

ELECTRIC CITY CORP  
Form POS AM  
December 07, 2001

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As filed with the Securities and Exchange Commission on December 7, 2001

Registration No. 333-67642

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## SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

**Post-Effective**

**Amendment No. 1 to**

**FORM SB-2**

**REGISTRATION STATEMENT**

**Under  
the Securities Act of 1933**

**ELECTRIC CITY CORP.**

(Name of Small Business Issuer in its Charter)

**Delaware**  
(State or other jurisdiction of  
incorporation or organization)

**3699**  
(Primary Standard Industrial  
Classification Code Number)

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

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

(Address, and Telephone Number of Principal Executive Offices)

**GREG RICE, ESQ.**

**General Counsel**

**Electric City Corp., 1280 Landmeier Road, Elk Grove Village, Illinois, 60007, (847) 437-1666**

(Name, Address, and Telephone Number of Agent for Service)

Approximate Date of Commencement of Proposed sale to the Public: From time to time after the effective date of this registration statement.

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, check the following box. /x/

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. //

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. /x/ Registration No. 333-67642

If this form is a post-effective amendment filed pursuant to Rule 462(d) 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. //

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

**PROSPECTUS**

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

**ELECTRIC CITY CORP.**

**4,491,097 Shares of Common Stock**

The selling stockholders are offering up to 4,491,097 shares of our common stock, par value \$0.0001 per share. The selling stockholders can sell these shares on any exchange on which the shares are listed or in privately negotiated transactions, whenever they decide and at the prices they set. We may issue up to 1,495,000 of these shares upon exercise of options and warrants 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 December 5, 2001, the closing sale price for shares of our common stock was \$1.27 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.electriccityecc.com>.

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*Investing in our common stock involves risks described beginning on page 3.*

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*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 December 7, 2001.

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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 otherwise indicated or the context otherwise requires, the terms "we," "us," "our," "the Company" and "Electric City" mean Electric City Corp., and the term "common stock" means Electric City Corp.'s common stock, par value \$0.0001 per share.

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### 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 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 2001 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, 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 commercial scale development of products and technologies to satisfy customers' demands and requirements, 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 (6%) percent of our issued and outstanding common stock to the approximately 330 shareholders 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 custom electric switchgear. 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 street lighting and parking lot lighting. In addition to our EnergySaver system, we manufacture, through our subsidiary Switchboard Apparatus, Inc. ("Switchboard Apparatus"), custom electric switchgear, including our TP3 line of prepackaged electrical distribution panels designed for use in telecommunications and Internet network centers.

Our EnergySaver product line is manufactured at our facilities in Elk Grove Village, Illinois, with manufacturing and assembly scaled to order demand. Our Switchgear product line, including the TP3 product line, is manufactured at the facilities of Switchboard Apparatus in Broadview, Illinois.

Giorgio Reverberi has patented in the U.S and Italy certain technologies underlying the EnergySaver products. We have entered into a license agreement with Mr. Reverberi 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 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 4,491,097 shares of our common stock.

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Terms of the Offering. We have agreed to use our best efforts to keep this registration statement effective until all registered shares have been sold or may be sold without volume restrictions pursuant to the Securities Act of 1933.

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, including working capital, marketing, recruiting and hiring additional personnel, and consolidating our manufacturing facilities.

American Stock Exchange Symbol. ELC

## 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.

***We have incurred 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 consolidating our manufacturing facilities; (2) for research and development; and (3) to acquire complementary products, technologies and services. To the extent that our revenues do not increase as quickly as these costs and expenditures, our results of operations and liquidity could be materially adversely affected. If we experience slower than anticipated revenue growth or if our operating expenses exceed our expectations, we may not achieve profitability. Even if we achieve profitability in the future, we may not be able to sustain it.

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***Our independent certified public accountants have issued a "going concern" opinion raising doubt about our financial viability.***

We are currently experiencing a significant lack of liquidity. As a result of our continuing losses and significant lack of liquidity, our independent certified public accountants, BDO Seidman, LLP, issued a "going concern" opinion in connection with their audit of our financial statements for the year ending December 31, 2000. This opinion expressed substantial doubt as to our ability to continue as a going concern. The going concern opinion could also have an adverse impact on our ability to execute the business plan, result in the reluctance on the part of certain suppliers to do business with us, or result in the loss of new business due to potential customers' concern about our ability to deliver product.

***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 less of a 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 Giorgio Reverberi, who holds a U.S. patent and who has applied for several patents in other countries. Pursuant to the terms of the license, Mr. Reverberi granted to us 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, South America and parts of Africa. However, the exclusive rights that we received from Mr. Reverberi 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 in or around November 2017. Mr. Reverberi may terminate our license agreement 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 with Mr. Reverberi is terminated, that could impact our ability to manufacture, sell or otherwise commercialize products in certain countries in the event that Mr. Reverberi has valid patent(s) in those countries with one or more patent claims that cover those products.

***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, 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

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market. Our license to use Mr. Reverberi's patents may have little or no value to us if Mr. Reverberi's 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 such modifications might not be successful to avoid infringing on the intellectual property rights of third parties.

Claims of patent infringement, 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. Reverberi) 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, and Brian Kawamura, our President and Chief Operating Officer, because they are critical to obtaining and retaining customers and managing our rapid growth. 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 power 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 have experienced rapid growth, which has been primarily through acquisitions of other businesses, and are subject to the risks inherent in the expansion and growth of a business enterprise. This significant growth, if sustained, will continue to place a substantial 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:

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 will not be adequate if we continue to grow at our current pace and will need to be modified and enhanced. The skills of management currently in place may not be adequate if we continue to grow at our current pace.

***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 and/or increase energy/power reliability. 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.

***The cyclical nature of the construction industry could negatively affect the sales of our products.***

The construction industry is cyclical and is frequently affected by changes in general and local economic conditions, including:

employment levels;

availability of financing for customers;

interest rate fluctuations; and

consumer confidence.

A decline in construction activity may decrease our ability to sell our products. We have no control over these economic conditions. Any significant downturn in construction activity could reduce demand for our products and could affect the sales of our products.

