

ELECTRIC CITY CORP
Form POS AM
February 19, 2004

Table of Contents

As filed with the Securities and Exchange Commission on February 19, 2004

Registration No. 333-105084

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

POST-EFFECTIVE AMENDMENT NO. 2 TO
FORM S-3
REGISTRATION STATEMENT

UNDER

THE SECURITIES ACT OF 1933

ELECTRIC CITY CORP.

(Exact Name of Registrant as Specified in its Charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

1280 Landmeier Road
Elk Grove Village, IL 60007
(847) 437-1666

36-4197337
(I.R.S. Employer
Identification No.)

(Address, Including Zip Code, and Telephone
Number, Including Area Code, of Registrant's
Principal Executive Offices)

JEFFREY R. MISTARZ
Chief Financial Officer and Treasurer
Electric City Corp., 1280 Landmeier Road, Elk Grove Village, Illinois, 60007, (847) 437-1666
(Name, Address, and Telephone Number of Agent for Service)

Copies to:
Andrew H. Connor
Schwartz Cooper Greenberger & Krauss, Chtd.
180 N. LaSalle Street, Suite 2700
Chicago, Illinois 60601
(312) 346-1300

Approximate Date of Commencement of Proposed sale to the Public:

From time to time 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, as amended, other than securities offered only in connection with dividend or interest reinvestment plans, check the following box.

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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, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. o

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 statement number of the earlier effective registration statement for the same offering. o

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

Table of Contents

PROSPECTUS

ELECTRIC CITY CORP.

17,660,651 Shares of Common Stock

This prospectus relates to up to 17,660,651 shares of our common stock, par value \$0.0001 per share, which may be offered for sale by selling stockholders named in this prospectus. The selling stockholders can sell these shares on any exchange on which the shares are listed, in privately negotiated transactions or by any other legally available means, whenever they decide and at the prices they set. We may issue up to 4,798,520 of these shares upon exercise of options and warrants issued by the Company held by some of the selling stockholders. We will not receive any of the proceeds from the sale of these shares of our common stock, but will receive proceeds from the exercise of any of such options and warrants.

Our common stock is quoted on the American Stock Exchange under the symbol ELC. On February 17, 2004, the closing sale price for shares of our common stock was \$2.20 per share.

Our principal executive office is located at 1280 Landmeier Road, Elk Grove Village, Illinois, 60007. Our telephone number at that address is (847) 437-1666. Our web site is located at <http://www.elccorp.com>.

Investing in our common stock involves risks described beginning on page 4.

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

The date of this prospectus is February 19, 2004.

TABLE OF CONTENTS

ABOUT THIS PROSPECTUS

WHERE YOU CAN FIND MORE INFORMATION

INCORPORATION OF CERTAIN DOCUMENTS BY REFERENCE

CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

PROSPECTUS SUMMARY

RISK FACTORS

USE OF PROCEEDS

PLAN OF DISTRIBUTION

SELLING STOCKHOLDERS

LEGAL MATTERS

EXPERTS

SIGNATURES

INDEX TO EXHIBITS

Joinder to Stockholders Agreement

Joinder to Investor Rights Agreement

Joinder to Stock Trading Agreements

Warrant Certificate to Purchase 50,000 Shares

Warrant Certificate to Purchase 27,000 Shares

Warrant Certificate to Purchase 15,000 Shares

Warrant Certificate to Purchase 5,000 Shares

Warrant Certificate to Purchase 50,000 Shares

Warrant Certificate to Purchase 50,000 Shares

Warrant Certificate to Purchase 50,000 Shares

Warrant Certificate to Purchase 20,000 Shares

Warrant Certificate to Purchase 160,000 Shares

Warrant Certificate to Purchase 40,000 Shares

Warrant Certificate to Purchase 50,000 Shares

Warrant Certificate to Purchase 10,000

Warrant Certificate to Purchase 100,000 Shares

Consent of BDO Seidman, LLP

Table of Contents

TABLE OF CONTENTS

About This Prospectus	1
Where You Can Find More Information	1
Incorporation Of Certain Documents By Reference	1
Cautionary Note Regarding Forward-Looking Statements	2
Prospectus Summary	3
Risk Factors	4
Use of Proceeds	15
Plan of Distribution	15
Selling Stockholders	17
Legal Matters	21
Experts	21

Table of Contents

ABOUT THIS PROSPECTUS

This prospectus is a part of a registration statement that we have filed with the Securities and Exchange Commission (SEC or Commission) using a shelf registration process. You should rely only on the information provided in this prospectus or any supplement or amendment. We have not authorized anyone else to provide you with additional or different information. You should not assume that the information in this prospectus or any supplement or amendment is accurate as of any date other than the date on the front of this prospectus or any supplement or amendment.

Unless the context otherwise requires, Electric City, the Company, we, our, us and similar expressions refers to Electric City Corp. and its subsidiaries, and the term common stock means Electric City Corp.'s common stock, par value \$0.0001 per share.

WHERE YOU CAN FIND MORE INFORMATION

We file reports, proxy statements and other information with the SEC. Information filed with the SEC by us can be inspected and copied at the public reference room maintained by the SEC at 450 Fifth Street, N.W., Room 1024, Washington, D.C. 20549. You may also obtain copies of this information by mail from the Public Reference Section of the SEC, 450 Fifth Street, N.W., Washington, D.C. 20549, at prescribed rates. Further information on the operation of the SEC's public reference room in Washington, D.C. can be obtained by calling the SEC at 1-800-SEC-0330.

