

CONSOL ENERGY INC  
Form S-3  
October 24, 2003  
Table of Contents

As filed with the Securities and Exchange Commission on October 23, 2003

Registration No. 333-

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**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

**FORM S-3**

**REGISTRATION STATEMENT**

*UNDER*

*THE SECURITIES ACT OF 1933*

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**CONSOL ENERGY INC.**

(Exact name of registrant as specified in its charter)

**Delaware**  
(State or other jurisdiction of incorporation or organization)

**51-0337383**  
(I.R.S. Employer Identification No.)

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**Consol Plaza**  
**1800 Washington Road**  
**Pittsburgh, PA 15241-1421**  
**(412) 831-4000**

(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

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**Stephen E. Williams, Esq.**

**Vice President - General Counsel**

**CONSOL Energy Inc.**

**Consol Plaza**

**1800 Washington Road**

**Pittsburgh, PA 15241-1421**

**(412) 831-4000**

(Name, address, including zip code, and telephone number, including area code, of agent for service)

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*Copy to:*

**Steven L. Wasserman, Esq.**

**Piper Rudnick LLP**

**1251 Avenue of the Americas**

**New York, New York 10020**

**(212) 835-6000**

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**Approximate date of commencement of proposed sale to the public:** As soon as practicable after the effective date of this registration statement.

If the only securities being registered on this Form are being offered pursuant to dividend or interest reinvestment plans, please check the following box. "

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, other than securities offered only in connection with dividend or interest reinvestment plans, check the following box. x

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If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. "

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration number of the earlier effective registration statement for the same offering. "

If delivery of the prospectus is expected to be made pursuant to Rule 434, please check the following box. "

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### CALCULATION OF REGISTRATION FEE

<b>Title of each Class of Securities to be Registered</b>	<b>Amount to be Registered</b>	<b>Proposed Maximum Offering Price Per Unit</b>	<b>Proposed Maximum Aggregate Offering Price</b>	<b>Amount of Registration Fee</b>
Common Stock, par value \$.01 per share	68,997,357 shares	\$21.80 <sup>(1)</sup>	\$1,504,142,382	\$121,686 <sup>(1)</sup>

<sup>(1)</sup> Estimated solely for purposes of calculating the registration fee pursuant to Rule 457(c) on the basis of the average of the high and low prices per share of our common stock, as reported on the New York Stock Exchange, on October 20, 2003.

**The registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registrant shall file an amendment which specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the registration statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.**

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**Table of Contents**

**The information in the Prospectus is not complete and may be changed. The selling stockholders may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell these securities and is not soliciting an offer to buy these securities in any state where the offer or sale is not permitted.**

**Subject to Completion Dated October 23, 2003**

**PRELIMINARY PROSPECTUS**

**CONSOL ENERGY INC.**

**68,997,357 shares of common stock**

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We are furnishing this document to you to allow the selling stockholders identified in this prospectus to sell up to an aggregate of 68,997,357 shares of our common stock. The selling stockholders may sell these shares from time to time in underwritten offerings, in regular brokerage transactions, in transactions directly with market makers or in privately negotiated transactions.

We will not receive any of the proceeds from the sale of the shares by the selling stockholders. The selling stockholders will pay all brokers' or underwriters' discounts and commissions, transfer taxes, and fees and disbursements of any counsel to the selling stockholders, if any.

Our common stock is listed on the New York Stock Exchange under the symbol **CNX**. On October 22, 2003, the last reported sales price of our common stock as reported on the New York Stock Exchange was \$21.07 per share.

**We urge you to read carefully the Risk Factors section beginning on page 2 where we describe specific risks associated with an investment in our company and these securities before you make your investment decision.**

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Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or passed upon the accuracy or adequacy of this prospectus. Any representation to the contrary is a criminal offense.

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The date of this prospectus is October \_\_, 2003

**Table of Contents**

**TABLE OF CONTENTS**

	<b>Page</b>
<u>PROSPECTUS SUMMARY</u>	1
<u>RISK FACTORS</u>	2
<u>FORWARD-LOOKING STATEMENTS</u>	12
<u>RECENT DEVELOPMENTS</u>	12
<u>USE OF PROCEEDS</u>	12
<u>SELLING STOCKHOLDERS</u>	13
<u>PLAN OF DISTRIBUTION</u>	30
<u>LEGAL MATTERS</u>	31
<u>EXPERTS</u>	31
<u>WHERE YOU CAN FIND MORE INFORMATION</u>	32

**Table of Contents**

**PROSPECTUS SUMMARY**

You should read the entire prospectus, including the information set forth in Risk Factors, and all the information incorporated by reference, before making an investment decision.

CONSOL Energy

We are a multi-fuel energy producer and energy services provider which primarily serves the electric power generation industry in the United States. That industry generates two-thirds of its output by burning coal or gas, the two fuels we produce. We produce bituminous coal from 20 mining complexes in the United States and Australia. Bituminous coal is the most common type of coal and has a moisture content less than 20% by weight and heating value of 10,500 to 14,000 British thermal units (Btu) per pound. Our coal generally has a high Btu content which creates more energy per unit when burned than coals with lesser Btu content. As a result, coals with greater Btu content can be more efficient to use. Energy content is commonly expressed in Btu, the amount of energy required to heat one pound of pure water by one degree Fahrenheit at one atmosphere pressure. We also produce pipeline-quality coalbed methane gas primarily from our properties in Virginia. We believe that the use of coal and gas to generate electricity will grow as demand for power increases. For the twelve months ended December 31, 2002, our coal operations accounted for 88% of our revenues, our gas operations accounted for 7% of our revenues and our other operations accounted for 5% of our revenues.

Historically, we rank among the largest coal producers in the United States based upon total production, revenue, net income and operating cash flow. Our total production, including our portion of production from equity affiliates for the twelve months ended December 31, 2002, was 66 million tons. Our United States production of 63 million tons of coal in the twelve months ended December 31, 2002, accounted for approximately 6% of the total tons produced in the United States and 13% of the total tons produced east of the Mississippi River during that year. We are one of the premier coal producers in the United States by several measures:

We mine more high-Btu bituminous coal than any other United States producer;

We are the largest coal producer, in terms of tons produced, east of the Mississippi River;

We export more coal from the United States than any other coal producer or trading company;

We have the second largest amount of recoverable coal reserves among United States coal producers; and

We are the largest United States producer of coal from underground mines.

We also operate a large coalbed methane gas company based on both its proved reserves and its current daily production. Our industry position is highlighted by several measures:

We possess a large coalbed methane reserve base with 1.0 trillion cubic feet of proved reserves of gas;

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We currently have 134 million cubic feet of average daily coalbed methane gas production;

We operate more than 1,300 wells connected by approximately 740 miles of gathering lines and associated infrastructure; and

Our facilities have the capacity to transport 250 million cubic feet of gas per day.

CONSOL Energy was organized as a Delaware corporation in 1991 and is a holding company for 63 direct and indirect subsidiaries. Our address is CONSOL Plaza, 1800 Washington Road, Pittsburgh, Pennsylvania 15241-1421 and our telephone number is (412) 831-4000.



**Table of Contents**

**RISK FACTORS**

Investing in our securities will be subject to risks, including risks inherent in our business. The value of your investment may decline and could result in a loss. You should carefully consider the following factors as well as other information contained and incorporated by reference in this prospectus before deciding to invest in our securities.

*We have a significant amount of debt compared to our stockholders' equity, which limits our flexibility, imposes restrictions on us and could hinder our ability to compete and meet future capital and liquidity needs and to pay dividends.*

We are highly leveraged. At June 30, 2003, we had outstanding approximately \$526 million in aggregate principal amount of indebtedness, including capital leases, and total stockholders' equity of \$151 million. We have become highly leveraged as a result of our policy of paying dividends. Since 1992, we have paid dividends aggregating \$1.2 billion, approximately the amount of our aggregate net income for the same period.

The degree to which we are leveraged could have important consequences to us, including the following:

a substantial portion of our cash flow must be used to pay interest on our indebtedness and therefore is not available for use in our business;

our high degree of indebtedness increases our vulnerability to changes in general economic and industry conditions;

our ability to obtain additional financing for working capital, capital expenditures, general corporate purposes or other purposes could be impaired;

because some of our borrowings are short-term or at variable rates of interest, we are vulnerable to interest rate fluctuations, which could result in us incurring higher interest expenses if interest rates increase; and

our failure to comply with covenants and restrictions contained in the terms of our borrowings could lead to a default which could cause all or a significant portion of our debt to become immediately payable.

Stockholders' equity was reduced by comprehensive losses of approximately \$8 million in the six months ended June 30, 2003, \$56 million in 2002 and \$37 million in 2001. These losses relate primarily to the recognition of a minimum pension liability as a result of the negative return on plan assets for non-contributory defined benefit retirement plans covering substantially all employees not covered by multi-employer retirement plans. Our minimum pension liability generally is calculated annually and reflects a number of factors including conditions in the stock markets and interest rates. We cannot predict whether we will be required to recognize such losses in the future. Further comprehensive losses would erode our stockholders' equity and possibly preclude us from paying dividends, which likely would adversely affect our stock price. For these and other reasons, we may not pay dividends at the same levels as in recent periods or at all.

*Recent changes in our credit ratings could adversely affect our costs and expenses.*

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The credit ratings of our long term debt recently have been downgraded. Standard and Poor s has classed our long-term debt as BB+ and Moody s has classed our long-term debt as Ba1, each a subinvestment grade rating. Our long-term debt remains on credit watch by both agencies. This could adversely affect our ability to borrow and result in more restrictive borrowing terms, including increased borrowing costs, more restrictive covenants and the extension of less open credit. This in turn could affect our operational flexibility.

**Table of Contents**

*We have received a copy of an anonymous letter addressed to the Securities and Exchange Commission and delivered to our independent auditors, PricewaterhouseCoopers LLP, containing numerous allegations, including assertions that certain directors and senior executive officers have misappropriated corporate funds and other assets and engaged in other illegal or inappropriate activities.*

We have received a copy of an anonymous letter addressed to the Securities and Exchange Commission and delivered to our independent auditors, PricewaterhouseCoopers LLP. The letter contains numerous allegations including assertions that certain directors and senior executive officers have misappropriated corporate funds and other assets and engaged in other illegal or inappropriate activities. An independent member of our board of directors not charged in the anonymous letter is leading an investigation utilizing independent legal counsel. Pending the outcome of the investigation, the persons about whom allegations are made will continue to fulfill their normal management responsibilities. We have been advised by PricewaterhouseCoopers LLP and Ernst & Young LLP that, in view of the pending investigation, PricewaterhouseCoopers LLP and Ernst & Young LLP will not at this time provide their consents required to be filed with the registration statement. We have been informed that the Securities and Exchange Commission has commenced an inquiry regarding certain matters, which may be related to the anonymous letter. If the allegations in the letter are proved to be accurate, it could have a material adverse effect upon us, our financial statements and the value of our common stock.