***If sufficient additional funding is not available to us, the commercialization of our products and our ability to grow at a rapid pace may be hindered; the raising of additional capital through the issuance of equity or equity-linked securities would dilute your ownership interest in us.***

We may need to obtain additional funds to grow our product development, manufacturing, marketing and sales activities at the pace that we intend. If we are not successful in raising additional funds, 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 operating 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, 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. On July 31, 2001, the Company entered into a securities purchase agreement (subject to shareholder approval) with five investors. This transaction was approved by our shareholders at our 2001 annual meeting held on August 30, 2001 and on September 7, we closed the issuance of our Series A Convertible Preferred Stock for gross proceeds of \$16,000,000 for the issuance of 1,600,000 shares of our Series A Convertible Preferred Stock, 320,864 shares of its common stock, one year warrants to purchase an additional 400,000 shares of Series A Convertible Preferred Stock at \$10 per share and seven year warrants to

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purchase 3,000,000 additional shares of common stock at \$1 per share. On November 29, 2001, the Company closed on an additional issuance of its Series A Convertible Preferred Stock for gross proceeds of \$3,000,000 for the issuance of 300,000 shares of its Series A Convertible Preferred Stock, 45,122 shares of its common stock, one year warrants to purchase an additional 75,000 shares of its Series A Convertible Preferred Stock at \$10 per share and seven year warrants to purchase an additional 421,875 shares of its common stock at \$1 per share. (See "Description of Securities - Additional Issuance of Series A Preferred Stock"). This preferred stock has a conversion price that is below the current market price of our common stock and will enable the investors to nominate and elect up to four directors to our board of directors.

***We need to effectively market our energy management products in order to successfully 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<sup>®</sup> products and are substantially 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<sup>®</sup> products would be harmed and we would 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 will 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, and may in the future be, involved in disputes with distributors that have distribution rights in specified geographic territories, but are achieving sales results which do not meet goals. We recently repurchased for cash and stock consideration the distribution rights for Arizona, Colorado, Florida, Georgia, Michigan, Nebraska, North Carolina, Ohio, South Carolina and Virginia 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.

***We do not know if our "Virtual Negawatt Power Plant" concept or our "Shared Savings" program will be successful.***

We recently announced our "Virtual Negawatt Power Plant" concept and our "Shared Savings" program. We plan to advance the distribution of our EnergySaver<sup>®</sup> products and increase the profitability of our EnergySaver<sup>®</sup> product line through these new projects. We are at the very early stages and have not yet begun to implement these projects, and we have no experience in this area. As a result, we do not know if these projects will be successful. If these projects are unsuccessful, our plans to significantly increase the distribution of our EnergySaver<sup>®</sup> product line, especially in markets where electricity has been deregulated, may not develop and our growth may be impaired.

***If our management fails to properly identify companies to acquire and to effectively negotiate the terms of these acquisition transactions, our growth may be impaired.***

Our recent growth is due in large part to acquisitions. Our future growth may depend, in part, on our ability to identify opportunities to acquire companies with complementary technologies, products

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and/or services and to successfully negotiate the terms of any acquisitions we want to make. Our management, including our Board of Directors, will have discretion in identifying and selecting companies to be acquired by us and in structuring and negotiating these acquisitions. In general, our common stockholders will not have the opportunity to approve these acquisitions (The holders of Series A Convertible Preferred Stock have certain rights to approve acquisitions - See "Description of Securities - Series A Convertible Preferred Stock"). In addition, in making acquisition decisions, we will rely, in part, on financial projections developed by our management and the management of potential target companies. These projections will be based on assumptions and subjective judgments. The actual operating results of any acquired company or the combination of us and an acquired company may significantly fall short of these projections.

We may be unable to acquire companies that we identify for various reasons, including:



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our inability to interest such companies in a proposed transaction;

our inability to agree on the terms of an acquisition;

incompatibility between our management and management of a target company; and

our inability to obtain required approvals of the holders of the Series A Convertible Preferred Stock.

If we cannot consummate acquisitions on a timely basis or agree on terms at all, or if we cannot continue to acquire companies with complementary technologies, products and/or services on terms acceptable to us, our growth may be impaired.

***Our growth may be impaired and our current business may suffer if we do not successfully address risks associated with acquisitions.***

During our limited operating history, we have acquired a company, Switchboard Apparatus, which forms the core of our switchgear business unit. Our future growth may depend, in part, upon our ability to successfully acquire other complementary businesses. We may encounter problems associated with such acquisitions, including the following:

difficulties in integrating acquired operations and products with our existing operations and products;

difficulties in meeting operating expectations for acquired businesses;

diversion of management's attention from other business concerns;

adverse impact on earnings of amortization or write-offs of goodwill and other intangible assets relating to acquisitions; and

issuances of equity securities that may be dilutive to existing stockholders to pay for acquisitions.

***Expanding our international operations will be difficult and our failure to do so successfully or in a cost-effective manner could have a material adverse effect on our business, operating results and financial condition.***

We have recently begun marketing and selling our products in Mexico and plan to expand our international operations and enter new international markets, such as Canada and Brazil. Under our license with Messrs. Reverberi and Marino, Mr. Reverberi granted to us exclusive rights to manufacture and sell products containing his patented load reduction technology in North America, South America and parts of Africa. Our future expansion into international markets will require significant management attention and financial resources and could adversely affect our business, operating results and financial condition. In order to expand international sales successfully, we must establish additional

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foreign operations and joint ventures, hire additional personnel and recruit additional international distributors. We may not be able to do so in a timely or cost efficient manner, and our failure to do so may limit our international sales growth.

There are certain risks inherent in international business activities including:

changes in foreign currency exchange rates;

tariffs and other trade barriers;

costs of localizing products for foreign countries;

lack of acceptance of localized products in foreign countries;

longer accounts receivable payment cycles;

difficulties in managing international operations;

difficulties enforcing agreements in foreign jurisdictions;

potentially adverse tax consequences, including restrictions on repatriating earnings;

weaker intellectual property protection in foreign countries; and

the burden of complying with a wide variety of foreign laws.

These factors may have a material adverse effect on our future international sales and, consequently, our business, operating results and financial condition.

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

In the energy management market, we compete with other manufacturers of switching and monitoring systems and 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. Failure of our products to reduce energy usage and cost sufficiently and reliably to achieve commercial acceptance or to otherwise successfully compete with conventional and new technologies would materially harm our business.