The SEC also maintains a web site that contains reports, proxy statements and other information about issuers, such as us, who file electronically with the SEC. The address of that site is <http://www.sec.gov>.

Our common stock is listed on the American Stock Exchange (AMEX: ELC), and reports, proxy statements and other information concerning us can also be inspected at the offices of the American Stock Exchange at 86 Trinity Place, New York, New York 10006. Our web site address is <http://www.elccorp.com>. The information on our web site, however, is not, and should not be deemed to be, a part of this prospectus.

INCORPORATION OF CERTAIN DOCUMENTS BY REFERENCE

The rules of the SEC allow us to incorporate by reference information into this prospectus, which means that we can disclose important information to you by referring you to another document filed separately with the SEC. The information incorporated by reference is deemed to be part of this prospectus, and later information that we file with the SEC will automatically update and supersede that information. This prospectus incorporates by reference the documents set forth below that we have previously filed with the SEC. These documents contain important information about us.

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Table of Contents

our Annual Report on Form 10-KSB for the year ended December 31, 2002 (filed with the SEC on March 31, 2003);

our Quarterly Report on Form 10-QSB for our fiscal quarter ended March 31, 2003 (filed with the SEC on May 15, 2003);

our Form 8-A (filed with the SEC on December 8, 2000);

our Form 8-K (filed with the SEC on June 5, 2003);

our Form 8-K/A (filed with the SEC on July 2, 2003);

our Form 8-K (filed with the SEC on July 2, 2003);

our Quarterly Report on Form 10-QSB for our fiscal quarter ended June 30, 2003 (filed with the SEC on August 14, 2003);

our Form 8-K (filed with the SEC on August 15, 2003);

our Form 8-K (filed with the SEC on September 3, 2003);

our Form 8-K (filed with the SEC on September 16, 2003);

our Form 8-K (filed with the SEC on November 13, 2003);

our Quarterly Report on Form 10-QSB for our fiscal quarter ended September 30, 2003 (filed with the SEC on November 13, 2003);

our registration statement on Form SB-2 (filed with the SEC on October 20, 2003);

our registration statement on Form SB-2/A (filed with the SEC on November 14, 2003);

all documents filed by us with the SEC pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act after the date of this prospectus and before the termination of the offering.

You may request a free copy of any of the documents incorporated by reference in this prospectus (other than exhibits, unless they are specifically incorporated by reference in the documents) by writing or telephoning us at the following address:

Electric City Corp.
Attn: Investor Relations
1280 Landmeier Road
Elk Grove Village, IL 60007-2410

Telephone: (847) 437-1666

You should rely only on the information provided or incorporated by reference in this prospectus or in the applicable supplement to this prospectus. You should not assume that the information in this prospectus and the applicable supplement is accurate as of any date other than the date on the front cover of the document.

CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

This prospectus 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 that reflect our current expectations and projections about our future results, performance, prospects and opportunities. We have tried to identify these forward-looking statements by using words

Table of Contents

such as may, will, should, expect, hope, anticipate, believe, intend, plan, estimate and similar expressions. These forward-looking statements are based on information currently available to us and are subject to a number of risks, uncertainties and other factors, including the factors set forth under Risk Factors, that could cause our actual results, performance, prospects or opportunities in 2004 and beyond to differ materially from those expressed in, or implied by, these forward-looking statements. These factors include, without limitation, our limited operating history, our history of operating losses, fluctuations in retail electricity rates, our reliance on licensed technologies, customers' acceptance of our new and existing products, the risk of increased competition, our ability to successfully integrate acquired businesses, products and technologies, our ability to manage our growth, our need for additional financing and the terms and conditions of any financing that is consummated, the possible volatility of our stock price, the concentration of ownership of our stock and the potential fluctuation in our operating results. Although we believe that the expectations reflected in these forward-looking statements are reasonable and achievable, such statements involve risks and uncertainties and no assurance can be given that the actual results will be consistent with these forward-looking statements. Except as otherwise required by Federal securities laws, we undertake no obligation to publicly update or revise any forward-looking statements, whether as a result of new information, future events, changed circumstances or any other reason, after the date of this prospectus.

PROSPECTUS SUMMARY

The following summary is qualified in its entirety by the more detailed information appearing elsewhere in this prospectus.

Our Company

We were organized as Electric City LLC, a Delaware limited liability company, on December 5, 1997. On June 5, 1998 we merged Electric City LLC with and into Electric City Corp., a Delaware corporation. On June 10, 1998, we issued approximately six percent (6%) of our issued and outstanding common stock to the approximately 330 stockholders of Pice Products Corporation ("Pice") an inactive, unaffiliated company with minimal assets, pursuant to the merger of Pice with and into Electric City. This merger facilitated the establishment of a public trading market for our common stock. Trading in our common stock commenced on August 14, 1998 through the OTC Bulletin Board under the trading symbol "ECCC". Since December 12, 2000, our common stock has traded on the American Stock Exchange under the trading symbol "ELC".

