MIRANT CORP
Form 10-K
March 15, 2005

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

Form 10-K

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

For the Fiscal Year Ended December 31, 2004

Or

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

For the Transition Period from to

Mirant Corporation

(Exact name of registrant as specified in its charter)

Delaware	**001-16107**	**58-2056305**
(State or other jurisdiction of Incorporation or Organization)	(Commission File Number)	(I.R.S. Employer Identification No.)
1155 Perimeter Center West, Suite 100, Atlanta, Georgia		**30338**
(Address of Principal Executive Offices)		(Zip Code)
(678) 579-5000		**www.mirant.com**
(Registrant s Telephone Number, Including Area Code)		Web Page

Securities registered pursuant to Section 12(b) of the Act:

None

Securities registered pursuant to Section 12(g) of the Act:

Common Stock, par value $0.01 per share

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

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of the registrants knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. o

Indicate by check mark whether the registrant is an accelerated filer (as defined by Rule 12b-2 of the Act). x Yes o No

Aggregate market value of voting stock held by non-affiliates of the registrant was approximately $121,700,425 on June 25, 2004 (based on $0.30 per share, the closing price in the daily composite list for transactions on the Pink Sheets Electronic Quotation Service for that day). As of February 25, 2005, there were 405,468,084 shares of the registrant s Common Stock, $0.01 par value per share outstanding.

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CAUTIONARY STATEMENT REGARDING FORWARD-LOOKING INFORMATION

The information presented in this Form 10-K includes forward-looking statements within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934 in addition to historical information. These statements involve known and unknown risks and uncertainties and relate to future events, our future financial performance or our projected business results. In some cases, you can identify forward-looking statements by terminology such as may, will, should, expect, plan, anticipate, believe, estimate, potential or continue or the negative of these terms or other comparable terminology.

Forward-looking statements are only predictions. Actual events or results may differ materially from any forward-looking statement as a result of various factors, which include:

General Factors

- legislative and regulatory initiatives regarding deregulation, regulation or restructuring of the electric utility industry; changes in state, federal and other regulations (including rate and other regulations); changes in, or changes in the application of, environmental and other laws and regulations to which we and our subsidiaries and affiliates are subject;

- the failure of our assets to perform as expected;

- our pursuit of potential business strategies, including the disposition or utilization of assets, suspension of construction or internal restructuring;

- changes in market conditions, including developments in energy and commodity supply, demand, volume and pricing or the extent and timing of the entry of additional competition in the markets of our subsidiaries and affiliates;

- market volatility or other market conditions that could increase our obligations to post collateral beyond amounts which are expected;

- our inability to access effectively the over-the-counter (OTC) and exchange-based commodity markets or changes in commodity market liquidity or other commodity market conditions, which may affect our ability to engage in asset hedging and optimization activities as expected;

- our ability to borrow additional funds and access capital markets;

- weather and other natural phenomena;

- war, terrorist activities or the occurrence of a catastrophic loss;

- deterioration in the financial condition of our counterparties and the resulting failure to pay amounts owed to us or to perform obligations or services due to us; and

- the disposition of the pending litigation described in this Form 10-K.

Bankruptcy-Related Factors

- the actions and decisions of our creditors and of other third parties with interests in the voluntary petitions for reorganization filed with the U.S. Bankruptcy Court for the Northern District of Texas, Fort Worth Division (the Bankruptcy Court) on July 14, 2003, July 15, 2003, August 18, 2003, October 3, 2003 and November 18, 2003, by Mirant Corporation and substantially all of its wholly-owned and certain non-wholly-owned U.S. subsidiaries under Chapter 11 (Chapter 11) of the U.S. Bankruptcy Code (the Bankruptcy Code), including actions taken by our creditors and other third parties with respect to our proposed plan of reorganization, filed with the Bankruptcy Court on

January 19, 2005, and any amendments thereto (the Plan);

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- our ability to satisfy the conditions precedent to the effectiveness of our proposed Plan, including our ability to secure the necessary financing commitments;

- the effects of the Chapter 11 proceedings on our liquidity and results of operations;