***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.

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***Our limited commercial manufacturing experience may adversely affect our ability to manufacture large quantities of our EnergySaver products at competitive prices and on a timely basis; we may have to outsource manufacturing.***

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. We have only produced limited quantities of our EnergySaver products for commercial installations and for use in development and customer trial programs. 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, but none have been engaged to manufacture our products. 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 manufacture our products on a timely basis may be hindered if we are unable to negotiate a new collective bargaining agreement on terms that are satisfactory to us.***

Of our 45 employees currently engaged in manufacturing, 30 are covered by either of two collective bargaining agreements. Both of our collective bargaining agreements expire on May 31, 2002. New collective bargaining agreements may not be reached when the current agreements expire which could lead to a work stoppage or strike. A prolonged work stoppage or strike by some or all of our manufacturing employees would have a material adverse effect on our ability to manufacture and sell products ordered by customers. In addition, to avoid a prolonged work stoppage or strike, we may have to enter into new collective bargaining agreements on terms that are not satisfactory to us, including the lack of a no strike provision.

#### **Risks Related to this Offering**

***Because our common stock was only recently listed on AMEX, an active trading market may not develop after this offering, which may make it difficult for you to sell your shares.***

Our common stock began trading on the American Stock Exchange on December 12, 2000. Previously our securities traded in the over-the-counter market on the OTC Bulletin Board. If an active and liquid trading market does not exist for our common stock on AMEX, you may have difficulty selling your shares.

***Future sales of our common stock could cause our stock price to decline.***

There are 31,113,841 shares of our common stock outstanding, of which approximately 59% are beneficially owned, collectively, by Joseph C. Marino, one of our founders, and by NCVC, L.L.C., an affiliate of two of our directors ("NCVC") and by DYDX Consulting, LLC ("DYDX"), an affiliate of another of our founders (this percentage includes stock options that are currently exercisable). A significant percentage of the outstanding shares of our common stock, including the shares beneficially owned by Mr. Marino and NCVC, can be sold in the public market from time to time, subject to limitations imposed by Federal securities laws and by trading agreements entered into with us. 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, NCVC, DYDX or other stockholders in the public

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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.

***Joseph Marino and NCVC and DYDX can control matters requiring stockholder approval because they beneficially own a large percentage of our common stock.***

Joseph C. Marino beneficially owns approximately 29% of our currently outstanding common stock. NCVC beneficially owns approximately 17% of our currently outstanding common stock, and DYDX beneficially owns approximately 13% of our currently outstanding common stock (each of the aforementioned percentages includes stock options that are currently exercisable). Victor Conant and Kevin P. McEneely, of which Mr. McEneely is one of our directors, share voting and investment power with respect to the shares of common stock held by NCVC. As a result of their significant ownership, Mr. Marino and NCVC and DYDX have the ability to exercise a controlling influence over our business and corporate actions requiring stockholder approval, including the election of our directors, 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 NCVC and DYDX could elect to receive a control premium to the exclusion of other stockholders.

***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 stockholder approval and upon those terms and conditions, and having those rights, privileges and preferences, as our Board of Directors may determine. 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

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common stock and discourage these investors from acquiring a majority of our common stock. In addition, 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.

### *Holder of the Series A Convertible Preferred Stock have the right to approve certain actions.*

On July 31, 2001, the Company entered into a securities purchase agreement (subject to shareholder approval) with five investors (the "Initial Holders"). This transaction was approved by our shareholders at our 2001 annual meeting held on August 30, 2001 and the closing of the transaction occurred on September 7, 2001 under which the Company received \$16,000,000 in aggregate gross proceeds for the issuance of 1,600,000 shares of its Series A Convertible Preferred Stock, 320,864 shares of its common stock, one year warrants to purchase an additional 400,000 shares of its Series A Convertible Preferred Stock at \$10 per share and seven year warrants to purchase an additional 3,000,000 shares of its common stock at \$1 per share. (See "Description of Securities Series A Preferred Stock"). In addition, on November 29, 2001, the Company entered into a securities purchase agreement with Leaf Mountain Company, LLC, which transaction was also approved by our shareholders at our 2001 annual meeting. This transaction closed on November 29, 2001 under which the Company received \$3,000,000 in aggregate gross proceeds for the issuance of 300,000 shares of its Series A Convertible Preferred Stock, 45,122 shares of its common stock, one year warrants to purchase

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an additional 75,000 shares of its Series A Convertible Preferred Stock at \$10 per share and seven year warrants to purchase an additional 421,875 shares of its common stock at \$1 per share. (See "Description of Securities Additional Issuance of Series A Preferred Stock").

The Initial Holders of the Series A Convertible Preferred Stock have the right to elect up to four directors (out of a board of 12). Except for the election of directors or as otherwise provided by law, the Initial Holders, along with Leaf Mountain, who is entitled to vote for the election of directors, are entitled 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 (however, if less than 200,000 shares of Series A Convertible Preferred are outstanding, unless otherwise provided by law, each holder of record of Series A Convertible Preferred Stock will have the right to vote on an "as converted" basis together with the holders of common stock on all matters on which holders of common stock are entitled to vote, including the election of directors). In addition, the holders of the Series A Convertible Preferred Stock are entitled to special approval rights in respect of certain actions by the Company, including any issuance of shares of capital stock by the Company and any acquisition, sale, merger, joint venture, consolidation or reorganization involving the Company or any of its subsidiaries. As a result of these voting and special approval rights, the holders of the Series A Convertible Preferred Stock have the ability to exercise a controlling influence over our actions requiring their approval, which 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. In addition, 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 the investors in the Series A Convertible Preferred Stock financing.

### **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. If and when the selling stockholders exercise their options and warrants, we will receive up to \$4,066,500 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 ranging from \$1.36 to \$5.50. 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 have agreed to register for public resale shares of our common stock which have been issued to the selling stockholders or may be issued in the future to selling stockholders upon the exercise of options or warrants. We have agreed to use our best efforts to keep this registration statement effective until all such shares registered under the applicable registration statement have been sold or may be sold without volume restrictions pursuant to Rule 144 under the Securities Act. The aggregate proceeds to the selling stockholders from the sale of shares offered pursuant to this prospectus will be the prices at which such securities are sold, less any commissions. The selling stockholders may choose to not sell any or all of the shares of our common stock offered pursuant to this prospectus.