Our Products

We are a developer, manufacturer and integrator of energy saving technologies and building automation controls as well as an independent developer of scalable, negative power systems. Our premier energy saving product is the EnergySaver system, which reduces energy consumed by lighting, typically by 20% to 30%, with minimal lighting level reduction. This technology has applications in commercial buildings, factories and office structures, as well as

Table of Contents

street lighting and parking lot lighting. Our GlobalCommander integrates with the EnergySaver, allowing us to link multiple EnergySaver units together and to provide remote communications, measurement and verification of energy savings. The combined technology of the EnergySaver and GlobalCommander led to the development of our Virtual Negawatt Power Plan (VNPP), which is essentially a negative power system which we market primarily to utilities as a demand response system. In addition to our EnergySaver system, we also provide, through our subsidiary, Great Lakes Controlled Energy Corporation (Great Lakes), integrated building and environmental control solutions for commercial and industrial facilities. Until June 1, 2003, we also manufactured custom electrical switchgear through Switchboard Apparatus Inc. (Switchboard), a wholly owned subsidiary located in Broadview Illinois. In an effort to refocus our resources and shed the continuing losses from the switchgear business, we sold the operating assets of Switchboard to a group of investors, including the President of Switchboard, effective as of May 31, 2003.

Our EnergySaver product line is manufactured at our facilities in Elk Grove Village, Illinois, with manufacturing and assembly scaled to order demand. Building and environmental control services and solutions provided by Great Lakes are based out of a separate facility also located in Elk Grove Village, Illinois.

Giorgio Reverberi has patented in the U.S. and Italy certain technologies underlying the EnergySaver products. We have entered into a license agreement and series of agreements with Mr. Reverberi and our founder, Mr. Joseph Marino, relating to the license of the EnergySaver technology in the United States and certain other markets.

We are pursuing a multi-channel marketing and sales distribution strategy to bring our energy saving products to market. Our multi-channel approach includes the use of a direct sales force, distributors and manufacturers representatives.

The Offering

Securities Offered	The selling stockholders are offering up to 17,660,651 shares of our common stock.
Terms of the Offering	We have agreed to use our best efforts to keep this registration statement effective until April 23, 2004.
Use of Proceeds	We will not receive any of the proceeds from any sale of the shares offered by this prospectus by the selling stockholders. To the extent the selling stockholders exercise their options or warrants, we intend to use the proceeds we receive from such exercise(s) for general corporate purposes.
American Stock Exchange Symbol	ELC

Table of Contents

RISK FACTORS

You should carefully consider the risks and uncertainties described below and all of the other information included in this prospectus before you decide whether to purchase shares of our common stock. Any of the following risks could materially adversely affect our business, financial condition or operating results and could negatively affect the value of your investment.

Risks Related to Our Business

We have a limited operating history upon which to evaluate our potential for future success.

We were formed in December 1997. To date, we have only generated limited revenues from the sale of our products and do not expect to generate significant revenues until we sell a significantly larger number of our products. Accordingly, we have only a limited operating history upon which you can base an evaluation of our business and prospects. The likelihood of our success must be considered in light of the risks and uncertainties frequently encountered by early stage companies like ours in an evolving market. If we are unsuccessful in addressing these risks and uncertainties, our business will be materially harmed.

Continuing losses and our inability to date to generate positive cash flow create a significant risk that we will be unable to continue as a going concern.

Our auditors have modified their opinion to our audited financial statements for the year ended December 31, 2002 to include an emphasis paragraph, stating that our continuing losses and negative cash flow from operations raise substantial doubt about our ability to continue as a going concern. In late 2002, our management developed a plan that included restructuring or possibly disposing of Switchboard Apparatus, Inc., increasing sales of our Energy Technology products and raising additional capital. Since the beginning of 2003 we have completed the sale of Switchboard Apparatus and we have raised over \$4 million in new capital, before the costs of issuance. While achievement of these objectives have reduced some of the financial strain on the Company, they do not guarantee that we will be able to continue to operate the Company as a going concern in the future, particularly if we are not successful in increasing revenue and achieving profitability.

We have incurred significant operating losses since inception and may not achieve or sustain profitability in the future.

We have incurred substantial net losses in each year since we commenced operations in December 1997. We must overcome significant manufacturing and marketing hurdles to sell large quantities of our products. In addition, we may be required to reduce the prices of our products in order to increase sales. If we reduce product prices, we may not be able to reduce product costs sufficiently to achieve acceptable profit margins. As we strive to grow our business, we expect to spend significant funds (1) for general corporate purposes, including working capital, marketing, recruiting and hiring additional personnel; and (2) for research and development. To the extent that our revenues do not increase as quickly as these costs and expenditures, our results of operations and liquidity will be materially adversely affected. If we experience slower than anticipated revenue growth or if our operating expenses exceed our

Table of Contents

expectations, we may not achieve profitability. Even if we achieve profitability in the future, we may not be able to sustain it.

A decrease in electric retail rates could lessen demand for our EnergySaver products.

Our principal products, our EnergySaver products, have the greatest profit potential in areas where commercial electric rates are relatively high. However, retail electric rates for commercial establishments in the United States may not remain at their current high levels. Due to a potential overbuilding of power generating stations throughout certain regions of the United States, wholesale power prices may decrease in the future. Because the price of commercial retail electric power is largely attributed to the wholesale cost of power, it is reasonable to expect that commercial retail rates may decrease as well. In addition, much of the wholesale cost of power is directly related to the price of certain fuels, such as natural gas, oil and coal. If the prices of those fuels decrease, the prices of the wholesale cost of power may also decrease. This could result in lower electric retail rates and reduced demand for energy saving devices such as our EnergySaver products.

We have a license under certain patents and our ability to sell our products may be adversely impacted if the license expires or is terminated.