- the instructions, orders and decisions of the Bankruptcy Court, the U.S. District Court for the Northern District of Texas, the U.S. Court of Appeals for the Fifth Circuit and other legal and administrative proceedings, settlements, investigations and claims;

- our ability to operate pursuant to the terms of our debtor-in-possession financing agreement;

- our ability to successfully reject unfavorable contracts;

- the disposition of unliquidated claims against us;

- our ability to obtain and maintain normal terms with vendors and service providers and to maintain contracts that are critical to our operations;

- possible decisions by our pre-petition creditors who may receive Mirant common stock upon our emergence from bankruptcy and therefore may have the right to select our board members and influence certain aspects of our business operations;

- the effects of changes in our organizational structure in conjunction with our emergence from Chapter 11 protection; and

- the duration of our Chapter 11 proceedings.

The ultimate outcome of matters with respect to which we make forward-looking statements and the terms of any reorganization plan ultimately confirmed can affect the value of our various pre-petition liabilities, common stock and other securities. No assurance can be given as to what values, if any, will be ascribed in the bankruptcy proceedings to each of these constituencies. The proposed Plan could result in holders of our common stock receiving no distribution on account of their interests and cancellation of their interests. Accordingly, we urge that appropriate caution be exercised with respect to existing and future investments in our common stock or any claims relating to pre-petition liabilities or other Mirant securities.

We undertake no obligation to publicly update or revise any forward looking statements to reflect events or circumstances that may arise after the date of this report.

Factors that Could Affect Future Performance

Other factors that could affect our future performance (business, financial condition or results of operations and cash flows) are set forth under Item 7. Management s Discussion and Analysis of Financial Condition and Results of Operations Factors that Could Affect Future Performance.

PART I

Item 1. *Business*

Overview

We are an international energy company incorporated in Delaware on April 20, 1993. Our revenues are primarily generated through the production of electricity in the United States, the Philippines and the Caribbean. As of December 31, 2004, we owned or leased approximately 18,000 megawatts (MW) of electric generating capacity.

We manage our business through two principal operating segments: North America and International. Our North America segment consists of the ownership and operation of power generation facilities and energy trading and marketing operations. The International segment includes power generation businesses in the Philippines, Curacao and Trinidad and Tobago, and integrated utilities in the Bahamas and Jamaica. The table below summarizes selected 2004 financial information about our business segments.

	Revenues ($ in millions)	%	Gross Margin	%	Operating Income (Loss)	Total Assets	Cash from Operating Activities
Business Segment:							
North America	$ 3,522	77 %	$ 1,196	61 %	$ 242	$ 9,354	$ (168)
International	1,050	23	756	39	(246)	4,730	371
Corporate and Eliminations					(14)	(2,660)	(132)
Total	$ 4,572	100 %	$ 1,952	100 %	$ (18)	$ 11,424	$ 71

The annual, quarterly and current reports, and any amendments to those reports, that we file with or furnish to the SEC are available free of charge on our website at www.mirant.com as soon as reasonably practicable after they are electronically filed with or furnished to the SEC. General information about us, including our Corporate Governance Guidelines, the charters for our Audit, Compensation, and Nominating and Governance Committees, and our Code of Ethics and Business Conduct, can be found at www.mirant.com. We will provide print copies of these documents to any shareholder upon written request to Corporate Secretary, Mirant Corporation, 1155 Perimeter Center West, Atlanta, Georgia 30338. Information contained in our website is not incorporated into this Form 10-K.

As used in this report, we, us, our, the Company and Mirant refer to Mirant Corporation and its subsidiaries, unless the context requires otherwise.

Proceedings under Chapter 11 of the Bankruptcy Code

On July 14, 2003 and July 15, 2003 (collectively, the Petition Date), Mirant and 74 of its wholly-owned subsidiaries in the United States (collectively, the Original Debtors) filed voluntary petitions for relief under Chapter 11 in the Bankruptcy Court. On August 18, 2003, October 3, 2003 and November 18, 2003, four additional wholly-owned subsidiaries and four affiliates of Mirant commenced Chapter 11 cases under the Bankruptcy Code (together with the Original Debtors, the Mirant Debtors). The Chapter 11 cases of the Mirant Debtors are being jointly administered for procedural purposes only under the case caption In re Mirant Corporation *et al*., Case No. 03-46590 (DML).

