UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

STEVEN BACA, On Behalf of Himself and All Others Similarly Situated,	§	Civil Action No.
	§	
	§	CLASS ACTION
Plaintiff,	§	
	§	
vs.	§	
	§	
DYNEGY, INC., CHARLES L. WATSON, ROBERT D. DOTY and STEPHEN W. BERGSTROM,	§	
	§	
	§	
	§	
Defendants.	§	
	§	
	§	DEMAND FOR JURY TRIAL

COMPLAINT FOR VIOLATION OF THE FEDERAL SECURITIES LAWS

INTRODUCTION AND OVERVIEW

1. This is a securities class action on behalf of all persons who purchased the publicly traded securities of Dynegy, Inc. ("Dynegy" or the "Company") between April 17, 2001 and May 15, 2002 (the "Class Period"). Plaintiff alleges violations of the federal securities laws arising out of defendants' issuance of false financial statements and other false and misleading statements about the Company's operating performance.

2. Dynegy and its top officers inflated the price of the Company's stock in order to pursue an accelerated securities sale program. Defendants knew that concealing Dynegy's true vehicle – Project Alpha – for creating cash flow from operations and the true impact it would have on the Company provided the only way that they could foster the perception in the business community that Dynegy was not "Enron Corp.," *i.e.,* the only way Dynegy could post the revenue and earnings per share ("EPS") growth claimed by defendants.

3. The five-year deal involved gas trading contracts between a specially created entity and DMT Supply LP, a partnership in which Dynegy had an interest. For most of the first year, the entity sold gas at prices below the market rate to DMT, with the loan covering losses on the trades. In the following four years and three months of the arrangement, DMT was supposed to buy gas from the entity for more than the market price. The two sets of gas transactions were supposed to then cancel each other out, so Dynegy would not have to report a gain or a loss in net income. In fact, contrary to existing law (discussed *supra*), the Alpha transactions had no real business purpose other than falsifying cash flows from operations and cutting tax costs.

4. Prior to the Class Period, the Individual Defendants realized that many of their complicated deals to generate reported net income did not generate cash flows. The defendants knew that investors would eventually discover this discrepancy and the Company's stock price would collapse. To prevent this, Dynegy classified what was essentially a loan from CitiGroup Inc. as an operating activity rather than as a financing activity as required by Generally Accepted Accounting Principles ("GAAP"). *See* FASB Statement of Financial Accounting Standards ("SFAS") No. 95, ¶¶18-19. The defendants' wrongful course of business (i) artificially inflated the price of Dynegy's stock during the Class Period; (ii) deceived the investing public, including

plaintiff and other Class members, into acquiring Dynegy's securities at artificially inflated prices; (iii) allowed the Individual Defendants to extract millions of dollars in bonuses for creating the appearance of the Company's phenomenal cash flow from operations growth; and (iv) allowed Dynegy to sell nearly half a billion dollars of its own securities to the unsuspecting public.

JURISDICTION AND VENUE

5. The claims asserted arise under §§10(b) and 20(a) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. §§78j(b) and 78t(a), and Rule 10b-5 promulgated thereunder. Jurisdiction exists pursuant to §27 of the Exchange Act, 15 U.S.C. §78aa, and 28 U.S.C. §1331. Certain of the Individual Defendants are residents and citizens of this District, including defendants Charles L. Watson, Robert D. Doty and Stephen W. Bergstrom. Dynegy is a citizen of Texas, as it is a corporation with its principal place of business in Houston, Texas.

6. Dynegy conducts business and maintains operations in this County. Defendants' wrongful conduct took place in this District, including the dissemination of many of the false and misleading statements made by defendants in and from this County. For example, the false releases and Securities and Exchange Commission ("SEC") filings complained of herein were prepared and disseminated from this County.

THE PARTIES

7. Plaintiff Steven Baca purchased shares of Dynegy during the Class Period, as reflected in the attached Certification, and was damaged thereby.

8. Defendant Dynegy, Inc. is headquartered in Houston, Texas. Dynegy is a provider of natural gas compression, gas handling and related services in the United States and select international markets.

9. (a) Defendant Charles L. Watson ("Watson") was at all relevant times the Chairman and CEO of Dynegy. Because of his position, Watson knew the adverse, non-public information about Dynegy's business, as well as its finances, markets and present and future business prospects via access to internal corporate documents (including the Company's operating plans, budgets and forecasts, and reports of actual operations compared thereto), conversations and connections with other corporate officers and employees, attendance at management and Board of

Directors' meetings or committees thereof, and via reports and other information provided to him in connection therewith. During the Class Period, Watson participated in the issuance of false and/or misleading statements. For his participation, Watson was paid a bonus of $5 million in FY 2001 together with more than one million stock options.

(b) Defendant Robert D. Doty ("Doty") was at all relevant times the Executive Vice President and CFO of Dynegy. Because of his position, Doty knew the adverse, non-public information about Dynegy's business, as well as its finances and present and future business prospects via access to internal corporate documents (including the Company's operating plans, budgets and forecasts, and reports of actual operations compared thereto), conversations and connections with other corporate officers and employees, attendance at management or Board of Directors' meetings and committees thereof, and via reports and other information provided to him in connection therewith. During the Class Period, Doty participated in the issuance of false and/or misleading statements. For his participation, Doty was paid a bonus of $1.3 million in FY 2001 together with 147,000 stock options.

(c) Defendant Stephen W. Bergstrom ("Bergstrom") was at all relevant times the President and COO of Dynegy. Because of his position, Bergstrom knew the adverse, non-public information about Dynegy's business, as well as its finances and present and future business prospects via access to internal corporate documents (including the Company's operating plans, budgets and forecasts, and reports of actual operations compared thereto), conversations and connections with other corporate officers and employees, attendance at Board of Directors and/or management meetings, and via reports and other information provided to him in connection therewith. During the Class Period, Bergstrom participated in the issuance of false and/or misleading statements. For his participation, Bergstrom was paid a bonus of $5 million in FY 2001 together with 450,000 stock options.

(d) The defendants identified in ¶9(a)-(c) are referred to herein as the "Individual Defendants."

KNOWLEDGE, GROUP-PUBLISHED DOCUMENTS, AND DUTY TO DISCLOSE OR ABSTAIN FROM STOCK SALES

10. During the Class Period, each of the Individual Defendants occupied a position as one of the top three Dynegy executives and was privy to non-public information concerning the Company. Each of them knew of the adverse facts specified herein. Notwithstanding their duty to refrain from causing Dynegy to sell/dispose of stock or other securities while in possession of material, adverse, non-public information concerning the Company, these defendants caused Dynegy shares to trade at grossly inflated prices, through the appearance of the positive statement relating to the Company's "cash flow from operation," thus allowing the Individual Defendants and Dynegy to benefit from the defendants' wrongful course of conduct. In exchange, Watson, Doty and Bergstrom each receive multi-million dollar bonuses for their participation. Dynegy's press releases, corporate reports to shareholders, and filings with the SEC were each group-published documents for which each defendant is equally responsible.

