

In re Dynegy, Inc. ERISA Litigation  
PO BOX 6336  
PORTLAND, OR 97228-6336

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

***In re Dynegy, Inc. ERISA Litigation  
This Document Relates To: All Actions***

**Civil Action No. H-02-3076  
CLASS ACTION**

**NOTICE OF CLASS ACTION SETTLEMENT**

**Your legal rights might be affected if you are a member of the following class:**

ALL PERSONS WHO WERE PARTICIPANTS IN OR BENEFICIARIES OF THE DYNEGY, INC. 401(K) SAVINGS PLAN WHOSE PLAN ACCOUNT BALANCES WERE TO ANY EXTENT INVESTED IN DYNEGY COMMON STOCK (INCLUDING THROUGH EMPLOYER MATCHING OR OTHER EMPLOYER CONTRIBUTIONS), AT ANY TIME BETWEEN APRIL 27, 1999 AND JANUARY 30, 2003, THEIR BENEFICIARIES, ALTERNATE PAYEES (INCLUDING SPOUSES OF DECEASED PERSONS WHO WERE PLAN PARTICIPANTS), REPRESENTATIVES AND SUCCESSORS-IN-INTEREST.

**A FEDERAL COURT AUTHORIZED THIS NOTICE.  
THIS IS NOT A SOLICITATION FROM A LAWYER.  
YOU HAVE NOT BEEN SUED.**

- The *Court* has preliminarily approved a proposed settlement of a class action lawsuit brought under the Employee Retirement Income Security Act (often referred to as ERISA) (the "*Settlement*"). The *Settlement* will provide for payments to the Dynegy, Inc. 401(k) Savings Plan (the "*Plan*") and for allocation of those payments to the accounts of members of the *Settlement Class* who had portions of their accounts invested in Dynegy stock. It is summarized below.
- The *Court* has scheduled a hearing on final approval of the *Settlement* and on *Named Plaintiff's* motion for attorneys' fees and expenses and for compensation to the *Named Plaintiff*. That hearing before the United States District Judge Sim Lake has been scheduled for December 10, 2004, at 2:00 p.m. at the United States District Court for the Southern District of Texas, Houston Division, Bob Casey United States Courthouse, 515 Rusk Avenue, Houston, Texas, 77002, in Courtroom 9B or in the Courtroom then occupied by United States District Judge Sim Lake.
- Any objections to the *Settlement* or the motion for attorneys' fees and expenses and compensation to the *Named Plaintiff* must be served in writing on *Co-Lead Counsel* for the *Settlement Class* identified on page 2 of this notice, and on *Defendants' attorneys*, who are identified on page 2 of this notice. The procedure for objecting is described below.
- This Notice contains summary information with respect to the *Settlement*. The terms and conditions of the *Settlement* are set forth in a Class Action Settlement Agreement (the "*Settlement Agreement*"). Capitalized and italicized terms used in this Notice, but not defined in this Notice, have the meanings assigned to them in the *Settlement Agreement*. The *Settlement Agreement*, and additional information with respect to this lawsuit and the *Settlement*, are available at [www.kellersettlements.com](http://www.kellersettlements.com) or [www.cmht.com](http://www.cmht.com), or from counsel listed on Page 2 below.

**PLEASE READ THIS NOTICE CAREFULLY AND COMPLETELY. IF YOU ARE A MEMBER OF THE SETTLEMENT CLASS TO WHOM THIS NOTICE IS ADDRESSED, THE SETTLEMENT WILL AFFECT YOUR RIGHTS. YOU ARE NOT BEING SUED IN THIS MATTER. YOU DO NOT HAVE TO APPEAR IN COURT, AND YOU DO NOT HAVE TO HIRE AN ATTORNEY IN THIS CASE. IF YOU ARE IN FAVOR OF THE SETTLEMENT, YOU NEED NOT DO ANYTHING. IF YOU DISAPPROVE, YOU MAY OBJECT TO THE SETTLEMENT PURSUANT TO THE PROCEDURES DESCRIBED BELOW.**