The selling stockholders may, from time to time, sell all or a portion of the shares of our common stock at fixed prices, at market prices prevailing at the time of sale, at prices related to such market prices or at negotiated prices. The selling stockholders may offer their shares of our common stock at various times in one or more of the following transactions:

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on any national securities exchange or market on which our common stock may be listed at the time of sale;

in an over-the counter market in which the shares are traded;

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through block trades in which the broker or dealer so engaged will attempt to sell the shares as agent, but may purchase and resell a portion of the block as principal to facilitate the transaction;

through purchases by a broker or dealer as principal and resale by such broker or dealer for its account pursuant to this prospectus;

in ordinary brokerage transactions and transactions in which the broker solicits purchasers;

through options, swaps or derivatives;

in privately negotiated transactions;

in transactions to cover short sales; and

through a combination of any such methods of sale.

The selling stockholders may also sell their shares of our common stock in accordance with Rule 144 under the Securities Act, rather than pursuant to this prospectus.

The selling stockholders may sell their shares of our common stock directly to purchasers or may use brokers, dealers, underwriters or agents to sell such shares. In effecting sales, brokers and dealers engaged by the selling stockholders may arrange for other brokers or dealers to participate. Brokers or dealers may receive commissions, discounts or concessions from a selling stockholder or, if any such broker-dealer acts as agent for the purchaser of such shares, from a purchaser in amounts to be negotiated. Such compensation may, but is not expected to, exceed that which is customary for the types of transactions involved. Broker-dealers may agree with a selling stockholder to sell a specified number of such shares at a stipulated price per share, and, to the extent such broker-dealer is unable to do so acting as agent for a selling stockholder, to purchase as principal any unsold shares at the price required to fulfill the broker-dealer commitment to the selling stockholders. Broker-dealers who acquire shares as principal may thereafter resell such shares from time to time in transactions which may involve block transactions and sales to and through other broker-dealers, including transactions of the nature described above, in the over-the-counter market or otherwise, at prices and on terms then prevailing at the time of sale, at prices then related to the then-current market price or in negotiated transactions. In connection with such resales, broker-dealers may pay to or receive from the purchasers of such shares commissions as described above.

The selling stockholders and any broker-dealers or agents that participate with the selling stockholders in sales of their shares of our common stock may be deemed to be "underwriters" within the meaning of the Securities Act of 1933 in connection with such sales. In such event, any commissions received by such broker-dealers or agents and any profit on the resale of such shares purchased by them may be deemed to be underwriting commissions or discounts under the Securities Act of 1933.

From time to time the selling stockholders may engage in short sales, short sales against the box, puts, calls and other hedging transactions in our securities, and may sell and deliver their shares of our common stock in connection with such transactions or in settlement of securities loans. These transactions may be entered into with broker-dealers or other financial institutions. In addition, from time to time a selling stockholder may pledge its shares pursuant to the margin provisions of its customer agreements with its broker-dealer. Upon default by a selling stockholder, the broker-dealer or financial institution may offer and sell such pledged shares from time to time.

We are required to pay all fees and expenses incident to the registration of the shares of our common stock offered hereby other than broker-dealer discounts and commissions. We have agreed to indemnify the selling stockholders against certain losses, claims, damages and

liabilities, including liabilities under the Securities Act of 1933.

## LEGAL PROCEEDINGS

We are not currently a party to any legal proceeding nor are we aware of any threatened legal proceeding that could have a material adverse effect on our business, results of operations or financial condition.

## DIRECTORS, EXECUTIVE OFFICERS, PROMOTERS AND CONTROL PERSONS

The table below shows certain information about our directors, executive officers and key employees:

Name	Age	Principal Positions
John P. Mitola	37	Chief Executive Officer and Director(1)(3)
Brian J. Kawamura	44	President, Chief Operating Officer and Director(1)(2)
Jeffrey R. Mistarz	43	Chief Financial Officer and Treasurer
Michael R. Pokora	37	Executive Vice President, Business Operations and Sales
Michael S. Stelter	45	Vice President, Sales and Director
Frederic F. Brace	44	Director(4)
John J. Callahan	52	Director(2)
Robert J. Manning	59	Director(1)(3)
Kevin P. McEneely	53	Director(1)
Paul McGlinn	45	Director(4)
Gerald A. Pientka	45	Director(2)(3)
Robert D. Wagner	59	Director(4)
Roscoe C. Young II	50	Director

(1) Member of our executive committee.

(2) Member of our compensation committee.

(3) Member of our audit committee.

(4) Appointed as directors of the Company effective October 17, 2001 by the holders of our Series A Convertible Preferred Stock. Mr. Brace was appointed collectively by Morgan Stanley Dean Witter Equity Funding, Inc. and Originators Investment Plan, L.P., Mr. McGlinn was appointed by EP Power Finance, L.L.C. and Mr. Wagner was appointed by Duke Capital Partners, LLC. Newcourt Capital USA, Inc. has not yet appointed a director. (See "Description of Securities Series A Preferred Stock Voting Rights").

John P. Mitola has been one of our directors since November 1999 and has been our chief executive officer since January 2000. From August 1993 until joining us, Mr. Mitola was with Unicom Thermal Technologies (now Exelon Thermal Technologies, Unicom (now Exelon) Corporation's largest unregulated subsidiary, serving most recently as vice president and general manager. Mr. Mitola led the growth of Unicom Thermal through the development of Unicom Thermal's Northwind ice technology and through thermal energy joint ventures between Unicom Thermal and several leading electric utility companies across North America. Prior to his appointment at Unicom Thermal, Mr. Mitola was director of business development for Commonwealth Edison Company, the local electric utility serving Chicago, Illinois and the northern Illinois region.

Brian J. Kawamura has been one of our directors since November 1999 and has been our President and Chief Operating Officer since January 2000. From September 1997 until joining us, Mr. Kawamura served as Executive Vice President Field Sales and Operations for the Southern

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Division of KMC Telecom, a rapidly growing competitive local exchange carrier founded in 1995, where he was responsible for sales growth in existing markets in Alabama, Florida, Georgia, Louisiana and Texas as well as future markets in the South and Southeast regions. From October 1986 until joining KMC Telecom, Mr. Kawamura was Vice President and General Manager of the six state Central Region for MFS Worldcom, a telecommunications company.

Jeffrey R. Mistarz has been our chief financial officer since January 2000 and our treasurer since October 2000. From January 1994 until joining us, Mr. Mistarz served as chief financial officer for Nucon Corporation, a privately held manufacturer of material handling products and systems, responsible for all areas of finance and accounting, managing capital and shareholder relations. Prior to joining Nucon, Mr. Mistarz was with First Chicago Corporation (now Bank One Corporation) for 12 years where he held several positions in corporate lending, investment banking and credit strategy.