We have entered into a license agreement with Messrs. Giorgio Reverberi and Joseph Marino. Mr. Reverberi holds a U.S. patent and has applied for several patents in other countries. Pursuant to the terms of the license, we have been granted the exclusive right to manufacture and sell products containing the load reduction technology claimed under Mr. Reverberi's U.S. patent or any other related patent held by him in the U.S., the remainder of North America, parts of South America and parts of Africa. However, the exclusive rights that we received may not have any value in territories where Mr. Reverberi does not have or does not obtain protectable rights. The term of the license expires when the last of these patents expires. We expect that these patents will expire or around November 2017. The license agreement may be terminated if we materially breach its terms and fail to cure the breach within 180 days after we are notified of the breach. If our license is terminated it could impact our ability to manufacture, sell or otherwise commercialize products in those countries where Mr. Reverberi holds valid patents relating to our products, including the United States.

Table of Contents

If we are not able to protect our intellectual property rights against infringement or others obtain intellectual property rights relating to energy management technology, we could lose our competitive advantage in the energy management market.

We regard our intellectual property rights, such as patents, licenses of patents, trademarks, copyrights and trade secrets, as important to our success. Although we entered into confidentiality and rights to inventions agreements with our non-union employees and consultants during March 2001 (and non-union employees hired since March 2001 have also signed these agreements), the steps we have taken to protect our intellectual property rights may not be adequate. Third parties may infringe or misappropriate our intellectual property rights or we may not be able to detect unauthorized use and take appropriate steps to enforce our rights. Failure to take appropriate protective steps could materially adversely affect our competitive advantage in the energy management market. Furthermore, our license to use Mr. Reverberis patents may have little or no value to us if Mr. Reverberis patents are not valid. In addition, patents held by third parties may limit our ability to manufacture, sell or otherwise commercialize products and could result in the assertion of claims of patent infringement against us. If that were to happen, we could try to modify our products to be non-infringing, but we might not be successful or such modifications might not avoid infringing on the intellectual property rights of third parties.

Claims of patent infringement against us, regardless of merit, could result in the expenditure of significant financial and managerial resources by us. We may be forced to seek to enter license agreements with third parties (other than Mr. Reverberis) to resolve claims of infringement by our products of the intellectual property rights of third parties. These licenses may not be available on acceptable terms or at all. The failure to obtain such licenses on acceptable terms could have a negative effect on our business.

The loss of key personnel may harm our ability to obtain and retain customers, manage our rapid growth and compete effectively.

Our future success will depend significantly upon the continued contributions of certain members of our senior management, including John P. Mitola, our Chief Executive Officer, because he is critical to obtaining and retaining customers, managing our growth and the future development of our VNPP concept. Our future success will also depend upon our ability to attract and retain highly qualified technical, operating and marketing personnel. We believe that there is intense competition for qualified personnel in the energy management industry. If we cannot hire, train and retain qualified personnel or if a significant number of our current employees depart, we may be unable to successfully manufacture and market our products.

If we are unable to manage our growth, it will adversely affect our business, the quality of our products and our ability to attract and retain key personnel.

We are subject to the risks inherent in the expansion and growth of a business enterprise. Growth in our business will place a strain on our operational and administrative resources and increase the level of responsibility for our existing and new management personnel. To manage our growth effectively, we will need to:

Table of Contents

further develop and improve our operating, information, accounting, financial and other internal systems and controls on a timely basis;

improve our business development, marketing and sales capabilities; and

expand, train, motivate and manage our employee base.

Our current senior management has limited experience managing a publicly traded company. Our systems currently in place may not be adequate if we continue to grow and may need to be modified and enhanced. The skills of management currently in place may not be adequate if we continue to grow.

If our EnergySaver products do not achieve or sustain market acceptance, our ability to compete will be adversely affected.

To date, we have not sold our EnergySaver product line in very large quantities and a sufficient market may not develop for it. Significant marketing will be required in order to establish a sufficient market for the EnergySaver products. The technology underlying these products may not become a preferred technology to address the energy management needs of our customers and potential customers. Failure to successfully develop, manufacture and commercialize products on a timely and cost-effective basis will have a material adverse effect on our ability to compete in the energy management market.

Failure to meet customers' expectations or deliver expected technical performance could result in losses and negative publicity.

Customer engagements involve the installation of energy management equipment that we design to help our clients reduce energy/power consumption. We rely on outside contractors to install our EnergySaver products. Any defects in this equipment and/or its installation or any other failure to meet our customers' expectations could result in:

delayed or lost revenues due to adverse customer reaction;

requirements to provide additional products and/or services to a customer at no charge;

negative publicity regarding us and our products, which could adversely affect our ability to attract or retain customers; and

claims for substantial damages against us, regardless of our responsibility for such failure.

If sufficient additional funding is not available to us, the commercialization of our products and our ability to grow may be hindered.

Our operations have not generated positive cash flow since the inception of the Company in 1997. We have funded our operations through the issuance of common and preferred stock and secured debt. Our ability to continue to operate until our cash flow turns positive may

Table of Contents

depend on our ability to continue to raise funds through the issuance of equity or debt. If we are not successful in raising additional funds, we might have to significantly scale back or delay our growth plans, or possibly cease operations altogether. Any reduction or delay in our growth plans could materially adversely affect our ability to compete in the marketplace, take advantage of business opportunities and develop or enhance our products.

Raising additional capital or consummation of additional acquisitions through the issuance of equity or equity-linked securities could dilute your ownership interest in us.