**YOUR LEGAL RIGHTS AND OPTIONS IN THE SETTLEMENT:**

<b>YOU CAN DO NOTHING</b>	If the <i>Settlement</i> is approved by the <i>Court</i> and you are a member of the <i>Settlement Class</i> , you will not need to do anything to receive a payment. The portion, if any, of the <i>Settlement Fund</i> to be allocated to your <i>Plan</i> account will be calculated as part of the implementation of the <i>Settlement</i> .
<b>NO ACTION IS NECESSARY TO RECEIVE PAYMENT</b>	If you are a current <i>Plan</i> participant any share of the <i>Settlement Fund</i> to which you are entitled will be deposited into your <i>Plan</i> account. If you no longer are a <i>Plan</i> participant and are entitled to share in the <i>Settlement Fund</i> , a <i>Plan</i> account will be established for you, if necessary, and you will be notified of such account.
<b>OBJECT (BY DECEMBER 1, 2004)</b>	If you wish to object to any part of the <i>Settlement</i> , you may (as discussed below) write to the <i>Court</i> and counsel about why you do not like the <i>Settlement</i> .
<b>GO TO A HEARING (TO BE HELD ON DECEMBER 10, 2004)</b>	If you have submitted a written objection to the <i>Settlement</i> to the <i>Court</i> and counsel, you may (but do not have to) attend the <i>Court</i> Hearing about <i>Settlement</i> and present your objections to the <i>Court</i> . You may attend the Hearing even if you do not file a written objection, but you will only be allowed to speak at the Hearing if you file written comments in advance of the Hearing.

- These rights and options - **and the deadlines to exercise them** - are explained in this Notice.
- The *Court* in charge of this case still has to decide whether to approve the *Settlement*. Payments will be made only if the *Court* approves the *Settlement* and that approval is upheld in the event of any appeals.

Further information regarding the litigation and this *Notice* may be obtained by contacting *Plaintiff's Co-Lead Counsel*:

Lynn Lincoln Sarko, Esq.  
 Gary A. Gotto, Esq.  
 Elizabeth A. Leland, Esq.  
 Keller Rohrbach L.L.P.  
 1201 Third Avenue, Suite 3200  
 Seattle, Washington 98101-3052  
 www.kellersettlements.com

Marc I. Machiz, Esq.  
 Marka Peterson, Esq.  
 Cohen, Milstein, Hausfeld & Toll P.L.L.C.  
 1100 New York Ave NW, Suite 500W  
 Washington, D.C. 20005  
 www.cmht.com

*Plaintiff's Co-Lead Counsel* have established a toll-free phone number to receive your comments and questions: 1-877-568-4655.

*Plaintiff's Co-Lead Counsel* may also be contacted via e-mail: info@dynegyERISAsettlement.com.

**WHAT THIS NOTICE CONTAINS**

<b>SUMMARY OF SETTLEMENT</b>	<b>3</b>
<b>BASIC INFORMATION</b>	<b>4</b>
1. Why did I get this Notice package? .....	4
2. What is the lawsuit about? .....	4
3. Why is This Case a Class Action? .....	5
4. Why is there a Settlement? .....	5
5. How do I know whether I am part of the Settlement? .....	5
6. Are there exceptions to being included? .....	5
<b>THE SETTLEMENT BENEFITS - WHAT YOU GET</b>	<b>6</b>
7. What does the Settlement provide? .....	6
8. How much will my payment be? .....	6
9. How can I get a payment? .....	7
10. When would I get my payment? .....	7
11. Can I get out of the Settlement? .....	7
<b>THE LAWYERS REPRESENTING YOU</b>	<b>7</b>
12. Do I have a lawyer in the case? .....	7
13. How will the lawyers be paid? .....	7
14. How do I tell the Court that I don't like the Settlement? .....	7
<b>THE COURT'S FAIRNESS HEARING</b>	<b>8</b>
15. When and where will the Court decide whether to approve the Settlement? .....	8
16. Do I have to come to the hearing? .....	8
17. May I speak at the hearing? .....	8
<b>IF YOU DO NOTHING</b>	<b>8</b>
18. What happens if I do nothing at all? .....	8
<b>GETTING MORE INFORMATION</b>	<b>8</b>
19. Are there more details about the Settlement? .....	8
20. How do I get more information? .....	8

This litigation (the “*Action*”) is a consolidated case in which *Plaintiff* alleges that the *Defendants* breached fiduciary duties they owed to the participants in and beneficiaries of the *Plan*. Copies of the most recent Complaint and other documents filed in the *Action* are available at [www.kellersettlements.com](http://www.kellersettlements.com) or [www.cmht.com](http://www.cmht.com).

## SUMMARY OF SETTLEMENT

1. A *Settlement Fund* consisting of \$30.75 million in cash is being established in the *Action*.

2. The net amount in the *Settlement Fund*, including interest, and after payment of any taxes, expenses, approved attorneys’ fees and costs, and compensation to the *Named Plaintiff*, will be paid to the *Plan* and be allocated to *Settlement Class* members according to a *Plan of Allocation* to be approved by the Court.