Michael R. Pokora has been our Executive Vice President of Business Operations and Sales since November 1999. Mr. Pokora was a founding member of the construction division of Arthur J. Gallagher & Company, where he served as Executive Vice President, responsible for the Midwest Construction Wrap-up Practice.

Michael S. Stelter is one of our co-founders and has been one of our directors since our incorporation in June 1998. Since our organization as a limited liability company in December 1997, Mr. Stelter has served as our Vice President of Sales. Mr. Stelter was our Corporate Secretary from June 1998 until October 2000. From 1986 until May 1999, Mr. Stelter served as Vice President of Marino Electric.

Frederic F. Brace has been one of our directors since October 2001 and is an appointee of the holders of our Series A Convertible Preferred Stock. Mr. Brace is, and has been, the Senior Vice President and Chief Financial Officer of UAL Corporation, the parent of United Airlines since September 2001. From July 1999 through September 2001, Mr. Brace was Senior Vice President and Treasurer of United Airlines and its Vice President of Finance from October 1996 through July 1999.

John J. Callahan was appointed to be one of our directors in April 2001. Mr. Callahan served as Senior Vice President of Sales and Marketing for Allegiance Telecom from December 1997 until his retirement in December 1999. From November 1992 to December 1997 Mr. Callahan served as the President of the Western Division of MFS Worldcom. Prior to joining MFS Worldcom he was a Vice President and General Manager of the Southwestern Division of Sprint.

Robert J. Manning has been one of our directors since May 2000 and Chairman of our Board of Directors since January 2001. Mr. Manning is a co-founder and a member of Groupe Manning LLC, an energy consulting company. From April 1997 until his retirement in January 2000, Mr. Manning served as executive vice president of Exelon Corporation and its largest subsidiary, Commonwealth Edison Company, where his responsibilities included managing the sale of Commonwealth Edison's fossil generating fleet. During his thirty-five year career at Exelon, Mr. Manning directed all aspects of electric generation, consumer service and transmission and distribution operations.

Kevin P. McEneely has been one of our directors since our incorporation in June 1998. Mr. McEneely was our Senior Executive Vice President and Chief Operating Officer from our organization as a limited liability company in December 1997 to December 1999. From 1985 to his retirement in December 1999, Mr. McEneely was Chief Operating Officer and an Executive Vice President of Nightingale-Conant Corporation. Mr. McEneely is also a member of NCVC.

Paul E. McGlenn has been one of our directors since October 2001 and is an appointee of the holders of our Series A Convertible Preferred Stock. Mr. McGlenn is, and has been, the Managing Director of EP Power Finance, L.L.C. since August 2000. From August 1999 through July 2000, Mr. McGlenn served as a Director of Republic Financial, Inc. and as a Senior Vice President of Heller Financial, Inc. from November 1993 through June 1999.

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Gerald A. Pientka has been one of our directors since May 2000. Mr. Pientka is a co-founder of Higgins Development Partners, LLC, a national real estate development company headquartered in Chicago, Illinois. Mr. Pientka has served as President of the company since its inception in May 1999 when the Pritzker family interest purchased a controlling interest in Higgins Development Partners, LLC (formerly Walsh, Higgins & Company). Mr. Pientka served as President of Walsh, Higgins & Company from May 1992 until May 1999.

Robert D. Wagner has been one of our directors since October 2001 and is an appointee of the holders of our Series A Convertible Preferred Stock. Mr. Wagner served as Managing Director of Arthur Andersen LLP's corporate finance group from May 1999 until his retirement in April 2001. From June 1998 through May 1999, Mr. Wagner served as Managing Director of M2 Capital. From April 1989 through June 1998,

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Mr. Wagner served as Managing Director for Bankers Trust/BT Alex Brown.

Roscoe C. Young II has been one of our directors since April 2000. Mr. Young has served as President and Chief Operating Officer of KMC Telecom since December 1999 and November 1996, respectively, and as a director since December 1999. Prior to joining KMC Telecom in 1996, Mr. Young was Vice President of Network Services for Ameritech, where he was in charge of customer service fulfillment of ISDN, digital centrex, voice services and network capital investment.

### Board Committees

Our board of directors currently has the following committees:

**Audit Committee.** The Audit Committee reviews and recommends to the board of directors the independent public accountants selected to audit our financial statements, meets with the independent public accountants to review the scope and results of the audit, confirms the independence of the auditors, reviews any management consulting services provided by the auditors and the related fees, reviews the adequacy and effectiveness of the Company's internal controls, reviews legal and regulatory matters that may have an effect on the Company's financial statements and investigates any matters brought to its attention. The members of the audit committee are Messrs. Mitola, Manning and Pientka.

**Executive Committee.** The Executive Committee reviews the general operations of the Company. The members of the executive committee are Messrs. Mitola, Kawamura, Manning and McEneely.

**Compensation Committee.** The Compensation Committee is responsible for establishing, administering and reviewing compensation programs for the Company's executive and senior management, subject to approval of the Board as a whole. The members of the compensation committee are Messrs. Callahan, Kawamura and Pientka.

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### SELLING SECURITY HOLDERS, SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT

The following tables list certain information, as of December 1, 2001, regarding the beneficial ownership of our outstanding common stock by each of our directors and named executive officers, the persons known to us to beneficially own greater than 5% of our common stock, our directors and executive officers, as a group, and stockholders whose shares are being registered pursuant to this prospectus. Beneficial ownership is determined in accordance with the rules of the SEC. Except as otherwise noted, the persons or entities named have sole voting and investment power with respect to all shares shown as beneficially owned by them. The address of each person listed in the following table (unless otherwise noted) is c/o Electric City Corp., 1280 Landmeier Road, Elk Grove Village, Illinois 60007-2410.

The 4,491,097 shares of common stock that we are registering pursuant to this prospectus and that are listed under the column "Number of Shares Being Offered" include (1) 2,996,097 shares held by the selling stockholders, (2) up to 815,000 shares which we may issue to the selling stockholders upon exercise of vested options, and (3) up to 680,000 shares which we may issue to the selling stockholders upon exercise of warrants. The shares of our common stock listed under the column "Shares Issuable Upon Exercise of Options" includes shares issuable upon exercise of options that are currently exercisable.