11. Each of the Individual Defendants and Dynegy is liable for making false and misleading statements in that they inflated the price of Dynegy stock by making false and misleading statements and omitting material adverse information. The defendants' wrongful course of business (i) artificially inflated the price of Dynegy's stock during the Class Period; (ii) deceived the investing public, including plaintiff and other Class members, into acquiring Dynegy's securities at artificially inflated prices; (iii) allowed the Individual Defendants to extract millions of dollars in bonuses for creating the appearance of the Company's phenomenal cash flow from operations growth; and (iv) allowed Dynegy to sell nearly half a billion dollars of its own securities to the unsuspecting public.

12. Dynegy and its top officers inflated the price of the Company's stock in order to pursue an accelerated securities sale program. Defendants knew that concealing Dynegy's true vehicle – Project Alpha – for creating cash flow from operations and the true impact it would have on the Company provided the only way that they could foster the perception in the business community that Dynegy was not "Enron Corp.," *i.e.,* the only way Dynegy could post the financial results claimed by defendants.

BACKGROUND AND OVERVIEW

13. During the Class Period, one financial component which was critical to the way investors measured Dynegy as an investment was its ability to generate cash flows from operations.

14. GAAP requires that companies include a "Statement of Cash Flows" as part of a full set of financial statements. *See* SFAS No. 95, ¶23. SFAS No. 95 requires that cash flows be classified as from either investing, financing or operating activities. SFAS No. 95, ¶14. The most important category for investors is operating activities since this shows how successful a company is at generating cash from the company's ongoing business.

15. Prior to the Class Period, the Individual Defendants realized that many of their complicated deals to generate reported net income did not generate cash flows. The defendants knew that investors would eventually discover this discrepancy and the Company's stock price would collapse. To prevent this, Dynegy classified what was essentially a loan from CitiGroup as an operating activity rather than as a financing activity as required by GAAP. *See* SFAS No. 95, ¶¶18-19.

16. This transaction, called "Project Alpha," was entered into in April 2001, and was structured in a way to minimize Dynegy's taxes and to be considered a derivative transaction and to avoid being classified as cash flows from financing activities. Dynegy started Project Alpha in April 2001 with a $300 million loan from CitiGroup, aiming to increase the Company's reported cash flow by that amount in 2001 while cutting the Company's tax bill by $80 million.

17. The five-year deal involved gas trading contracts between a specially created entity and DMT Supply LP, a partnership in which Dynegy had an interest. For most of the first year, the entity sold gas at prices below the market rate to DMT, with the loan covering losses on the trades. In the following four years and three months of the arrangement, DMT was supposed to buy gas from the entity for more than the market price. The two sets of gas transactions were supposed to then cancel each other out, so Dynegy would not have to report a gain or a loss in net income. In fact, contrary to existing law (discussed *supra*), the Alpha transactions had no real business purpose other than falsifying cash flows from operations and cutting tax costs.

FALSE AND MISLEADING STATEMENTS

18. On April 17, 2001, the Company issued a press release entitled, "Dynegy Reports First Quarter 2001 Recurring Earnings Per Share of $0.41." The press release stated in part:

> Record first quarter highlighted by recurring net income of $137.5 million; Dynegy Marketing and Trade recurring net income doubles; and growth driven by nationwide asset optimization, increased customer origination and risk management activities.
>
> Dynegy Inc. today reported a 73 percent increase in first quarter 2001 recurring net income to $137.5 million, or $0.41 per diluted share, compared to first quarter 2000 recurring net income of $79.4 million, or $0.26 per diluted share.
>
> "Our record first quarter performance was the result of continued execution of sound business strategies across all of our segments," said Chuck Watson, chairman and chief executive officer of Dynegy Inc. "We created significant value during a period of strong industry fundamentals in both natural gas and power. Furthermore, we captured opportunities generated by a return to seasonal winter weather and the supply and demand imbalances that are impacting multiple energy commodities.
>
> "The volatility characterizing the current energy environment has created an even more pronounced 'flight to quality' by companies recognizing the need to align with a proven provider of products, services and risk mitigation," Watson added. "Our increased origination and risk management activities during the first quarter reflect our status as a preferred national energy merchant with a diverse and balanced portfolio and the capabilities to navigate competitive markets for our customers."

19. On May 14, 2001, the Company filed its 10-Q with the SEC stating that for the three months ended March 31, 2001, it had cash flow from operations of $267 million.

20. On June 22, 2001, an article appeared in the *Oil Daily* which stated, in part:

> The Houston-based utility said that it would meet or exceed its 2001 earnings estimate of $1.93 to $1.98/share and would grow by at least 20% to 25% next year.
>
> "***Dynegy's earnings and cash flow to date have exceeded expectations***. In addition, we have found that we can execute our communications strategy with less capital," Chairman and Chief Executive Chuck Watson said in a statement, referring to the company's investments in broadband and telecommunications concerns.

21. On July 24, 2001, the Company issued a press release entitled, "Dynegy Posts Record Earnings for Second Quarter." The press release stated in part:

> - 48 percent increase in recurring earnings per diluted share to $0.43;
> - Dynegy Marketing and Trade recurring net income more than doubles;
> - Dynegydirect reaches nearly $25 billion in notional transactions since inception.

Dynegy Inc. today reported a 48 percent increase in second quarter 2001 recurring earnings per diluted share to $0.43, compared to second quarter 2000 recurring earnings per diluted share of $0.29. Recurring net income increased 60 percent in second quarter 2001 to $146 million, compared to second quarter 2000 recurring net income of $91 million.

"Our second quarter earnings performance once again validates that Dynegy's energy delivery network is positioned to execute through all phases of market transition," said Chuck Watson, chairman and chief executive officer of Dynegy Inc. "Dynegy's merchant energy business continues to serve as a fundamental growth platform, which ensures earnings sustainability and provides opportunities for incremental upside through network optionality.

"Our concurrent move into new markets is further diversifying our delivery network, augmenting Dynegy's ability to deliver sophisticated solutions to meet customers' complex energy needs and providing broader opportunities for arbitrage and risk management between portfolios," Watson added. "Our recent UK storage acquisition and entrance into the global LNG business also demonstrate our discipline in allocating our capital resources in order to optimize shareholder value."

22. On August 14, 2001, the Company filed its 10-Q with the SEC stating that for the six months ended June 30, 2001, it had cash flow from operations of $365 million.

23. On October 1, 2001, the Company issued a press release entitled, "Dynegy Confirms Earnings Estimates." The press release stated in part:

Dynegy Inc. today announced that it expects to meet or exceed current First Call consensus estimates for 2001 of $2.07 recurring earnings per diluted share. Management also reaffirmed that it expects to meet recurring earnings estimates for 2002 of $2.50 to $2.60 per diluted share.

"Fundamentally, the energy industry has been and will continue to be one of the strongest sectors in our global economy," said Chuck Watson, chairman and chief executive officer of Dynegy Inc. "Recent events and the general economic downturn have not adversely impacted the outlook for our merchant energy business and are not expected to affect our earnings growth or slow our momentum.