### **Statement of Potential Outcome of the Action**

As with any litigated case, *Plaintiff* would face an uncertain outcome if the *Action* were to continue against the *Defendants*. Continued litigation of the *Action* against these *Defendants* could result in a judgment or verdict greater or lesser than the recovery under the *Settlement Agreement*, or in no recovery at all.

Throughout this litigation, the *Named Plaintiff* and the *Defendants* have disagreed on both liability and damages, and they do not agree on the amount that would be recoverable even if the *Plaintiff* were to prevail at trial. The *Defendants* have denied and continue to deny the claims and contentions alleged by the *Named Plaintiff*, that they are liable at all to the *Settlement Class*, and that the *Settlement Class* or the *Plan* have suffered any damages for which the *Defendants* could be legally responsible. Nevertheless, the *Defendants* have taken into account the uncertainty and risks inherent in any litigation, particularly in a complex case such as this, and have concluded that it is desirable that the *Action* be fully and finally settled as to them on the terms and conditions set forth in the *Settlement Agreement*.

### **Statement of Attorneys’ Fees and Costs Sought in the Action**

*Co-Lead Counsel* in the *Action* will apply to the *Court* for an order awarding to counsel for *Named Plaintiff* in the *Action* from the proceeds of the *Settlement Fund* attorneys’ fees not in excess of 28% of the amount recovered in the *Settlement*, plus reimbursement of expenses.

### **What Will the Named Plaintiff Get?**

The *Named Plaintiff* named in the *Action* will share in the allocation of the money paid to the *Plan* on the same basis and to the same extent as all other members of the *Settlement Class*, except that, in addition, the *Named Plaintiff* may apply to the *Court* for compensation up to \$10,000, plus reimbursement of the reasonable costs and expenses directly relating to her representation of the *Settlement Class*. Any compensation awarded to *Named Plaintiff* by the *Court* will be payable from the proceeds of the *Settlement*.

### **Further Information**

*Plaintiff’s Co-Lead Counsel* have established a toll-free phone number to receive your comments and questions: 1-877-568-4655.

*Plaintiff’s Co-Lead Counsel* may also be contacted via e-mail: [info@dynegyERISAsettlement.com](mailto:info@dynegyERISAsettlement.com).

Further information regarding the *Action* and this *Notice* may be obtained by contacting either:

Lynn Lincoln Sarko, Esq.  
Gary A. Gotto, Esq.  
Elizabeth A. Leland, Esq.  
Keller Rohrback L.L.P.  
1201 Third Avenue, Suite 3200  
Seattle, Washington 98101-3052  
[www.kellersettlements.com](http://www.kellersettlements.com)

or

Marc I. Machiz, Esq.  
Marka Peterson, Esq.  
Cohen, Milstein, Hausfeld & Toll P.L.L.C.  
1100 New York Ave NW, Suite 500W  
Washington, D.C. 20005  
[www.cmht.com](http://www.cmht.com)

## BASIC INFORMATION

### 1. *Why did I get this Notice package?*

You or someone in your family are or may have been a participant in or beneficiary of the *Plan* and/or one of its predecessor plans.

The *Court* caused this Notice to be sent to you because, if you fall within that group, you have a right to know about the *Settlement* and about all of your options, before the *Court* decides whether to approve the *Settlement*. If the *Court* approves the *Settlement*, and after any objections and appeals are resolved, the net amount of the *Settlement Fund* will be paid to the *Plan* and then allocated among *Settlement Class* members according to a *Court*-approved *Plan of Allocation*. This Notice package describes the litigation, the *Settlement*, your legal rights, what benefits are available, who is eligible for them, and how to get them.

The *Court* in charge of this case is the United States District Court for the Southern District of Texas, Houston Division. The person who sued is called the “*Named Plaintiff*,” and the people she sued are called “*Defendants*.” The *Named Plaintiff* in the *Action* is Constance K. Schied. The *Defendants* are: Dynege, Inc., Larry Altenbaumer, Louis J. Dorey, Alec G. Dreyer, Andrea Lang, Michael Mott, Milton L. Scott, R. Blake Young and Robert D. Doty, Jr. The legal action that is the subject of this Notice and the *Settlement* is known as *In re Dynege, Inc. ERISA Litigation*, No. H-02-3076 (the “*Action*”).