Additionally, on the Petition Date, certain of our Canadian subsidiaries, Mirant Canada Energy Marketing, Ltd. and Mirant Canada Marketing Investments, Inc. (together, the Mirant Canadian Subsidiaries), filed an application for creditor protection under the Companies Creditors Arrangement Act in Canada (CCAA), which, like Chapter 11, allows for reorganization under the protection of the court system. The Mirant Canadian Subsidiaries emerged from creditor protection on May 21, 2004. The

accounting for their emergence is reflected in this report and did not have a material impact on our operating results.

Our businesses in the Philippines and the Caribbean were not included in the court-supervised reorganizations.

The Mirant Debtors are operating their businesses as debtors-in-possession under the jurisdiction of the Bankruptcy Court and in accordance with the applicable provisions of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure and applicable orders, as well as other applicable laws and rules. In general, each of the Mirant Debtors, as a debtor-in-possession, is authorized under the Bankruptcy Code to continue to operate as an ongoing business, but may not engage in transactions outside the ordinary course of business without the prior approval of the Bankruptcy Court.

The Office of the United States Trustee has established a committee of unsecured creditors for Mirant Corporation and a committee of unsecured creditors for Mirant Americas Generation, LLC (collectively, the Creditor Committees). The Office of the United States Trustee also has established a committee of equity security holders of Mirant Corporation (the Equity Committee and, collectively with the Creditor Committees, the Statutory Committees). Pursuant to an order of the Bankruptcy Court, the Office of the United States Trustee appointed an examiner (the Examiner) in these cases to analyze certain potential causes of action and to act as a mediator with respect to certain disputes that may arise among the Mirant Debtors, the Statutory Committees and other parties in interest.

Subject to certain exceptions in the Bankruptcy Code, the Chapter 11 filings automatically stayed the initiation or continuation of most actions against the Mirant Debtors, including most actions to collect pre-petition indebtedness or to exercise control over the property of the bankruptcy estates. As a result, absent an order of the Bankruptcy Court, creditors of the Mirant Debtors are precluded from collecting pre-petition debts and substantially all pre-petition liabilities are subject to compromise under a proposed plan or plans of reorganization in the bankruptcy proceedings. One exception to this stay of litigation is for an action or proceeding by a governmental agency to enforce its police or regulatory power.

On July 24, 2003, the Bankruptcy Court approved an interim procedure requiring certain direct and indirect holders of claims, preferred securities and common stock to provide at least ten days advance notice of their intent to buy or sell claims against the Mirant Debtors or shares in Mirant Corporation. The Bankruptcy Court entered a final order on September 17, 2003 and such order establishes notice procedures applicable only to those transactions with a person or entity owning (or, because of the transaction, resulting in ownership of) an aggregate amount of claims equal to or in excess of $250 million or such higher amount determined under the order and, with respect to shares, only those persons or entities owning (or, because of the transaction, resulting in ownership of) 4.75% or more of any class of outstanding shares. In addition, each entity or person that owns at least $250 million, or such higher amount determined under the order, of certain claims or preferred securities must provide Mirant and the Creditor Committees with notice of ownership information. The Court s orders also provide for expedited procedures to impose sanctions for a violation of its orders, including monetary damages and, in some cases, the voidance of any such transactions that violate the order. Upon election, a special regime allowing virtually unlimited trading of claims without having to provide notice thereof may be available to certain claimholders, although such electing claimholders may be required to sell a portion of their claims before a specific date. The emergency and final relief was sought to prevent potential trades of claims of stock that could negatively impact the availability of the Mirant Debtors U.S. net operating loss carryforwards and other tax attributes. The U.S. federal net operating loss carryforward is approximately $2.8 billion at December 31, 2004. Even with the relief that has been granted, Mirant cannot guarantee that it will be able to benefit from all, or any portion, of its U.S. federal net operating loss carryforwards and other tax attributes. Similarly, there are approximately $3.9 billion of state net operating loss carryforwards. See Critical Accounting Policies and Estimates for further information.