We may need to obtain additional funds in the future to grow our product development, manufacturing, marketing and sales activities at the pace that we intend, or to continue to fund operating losses until our cash flow turns positive. If we determine that we do need to raise additional capital in the future and we are not successful in doing so, we might have to significantly scale back or delay our growth plans, reduce staff and delay planned expenditures on research and development and capital expenditures in order to continue as a going concern. Any reduction or delay in our growth plans could materially adversely affect our ability to compete in the marketplace, take advantage of business opportunities and develop or enhance our products.

If we receive additional funds through the issuance of equity securities or convertible debt securities, our existing stockholders will likely experience dilution of their present equity ownership position and voting rights. Depending on the number of shares issued and the terms and conditions of the issuance, new equity securities could have rights, preferences, or privileges senior to those of our common stock.

Failure to effectively market our energy management products could impair our ability to sell large quantities of these products.

One of the challenges we face in commercializing our energy management products is demonstrating the advantages of our products over more traditional products and competitive products. As we grow, we will need to further develop our marketing and sales force. In addition to our internal sales force, we rely on third parties to market and sell our products. We currently maintain a number of relationships and have a number of agreements with third parties regarding the marketing and distribution of our EnergySaver products and are dependent upon the efforts of these third parties in marketing and selling these products. Maintenance of these relationships is based primarily on an ongoing mutual business opportunity and a good overall working relationship. The current contracts associated with certain of these relationships allow the distributors to terminate the relationship upon 30 days written notice. Without these relationships, our ability to market and sell our EnergySaver products could be harmed and we may need to divert even more resources to increasing our internal sales force. If we are unable to expand our internal sales force and maintain our third party marketing relationships, our ability to generate significant revenues could be seriously harmed.

The distribution rights we have granted to third parties in specified geographic territories may make it difficult for us to grow our business in such territories if those distributors do not successfully market and support our products in those territories. We have in the past been, are

Table of Contents

now, and may in the future be, involved in disputes with distributors that have distribution rights in specified geographic territories, but are not achieving our goals. During 2000, we repurchased for cash and stock consideration the distribution rights from three distributors that were not meeting our sales goals. We may have to expend additional funds, incur debt or issue additional securities in the future to repurchase other distribution rights that we have granted or may grant in the future.

If our Virtual Negawatt Power Plan concept is unsuccessful, distribution of our EnergySaver product line may be impaired and our growth could suffer.

During 2001, we announced our Virtual Negawatt Power Plan concept. The VNPP is intended to allow a utility to remotely control commercial, industrial and government lighting systems over a managed and secure IP network. It is envisioned that through the use of the EnergySaver/GlobalCommander system, a utility will be able to reduce electric demand requirements during periods of peak demand, providing nearly instantaneous control, measurement and verification of load reduction. The successful implementation of the VNPP concept could significantly increase the sales and profitability of our EnergySaver product line. We recently announced an agreement with Commonwealth Edison to implement a 50-Megawatt VNPP system in northern Illinois. This agreement could result in total equipment and service revenue approaching \$20 million and therefore could have a significant impact on our operating results. While we have made significant progress toward implementing this program with ComEd, including initiating shipments of equipment, we still have a number of hurdles to clear before we can start recognizing revenue related to this program, including legal and financing issues, the failure to accomplish any one of which could delay or cancel the program. If our attempts to advance the VNPP concept are unsuccessful, our plans to significantly increase the distribution of our EnergySaver product line may not develop and our growth may be impaired.

If we do not successfully compete with others in the very competitive energy management market, we may not achieve profitability.

In the energy management market, we compete with other manufacturers of traditional energy management products that are currently used by our potential customers. Many of these companies have substantially greater financial resources, larger research and development staffs and greater manufacturing and marketing capabilities than us. Our competitors may provide energy management products at lower prices and/or with superior performance. If we are unable to successfully compete with conventional and new technologies our business may be materially harmed.

Product liability claims could result in losses and could divert our management's time and resources.

The manufacture and sale of our products creates a risk of product liability claims. Any product liability claims, with or without merit, could result in costly litigation and reduced sales, cause us to incur significant liabilities and divert our management's time, attention and resources. We do have product liability insurance coverage; however, there is no assurance that such insurance is adequate to cover all potential claims. The successful assertion of any such large claim against us could materially harm our liquidity and operating results.

Table of Contents

Our current internal manufacturing capacity is limited and if demand for our products increases significantly and we are unable to increase our capacity quickly and efficiently our business could suffer.

Our EnergySaver products are manufactured at our facilities. To be financially successful, we must manufacture our products, including our EnergySaver products, in substantial quantities, at acceptable costs and on a timely basis. While we have produced over 900 EnergySaver units over the past six years, we have never approached what we believe is our production capacity. To produce larger quantities of our EnergySaver products at competitive prices and on a timely basis, we will have to further develop our processing, production control, assembly, testing and quality assurance capabilities. We may also have to hire contract manufacturers and outsource the manufacturing of some or all of our products. We have had discussions with several potential contract manufacturers and they have produced units on a trial basis, but their ability to deliver significant quantities of product in a timely manner is still unproven. We may be unable to manufacture our EnergySaver products in sufficient volume and may incur substantial costs and expenses in connection with manufacturing larger quantities of our EnergySaver products. If we are unable to make the transition to large-scale commercial production successfully, our business will be negatively affected. We could encounter substantial difficulties if we decide to outsource the manufacturing of our products, including delays in manufacturing and poor production quality.

Our ability to continue to pay dividends on our preferred stock with additional shares of preferred stock is limited, and once cash dividends are required to begin, the dividend rate will increase every six months.