The information provided in the following table with respect to each selling stockholder is based on information obtained from that selling stockholder. The information under the column "Beneficial Ownership After Offering" assumes each selling stockholder sells all of its shares offered pursuant to this prospectus to unaffiliated third parties. Each selling stockholder may sell all, part or none of its shares.

Name	Shares Directly Held	Shares Issuable Upon Exercise of Preferred Stock	Shares Issuable Upon Exercise of Warrants	Shares Issuable Upon Exercise of Options	Total	%
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**Directors, Executive Officers and  
5% Holders**

Joseph C. Marino	7,549,654(1)		2,150,000(2)	9,696,654	29.19%
Pino, LLC	7,150,502		1,700,000	8,850,502	27.01%
NCVC, L.L.C.(3)	4,488,999		1,000,000(7)	5,388,999	16.80%
Victor Conant	4,488,999(4)(5)		1,000,000(7)	5,388,999	16.80%
Kevin P. McEneely	4,488,999(4)(6)		1,000,000(7)	5,388,999	16.80%
DYDX Consulting LLC(8)	3,017,499		1,000,000(9)	4,017,499	12.53%
Nikolas Konstant(10)	3,017,499		1,000,000(9)	4,017,499	12.53%
Augustine Fund, L.P.(11)	1,529,008	200,000		1,729,008	5.53%
Newcourt Capital Securities, Inc.(12)		3,314,830		3,314,830	9.64%
Newcourt Capital USA, Inc.(13)	80,217	4,034,001	5,064,830(14)	9,179,048	22.85%
EP Power Finance, L.L.C.(13)	80,217	4,067,778	1,750,000	5,947,995	16.10%
Duke Capital Partners, LLC(13)	80,217	4,067,778	1,750,000	5,897,995	15.99%
Morgan Stanley Dean Witter Equity Funding, Inc.(13)(15)	80,217	4,067,778	1,750,000	5,897,995	15.99%
Leaf Mountain Company, LLC(13)	45,122	3,000,000	1,171,875	4,216,997	11.97%
Michael S. Stelter	1,178,592			1,178,592	3.79%
Brian Kawamura	68,000		1,000,000	1,068,000	3.33%
John P. Mitola	7,000		666,667	677,667	2.14%
Michael R. Pokora	10,000		333,333	343,333	1.09%
John J. Callahan	10,000		50,000	60,000	*
Jeffrey R. Mistarz	4,200		66,667	70,867	*
Robert J. Manning	2,000		91,667	93,667	*
Gerald A. Pientka(13)	22,000		91,667	113,667	*

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Roscoe C. Young II			91,667	91,667	*
Frederic F. Brace			50,000	50,000	*
Paul McGlenn			0(41)	0	*
Robert D. Wagner			50,000	50,000	*
All directors and executive officers as a group (13 persons)**	5,694,791		3,491,668	9,186,459	26.58%

**Selling Stockholders**

Augustine Fund, L.P.(11)	1,529,008	200,000		1,729,008	5.53%
Joseph C. Marino(16)			450,000	450,000	1.42%
Dale Hoppensteadt(17)(18)	349,458			349,458	1.12%
Helmut Hoppe(17)(19)	74,884			74,884	*
George Miller(16)(20)	74,884			74,884	*
Phil Johnson(17)(21)	12,000			12,000	*
Kevin Hoppensteadt(17)(21)	10,500			10,500	*
Jim Manhart(17)(21)	10,500			10,500	*
Steve Solecki(17)(21)	5,250			5,250	*
Brian Elia(17)(21)	3,750			3,750	*
Don Bezek(17)(21)	2,500			2,500	*
Mike Galvin(17)(21)	2,500			2,500	*
Larry Gramit(17)(21)	2,500			2,500	*
Mike Pacione(17)(21)	2,500			2,500	*
Christopher Kelly(22)	275,000			275,000	*
thestockpage.com.(23)	58,600	200,000		258,600	*
R&R Investments, LLC(24)	255,000			255,000	*
David Limanowski(25)	99,358			99,358	*
Delano Group Securities(26)		100,000		100,000	*
Stephanie Cox(27)			100,000	100,000	*
Mark Swartz(28)			100,000	100,000	*
Matthew Soltis(29)			100,000	100,000	*
Wall and Broad Equities(30)		110,000		110,000	*
John Prinz & Associates LLC(31)	15,000	40,000		55,000	*

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Investor Awareness, Inc.(32)	25,000	25,000	*
Paul Stock(33)	5,000	5,000	*
Curtis Vernon(34)(35)		10,000	10,000 *
Jeffrey Dome(34)(36)		20,000	20,000 *
Ronald Stone(34)(37)		35,000	35,000 *
Eugene Borucki(38)(39)	106,452		106,452 *
Denis Enberg(38)(40)	106,452		106,452 *

Shares Beneficially Owned  
After Offering

Name	Number of Shares Being Offered	Number of Shares	Percent
<b>Directors, Executive Officers and 5% Holders</b>			
Joseph C. Marino	450,000	9,246,654(42)	28.22%
Pino, LLC		8,850,502	27.01%
NCVC, L.L.C.		5,388,999	16.80%
Victor Conant		5,388,999	16.80%
Kevin P. McEneely		5,388,999	16.80%
DYDX Consulting LLC		4,017,499	12.53%
Nikolas Konstant		4,017,499	12.53%
Augustine Fund, L.P.	1,729,009	(42)	
Newcourt Capital Securities, Inc.		9,179,048	22.85%
Newcourt Capital USA, Inc.			

