CMS ENERGY CORP
Form 424B5
December 08, 2004

RULE 424(B)(5)
REGISTRATION STATEMENT NO. 333-51932

PROSPECTUS SUPPLEMENT TO PROSPECTUS DATED SEPTEMBER 21, 2004

CMS ENERGY CORPORATION LOGO CMS ENERGY CORPORATION

$250,000,000

2.875% CONVERTIBLE SENIOR NOTES DUE 2024

The Notes will bear interest at the rate of 2.875% per year. Interest on the Notes is payable on June 1 and December 1 of each year, beginning on June 1, 2005. The Notes are convertible by Holders into cash and shares of our common stock, unless we have previously redeemed the Notes or unless the Notes have matured, under the following circumstances: (1) the price of our common stock issuable upon conversion reaches specified thresholds described in this prospectus supplement; (2) if we call the Notes for redemption; (3) upon the occurrence of specified corporate transactions described in this prospectus supplement; or (4) subject to certain exceptions, during the five business day period after any ten consecutive trading day period in which the trading price per Note for each day of the ten consecutive trading day period was less than 95% of the product of the closing sale price of our common stock and the conversion rate of such Note.

Holders may convert any outstanding Notes into cash and shares of our common stock at an initial conversion price per share of $14.75. This represents a conversion rate of approximately 67.7966 shares of common stock per $1,000 principal amount of Notes. Subject to certain exceptions, at the time Notes are tendered for conversion, the value (the "conversion value") of the cash and shares of our common stock, if any, to be received by a Holder converting $1,000 principal amount of the Notes will be determined by multiplying the conversion rate by the ten day average closing stock price, which equals the average of the closing per share prices of our common stock on the New York Stock Exchange on the ten consecutive trading days beginning on the second trading day following the day the Notes are submitted for conversion. We will deliver the conversion value to holders as follows: (1) an amount in cash (the "principal return") equal to the lesser of (a) the aggregate conversion value of the Notes to be converted or (b) the aggregate principal amount of the Notes to be converted; and (2) if the aggregate conversion value of the Notes to be converted is greater than the principal return, an amount in shares (the "net shares"), determined as set forth below, equal to such aggregate conversion value less the principal return (the "net share amount"). We will pay the principal return and deliver the net shares, if any, as promptly as practicable after determination of the net share amount. The number of net shares to be paid will be determined by dividing the net share amount by the ten day average closing stock price.

The Notes will mature on December 1, 2024. We may redeem some or all of the Notes at any time after December 7, 2011 at a redemption price, payable in cash, of 100% of the principal amount of the Notes, plus accrued and unpaid interest up to but not including the date of redemption. Holders may require us to repurchase all or a portion of their Notes on December 1, 2011, December 1, 2014 and December 1, 2019 at 100% of the principal amount of the Notes, plus accrued and unpaid interest up to but not including the date of repurchase, payable in cash. The redemption prices are described under the

caption "Description of the Notes--Optional Redemption."

The Notes will be our unsecured obligations and will rank equally with all of our other unsecured senior indebtedness. Under certain circumstances, Holders of the Notes will have the right to require us to repurchase all or any part of their Notes at a repurchase price equal to 100% of the principal amount of the Notes, plus accrued and unpaid interest to but excluding the repurchase date.

We have granted the underwriters named in this prospectus supplement an option to purchase up to an additional $37.5 million principal amount of Notes to cover over-allotments, if any.

We do not intend to apply for listing of the Notes or for inclusion of the Notes in any automated quotation system.

Our common stock is listed on the New York Stock Exchange under the symbol "CMS". The last reported price of the common stock on December 7, 2004, was $10.17 per share.

	PRICE TO INVESTORS (1)	UNDERWRITING DISCOUNT
Per Note	$1,000	$27.50
Total	$250,000,000	$6,875,000

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(1) Plus accrued interest from December 13, 2004, if settlement occurs after that date.

INVESTING IN THE NOTES AND OUR COMMON STOCK ISSUABLE UPON THEIR CONVERSION INVOLVES RISKS. SEE "RISK FACTORS" BEGINNING ON PAGE S-20.

NEITHER THE SECURITIES AND EXCHANGE COMMISSION NOR ANY STATE SECURITIES COMMISSION HAS APPROVED OR DISAPPROVED OF THESE SECURITIES OR DETERMINED IF THIS PROSPECTUS SUPPLEMENT OR THE ACCOMPANYING PROSPECTUS IS TRUTHFUL OR COMPLETE. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

The Notes are expected to be delivered through the book-entry facilities of The Depository Trust Company in New York City on or about December 13, 2004 against payment therefor.

The underwriters expect to deliver the Notes to purchasers on or about December 13, 2004.

Joint Book-Running Managers

DEUTSCHE BANK SECURITIES JPMORGAN WACHOVIA SECURITIES

CITIGROUP MERRILL LYNCH & CO.
WEDBUSH MORGAN SECURITIES INC. BARCLAYS CAPITAL

December 8, 2004

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YOU SHOULD RELY ONLY ON THE INFORMATION CONTAINED IN THIS DOCUMENT OR TO WHICH WE HAVE REFERRED YOU. WE HAVE NOT AUTHORIZED ANYONE TO PROVIDE YOU WITH INFORMATION THAT IS DIFFERENT. THIS DOCUMENT MAY ONLY BE USED WHERE IT IS LEGAL TO SELL THESE SECURITIES. THE INFORMATION IN THIS DOCUMENT MAY ONLY BE ACCURATE ON THE DATE OF THIS DOCUMENT.

ABOUT THIS PROSPECTUS SUPPLEMENT

This document is in two parts. The first part is this prospectus supplement, which describes the terms of this offering of Notes and also adds to and updates information contained in the accompanying prospectus and the documents incorporated by reference into the accompanying prospectus. The second part is the accompanying prospectus, which

contains a description of the securities registered by us. To the extent there is a conflict between the information contained or incorporated by reference in this prospectus supplement, on the one hand, and the information contained in the accompanying prospectus or any document incorporated by reference therein, on the other hand, the information in this prospectus supplement shall control.

This prospectus supplement and the accompanying prospectus are part of a registration statement that we filed with the Securities and Exchange Commission ("SEC") using a "shelf" registration process. Under the registration statement, we may sell securities, including Notes, up to a dollar amount of $2,000,000,000, of which this offering is a part.

FORWARD-LOOKING STATEMENTS AND INFORMATION

This prospectus supplement contains forward-looking statements as defined in Rule 175 under the Securities Act of 1933, as amended (the "SECURITIES ACT") and Rule 3b-6 under the Securities Exchange Act of 1934, as amended (the "EXCHANGE ACT") and relevant legal decisions. Our intention with the use of such words as "may," "could," "anticipates," "believes," "estimates," "expects," "intends," "plans" and other similar words is to identify forward-looking statements that involve risk and uncertainty. We designed this discussion of potential risks and uncertainties to highlight important factors that may impact our business and financial outlook. We have no obligation to update or revise forward-looking statements regardless of whether new information, future events or any other factors affect the information contained in the statements. These forward-looking statements are subject to various factors that could cause our actual results to differ materially from the results anticipated in these statements. Such factors include our inability to predict and/or control:

- capital and financial market conditions, including the price of our common stock and the effect of such market conditions on our pension plan, interest rates and access to the capital markets, as well as availability of financing to us, Consumers Energy Company, our wholly-owned subsidiary ("CONSUMERS"), or any of our affiliates, and the energy industry;

- market perception of the energy industry, us and Consumers, or any of our affiliates;

- credit ratings of us, Consumers or any of our affiliates;

- currency fluctuations, transfer restrictions and exchange controls;

- factors affecting utility and diversified energy operations such as unusual weather conditions, catastrophic weather-related damage, unscheduled generation outages, maintenance or repairs, environmental incidents or electric transmission or gas pipeline system constraints;

- international, national, regional and local economic, competitive and regulatory policies, conditions and developments;

- adverse regulatory or legal decisions, including those related to environmental laws and regulations;

- the extent of favorable regulatory treatment and regulatory lag concerning a number of significant questions presently before the Michigan Public Service Commission ("MPSC") relating to the Customer Choice Act, including:

  - recovery of stranded costs incurred due to customers choosing alternative energy suppliers;

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  - recovery of Clean Air Act costs and other environmental and safety-related expenditures;

  - power supply and natural gas supply costs when energy supply and oil prices are rapidly increasing;

  - timely recognition in rates of additional equity investments in Consumers; and

  - adequate and timely recovery of additional electric and gas rate-based expenditures;

- the impact of adverse natural gas prices on the Midland Cogeneration Venture Limited Partnership (the "MCV PARTNERSHIP") investment, regulatory decisions concerning the MCV Partnership resource conservation plan ("RCP") and regulatory decisions that limit our recovery of capacity and fixed energy payments;

- federal regulation of electric sales and transmission of electricity, including re-examination by federal regulators of the market-based sales authorizations by which our subsidiaries participate in wholesale power markets without price restrictions;

- energy markets, including the timing and extent of changes in commodity prices for oil, coal, natural gas, natural gas liquids, electricity and certain related products due to lower or higher demand, shortages, transportation problems or other developments;

- the generally accepted accounting principles requirement that we utilize mark-to-market accounting on certain of our energy commodity contracts, and possibly other types of contracts in the future, which may have, in any given period, a significant negative effect on earnings, which could change dramatically or be eliminated in subsequent periods or could add to earnings volatility;

- potential disruption, expropriation or interruption of facilities or operations due to accidents, war, terrorism or changing political conditions and the ability to obtain or maintain insurance coverage for such events;

- nuclear power plant performance, decommissioning, policies, procedures, incidents and regulation, including the availability of spent nuclear fuel storage;

- technological developments in energy production, delivery and usage;

- achievement of capital expenditure and operating expense goals;

- changes in financial or regulatory accounting principles or policies;

- outcome, cost and other effects of legal and administrative proceedings, settlements, investigations and claims, including particularly claims, damages and fines resulting from round-trip trading and inaccurate commodity price reporting, including investigations by the U.S. Department of Justice regarding round-trip trading and price reporting;

- limitations on our ability to control the development or operation of projects in which our subsidiaries have a minority interest;

- disruptions in the normal commercial insurance and surety bond markets that may increase costs or reduce traditional insurance coverage, particularly terrorism and sabotage insurance and performance bonds;

- the efficient sale of non-strategic or under-performing domestic or international assets and discontinuation of certain operations;

- other business or investment considerations that may be disclosed from time to time in our or Consumers' SEC filings or in other publicly issued written documents;

- other uncertainties that are difficult to predict, and many of which are beyond our control; and

- the factors identified under "Risk Factors" beginning on page S-20.

These are important factors, but not necessarily all of the important factors, that could cause actual results to differ materially from those expressed in any forward-looking statement made by, or on behalf of, us or our subsidiaries.