"The volatility found in current energy markets is expected to continue, creating an even greater 'flight to quality' by companies recognizing the need for an energy partner with a reliable physical delivery network," added Watson. "We are confident that our origination and risk management capabilities, our status as a national energy merchant with a diverse and balanced physical portfolio, and our experience navigating competitive markets for our customers will make Dynegy the provider-of-choice."

24. On October 15, 2001, the Company issued a press release entitled, "Dynegy Reports 55 Percent Increase in Third Quarter 2001 Recurring Earnings Per Share." The press release stated in part:

- Record third quarter highlighted by recurring net income of $286 million;

- Strong growth driven by continued execution and global energy delivery network;

- Dynegy Global Communications completes core network;

- Company raises estimates for 2001 to $2.09 to $2.10 recurring earnings per diluted share.

Dynegy Inc today reported a 55 percent increase in third quarter 2001 recurring earnings per diluted share to $0.85 compared to third quarter 2000 recurring earnings per diluted share of $0.55. Recurring net income increased 62 percent in third quarter 2001 to $286 million, compared to third quarter 2000 recurring net income of $177 million.

Dynegy's third quarter 2000 reported earnings per share of $0.73 included a pre-tax non-recurring gain of $83.3 million from the sale of its equity interest in Accord Energy Limited, a U.K. gas marketing joint venture in which Dynegy held a non-operating interest.

"Our performance in the third quarter and year-to-date demonstrates continued execution of our strategies across all business segments, regardless of market conditions," said Chuck Watson, chairman and chief executive officer of Dynegy Inc. "We are confident that the company is uniquely positioned to benefit from the pronounced 'flight to quality' by companies recognizing the importance of a partnership with an energy provider that possesses a reliable delivery network.

"We are also confident that our origination and risk management skill set, our status as a global energy merchant with physical delivery capabilities, and our experience navigating competitive markets for customers will make Dynegy a provider-of-choice," Watson added. "Our long-term strategy to focus on marketing and trading around physical assets supports earnings sustainability, while the expansion of our merchant energy business to capitalize on the opportunities generated by competition in North American and European energy markets will serve as a fundamental growth platform for the future."

* * *

Recurring net income for this segment increased 85 percent to $263 million in the third quarter 2001, compared to $142 million in the third quarter 2000. The quarter benefitted from strong earnings and cash flow from the company's existing energy delivery network, incremental earnings from developed and acquired generation assets, and excellent gas and power marketing operations resulting from increased customer origination and risk management activities throughout the county. In addition, the quarter benefitted from improved results in the company's European and Canadian operations.

* * *

Dynegy Global Communications

Dynegy's newly established communications segment, Dynegy Global Communications (DGC), is engaged in pursuing and capturing opportunities in the converging energy and communications marketplace through opportunistic asset acquisitions and strategic partnerships. DGC is focused on becoming a leader in the broadband marketing and trading arena by leveraging its global communications network with the company's wholesale marketing, trading and logistics skills.

Segment results reflect a $15 million quarterly loss resulting from start-up costs associated with network development and decreased demand. Results are not comparable due to the start of the business segment in the fourth quarter 2000.

Dynegy recently expanded its delivery capabilities through the completion of its U.S. core network, one of the first optically switched mesh networks in the world. The network spans more than 16,000 route miles and reaches 44 of the largest cities in the United States. Dynegy's U.S. metro area connectivity will be completed in the fourth quarter 2001.

Other Factors Affecting Earnings

Dynegy's recurring net income increased 62 percent to $286 million in the third quarter 2001, reflecting higher operating margin and investment earnings, principally from the energy convergence business. These results were partially offset by increased general and administrative expenses due to continued expansion of the company's operations primarily in Europe and communications and higher variable compensation expenses, as well as increased depreciation and amortization.

2001 Earnings Estimate

With this announcement, management increases expectations for 2001 recurring earnings per diluted share to $2.09 to $2.10.

25. On October 30, 2001, the Company filed its 10-Q with the SEC stating that for the nine months ended September 30, 2001, it had cash flow from operations of $640 million.

26. On December 20, 2001, the Company issued a press release entitled "Dynegy Achieves Significant Milestone in Capital Restructuring," which stated in part:

As part of the company's capital restructuring program unveiled Monday, December 17, Dynegy Inc. today reported it has sold 25 million shares of Class A common stock as $20.75 per share in an underwritten public offering.

Net proceeds from the sale totaling $494 million will be used to reduce debt, according to the company. Lehman Brothers acted as sole underwriter and retains a 10 percent over-allotment option for 30 days.

Dynegy Inc. Chairman and Chief Executive Officer Chuck Watson said the issuance "is an important next step in the execution of our strategy to strengthen Dynegy's financial position in light of the changing financial standards in the energy merchant industry. The rapid execution of this equity offering demonstrates Dynegy's strong commitment to the capital restructuring program we outlined this past Monday."

27. On January 23, 2002, the Company issued a press release entitled, "Dynegy Reports 47 Percent Increase in 2001 Recurring Earnings Per Share To $2.10." The press release stated in part:

- Annual recurring net income up 58 percent to $713 million;

- 70 percent of recurring financial contribution from owned assets;

- Fourth quarter recurring net income of $144 million, or $0.41 per diluted share;

- 86 percent increase in wholesale energy network segment annual recurring net income;

- Diversification strategy, physical asset ownership and strong balance sheet drive growth.

Dynegy Inc. today reported a 47 percent increase in 2001 recurring earnings per diluted share to $2.10, compared to 2000 recurring earnings per diluted share of $1.43. Recurring net income increased 58 percent in 2001 to $713 million, compared to 2000 recurring net income of $452 million.

Dynegy's 2001 reported earnings per diluted share of $1.90 included after-tax non-recurring charges aggregating $67 million from the company's previously disclosed exposure to Enron Corp.'s bankruptcy, costs related to the company's terminated merger with Enron and a severance charge associated with a subsidiary's restructuring. The reported earnings per diluted share also include a $3 million non-recurring dividend associated with the mandatorily convertible redeemable preferred stock issued to ChevronTexaco Corp. in November 2001.

Dynegy's 2000 reported earnings per share included an after-tax non-recurring gain of $58 million from the sale of its equity interest in Accord Energy Limited, a U.K. gas marketing joint venture in which Dynegy held a non-operating interest, a $34 million gain on the sale of certain generation facilities and $44 million of charges related to the sale and impairment of certain crude oil and natural gas liquids assets.

"2001 was a year in which Dynegy successfully executed across all business segments in the face of unprecedented industry challenges and market conditions. Our ability to achieve our financial and operational objectives during a year of significant industry events validates our focus on customer marketing, origination, risk management and delivery logistics around our network of physical energy assets," said Chuck Watson, chairman and chief executive officer of Dynegy Inc." I am particularly proud of how our company performed during the fourth quarter, when Dynegy and the entire merchant energy industry came under scrutiny following the financial collapse of Enron. We reassessed our financial position, communicated a definitive course of action to enhance our credit strength and began executing on a plan that was designed to restore market confidence and bolster our balance sheet," Watson added.