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EP Power Finance, L.L.C.		5,947,995	16.10%
Duke Capital Partners, LLC		5,897,995	15.99%
Morgan Stanley Dean Witter Equity Funding, Inc.		5,897,995	15.99%
Leaf Mountain Company, LLC		4,216,997	11.97%
Michael S. Stelter		1,178,592	3.79%
Brian Kawamura		1,068,000	3.33%
John P. Mitola		677,667	2.14%
Michael R. Pokora		343,333	*
John J. Callahan		60,000	*
Jeffrey R. Mistarz		70,867	*
Robert J. Manning		93,667	*
Gerald A. Pientka		113,667	*
Roscoe E. Young II		91,667	*
Frederic F. Brace		50,000	*
Paul McGlinn		0	*
Robert D. Wagner		50,000	*
All directors and executive officers as a group (13 persons)**		9,186,459	26.58%

**Selling Stockholders**

Augustine Fund, L.P.	1,729,009	(42)	
Joseph C. Marino	450,000	9,246,654(42)	28.22%
Dale Hoppensteadt	349,458	(42)	
Helmut Hoppe	74,884	(42)	
George Miller	74,884	(42)	
Phil Johnson	12,000	(42)	
Kevin Hoppensteadt	10,500	(42)	
Jim Manhart	10,500	(42)	
Steve Solecki	5,250	(42)	
Brian Elia	3,750	(42)	
Don Bezek	2,500	(42)	
Mike Galvin	2,500	(42)	
Larry Grant	2,500	(42)	
Mike Pacion	2,500	(42)	
Joseph C. Marino	450,000	(42)	
Augustine Fund, L.P.	1,729,009	(42)	

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Christopher Kelly	275,000	(42)
thestockpage.com.	258,600	(42)
R&R Investments, L.L.C.	255,000	(42)
David Limanowski	99,358	(42)
Delano Group Securities	100,000	(42)
Stephanie Cox	100,000	(42)
Mark Swartz	100,000	(42)
Matthew Soltis	100,000	(42)
Wall and Broad Equities	110,000	(42)
John Prinz & Associates LLC	55,000	(42)
Investor Awareness, Inc.	25,000	(42)
Paul Stock	5,000	(42)
Curtis Vernon	10,000	(42)
Jeffrey Dome	20,000	(42)
Ronald Stone	35,000	(42)
Eugene Borucki	106,452	(42)
Denis Enberg	106,452	(42)

### Notes to Tables:

- \* Denotes beneficial ownership of less than 1%.
- \*\* Eliminates duplication

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- (1) Includes 7,150,502 shares held of record by Pino, LLC ("Pino"). Mr. Marino holds a 100% membership interest in Pino and, in such capacity, has sole voting and investment power with respect to the shares of common stock held by Pino and, therefore, is deemed to be the beneficial owner of these shares.
- (2) Includes options to acquire 1,700,000 shares of common stock at \$1.10 per share held by Pino. In addition, Mr. Marino holds options to acquire 450,000 shares of common stock which are being registered pursuant to this offering. Pursuant to an employment agreement between the Company and Mr. Marino dated January 1, 1999, Mr. Marino was granted stock options to acquire 450,000 shares of the Company's common stock with an exercise price of \$3.50 per share. These option shares were to vest equally over the four-year term of the employment agreement. During July 1999, the Company's board of directors approved a 2 for 1 stock split, which resulted in a post-split grant of 900,000 shares. During December 2000, Mr. Marino resigned his position as Chairman of the Company, at which time 450,000 shares had become vested.
- (3) The business address of NCVC, L.L.C. ("NCVC") is 6245 West Howard St., Niles, Illinois 60714.
- (4) Includes 4,488,999 shares held of record by NCVC. Messrs. Conant and McEneely are managers and members of NCVC, and, in said capacities, share voting and investment power with respect to shares of common stock held by NCVC. Therefore, they are deemed to be the beneficial owners of these shares.
- (5) Excludes 448,415 shares held in trust for Carson Conant Trust and Chappell Conant Trust, Mr. Conant's adult children. Although Mr. Conant is trustee of the trust and, in such capacity, has sole voting and investment power with respect to the shares of common stock held by the trust, he disclaims beneficial ownership of these shares.
- (6) Excludes 427,568 shares held by Patrick McEneely and Ryan McEneely, Mr. McEneely's adult children.
- (7) Includes options to acquire 1,000,000 shares of common stock at \$1.10 per share held by NCVC.
- (8) The business address of DYDX Consulting, LLC ("DYDX") is 221 N. LaSalle Street, Suite 3900, Chicago, Illinois 60601.
- (9) Includes options to acquire 1,000,000 shares of common stock at \$1.10 per share held by DYDX.
- (10) Includes 3,017,499 shares held of record by DYDX. Mr. Konstant holds a 100% membership interest in DYDX and, in such capacity, has sole voting and investment power with respect to the shares of common stock held by DYDX and, therefore, is deemed to be the

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beneficial owner of these shares.

- (11) On October 17, 2000, Augustine Fund, L.P. purchased 2,000 shares of the Company's Series B Convertible Preferred Stock ("Series B Preferred") and was issued warrants to purchase 200,000 shares of the Company's common stock at an exercise price of \$4.425 per share, for gross proceeds to the Company of \$2,000,000. The Series B Preferred was convertible into shares of the Company's common stock, which stock was converted on June 15, 2001 into 1,472,244 shares of the Company's common stock. An additional 56,764 shares of common stock were issued as accrued dividends on the Series B Preferred. The controlling members, directors and officers, all of whom are David Asplund, Thomas Duszynski, David Matteson, Brian Porter and John Porter, may be deemed to share power to vote or dispose of the shares held by Augustine Fund, L.P. The business address of Augustine Fund, L.P. is 141 W. Jackson Boulevard, Suite 2182, Chicago, Illinois 60604.
- (12) Newcourt Capital Securities, Inc. ("Newcourt Capital Securities"), a registered broker-dealer, was issued warrants to purchase 3,314,830 shares of the Company's common stock at a price of \$1.00 per share in consideration for purchasing \$3,200,000 of Convertible Senior Subordinated Promissory Notes from the Company during the second quarter of 2001 and for acting as placement agent for the Company's issuance of its Series A Convertible Preferred Stock (See "Description of Securities Series A Preferred Stock"). Newcourt Capital Securities, Inc. is a wholly owned subsidiary of Newcourt Capital USA, Inc ("Newcourt Capital USA"). Accordingly, Newcourt Capital USA is deemed to be the beneficial owner of shares held by Newcourt Capital

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Securities. The following individuals share voting and investment power with respect to the shares of common stock held by Newcourt Capital Securities, Inc: Messrs. David McKerroll, J. Daryl MacLellan, Murray Eastwood, Michael Stupay, Johannes G.M. Derksen, Daniel Morash, Robert Sexton, Eric Mandelbaum and Robert Ingato. The aforementioned individuals are the current executive officers of Newcourt Capital Securities, Inc. and may be subject to subsequent change. The business address of Newcourt Capital Securities, Inc. is 1211 Avenue of the Americas, 22<sup>nd</sup> Floor, New York, NY 10036