The following persons or entities, referred to as “*Dismissed Defendants*,” were originally named as *Defendants* in the *Complaint*, but were dismissed from the *Action* by the *Court* in its ruling on *Defendants*’ motions to dismiss, *In re Dynege, Inc. ERISA Litig.*, 309 F. Supp. 2d 861 (S.D. Tex. 2004): J. Joe Adjoran, Michael B. Barton, Charles E. Bayless, Stephen W. Bergstrom, Stephen J. Brandon, Darald W. Callahan, Michael D. Capellas, Marian M. Davenport, Daniel L. Dienstbier, Patricia M. Eckert, John E. Ford, Jerry L. Johnson, Tom Linton, Jeffrey M. Lipton, C. Steven McMillan, Lisa Q. Metts, Jack S. Mustoe, A. Terence Poole, Robert M. Powers, H. John Riley, Jr., Peter J. Robertson, Sheli Z. Rosenberg, Stanley I. Rubenfield, Joe J. Stewart, Glenn F. Tilton, Charles L. Watson, John S. Watson, J. Otis Winters, Patricia A. Woertz, Paul N. Woollacott, as well as Vanguard Fiduciary Trust Company and CG Trust Company.

### 2. *What is the lawsuit about?*

The *Action* claims that the *Defendants* were fiduciaries of the *Plan* and violated fiduciary duties under *ERISA* that they owed to current and former Dynege employees who were participants in the *Plan*. In the *Complaint*, *Named Plaintiff* has asserted causes of action for the losses she alleges were suffered by the *Plan* as the result of the alleged breaches of fiduciary duty by the *Defendants*.

Participants in the *Plan* were able to allocate their account balances among various investment funds maintained by the *Plan*. The investment funds included a fund primarily invested in Dynege common stock. Many *Plan* participants chose to have contributions to the *Plan* invested in the Dynege stock fund. In addition, Dynege made matching contributions, which were invested in the Dynege stock fund and credited to *Plan* participants’ accounts.

The *Action* alleges that Dynege and some of its individual officers and employees had the discretion to freeze further investments in Dynege stock and to sell the *Plan*’s holdings of Dynege stock. *Named Plaintiff* further alleges that the *Defendants* knew or should have known that Dynege stock was not a prudent retirement investment during the class period and that the *Defendants* acted imprudently by not preventing further investment in Dynege stock and not liquidating the *Plan*’s Dynege common stock holdings. *Named Plaintiff* also asserts that certain *Defendants* violated their alleged fiduciary duties by misrepresenting and failing to provide *Plan* participants with complete and accurate public information about Dynege.

The *Action* previously alleged that some of the *Defendants* and *Dismissed Defendants* breached their duty to monitor other *Plan* fiduciaries and to provide those fiduciaries with information necessary to do their job as fiduciaries. In addition, *Named Plaintiff* alleged that the Dynege *Plan* fiduciaries failed to follow the *Plan* documents, which required diversification of *Plan* assets in order to minimize investment risk, that certain *Defendants* and *Dismissed Defendants* had conflicts of interest which rendered them unable to prudently manage the *Plan*, and that, by accepting undiversified *Plan* investments, the *Plan Trustees* became liable for the other *Defendants*’ failure to diversify assets. These claims were dismissed by the *Court* in its ruling on *Defendants*’ motions to dismiss, *In re Dynege, Inc. ERISA Litig.*, 309 F. Supp. 2d 861 (S.D. Tex. 2004), which also limited the case to conduct beginning in January 2002. Absent the *Settlement*, these dismissals would be subject to appeal.

#### **The Defenses in the Action**

The *Defendants* deny that they have liability to the *Plan* or its participants or beneficiaries. If the litigation were to continue, the *Defendants* would raise numerous defenses to liability, including the following:

- They were not fiduciaries of the *Plan*, or, if they were fiduciaries, their fiduciary duties did not extend to the matters at issue in the *Action*;
- Dynege common stock was at all relevant times a prudent investment for the *Plan* and its participants;
- To the extent they were fiduciaries as to the matters at issue in the *Action*, they fully discharged all fiduciary duties imposed on them by *ERISA*;
- Even if they failed to discharge one or more of their *ERISA* fiduciary duties, any such breach of fiduciary duty did not cause the losses alleged by the *Plaintiff*; and
- The relief sought by the *Plaintiff* in the *Action* is not permitted by *ERISA*.

## The Action Has Been Aggressively Litigated

Counsel for the *Plaintiff* has conducted an extensive investigation of the allegations in the *Action* and of the losses suffered by the *Plan*. In addition, through that investigation and through discovery of information in the *Action*, counsel for the *Plaintiff* have obtained and reviewed thousands of pages of documents, including *Plan* governing documents and materials, communications with *Plan* participants, internal Dynege documents regarding the *Plan*, SEC filings, press releases, public statements, news articles, the transcript and exhibits from the trial on securities fraud, mail fraud, wire fraud and conspiracy charges of former Dynege senior director of tax planning, Jamie Olis, *United States v. James Olis*, No. H-2003-217 (S.D. Tex.), and other publications, and other documents.