Under the Bankruptcy Code, the Mirant Debtors also have the right to assume, assign, or reject certain executory contracts and unexpired leases, subject to the approval of the Bankruptcy Court and satisfaction of certain other conditions. The Mirant Debtors are continuing to evaluate their executory contracts in order to determine which contracts will be assumed, assigned or rejected.

In response to a motion filed under section 502(c) of the Bankruptcy Code (the Estimation Motion) by the Mirant Debtors, the Bankruptcy Court entered an order establishing procedures for estimating proofs of claim under section 502(c) of the Bankruptcy Code that are binding for all purposes, including voting on, feasibility of and distribution under a Chapter 11 plan for the Mirant Debtors. As a result, the Mirant Debtors filed approximately sixty material claim objections and three notices of intent to contest claims.

Plan of Reorganization

On January 19, 2005, the Mirant Debtors filed a proposed Plan of Reorganization and Disclosure Statement (the Disclosure Statement) with the Bankruptcy Court. The proposed Plan sets forth a proposed structure of the Company at emergence and how the claims of creditors and stockholders are to be treated. If the Disclosure Statement is found by the Bankruptcy Court to contain adequate information, then we will solicit votes on the proposed Plan from those creditors, security holders and interest holders who are entitled to vote on the proposed Plan.

The proposed Plan implements and includes the following key elements:

- the business of the Mirant Debtors will continue to be operated in substantially its current form, subject to certain internal structural changes that the Mirant Debtors believe will improve operational efficiency, facilitate and optimize their ability to meet financing requirements and accommodate the enterprise s debt structure as contemplated at emergence;

- the original Mirant Debtors that are parties to the Chapter 11 proceedings, excluding Mirant Americas Generation, LLC (Mirant Americas Generation) and its subsidiaries (collectively, the Mirant Americas Generation Debtors), are substantively consolidated for all purposes under the proposed Plan;

- the Mirant Americas Generation Debtors are substantively consolidated for all purposes under the proposed Plan;

- the unsecured debt of the Mirant Americas Generation Debtors is to be paid in full through (i) the issuance to the lenders under the Mirant Americas Generation revolving credit facilities and the holders of Mirant Americas Generation senior notes maturing in 2006 and 2008 of (a) new debt securities of a newly formed intermediate holding company under Mirant Americas Generation (New Mirant Americas Generation Holdco) in an amount equal to 90% of the full amount owed to such creditors (as determined by the Bankruptcy Court) and (b) common stock in the new corporate parent of the Mirant Debtors (New Mirant) having a value equal to 10% of such amount owed; and (ii) the reinstatement of Mirant Americas Generation senior notes maturing in 2011, 2021 and 2031;

- to ensure the feasibility of the proposed Plan with respect to the Mirant Americas Generation Debtors and to resolve intercompany claims, the proposed Plan provides that additional value shall be contributed to Mirant Americas Generation, including the trading business (subject to an obligation to return a portion of the embedded capital in the trading business to Mirant), the Zeeland generating facility and commitments to make prospective capital contributions of up to $150 million (for refinancing) and $265 million (for sulfur dioxide capital expenditures);

- the prospective working capital requirements of Mirant Americas Generation will be met with the proceeds of a new first lien facility in the amount of at least $750 million;

- the bulk of the contingent liabilities of the Mirant Debtors associated with the California energy crisis and certain related matters will be resolved pursuant to a global settlement as described in Item 3. Legal Proceedings contained elsewhere in this report;

- substantially all of the assets of Mirant will be transferred to a new company to be formed pursuant to the proposed Plan, which will serve as the corporate parent of our business enterprise on and after the effective date of the proposed Plan and which shall have no successor liability for any unassumed obligations of Mirant Corporation, including any obligations to Potomac Electric Power Company (PEPCO) under the back-to-back agreement discussed under Item 3. Legal Proceedings ; similarly, the trading business shall be transferred to Mirant Energy Trading, LLC, which shall have no successor liability for any unassumed obligations of Mirant Americas Energy Marketing, L.P. (Mirant Americas Energy Marketing), including any obligations to PEPCO under the back-to-back agreement discussed under Item 3. Legal Proceedings ; and

- the outstanding common stock in Mirant Corporation will be cancelled and the holders thereof will receive any surplus value after creditors are paid in full, plus the right to receive a pro rata share of warrants issued by New Mirant if they vote to accept the proposed Plan.