WHERE YOU CAN FIND MORE INFORMATION

We file reports, proxy statements and other information with the SEC under File No. 1-9513. Our SEC filings are available over the Internet at the SEC's web site at http://www.sec.gov. You may also read and copy any document we file at the SEC's public reference room at 450 Fifth Street N.W., Room 1024, Washington, D.C. 20549. Please call the SEC at 1-800-SEC-0330 for more information on the public reference rooms and their copy charges. You may also inspect our SEC reports and other information at the New York Stock Exchange, 20 Broad Street, New York, New York 10005. You can find additional information about us, including our Annual Report on Form 10-K/A for the year ended December 31, 2003 and our Quarterly Reports on Form 10-Q for the quarters ended March 31, 2004, June 30, 2004 and September 30, 2004, on our web site at http://www.cmsenergy.com. The information on this web site is not a part of this prospectus supplement and the accompanying prospectus.

We are "incorporating by reference" information into this prospectus supplement and the accompanying prospectus. This means that we are disclosing important information by referring to another document filed separately with the SEC. The information incorporated by reference is deemed to be part of this prospectus supplement and the accompanying prospectus, except for any information superseded by information in this prospectus supplement and the accompanying prospectus. This prospectus supplement and the accompanying prospectus incorporate by reference the documents set forth below that we have previously filed with the SEC. These documents contain important information about us and our finances.

- Annual Report on Form 10-K/A for the year ended December 31, 2003 filed

on July 21, 2004

- Quarterly Report on Form 10-Q for the quarter ended March 31, 2004 filed on May 7, 2004, Quarterly Report on Form 10-Q for the quarter ended June 30, 2004 filed on August 6, 2004 and Quarterly Report on Form 10-Q for the quarter ended September 30, 2004 filed on November 4, 2004

- Current Reports on Form 8-K filed on January 22, 2004, March 18, 2004, April 14, 2004, June 3, 2004, August 20, 2004, August 31, 2004, September 1, 2004, October 6, 2004, October 12, 2004, October 13, 2004, October 19, 2004, November 9, 2004 and December 6, 2004

The documents filed by us with the SEC pursuant to Section 13(a), 13(c), 14 or 15(d) of the Exchange Act after the date of this prospectus supplement, until the offering of the Notes and the common stock issuable upon conversion thereof pursuant to this prospectus supplement is terminated, are also incorporated by reference into this prospectus supplement and the accompanying prospectus. Any statement contained in such document will be deemed to be modified or superseded for purposes of this prospectus supplement and the accompanying prospectus to the extent that a statement contained in this prospectus supplement and the accompanying prospectus or any other subsequently filed document modifies or supersedes such statement.

We will provide, upon your oral or written request, a copy of any or all of the information that has been incorporated by reference in this prospectus supplement and the accompanying prospectus but not delivered with this prospectus supplement and the accompanying

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prospectus. You may request a copy of these filings at no cost by writing or telephoning us at the following address:

CMS Energy Corporation
One Energy Plaza
Jackson, Michigan 49201
Tel: (517) 788-0550
Attention: Office of the Secretary

SUMMARY

This summary may not contain all the information that may be important to you. You should read this prospectus supplement and the documents incorporated by reference into this prospectus supplement in their entirety before making an investment decision. The terms "CMS," "CMS ENERGY," "OUR," "US" and "WE" as used in this document refer to CMS Energy Corporation and its subsidiaries as a combined entity, except where it is made clear that such term means only CMS Energy Corporation.

In this document, "BCF" means billion cubic feet, "GWH" means gigawatt-hour, "KWH" means kilowatt-hour and "MW" means megawatts.

CMS ENERGY CORPORATION

CMS Energy, formed in Michigan in 1987, is an integrated energy holding company operating through subsidiaries in the United States and in selected markets around the world. Its two principal wholly-owned subsidiaries are Consumers and CMS Enterprises Company ("ENTERPRISES"). Consumers is a public utility that provides natural gas and/or electricity to almost 6.5 million of Michigan's 10 million residents and serves customers in 61 of the 68 counties in Michigan's Lower Peninsula. Enterprises, through subsidiaries, is engaged in several energy businesses in the United States and in selected international markets.

Our assets and services include: electric and natural gas utility operations; independent power production; natural gas transmission, storage and processing; and international energy distribution. Our principal businesses are:

- Consumers' electric utility, which owns and operates 30 electric generating plants with an aggregate of 6,431 MW of capacity and serves 1.77 million customers in Michigan's Lower Peninsula;

- Consumers' gas utility, which owns and operates over 27,463 miles of transmission and distribution lines throughout the Lower Peninsula of Michigan, providing natural gas to 1.67 million customers;

- CMS Generation Co. ("CMS GENERATION"), a wholly-owned subsidiary of Enterprises that has ownership interests in independent power plants in operation with 6,766 gross MW (3,157 net MW) throughout the United States and abroad. The plants are located in the U.S., Argentina, Chile, Ghana, India, Jamaica, Morocco and the United Arab Emirates. CMS Generation also has ownership interests in the Shuweihat power plant, which is under construction in the United Arab Emirates, and the Saudi Petrochemical Company power plant, which is under construction in the Kingdom of Saudi Arabia. These plants total approximately 1,784 gross MW (420 net MW) of electric generation; and

- CMS Gas Transmission Company ("CMS GAS TRANSMISSION"), a wholly-owned subsidiary of Enterprises that owns an interest in and operates natural gas pipelines in various locations in North America (aggregating 265 miles) and South America (aggregating 4,330 miles). The pipelines are located in the U.S., Argentina and Chile. It also owns gathering systems and processing facilities.

In 2003, we had consolidated operating revenue of approximately $5.5 billion.

Our principal executive offices are located at One Energy Plaza, Jackson, Michigan 49201 and our telephone number is (517) 788-0550.

RECENT DEVELOPMENTS

THIRD QUARTER RESULTS OF OPERATIONS

THREE MONTHS ENDED SEPTEMBER 30,	2004	RESTATED 2003	CHANGE
	UNAUDITED, IN MILLIONS		

(EXCEPT FOR PER SHARE AMOUNTS)			
Net Income (Loss)	$ 59	$ (69)	$ 128
Preferred Dividends	$ 3	--	$ 3
Net Income (Loss) Available to Common Stock	$ 56	$ (69)	$ 125
Basic Earnings (Loss) Per Share	$0.35	$(0.46)	$0.81
Diluted Earnings (Loss) Per Share	$0.34	$(0.46)	$0.80
Electric utility	$ 49	$ 59	$ (10)
Gas utility	(11)	(19)	8
Enterprises	59	(24)	83
Corporate interest and other	(49)	(87)	38
Discontinued operations	8	2	6
CMS Energy Net Income (Loss) Available to Common Stock	$ 56	$ (69)	$ 125

For the three months ended September 30, 2004, our net income available to common stock was $56 million, compared to a net loss available to common stock of $69 million for the three months ended September 30, 2003. The $125 million increase primarily reflects:

- a $35 million net gain from the 2004 sale of our Parmelia business and our interest in Goldfields;

- a $24 million reduction in corporate interest expense;

- an $8 million increase in net income at our gas utility primarily due to the 2004 annual unbilled gas revenue analysis increase in gas revenues versus the 2003 analysis reduction in gas revenues;

- a $7 million increase in net income at CMS Marketing, Services and Trading Company (now known as CMS Energy Resource Management Company) ("CMS MST" or "CMS ERM") primarily due to the absence of losses associated with wholesale gas and power contracts sold in 2003;

- a $6 million reduction in funded benefits expense due to the OPEB plans accounting for the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 and the positive impact of prior year pension plan contributions on pension plan asset returns;

- the absence in 2004 of a $46 million net impairment charge related to our international energy distribution business recorded in 2003; and

- the absence in 2004 of a $19 million debt retirement charge recorded in 2003.

These increases were offset partially by:

- a $10 million reduction in net income at our electric utility primarily due to reduced tariff revenues equivalent to Big Rock nuclear decommissioning surcharges, milder weather and decreased sales margins from deliveries to customers choosing alternative electric suppliers;

- a $7 million reduction in earnings from our equity method investments; and

- a $3 million declaration and payment of CMS Energy preferred dividends.

STRANDED COST ORDER

On November 23, 2004, the MPSC issued an order authorizing Consumers to collect its combined 2002 and 2003 "net" stranded costs under the Customer Choice Act, of approximately $63.2 million. The amount, including interest at an annual rate of 7 percent, will be collected through use of a stranded cost recovery charge of 1.2 mills per kilowatt-hour starting in December 2004 until fully collected. The order also approved a methodology for the calculation of stranded costs.

2003 GAS RATE CASE AND 2001 GAS DEPRECIATION CASE

On December 2, 2004, the MPSC issued orders in Consumers' rehearing requests stemming from MPSC orders issued October 14, 2004 regarding Consumers' 2003 gas rate case and the 2001 gas depreciation case.

Regarding the 2003 gas rate case, the MPSC issued an order clarifying the method of computing Consumers' rate of return on common equity, for purposes of whether the rate of return on common equity exceeds the authorized 11.4 percent rate, consistent with Consumers' rehearing request. The MPSC held that (i) the actual current level of equity invested in Consumers should be used and (ii) actual (not weather-normalized) results should be used for the rate of return calculation required by the October 14, 2004 order.

Regarding the 2001 gas depreciation case, the MPSC issued an order approving Consumers' rehearing request that the book depreciation rates be restored to the levels set forth in the MPSC's December 18, 2003 interim gas rate relief order, effective and retroactive to October 14, 2004.

THE OFFERING

Issuer....................... CMS Energy Corporation.

Securities Offered........... $250 million aggregate principal amount of 2.875% Convertible Senior Notes due 2024 (the "NOTES") to be issued under the indenture dated as of September 15, 1992 between us and J.P. Morgan Trust Company, N.A. (successor to NBD Bank, National Association), as trustee (the "TRUSTEE"), and as amended and supplemented from time to time (the "SENIOR DEBT INDENTURE"). We have also granted the underwriters an option to purchase an additional $37.5 million aggregate principal amount of the Notes to cover over-allotments, if any.

Issue Price.................. Each Note will be issued at a price of $1,000 per Note, plus accrued interest, if any, from December 13, 2004.

Maturity..................... December 1, 2024.

Interest Rate................ The Notes will bear interest at the rate of

2.875% per year semiannually in arrears on June 1 and December 1, commencing on June 1, 2005, and at maturity.