The last dividend payment date on which we will be permitted to pay dividends on our Series A Convertible Preferred stock with additional shares of Series A Convertible Preferred stock is September 30, 2004. The last such date applicable with respect to the Series C Convertible Preferred stock is June 30, 2005. The last such date applicable with respect to the Series D Convertible Preferred stock is June 30, 2006. Beginning with December 31, 2004 (in the case of Series A), September 30, 2005 (in the case of Series C) and September 30, 2006 (in the case of Series D Preferred), we will be required to begin paying dividends on our preferred stock in cash. In addition, once dividends become payable in cash for a series of preferred stock, the dividend rate will increase by 1/2 of 1% every six months, up to a maximum rate of 15% per annum, for such series of our preferred stock. Payment of such cash dividends could strain our liquidity and restrict or severely limit our ability to carry out our business objectives. Failure to pay the dividends in cash when required would constitute an event of default under the related agreements.

Table of Contents

Risks Related to this Offering

Because of the current market price of our common stock, in conjunction with the fact that we are a relatively small company with a history of operating losses, the future trading market for our stock may not be active on a consistent basis, which may make it difficult for you to sell your shares.

The trading volume of our stock in the future will depend in part on our ability to increase our revenue and reduce or eliminate our operating losses. If an active and liquid trading market does not exist for our common stock on AMEX, you may have difficulty selling your shares.

The need to raise additional capital will most likely be dilutive to our current stockholders and could result in new investors receiving rights that are superior to those of existing stockholders.

Since September 2001, we have issued 2,787,973 shares of our preferred stock, which is convertible into our common stock at the ratio of ten (10) shares of common stock for each share of preferred stock. These shares of preferred stock are accruing dividends at the rate of 10% per year and during the first three (3) years following issuance we can pay these dividends either in cash or additional shares of preferred stock. After the third anniversary of initial issuance of each of our series of preferred stock the dividend rate for such series increases by 1/2% of 1% every six months to a maximum rate of 15% and we are required to pay the dividends in cash. To date we have issued 537,973 shares of convertible preferred stock in satisfaction of accrued dividends. The preferred stockholders all have rights that are superior to the rights of our common stockholders, including:

a liquidation preference of \$20 per share;

special approval rights in respect of certain actions by the Company, including any issuance of shares of capital stock by the Company (other than to pay dividends on the preferred and under certain other limited exceptions such as conversion of outstanding convertible securities) and any acquisition, sale, merger, joint venture, consolidation or reorganization involving the Company or any of its subsidiaries;

a conversion price that may be below the market price of our common stock;

the Series A Preferred has the right to elect up to four directors;

the right to vote with the holders of common stock on an as converted basis on all matters on which holders of our common stock are entitled to vote, except with respect to the election of directors or as otherwise provided by law;

a right of first offer on the sale of equity by the Company in a private transaction; and

anti-dilution protection that would adjust the conversion price on their preferred shares and the exercise price on their warrants in the event we issue equity at a price which is less than the conversion price or exercise price of their securities.

Table of Contents

These rights associated with our preferred stock are substantially different than the rights of our common stockholders and may materially decrease the value of our common stock.

Joseph Marino, Mr. Richard Kiphart and DYDX may be able to control matters requiring stockholder approval or could cause our stock price to decline through future sales because they beneficially own a large percentage of our common stock.

There are 34,922,021 shares of our common stock outstanding as of February 17, 2004, of which Joseph C. Marino, either directly or through an affiliate, beneficially owns approximately 22%, Mr. Richard Kiphart owns approximately 20% and DYDX Consulting, LLC beneficially owns approximately 10% (each of the aforementioned percentages include stock options that are currently exercisable by Mr. Kiphart, DYDX or Mr. Marino and/or his affiliate). As a result of their significant ownership, Mr. Marino, Mr. Kiphart and DYDX have the ability to exercise a substantial and possibly controlling influence over our business and corporate actions requiring stockholder approval, including the election of our directors (other than those directors to be chosen by the holders of the Series A Convertible Preferred Stock), a sale of substantially all of our assets, a merger between us and another entity or an amendment to our certificate of incorporation. This concentration of ownership could delay, defer or prevent a change of control and could adversely affect the price investors might be willing to pay in the future for shares of our common stock. Also, in the event of a sale of our business, Mr. Marino and Mr. Kiphart and DYDX could seek to receive a control premium to the exclusion of other stockholders.

A significant percentage of the outstanding shares of our common stock, including the shares beneficially owned by Mr. Marino, Mr. Kiphart or DYDX, can be sold in the public market from time to time, subject to limitations imposed by Federal securities laws. The market price of our common stock could decline as a result of sales of a large number of our presently outstanding shares of common stock by Mr. Marino, Mr. Kiphart, DYDX or other stockholders in the public market or due to the perception that these sales could occur. This could also make it more difficult for us to raise funds through future offerings of our equity securities.

Provisions of our charter and by-laws, in particular our blank check preferred stock, could discourage an acquisition of our company that would benefit our stockholders.