At present, the proposed Plan has not been approved by any of the Statutory Committees. As such, the Mirant Debtors anticipate that negotiations (which, whether or not successful, could lead to material changes to certain components of the proposed Plan) will continue between the Mirant Debtors and each of the Statutory Committees until the hearing to approve the adequacy of the Disclosure Statement. At present, the Bankruptcy Court has set the following schedule with respect to the Disclosure Statement: the First Amended Disclosure Statement is to be filed by March 25, 2005; objections to the draft Disclosure Statement are to be filed by April 1, 2005; the Second Amended Disclosure Statement is to be filed by April 15, 2005; and the Disclosure Statement adequacy hearing in the Bankruptcy Court is set for April 20, 2005.

At this time, it is not possible to accurately predict if or when the proposed Plan will be approved by the creditors and security holders and confirmed by the Bankruptcy Court, or if and when some or all of the Mirant Debtors may emerge from Bankruptcy Court protection under Chapter 11.

U.S. Competitive Environment

The power industry is one of the largest industries in the United States and has an influence on practically every aspect of the U.S. economy. Historically, the power generation industry in the United States was characterized by electric utility monopolies selling to franchised customer bases. In response to increasing customer demand for access to low-cost electricity and enhanced services, regulatory initiatives were adopted, primarily to increase wholesale and retail competition in the power industry. Following the resulting industry restructuring, merchant companies purchased plants from regulated utilities, built new capacity and began marketing to customers. At the same time, Independent System Operators (ISOs) and/or Regional Transmission Organizations (RTOs) were created to administer the new markets while maintaining system reliability. In recent years, state and federal restructuring efforts have stalled, primarily in response to the California energy crisis and financial troubles of many merchant energy companies. In addition, ISOs have begun exerting more control over market prices. The result is a blend of competitive and regulatory constructs, often different by state, under which merchant generators must compete with regulated utilities.

The substantial increase in new generation capacity that followed the restructuring of the U.S. power markets, utility capital investments to extend lives of older units, and the inability to decommission plants

for reliability reasons have created a prolonged oversupply situation. We do not expect our primary markets to reach target reserve margins, approximately 15% of excess capacity over peak demand, until 2008 to 2010. The market oversupply situation, price controls during periods of high demand or local constraint, and lack of appropriate compensation for locational capacity value currently limit fixed cost recovery for merchant generators.

With the expansion of the Pennsylvania-New Jersey-Maryland Interconnection, LLC (PJM) market and the ongoing development of Midwest Independent System Operators (MISO), the markets themselves continue to evolve. This evolution has changed not only the utilization of generation and transmission resources, but also the voting interests among market participants.

Recently, natural gas has been the fuel of choice for new power generation facilities for economic, operational and environmental reasons. While this trend is expected to continue, some regulated utilities are now constructing clean coal units and renewable resources, often with subsidies or under legislative mandate. These utilities enjoy a lower cost of capital than most merchants and often are able to recover fixed costs through rate base mechanisms, allowing them to build, buy and upgrade generation without relying exclusively on market clearing prices to recover their investments.

Market liquidity stabilized or improved in most regions in 2004, as compared to 2003, allowing us to economically hedge portions of our expected electricity production up to 24 months in advance, primarily through exchange-traded contracts. However, market conditions, as well as conditions specific to us, have significantly reduced our marketing and risk management activities as compared to previous years.

Business Segments

For selected financial information about our business segments and information about geographic areas, see Note 20 to our consolidated financial statements contained elsewhere in this report. See Item 2. Properties for a complete list of our assets.