Use of Proceeds...............	We estimate that the proceeds of the offering of the Notes, after deducting underwriters' discounts and commissions and offering expenses, will aggregate approximately $243 million (assuming no purchase under the underwriters' option). We intend to use the proceeds of this offering to redeem the $180 million principal amount of outstanding 7% Extendible Tenor Rate-Adjusted Securities (the "X-TRAS"), plus accrued but unpaid interest and any associated option payment, and for general corporate purposes. See "Use of Proceeds."
Optional Redemption...........	Prior to December 7, 2011, the Notes will not be redeemable. On or after December 7, 2011, we may redeem for cash all or part of the Notes at any time, upon not less than 30 nor more than 60 days' notice before the redemption date by mail to the Trustee, the paying agent and each holder of the Notes (a "HOLDER"), for a price equal to 100% of the principal amount of the Notes to be redeemed plus any accrued and unpaid interest to but not including the redemption date. See "Description of the Notes--Optional Redemption."
Conversion Rights.............	Holders may convert their Notes prior to maturity, in multiples of $1,000 principal amount, into cash and shares of our common stock under any of the following circumstances:

- during any calendar quarter (and only during such calendar quarter) if the last reported sale price of our common stock for at least 20 trading days during the period of 30 consecutive trading days ending on the

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last trading day of the previous calendar quarter is greater than or equal to 120% of the conversion price per share of our common stock on such last trading day;

- subject to certain exceptions, during the five business day period after any ten consecutive trading day period in which the trading price per Note for each day of the ten trading day period was less than 95% of the product of the closing sale price of our common stock and the applicable conversion rate of such Note; provided, however, a Holder may not convert its Notes if the average closing sale price of our common stock for such ten consecutive trading day period was between the then current

conversion price on the Notes and 120% of the then applicable conversion price on the Notes;

- if we call the Notes for redemption as described in this prospectus supplement; or

- upon the occurrence of specified corporate transactions described under "Description of the Notes--Conversion Rights--Conversion Upon Specified Corporate Transactions."

Upon the occurrence of any of the circumstances described above, Holders may convert any outstanding Note into cash and shares of our common stock at an initial conversion rate of 67.7966 shares of common stock per $1,000 principal amount of Notes (equivalent to an initial conversion price of $14.75 per share of common stock) at any time prior to the close of business on November 30, 2024. This represents a conversion rate of approximately 67.7966 shares of common stock per $1,000 principal amount of Notes. The conversion rate and the equivalent conversion price in effect at any given time are referred to as the "APPLICABLE CONVERSION RATE" and the "APPLICABLE CONVERSION PRICE," respectively, and will be subject to adjustment as described below. Subject to certain exceptions, once Notes are tendered for conversion, the value (the "CONVERSION VALUE") of the cash and shares of our common stock, if any, to be received by a Holder converting $1,000 principal amount of the Notes will be determined by multiplying the conversion rate by the ten day average closing stock price. We will deliver the conversion value to Holders as follows: (1) an amount in cash (the "PRINCIPAL RETURN") equal to the lesser of (a) the aggregate conversion value of the Notes to be converted and (b) the aggregate principal amount of the Notes to be converted; (2) if the aggregate conversion value of the Notes to be converted is greater than the principal return, an amount in whole shares (the

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"NET SHARES"), determined as set forth below, equal to such aggregate conversion value less the principal return (the "NET SHARE AMOUNT"); and (3) an amount in cash in lieu of any fractional shares of common stock. We will pay the principal return and cash in lieu of fractional shares and deliver the net shares, if any, as promptly as practicable after determination of the net share amount. The number of net shares to be paid will be determined by dividing the net share amount by

the ten day average closing stock price. The "TEN DAY AVERAGE CLOSING STOCK PRICE" will be the average of the closing per share prices of our common stock on the New York Stock Exchange on the ten consecutive trading days beginning on the second trading day following the day the Notes are submitted for conversion.

As described in this prospectus supplement, the conversion rate may be adjusted for certain reasons, but it will not be adjusted for accrued and unpaid interest. Except as otherwise described in this prospectus supplement, Holders will not receive any payment representing accrued and unpaid interest, if any, upon conversion of a Note. Notes called for redemption may be surrendered for conversion prior to the close of business on the second Business Day (as defined under "Description of the Notes--Certain Definitions") immediately preceding the redemption date.

If we declare a cash dividend or cash distribution to all or substantially all of the holders of our common stock, the applicable conversion rate shall be increased to equal the number determined by multiplying the applicable conversion rate in effect immediately prior to the record date for such dividend or distribution by the following fraction:

$$\frac{\text{(pre-dividend sale price)}}{\text{(pre-dividend sale price - dividend adjustment amount)}}$$

provided that if the denominator of the foregoing fraction is less than $1.00 (including a negative amount), then, in lieu of any adjustment, we shall make adequate provision so that each Holder of Notes shall have the right to receive upon conversion, in addition to the cash and shares of common stock issuable upon such conversion, the amount of cash such Holder would have received had such Holder converted its Notes solely into shares of our common stock at the then applicable conversion rate immediately prior to the record date for such cash dividend or cash distribution. "PRE-DIVIDEND SALE PRICE" means the average of the last reported sale price of our common stock price for the five consecutive trading days ending on the trading day immediately preceding the record date for such dividend or distribution. "DIVIDEND

ADJUSTMENT AMOUNT" means the full amount of the dividend or distribution to the extent payable in cash applicable to one share of our common stock.

Purchase of Notes by Us at the Option of the Holder.......... Holders have the right to require us to purchase all or any portion of the Notes for cash on December 1, 2011, December 1, 2014 and December 1, 2019. In each case, we will pay a purchase price equal to 100% of the principal amount of the Notes to be purchased plus any accrued and unpaid interest to but excluding such purchase date. See "Description of the Notes--Purchase of Notes by Us at the Option of the Holder."

Fundamental Change............ If we undergo a Fundamental Change (as defined under "Description of the Notes--Fundamental Change Requires Purchase of Notes by Us at the Option of the Holder") prior to December 1, 2011, Holders will have the right, at their option, to require us to purchase any or all of their Notes for cash, or any portion of the principal amount thereof that is equal to $1,000 or an integral multiple of $1,000. The cash price we are required to pay is equal to 100% of the principal amount of the Notes to be purchased plus accrued and unpaid interest, if any, to the Fundamental Change purchase date. See "Description of the Notes--Fundamental Change Requires Purchase of Notes by Us at the Option of the Holder."

Change of Control Make-Whole Provision.................... If you elect to convert your Notes in connection with a corporate transaction as described under "Description of the Notes--Conversion Rights--Conversion Upon Specified Corporate Transactions" that occurs on or prior to December 1, 2011 that constitutes a Fundamental Change as defined under "Description of the Notes--Fundamental Change Requires Purchase of Notes by Us at the Option of the Holder" (other than a Fundamental Change relating to the composition of the CMS Energy board of directors (the "BOARD OF DIRECTORS")) and 10% or more of the fair market value of the consideration for the shares of common stock in the corporate transaction consists of (i) cash, (ii) other property or (iii) securities that are not traded or scheduled to be traded immediately following such transaction on a U.S. national securities exchange or the NASDAQ National Market, we will increase the applicable conversion rate for the Notes surrendered for conversion, which will increase the number of shares of our common stock issuable upon conversion. The number of additional shares a Holder will receive and the applicable conversion rate upon such

Fundamental Change is determined by the table found in "Description of the Notes--Conversion Rights--Adjustment to Conversion

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Rate upon the Occurrence of a Cash Take-Over Transaction."

Cash Take-Over Transaction by a Public Company.............	A public company change of control is a cash take-over transaction where we would be required to increase the conversion rate and the acquirer has a class of equity securities traded on a U.S. national securities exchange or quoted on the NASDAQ National Market. Upon the occurrence of a cash take-over transaction that constitutes a public company change of control, in lieu of increasing the conversion rate, we may elect to change the conversion right so that Holders of the Notes will be entitled to convert their Notes into the acquirer's common stock. See "Description of the Notes--Conversion Rights--Conversion After a Public Acquirer Change of Control."
Ranking......................	The Notes will be unsecured and unsubordinated senior debt securities of ours ranking equally with our other unsecured and unsubordinated indebtedness. As of September 30, 2004, we had outstanding approximately $2.7 billion aggregate principal amount of indebtedness, including approximately $178 million of subordinated indebtedness relating to our convertible preferred securities, but excluding approximately $5.1 billion of indebtedness of our subsidiaries. In August 2004, CMS Energy entered into the Fifth Amended and Restated Credit Agreement in the amount of approximately $300 million. This facility is secured and the Notes are junior to such indebtedness. As of November 30, 2004 there were approximately $93 million of letters of credit outstanding under the Fifth Amended and Restated Credit Agreement. Except for the amount outstanding under the Fifth Amended and Restated Credit Agreement, none of our indebtedness is senior to the Notes. The Notes are structurally subordinated to approximately $5.1 billion of our subsidiaries' debt.
Certain Covenants............	The senior debt indenture will contain covenants that will, among other things, limit our ability to pay dividends or distributions, incur additional indebtedness, incur additional liens, sell, transfer or dispose of certain assets, enter into certain transactions with affiliates or enter into certain mergers or consolidations.

Form of Notes.................	One or more global securities held in the name of The Depository Trust Company ("DTC") in a minimum denomination of $1,000 and any integral multiple thereof.
Trustee, Paying Agent and Conversion Agent..............	J.P. Morgan Trust Company, N.A.

Trading.......................	The Notes will not be listed on any securities exchange or included in any automated quotation system. No assurance can be given as to the liquidity of or trading market for the Notes. Our common stock is listed on the New York Stock Exchange under the symbol "CMS."
Risk Factors..................	You should carefully consider each of the factors described in the section of this prospectus supplement entitled "Risk Factors" starting on page S-20 before purchasing the Notes.

SELECTED CONSOLIDATED FINANCIAL DATA

The following selected financial data have been derived from our audited consolidated financial statements, which have been audited by Ernst & Young LLP, independent registered public accounting firm, for the fiscal years ended December 31, 2003, 2002, 2001 and 2000, except for amounts included from the financial statements of the MCV Partnership and Jorf Lasfar Energy Company S.C.A. ("JORF LASFAR"). The MCV Partnership represents an investment accounted for under the equity method of accounting through December 31, 2003, which was audited by another independent registered public accounting firm (the other auditors for 2001 and 2000 have ceased operations), for the fiscal years ended December 31, 2003, 2002, 2001 and 2000. Jorf Lasfar represents an investment accounted for under the equity method of accounting, which was audited by another independent accountant for the fiscal years ended December 31, 2003, 2002, 2001 and 2000. The following selected consolidated financial data for the nine months ended September 30, 2004 and 2003 have been derived from our unaudited consolidated financial statements. Please refer to our financial statements for the fiscal year ended December 31, 2003 and for the quarter ended September 30, 2004, which are each incorporated by reference herein. The financial information set forth below should be read in conjunction with our consolidated financial statements, related notes and other financial information that are incorporated by reference herein. Operating results for the nine months ended September 30, 2004 are not necessarily indicative of results that may be expected for the entire year ending December 31, 2004. See "Where You Can Find More Information."