*In recent periods our operating results have deteriorated and we may incur losses in future periods.*

Although we reported net income for each of the twelve months ended December 31, 2002, the six months ended December 31, 2001, the twelve months ended June 30, 2001 and the six months ended June 30, 2003, net income was attributable to income tax benefits in the periods ended December 31, 2002 and 2001 and benefited substantially from an export sales excise tax resolution in the twelve months ended June 30, 2001 and from income tax benefits and the cumulative effects of accounting changes in the six months ended June 30, 2003. For the twelve months ended December 31, 2002 and the six months ended December 31, 2001, we incurred losses before income tax benefits of \$40.4 million and \$19.6 million, respectively. Our recent results reflect a number of factors, including a decrease in tons of coal sold as a result of higher than usual customer inventory levels, decreased average sales price for gas in the industrial sector and lower demand for gas during the 2001-2002 winter heating season that resulted in high levels of gas storage. These and other conditions beyond our control could continue to affect our business, and we may incur losses in the future.

*We may be unable to comply with restrictions imposed by our senior credit facility which could result in a default under these agreements.*

Our senior credit facility imposes a number of restrictions on us. A failure to comply with these restrictions could adversely affect our ability to borrow under our senior credit facility or result in an event of default under these agreements and our other debt. Our senior credit facility contains financial and other covenants that create limitations on our ability to, among other things, borrow the full amount under our senior credit facility or incur additional debt, and requires us to maintain various financial ratios and comply with various other financial covenants. These financial covenants include a funded debt ratio that requires that we maintain a ratio of total indebtedness for borrowed money as of the last day of each quarter to total earnings before interest, taxes, depreciation and amortization and excluding any extraordinary gains or losses for the four quarters ended on that date of not more than 3.5 to 1 and a ratio for the last four consecutive quarters of total earnings before interest, taxes, depreciation and amortization and excluding any extraordinary gains or losses to total interest payable (including amortization of debt discount) on indebtedness for borrowed money of not less than 4.5 to 1. A covenant also limits capital expenditures to \$275 million for the fiscal year ending December 31, 2003, \$455 million for the fiscal year ending December 31, 2004 and \$470 million for the fiscal year ending December 31, 2005. Our ability to comply with these restrictions depends upon our operating results, which recently have deteriorated from earlier periods and which continue to be affected by economic factors. As a result, we may be unable to comply with these covenants and other restrictions in our senior credit facility. In the event of a default, our lenders could terminate their commitments to us and declare all amounts borrowed, together with accrued interest and fees, immediately due and payable. If this were to occur, we might not be able to pay these amounts or we might be forced to seek an amendment to our debt agreements which could make the terms of these agreements more onerous for us. Failure to comply with these restrictions, even if waived by our bank lenders, also could adversely affect our credit ratings, which could increase the costs of debt financings to us and impair our ability to obtain additional debt financing.



## **Table of Contents**

*We may not be able to maintain our competitive position because coal and gas markets are highly competitive and are affected by factors beyond our control.*

We compete with coal producers in various regions of the United States for domestic sales, and we compete both with domestic and foreign coal producers for sales in international markets. Demand for our coal by our principal customers is affected by the price of competing coal and alternative fuel supplies, including nuclear, natural gas, oil and renewable energy sources, such as hydroelectric power. We also sell coal to foreign electricity generators and to the more specialized metallurgical coal market, both of which are significantly affected by international demand and competition.

*A significant decline in the prices we receive for our coal and gas could adversely affect our operating results and cash flows.*

Our results of operations are highly dependent upon the prices we receive for our coal and gas, which are closely linked to consumption patterns of the electric generation industry and certain industrial and residential patterns where gas is the principal fuel. Extended or substantial price declines for coal or gas would adversely affect our operating results for future periods and our ability to generate cash flows necessary to improve productivity and expand operations. For example, in 1998, 1999 and 2001, demand for coal decreased because of the warm winters in the northeastern United States. This resulted in increased inventories that caused pricing decreases. Natural gas prices have been volatile.

*We may not be able to produce sufficient amounts of coal to fulfill our customers requirements, which could harm our customer relationships.*

We may not be able to produce sufficient amounts of coal to meet customer demand, including amounts that we are required to deliver under long-term contracts. Our inability to satisfy our contractual obligations could result in our customers initiating claims against us. Our inability to satisfy demand could otherwise harm our relationships with our customers.

*If the coal or gas industry experiences overcapacity in the future, our profitability could be impaired.*

During the mid-1970s and early 1980s, a growing coal market and increased demand for coal attracted new investors to the coal industry, spurred the development of new mines and resulted in added production capacity throughout the industry, all of which led to increased competition and lower coal prices. Increases in coal prices similarly could encourage the development of expanded capacity by new or existing coal producers. Any overcapacity could reduce coal prices in the future. Increased prices for gas typically stimulate additional exploration and often result in additional supplies brought to market. Increased gas supply could reduce gas prices in the future.

*If customers do not extend existing contracts or enter into new long-term contracts for coal, the stability and profitability of our operations could be affected.*

During the twelve months ended December 31, 2002, approximately 82% of the coal we produced was sold under contracts with terms of one year or more. If a substantial portion of our long-term contracts are modified or terminated, we would be adversely affected if we are unable to

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replace them or if our new contracts were not at the same level of profitability. The profitability of our long-term coal supply contracts depends on a variety of factors, which vary from contract to contract and fluctuate during the contract term, and includes our production costs and other factors. Price changes, if any, provided in long-term supply contracts are not intended to reflect our cost increases, and therefore increases in our costs may reduce our profit margins. In addition, in periods of declining market prices, provisions for adjustment or renegotiation of prices and other provisions may increase our exposure to short-term coal price volatility. As a result, we may not be able to obtain long-term agreements at favorable prices (compared to either market conditions, as they may change from time to time, or our cost structure) and long-term contracts may not contribute to our profitability.

*We depend on two customers for a significant portion of our revenues and the loss of one or both of these customers could adversely affect us.*

During the twelve months ended December 31, 2002, Allegheny Energy accounted for approximately 15% of our total revenue and American Electric Power accounted for approximately 11% of our total revenue. Our business and operating results could be adversely affected if either one of these customers does not continue to purchase the same amount of coal or gas as it has purchased from us in the past or on terms, including pricing, it has under existing agreements.

## **Table of Contents**

*Some of our long-term contracts require us to supply all of our customers' coal needs. If these customers' coal requirements decline, our operating results may be adversely affected.*

We have requirements contracts with certain customers which require us to supply all of those customers' coal needs but allow the customers to defer or vary the amount of coal that they accept. During 2002, the reduction in the amount required by certain of these customers contributed to the reduction in our earnings when we could not find alternative customers at the same price and volume levels. If these or other customers with requirements contracts need less coal in the future, it could adversely affect our operating results.

*The creditworthiness of our customer base has declined.*

Our ability to receive payment for coal or gas sold depends on the creditworthiness of our customers. In general, the creditworthiness of our customers has declined. If this trend were to continue, the number of customers with acceptable credit profiles could decline. The bankruptcy of a customer could result in a loss of revenue for coal or gas already shipped, or in adverse changes to our sales contracts being imposed by the courts.

*We may not be able to accomplish acquisitions effectively, which requires us to outbid competitors, obtain financing on acceptable terms and integrate acquired operations.*

The energy industry is a rapidly consolidating industry, with many companies seeking to consummate acquisitions and increase their market share. In this environment, we compete and will continue to compete with many other buyers for acquisitions. Some of those competitors may be able to outbid us for acquisitions because they have greater financial resources. As a result of these and other factors, future acquisitions may not be available to us on attractive terms. Our ability to consummate any acquisition will be subject to various conditions, including the negotiation of satisfactory agreements and obtaining necessary regulatory approvals and financing. Once any acquisition is completed, we may not be able to achieve expected operating benefits through cost reductions, increased efficiency and integration with our existing operations. As a result, our operating results may be adversely affected.

*Disputes with our customers concerning contracts can result in litigation, which could result in our paying substantial damages or incurring loss of revenues.*

From time to time, we have disputes with our customers over the provisions of long-term contracts relating to, among other things, coal quality, pricing and quantity. We may not be able to resolve any future disputes in a satisfactory manner, which could result in our paying substantial damages or suffering reduced revenues.

*Coal mining is subject to conditions or events beyond our control, which could cause our quarterly or annual results to deteriorate.*

Our coal mining operations are predominantly underground mines. These mines are subject to conditions or events beyond our control that could disrupt operations, affect production and the cost of mining at particular mines for varying lengths of time and have a significant impact on our

operating results. These conditions or events have included:

variations in thickness of the layer, or seam, of coal;

amounts of rock and other natural materials and other geological conditions;

equipment failures or repair;

fires and other accidents; and

weather conditions.



**Table of Contents**

*We face numerous uncertainties in estimating our economically recoverable coal reserves, and inaccuracies in our estimates could result in lower than expected revenues, higher than expected costs and decreased profitability.*

There are numerous uncertainties inherent in estimating quantities and values of economically recoverable coal reserves, including many factors beyond our control. As a result, estimates of economically recoverable coal reserves are by their nature uncertain. Information about our reserves consists of estimates based on engineering, economic and geological data assembled and analyzed by our staff. None of our coal reserve estimates have been reviewed by independent experts.

Some of the factors and assumptions which impact economically recoverable reserve estimates include:

geological conditions;

historical production from the area compared with production from other producing areas;

the assumed effects of regulations and taxes by governmental agencies;

assumptions governing future prices; and

future operating costs.

Each of these factors may in fact vary considerably from the assumptions used in estimating reserves. For these reasons, estimates of the economically recoverable quantities of coal attributable to a particular group of properties, and classifications of these reserves based on risk of recovery and estimates of future net cash flows, may vary substantially. Actual production, revenues and expenditures with respect to our reserves will likely vary from estimates, and these variances may be material. As a result, our estimates may not accurately reflect our actual reserves.

*The exploration for, and production of, gas is an uncertain process with many risks.*

The exploration for and production of gas involves numerous risks. The cost of drilling, completing and operating wells for coalbed methane or other gas is often uncertain, and a number of factors can delay or prevent drilling operations or production, including:

unexpected drilling conditions;

pressure or irregularities in formations;

equipment failures or repairs;

fires or other accidents;

adverse weather conditions;

pipeline ruptures or spills; and

shortages or delays in the availability of drilling rigs and the delivery of equipment.

Our future drilling activities may not be successful, and we cannot be sure that our drilling success rates will not decline. Unsuccessful drilling activities could result in higher costs without any corresponding revenues. Also, we may not be able to obtain any options or lease rights in potential drilling locations that we identify which, among other things, could prevent us from producing gas at potential drilling locations.

***The coal beds from which we produce methane gas frequently contain water which may hamper our ability to produce gas in commercial quantities.***

The amount of coalbed methane that can be commercially produced depends upon the coal quality, the original gas content of the coal seam, the thickness of the seam, the reservoir pressure, the rate at which gas is

## **Table of Contents**

released from the coal, and the existence of any natural fractures through which the gas can flow to the well bore. However, coal beds frequently contain water that must be removed in order for the gas to detach from the coal and flow to the well bore. Our ability to remove and dispose of sufficient quantities of water from the coal seam will determine whether or not we can produce gas in commercial quantities.