"The strategy we pursued in 2001, coupled with the manner in which we delivered value to our stakeholders, set the stage for solid performance in 2002 and beyond," Watson said. "Overall, 70 percent of the company's recurring financial contribution was from assets we own. Our wholesale energy network segment continues to perform extremely well and results are consistent with our expectations. Earnings in this segment benefitted from the addition of nearly 3,000 megawatts of both new and acquired power generation facilities, greater market origination, increased sales to commercial and industrial customers, and the expansion of product and service offerings through our online sales and trading portal, Dynegydirect. In addition, Dynegy's acquisition of BG Storage Limited and its natural gas storage facilities in the United Kingdom was a significant step toward expanding our energy marketing presence throughout Europe, and our pending acquisition of Northern Natural Gas will be a source of predictable and sustainable earnings and cash flow."

Watson added that, "Despite a difficult pricing environment, our natural gas liquids segment continued to grow as a result of our strategy to minimize commodity exposure in our upstream processing activities, control costs and focus on specific geographic regions. Our transmission and distribution segment, Illinois Power, has made significant progress on a restructuring program that will further elevate its position as a leading competitive energy delivery company. Additionally, we have reassessed the costs in our global communications segment in order to accelerate our timing for positive earnings when the market recovers."

Wholesale Energy Network

Dynegy's wholesale energy network segment, which the company previously referred to as Dynegy Marketing and Trade, is focused on optimizing the company's and its customers' energy networks consisting of assets, capacity and contracts, as well as direct commercial and industrial sales and retail marketing alliances. It is engaged in a broad array of energy businesses, including the physical supply of, and risk management activities around, wholesale natural gas, power and coal. Recurring net income for this segment increased 86 percent to $660 million in 2001, compared to $354 million in 2000. The segment benefitted from strong earnings and cash flow in both its Customer and Risk Management activities (marketing), as well as its Asset Businesses (generation and storage).

The Asset Businesses generated 55 percent of the recurring financial contribution for the segment in 2001. Recurring financial contribution from the Asset Businesses was up 38 percent, compared to 2000, primarily due to incremental earnings from existing, developed and acquired assets, including 1,700 megawatts of generation facilities in New York, nearly 1,200 megawatts of new merchant generation facilities in the south and the newly acquired BG Storage in the United Kingdom.

Customer and Risk Management activities generated 45 percent of the recurring financial contribution of the segment in 2001. North American gas marketing sales volumes increased 16 percent to 11.3 billion cubic feet per day (Bcf/d) in 2001, up from 9.7 Bcf/d in 2000. Total physical power sold increased 130 percent to 317 million megawatt hours in 2001, compared to 138 million megawatt hours in 2000. The higher volumes in gas and power were the result of greater market origination, including sales to commercial and industrial customers, increased sales volumes on Dynegydirect and increased gas marketing in Canada.

Further growth of the Dynegydirect platform is reducing the variable cost of serving customers, while increasing Dynegy's competitive reach and market share. Dynegydirect offers more than 750 products and services online, including hourly power and coal. It recorded nearly $43 billion in notional transactions in 2001, $13 billion of which was recorded in the fourth quarter. Dynegy recently expanded Dynegydirect into U.K. energy markets. Customers have self-service access to Dynegy's bid and offer pricing for power in the English and Welsh electricity market and U.K. natural gas at the National Balancing Point.

Dynegy Midstream Services

Dynegy Midstream Services consists of Dynegy's North American midstream liquids processing and marketing business and worldwide natural gas liquids marketing and transportation operations.

Recurring net income from this segment increased 7 percent to $59 million in 2001, compared to recurring net income of $55 million in 2000. This segment's annual results reflect higher price realization resulting from an active forward sales program and contract restructuring activities, which were realized despite a depressed pricing environment resulting from larger inventories.

Processing volumes declined 13 percent to 84 thousand barrels per day (MBbls/d) in 2001, compared to 97 MBbls/d in 2000. This decrease was primarily due to the timing of certain asset sales in 2000 and reduced straddle volumes resulting from lower fractionation spreads than in 2000. Natural gas liquids sold were almost flat in 2001 at 557 MBbls/d, compared to 565 MBbls/d in 2000.

Transmission and Distribution

Dynegy's regulated transmission and distribution segment currently includes Illinois Power (IP). Beginning with the first quarter 2002, this segment will include results from Northern Natural Gas (NNG), an acquisition that Dynegy expects to complete later this month.

IP is an energy delivery company engaged in the transmission, distribution and sale of electricity and natural gas to customers across a 15,000-square-mile area of Illinois. NNG's 16,600 miles of pipeline extend from the Permian Basin in Texas to the Upper Midwest, providing natural gas transportation and storage services to major utilities and industrial customers.

IP reported recurring net income of $55 million in both 2001 and 2000. Segment results reflect lower weather-driven demand offset by reduced operating costs. During the fourth quarter 2001, IP announced a restructuring program aimed at reducing costs and improving customer service. IP recognized a $15 million pre-tax severance charge related to this program.

Dynegy Global Communications

Dynegy's communication segment, Dynegy Global Communications (DGC), was established during the fourth quarter 2000 to pursue and capture opportunities in the converging energy and communications marketplace through opportunistic asset acquisitions and strategic partnerships. Dynegy expanded its delivery capabilities through the completion of its U.S. core network, one of the first optically switched mesh networks in the world, in October 2001. The network spans more than 16,000 route miles and reaches 44 of the largest cities in the United States.

Segment results reflect a $61 million loss for 2001. Revenues fell short of company expectations due to extreme weakness in technology and telecommunications markets. Dynegy is implementing cost-savings initiatives in this business, reducing operating expenses and capital expenditures, and positioning the business for future earnings contribution.

Other Factors Affecting Earnings

Dynegy's increase in recurring net income in 2001 is primarily attributable to higher operating margin, which was partially offset by increased general and administrative expenses due to continued expansion of the company's operations, primarily in the communications segment and in Europe. Higher variable compensation expense also contributed to increased general and administrative expenses. Depreciation and amortization also increased in 2001, reflecting the company's expanded ownership in operating and technology assets.

Fourth Quarter 2001 Results

Dynegy reported an increase of 36 percent in fourth quarter 2001 recurring net income to $144 million, or a 28 percent increase to $0.41 per diluted share. This compares to fourth quarter 2000 recurring net income of $106 million, or $0.32 per diluted share. Reported fourth quarter 2001 net income of $77 million, or $0.21 per diluted share, includes the previously discussed non-recurring charges and special dividend.

The quarter benefitted from strong earnings and cash flow from the company's wholesale energy network segment, which, on a recurring net income basis, was up 58 percent compared to the 2000 period. This improvement was led by increased origination in North American and European gas and power. North American gas volumes increased 14 percent to 11.8 Bcf/d in the fourth quarter 2001, up from 10.4 Bcf/d in the fourth quarter 2000. Total physical power sold increased 150 percent to 104.5 million megawatt hours in the fourth quarter 2001, compared to 41.8 million megawatt hours in the fourth quarter 2000. Dynegy's strong gas and power marketing operations were the result of increased Customer and Risk Management activities throughout the United States, Europe and Canada. Dynegy's liquids and transmission and distribution segments were negatively impacted by mild weather and the economy.