	NINE MONTHS ENDED SEPTEMBER 30,	YEAR ENDED DECEMBER 31,

	2004 (A)	2003	2003	2002	2001	
	(UNAUDITED, DOLLARS IN MILLIONS EXCEPT PER SHARE AMOUNTS)		(DOLLARS IN MILLIONS EXCEPT PER SHARE AMO			
INCOME STATEMENT DATA:						
Operating revenue...............	$ 3,910	$ 4,141	$ 5,513	$ 8,673	$ 8,006	$
Earnings from equity method investees.....................	78	125	164	92	172	
Operating expenses..............	3,537	3,776	5,082	8,690	8,027	
Operating income................	451	490	595	75	151	
Income (loss) from continuing operations....................	68	(8)	(43)	(394)	(327)	
Net income (loss) available to common shareholder............	$ 65	$ (52)	$ (44)	$ (650)	$ (459)	$
Earnings per average common share:						
Income (loss) from continuing operations						
Basic and diluted.............	$ 0.36	$ (0.06)	$ (0.30)	$ (2.84)	$ (2.50)	$
CMS Energy Basic and Diluted Net Income (Loss) attributable to common stock..................	0.40	(0.36)	(0.30)	(4.68)	(3.51)	
Dividends declared per average common share:						
CMS Energy....................	$ --	$ --	$ --	$ 1.09	$ 1.46	$

	NINE MONTHS ENDED SEPTEMBER 30,		YEAR ENDED DECEMBER 31,			
	2004 (A)	2003	2003	2002	2001	
	(UNAUDITED, DOLLARS IN MILLIONS EXCEPT PER SHARE AMOUNTS)		(DOLLARS IN MILLIONS EXCEPT PER SHARE AMO			
BALANCE SHEET DATA (AT PERIOD END DATE):						
Cash and cash equivalents.......	$ 560	$ 669	$ 532	$ 351	$ 123	$
Restricted cash.................	83	205	201	38	4	
Net plant and property (a)......	8,600	6,624	6,944	6,103	6,703	
Total assets....................	15,377	13,234	13,838	14,781	17,633	1
Long-term debt, excluding current maturities (a)........	6,228	6,295	6,020	5,357	5,842	
Long-term debt--related parties......................	684	--	684	--	--	
Non-current portion of capital and finance lease						

obligations..................	318	116	58	116	71	
Notes payable..................	--	4	--	458	416	
Other liabilities..............	5,328	4,786	5,113	6,807	8,012	
Minority interest (a)..........	750	35	73	38	43	
Company-obligated mandatorily redeemable trust preferred securities of subsidiaries (b)..........................	--	173	--	393	694	
Company obligated trust preferred securities of Consumers' subsidiaries (b)...	--	490	--	490	520	
Preferred stock................	261	--	261	--	--	
Preferred stock of subsidiary...	$ 44	$ 44	$ 44	$ 44	$ 44	$
Common stockholders' equity.....	1,764	1,291	1,585	1,078	1,991	
OTHER DATA:						
Cash Flow:						
Provided by (Used in) operating activities...................	$ 194	$ --	$ (251)	$ 614	$ 372	$
Provided by (Used in) investing activities...................	(132)	332	203	829	(1,349)	(
Provided by (Used in) financing activities...................	(208)	(16)	230	(1,223)	967	
Ratio of earnings to fixed charges (c)..................	1.01	--(d)	--(e)	--(f)	--(g)	

(a) Under revised FASB Interpretation No. 46 "Consolidation of Variable Interest Entities," we are the primary beneficiary of the MCV Partnership and the First Midland Limited Partnership (the "FMLP"). As a result, we have consolidated their assets, liabilities and activities into our financial statements for the first time as of and for the quarter ended March 31, 2004. These partnerships had third-party obligations totaling $581 million at September 30, 2004. Property, plant and equipment serving as collateral for these obligations had a carrying value of $1.440 billion at September 30, 2004.

(b) CMS Energy and Consumers each formed various statutory wholly-owned business trusts for the sole purpose of issuing preferred securities and lending the gross proceeds to the parent companies. The sole assets of the trusts are debentures of the parent company with terms similar to those of the preferred securities. As a result of the

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adoption of FASB Interpretation No. 46 on December 31, 2003, we deconsolidated the trusts that hold the mandatorily redeemable trust preferred securities. Therefore, $490 million, previously reported by us as Company-obligated mandatorily redeemable trust preferred securities of subsidiaries, plus $16 million owed to the trusts and previously eliminated in consolidation, is now included in the balance sheet as Long-term debt--related parties. Additionally, $173 million, previously reported by us as Company-obligated trust preferred securities of Consumers' subsidiaries, plus $5 million owed to the trusts and previously eliminated in consolidation, is now included in the balance sheet as Long-term debt--related parties.

(c) For the purpose of computing the ratio, earnings represents the sum of

income from continuing operations before income taxes and income from equity method investees, net interest charges and preferred dividends of subsidiary, the estimated interest portion of lease rentals and distributed income of equity method investees.

(d) For the nine months ended September 30, 2003, fixed charges exceeded earnings by $36 million. Earnings as defined include $70 million of asset impairment charges.

(e) For the year ended December 31, 2003, fixed charges exceeded earnings by $59 million. Earnings as defined include $95 million of asset impairment charges.

(f) For the year ended December 31, 2002, fixed charges exceeded earnings by $475 million. Earnings as defined include $602 million of asset impairment charges.

(g) For the year ended December 31, 2001, fixed charges exceeded earnings by $393 million. Earnings as defined include $323 million of asset impairment charges.

(h) For the year ended December 31, 2000, fixed charges exceeded earnings by $225 million. Earnings as defined include a $329 million pretax impairment loss on the Loy Yang investment.

RISK FACTORS

Before purchasing any of our securities offered by this prospectus supplement and the accompanying prospectus, you should carefully consider the following risk factors, as well as the other information contained or incorporated by reference in this prospectus supplement and the accompanying prospectus.

RISKS RELATING TO CMS ENERGY

WE DEPEND ON DIVIDENDS FROM OUR SUBSIDIARIES TO MEET OUR DEBT SERVICE OBLIGATIONS. IF WE DO NOT RECEIVE ADEQUATE DIVIDENDS OR DISTRIBUTIONS FROM OUR SUBSIDIARIES, WE MAY NOT BE ABLE TO MAKE PRINCIPAL OR INTEREST PAYMENTS ON THE NOTES.

Due to our holding company structure, we depend on dividends from our subsidiaries to meet our debt obligations, including the payment of any principal or interest on the Notes. None of these entities are or will be obligated to pay any amounts due on the Notes. Therefore, the Notes are effectively subordinated to the payment of interest, principal, declared dividends and preferred distributions on the debt, preferred securities and other liabilities of Consumers and Enterprises and each of their subsidiaries.

Restrictions contained in Consumers' preferred stock provisions and other legal restrictions limit Consumers' ability to pay dividends or acquire its own stock from us. As of September 30, 2004, the most restrictive provisions in its financing documents allowed Consumers to pay an aggregate of $300 million in dividends to us during any year.

For additional information concerning restrictions on Consumers' ability to pay dividends to us, see "Description of Our Capital Stock--Primary Source of Funds of CMS Energy; Restrictions on Sources of Dividends."

THE NOTES ARE STRUCTURALLY SUBORDINATED TO THE DEBT AND PREFERRED STOCK OF OUR SUBSIDIARIES.

Of the approximately $7.8 billion of our consolidated indebtedness as of September 30, 2004, approximately $5.1 billion was indebtedness of our subsidiaries. Payments on that indebtedness and preferred stock are prior in right of payment to dividends paid to us by our subsidiaries. See "Description of the Notes--Structural Subordination."

WE HAVE SUBSTANTIAL INDEBTEDNESS THAT COULD LIMIT OUR FINANCIAL FLEXIBILITY AND HENCE OUR ABILITY TO MEET OUR DEBT SERVICE OBLIGATIONS UNDER THE NOTES.

As of September 30, 2004, we had outstanding approximately $2.7 billion aggregate principal amount of indebtedness, including approximately $178 million of subordinated indebtedness relating to our convertible preferred securities but excluding approximately $5.1 billion of indebtedness of our subsidiaries. In August 2004, we entered into the Fifth Amended and Restated Credit Agreement in the amount of approximately $300 million. As of November 30, 2004, there were approximately $93 million of letters of credit outstanding under the Fifth Amended and Restated Credit Agreement. We and our subsidiaries may incur additional indebtedness in the future.

The level of our present and future indebtedness could have several important effects on our future operations, including, among others:

- a significant portion of our cash flow from operations will be dedicated to the payment of principal and interest on our indebtedness and will not be available for other purposes;

- covenants contained in our existing debt arrangements require us to meet certain financial tests, which may affect our flexibility in planning for, and reacting to, changes in our business;

- our ability to obtain additional financing for working capital, capital expenditures, acquisitions and general corporate and other purposes may be limited;

- we may be at a competitive disadvantage to our competitors that are less leveraged; and

- our vulnerability to adverse economic and industry conditions may increase.

Our ability to meet our debt service obligations and to reduce our total indebtedness will be dependent upon our future performance, which will be subject to general economic conditions, industry cycles and financial, business and other factors affecting our operations, many of which are beyond our control. We cannot assure you that our business will continue to generate sufficient cash flow from operations to service our indebtedness. If we are unable to generate sufficient cash flow from operations, we may be required to sell additional assets or obtain additional financings. We also plan to refinance a substantial amount of our indebtedness prior to its maturity. We cannot assure you that any such refinancing will be possible or that additional financing will be available on commercially acceptable terms or at all.

There can be no assurance that the requirements of our existing debt

arrangements or other indebtedness will be met in the future. Failure to comply with such covenants may result in a default with respect to the related debt and could lead to acceleration of such debt or any instruments evidencing indebtedness that contain cross-acceleration or cross-default provisions.

In such a case, there can be no assurance that we would be able to refinance or otherwise repay such indebtedness.

WE HAVE FINANCING NEEDS AND WE MAY BE UNABLE TO SUCCESSFULLY ACCESS BANK FINANCING OR THE CAPITAL MARKETS.

As of September 30, 2004, CMS Energy had approximately $427 million of debt maturities in 2004 and 2005, excluding debt maturities of our subsidiaries. These maturities include: approximately $176 million of senior notes due in November 2004; $180 million of senior notes due in January 2005; and approximately $71 million of general term notes that mature at various times in 2004 and 2005. In addition, we expect to incur significant costs for capital expenditures, including future environmental regulation compliance, especially compliance with clean air laws. See "We could incur significant capital expenditures to comply with environmental standards and face difficulty in recovering these costs on a current basis" below. As of September 30, 2004 we had incurred $500 million in capital expenditures to comply with these regulations and future capital expenditures may total approximately $302 million between 2004 and 2011. We could also be required to make additional cash contributions to our employee pension and benefit plans and become subject to liquidity demands pursuant to commercial commitments under guarantees, indemnities and letters of credit. After giving effect to recent issuances of securities, along with asset sales, capital markets or bank financing and cash flow from operations, we believe, but can make no assurance, that we will have sufficient liquidity to meet our debt maturities through 2005. Management is actively pursuing plans to refinance debt and to sell assets. There can be no assurances that this business plan will be successful and failure to achieve its goals could have a material adverse effect on our liquidity and operations.