*Disruption of rail, barge and other systems which deliver our coal, or of pipeline systems which deliver our gas, or increases in transportation costs could make our coal or gas less competitive.*

Coal producers depend upon rail, barge, trucking, overland conveyor and other systems to provide access to markets. Disruption of transportation services because of weather-related problems, strikes, lock-outs or other events could temporarily impair our ability to supply coal to customers and adversely affect our profitability. Transportation costs represent a significant portion of the delivered cost of coal and, as a result, the cost of delivery is a critical factor in a customer's purchasing decision. Increases in transportation costs could make our coal less competitive.

The marketability of our gas production partly depends on the availability, proximity and capacity of pipeline systems owned by third parties. Unexpected changes in access to pipelines could adversely affect our operations.

*Government laws, regulations and other legal requirements relating to protection of the environment and health and safety matters increase our costs of doing business and may restrict our operations.*

We are subject to laws, regulations and other legal requirements enacted or adopted by federal, state and local, as well as foreign, authorities relating to protection of the environment and health and safety matters, including those legal requirements that govern discharges of substances into the air and water, the management and disposal of hazardous substances and wastes, the cleanup of contaminated sites, groundwater quality and availability, plant and wildlife protection, reclamation and restoration of mining properties after mining is completed and control of surface subsidence from underground mining. Complying with these requirements, including the terms of our permits, has had, and will continue to have, a significant effect on our costs of operations and competitive position. In addition, we could incur substantial costs, including clean up costs, fines and civil or criminal sanctions and third party damage claims for personal injury, property damage, wrongful death, or exposure to hazardous substances, as a result of violations of or liabilities under environmental laws.

For example, we incur and will continue to incur significant costs associated with the investigation and remediation of environmental contamination under the federal Comprehensive Environmental Response, Compensation, and Liability Act (Superfund) and similar state statutes and have been named as a potentially responsible party at Superfund sites in the past. Our costs for these matters, which currently relate predominantly to one site, could exceed our current accruals, which were \$2.9 million at December 31, 2002. The discovery of additional contaminants or the imposition of additional clean-up obligations or other liabilities could result in substantially greater costs than we have estimated.

*We must obtain governmental permits and approvals for mining operations, which can be a costly and time consuming process and result in restrictions on our operations.*

Regulatory authorities exercise considerable discretion in the timing and scope of permit issuance. Requirements imposed by these authorities may be costly and time consuming and may result in delays in the commencement or continuation of exploration or production operations. For

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example, we often are required to prepare and present to federal, state and local authorities data pertaining to the impact that proposed exploration for or production of coal may have on the environment. Further, the public may comment on and otherwise engage in the permitting process, including through intervention in the courts. Accordingly, the permits we need may not be issued, or if issued, may not be issued in a timely fashion, or may involve requirements which restrict our ability to conduct our mining operations or to do so profitably.

## **Table of Contents**

*The characteristics of coal may make it difficult for coal users to comply with various environmental standards related to coal combustion. As a result, they may switch to other fuels, which would affect the volume of our sales.*

Coal contains impurities, including sulfur, mercury, chlorine and other elements or compounds, many of which are released into the air when coal is burned. Stricter environmental regulations of emissions from coal-fired electric generating plants could increase the costs of using coal thereby reducing demand for coal as a fuel source, the volume of our coal sales and price. Stricter regulations could make coal a less attractive fuel alternative in the planning and building of utility power plants in the future.

For example, in order to meet the federal Clean Air Act limits for sulfur dioxide emissions from electric power plants, coal users may need to install scrubbers, use sulfur dioxide emission allowances (some of which they may purchase), blend high sulfur coal with low sulfur coal or switch to other fuels. Each option has limitations. Lower sulfur coal may be more costly to purchase on an energy basis than higher sulfur coal depending on mining and transportation costs. The cost of installing scrubbers is significant and emission allowances may become more expensive as their availability declines. Switching to other fuels may require expensive modification of existing plants. Because higher sulfur coal currently accounts for a significant portion of our sales, the extent to which power generators switch to low-sulfur fuel could materially affect us if we cannot offset the cost of sulfur removal by lowering the delivered costs of our higher sulfur coals on an energy equivalent basis.

Other new and proposed reductions in emissions of mercury, nitrogen oxides, particulate matter or greenhouse gases may require the installation of additional costly control technology or the implementation of other measures, including switching to other fuels. These new and proposed reductions will make it more costly to operate coal-fired plants and could make coal a less attractive fuel alternative to the planning and building of utility power plants in the future. For example, the Environmental Protection Agency is requiring reduction of nitrogen oxide emissions in 22 eastern states and the District of Columbia and will require reduction of particulate matter emissions over the next several years for areas that do not meet air quality standards for fine particulates. In addition, Congress and several states are now considering legislation to further control air emissions of multiple pollutants from electric generating facilities and other large emitters. To the extent that any new requirements affect our customers, this could adversely affect our operations and results.

*We have significant reclamation and mine closure obligations. If the assumptions underlying our accruals are materially inaccurate, we could be required to expend greater amounts than anticipated.*

The Surface Mining Control and Reclamation Act establishes operational, reclamation and closure standards for all aspects of surface mining as well as most aspects of deep mining. We accrue for the costs of current mine disturbance and of final mine closure, including the cost of treating mine water discharge where necessary. Estimates of our total reclamation and mine-closing liabilities, which are based upon permit requirements and our experience, were \$391 million at December 31, 2002. On January 1, 2003, we adopted Statement of Financial Accounting Standards No. 143 (SFAS 143) to account for the costs related to the closure of mines and gas wells and the reclamation of the land upon exhaustion of coal and gas reserves. This statement requires that the fair value of an asset retirement obligation be recognized in the period in which it is incurred if a reasonable estimate of fair value can be made. The present value of the estimated asset retirement costs are capitalized as part of the carrying amount of the long-lived asset. As a result of this change in accounting principle, we recognized a gain of \$5 million, net of a tax cost of \$3 million. At the time of adoption, total assets, net of accumulated depreciation, increased approximately \$59 million, and total liabilities increased approximately \$51 million. These amounts recorded upon adoption are dependent upon a number of variables, including the estimated future retirement costs, estimated proved reserves, assumptions involving profit margins, inflation rates, and the assumed credit-adjusted risk-free interest rates. Furthermore, these obligations are unfunded. If these accruals are insufficient or our liability in a particular year is greater than currently anticipated, our future operating results could be adversely affected.

*Federal, state and local authorities extensively regulate our gas production activities.*

The gas industry is subject to extensive legislation and regulation, which is under constant review for amendment or expansion. Any changes may affect, among other things, the pricing or marketing of gas production. State and local authorities regulate various aspects of gas drilling and production activities, including the drilling of wells (through permit and bonding requirements), the spacing of wells, the unitization or pooling of gas properties, environmental matters, safety standards, market sharing and well site restoration. If we fail to comply with statutes and regulations, we may be subject to substantial penalties, which would decrease our profitability.

**Table of Contents**

***Deregulation of the electric utility industry could have unanticipated effects on our industry.***

Deregulation of the electric utility industry will enable purchasers of electricity to shop for the lowest cost suppliers. If our electric power generator customers become more sensitive to long-term price or quantity commitments in a more competitive environment, it may be more difficult for us to enter into long-term contracts and could subject our revenue stream to increased volatility which may adversely affect our profitability. Deregulation of the power industry may have other consequences for our industry, such as efforts to reduce coal prices, which may have a negative effect on our operating results.

***The passage of legislation responsive to the Framework Convention on Global Climate Change or similar governmental initiatives could result in restrictions on coal use.***

The United States and more than 160 other nations are signatories to the 1992 Framework Convention on Global Climate Change which is intended to limit or capture emissions of greenhouse gases, such as carbon dioxide. In December 1997, in Kyoto, Japan, the signatories to the convention established a binding set of emissions targets for developed nations. Although the specific emissions targets vary from country to country, the United States would be required to reduce emissions to 93% of 1990 levels over a five-year budget period from 2008 through 2012. If the Kyoto Protocol or other comprehensive legislation focusing on greenhouse gas emissions is enacted by the United States, it could have the effect of restricting the use of coal. Other efforts to reduce emissions of greenhouse gases and federal initiatives to encourage the use of natural gas also may affect the use of coal as an energy source.

***We are subject to the federal Clean Water Act and similar state laws which impose treatment, monitoring and reporting obligations.***

The federal Clean Water Act and corresponding state laws affect coal mining operations by imposing restrictions on discharges into regulated waters. Permits requiring regular monitoring and compliance with effluent limitations and reporting requirements govern the discharge of pollutants into regulated waters. New requirements under the Clean Water Act and corresponding state laws could cause us to incur significant additional costs that adversely affect our operating results.

***We have significant obligations for long-term employee benefits for which we accrue based upon assumptions which, if inaccurate, could result in our being required to expend greater amounts than anticipated.***

We provide various long-term employee benefits to inactive and retired employees. We accrue amounts for these obligations. At December 31, 2002, the current and non-current portions of these obligations included:

post retirement medical and life insurance (\$1.5 billion);

coal workers' black lung benefits (\$462 million); and

workers' compensation (\$317 million).

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These obligations have been estimated based on assumptions, which are described in the notes to our consolidated financial statements included in our Annual Report on Form 10-K, as amended, for the year ended December 31, 2002. However, if our assumptions are inaccurate, we could be required to expend greater amounts than anticipated. These obligations are unfunded, except for coal workers' black lung, of which approximately 8% was funded at December 31, 2002. In addition, several states in which we operate consider changes in workers' compensation laws from time to time. Such changes, if enacted, could increase our benefit expense.

*New regulations have expanded the definition of black lung disease and generally made it easier for claimants to assert and prosecute claims, which could increase our exposure to black lung benefit liabilities.*

In January 2001, the United States Department of Labor amended the regulations implementing the federal black lung laws to give greater weight to the opinion of a claimant's treating physician, expand the definition of black lung disease and limit the amount of medical evidence that can be submitted by claimants and respondents.



## **Table of Contents**

The amendments also alter administrative procedures for the adjudication of claims, which, according to the Department of Labor, results in streamlined procedures that are less formal, less adversarial and easier for participants to understand. These and other changes to the federal black lung regulations could significantly increase our exposure to black lung benefits liabilities.

In recent years, legislation on black lung reform has been introduced but not enacted in Congress. It is possible that this legislation will be reintroduced for consideration by Congress. If any of the proposals included in this or similar legislation is passed, the number of claimants who are awarded benefits could significantly increase. Any such changes in black lung legislation, if approved, may adversely effect our business, financial condition and results of operations.

***Fairmont Supply Company, our subsidiary, is a co-defendant in various asbestos litigation cases which could result in making payments in the future that are material.***

One of our subsidiaries, Fairmont Supply Company, which distributes industrial supplies, currently is named as a defendant in approximately 22,100 asbestos claims in state courts in Pennsylvania, Ohio, West Virginia, Maryland, New Jersey and Mississippi. Because a very small percentage of products manufactured by third parties and supplied by Fairmont in the past may have contained asbestos and many of the pending claims are part of mass complaints filed by hundreds of plaintiffs against a hundred or more defendants, it has been difficult for Fairmont to determine how many of the cases actually involve valid claims or plaintiffs who were actually exposed to asbestos-containing products supplied by Fairmont. In addition, while Fairmont may be entitled to indemnity or contribution in certain jurisdictions from manufacturers of identified products, the availability of such indemnity or contribution is unclear at this time and, in recent years, some of the manufacturers named as defendants in these actions have sought protection from these claims under bankruptcy laws. Fairmont has no insurance coverage with respect to these asbestos cases. To date, payments by Fairmont with respect to asbestos cases have not been material. However, payments in the future with respect to pending or future asbestos cases could be material to our financial position, results of operations or cash flows.