North America

Overview

In our North America segment, our core business is the production and sale of electrical energy, electrical capacity (essentially the ability to produce electricity on demand) and ancillary services. Our customers in the United States are utilities, municipal systems, aggregators, electric-cooperative utilities, producers, generators, marketers and large industrial customers. In the United States, we serve four primary geographic areas: (i) the Mid-Atlantic Region, (ii) the Northeast Region, (iii) the Mid-Continent Region, and (iv) the West Region.

Ownership and Operations of Electricity Generation Assets

As of December 31, 2004, we owned or leased generation facilities in the United States with an aggregate generation capacity of over 14,500 MW (including our Coyote Springs facility, the sale of which closed in January 2005, and our Wrightsville facility, which we expect to sell during 2005). Our domestic generating portfolio is diversified across fuel types, power markets and dispatch types and serves customers located near many major metropolitan load centers. Our total generation capacity included approximately 28% baseload units, 46% intermediate units and 26% peaking units. Mirant Americas Generation owns or controls approximately two-thirds of our U.S. generating capacity. We have six facilities in our North America business unit operating under long term contracted capacity contracts. At December 31, 2004, our contracted capacity was approximately 4,325 MW pursuant to agreements with terms expiring May 2005 through December 2014.

Commercial Operations

Our commercial operations, which are conducted through our Mirant Americas Energy Marketing subsidiary, consist of fuel procurement, power dispatch, logistics, asset hedging and risk management, and optimization trading. Mirant Americas Energy Marketing conducts its business in the markets in which we have an asset presence, which enhances our ability to deliver additional value as compared to only buying fuel and selling power in the spot market.

Pursuant to agreements with our subsidiaries that own generation facilities, Mirant Americas Energy Marketing enters into transactions for the benefit of such subsidiaries pursuant to which Mirant Americas Energy Marketing procures the appropriate fuel, formulates the daily dispatch decisions and sells the electricity generated in the wholesale market for the generation facilities. Mirant Americas Energy Marketing uses dispatch models to make daily decisions regarding the quantity and the price of the power it will sell into the markets. In most markets governed by ISOs/RTOs, Mirant Americas Energy Marketing bids the energy from our generation facilities into the ISO-run day-ahead energy market. Mirant Americas Energy Marketing also sells ancillary services through the ISO markets. In real-time, Mirant Americas Energy Marketing works with the ISOs/RTOs to ensure that our generation facilities are dispatched economically to meet the reliability needs of the market. In non-ISO markets, Mirant Americas Energy Marketing conducts business through bilateral transactions, on a day-ahead basis, pursuant to which Mirant Americas Energy Marketing provides the generation facilities with firm schedules to follow.

Mirant Americas Energy Marketing enters into contracts of varying terms to secure appropriate quantities of fuel that meet the varying specifications of our generating facilities. For our coal fired generation facilities, Mirant Americas Energy Marketing purchases coal from a variety of suppliers under both short-term and multi-year contracts. For our oil fired units, fuel is typically purchased under short-term contracts usually linked to a transparent oil index price. For our gas fired units, fuel is typically purchased under short-term contracts with a variety of suppliers.

Mirant Americas Energy Marketing enters into transactions to economically hedge our power price exposure by selling power into the wholesale market over a variety of tenors through over-the-counter transactions, exchanges and structured transactions. Mirant Americas Energy Marketing sells both energy and energy-linked commodities, including capacity and ancillary services. Mirant Americas Energy Marketing economically hedges the energy component of gross margin through futures, forwards, swaps and options. All of Mirant Americas Energy Marketing s commercial activities are governed by our Risk Management Policy (RMP). The RMP requires that Mirant Americas Energy Marketing engage only in risk reducing activities with respect to hedging our assets.

While over-the-counter transactions make up a substantial portion of our economic hedge portfolio, Mirant Americas Energy Marketing also has a marketing function that serves as the interface between our generation facilities and customers. The marketing organization is focused on selling non-standard, structured products to customers. In addition to load following energy sales, these products typically include capacity, ancillary services, transmission losses and other energy products. Mirant Americas Energy Marketing views these transactions as a method of mitigating the risk of certain portions of our business that are not easy to economically hedge in the over-the-counter market. Typically, Mirant Americas Energy Marketing is able to sell these products at a higher premium than standard products. For certain generation facilities, Mirant Americas Energy Marketing has sought to enter into longer-term transactions to provide certainty of cash flows over an extended period. These transactions are typically tolling transactions whereby we receive a fixed capacity payment and, in return, grant an exclusive right for the counterparty to procure the fuel for the generation facility and take title to the power generated.