Provisions of our charter and by-laws may make it more difficult for a third party to acquire control of our company, even if a change in control would benefit our stockholders. In particular, shares of our preferred stock have been issued and may be issued in the future without further approval of our stockholders (other than holders of our preferred stock) and upon those terms and conditions, and having those rights, privileges and preferences, as our Board of Directors may determine and which are acceptable to the holders of our outstanding preferred stock. The rights of the holders of our common stock will be subject to, and may be adversely affected by, the rights of the holders of any of our preferred stock which is currently outstanding or which may be issued in the future. The issuance of our preferred stock, while providing desirable flexibility in pursuing possible acquisitions and other corporate purposes, could have the effect of making it more difficult for a third party to acquire control of us. This could limit the price that certain investors might be willing to pay in the future for shares of our common stock and discourage these investors from acquiring a majority of our common stock. In addition,

Table of Contents

the price that future investors may be willing to pay for our common stock may be lower due to the conversion price and exercise price granted to investors in any such private financing.

USE OF PROCEEDS

We will not receive any of the proceeds from any sale of the shares of common stock offered by this prospectus by the selling stockholders. If and when the selling stockholders exercise their options and warrants, we will receive up to \$4,856,274.60 from the issuance of shares of common stock to the selling stockholders. Under such options and warrants, the selling stockholders have exercise prices per share of common stock ranging from \$0.92 to \$1.23. To the extent the selling stockholders exercise their options or warrants, we intend to use the proceeds we receive for general corporate purposes.

PLAN OF DISTRIBUTION

We are registering the shares of common stock issued or issuable upon exercise of options and warrants previously issued by us to permit the resale of those shares of common stock from the date of this prospectus until April 23, 2004. We will not receive any of the proceeds from the sale by the selling stockholders of the shares of common stock, although we may receive up to \$4,856,274.60 in connection with the issuance of the shares of common stock upon exercise of such options and warrants. We will bear all fees and expenses incident to the registration of the shares of common stock.

The selling stockholders may sell all or a portion of the common stock subject to this prospectus and offered hereby from time to time directly or through one or more underwriters, broker-dealers or agents. If the common stock is sold through underwriters or broker-dealers, the selling stockholders will be responsible for underwriting discounts or commissions or agent's commissions. Certain of the selling stockholders are also subject to stock trading agreements that restrict the amount of their public sales on any given day and within certain longer periods of time. The common stock may be sold in one or more transactions at fixed prices, at prevailing market prices at the time of the sale, at varying prices determined at the time of sale, or at negotiated prices. These sales may be effected in transactions, which may involve crosses or block transactions,

- on any national securities exchange or quotation service on which the securities may be listed or quoted at the time of sale,
- in the over-the-counter market,

Table of Contents

- in transactions otherwise than on these exchanges or systems or in the over-the-counter market,
- through the writing of options, whether such options are listed on an options exchange or otherwise, or
- by any other legally available means.

If the selling stockholders effect such transactions by selling shares of common stock to or through underwriters, broker-dealers or agents, such underwriters, brokers-dealers or agents may receive commissions in the form of discounts, concessions or commissions from the selling stockholders or commissions from purchasers of the shares of common stock for whom they may act as agent or to whom they may sell as principal (which discounts, concessions or commissions as to particular underwriters, brokers-dealers or agents may be in excess of those customary in the types of transactions involved). In connection with sales of the common stock or otherwise, the selling stockholders may enter into hedging transactions with broker-dealers, which may in turn engage in short sales of the common stock in the course of hedging in positions they assume. The selling stockholders may also sell shares of common stock short and deliver shares of common stock covered by this prospectus to close out short positions, provided that the short sale is made after the registration statement is declared effective and a copy of this prospectus is delivered in connection with the short sale. The selling stockholders may also loan or pledge shares of common stock to broker-dealers that in turn may sell such shares under this prospectus. Our directors and executive officers are not permitted to make short sales under our insider trading compliance program or under Section 16 of the Securities Exchange Act.

The selling stockholders and any broker-dealer participating in the distribution of the shares of common stock may be deemed to be underwriters within the meaning of the Securities Act, and any commissions paid, or any discounts or concessions allowed to any such broker-dealer may be deemed to be underwriting commissions or discounts under the Securities Act. At the time a particular offering of the shares of common stock is made, a prospectus supplement, if required, will be distributed which will set forth the aggregate amount of shares of common stock being offered and the terms of the offering, including the name or names of any broker-dealers or agents, any discounts, commissions and other terms constituting compensation from the selling stockholders and any discounts, commissions or concessions allowed or reallocated or paid to broker-dealers.

Under the securities laws of some states, the shares of common stock may be sold in such states only through registered or licensed brokers or dealers. In addition, in most states the shares of common stock may not be sold unless such shares have been registered or qualified for sale in such state or an exemption from registration or qualification is available and is complied with.

There can be no assurance that any selling stockholders will sell any or all of the shares of common stock registered pursuant to the registration statement of which this prospectus forms a part.

Table of Contents

The selling stockholders and any other person participating in such distribution will be subject to applicable provisions of the Exchange Act and the rules and regulations thereunder, including, without limitation, Regulation M of the Exchange Act, which may limit the timing of purchases and sales of any of the shares of common stock by the selling stockholders and any other participating person. Regulation M may also restrict the ability of any person engaged in the distribution of the shares of common stock to engage in market-making activities with respect to the shares of common stock.

All of the foregoing may affect the marketability of the shares of common stock and the ability of any person or entity to engage in market-making activities with respect to the shares of common stock.

We will pay all expenses of the registration of the shares of common stock estimated to be \$28,537 in total, including, without limitation, Securities and Exchange Commission filing fees, expenses of compliance with state securities or blue sky laws and transfer agent fees relating to sales pursuant to this prospectus; provided, however, that the selling stockholders will pay all underwriting discounts and selling commissions, if any.