***We have been informed by insurance companies that, unless provided with collateral, they no longer will issue surety bonds that we and other coal mining companies are required by law to obtain.***

Various federal or state laws and regulations require us to obtain surety bonds or to provide other assurance of payment for certain of our long-term liabilities including mine closure or reclamation costs, workers' compensation and other post employment benefits. We, along with other participants in the coal industry, have been informed by the insurance companies that they no longer will provide surety bonds for workers' compensation and other post employment benefits without collateral. We have satisfied our obligations under these statutes and regulations, by providing letters of credit or other assurances of payment. However, letters of credit can be significantly more costly to us than surety bonds. The issuance of letters of credit under our bank credit facilities also reduces amounts that we can borrow under our bank credit facilities for other purposes.

***RWE AG beneficially owns approximately 18.5% of our outstanding common stock and may be able, together with one or more other holders of our common stock, to have a significant influence on our business decisions.***

As of the date hereof, RWE AG beneficially owns 16,622,932 shares, or approximately 18.5%, of our outstanding common stock through its wholly owned subsidiary RWE Power AG. RWE AG may be able, together with one or more other holders of our common stock, to have a significant influence on the election of the members of our board of directors and on our business and affairs, including any determination with respect to major business transactions.

*Our share price may decline due to shares eligible for future sale.*

A total of 68,997,357 shares of our common stock, including 16,622,932 shares beneficially owned by RWE AG, are eligible for sale as a result of this registration statement. This substantially exceeds the approximately 20 million shares held by stockholders other than RWE AG immediately prior to September 23, 2003, the date of an initial placement by RWE and us. Therefore, the number of shares potentially available for trading in the public markets has significantly increased since September 23, 2003. We cannot predict the effect, if any, that future sales

## **Table of Contents**

of shares of our common stock, or the availability of such shares for sale, would have on the market price prevailing from time to time. Sales of substantial amounts of our common stock in the public market by RWE AG or other holders, or the perception that such sales could occur, could adversely affect prevailing market prices for our common stock. A reduction in the market price of our common stock could impair our ability to raise additional capital through future public offerings of our equity securities.

RWE Power AG has granted to Friedman, Billings, Ramsey & Co., Inc., or FBR, the option to place all of RWE Power AG's shares of our common stock. FBR may exercise the option on one or more occasions at any time during the period ending on the earlier of (i) 90 days after September 23, 2003 or (ii) 30 days following the date of the effectiveness of the registration statement of which this prospectus is a part. The option period may be extended in certain circumstances. If the registration statement of which this prospectus is a part becomes effective during the option period, FBR may place RWE Power AG's shares of our common stock under the registration statement. RWE AG has advised us that, should RWE AG continue to beneficially hold any shares of our common stock at the time of expiration of the option granted to FBR, RWE AG intends, subject to market conditions, to seek to dispose of all or as many of its remaining shares as reasonably practicable thereafter through open market or private sales, underwritten offerings or otherwise. RWE AG has also advised us that it is possible that RWE Power AG may not sell any such shares and, while it has no present intention to do so, RWE AG or one of its subsidiaries may decide in the future to purchase shares of our common stock.

### ***There is a limited market for our common stock.***

There has been limited volume of our shares traded, averaging approximately 200,000 shares per day from January 2, 2003 through August 31, 2003. The limited liquidity for our stock could make it difficult for purchasers in this offering to resell their shares or adversely affect the price that can be obtained for the shares. However, see also "Risk Factors" — Our share price may decline due to shares eligible for future sale.

***We are a holding company and conduct substantially all of our operations through subsidiaries. Our ability to service our debt and pay dividends to holders of our common stock will depend upon us receiving distributions or similar payments from our subsidiaries. Dividends are discretionary.***

Because substantially all of our operations are conducted through subsidiaries, our cash flow and, therefore, our ability to service our debt and pay dividends to holders of our common stock primarily depends upon the earnings of our subsidiaries and the distribution of those earnings to, or upon loans or other payments of funds by those subsidiaries to, us. Our subsidiaries are separate and distinct legal entities and have no obligation to pay any amounts due pursuant to our debt securities or to make any funds available to us for the payment of dividends or otherwise. In addition, the payment of dividends and the making of loans and advances to the us by our subsidiaries may be subject to statutory or contractual restrictions, will be contingent upon the earnings of those subsidiaries and subject to various business considerations.

Our declaration and payment of dividends is subject to the discretion of our board of directors, and no assurance can be given that we will pay dividends in the future.

**Table of Contents**

**FORWARD-LOOKING STATEMENTS**

Some statements in this prospectus or any prospectus supplement, and the documents incorporated by reference in this prospectus or any prospectus supplement are known as forward-looking statements, as that term is used in Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934. Forward-looking statements may relate to, among other things, future performance generally, business development activities, future capital expenditures, financing sources and availability and the effects of regulation and competition.

When we use the words believe, intend, expect, may, will, should, anticipate, could, estimate, plan, predict, project, or similar expressions, the statements which include those words are usually forward-looking statements. When we describe strategy that involves risks or uncertainties, we are making forward-looking statements.

We warn you that forward-looking statements are only predictions. Actual events or results may differ as a result of risks that we face, including those set forth in the sections of this prospectus called Risk Factors. Those are representative of factors that could affect the outcome of the forward-looking statements. These and the other factors discussed elsewhere in this prospectus or any prospectus supplement and the documents incorporated by reference in them are not necessarily all of the important factors that could cause our results to differ materially from those expressed in our forward-looking statements. Forward-looking statements speak only as of the date they are made and we undertake no obligation to update them.

**RECENT DEVELOPMENTS**

On October 21, 2003, a complaint was filed in the United States District Court for the Western District of Pennsylvania on behalf of Seth Moorhead against us, J. Brett Harvey and William J. Lyons. The complaint alleges, among other things, that the defendants violated sections 10(b) and 20(a) of the Securities and Exchange Act of 1934 and Rule 10b-5 promulgated under that Act and that during the period between January 24, 2002 and July 18, 2002 the defendants issued false and misleading statements to the public which failed to disclose or misrepresented the following, among other things: (a) that we utilized an aggressive approach regarding our spot market sales by reserving 20% of our production to that market, and that by increasing our exposure to the spot market, we were subjecting ourselves to increased risk and uncertainty as the price and demand for coal could be volatile; (b) that we were experiencing difficulty selling the production that we had allocated to the spot market, and, nonetheless, we maintained our production levels which caused our coal inventory to increase; (c) that our increasing coal inventory was causing our expenses to rise dramatically, thereby weakening our financial condition; and (d) that based on the foregoing, defendants' positive statements regarding our earnings and prospects were lacking in a reasonable basis at all times and therefore were materially false and misleading. The complaint asks the court to (a) award unspecified damages to plaintiff and (b) award plaintiff reasonable costs and expenses incurred in connection with this action, including counsel fees and expert fees.

We have received a copy of an anonymous letter addressed to the Securities and Exchange Commission and delivered to our independent auditors, PricewaterhouseCoopers LLP. The letter contains numerous allegations including assertions that certain directors and senior executive officers have misappropriated corporate funds and other assets and engaged in other illegal or inappropriate activities. An independent member of our board of directors not charged in the anonymous letter is leading an investigation utilizing independent legal counsel. Pending the outcome of the investigation, the persons about whom allegations are made will continue to fulfill their normal management responsibilities. We have been advised by PricewaterhouseCoopers LLP and Ernst & Young LLP that, in view of the pending investigation, PricewaterhouseCoopers LLP and Ernst & Young LLP will not at this time provide their consents required to be filed with the registration statement. We have been informed that the Securities and Exchange Commission has commenced an inquiry regarding certain matters, which may be related to the anonymous letter. If the allegations in the letter are proved to be accurate, it could have a material adverse effect upon us, our financial statements and the value of our common stock.

**USE OF PROCEEDS**

We will not receive any of the proceeds from the sale of the common stock described in this prospectus.

**Table of Contents****SELLING STOCKHOLDERS**

The selling stockholders may from time to time offer and sell pursuant to this prospectus any or all of the shares of common stock. The term selling stockholders includes the holders listed below and the beneficial owners of the shares and their transferees, pledges, donees or other successors.

The following table sets forth information as of October 22, 2003 with respect to each selling stockholder.

Name	Common stock beneficially owned prior to the offering	Common Stock Offered in this Offering	Common stock beneficially owned after the offering <sup>(1)</sup>	
			Number	Percent of Class
RWE Power AG <sup>(2)</sup>	16,622,932	16,622,932		
Aaron Wolfson c/o Wolfson Group	15,000	15,000		
Abraham Wolfson c/o Acta Realty	10,000	10,000		
AIM Equity Funds on behalf of AIM Capital Development Fund	546,600	546,600		
AIM Funds Group on behalf of AIM Small Cap Equity Fund	230,000	230,000		
AIM Variable Insurance Funds on behalf of AIM VI Capital Development Fund	60,000	60,000		
AIM Variable Insurance Funds, on behalf of AIM VI Small Cap Equity Fund	500	500		
Alford Turman	550	550		
Alice R. Hudspeth Regular	2,000	2,000		
Alice Rainey Hudspeth, Trustee U/W/O, John Bradshaw Rainey Jr. Trust, Dated 12/05-1995	3,600	3,600		
Alpha Q Trust	1,676	1,676		
Alpha US Sub Fund I, LLC	23,123	23,123		
Anchorwatch & Co.	3,700,000	3,700,000		
Ann B. Wilson	1,800	1,800		
Atlas Capital (Q.P.) L.P.	112,825	107,500	5,325	*
Atlas Capital Master Fund L.P.	338,500	322,500	16,000	*

**Table of Contents**

Name	Common stock beneficially owned prior to the offering	Common Stock Offered in this Offering	Common stock beneficially owned <sup>(1)</sup> after the offering	
			Number	Percent of Class
Avast & Co.	911,600	617,000	294,600	*
AXIA Offshore Partners Ltd	11,027	11,027		
AXIA Partners LP	85,850	85,850		
Balboa Fund LP	69,826	65,000	4,826	*
Balboa Fund LTD	91,434	85,000	6,434	*
Banzai Offshore Fund Ltd	124,095	124,095		
Banzai Partners LP	85,000	85,000		
Barnett & Co as Nominee for the Boston Partners All Cap Value Fund	1,580	1,580		
Barnett & Co as Nominee for the Boston Partners Long Short Equity Fund	19,435	19,435		
Barnett & Co.	12,000	5,000	7,000	*
Barnett L. Gershen	3,700	3,700		
Bear Stearns Sec. Corp. custodian, Edward J. Nusrala, IRA	2,000	2,000		
Bear Stearns Sec. Corp., Custodian: Emerson Partners	20,000	20,000		
Bear Stearns Sec. Corp., Custodian: J. Steven Emerson	30,000	30,000		
Bear Stearns Sec. Corp., Custodian: J. Steven Emerson IRA II	175,000	175,000		
Bear Stearns Sec. Corp., Custodian: J. Steven Emerson ROTH IRA	75,000	75,000		
Bell Jones & Quinlisk Profit Sharing Plan	930	930		
Bill Ham	6,500	6,500		
BJC Health Care Services-Master Custodial Trust	50,019	50,019		