We continue to explore financing opportunities to supplement our financial plan. These potential opportunities include: refinancing our bank credit facilities; entering into leasing arrangements and/or vendor financing; refinancing and issuing new capital markets debt,

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preferred stock and/or common equity; and negotiating private placement debt. We cannot guarantee the capital market's acceptance of our securities or predict the impact of factors beyond our control, such as actions of rating agencies. If we are unable to access bank financing or the capital markets to incur or refinance indebtedness, there could be a material adverse effect upon our liquidity and operations.

Standard & Poor's Ratings Group, a division of The McGraw Hill Companies, Inc. ("S&P"), has assigned the Notes a rating of B+, Moody's Investors Service, Inc. has assigned the Notes a rating of B3 and Fitch, Inc. has assigned the Notes a rating of B+. We cannot assure you that these credit ratings will remain in effect for any given period of time or that one or more of these ratings will not be lowered or withdrawn entirely by a rating agency. We note that these credit ratings are not recommendations to buy, sell or hold our securities. Each rating should be evaluated independently of any other rating. Any future reduction or withdrawal of one or more of our credit ratings could have a material adverse impact on our ability to access capital on acceptable terms. We cannot assure you that any of our current ratings or those of our affiliates,

including Consumers, will remain in effect for any given period of time or that a rating will not be lowered or withdrawn entirely by a rating agency.

Certain of our securities and those of our affiliates, including Consumers, are rated by various credit rating agencies. Any reduction or withdrawal of one or more of our credit ratings could have a material adverse impact on our ability to access capital on acceptable terms. We cannot assure you that any of our current ratings or those of our affiliates, including Consumers, will remain in effect for any given period of time or that a rating will not be lowered or withdrawn entirely by a rating agency.

WE MAY BE ADVERSELY AFFECTED BY A REGULATORY INVESTIGATION AND LAWSUITS REGARDING "ROUND TRIP" TRADING BY ONE OF OUR SUBSIDIARIES AS WELL AS CIVIL LAWSUITS REGARDING PRICING INFORMATION THAT TWO OF OUR AFFILIATES PROVIDED TO MARKET PUBLICATIONS.

As a result of round trip trading transactions at CMS MST, we are under investigation by the United States Department of Justice. We have received subpoenas from U.S. Attorneys' Offices regarding investigations of those trades. CMS Energy and Consumers have also been named in numerous class action lawsuits by individuals who allege that they purchased CMS Energy securities during a purported class period. These complaints generally seek unspecified damages based on allegations that the defendants violated United States securities laws and regulations by making allegedly false and misleading statements about the company's business and financial condition. The cases have been consolidated into a single lawsuit and an amended and consolidated complaint was filed on May 1, 2003. The judge issued an opinion and order dated March 31, 2004 in connection with various pending motions, including the plaintiffs' motion to amend the complaint and the motions to dismiss the complaint filed by us, Consumers and other defendants. The judge directed the plaintiffs to file an amended complaint under seal and ordered an expedited hearing on the motion to amend, which was held on May 12, 2004. At the hearing, the judge ordered the plaintiffs to file an amended complaint deleting certain counts related to purchasers of CMS Energy-related securities, which the judge ordered dismissed with prejudice. The plaintiffs filed this complaint on May 26, 2004. We, Consumers and the individual defendants filed new motions to dismiss on June 21, 2004. A hearing on those motions occurred on August 2, 2004 and the judge has taken the matter under advisement.

In March 2004, the SEC approved a cease-and-desist order settling an administrative action against us relating to round-trip trading. The order did not assess a fine and we neither admitted nor denied the order's findings.

Our Board of Directors has received a demand on behalf of a shareholder of CMS Energy to commence civil actions (i) to remedy alleged breaches of fiduciary duties by CMS Energy officers and directors in connection with round trip trading at CMS MST and (ii) to recover damages sustained by CMS Energy as a result of alleged insider trades alleged to have been made by certain current and former officers of CMS Energy and its subsidiaries. In December 2002, two new directors were appointed to our Board of Directors. A special litigation committee was formed by the Board of Directors in January 2003 to determine whether it is in the best interest of CMS Energy to bring the action demanded by the shareholder. The disinterested members of the Board of Directors appointed the two new directors to serve on the special litigation committee.

On December 2, 2003, during the continuing review by the special litigation committee, we were served with a derivative complaint filed by the shareholder in the Circuit Court of Jackson County, Michigan in furtherance of his demands.

The date for CMS Energy and other defendants to answer or otherwise respond to the complaint was stayed by the court to February 21, 2005, subject to such further stays as may be mutually agreed upon by the parties and authorized by the court. On December 6, 2004, our Board of Directors received a separate demand on behalf of shareholders to commence a civil action against the current directors and certain officers of CMS Energy and certain former directors and officers of CMS Energy (i) to remedy alleged breaches of fiduciary duties by CMS Energy officers and directors in connection with round-trip trading at CMS MST and alleged failure to take remedial action against the individuals causing the damages resulting from the round-trip trading and (ii) demanding that the special litigation committee disclose all relevant details regarding the nature of its investigation.

We have notified appropriate regulatory and governmental agencies that some employees at CMS MST and CMS Field Services, Inc. (now Cantera Gas Company) appeared to have provided inaccurate information regarding natural gas trades to various energy industry publications which compile and report index prices. CMS Energy is cooperating with an investigation by the United States Department of Justice regarding this matter. On November 25, 2003, the Commodity Futures Trading Commission ("CFTC") issued a settlement order regarding this matter. CMS MST and CMS Field Services, Inc. agreed to pay a fine to the CFTC totaling $16 million. CMS Energy neither admitted nor denied the findings of the CFTC in the settlement order.

We have also been named as a defendant in several gas industry civil lawsuits regarding inaccurate gas trade reporting that include claims alleging manipulation of natural gas prices and violations of the Commodities Exchange Act and federal and state antitrust laws.

We cannot predict the outcome of the United States Department of Justice investigation and the lawsuits. It is possible that the outcome in one or more of the investigation or the lawsuits could adversely affect our financial condition, liquidity or results of operations.

WE MAY BE NEGATIVELY IMPACTED BY THE RESULTS OF AN EMPLOYEE BENEFIT PLAN LAWSUIT.

We are a defendant, along with Consumers, CMS MST and certain named and unnamed officers and directors, in two lawsuits brought as purported class actions on behalf of participants and beneficiaries of our 401(k) plan. The two cases, filed in July 2002 in the United States District Court for the Eastern District of Michigan, were consolidated by the trial judge and an amended and consolidated complaint has been filed. Plaintiffs allege breaches of fiduciary duties under the Employee Retirement Income Security Act of 1974 ("ERISA") and seek restitution on behalf of the plan with respect to a decline in value of the shares of our common stock held in the plan. The plaintiffs also seek other equitable relief and legal fees. The

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judge issued an opinion and order dated March 31, 2004 in connection with the motions to dismiss filed by us, Consumers and the individuals. The judge dismissed certain of the amended counts in the plaintiffs' complaint and denied our motion to dismiss the other claims in the complaint. We, Consumers and the individual defendants filed answers to the amended complaint on May 14, 2004. A trial date has not been set, but is expected to be no earlier than late in 2005.

We cannot predict the outcome of the ERISA litigation and it is possible that an adverse outcome in this lawsuit could adversely affect our financial condition, liquidity or results of operations.

WE CANNOT PREDICT THE OUTCOME OF CERTAIN CLAIMS OR OTHER LITIGATION IN WHICH SUBSTANTIAL MONETARY CLAIMS ARE INVOLVED.

Certain of CMS Energy's subsidiaries participated in the development of Bay Harbor, a residential/commercial development near Petoskey, Michigan. CMS Energy has since sold its interests in Bay Harbor, but on September 3, 2004, the Michigan Department of Environmental Quality ("MDEQ") issued a Notice of Noncompliance ("NON") directed to certain CMS Energy subsidiaries and other parties that had participated in Bay Harbor and had entered into an Administrative Agreement and Covenant Not To Sue ("CNTS") with the State of Michigan in 1994.

In the various agreements to develop Bay Harbor, CMS Land Company, a subsidiary of CMS Energy ("CMS LAND"), and CMS Energy made certain indemnifications to various parties for environmental conditions. In a settlement agreement, CMS Land abandoned all interests and rights in Bay Harbor but retained the responsibilities it and CMS Energy had under the previous environmental indemnifications and the CNTS. One such responsibility deals with the construction, operation and maintenance of a pH-lowering treatment facility at Bay Harbor that treats "seep water" from pre-existing cement kiln dust ("CKD") piles. The "seep water" has a high pH level that requires treatment before the water can be discharged into the City of Petoskey sewer system. While the pH treatment facility was out of service for a number of months to address maintenance issues, and to resolve issues with the City of Petoskey, MDEQ found the high levels of pH in Little Traverse Bay and issued the NON.

In addition, the Environmental Protection Agency ("EPA") has become involved, has sent a representative to obtain samples and information concerning the site, and has issued a General Notice of Potential Liability under Section 107(a) of the Comprehensive Environmental Response Compensation and Liability Act, 42 USC 9601 et seq. Follow-up meetings with the EPA to discuss potential response activities have been held and are scheduled in the future. CMS Energy filed a formal response to the Section 107(a) notice on December 6, 2004. While reserving all rights, CMS Energy presented a study to the City of Petoskey, which addresses maintenance issues and issues over the chemical composition of the liquid being delivered to the City of Petoskey. The study recommends that significant upgrades be made to the treatment facility.

CMS Energy has also presented plans to the MDEQ and EPA to undertake a study concerning separate "seeps" that are not currently subject to a water collection and treatment facility. In addition, CMS Energy has submitted a proposed plan to undertake immediate response activities, which are under discussion at the MDEQ and EPA.

Several parties have issued demand letters to CMS Land and CMS Energy claiming breach of the indemnification provisions, making requests for payment of their expenses related to the NON, and/or claiming damages to property or personal injury with regard to the matter. CMS Energy responded to the indemnification by stating that it had not breached its indemnity

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obligations, it will comply with the indemnities, it has restarted the pH treatment facility and it has responded to the NON. CMS Energy will vigorously defend any property damage and personal injury claim.

