

CONSOL ENERGY INC
Form S-3
October 24, 2003
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As filed with the Securities and Exchange Commission on October 23, 2003

Registration No. 333-

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM S-3

REGISTRATION STATEMENT

UNDER

THE SECURITIES ACT OF 1933

CONSOL ENERGY INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of incorporation or organization)

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

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

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

Stephen E. Williams, Esq.

Vice President - General Counsel

CONSOL Energy Inc.

Consol Plaza

1800 Washington Road

Pittsburgh, PA 15241-1421

(412) 831-4000

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

Copy to:

Steven L. Wasserman, Esq.

Piper Rudnick LLP

1251 Avenue of the Americas

New York, New York 10020

(212) 835-6000

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

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

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

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

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

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

CALCULATION OF REGISTRATION FEE

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

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

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

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

Subject to Completion Dated October 23, 2003

PRELIMINARY PROSPECTUS

CONSOL ENERGY INC.

68,997,357 shares of common stock

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

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

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

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

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

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The date of this prospectus is October __, 2003

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PROSPECTUS SUMMARY

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

CONSOL Energy

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

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

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

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

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

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

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

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

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

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

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

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

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

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RISK FACTORS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The creditworthiness of our customer base has declined.

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

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

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

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

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

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

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

operating results. These conditions or events have included:

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

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

equipment failures or repair;

fires and other accidents; and

weather conditions.

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

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

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

geological conditions;

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

the assumed effects of regulations and taxes by governmental agencies;

assumptions governing future prices; and

future operating costs.

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

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

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

unexpected drilling conditions;

pressure or irregularities in formations;

equipment failures or repairs;

fires or other accidents;

adverse weather conditions;

pipeline ruptures or spills; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

workers' compensation (\$317 million).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

There is a limited market for our common stock.

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

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

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

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

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FORWARD-LOOKING STATEMENTS

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

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

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

RECENT DEVELOPMENTS

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

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

USE OF PROCEEDS

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

Table of Contents**SELLING STOCKHOLDERS**

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

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

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