**Table of Contents**

Name	Common stock beneficially owned prior to the offering	Common Stock Offered in this Offering	Common stock beneficially owned after the offering <sup>(1)</sup>	
			Number	Percent of Class
BJC Health Care Services-Pension Plan	21,421	21,421		
Bost & Co FBO Raytheon Master Pension	12,500	12,500		
Boston Partners Offshore Fund, LTD	16,100	16,100		
Boston & Co as nominee for GMI Master Pension Trust	52,400	52,400		
Boston & Co as nominee for the Employee Retirement Income Plan Trust of Minnesota Mining & Manufacturing Co.	335,520	335,520		
Boston Partners Long/Short Equity Fund II LP	3,300	3,300		
Boston Partners Long/Short Equity Fund LP	3,800	3,800		
Boston Provident Partners, LP	94,000	94,000		
BP Institutional Partners LP	6,000	6,000		
Bright Capital Long/Short Equity Partners	2,365	2,365		
Brookstone Corporation ESP FBO Stephen J. Dishman	600	600		
Canterbury/Westchester SMID Cap Value Fund	28,720	28,720		
Capital Crossover Partners, L.P.	600,000	600,000		
Capitalgest Sgr. Spa.	60,000	60,000		
CastleRock Fund, Ltd	224,900	224,900		
CastleRock Partners II, L.P.	22,100	22,100		
CastleRock Partners, L.P.	398,700	398,700		
Catequil Energy Overseas Partners Ltd	97,800	97,800		
Catequil Energy Partners L.P.	52,200	52,200		
Catequil Overseas Partners Ltd	370,865	370,865		



**Table of Contents**

Name	Common stock beneficially owned prior to the offering	Common Stock Offered in this Offering	Common stock beneficially owned after the offering <sup>(1)</sup>	
			Number	Percent of Class
Catequil Partners L.P.	179,135	179,135		
CCHS Retirement Plan	110,000	110,000		
CEBT Comingled Employee Benefit Trust Capital Structure Arbitrage	11,190	11,190		
Chana Sasha Foundation	16,500	16,500		
Charles O. Requadt & Julie K. Requadt JTEN	3,600	3,600		
Charles Schwab & Co. Inc., custodian, Barnett L. Gershen IRA Rollover	1,400	1,400		
Charles Schwab & Co., custodian, Edward P. Hansen IRA	700	700		
Chelonia Fund LP	50,000	50,000		
Chesed Congregation of America	180,000	180,000		
Cheyne Value Fund LP	150,000	150,000		
Childrens Medical Center	18,400	18,400		
City of Austin Retirement System	95,000	95,000		
City of Boston	4,053	4,053		
Concho Group Ltd.	2,700	2,700		
Continental Casualty Company	250,000	250,000		
Cotran Investment Limited	200,000	200,000		
Creve & Co.	13,000	13,000		
Dacoma Investments, Ltd.	1,400	1,400		
Dale McGleary	3,500	3,500		
David A. Todd	2,400	2,400		

**Table of Contents**

Name	Common stock beneficially owned prior to the offering	Common Stock Offered in this Offering	Common stock beneficially owned <sup>(1)</sup> after the offering	
			Number	Percent of Class
David Eidelman & Rachel Eidelman JTWROS	3,500	3,500		
David Spolane & Marlene Spolane JTEN	2,100	2,100		
Deutsche Bank AG, London Branch	905,393	500,000	405,393	*
Dorothy R. Middleton	500	500		
DSM PVM NV	115,000	115,000		
Eli Levitin	8,500	8,500		
Ell & Co as Nominee for Emerson Electric	55,700	55,700		
Ell & Co as Nominee for Loyola Retirement	12,300	12,300		
Ell & Co as Nominee for Loyola University Endowment	12,300	12,300		
Ell & Co as Nominee for Producers/Writers Guild	20,600	20,600		
Emily Todd & David A. Todd TTEES, Magnolia Charitable Trust U/A 10/1/98	2,600	2,600		
Emory University	26,200	26,200		
Euromobiliare Asset Management Sgr. Spa.	400,000	400,000		
Excelsior Value & Restructuring Fund	924,900	900,000	24,900	*
Farallon Capital Institutional Partners II, L.P.	41,671	41,671		
Farallon Capital Institutional Partners III, L.P.	45,835	45,835		
Farallon Capital Institutional Partners, L.P.	333,346	333,346		
Farallon Capital Offshore Investors, Inc.	837,527	837,527		
Farallon Capital Partners, L.P.	362,511	362,511		
FBR Ashton Limited Partnership <sup>(3)</sup>	423,001	244,401	178,600	*

**Table of Contents**

Name	Common stock beneficially owned prior to the offering	Common Stock Offered in this Offering	Common stock beneficially owned <sup>(1)</sup> after the offering	
			Number	Percent of Class
FBR Opportunity Fund, LTD <sup>(3)</sup>	41,900	24,200	17,700	*
FBR Private Equity Fund LP <sup>(3)</sup>	30,000	30,000		
First Eagle Global Fund	660,000	85,000	575,000	*
First Security Bank Commingled Investment Fund for Qualified Employee Benefit Plans	53,600	53,600		
Firststar Bank, Custodian, H.J. Foster, IRA #1	2,500	2,500		
Firststar Bank, custodian, Joan G. Eastwood, IRA Rollover	500	500		
Fleet Maritime, Inc.	9,418	8,260	1,158	*
Flossmoor Q Trust	1,115	1,115		
Fountainhead Special Value Fund	40,000	40,000		
Francis A. Bonanno	640	640		
Frank Greek & Cathy Greek JT	5,000	5,000		
Franklin Mutual Advisers, LLC <sup>(4)</sup>	2,417,300	2,350,000	67,300	*
Fred Kavli Personal Portfolio	20,310	20,310		
Frederick R. Horstmann	10,000	10,000		
Gardner Lewis Capital Appreciation Fund LP	101,500	101,500		
Gardner Lewis Fund LP	70,700	70,700		
General Mills Group Trust - Agreement of Trust Establishing General Mills Group Trust, dated as of June 1, 1999	28,000	28,000		
General Motors Employes Global Group Pension Trust	5,418	5,418		
General Motors Welfare Benefits Trust	15,953	15,953		
Genesis Healthcare System Pension	2,168	2,168		

**Table of Contents**

Name	Common stock beneficially owned prior to the offering	Common Stock Offered in this Offering	Common stock beneficially owned <sup>(1)</sup> after the offering	
			Number	Percent of Class
George Andrew Jackson and Linda Kennedy Jackson, JTWROS	3,600	3,600		
George H. Welsh Revocable Living Trust DTD 8/1/90 - Trust B Joan M. Welsh, Co-TTEE	3,430	3,430		
Gerald Wayne Broesche & Brook Anne Broesche	1,900	1,900		
Giles W. Nolan Retirement Plan U/A DTD 09/09/96 Giles W. Nolan TTEE	370	370		
GLG Global Aggressive Fund	200,000	200,000		
GLG Global Macro Fund	200,000	200,000		
GLG Investments IV plc - GLG Capital Appreciation (Distributing) Fund	60,000	60,000		
GLG Investments plc - GLG Capital Appreciation Fund	40,000	40,000		
GLG Market Neutral Fund	1,300,000	1,300,000		
GLG North American Opportunity Fund	1,550,000	1,550,000		
Global Natural Resources II	40,900	40,900		
Global Natural Resources III	267,600	267,600		
Global Natural Resources III, L.P.	16,100	16,100		
Greg Kung	2,100	2,100		
H.J. Foster and Aggie L. Foster trustees, H.J. Foster & Aggie L. Foster Trust, dated 02-17-1994	1,300	1,300		
Hare & Co as Nominee for Brunswick Master Pension Trust	40,700	40,700		
Hare & Co as Nominee for USC Endowment	39,600	39,600		
Hartford Capital Appreciation Fund	1,628,700	1,628,700		

**Table of Contents**

Name	Common stock beneficially owned prior to the offering	Common Stock Offered in this Offering	Common stock beneficially owned <sup>(1)</sup> after the offering	
			Number	Percent of Class
Hartford Capital Appreciation Fund, Inc.	3,371,300	3,371,300		
Harvest Partners II LP	260,000	260,000		
Hatfield Quality Meats	3,483	3,483		
Highway Patrol Retirement System Retirement Plan	38,000	38,000		
Hillel Weinberger	100,000	100,000		
Houston Pilot Pension Plan & Trust	5,200	5,200		
Hunter Global Investors Fund I L.P.	137,180	137,180		
Hunter Global Investors Fund II L.P.	9,500	9,500		
Hunter Global Investors Offshore Fund II Ltd.	34,580	34,580		
Hunter Global Investors Offshore Fund Ltd.	198,740	198,740		
IAT Reinsurance Company Ltd	79,300	79,300		
Investors Bank & Trust Co., custodian, Louise E. Liszewski IRA	1,000	1,000		
Investors of America LP	1,000,000	1,000,000		
Irving Levin Living J. Trust Small Cap Value	1,186	1,186		
J & S Black F.L.P.	3,500	3,500		
J.C. Lewis 1974-GC Investment	4,400	4,400		
J.C. Lewis T/U/W Investments	3,300	3,300		
Jabon R. Dawson & Jacqueline Dawson JTEN	500	500		
Jack Barrish	10,000	10,000		
Jeffrey L. Lacy	800	800		
Jennifer Horstmann	10,000	10,000		

**Table of Contents**

Name	Common stock beneficially owned prior to the offering	Common Stock Offered in this Offering	Common stock beneficially owned <sup>(1)</sup> after the offering	
			Number	Percent of Class
JMG Capital Partners, L.P.	368,350	368,350		
JMG Triton Offshore Fund LTD	368,350	368,350		
Jody Irwin Separate Property	1,200	1,200		
John C. Middleton Jr.	2,000	2,000		
John M. Ryan	900	900		
Judy J. Kennell	2,100	2,100		
Katherine Colella	10,000	10,000		
Kavli Foundation	31,540	31,540		
Kevin J. Rainey	3,900	3,900		
King Investment Advisors, Inc.	14,000	14,000		
King Investment Advisors, Inc. Profit Sharing Plan	800	800		
Krasny Trust, Small Cap Value	2,951	2,951		
Kumar Enterprises Limited Partnership	560	560		
Leon A. Kent & Mike Kent	2,100	2,100		
Leonardo, L.P.	800,000	800,000		
Lyxor	209,800	209,800		
Mac & Co as Nominee for Verizon	232,600	232,600		
Manitoba Public Insurance	47,000	47,000		
Maria L. Vecchiotti	20,000	20,000		
Marinecrew & Co.	351,500	165,500	186,000	*
Market Street Real Assets	70,600	36,000	34,600	*