An adverse outcome of this matter could, depending on the size of any indemnification obligation or liability under environmental laws, have a potentially significant adverse effect on our financial condition and liquidity and could negatively impact our financial results. We cannot predict the

ultimate cost or outcome of this matter.

In addition to the litigation and proceedings discussed above, CMS Energy or various of our subsidiaries are parties in other pending litigation in which substantial monetary damages are sought. These proceedings, certain of which are described in CMS Energy's Annual Report on Form 10-K/A for the year ended December 31, 2003--Notes to Consolidated Financial Statements--Note 4, include arbitration and litigation relating to the Dearborn Industrial Generation project and claims from various provinces in Argentina for stamp taxes and associated penalties and interest arising from various gas transportation transactions. An adverse outcome in one or more of these cases could, depending on the timing and size of any award and the availability of insurance or reimbursement from third parties, have an adverse effect on our financial condition, liquidity or results of operations.

REGULATORY CHANGES AND OTHER DEVELOPMENTS HAVE RESULTED AND WILL CONTINUE TO RESULT IN INCREASED COMPETITION IN OUR DOMESTIC ENERGY BUSINESS. GENERALLY, INCREASED COMPETITION THREATENS OUR MARKET SHARE IN CERTAIN SEGMENTS OF OUR BUSINESS AND CAN REDUCE OUR PROFITABILITY.

Consumers has in the last several years experienced, and expects to continue to experience, a significant increase in competition for generation services with the introduction of retail open access in the State of Michigan. Pursuant to the Customer Choice Act, as of January 1, 2002, all electric customers have the choice of buying electric generation service from an alternative electric supplier. We continue to lose industrial and commercial customers to other electric suppliers without receiving compensation for stranded costs caused by the lost sales. As of November 2004, we had lost 905 MW or 11 percent of our electric generation business to these alternative electric suppliers. We expect the loss to be in the range of 926 MW to 975 MW by year-end 2004. We cannot predict the total amount of electric supply load that we may lose to competitor suppliers in the future.

ELECTRIC INDUSTRY REGULATION COULD ADVERSELY AFFECT OUR BUSINESS, INCLUDING OUR ABILITY TO RECOVER OUR EXPENSES FROM OUR CUSTOMERS.

Federal and state regulation of electric utilities has changed dramatically in the last two decades and could continue to change over the next several years. These changes could adversely affect our business, financial condition and profitability.

In June 2000, the Michigan Legislature enacted the Customer Choice Act that became effective June 5, 2000. Pursuant to the Customer Choice Act:

- residential rates were reduced by five percent and then capped through at least December 31, 2005; and

- small commercial and industrial customer rates were capped through at least December 31, 2004.

Ultimately, the rate caps could extend until December 31, 2013 depending upon whether or not Consumers exceeds the market power supply test established by the legislation (a requirement that Consumers believes itself to be in compliance with at this time). Under

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circumstances specified in the Customer Choice Act, certain costs can be deferred for future recovery after the expiration of the rate cap period. The rate caps could, however, result in Consumers being unable to collect customer rates sufficient to fully recover its cost of conducting business. Some of these

costs may be beyond Consumers' ability to control. In particular, if Consumers needs to purchase power supply from wholesale suppliers during the period when retail rates are frozen or capped, the rate restrictions imposed by the Customer Choice Act may make it impossible for Consumers to fully recover the cost of purchased power and associated transmission costs through the rates it charges its customers. As a result, it is not certain that Consumers can maintain its profit margins in its electric utility business during the period of the rate freeze or rate caps.

Consumers intends to file an electric rate case with the MPSC in December 2004.

There are multiple proceedings pending before the Federal Energy Regulatory Commission ("FERC") involving transmission rates, regional transmission organizations and standard market design for electric bulk power markets and transmission. FERC is also reviewing the standards under which electric utilities are allowed to participate in wholesale power markets without price restrictions. FERC is currently reviewing information submitted by Consumers to support its ability to continue to sell power at market-based rates. We cannot predict the impact of these electric industry-restructuring proceedings on our financial position, liquidity or results of operations.

PENDING UTILITY LEGISLATION IN MICHIGAN MAY AFFECT US IN WAYS WE CANNOT PREDICT.

In July 2004, as a result of legislative hearings, several bills were introduced into the Michigan Senate that could change Michigan's Customer Choice Act. The proposals include:

- requiring that rates be based on cost of service;

- establishing a defined Stranded Cost calculation method;

- allowing customers who stay with or switch to alternative electric suppliers after December 31, 2005 to return to utility services, and requiring them to pay current market rates upon return;

- establishing reliability standards that all electric suppliers must follow;

- requiring electric utilities and electric alternative suppliers to maintain a 15 percent power reserve margin;

- creating a service charge to fund the Low Income and Energy Efficiency Fund;

- giving kindergarten through twelfth-grade schools a discount of 10 percent to 20 percent on electric rates; and

- authorizing a service charge payable by all customers for meeting Clean Air Act requirements.

In September 2004, the Chair of the Senate Technology and Energy Committee formed a workgroup, which analyzed the merits of the proposed legislation. Workgroup activities have since concluded that the impact on the proposed legislation is still uncertain. In October 2004, a substitute to one of the bills was introduced, but has not yet been adopted by the Michigan Senate.

Although we do not believe the terms of the proposed bills, if enacted, would have a material adverse effect on our business, the final form of any new utility legislation may differ

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from the bills proposed in 2004. We cannot predict whether these or other measures will be enacted into law or their potential effect on us.

OUR ABILITY TO RECOVER CERTAIN REGULATORY ASSETS UNDER SECTION 10(D)(4) OF THE CUSTOMER CHOICE ACT MAY AFFECT OUR FINANCIAL RESULTS.

Section 10(d)(4) of the Customer Choice Act allows deferred recovery of an annual return of and on capital expenditures in excess of depreciation levels and certain other expenses incurred prior to and throughout the rate freeze and rate cap periods. See "Electric industry regulation could adversely affect our business, including our ability to recover our expenses from our customers." In October 2004, Consumers filed an application with the MPSC seeking recovery of $628 million of capital expenditures in excess of depreciation, Clean Air Act costs and other expenses for the period June 2000 through December 2005. Of the $628 million, $152 million relates to the cost of money.

We cannot predict the ability of Consumers to recover certain regulatory assets under Section 10(d)(4) of the Customer Choice Act and failure to recover these regulatory assets could adversely affect our financial condition.

PERIODIC REVIEWS OF THE VALUES OF OUR ASSETS COULD RESULT IN ADDITIONAL ACCOUNTING CHARGES.

We are required by U.S. generally accepted accounting principles to periodically review the carrying value of our assets, including those that may be sold. Market conditions, the operational characteristics of our assets and other factors could result in our recording additional impairment charges for our assets, which could have an adverse effect on our stockholders' equity and our access to additional financing. In addition, we may be required to record impairment charges and foreign currency translation losses at the time we sell assets depending on the sale prices we are able to secure and other factors.

WE COULD INCUR SIGNIFICANT CAPITAL EXPENDITURES TO COMPLY WITH ENVIRONMENTAL STANDARDS AND FACE DIFFICULTY IN RECOVERING THESE COSTS ON A CURRENT BASIS.

We and our subsidiaries are subject to costly and increasingly stringent environmental regulations. We expect that the cost of future environmental compliance, especially compliance with clean air and water laws, will be significant.

In 1998, the EPA issued regulations requiring the State of Michigan to further limit nitrogen oxide emissions at our coal-fired electric plants. The EPA and the State of Michigan regulations require us to make significant capital expenditures estimated to be $802 million. As of September 30, 2004, Consumers has incurred $500 million in capital expenditures to comply with the EPA regulations and anticipates that the remaining $302 million of capital expenditures will be incurred between 2004 and 2011. Additionally, Consumers currently expects it will supplement its compliance plan with the purchase of nitrogen oxide emissions credits for the years 2004 through 2009. The cost of these credits based on the current market is estimated to average $7 million per year for 2004-2006 and then decrease with Consumers' installation of control technology; however, the market for nitrogen oxide emissions credits and their price could change substantially. As new environmental standards become effective, Consumers will need additional capital expenditures to comply with the standards.

Based on the Customer Choice Act, beginning January 2004 an annual return of and on these types of capital expenditures, to the extent they are above depreciation levels, subject to an MPSC prudency hearing shall be accrued and

deferred for recovery. After notice and hearing, the MPSC shall determine the amount of reasonable and prudent costs, if any, to be recovered and the recovery period.

The EPA has proposed a Clean Air Interstate Rule that would require additional coal-fired electric plant emission controls for nitrogen oxides and sulfur dioxide. If implemented, this rule could potentially require substantial additional expenditures. The rule proposes a two-phase program to reduce emissions of sulfur dioxide by 70 percent and nitrogen oxides by 65 percent by 2015. Additionally, the EPA also proposed two alternative sets of rules to reduce emissions of mercury and nickel from coal-fired and oil-fired electric plants. Until the proposed environmental rules are finalized, an accurate cost of compliance cannot be determined.

The EPA has alleged that some utilities have incorrectly classified plant modifications as "routine maintenance" rather than seek modification permits from the EPA. We have received and responded to information requests from the EPA on this subject. We believe that we have properly interpreted the requirements of "routine maintenance." If our interpretation is found to be incorrect, we may be required to install additional pollution controls at some or all of our coal-fired electric plants and potentially pay fines. Additionally, the viability of certain plants remaining in operation could be called into question.

These and other required environmental expenditures, if not recovered from customers in Consumers' rates, may require us to seek significant additional financing to fund such expenditures and could strain our cash resources.

WE RETAIN CONTINGENT LIABILITIES IN CONNECTION WITH OUR ASSET SALES.

The agreements we enter into for the sale of assets customarily include provisions whereby we are required to:

- retain specified preexisting liabilities such as for taxes and pensions;

- indemnify the buyers against specified risks, including the inaccuracy of representations and warranties we make; and

- require payments to the buyers depending on the outcome of post-closing adjustments, audits or other reviews.

Many of these contingent liabilities can remain open for extended periods of time after the sales are closed. Depending on the extent to which the buyers may ultimately seek to enforce their rights under these contractual provisions, and the resolution of any disputes we may have concerning them, these liabilities could have a material adverse effect on our financial condition, liquidity and results of operations.

We have received a request for indemnification from the purchaser of CMS Oil and Gas Company, a former subsidiary of CMS. The indemnification claim relates to the sale by CMS of its oil, gas and methanol projects in Equatorial Guinea and the claim of the government of Equatorial Guinea that $142 million in taxes is owed it in connection with that sale. Based on information currently available, CMS and its tax advisors have concluded that the government's tax claim is without merit and the purchaser of CMS Oil and Gas Company has submitted a response to the government rejecting the claim. An adverse outcome of this claim could have a material adverse effect on our financial condition, liquidity and results of operations.