*Plaintiff's* counsel previously opposed a motion by the *Defendants* to dismiss the *Plaintiff's* claims. The *Court* granted in part and denied in part that motion, including dismissing certain claims originally asserted by *Plaintiff*.

*Plaintiff's* counsel have drafted and served on *Defendants* numerous discovery requests, and they have prepared and served responses to written discovery requests made by *Defendants*.

*Plaintiff's* counsel has not yet filed a motion for certification of the *Action* as a class action. If the litigation were to continue, *Plaintiff* would file a motion for certification of the *Action* as a class action, and the *Defendants* would be permitted to raise objections to the *Plaintiff's* motion for class certification, including that the *Action* should not be certified as a class action.

## Settlement Discussions

This *Settlement* is the product of extensive negotiations between *Plaintiff's* counsel and the *Defendants'* counsel, including the services of an experienced mediator. Throughout the settlement negotiations, the *Plaintiff* and the *Defendants* were advised by various consultants and experts, including individuals with expertise in *ERISA* fiduciary liability issues, insurance coverage issues, and estimating potential damages in cases involving *ERISA* fiduciary liability.

### 3. Why Is This Case a Class Action?

In a class action, one or more plaintiffs, called “*Named Plaintiff*,” sues on behalf of people who have similar claims. All of the individuals on whose behalf the *Named Plaintiff* is suing are “*Class Members*.” One *Court* resolves the issues for all *Class Members*. U.S. District Judge Sim Lake is presiding over this case. In its Order setting the *Fairness Hearing*, the *Court* conditionally certified the *Settlement Class* in the *Action*.

### 4. Why is there a Settlement?

The *Court* has not reached any final decisions in connection with *Plaintiff's* claims against the *Defendants*. Instead, the *Plaintiff* and the *Defendants* have agreed to a settlement. In reaching the *Settlement*, they have avoided the cost and time of a trial.

As with any litigated case, the *Plaintiff* would face an uncertain outcome if this case went to trial. On the one hand, continuation of the case against the *Defendants* could result in a verdict greater than this *Settlement*. On the other hand, continuing the case against them could result in a verdict for less money than *Plaintiff* has obtained in this *Settlement*, or even no recovery at all. Based on these factors, the *Plaintiff* and her attorneys in this case believe the *Settlement* is best for all *Settlement Class* members. Additional information concerning the *Settlement* and these factors is available in the motion for preliminary approval of the *Settlement Agreement*, which may be obtained at [www.kellersettlements.com](http://www.kellersettlements.com) or [www.cmht.com](http://www.cmht.com), or directly from the Clerk of the United States District Court for the Southern District of Texas, Houston Division.

### 5. How do I know whether I am part of the Settlement?

The proceeds of this *Settlement* will be allocated only to members of the *Settlement Class*, and then only according to a *Court*-approved *Plan of Allocation*.

You are a member of the *Settlement Class* if you fall within the “class definition” approved by United States District Judge Sim Lake:

- (a) All *Persons* who were participants in the *Plan* at any time from April 27, 1999 through January 30, 2003, inclusive; and (b) as to each *Person* within the scope of subsection (a), his, her or its beneficiaries, alternate payees, *Representatives* and *Successors-In-Interest*. Excluded from the *Settlement Class* are the *Defendants* and the *Dismissed Defendants*, and the *Immediate Family* and *Successors-In-Interest* of any *Defendant* or *Dismissed Defendant*, except for *Immediate Family* members who themselves are not *Defendants* or *Dismissed Defendants* and who were participants in the *Plan* at any time from April 27, 1999 through January 30, 2003, inclusive.

If you are a member of the *Settlement Class*, the amount of money you will receive, if any, will depend upon the *Court*-approved *Plan of Allocation*, described below in Section 8.

### 6. Are there exceptions to being included?

You are not a member of the *Settlement Class* if you are a *Defendant* or *Dismissed Defendant*, or a member of the *Immediate Family* or *Successor-In-Interest* of any *Defendant* or *Dismissed Defendant*, unless you are an *Immediate Family* member who is not a *Defendant* or *Dismissed Defendant* and who was a participant in the *Plan* at any time from April 27, 1999 through January 30, 2003.