**Table of Contents**

Name	Common stock beneficially owned prior to the offering	Common Stock Offered in this Offering	Common stock beneficially owned <sup>(1)</sup> after the offering	
			Number	Percent of Class
Mary L.G. Theroux, Trustee, Mary L.G. Theroux Charitable Remainder Unitrust 05-14-1996	3,100	3,100		
Mary L.G. Theroux, Trustee, Mary L.G. Theroux Revocable Living Trust U/A 09-30-1968	3,500	3,500		
Masonic Home of Virginia	3,242	3,242		
MEMC Electronic Materials	7,868	7,868		
Meta H. Lewis T/U/W Investments	2,600	2,600		
Michael J. Mathile Revocable Living Trust DTD 10/03/96 Trustee Michael J. Mathile	2,180	2,180		
Nextra Investment Management	300,000	300,000		
Northwest Airlines	78,789	78,789		
OZ Mac 13 Ltd.	12,595	10,990	1,605	*
OZ Master Fund, Ltd	468,773	406,000	62,773	*
OZF Credit Opportunities Master Fund II, Ltd	162,571	142,170	20,401	*
OZF Credit Opportunities Master Fund, Ltd	265,080	132,580	132,500	*
P/I Long Short Equity Hedged Fund	27,060	27,060		
Paul T. Dell Isola	25,000	25,000		
Pennant Offshore Partners, Ltd.	291,700	291,700		
Pennant Onshore Partners, L.P.	39,400	39,400		
Pennant Onshore Qualified, L.P.	168,900	168,900		
Pitt & Co as Nominee for Savannah Pension	22,800	22,800		
Points West International Investments Ltd.	89,265	89,265		
Portside Growth & Opportunity Fund	250,000	250,000		

**Table of Contents**

Name	Common stock beneficially owned prior to the offering	Common Stock Offered in this Offering	Common stock beneficially owned <sup>(1)</sup> after the offering	
			Number	Percent of Class
Premier Health Care Pension Plan	8,520	8,520		
Prism Partners I, LP	125,000	125,000		
Prism Partners II Offshore Fund	125,000	125,000		
Pruett Family Partnership, Ltd.	500	500		
Public Service Co New Mexico	18,317	18,317		
Quissett Investors (Bermuda) L.P.	158,500	158,500		
Quissett Partners, L.P.	95,500	95,500		
Raytheon Capital Appreciation Hedged Portfolio - Raytheon Master Pension Trust	178,300	178,300		
Raytheon Combined DB/DC Master Trust	172,500	102,000	70,500	*
Raytheon DB/DC Capital Appreciation Hedged Portfolio - Raytheon Master Pension Trust	13,200	13,200		
Raytheon Master Pension Trust	600,600	316,600	284,000	*
Raytheon Master Pension Trust DTD 05-17-00, Boston Safe & Trust Co. TTEE	153,740	153,740		
Reefbend & Co.	304,900	105,500	199,500	*
Relish & Co.	78,500	35,200	43,300	*
Rene L. Drouin and Julie Drouin JTWROS	1,300	1,300		
Rescueboat & Co.	3,700,000	3,700,000		
Richard Feinberg	6,000	6,000		
Richard Horstmann c/f Kimberly Horstmann UTMA NJ	10,000	10,000		
RNR, LLC	200,000	200,000		
Robert H. Dunlap Irrevocable Trust # 101, dated 04-02-1987	1,800	1,800		



**Table of Contents**

Name	Common stock beneficially owned prior to the offering	Common Stock Offered in this Offering	Common stock beneficially owned after the offering <sup>(1)</sup>	
			Number	Percent of Class
Rockbay Capital Fund, LLC	10,300	10,300		
Rockbay Capital Institutional Fund, LLC	128,400	128,400		
Rockbay Capital Offshore Fund, Ltd	261,300	261,300		
Roger E. King	28,000	28,000		
Ronald Clarke & Gwendoline D. Clarke JTWROS	1,700	1,700		
Salomon Brothers Archer Investors L.P.	15,212	15,212		
Salomon Brothers Archer Investors Ltd	34,788	34,788		
Salomon Brothers Diversified Arbitrage Strategies Fund Ltd.	51,158	51,158		
Salomon Brothers Enhanced Arbitrage Strategies Fund	11,271	11,271		
Salomon Brothers Libra Strategies L.P.	15,353	15,353		
Salomon Brothers Libra Strategies Ltd.	19,518	19,518		
Salomon Brothers Market Neutral Arbitrage Fund L.P.	15,474	15,474		
Salomon Brothers Qualified Investor Portfolios Multi-Strategy Arbitrage Portfolio	204,665	204,665		
Salomon Smith Barney, custodian, Francis A. Bonanno, Jr. IRA	3,170	3,170		
Salomon Smith Barney, custodian, Joseph E. Eavey IRA	330	330		
Sam T. Searcy & Sharon M Searcy JTWROS	800	800		
Santa Barbara Cottage Hospital Foundation	56,460	56,460		
Santa Clara University Endowment Fund	25,360	25,360		
Schar Holdings, Inc.	280,583	280,583		

**Table of Contents**

Name	Common stock beneficially owned prior to the offering	Common Stock Offered in this Offering	Common stock beneficially owned <sup>(1)</sup> after the offering	
			Number	Percent of Class
Scoggin Capital Management LP II	165,000	165,000		
Scoggin-International Fund Ltd.	165,000	165,000		
Scripps Health Charitable Foundation Investment Portfolio	18,990	18,990		
Scudder Flag Investors Equity Partners Fund	260,000	260,000		
Scudder Flag Investors Value Builder Fund	490,000	490,000		
Seneca Capital International, Ltd	922,000	922,000		
Seneca Capital L.P.	677,000	677,000		
Shirley P. Rabke	3,300	3,300		
Shirley P. Rabke, Trustee, Rabke Family Trust, Dated 08-29-1986	2,500	2,500		
Signature Systems, Inc.	350	350		
Silver Capital Fund, LLC	280,583	280,583		
Southern California Edison	53,800	53,800		
Spindrift Investors (Bermuda) L.P.	510,900	510,900		
Spindrift Partners, L.P.	519,200	519,200		
SSR Energy & Natural Resources Hedge Fund, LLC	600,500	299,000	301,500	*
Steamboat & Co.	230,250	95,000	135,250	*
Steven Rothstein	5,000	5,000		
Suellen B. Louis	810	810		
Summerboat & Co as Nominee for University of Richmond Endowment	18,400	18,400		
Sure Fire Investments Family Limited Partnership	270	270		

**Table of Contents**

Name	Common stock beneficially owned prior to the offering	Common Stock Offered in this Offering	Common stock beneficially owned <sup>(1)</sup> after the offering	
			Number	Percent of Class
Sutton Brook Capital Portfolio LP	750,000	750,000		
Tadeusz Witkowicz Family Trust U/A/D 09/22/93 Tadeusz Witkowicz, TTEE	8,400	8,400		
The Alfred I. duPont Testamentary Trust DTD 02-25-1936 Hugh M. Durden, John S. Lord, Herbert H. Payton, John F. Porter III, W.T. Thompson III, W.L. Thornton, TTEES	230,220	230,220		
The Cleveland Clinic Foundation	110,000	110,000		
The Manhattan and Bronx Surface Transit Operating Authority	9,891	9,891		
The McFarlan Home	2,500	2,500		
The Nemours Foundation Pension Plan DTD 05/01/02 The Northern Trust Company, TTEE	14,570	14,570		
The Oneida Tribe of Indians	11,400	11,400		
Third Point Offshore Fund Ltd.	937,425	937,425		
Third Point Partners, LP	554,415	554,415		
Thompson & Murff Investments, LP Limited Partnership	27,000	27,000		
Tinicum Partners, L.P.	16,665	16,665		
Trenton Capital (QP), Ltd.	61,100	61,100		
Trenton Capital, Ltd.	13,900	13,900		
Trident Selections	151,500	151,500		
Trident Selections, L.P.	3,000	3,000		
Tugboat & Co. c/o Jennison Utility Fund	1,580,000	1,580,000		
United Capital Management, Inc.	250,000	250,000		
Univar USA Inc.	3,365	3,365		

**Table of Contents**

Name	Common stock beneficially owned prior to the offering	Common Stock Offered in this Offering	Common stock beneficially owned after the offering <sup>(1)</sup>	
			Number	Percent of Class
University of Cincinnati	34,200	34,200		
University of Nebraska	25,000	25,000		
University of Nebraska #2	5,700	5,700		
Upnorth Investments, Ltd.	11,550	11,550		
US Bank for benefit of Sisters of St. Joseph of Carondelet, St. Paul Province	10,500	10,500		
US Bank NA FBO Heartland Value Fund	1,000,000	1,000,000		
US Bank NA FBO Heartland Value Plus Fund	200,000	200,000		
Vanguard Energy Fund	1,073,600	1,073,600		
Verizon Master Trust	182,600	182,600		
Victoire Finance et Gestion BO	56,116	56,116		
Voluntary Employees Beneficiary Association for General Mills and Bakery, Confectionary, Tobacco and Grain Millers (AFL-CIO) Health and Welfare Plan Amended and Restated Trust Agreement, dated as of June 19, 1990 <sup>(5)</sup>	7,600	7,600		
Wellington Trust Company, National Association Multiple Collective Investment Funds Trust, Energy Portfolio Amended and Restated Plan and Declaration of Trust, dated June 15, 1999 <sup>(6)</sup>	37,000	37,000		
Wellington Trust Company, National Association Multiple Common Trust Funds Trust, Energy Portfolio - Amended and Restated Plan and Declaration of Trust, dated October 11, 1995 <sup>(7)</sup>	269,400	269,400		
William Blair Value Discovery Fund	120,551	120,551		
Williams & Connolly	4,322	4,322		

**Table of Contents**

Name	Common stock beneficially owned prior to the offering	Common Stock Offered in this Offering	Common stock beneficially owned after the offering <sup>(1)</sup>	
			Number	Percent of Class
Wray & Todd Interests, Ltd.	12,800	12,800		
Wylie R. Barrow, Jr and Rosalind K. Barrows, JTWROS	1,500	1,500		
Wynnefield Small Cap Value Offshore Fund, Ltd.	200,000	30,000	170,000	*
Yaupon Fund LTD	18,680	18,680		
Yaupon Partners II, LP	6,140	6,140		
Yaupon Partners, LP	148,120	148,120		
York Capital Management L.P.	88,000	88,000		
York Distressed Opportunities Fund, L.P.	107,000	107,000		
York Global Value Partners, L.P.	13,000	13,000		
York Investment Limited	186,000	186,000		
York Offshore Investors Unit Trust	106,000	106,000		
ZWD Investments, LLC	920,000	920,000		

- (1) These shares were purchased in transactions not requiring registration and may or may not be sold in conjunction with the offering of shares under this registration statement.
- (2) Prior to September 23, 2003, RWE Power AG owned 57,997,357 shares, or approximately 73.6%, of our outstanding common stock, and four of our eight directors were representatives of RWE Power AG. On September 23, 2003, September 24, 2003 and October 9, 2003 RWE Power AG sold an aggregate of 41,374,425 shares of our common stock in private placements, reducing the number of shares of common stock RWE Power AG owns to 16,622,932 shares, or approximately 18.5%, of our outstanding common stock. On October 21, 2003, Georg Lambertz and Christoph Koether, each a representative of RWE AG, resigned from our board of directors.
- (3) FBR Ashton Limited Partnership, FBR Opportunity Fund, LTD and FBR Private Equity Fund LP are affiliates of Friedman, Billings, Ramsey & Co., Inc. On September 23, 2003 and September 24, 2003, FBR acted as placement agent in connection with the sale of 11,000,000 primary shares of our common stock and, concurrently, on behalf of RWE Power AG, the sale of 14,100,000 shares of our common stock, in each case pursuant to a placement agent agreement, dated September 18, 2003, by and among us, RWE Power AG and FBR, which provided for a cash fee of \$0.50 per share sold to be paid to FBR. In connection with the placement, we agreed to increase by one the number of directors on our board of directors and to cause the appointment of a nominee selected by FBR. On October 9, 2003, FBR acted as placement agent in connection with the sale of 27,274,425 shares of our common stock on behalf of RWE Power AG pursuant

**Table of Contents**

to a placement agreement, dated October 2, 2003, by and among us, RWE Power AG and FBR, which provided for a cash fee of \$0.50 per share sold to be paid to FBR.