OUR REVENUES AND RESULTS OF OPERATIONS ARE SUBJECT TO RISKS THAT ARE BEYOND OUR CONTROL, INCLUDING BUT NOT LIMITED TO FUTURE TERRORIST ATTACKS OR RELATED ACTS OF WAR.

The cost of repairing damage to our facilities due to storms, natural disasters, wars, terrorist acts and other catastrophic events, in excess of reserves established for such repairs, may adversely impact our results of operations, financial condition and cash flows. The occurrence or risk of occurrence of future terrorist activity and the high cost or potential

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unavailability of insurance to cover such terrorist activity may impact our results of operations and financial condition in unpredictable ways. These actions could also result in disruptions of power and fuel markets. In addition, our natural gas distribution system and pipelines could be directly or indirectly harmed by future terrorist activity.

WE HAVE MADE SUBSTANTIAL INTERNATIONAL INVESTMENTS THAT ARE SUBJECT TO POSSIBLE NATIONALIZATION, EXPROPRIATION OR INABILITY TO CONVERT CURRENCY.

Our investments in selected international markets in electric generating facilities, natural gas pipelines and electric distribution systems face a number of risks inherent in acquiring, developing and owning these types of international facilities. Although we maintain insurance for various risk exposures, including political risk from possible nationalization, expropriation or inability to convert currency, we are exposed to some risks that include local political and economic factors over which we have no control, such as changes in foreign governmental and regulatory policies (including changes in industrial regulation and control and changes in taxation), changing political conditions and international monetary fluctuations. In some cases an investment may have to be abandoned or disposed of at a loss. These factors could significantly adversely affect the financial results of the affected subsidiary and our financial position and results of operations.

International investments of the type we have made are subject to the risk that they may be expropriated or that the required agreements, licenses, permits and other approvals may be changed or terminated in violation of their terms. These kinds of changes could result in a partial or total loss of our investment.

The local foreign currency may be devalued, the conversion of the currency may be restricted or prohibited or other actions, such as increases in taxes, royalties or import duties, may be taken which adversely affect the value and the recovery of our investment.

OUR OWNERSHIP OF A NUCLEAR GENERATING FACILITY CREATES RISK RELATING TO NUCLEAR ENERGY.

Consumers owns the Palisades nuclear power plant and we are, therefore, subject to the risks of nuclear generation, including the risks associated with the operation of plant facilities and the storage and disposal of spent fuel and other radioactive waste. The Nuclear Regulatory Commission ("NRC") has broad authority under federal law to impose licensing and safety-related requirements for the operation of nuclear generation facilities. In the event of non-compliance, the NRC has the authority to impose fines or shut down a unit, or both, depending upon its assessment of the severity of the situation, until compliance is achieved. In addition, although we have no reason to anticipate a serious nuclear incident at Consumers' plant, if an incident did occur, it could harm our results of operations and financial condition. A major incident at a

nuclear facility anywhere in the world could cause the NRC to limit or prohibit the operation or licensing of any domestic nuclear unit.

CONSUMERS CURRENTLY UNDERRECOVERS IN ITS RATES ITS PAYMENTS TO THE MCV PARTNERSHIP FOR CAPACITY AND ENERGY, AND IS ALSO EXPOSED TO FUTURE CHANGES IN THE MCV PARTNERSHIP'S FINANCIAL CONDITION THROUGH ITS EQUITY AND LESSOR INVESTMENTS.

Consumers' power purchase agreement with the MCV Partnership ("PPA") expires in 2025. We estimate that Consumers will incur estimated cash underrecoveries of payments under the PPA aggregating $206 million through 2007. For availability payments billed by the MCV Partnership after September 15, 2007, and not recovered from customers, Consumers would expect to claim a "regulatory out" under the PPA which Consumers believes it has the right to do after satisfying its obligation to "support and defend" full recovery of PPA charges

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from customers. The MCV Partnership has indicated that it may take issue with our exercise of the regulatory out clause after September 2007. The effect of exercise of the regulatory out clause would be to reduce cash flow to the MCV Partnership, which could in turn have an adverse effect on Consumers' equity and lessor interests in the MCV Partnership's facility (the "MCV FACILITY").

Further, under the PPA, energy payments to the MCV Partnership are based on the cost of coal burned at Consumers' coal plants and costs associated with fuel inventory, operations and maintenance, and administrative and general expenses associated with Consumers' coal plants. However, the MCV Partnership's costs of producing electricity are tied, in large part, to the cost of natural gas. Because natural gas prices have increased substantially in recent years, while energy charge payments to the MCV Partnership have not, the MCV Partnership's financial performance has been impacted negatively.

In February 2004, Consumers filed an RCP with the MPSC that is intended to help conserve natural gas and thereby improve its investment in the MCV Partnership. This plan seeks approval to:

- dispatch the MCV Facility based on natural gas market prices without increased costs to electric customers;

- give Consumers a priority right to buy excess natural gas as a result of the reduced dispatch of the MCV Facility; and

- fund $5 million annually for renewable energy sources such as wind power projects.

The RCP is expected to reduce the MCV Facility's annual natural gas consumption by an estimated 30 to 40 bcf. This decrease in the quantity of high-priced natural gas consumed by the MCV Facility would benefit Consumers' ownership interest in the MCV Partnership. The amount of PPA capacity and fixed energy payments recovered from retail electric customers would remain capped at 88.7 percent. Therefore, customers would not be charged for any increased power supply costs, if they occur. Consumers and the MCV Partnership have reached an agreement that the MCV Partnership will reimburse Consumers for any incremental power costs incurred to replace the reduction in power dispatched from the MCV Facility. We cannot predict if or when the MPSC will approve the RCP.

We cannot estimate, at this time, the impact of these issues on Consumers' future earnings or cash flow from its interest in the MCV Partnership. The

forward price of natural gas for the next 20 years and the MPSC decision in 2007 or later related to Consumers' recovery of capacity payments are the two most significant variables in the analysis of the MCV Partnership's future financial performance. Natural gas prices have historically been volatile and presently there is no consensus in the marketplace on the price or range of prices of natural gas beyond the next five years. Further, it is not presently possible for us to predict the actions of the MPSC in 2007 or later. Even with an approved RCP, if gas prices continue at present levels or increase, the economics of operating the MCV Facility may be adverse enough to require Consumers to recognize an impairment of its investment in the MCV Partnership. For these reasons, at this time we cannot predict the impact of these issues on Consumers' future earnings or cash flows or on the value of its equity interest in the MCV Partnership.

CONSUMERS' ENERGY RISK MANAGEMENT STRATEGIES MAY NOT BE EFFECTIVE IN MANAGING FUEL AND ELECTRICITY PRICING RISKS, WHICH COULD RESULT IN UNANTICIPATED LIABILITIES TO CONSUMERS OR INCREASED VOLATILITY OF ITS EARNINGS.

Consumers is exposed to changes in market prices for natural gas, coal, electricity and emission credits. Prices for natural gas, coal, electricity and emission credits may fluctuate

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substantially over relatively short periods of time and expose Consumers to commodity price risk. A substantial portion of Consumers' operating expenses for its plants consists of the costs of obtaining these commodities. Consumers manages these risks using established policies and procedures, and it may use various contracts to manage these risks, including swaps, options, futures and forward contracts. We cannot assure you that these strategies will be successful in managing Consumers' pricing risk, or that they will not result in net liabilities to Consumers as a result of future volatility in these markets.

Natural gas prices in particular have historically been volatile. To manage market risks associated with the volatility of natural gas prices, the MCV Partnership maintains a gas hedging program. The MCV Partnership enters into natural gas futures contracts, option contracts and over-the-counter swap transactions in order to hedge against unfavorable changes in the market price of natural gas in future months when gas is expected to be needed. These financial instruments are being used principally to secure anticipated natural gas requirements necessary for projected electric and steam sales, and to lock in sales prices of natural gas previously obtained in order to optimize the MCV Partnership's existing gas supply, storage and transportation arrangements. Consumers also routinely enters into contracts to offset its positions, such as hedging exposure to the risks of demand, market effects of weather and changes in commodity prices associated with its gas distribution business. Such positions are taken in conjunction with the gas cost recovery mechanism, which allows Consumers to recover prudently incurred costs associated with such positions. However, neither Consumers nor the MCV Partnership always hedges the entire exposure of its operations from commodity price volatility. Furthermore, the ability to hedge exposure to commodity price volatility depends on liquid commodity markets. As a result, to the extent the commodity markets are illiquid, Consumers may not be able to execute its risk management strategies, which could result in greater open positions than we would prefer at a given time. To the extent that open positions exist, fluctuating commodity prices can improve or diminish our financial results and financial position.

In addition, Consumers currently has a power supply cost recovery mechanism to recover the increased cost of fuel used to generate electricity from its industrial and large commercial customers, but not from its residential or small commercial customers. Therefore, to the extent that Consumers has not hedged its

fuel costs, it is exposed to changes in fuel prices to the extent fuel for its electric generating facilities must be purchased on the open market in order for Consumers to serve its residential and small commercial customers.

RISKS RELATED TO THE NOTES

THE MARKET-TRADING PRICE OF THE NOTES COULD BE SIGNIFICANTLY AFFECTED BY THE MARKET-TRADING PRICE OF OUR COMMON STOCK.

We expect that the market-trading price of the Notes will be significantly affected by the market-trading price of our common stock. This may result in greater volatility in the market-trading price of the Notes than would be expected for nonconvertible debt securities. The market-trading price of our common stock will likely continue to fluctuate in response to factors including the following, many of which are beyond our control:

- fluctuations in our operating and financial results;

- changes in financial estimates and recommendations by financial analysts;

- changes in the ratings of the Notes or other securities of ours or Consumers;

- developments related to litigation or regulatory proceedings involving us;

- financings; and

- market perception of the energy industry and of us.

In addition, the stock markets in general, including the New York Stock Exchange, are subject to significant price and trading fluctuations. These fluctuations have resulted in volatility in the market-trading prices of securities that often has been unrelated or disproportionate to changes in operating performance. These broad market fluctuations may affect adversely the market-trading prices of the Notes and our common stock.

WE MAY ISSUE ADDITIONAL SHARES OF COMMON STOCK OR SECURITIES CONVERTIBLE OR EXCHANGEABLE FOR OUR COMMON STOCK AND THEREBY MATERIALLY AND ADVERSELY AFFECT THE PRICE OF OUR COMMON STOCK.

We are not restricted from issuing additional common stock or securities convertible or exchangeable for our common stock during the life of the Notes. If we issue additional shares of common stock or securities convertible or exchangeable for our common stock, it may materially and adversely affect the price of our common stock and, in turn, the price of the Notes.

WE CURRENTLY DO NOT PAY DIVIDENDS ON OUR COMMON STOCK.