Once sold under the registration statement, of which this prospectus forms a part, the shares of common stock will be freely tradable in the hands of persons other than our affiliates.

SELLING STOCKHOLDERS

The shares of common stock being offered by the selling stockholders represent 17,660,651 shares that have been issued or are issuable upon exercise of options and warrants owned by the selling stockholders. We are registering the shares so that the selling stockholders may offer the shares for resale from time to time, subject to the terms of specific stock trading agreements to which certain selling stockholders are parties. In addition, securities which have been acquired directly from the Company in a transaction not involving any registered public offering are usually considered restricted securities. The sale of restricted securities is generally restricted by the Securities Act of 1933, as amended. Rule 144 under the Securities Act of 1933 provides certain conditions under which restricted securities may be sold. During any 90 day period the sale of restricted securities by those shareholders who are deemed to be affiliates of the Company is limited by Rule 144 to the greater of one percent (1%) of the outstanding shares of the Company's common stock, or the average weekly trading volume of the Company's common stock during the preceding four week period. In addition, for any sale by a shareholder who is deemed to be an affiliate of the Company, the restricted securities must have been held by the selling stockholder for at least one year and they must be sold in brokers transactions (as defined in Rule 144). The foregoing trading restrictions of Rule 144 continue to apply to affiliates for a period of three months following the date on which the stockholder no longer is considered an affiliate of the Company. The Securities and Exchange Commission defines affiliate, for the purposes of Rule 144, as a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with the issuer. Directors and executive officers are generally deemed to be affiliates. Historically, ownership of at least 10% of the common stock was regarded as evidence of

Table of Contents

control, however the Securities and Exchange Commission no longer subscribes to that standard as a bright line test. As a holder of at least 10% of our common stock, Pino Manufacturing, Inc., DYDX Consulting LLC, and Mr. Richard Kiphart could each be affiliates subject to such limitations. All of the shares of common stock being offered are restricted securities, but for those selling stockholders which are not affiliates of the Company, Rule 144 permits sales after the restricted securities have been held for one year.

The owners of some of the shares being registered herein are parties to various trading agreements which limit the number of shares they may sell in any publicly traded transaction on any given day and within certain longer periods of time. The trading restrictions imposed by the trading agreements with respect to sales in publicly traded transactions do not transfer to a buyer of the securities being offered hereby.

The table below lists the selling stockholders and other information regarding the beneficial ownership of the common stock by each of the selling stockholders. The first column lists, for each selling stockholder, the number of shares of common stock held by such stockholder including shares issuable (pursuant to options or warrants) to such stockholder. The second column lists the shares of common stock (including shares issued or issuable upon exercise of options or warrants) being offered by this prospectus by each selling stockholder. The column titled Ownership After Offering assumes the sale of all of the shares offered by each selling stockholder, although each selling stockholder may sell all, some or none of his, her or its shares in this offering.

Table of Contents

Selling Stockholder (25)	Ownership Prior to Offering		Securities Being Offered	Ownership After Offering	
	Shares	%		Shares	%
Pam Aronson	107,629	*	107,629	0	0%
Aftbird & Co., nominee for The Munder Power Plus Fund, A series of Munder Series Trust (formerly a series of the Munder Funds, Inc.)	1,324,695 ⁽¹⁾	3.801%	1,324,695 ⁽¹⁾	0	0%
Barretto Pacific Corporation	20,000	*	20,000	0	0%
Capstone Investments	50,000 ⁽²⁾	*	50,000 ⁽²⁾	0	0%
Carson Conant Trust	226,153 ⁽³⁾	*	226,153 ⁽³⁾	0	0%
Chappell Conant Trust	226,153 ⁽⁴⁾	*	226,153 ⁽⁴⁾	0	0%
Marilee Conant	852,015 ⁽⁵⁾	2.458%	852,015 ⁽⁵⁾	0	0%
Victor Conant	852,015 ⁽⁶⁾	2.458%	852,015 ⁽⁶⁾	0	0%
Jason Diamond	50,000 ⁽⁷⁾	*	50,000 ⁽⁷⁾	0	0%
DYDX Consulting LLC ⁽⁸⁾	3,439,500 ⁽⁹⁾	9.711%	947,546 ⁽⁹⁾	2,491,954	7.229%
Engle Group	5,000	*	5,000	0	0%
Greg Hawkins	20,000	*	20,000	0	0%
Henning Capital	40,000 ⁽¹⁰⁾	*	40,000 ⁽¹⁰⁾	0	0%
Richard Kiphart	8,132,243 ⁽¹¹⁾	19.338%	582,403 ⁽¹²⁾	7,549,840	18.007%
Kevin McKneely	1,725,075 ⁽¹³⁾	4.950%	1,725,075 ⁽¹³⁾	0	0%
Patrick McKneely	215,639 ⁽¹⁴⁾	*	215,639 ⁽¹⁴⁾	0	0%
Ryan McKneely	215,639 ⁽¹⁵⁾	*	215,639 ⁽¹⁵⁾	0	0%
Earl Nightingale	107,629 ⁽¹⁶⁾	*	107,629 ⁽¹⁶⁾	0	0%
Pino Manufacturing LLC ⁽¹⁷⁾	7,954,852 ⁽¹⁸⁾	21.992%	7,954,852 ⁽¹⁸⁾	0	0%
R&R Investments	50,000 ⁽¹⁹⁾	*	50,000 ⁽¹⁹⁾	0	0%
William Ritger	27,000	*	27,000	0	0%
SF Capital Partners	2,876,136				