In addition to the risk management services that Mirant Americas Energy Marketing provides to our subsidiaries that own generation facilities, Mirant Americas Energy Marketing engages in optimization trading for its own account. Mirant Americas Energy Marketing generates gross margin by taking market

positions based, in part, on market and other information gathered from its relationship with our generation facilities. The optimization trading activities also are governed by the RMP, which sets forth limits on the size of trading positions and value-at-risk that Mirant Americas Energy Marketing can bear at any given time. By participating in the markets in this way, Mirant Americas Energy Marketing is better able to avoid disclosing to the markets the direction of its trading and hedging activity to the benefit of our subsidiaries that own generation facilities. We also benefit from tighter bid/offer spreads because Mirant Americas Energy Marketing is active in the markets as both a buyer and seller.

Mid-Atlantic Region

We own, directly and indirectly, or lease four generation facilities comprising 5,256 MW of generation capacity in the Mid-Atlantic region: Chalk Point, Morgantown, Dickerson and Potomac River Station. Our Mid-Atlantic facilities were acquired from Potomac Electric Power Company (PEPCO) in December 2000. These facilities consist of coal and oil fired baseload units as well as coal, gas and oil fired intermediate and peaking units in Maryland and Virginia. Our largest facility in the region, the Chalk Point facility, has two coal fired baseload units, two oil and gas fired intermediate units and seven either oil fired or oil and gas fired peaking units, totaling 2,429 MW of capacity. The next largest facility, the Morgantown facility, consists of two coal and oil fired baseload units and six oil fired peaking units, totaling 1,492 MW of capacity. The Dickerson facility has three coal fired baseload units and three peaking units, totaling 853 MW of capacity, and the Potomac River Station, a coal fired facility, has three baseload and two intermediate units, totaling 482 MW of capacity.

Power generated by our Mid-Atlantic facilities is sold into the PJM market. For a discussion of the PJM market, see Regulatory Environment U.S. Public Utility Regulation below. In connection with the acquisition of the Mid-Atlantic facilities from PEPCO in 2000, we, through Mirant Americas Energy Marketing, agreed to supply PEPCO its full load requirement in the District of Columbia under a transition power agreement (TPA), which expired in January 2005 (the DC TPA). There was also a similar TPA in place to supply PEPCO s load in Maryland, which expired in June 2004 (the Maryland TPA).

Also, in connection with our acquisition of the Mid-Atlantic facilities from PEPCO in 2000, we agreed to purchase from PEPCO all power it received under long-term power purchase agreements with Ohio Edison Company (Ohio Edison) and Panda-Brandywine L.P. (Panda) that expire in 2005 and 2021, respectively. We and PEPCO entered into a contractual arrangement (the PEPCO Back-to-Back Agreement) with respect to PEPCO s agreements with Panda and Ohio Edison under which (1) PEPCO agreed to resell to us all capacity, energy, ancillary services and other benefits to which it is entitled under those agreements; and (2) we agreed to pay PEPCO each month all amounts due from PEPCO to Panda or Ohio Edison for the immediately preceding month associated with such capacity, energy, ancillary services and other benefits. Under the PEPCO Back-to-Back Agreement, we are obligated to purchase power from PEPCO at prices that are significantly higher than existing market prices for power in the PJM market. On August 28, 2003, we filed a motion with the Bankruptcy Court to reject the PEPCO Back-to-Back Agreement. On December 9, 2004, we notified PEPCO and the Bankruptcy Court that we were suspending all future payments to PEPCO under the PEPCO Back-to-Back Agreement. For further information, see Item 3. Legal Proceedings.

Since the expiration of the Maryland TPA in June 2004 and the expiration of the DC TPA