We suspended the payments of dividends on our common stock in January 2003 and have no current plans to resume payment of a dividend. Our ability to declare dividends in the future will depend on a variety of factors, including improvement in our financial condition and liquidity and the terms of our financing agreements. We cannot predict when resumption of dividends on our common stock would occur, and if so the amount of any such dividends that might be declared.

A HOLDER OF NOTES WILL NOT BE ENTITLED TO ANY RIGHTS WITH RESPECT TO OUR COMMON STOCK, BUT WILL BE SUBJECT TO ALL CHANGES MADE WITH RESPECT TO OUR COMMON STOCK.

A Holder of Notes will not be entitled to any rights with respect to our common stock (including, without limitation, voting rights and rights to receive any dividends or other distributions on our common stock), but will be subject to all changes affecting our common stock. Holders will only be entitled to rights on our common stock if and when we deliver shares of common stock to Holders upon conversion of Notes and in limited cases under the conversion rate adjustments of the Notes. For example, in the event that an amendment is proposed to our Restated Articles of Incorporation or Restated Bylaws requiring stockholder approval and the record date for determining the stockholders of record entitled to vote on the amendment occurs prior to delivery of our common stock, Holders will not be entitled to vote on the amendment, although Holders will nevertheless be subject to any changes in the powers, preferences or special rights of our common stock.

WE MAY NOT HAVE THE ABILITY TO RAISE THE FUNDS NECESSARY TO PAY THE CASH COMPONENT UPON A CONVERSION OF THE NOTES OR PURCHASE THE NOTES UPON A FUNDAMENTAL CHANGE, OTHER PURCHASE DATE OR AT THE OPTION OF THE HOLDERS, AS REQUIRED BY THE SENIOR DEBT INDENTURE.

Upon conversion of the Notes, Holders will be entitled to receive cash and shares of our common stock. See "Description of the Notes--Conversion Rights." Also, on December 1, 2011, December 1, 2014 and December 1, 2019, Holders of the Notes may require us to purchase their Notes for cash. See "Description of the Notes--Purchase of Notes by Us at the Option of the Holder." In addition, prior to December 1, 2011, Holders of the Notes also may require us to purchase their Notes upon a Fundamental Change as described under "Description

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of the Notes--Fundamental Change Requires Purchase of Notes by Us at the Option of the Holder." A Fundamental Change also may constitute an event of default, and result in the acceleration of the maturity of our then existing indebtedness, under another indenture or other agreement. We cannot assure you that we would have sufficient financial resources, or would be able to arrange financing, to pay the purchase price for the Notes converted or tendered by Holders. Failure by us to pay the cash portion required upon any conversion or purchase the Notes when required will result in an event of default with respect to the Notes.

THE MAKE-WHOLE PREMIUM PAYABLE ON NOTES CONVERTED IN CONNECTION WITH CERTAIN CORPORATE TRANSACTIONS MAY NOT ADEQUATELY COMPENSATE HOLDERS FOR THE LOST OPTION TIME VALUE OF THE HOLDER'S NOTES.

In connection with certain corporate transactions described under "Description of the Notes--Conversion Rights--Adjustment to Conversion Rate upon the Occurrence of a Cash Take-Over Transaction", we will increase the conversion rate for the Notes surrendered for conversion, which will increase the number of shares of our common stock issuable upon conversion. The additional shares a Holder will receive and the applicable conversion rate is determined by the table found in "Description of the Notes--Conversion Rights--Adjustment to Conversion Rate upon the Occurrence of a Cash Take-Over Transaction." While the additional shares are designed to compensate a Holder for the lost option time value of its Notes as a result of such corporate transaction, the additional shares are only an approximation of such lost value and may not adequately compensate the Holder for such loss. In addition, if certain corporate transactions occur after December 1, 2011 or if the share price paid per share of our common stock is less than $10.17 per share or greater than $50.00 per share, no make-whole premium will be paid. Any adjustment to the applicable conversion rate relating to the issuance of additional shares as described above will not exceed the maximum conversion rate.

THE CONDITIONAL CONVERSION FEATURE OF THE NOTES COULD RESULT IN A HOLDER RECEIVING LESS THAN THE VALUE OF THE CONSIDERATION INTO WHICH A NOTE IS CONVERTIBLE.

The Notes are convertible only if specified conditions are met. If the specified conditions for conversion are not met, a Holder will not be able to convert its Notes and may not be able to receive the value of the consideration into which the Notes would otherwise be convertible. The contingent conversion features of the Notes could also adversely affect the value and trading prices of the Notes.

THE CONVERSION RATE OF THE NOTES MAY NOT BE ADJUSTED FOR ALL DILUTIVE EVENTS THAT MAY OCCUR.

The conversion rate of the Notes is subject to adjustment for certain events including, but not limited to, the issuance of stock dividends on our common stock, the issuance of certain rights or warrants, subdivisions or combinations of our common stock and certain distributions of assets, debt securities, capital stock or cash to holders of our common stock as described under "Description of the Notes--Conversion Rights--Conversion Rate Adjustments." The conversion rate will not be adjusted for other events that may adversely affect the trading price of the Notes. See "Description of the Notes--Conversion Rights--Conversion Rate Adjustments." There can be no assurance that an event that adversely affects the value of the Notes, but does not result in an adjustment to the conversion rate, will not occur.

HOLDERS OF THE NOTES MAY NOT RECEIVE ANY SHARES OF OUR COMMON STOCK UPON CONVERSION.

We will satisfy our conversion obligation to Holders in excess of the principal amount of Notes to be converted, if any, by issuing shares of common stock in satisfaction of such excess. Accordingly, upon conversion of a Note, Holders may not receive any shares of our common stock.

UPON CONVERSION OF THE NOTES, YOU MAY RECEIVE LESS PROCEEDS THAN EXPECTED BECAUSE THE VALUE OF OUR COMMON STOCK MAY DECLINE BETWEEN THE DAY THAT YOU EXERCISE YOUR CONVERSION RIGHT AND THE DAY THE VALUE OF YOUR SHARES IS DETERMINED.

The conversion value that you will receive upon conversion of your Notes is in part determined by the average of the closing prices per share of our common stock on the New York Stock Exchange for the ten consecutive trading days beginning on the second trading day immediately following the day the Notes are tendered for conversion. Accordingly, if the price of our common stock decreases after you tender your Notes for conversion, the conversion value you receive may be adversely affected.

YOU MAY HAVE TO PAY TAXES WITH RESPECT TO DISTRIBUTIONS ON OUR COMMON STOCK THAT YOU DO NOT RECEIVE.

The conversion rate of the Notes is subject to adjustment for certain events arising from stock splits and combinations, stock dividends, certain cash dividends, certain corporate transactions and certain other actions by us that modify our capital structure. Please read "Description of the Notes--Conversion Rights--Conversion Rate Adjustments." If the conversion rate is adjusted as a result of a distribution that is taxable to our common stockholders, such as a cash dividend, you would be required to include an amount in income for federal

income tax purposes, notwithstanding the fact that you do not receive such distribution. In addition, Non-U.S. Holders (as defined in "Material United States Federal Income Tax Considerations") of the Notes may, in certain circumstances, be deemed to have received a distribution subject to U.S. federal withholding tax requirements. Please read "Material United States Federal Income Tax Considerations" in this prospectus supplement.

WE CANNOT ASSURE YOU THAT AN ACTIVE TRADING MARKET WILL DEVELOP FOR THE NOTES.

The Notes are a new issue of securities for which there currently is no active trading market. As we do not intend to apply to list the Notes for trading on any national securities exchange or to include the Notes in any automated quotation system, we cannot assure you that an active trading market for the Notes will develop or as to the liquidity or sustainability of any such market, the ability of the Holders to sell their Notes or the price at which Holders of the Notes will be able to sell their Notes. Future trading prices of the Notes will also depend on many other factors, including, among other things, prevailing interest rates, the market for similar securities, our performance and other factors. We do not intend to apply for listing of the Notes on any securities exchange or any automated quotation system.

USE OF PROCEEDS

We estimate that the proceeds of the offering of the Notes, after deducting underwriters' discounts and commissions and offering expenses, will aggregate approximately $243 million (assuming no purchase under the underwriters' option). We intend to use the proceeds of this offering to redeem the $180 million principal amount of outstanding X-TRAS, plus accrued but unpaid interest and any associated option payment, and for general corporate purposes.

RATIO OF EARNINGS TO FIXED CHARGES

The ratio of earnings to fixed charges for the nine months ended September 30, 2004 and each of the years ended December 31, 1999 through 2003 is as follows:

	NINE MONTHS ENDED SEPTEMBER 30, 2004	YEAR ENDED DECEMBER 31, 2003	2002	2001	2000	1999
Ratio of earnings to fixed charges........	1.01	--(1)	--(2)	--(3)	--(4)	1.33

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(1) For the year ended December 31, 2003, fixed charges exceeded earnings by $59 million. Earnings as defined include $95 million of asset impairment charges.

(2) For the year ended December 31, 2002, fixed charges exceeded earnings by $475 million. Earnings as defined include $602 million of asset impairment charges.

(3) For the year ended December 31, 2001, fixed charges exceeded earnings by

$393 million. Earnings as defined include $323 million of asset impairment charges.

(4) For the year ended December 31, 2000, fixed charges exceeded earnings by $225 million. Earnings as defined include a $329 million pretax impairment loss on the Loy Yang investment.

For the purpose of computing the ratio, earnings represent income before income taxes, net interest charges and the estimated interest portion of lease rentals and distributed income of equity method investees.

PRICE RANGE OF OUR COMMON STOCK AND DIVIDEND POLICY

Our common stock is listed on the New York Stock Exchange. The following table sets forth for the periods indicated the range of high and low intraday sales prices per share of our common stock as reported on the New York Stock Exchange and the cash dividends declared on the common stock for the periods indicated.

	HIGH	LOW	DIVIDENDS
Year Ended December 31, 2002			
First Quarter	$24.80	$20.97	$0.365
Second Quarter	22.50	7.75	0.365
Third Quarter	11.55	6.89	0.180
Fourth Quarter	10.48	5.45	0.180
Year Ended December 31, 2003			
First Quarter	10.74	3.41	--
Second Quarter	8.95	4.58	--
Third Quarter	8.04	6.03	--
Fourth Quarter	8.67	7.40	--
Year Ending December 31, 2004			
First Quarter	9.59	8.25	--
Second Quarter	9.43	7.81	--
Third Quarter	9.88	8.58	--
Fourth Quarter (through December 7)	10.65	8.80	--

On December 7, 2004, the last sale price of our common stock as reported on the New York Stock Exchange was $10.17 per share. On December 7, 2004 there were approximately 58,635 holders of record of our common stock.

In January 2003, we suspended the payment of dividends on our common stock.

CAPITALIZATION

The following table sets forth our capitalization as of September 30, 2004 on an actual basis and as a