## THE SETTLEMENT BENEFITS - WHAT YOU GET

### 7. *What does the Settlement provide?*

A *Settlement Fund* consisting of \$30.75 million in cash is being established in the *Action*. The net amount in the *Settlement Fund*, including interest, and after payment of, and establishment of reserves for, any taxes and *Court*-approved costs, attorney's fees, and expenses, including any *Court*-approved compensation to be paid to the *Named Plaintiff*, will be paid to the *Plan* and, after payment of implementation expenses, the remaining amount will be allocated to members of the *Settlement Class* according to a *Plan of Allocation* to be approved by the *Court*. Allocations will be made to the existing *Plan* accounts of members of the *Settlement Class*. *Plan* accounts may be created for those members of the *Settlement Class* who no longer have *Plan* accounts and who are entitled to an award under the *Plan of Allocation*. All *Settlement Class* members and anyone claiming through them are deemed to fully release the "Releasees" from "Released Claims." The *Releasees* are the *Defendants*, *Dismissed Defendants* and the present and former *Representatives* of each of them.

The *Released Claims* generally include all claims (i) that are or were alleged, asserted, or set forth in the *Action*, including (a) the acquisition and holding of *Company* securities in the *Plan*, (b) the preparation or dissemination of information relating to the *Company* to *Plan* participants and beneficiaries, or (c) the appointment, removal or monitoring of any fiduciary of the *Plan* as such actions relate in any way to the acquisition and holding of *Company* securities in the *Plan*; or (ii) that would be barred by principles of *res judicata* had the claims asserted in the *Action* been fully litigated and resulted in a final judgment or order. The *Settlement Agreement* does not release, bar, waive, or otherwise affect any Claim that has been or could be asserted under the state or federal securities laws by any member of the *Settlement Class* or the *Plan* directly or derivatively.

The above description of the operation of the *Settlement* is only a summary. The governing provisions are set forth in the *Settlement Agreement* (including its exhibits), which may be obtained at [www.kellersettlements.com](http://www.kellersettlements.com) or [www.cmht.com](http://www.cmht.com), or by contacting counsel listed on Page 2 above.

### 8. *How much will my payment be?*

Your share of the net *Settlement* proceeds paid into the *Plan* (the "Net Proceeds") will depend on your proportionate loss, compared to other *Class* members, related to *Plan* investments in *Dynegy* stock at any time during the period April 27, 1999 through and including January 30, 2003. Each *Class* member's proportionate loss will be determined using a *Court*-approved *Plan of Allocation*. Because the Net Proceeds are less than the total losses alleged by the *Class*, each *Class* member's proportionate recovery will be less than his or her alleged loss. If your proportionate recovery is *de minimus*, it may be distributed *pro rata* to other *Class Members*. You are not responsible for calculating the amount you may be entitled to receive under the *Settlement*. This calculation will be done as part of the implementation of the *Settlement*.

In general, your proportionate share of the *Net Proceeds* will be calculated as follows:

- Using the *Plan*'s records and other records as necessary, the *Plan* trustee shall identify each member of the *Settlement Class*.
- An "Adjusted Net Loss" shall be calculated for each member of the *Settlement Class*. *Adjusted Net Loss* shall be a positive number equal to

(a) the sum of:

- i. the participant's *Dynegy* Stock Fund *Plan* account balance at the beginning of the class period;
- ii. plus the dollar amount added (through employee contributions, employer contributions in cash or stock or cash dividends) to a participant's *Dynegy* Stock Fund *Plan* account from the start of the *Class Period* through August 15, 2001;
- iii. plus 1.15 times the dollar amount added to a participant's *Dynegy* Stock Fund *Plan* account from August 16, 2001 through January 15, 2002;
- iv. plus 1.3 times the dollar amount added to a participant's *Dynegy* Stock Fund *Plan* account from January 16, 2002 through April 25, 2002;
- v. plus the dollar amount added to a participant's *Dynegy* Stock Fund *Plan* account from April 26, 2002 until the end of the class period;

(b) minus the sum of:

- i. the dollar amount of a participant's *Dynegy* Stock Fund *Plan* account balance at the end of the *Class Period*;
  - ii. plus the dollar amount of all distributions and transfers from a participant's *Dynegy* Stock Fund *Plan* account during the *Class Period*.
- The *Adjusted Net Losses* of the *Settlement Class* members shall be aggregated.
  - Each *Settlement Class* member will be assigned an *Adjusted Net Loss Percentage*, which shall be his, her or its *Adjusted Net Loss* as a percentage of the aggregated *Adjusted Net Losses* of the entire *Settlement Class*.
  - The *Plan* trustee shall allocate to each *Settlement Class* member a share of the *Net Proceeds* (less the *Plan* expenses reasonably and necessarily incurred in implementing the *Plan of Allocation*), multiplied by the *Settlement Class* member's *Adjusted Net Loss Percentage* ("Class Member Share").