- (4) Represents shares beneficially owned by advisory clients of Franklin Mutual Advisers, LLC: 938,100 shares beneficially owned by Mutual Qualified Fund; 1,187,100 shares beneficially owned by Mutual Beacon Fund; 45,200 shares beneficially owned by Mutual Beacon Fund (Canada); and 179,600 shares beneficially owned by Franklin Mutual Beacon Fund. Pursuant to advisory contracts with its clients, Franklin Mutual Advisers, LLC has voting and investment discretion over these securities beneficially owned by its clients. Franklin Mutual Advisers, LLC disclaims beneficial ownership of the shares owned by its advisory clients.
- (5) Wellington Management Company, LLP is the investment manager of the Voluntary Employees Beneficiary Association for General Mills and Bakery, Confectionary, Tobacco and Grain Mullers (AFL-CIO) Health and Welfare Plan and has dispositive power over the shares. The nominee name for Voluntary Employees Beneficiary Association for General Mills and Bakery, Confectionary, Tobacco and Grain Mullers (AFL-CIO) Health and Welfare Plan is Bost & Co.
- (6) Wellington Management Company, LLP is the investment manager of the Wellington Trust Company, National Association Multiple Collective Investment Funds Trust, Energy Portfolio and has dispositive power over the shares. The nominee name for Wellington Trust Company, National Association Multiple Collective Investment Funds Trust, Energy Portfolio is Finwell & Co.
- (7) Wellington Management Company, LLP is the investment manager of the Wellington Trust Company, National Association Multiple Common Trust Funds Trust, Energy Portfolio and has dispositive power over the shares. The nominee name for Wellington Trust Company, National Association Multiple Common Trust Funds Trust, Energy Portfolio is Landwave & Co.
- \* Selling stockholder owns less than one percent of our common stock.

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**Table of Contents**

**PLAN OF DISTRIBUTION**

Pursuant to a Registration Rights Agreement, dated as of September 23, 2003, by and among us and Friedman, Billings, Ramsey & Co., Inc. (FBR), for the benefit of purchasers of our common stock in certain private placements in which FBR acted as placement agent and a Registration Rights Agreement, dated as of February 1, 1999, between us and RWE Power AG, as amended, the registration statement of which this prospectus forms a part was filed with the Securities and Exchange Commission covering the sale of the shares by the selling stockholders. We have agreed to keep effective the registration statement until the earlier of two years following the effective date of the registration statement and the time when all of the shares of common stock registered thereunder have been sold under the registration statement or otherwise cease to be registrable shares (as defined in the registration rights agreement). We will be permitted to suspend the use of this prospectus (which is a part of the registration statement) in connection with the sale of the shares by holders during certain time periods under certain circumstances relating to pending corporate developments and public filings with the Securities and Exchange Commission and similar events.

We will not receive any of the proceeds of the offering of the shares by the selling stockholders. The selling stockholders may sell their shares in transactions (which may include block transactions and underwritten offerings):

- (i) on any exchange or market on which the securities are listed or quoted;
- (ii) in negotiated transactions; or
- (iii) through a combination of methods of sale.

These sales may be made at fixed prices that may be changed, at market prices prevailing at the time of sale, at prices related to prevailing market prices, or at negotiated prices. The selling stockholders may sell the shares (i) directly to purchasers; (ii) through broker-dealers acting as agents for the selling stockholders; or (iii) to broker-dealers who may purchase shares as principals and thereafter sell the shares as described above. In connection with the sale of common stock, the selling stockholders may enter into hedging transactions with broker dealers, which may in turn engage in short sales of common stock in the course of hedging the positions they assume. The selling stockholders also may sell the common stock offered hereby short and deliver the common stock to close out those short positions, or loan or pledge the common stock to broker dealers that in turn may sell the securities. In effecting sales, broker-dealers engaged by selling stockholders may arrange for other broker-dealers to participate. Broker-dealers may receive compensation in the form of discounts, placement fees, concessions or commissions from the selling stockholders and/or the purchasers of the shares for whom the broker-dealers may act as agents or to whom they may sell as principals, or both (which compensation as to a particular broker-dealer might be in excess of customary commissions). The selling stockholders and any broker-dealers, agents or underwriters that participate with the selling stockholders in the distribution of the shares may be deemed underwriters within the meaning of the Securities Act. Any commissions paid or any discounts or concessions allowed, and any profits received on the resale of the shares offered hereby and purchased by them may be deemed to be underwriting commissions or discounts under the Securities Act. To the extent required, a prospectus supplement with respect to the common stock will set forth the terms of the offering, including the names of any underwriters, dealers or agents, the number of shares of common stock to be sold, the price of the common stock, any underwriting discounts, placement fees or other items constituting underwriters' compensation.

On September 23 and September 24, 2003, RWE Power AG and we completed the sale of 14,100,000 and 11,000,000 shares of our common stock, respectively, to various purchasers in a private placement for a purchase price of \$17.82 per share. In connection with this private placement, RWE Power AG granted to FBR, the placement agent, an option to place RWE Power AG's remaining shares of our common stock. FBR exercised its option and privately placed 27,274,425 of RWE Power AG's shares of common stock on October 9, 2003. FBR may further exercise its placement option as to RWE Power AG's remaining 16,622,932 shares of our common stock on one or more occasions at any time until the earlier of (1) December 22, 2003 or (2) 30 days following the date of effectiveness of the registration statement of which this prospectus is a part. The option period may be extended in certain circumstances. Pursuant to a provision in the placement agreement, dated September 18, 2003, among us, RWE Power AG and FBR relating to the initial private placement on September 23 and 24, 2003 described above, each of the

purchasers who purchased shares of our common stock in the initial



## **Table of Contents**

private placement has the right to receive, and RWE Power AG is obligated to pay to each purchaser, each purchaser's pro rata share of the excess, if any, of the price paid per share by the investors in any placement by FBR of the shares subject to FBR's option over \$17.82 per share. Accordingly, if the registration statement of which this prospectus is a part becomes effective during the option period and FBR exercises its option to place all or a portion of RWE Power AG's remaining 16,622,932 shares of our common stock under this registration statement, RWE Power AG will be obligated to pay the purchasers in the initial private placement described above the excess, if any, of the price paid by the investors in a sale over \$17.82 per share. FBR will receive a placement fee of \$0.50 per share for each of RWE Power AG's shares of our common stock sold pursuant to an exercise of FBR's option. FBR has agreed to use commercially reasonable efforts to place all of RWE Power AG's shares of our common stock subject to FBR's placement option.

Pursuant to the placement agreement with FBR and RWE Power AG for the initial private placement described above, we agreed to increase by one the number of directors on our board of directors and to cause the appointment of a nominee selected by FBR to our board of directors. We further agreed to use all commercially reasonable efforts to cause the nominee to be elected as a director at the next meeting of stockholders at which members of the board of directors are elected and to cause the nominee to be a member of our board of directors for no less than three years following the date of initial appointment.

The placement agreement with FBR and RWE Power AG described above also requires RWE Power AG to use all commercially reasonable efforts to cause one of its two remaining representatives to resign from our board of directors if RWE Power AG's holdings of our common stock fall to 15% or below but remain in excess of 5% of all shares entitled to be voted in the election of directors and to cause all of its remaining representatives to resign from our board of directors if RWE Power AG's holdings of our common stock fall to 5% or below of all shares entitled to be voted in the election of directors. Two other representatives of RWE Power AG resigned from our board of directors on October 21, 2003 in accordance with the terms of the placement agreement described above.

Pursuant to the registration rights agreements described above, we have agreed to pay all expenses incident to the offer and sale of the shares offered by the selling stockholders, except that the selling stockholders will pay all brokers' or underwriters' discounts and commissions, transfer taxes, and fees and disbursements of any counsel to the selling stockholders, if any. We and the selling stockholders are obligated to indemnify each other against certain liabilities arising under the Securities Act.

Our common stock is listed on the New York Stock Exchange under the symbol **CNX**.

To comply with the securities laws of certain states, if applicable, the shares offered hereby will be offered or sold in such jurisdictions only through registered or licensed brokers or dealers. In addition, in some states the shares may not be sold unless they have been registered or qualified for sale in the applicable state or an exemption from the registration or qualification requirement is available and is complied with.

Under applicable rules and regulations under the Securities Exchange Act of 1934, as amended, any person engaged in a distribution of the shares may be limited in its ability to engage in market activities with respect to such shares. In addition and without limiting the foregoing, each selling stockholder will be subject to applicable provisions of the Exchange Act and the rules and regulations thereunder, which provisions may limit the timing of purchase and sales of any of the shares by the selling stockholders. This may affect the marketability of the shares.

## **LEGAL MATTERS**

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The validity of the common stock that is being offered pursuant to this prospectus will be passed upon by Piper Rudnick LLP, New York, New York.

### **EXPERTS**

The financial statements as of December 31, 2002 and for the year ended December 31, 2002, incorporated in this prospectus by reference to the Annual Report on Form 10-K, as amended, for the year ended December 31,

## **Table of Contents**

2002 have been so incorporated in reliance on the report of PricewaterhouseCoopers LLP, independent accountants, given on the authority of said firm as experts in auditing and accounting.

The consolidated financial statements of CONSOL Energy Inc. incorporated in this prospectus by reference from CONSOL Energy Inc.'s Annual Report (Form 10-K) at December 31, 2001 and June 30, 2001, and for the periods of six months ended December 31, 2001 and the twelve months ended June 30, 2001 and 2000 have been audited by Ernst & Young LLP, independent auditors, as set forth in their report thereon incorporated herein by reference. Such consolidated financial statements are incorporated herein by reference in reliance upon such report given on the authority of such firm as experts in accounting and auditing.

The information included or incorporated by reference in this prospectus from our Annual Report on Form 10-K for the year ended December 31, 2002, relating to our total gas supply and our owned gas reserves of Pocahontas Gas Partnership, is derived from reserve reports prepared or reviewed by Ralph E. Davis Associates, Inc. The information included or incorporated by reference in this prospectus from our Annual Report on Form 10-K for the year ended December 31, 2002, relating to the estimates of reserves from our oil and gas reserves, is derived from reserve reports prepared or reviewed by Data and Consulting Services, a division of Schlumberger. This information is included or incorporated by reference in this prospectus in reliance upon these firms as experts in matters contained in the reports.