Capital Management

On December 17, 2001, in an effort to improve its balance sheet and adapt to the changing credit standards in the merchant energy industry, Dynegy announced a $1.25 billion capital restructuring program. The program was designed to raise $500 million in common equity and to reduce capital spending and asset sales in the combined amount of $750 million.

Dynegy has executed on its restructuring plan by issuing $748 million of common equity ($543 million in a public offering in December 2001 and $205 million to ChevronTexaco in January 2002) and by reducing its 2002 capital spending budget to $1.2 billion from $1.7 billion. Dynegy continues to pursue strategies to improve its balance sheet and is in the process of designating certain assets for sale.

Dynegy manages its liquidity and capital resources through a combination of cash on hand, operating cash flow, borrowing arrangements and access to the debt and equity markets. As of December 31, 2001, Dynegy had available liquidity resources, including cash on hand and availability under borrowing arrangements, of approximately $1.2 billion. Dynegy believes that this level of liquidity is sufficient to operate its business under any conceivable circumstance.

Earnings Estimate

With this announcement, management reiterates its 2002 earnings guidance of $2.26 per diluted share and establishes guidance for first quarter 2002 diluted earnings per share at $0.41.

28. On March 13, 2002, the Company filed its 10-K for FY 2001 stating that for the full fiscal year the Company had cash flow from operations of $811 million.

Dynegy Tries to Defend its Tax Scheme

29. On April 3, 2002, *The Associated Press* issued a report entitled, "Dynegy shares fall after report it used complex accounting to beef up finances." The report stated in part:

> Dynegy Inc.'s stock dropped more than 4 percent Wednesday after a report that the one-time Enron Corp. suitor indulged in complex accounting aimed partly at bolstering its balance sheet.
>
> The Wall Street Journal reported Wednesday that internal Dynegy documents show a financial vehicle launched a year ago that boosts reported cash flow and cuts taxes but has little other purpose. Dynegy said the financial vehicle provides a steady gas source as well as tax benefits.
>
> Dynegy's stock fell $1.30 to close at $28.79 on the New York Stock Exchange.
>
> The financial vehicle, developed by Dynegy's tax division and dubbed "Project Alpha," is designed to close the gap between reported cash flow and the estimated value of trades for gas, electricity and other commodities years before the transactions take place, the Journal reported.
>
> Dynegy and other trading companies include estimated value for "derivative" contracts they use for future buying and selling of commodities in net income as "unrealized gains." Trades that generate cash are included in reported cash flow.
>
> Accounting rules give energy companies latitude in assigning current values to future transactions, which involves assumptions about what direction the market will take. Critics say it is easy to be overly generous when assigning such values.
>
> Cash flow of operations is calculated from net income, which can lead to discrepancies. In 1999, Dynegy included $115 million in unrealized gains in its net income, but had to cut its cash flow by $115 million because that amount hadn't actually come into the company. A gap appeared again in 2000, when Dynegy reported $354 million in unrealized gains in its net income and cut its cash flow by the same amount.
>
> But higher values were being assigned to derivative contracts than those assigned to transactions that brought in cash, according to the documents obtained by the Journal. They said the difference created a "disconnect" between reported net income and cash flow that investors could notice.
>
> So Dynegy started Project Alpha last April with a $300 million loan from CitiGroup Inc., the documents showed, aiming to increase the company's reported

cash flow by that amount in 2001 while cutting the company's tax bill by $80 million.

The five-year deal involves gas trading contracts between a specially created entity and DMT Supply LP, a partnership in which Dynegy has an interest, the Journal said.

For most of the first year, the documents showed, the entity sold gas at prices below the market rate to DMT, with the loan covering losses on the trades. In the next four years and three months of the arrangement, according to the documents, DMT is supposed to buy gas from the entity for more than the market price. The two sets of gas transactions are supposed to then cancel each other out, so Dynegy doesn't have to report a gain or a loss in net income, the Journal said.

Douglas Carmichael, an accounting professor at Baruch College in New York, reviewed the Alpha transactions for the Journal and said they had no real business purpose other than increasing cash flow and cutting tax costs.

Dynegy said Project Alpha provides a steady gas source as well as financial advantages.

"The natural gas supply transaction we entered into provides us with a long-term source of physical gas supply and a significant tax benefit," Dynegy spokesman John Sousa told The Associated Press.

30. In order to appease the market and defend its acts, Dynegy responded that:

"It is an economically sound transaction and has been accounted for and appropriately disclosed in our 2001 financial statements," Sousa said.

Auditing firm Arthur Andersen LLP, fired by Dynegy last month, approved Project Alpha. Andersen was indicted last month on obstruction charges for shredding Enron-related documents.

31. On April 25, 2002, the Company issued a press release entitled, "Dynegy Expects to Meet First Quarter 2002 Earnings Guidance of 41 Cents." The press release stated in part:

– First quarter 2002 recurring net income expected to increase $36 million, or 26 percent, over first quarter 2001

– Highlights to include continued solid energy results, strong cash flow

– Global Communications segment expected to report $300 million goodwill and other non-recurring charges

– 2002 annual earnings guidance revised to $2.00 to $2.05 to reflect telecom and non-energy adjustments

– Dynegy files additional disclosure relating to physical natural gas supply transaction

Dynegy Inc. today announced that it expects to meet first quarter 2002 recurring earnings per diluted share guidance of $0.41. The company expects to report recurring net income of $173 million, an increase of $36 million, or 26 percent, over first quarter 2001. These recurring results compare to $0.41 recurring earnings per diluted share, or $137 million recurring net income, in the first quarter of 2001. Reported loss per share of $0.41, or $140 million reported net loss in the first quarter 2002, compares to $0.41 reported earnings per diluted share, or $139 million reported net income, in the first quarter 2001.

Reported 2002 results include total after-tax non-recurring charges of $313 million, or $0.74 per diluted share, which include after-tax non-recurring charges of $300 million, or $0.71 per diluted share, in Dynegy Global Communications (DGC). Significantly all of these charges are non-cash. In addition, the company expects to incur an after-tax non-recurring charge of approximately $13 million, or $0.03 per diluted share, in Northern Natural Gas Company (NNG).

Net income available to shareholders is expected to be reduced by approximately $8 million for the amortization of a special dividend associated with the issuance discount on the $1.5 billion ChevronTexaco convertible preferred securities issued late last year, or $0.02 per diluted share.

First quarter 2002 results were impacted by the addition of NNG, the acquisition of Dynegy Storage Limited in the United Kingdom, incremental power generation assets and 81 million additional diluted shares outstanding.

The company's expected first quarter 2002 results reflect several key drivers:

– Successful execution of Dynegy's core energy business strategy, focusing on reliable physical delivery of energy commodities through its diversified asset-backed network and mitigating the risk from commodity volatility for the company and its customers;

– Optimization of Dynegy's expanding portfolio of physical assets, including storage and generation facilities, capacity and contracts is expected to contribute to solid results in the Wholesale Energy Network segment.

– Significant wholesale and commercial and industrial origination and risk management activities.