Do not worry if you do not have records that show your *Plan* activity. If you are entitled to a share of the net *Settlement Fund*, you will receive a statement showing the amount of your share. If you have questions regarding the *Settlement* or the *Plan of Allocation*, please contact the counsel listed on Page 2 above.

**9. How can I get a payment?**

You do not need to file a claim. If you are a *Settlement Class* member entitled to a share of the *Net Proceeds*, and have a current *Plan* account, your share will be deposited in your *Plan* account. If you are a former *Plan* participant, an account may be established for you in the *Plan*. If you are a former participant and have not provided the *Plan* with your current address, please contact *Plaintiffs’* counsel at 1-877-568-4655.

**10. When would I get my payment?**

Payment is conditioned on several matters, including the *Court’s* approval of the *Settlement* and such approval becoming final and no longer subject to any appeals to any court. Upon satisfaction of various conditions, the *Net Settlement Fund* will be paid to the *Plan* and allocated to the accounts of *Settlement Class* members pursuant to the *Plan of Allocation* (described in the Answer to Question No. 8, above) as soon as possible after final approval has been obtained for the *Settlement* (which includes exhaustion of any appeals). Any appeal of the final approval may take several years. Any accrued interest on the *Settlement Fund* will be included in the amount paid to the *Plan* and allocated to the *Plan* accounts of *Settlement Class* members.

**There Will Be No Payments If The Settlement Agreement Is Terminated.**

The *Settlement Agreement* may be terminated on several grounds, including if the *Court* does not approve or modifies the *Settlement*. Should the *Settlement Agreement* be terminated, the *Settlement* will be terminated, the certification of the *Class* for settlement purposes will be vacated, and the *Action* will proceed as if the *Settlement Agreement* had not been entered into.

**11. Can I get out of the Settlement?**

You do not have the right to exclude yourself from the *Settlement*. The *Action* was conditionally certified under Federal Rule of Civil Procedure 23(b)(1) and/or (2) as a non “opt-out” class action because the *Court* preliminarily determined the requirements of those rules were satisfied. Thus, it is not possible for any participants or beneficiaries to exclude themselves from the benefits of the *Settlement*. As a *Settlement Class* member, you will be bound by any judgments or orders that are entered in the *Action* for all claims that were or could have been asserted in the *Action* or are otherwise included in the release under the *Settlement*.

Although you cannot opt-out of the *Settlement*, you can object to the *Settlement* and ask the *Court* not to approve it. See Answer to Question No. 14, below.

**THE LAWYERS REPRESENTING YOU**

**12. Do I have a lawyer in the case?**

The *Court* has appointed the law firm Keller Rohrback L.L.P. and the law firm Cohen, Milstein, Hausfeld & Toll P.L.L.C. as *Co-Lead Counsel* for *Named Plaintiff* in the *Action*. These lawyers are called “*Class Counsel*.” You will not be charged directly by these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

**13. How will the lawyers be paid?**

*Co-Lead Counsel* will file a motion for the award of attorneys’ fees and expenses. This motion will be considered at the *Fairness Hearing*. As previously described, *Co-Lead Counsel* have agreed to limit their application for an award of attorneys’ fees to not more than 28% of the recovery, plus reimbursement of expenses incurred in connection with the prosecution of the *Action*.

**Objecting to the Settlement or the Attorneys’ Fees**

You can tell the *Court* that you do not agree with the *Settlement* or some part of it, including the attorneys’ fees and expenses the attorneys intend to seek.

**14. How do I tell the Court that I don’t like the Settlement?**

If you are a *Settlement Class* member, you can object to the *Settlement* if you do not like any part of it. You can give reasons why you think the *Court* should not approve it. To object, you must send a letter or other written statement saying that you object to the *Settlement* in *In re Dynege, Inc. ERISA Litigation*, No. H-02-3076. Be sure to include your name, address, telephone number, signature, and a full explanation of all reasons you object to the *Settlement*. **Your written objection must be served on the following counsel and must be postmarked no later than December 1, 2004:**