## **WHERE YOU CAN FIND MORE INFORMATION**

We are subject to the reporting requirements of the Securities Exchange Act of 1934 and, in accordance with that Act, file annual and quarterly reports, proxy statements and other information with the Securities and Exchange Commission. These reports, proxy statements and other information may be inspected and copies of these materials may be obtained upon payment of fees at the Public Reference Room maintained by the Commission at 450 Fifth Street, N.W., Washington, D.C. 20549. You may obtain information on the operation of the Public Reference Room by calling the Commission at 1-800-SEC-0330. In addition, we are required to file electronic versions of these materials with the Commission through the Commission's Electronic and Data Gathering, Analysis and Retrieval system. The Commission maintains a World Wide Web site at <http://www.sec.gov> that contains reports, proxy and information statements and other information regarding registrants that file electronically with the Commission. Our common stock is listed on the New York Stock Exchange, and reports and other information concerning us may be inspected at the New York Stock Exchange, Inc. at 20 Broad Street, New York, New York 10005.

We have filed with the Commission a registration statement on Form S-3 under the Securities Act of 1933. This prospectus does not contain all of the information set forth in the registration statement and the exhibits thereto. The Commission allows us to incorporate by reference the information we file with it, which means that we can disclose important information to you by referring to those documents. We incorporate by reference the documents listed below and any filings made with the Commission under Sections 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934 after the initial filing of the registration statement that contains this prospectus and prior to the time that we sell all the securities offered by this prospectus. Any statement contained in this prospectus or in a document incorporated or deemed to be incorporated by reference in this prospectus shall be modified or superseded for purposes of this prospectus to the extent that a statement contained in this prospectus or in any subsequently filed document which is incorporated by reference in this prospectus modifies or supersedes that statement. A statement so modified or superseded will not be deemed, except as so modified or superseded, to be a part of this prospectus.

Copies of the registration statement, including all exhibits to it, may be obtained from the Commission's principal office in Washington, D.C. upon the payment of the fees prescribed by the Commission, or may be examined without charge at the offices of the Commission described above. Copies of these materials may also be obtained from the EDGAR database.



**Table of Contents**

The following documents filed by us with the Commission pursuant to the Exchange Act are incorporated by reference herein:

1. Our Annual Report on Form 10-K, as amended, for the fiscal year ended December 31, 2002, filed March 21, 2003 (file no. 001-14901);
2. Our Current Report on Form 8-K, filed on October 15, 2003 (file no. 001-14901);
3. Our Current Report on Form 8-K, filed on October 3, 2003 (file no. 001-14901);
4. Our Current Report on Form 8-K, filed on September 24, 2003 (file no. 001-14901);
5. Our Current Report on Form 8-K, filed on September 18, 2003 (file no. 001-14901);
6. Our Current Report on Form 8-K, filed on September 17, 2003 (file no. 001-14901);
7. Our Quarterly Report on Form 10-Q for the quarter ended June 30, 2003, filed August 13, 2003 (file no. 001-14901);
8. Our Quarterly Report on Form 10-Q for the quarter ended March 31, 2003, filed May 9, 2003 (file no. 001-14901); and
9. The description of the common stock contained in our Registration Statement on Form 8-A, filed March 24, 1999 (file no. 001-14901).

We will provide to each person to whom a copy of this prospectus is delivered, upon the written or oral request of such person, without charge, a copy of any or all of the documents that are incorporated herein by reference. Requests should be directed to: CONSOL Energy Inc. 1800 Washington Road, Pittsburgh, PA 15241-1421, Attention: General Counsel.

Table of Contents

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**CONSOL ENERGY INC.**

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**PROSPECTUS**

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Until , 2003, all dealers that effect transactions in these securities, whether or not participating in this offering, may be required to deliver a prospectus. This is in addition to the dealers obligation to deliver a prospectus when acting as underwriters and with respect to their unsold allotments or subscriptions.

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**Table of Contents****Part II****INFORMATION NOT REQUIRED IN PROSPECTUS****Item 14. Other Expenses of Issuance and Distribution.**

The following table sets forth the estimated expenses to be incurred by us in connection with the issuance and distribution of the securities being registered, other than underwriting discounts and commissions.

Securities and Exchange Commission Registration Fee	\$ 121,686
Legal Fees and Expenses	*
Accounting Fees and Expenses	*
Miscellaneous	*
<b>Total</b>	<b>\$ *</b>

\* To be filed by amendment.

**Item 15. Indemnification of Directors and Officers.**

## Limitation of Liability and Indemnification Matters

As permitted by applicable provisions of the Delaware General Corporation Law, the Restated Certificate of Incorporation contains a provision eliminating, to the fullest extent permitted by the Delaware General Corporation Law as it exists or may in the future be amended, the liability of a director to CONSOL Energy and its stockholders for monetary damages for breaches of fiduciary duty as a director except for:

any breach of the director's duty of loyalty to CONSOL Energy or its stockholders;

acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of laws;

payment of dividends, stock purchases or redemptions that violate the Delaware General Corporation Law; or

any transaction from which the director derived an improper personal benefit.

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CONSOL Energy's By-laws also provide that any present or prior director, officer, employee or agent of CONSOL Energy shall be indemnified by CONSOL Energy as of right to the full extent permitted by the Delaware General Corporation Law against any liability, cost or expense asserted against and incurred by such person by reason of his serving in such capacity. This right to indemnification includes the right to be paid the expenses incurred in defending any action, suit or proceeding in advance of its final disposition.

CONSOL Energy maintains insurance coverage for claims against directors, officers, and employees for certain liabilities, including, with respect to employees, for alleged violations of federal and state securities laws and regulations.

II - 1



**Table of Contents**

CONSOL Energy has also entered into agreements that provide for the indemnification by CONSOL Energy of its directors, their executors, administrators or assigns for damages and expenses in connection with a threatened, pending or completed claim, action, or proceeding, whether brought by or in the right of CONSOL Energy or by a third party or otherwise and whether of a civil, criminal, administrative or investigative nature, in which the director may be or may have been involved as a party or otherwise, by reason of the fact that the director is or was a director or officer of CONSOL Energy, by reason of any actual or alleged error or misstatement or misleading statement or omission made or suffered by the director, by reason of any action taken by or any inaction on the part of the director while acting as such director or officer, or by reason of the fact that the director was serving at the request of CONSOL Energy as a director, trustee, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, provided that a director acted in good faith and in a manner, which the director reasonably believed to be in or not opposed to the best interests of CONSOL Energy, and, in the case of a criminal proceeding, in addition, had no reasonable cause to believe that his or her conduct was unlawful.

**Item 16. Exhibits**

<u>Exhibit No.</u>	<u>Description</u>
4.1*	Specimen Common Stock Certificate
5.1**	Opinion of Piper Rudnick LLP
23.1**	Consent of PricewaterhouseCoopers LLP, Independent Accountants
23.2**	Consent of Ernst & Young LLP, Independent Auditors
23.3**	Consent of Piper Rudnick LLP (included in Exhibit 5.1)
23.4**	Consent of Ralph E. Davis Associates, Inc., Independent Petroleum Engineers
23.5**	Consent of Data and Consulting Services, a division of Schlumberger, Independent Petroleum Engineers
24.1	Powers of Attorney (included on signature page)

\* Incorporated by reference to Exhibit 4.1 to Amendment No. 2 to Registration Statement Form S-1 (Registration No. 333-68987) filed on March 24, 1999.

\*\* To be filed by amendment.

**Item 17. Undertakings**

(a) The undersigned registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933;

(ii) To reflect in the prospectus any facts or events arising after the effective date of the Registration Statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration

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statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of

II - 2

**Table of Contents**

securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than 20% change in the maximum aggregate offering price, set forth in the Calculation of Registration Fee table in the effective registration statement; and

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement.

*provided, however*, that paragraphs (i) and (ii) above do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed with or furnished to the Commission by the registrant pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference into the registration statement.

(2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof; and

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(b) The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Securities Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(c) Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question of whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

(d) The undersigned registrant hereby undertakes that:

(1) For purposes of determining any liability under the Securities Act of 1933, the information omitted from the form of prospectus filed as part of a registration statement in reliance upon Rule 430A and contained in the form of prospectus filed by the registrant pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act shall be deemed to be part of the registration statement as of the time it was declared effective.

(2) For the purpose of determining any liability under the Securities Act of 1933, each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

**Table of Contents****SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, as amended, the Registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in Pittsburgh, Pennsylvania on October 23, 2003.

CONSOL ENERGY INC.

By:                                 /s/ J. Brett Harvey

J. Brett Harvey,

President and Chief Executive Officer

KNOW BY ALL MEN BY THESE PRESENTS that each person whose signature appears below hereby constitutes and appoints J. Brett Harvey and Stephen E. Williams, and each of them acting singly, as his true and lawful attorney-in-fact and agent with full power of substitution and resubstitution, to act, without the other, for him and in his name, place and stead, in any and all capacities, to sign any or all amendments (including post-effective amendments) to this Registration Statement, including any subsequent registration statement for the same offering that may be filed under Rule 462(b), and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or any of them, their substitute may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, as amended, this Registration Statement has been signed below by the following persons in the capacities and on the dates indicated:

<u>                        /s/ J. Brett Harvey</u>	President and Chief Executive Officer and	October 23, 2003
J. Brett Harvey	Director (Principal Executive Officer)	
<u>                        /s/ William J. Lyons</u>	Senior Vice President and Chief Financial Officer	October 23, 2003
William J. Lyons	(Principal Financial and Accounting Officer)	
<u>                        /s/ John L. Whitmire</u>	Chairman of the Board of Directors	October 23, 2003
John L. Whitmire		
<u>                        /s/ Philip W. Baxter</u>	Director	October 23, 2003
Philip W. Baxter		
<u>  </u>	Director	October 23, 2003
Berthold Bonekamp		

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/s/ Rolf Zimmermann

Director

October 23, 2003

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Rolf Zimmermann

Director

October 23, 2003

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Patricia A. Hammick

II - 4

**Table of Contents**

**Exhibit Index**

<b><u>Exhibit No.</u></b>	<b><u>Description</u></b>
4.1*	Specimen Common Stock Certificate
5.1**	Opinion of Piper Rudnick LLP
23.1**	Consent of PricewaterhouseCoopers LLP, Independent Accountants
23.2**	Consent of Ernst & Young LLP, Independent Auditors
23.3**	Consent of Piper Rudnick LLP (included in Exhibit 5.1)
23.4**	Consent of Ralph E. Davis Associates, Inc., Independent Petroleum Engineers
23.5**	Consent of Data and Consulting Services, a division of Schlumberger, Independent Petroleum Engineers
24.1	Powers of Attorney (included on signature page)

\* Incorporated by reference to Exhibit 4.1 to Amendment No. 2 to Registration Statement Form S-1 (Registration No. 333-68987) filed on March 24, 1999.

\*\* To be filed by amendment.