– Increased market share in physical gas and power. Global gas volumes are expected to increase as a result of incremental ChevronTexaco natural gas volumes associated with former Texaco's equity production.

– As anticipated, Dynegy's Midstream Services segment is expected to report lower results, primarily due to the decline in realized contract and spot commodity prices period over period, partially offset by improved NGL marketing results and increased utilization of straddle plants resulting from more favorable processing economics;

– The company's Transmission and Distribution segment is expected to benefit from earnings generated from full ownership of NNG during the second and third months of the first quarter. These results were partially offset by a lack of weather-driven demand in Illinois Power's service territory and an $18 million pre-tax non-recurring charge ($13 million after-tax) associated with gas delivery commitments assumed in the NNG acquisition; and

– DGC earnings are expected to be lower than anticipated due to temporary start-up network difficulties and lower sales experienced during the first quarter. Issues with network equipment vendors required the company to secure off-net capacity to fulfill its customer obligations.

– Dynegy adopted "Statement of Financial Accounting Standard No. 142, Goodwill and Other Intangible Assets," which necessitated a reduction of the carrying value of goodwill associated with DGC's operations. DGC expects to report an after-tax non-recurring charge of approximately $300 million. This charge will encompass all of the goodwill associated with this segment (approximately $256 million) and impairment of certain telecommunications assets, including investments in unconsolidated affiliates, equipment and other charges.

During the first quarter, Dynegy made significant progress on its capital restructuring program, which was announced in late December 2001. In January 2002, Dynegy raised $205 million of common equity from ChevronTexaco, bringing the total common equity raised pursuant to the capital restructuring program to about $750 million. In addition, Dynegy issued $500 million in long-term debt in February 2002, reducing reliance on short-term bank credit facilities. For the quarter, cash flow from operations is expected to be approximately $300 million or about $450 million before working capital changes. Liquidity (cash on hand plus availability under bank credit facilities) increased to approximately $1.7 billion at quarter end.

Revised 2002 Earnings Guidance

Dynegy's management is revising the company's 2002 recurring earnings per share guidance to a range of $2.00 to $2.05 from the previous guidance of $2.26. The new guidance is based primarily on expectations of continued weakness in the telecommunications and technology markets, a one-time differential in seasonal earnings resulting from the delayed timing of the NNG acquisition and incremental interest expense. Dynegy's wholesale energy businesses performed well in the quarter and are still expected to meet expectations for the year.

Physical Natural Gas Supply Transaction

Dynegy will file a Current Report on SEC Form 8-K to disclose a change in the presentation of cash flow associated with a natural gas supply transaction. The company's consolidated balance sheet, consolidated statement of operations and consolidated statement of changes in stockholders' equity are unaffected by the cash flow statement change.

Originally entered into in April 2001 by DMT Supply L.P., a Dynegy subsidiary, the transaction consists of a five-year physical gas supply contract with ABG Gas Supply LLC, an unrelated third-party. The transaction provided Dynegy with access to a significant long-term supply of physical gas, cash funding and a permanent tax benefit. Under the terms of the contract, DMT Supply bought gas at a discount to market prices over the first nine months of the contract. For the remaining 51 months of the contract, DMT Supply will purchase gas at a premium to market prices. ABG Gas Supply acquires the gas through standard NYMEX contracts to fulfill its sales commitments to DMT Supply, which takes title to the gas at Henry Hub in Louisiana and markets it to customers.

The transaction resulted in a significant tax benefit of approximately $80 million and $35 million in costs on a pre-tax basis in 2001. Dynegy classified the net cash in flow from the gas supply contract as operating cash flow in its quarterly and year-end financial statements for 2001. Activity under the contract resulted in net cash in flow of approximately $300 million during 2001.

Dynegy has decided, after consultation with staff of the SEC, to present the cash flow associated with the gas supply contract as a financing activity in its consolidated statement of cash flows. As such, Dynegy will file amended Exchange Act reports reflecting the change in cash flow presentation. Management believes that the change in cash flow presentation will not alter the tax benefit recognized in 2001, but will continue to assess this conclusion in connection with the amendment of its Exchange Act reports.

Dynegy has been advised that the staff of the SEC is conducting an informal inquiry of the facts and circumstances surrounding the transaction. The company will cooperate fully with the inquiry. Dynegy has received the concurrence of the SEC Office of the Chief Accountant staff regarding the presentation of cash flows relating to this transaction.

* * *

First Quarter Earnings Announcement

Dynegy expects to release first quarter 2002 earnings on Tuesday, April 30, 2002 prior to the opening of the New York Stock Exchange. The company will host an analyst conference call to review first quarter results during the morning of April 30.

32. On May 15, 2002, the Company filed its Report on Form 10-Q for the quarter ended March 31, 2002, with the SEC, restating Dynegy's 2001 results for operations, shareholders' equity and cash flow.

In April 2001, Dynegy entered into a structured natural gas transaction ("Project Alpha") involving two unrelated special purpose entities, NGAI Funding LLC and ABG Gas Supply LLC, and a newly created partnership, DMT Supply LP. ... On April 25, 2002, Dynegy filed a Current Report on Form 8-K discussing Project Alpha (the "Form 8-K"). As described in the Form 8-K, Dynegy has decided, after consultation with the Staff of the SEC, to present the cash flow associated with the gas supply contract as a financing activity in its Consolidated Statement of Cash Flows in 2001. The change will reduce operating cash flow for the year ended December 31, 2001 from the $811 million previously reported to approximately $511 million, with a corresponding increase in financing cash flow from the $2.7 billion previously reported to approximately $3 billion.

* * *

As a result of this decision, Retained Earnings at December 31, 2001 will be reduced by $79 million and Deferred Income Tax Liability will be correspondingly increased in relation to the balances previously reported by the Company in the Form 10-K. Eliminating the financial statement recognition of the income tax benefit reduces previously reported 2001 net income by approximately $79 million, or $0.23 per diluted share. Restated reported net income for the year ended December 31, 2001 is $569 million, or $1.67 per diluted share, as compared to previously reported amounts of $648 million and $1.90 per diluted share, respectively....

> Accordingly, the Company will restate its 2001 results of operations, stockholders' equity and cash flow to reflect this change in upcoming amendments to its Form 10-K and its June 30, 2001 and September 30, 2001 Quarterly Reports on Form 10-Q. As a result, the previously issued financial statements for the year ended December 31, 2001, and the auditors' report thereon, should no longer be relied upon as it relates to this item....
>
> Dynegy has been advised by the Staff of the SEC that it intends to seek a formal order of investigation in connection with the previously announced inquiry into the facts and circumstances surrounding Project Alpha.

33. On this news, Dynegy stock collapsed to as low as $7.61 per share on extraordinarily heavy volume of 20.6 million shares.

FALSE FINANCIAL STATEMENTS

34. In order to misrepresent the Company's financial condition during the Class Period, the defendants caused the Company to violate GAAP and SEC rules by misclassifying proceeds from Project Alpha as cash flows from operations rather than from financing activities as required by GAAP.