PLAINTIFF’S CO-LEAD COUNSEL	DEFENDANTS’ COUNSEL
Lynn Lincoln Sarko, Esq. Gary A. Gotto, Esq. Elizabeth A. Leland, Esq. Keller Rohrback L.L.P. 1201 Third Avenue, Suite 3200 Seattle, Washington 98101-3052  Marc I. Machiz, Esq. Marka Peterson, Esq. Cohen, Milstein, Hausfeld & Toll P.L.L.C. 1100 New York Ave NW, Suite 500W Washington, D.C. 20005	Paul J. Ondrasik, Jr., Esq. F. Michael Kail, Esq. Morgan D. Hodgson, Esq. Steptoe & Johnson LLP 1330 Connecticut Avenue, N.W. Washington, D.C. 20036  Michael M. Wilson, Esq. David K. Bissinger, Esq. Clements O’Neill, Pierce, Wilson & Fulkerson, L.L.P. Wells Fargo Plaza 1000 Louisiana, Suite 1800 Houston, TX 77002-5009

You must also file your objection with the Clerk of the United States District Court for the Southern District of Texas, Houston Division. The address is: Clerk of the Court, U.S. District Court for the Southern District of Texas, Houston Division, P.O. Box 61010, Houston, Texas, 77208.

**Your objection must be postmarked no later than December 1, 2004.**

## THE COURT'S FAIRNESS HEARING

The *Court* will hold a hearing to decide whether to approve the *Settlement* as fair, reasonable and adequate (the “*Fairness Hearing*”). You may attend the *Fairness Hearing* in person or through counsel retained at your expense. You do not have to attend the *Fairness Hearing*.

### 15. *When and where will the Court decide whether to approve the Settlement?*

The *Court* will hold a *Fairness Hearing* at 2:00 p.m. on December 10, 2004, at the United States District Court for the Southern District of Texas, Houston Division, Bob Casey United States Courthouse, 515 Rusk Avenue, Houston, Texas, 77002, in Courtroom 9B or in the Courtroom then occupied by United States District Judge Sim Lake. At that hearing, the *Court* will consider whether the *Settlement* is fair, reasonable, and adequate. If there are objections, the *Court* will consider them. After the *Fairness Hearing*, the *Court* will decide whether to approve the *Settlement*. The *Court* will also rule on the motions for attorneys’ fees and expenses. We do not know how long these decisions will take.

### 16. *Do I have to come to the hearing?*

No. *Class Counsel* will answer questions Judge Lake might have. But you are welcome to come at your own expense. If you send an objection, you do not have to come to *Court* to talk about it. As long as you mailed your written objection on time, it will be before the *Court* when the *Court* considers whether to approve the *Settlement* as fair, reasonable and adequate. You also may pay your own lawyer to attend the *Fairness Hearing*, but such attendance is not necessary.

### 17. *May I speak at the hearing?*

If you are a *Settlement Class* member, you may ask the *Court* for permission to speak at the *Fairness Hearing*. To do so, you must send a letter or other paper called a “Notice of Intention to Appear at Fairness Hearing in *In re Dynegy, Inc. ERISA Litigation*, No. H-02-3076.” Be sure to include your name, address, telephone number, and your signature. Your Notice of Intention to Appear must be served on the attorneys listed in the Answer to Question No. 14, above, postmarked no later than December 1, 2004, and must be filed with the Clerk of the Court at the address listed in the Answer to Question No. 14, postmarked no later than December 1, 2004.

## IF YOU DO NOTHING

### 18. *What happens if I do nothing at all?*

If you do nothing and you are a *Settlement Class* member, you will participate in the settlement of the *Action* as described above in this *Notice* if the *Settlement* is approved.

## GETTING MORE INFORMATION

### 19. *Are there more details about the Settlement?*

This *Notice* summarizes the proposed *Settlement*. The complete settlement is set forth in the *Settlement Agreement*. You may obtain a copy of the *Settlement Agreement* by making a written request to the counsel listed at Page 2 above. Copies of the *Settlement Agreement*, as well as the *Preliminary Motion*, seeking preliminary approval of the *Settlement Agreement*, and the *Preliminary Approval Order*, may also be obtained at [www.kellersettlements.com](http://www.kellersettlements.com) or [www.cmht.com](http://www.cmht.com). The *Settlement Agreement* also was filed with the Clerk of the United States District Court for the Southern District of Texas, Houston Division and may be obtained from the Clerk’s office directly.

### 20. *How do I get more information?*

You can contact the attorneys for *Plaintiff* (see Page 2 above), or visit the website at [www.kellersettlements.com](http://www.kellersettlements.com) or [www.cmht.com](http://www.cmht.com) for more information regarding the *Settlement*.