35. During the Class Period, Dynegy reported the following FY 2001 cash flows from operating activities:

Q1	Q2	Q3	Q4
$267.00M	$98.00M	$275.00M	$171.00M

36. Dynegy included its results for Q1, Q2 and Q3 2001 in press releases and Form 10-Qs. The Q4 and 2001 results were included in a press release and Form 10-K filed with the SEC. The SEC filings represented that the financial information was a fair statement of its financial results.

37. These representations were false and misleading as to the financial information reported, as such financial information was not prepared in conformity with GAAP, nor was the financial information "a fair presentation" of the Company's operations due to the Company's improper reporting of cash flows from operating activities by causing loan proceeds to be included therein, causing the financial statements to be presented in violation of GAAP and SEC rules.

38. GAAP are those principles recognized by the accounting profession as the conventions, rules and procedures necessary to define accepted accounting practice at a particular

time. Regulation S-X (17 C.F.R. §210.4-01(a)(1)), states that financial statements filed with the SEC which are not prepared in compliance with GAAP are presumed to be misleading and inaccurate. Regulation S-X requires that interim financial statements must also comply with GAAP, with the exception that interim financial statements need not include disclosure which would be duplicative of disclosures accompanying annual financial statements. 17 C.F.R. §210.10-01(a).

39. GAAP, as set forth in SFAS No. 95, states that borrowings should be classified as cash flows from financing activities. SFAS No. 95, ¶18 states:

> Financing activities include obtaining resources from owners and providing them with a return on, and a return of, their investment; borrowing money and repaying amounts borrowed, or otherwise settling the obligation; and obtaining and paying for other resources obtained from creditors on long-term credit.

40. Project Alpha was concocted to circumvent this rule. As *The Wall Street Journal* article stated on April 3, 2002:

> One mechanism for beefing up reported cash-flow numbers was Project Alpha, which began on April 1, 2001. Dynegy says that its tax division conceived the project, working closely with the commercial side of the company.
>
> The project's goals are made clear by the company documents. "Operating cash flow will increase by $300 million in 2001," according to one undated document that apparently was prepared for an internal presentation. "Significant earnings and cash tax benefits will result," the document said.
>
> Alpha relied on a complicated series of financial and accounting steps, according to the documents and interviews with company officials. CitiGroup arranged a loan of roughly $300 million that ended up with a specially created entity that entered a series of gas-trading contracts with a partnership called DMT Supply LP. Through a subsidiary, Dynegy held an interest in DMT.
>
> During the first nine months of the arrangement, DMT bought gas from the entity at prices below the market rate. DMT then resold the gas into the market at a profit. The $300 million funded the special entity's subsequent losses on these trades.

41. Ultimately, Dynegy has been forced to admit that its prior classification of the proceeds from Project Alpha were incorrect and had made a filing with the SEC to change the way it accounted for the contract. This was tantamount to an admission that its financial statements as originally presented during the Class Period were in violation of GAAP.

42. Due to these accounting improprieties, the Company presented its financial results and statements in a manner which violated GAAP, including the following fundamental accounting principles:

(a) The principle that interim financial reporting should be based upon the same accounting principles and practices used to prepare annual financial statements was violated (APB No. 28, ¶10);

(b) The principle that financial reporting should provide information that is useful to present and potential investors and creditors and other users in making rational investment, credit and similar decisions was violated (FASB Statement of Concepts No. 1, ¶34);

(c) The principle that financial reporting should provide information about the economic resources of an enterprise, the claims to those resources, and effects of transactions, events and circumstances that change resources and claims to those resources was violated (FASB Statement of Concepts No. 1, ¶40);

(d) The principle that financial reporting should provide information about how management of an enterprise has discharged its stewardship responsibility to owners (stockholders) for the use of enterprise resources entrusted to it was violated. To the extent that management offers securities of the enterprise to the public, it voluntarily accepts wider responsibilities for accountability to prospective investors and to the public in general (FASB Statement of Concepts No. 1, ¶50);

(e) The principle that financial reporting should provide information about an enterprise's financial performance during a period was violated. Investors and creditors often use information about the past to help in assessing the prospects of an enterprise. Thus, although investment and credit decisions reflect investors' expectations about future enterprise performance, those expectations are commonly based at least partly on evaluations of past enterprise performance (FASB Statement of Concepts No. 1, ¶42);

(f) The principle that financial reporting should be reliable in that it represents what it purports to represent was violated. That information should be reliable as well as relevant is a notion that is central to accounting (FASB Statement of Concepts No. 2, ¶¶58-59);

(g) The principle of completeness, which means that nothing is left out of the information that may be necessary to insure that it validly represents underlying events and conditions was violated (FASB Statement of Concepts No. 2, ¶79); and

(h) The principle that conservatism be used as a prudent reaction to uncertainty to try to ensure that uncertainties and risks inherent in business situations are adequately considered was violated. The best way to avoid injury to investors is to try to ensure that what is reported represents what it purports to represent (FASB Statement of Concepts No. 2, ¶¶95, 97).

43. Further, the undisclosed adverse information concealed by defendants during the Class Period is the type of information which, because of SEC regulations, regulations of the national stock exchanges and customary business practice, is expected by investors and securities analysts to be disclosed and is known by corporate officials and their legal and financial advisors to be the type of information which is expected to be and must be disclosed.

CLASS ACTION ALLEGATIONS

44. Plaintiff brings this lawsuit pursuant to Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure, on behalf of himself and on behalf of a class of persons who purchased Dynegy publicly traded securities from April 17, 2001 through May 15, 2002, inclusive (the "Class"). Excluded from the Class are defendants herein, members of the immediate families of each of the defendants, any person, firm, trust, corporation, officer, director or other individual or entity in which any defendant has a controlling interest or which is related to or affiliated with any of the defendants, and the legal representatives, agents, affiliates, heirs, successors-in-interest or assigns of any such excluded party.

45. This action is properly maintainable as a class action for the following reasons:

(a) The Class is so numerous that joinder of all Class members is impracticable. As of March 1, 2002, Dynegy had approximately 268 million shares outstanding. Members of the Class are scattered throughout the United States.

(b) There are questions of law and fact which are common to members of the Class and which predominate over any questions affecting only individual members. The common questions include, *inter alia*, the following:

(i) Whether the defendants' acts as alleged herein violated the federal securities laws;

(ii) Whether defendants participated in and pursued the common course of conduct complained of herein;

(iii) Whether documents, SEC filings, press releases and other statements disseminated to the investing public and Dynegy's common stockholders during the Class Period misrepresented material facts about the operations, financial condition and earnings of Dynegy;

(iv) Whether the market prices of Dynegy publicly traded securities during the Class Period were artificially inflated due to material misrepresentations and the failure to correct the material misrepresentations complained of herein; and

(v) To what extent the members of the Class have sustained damages and the proper measure of damages.

(c) Plaintiff's claims are typical of the claims of other members of the Class and plaintiff has no interests that are adverse or antagonistic to the interests of the Class.

(d) Plaintiff is committed to the vigorous prosecution of this action and has retained competent counsel experienced in litigation of this nature. Accordingly, plaintiff is an adequate representative of the Class and will fairly and adequately protect the interests of the Class.

(e) Plaintiff anticipates that there will not be any difficulty in the management of this litigation as a class action.

46. For the reasons stated herein, a class action is superior to other available methods for the fair and efficient adjudication of this action and the claims asserted herein. Because of the size of the individual Class members' claims, few, if any, Class members could afford to seek legal redress individually for the wrongs complained of herein.

COUNT I

For Violation of §10(b) of the Exchange Act and Rule 10b-5 Promulgated Thereunder Against All Defendants

47. Plaintiff repeats and realleges the allegations set forth above as though fully set forth herein.

48. This Count is brought by plaintiff pursuant to §10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder by the SEC against all defendants.

49. The defendants: (a) employed devices, schemes, and artifices to defraud; (b) made untrue statements of material fact and/or omitted to state material facts necessary in order to make the statements made not misleading; and (c) engaged in acts, practices, and a course of business which operated as a fraud and deceit upon the purchasers of Dynegy securities in an effort to maintain artificially high market prices for Dynegy securities in violation of §10(b) of the Exchange Act and Rule 10b-5. Defendants are sued as primary participants in the wrongful and illegal conduct charged herein and/or as controlling persons as alleged below.

50. In addition to the duties of full disclosure imposed on the defendants by their status as controlling persons of Dynegy, as a result of their affirmative statements and reports, or participation in the making of affirmative statements and reports to the investing public, defendants had a duty to promptly disseminate truthful information that would be material to investors in compliance with the integrated disclosure provisions of the SEC as embodied in SEC regulations S-X (17 C.F.R. §210.01, *et seq*.) and S-K (17 C.F.R. §229.10, *et seq*.) and other SEC regulations, including accurate and truthful information with respect to Dynegy's securities, operations, financial condition and earnings so that the market price of Dynegy publicly traded securities would be based on truthful, complete and accurate information.

51. Defendants, individually and in concert, directly and indirectly, by using the means and instrumentalities of interstate commerce and/or of the mails, engaged and participated in a continuous course of conduct to conceal adverse material information about the business, operations and future prospects of Dynegy as specified herein. The defendants employed devices, schemes and artifices to defraud, while in possession of material, adverse, non-public information and engaged in acts, practices, and a course of conduct as alleged herein in an effort to assure investors of Dynegy's value and performance and continued substantial growth, which included the making of, or the participation in the making of, untrue statements of material facts and omitting to state material facts necessary in order to make the statements made about Dynegy and its business operations and future prospects, in light of the circumstances under which they were made, not

misleading, as set forth more particularly herein, and engaged in transactions, practices and a course of business which operated as a fraud and deceit upon the purchasers of Dynegy publicly traded securities during the Class Period.

52. The primary liability and controlling person liability of defendants arises from the fact that during the Class Period, the defendants engaged in a scheme to conceal Dynegy's Project Alpha transaction to prevent the decline in the price of Dynegy securities so that defendants could use Dynegy's artificially inflated stock to raise capital for its operations in an offering which raised the Company nearly half a billion dollars.

53. The defendants had actual knowledge of the misrepresentations and omissions of material facts set forth herein. Such defendants' material misrepresentations or omissions were done knowingly and for the purpose and effect of concealing Dynegy's operating condition and future business prospects from the investing public and supporting the artificially inflated prices of their securities, as demonstrated by said defendants' overstatements and misstatements of Dynegy's business, operations and future earnings prospects and/or financial statements throughout the Class Period.

54. As a result of the dissemination of the materially false and misleading information and failure to disclose material facts by all defendants, as set forth above, the market prices of Dynegy publicly traded securities were artificially inflated during the Class Period. In ignorance of the fact that the market prices for Dynegy securities were artificially inflated, and relying directly or indirectly on the false and misleading statements made by defendants, or upon the integrity of the market in which the securities trade, and the truth of any representations made to appropriate agencies and to the investing public, at the times at which any statements were made, and/or on the absence of material adverse information that was known by defendants but not disclosed in public statements by defendants during the Class Period, plaintiff and the other members of the Class acquired Dynegy publicly traded securities during the Class Period at artificially high prices and were damaged thereby.

55. At the time of said misrepresentations and omissions, plaintiff and other members of the Class were ignorant of their falsity and believed them to be true. Had plaintiff and the other

members of the Class and the marketplace known of the true financial condition and business prospects of Dynegy, which were not disclosed by defendants, plaintiff and other members of the Class would not have purchased Dynegy publicly traded securities during the Class Period, or, if they had purchased such securities during the Class Period, they would not have done so at the artificially inflated prices which they paid.

56. By virtue of the foregoing, defendants have violated §10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder.

57. As a direct and proximate result of the wrongful conduct of the defendants, plaintiff and the other members of the Class suffered damages in connection with their purchases of Dynegy publicly traded securities during the Class Period.

COUNT II

For Violation of Section 20(a) of the Exchange Act Against All Defendants

58. Plaintiff repeats and realleges the allegations set forth above as if set forth fully herein.

59. Defendants acted as controlling persons of Dynegy within the meaning of §20(a) of the Exchange Act as alleged herein. By virtue of their high-level positions, substantial stock holdings, participation in and/or awareness of Dynegy's operations and/or intimate knowledge of its internal financial condition, business practices, products and the actual progress of development and marketing efforts, the Individual Defendants had the power to influence and control and did influence and control, directly or indirectly, the decision-making of Dynegy, including the content and dissemination of the various statements which plaintiff contends are false and misleading. Dynegy controlled the Individual Defendants and all of its employees. Each of the Individual Defendants was provided with or had unlimited access to copies of Dynegy's internal reports, press releases, public filings and other statements alleged by plaintiff to be misleading prior to and/or shortly after these statements were issued and had the ability to prevent the issuance of the statements or cause the statements to be corrected.

60. In particular, each of the Individual Defendants had direct involvement in or intimate knowledge of the day-to-day operations of Dynegy and therefore is presumed to have had the power to control or influence the particular transactions giving rise to the securities violations as alleged herein, and exercised the same.

61. As set forth above, defendants violated §10(b) of the Exchange Act and Rule 10b-5 by their acts and omissions as alleged in this Complaint. By virtue of their positions as controlling persons, defendants are liable pursuant to §20(a) of the Exchange Act.

62. As a direct and proximate result of the wrongful conduct of defendants, plaintiff and other members of the Class suffered damages in connection with their purchases of Dynegy publicly traded securities during the Class Period.

PRAYER FOR RELIEF

WHEREFORE, plaintiff, on behalf of himself and the Class, prays for judgment as follows:

A. Declaring this action to be a class action properly maintained pursuant to Rule 23 of the Federal Rules of Civil Procedure;

B. Awarding plaintiff and other members of the Class damages together with interest thereon;

C. Awarding plaintiff and other members of the Class costs and expenses of this litigation, including reasonable attorneys' fees, accountants' fees and experts' fees and other costs and disbursements; and

D. Awarding plaintiff and other members of the Class such equitable/injunctive and/or other and further relief as may be just and proper under the circumstances.

JURY DEMAND

Plaintiff demands a trial by jury.

DATED: June 12, 2002

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