- (13) On September 7, 2001, we closed our Series A Convertible Preferred Stock transaction (See "Description of Securities Series A Preferred Stock") with a group of investors and issued the following securities for an aggregate purchase price of \$16,000,000:

400,000 shares of our Series A Convertible Preferred Stock to each of Newcourt Capital USA, Inc. ("Newcourt"), Duke Capital Partners, LLC ("Duke Capital"), and EP Power Finance, L.L.C. ("EPP"), 380,000 shares of our Series A Convertible Preferred Stock to Morgan Stanley Dean Witter Equity Funding, Inc. ("Morgan Stanley") and 20,000 shares of our Series A Convertible Preferred Stock to Originators Investment Plan, L.P. ("OIP"). OIP is an affiliate of Morgan Stanley (See Note No. 15, below) and therefore, Morgan Stanley is deemed to be the beneficial owner of shares held by OIP. Each share of Series A Convertible Preferred Stock is convertible into 10 shares of our common stock and is exercisable beginning on November 7, 2001.

Warrants to purchase 100,000 shares of our Series A Convertible Preferred Stock to each of Newcourt, Duke Capital and EPP, warrants to purchase 95,000 shares of our Series A Convertible Preferred Stock to Morgan Stanley and warrants to purchase 5,000 shares of our Series A Convertible Preferred Stock to OIP. These warrants are initially exercisable at \$10.00 per share and each share of Series A Preferred Stock is convertible into 10 shares of our common stock.

80,217 shares of our common stock to each of Newcourt, Duke Capital and EPP, 76,206 shares of our common stock to Morgan Stanley and 4,011 shares of our common stock to OIP.

Warrants to purchase 750,000 shares of our common stock to each of Newcourt, Duke Capital and EPP, warrants to purchase 712,500 shares of our common stock to Morgan Stanley and warrants to purchase 37,500 shares of our common stock to OIP. These warrants are initially exercisable at \$1.00 per share and are exercisable beginning on November 7, 2001.

Additional information regarding each of these investors is as follows:

The following individuals share voting and investment power with respect to the shares of common stock held by Newcourt Capital USA, Inc: Messrs. David McKerroll, J. Daryl MacLellan, Daniel Morash, John C. Wehner and Robert Golding. The aforementioned individuals are the current executive officers of Newcourt Capital USA, Inc. and may be subject to

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subsequent change. The business address of Newcourt Capital USA, Inc. is 1211 Avenue of the Americas, 22<sup>nd</sup> Floor, New York, NY 10036.

The following individuals share voting and investment power with respect to the shares of common stock held by Duke Capital Partners, LLC: Messrs. Robert Ladd, Gerald Stalun and F.T. Webster. The aforementioned individuals are the current executive officers of Duke Capital Partners, LLC and may be subject to subsequent change. The sole member of Duke Capital Partners, LLC is Duke Capital Corporation. The business address of Duke Capital Partners, LLC is 128 S. Tryon Street, Suite 1100, Charlotte, North Carolina 28202.

The following individuals share voting and investment power with respect to the shares of common stock held by EP Power Finance, L.L.C.: Messrs. Clark Smith, John Holmes, Grady Blakey, J. Robert Collins, Jr., John L. Harrison, W.C. Mack and Ms. Cecilia Heilmann. The aforementioned individuals are the current executive officers of EP Power Finance, L.L.C. and

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may be subject to subsequent change. The sole member of EP Power Finance, L.L.C. is El Paso Merchant Energy North America Company. The business address of EP Power Finance, L.L.C. is 1001 Louisiana Street, Houston, Texas 77002.

The following individuals share voting and investment power with respect to the shares of common stock held by Morgan Stanley Dean Witter Equity Funding, Inc.: Mr. Stephen Munger, Ms. Debra Aaron, Messrs. William Atkins, Steven Brown, Pietro Cinquegrana, Thomas Clayton, James Keane, David Landman, James Liang, Ms. Mary Meeker, Mr. Louis Palladino, Jr., Ms. Ruth Porat, Messrs. Bruce Sandberg, Dhiren Shah, James Wilmott, Michael Zuckert, Alexander Frank and Martin Cohen. The aforementioned individuals are the current executive officers of Morgan Stanley Dean Witter Equity Funding, Inc. and may be subject to subsequent change. The business address of Morgan Stanley Dean Witter Equity Funding, Inc. is 1585 Broadway, New York, New York 10036.

The following individuals share voting and investment power with respect to the shares of common stock held by Originators Investment Plan, L.P.: Mr. Tarek Abdel-Meguid, Ms. G. Andrea Botta, Ms. Debra Aaron, Ms. Lisa Butler, Ms. Stacie Cerza, Messrs. Pietro Cinquegrana, Thomas Clayton, Keith Hennessey, James Keane, Gavin MacDonald, Ms. Alyssa Mocco, Messrs. Louis Palladino, Jr., Bruce Sandberg, James Wilmott, Michael Zuckert, Martin Cohen and Alexander Frank. The aforementioned individuals are the current executive officers of MSDW OIP Investors, Inc., the sole general partner of OIP, and may be subject to subsequent change. The business address of Originators Investment Plan, L.P. is 1585 Broadway, New York, New York 10036.

On November 29, 2001, we closed on an additional issuance of our Series A Convertible Preferred Stock (See "Description of Securities Additional Issuance of Series A Preferred Stock") with Leaf Mountain Company, LLC ("Leaf Mountain") and issued the following securities for an aggregate purchase price of \$3,000,000:

300,000 shares of our Series A Convertible Preferred Stock. Each share of Series A Convertible Preferred Stock is convertible into 10 shares of our common stock and is exercisable beginning on November 28, 2002.

Warrants to purchase 750,000 shares of our Series A Convertible Preferred Stock. These warrants are initially exercisable at \$10.00 per share and each share of Series A Preferred Stock is convertible into 10 shares of our common stock.

45,122 shares of our common stock.

Warrants to purchase 421,875 shares of our common stock. These warrants are initially exercisable at \$1.00 per share and are exercisable beginning on November 29, 2001.

Additional information regarding Leaf Mountain is as follows:

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Leaf Mountain is a member-managed limited liability company and was formed in February 1995 by a group of individuals for the purpose of investing in various business ventures. Leaf Mountain is not affiliated with any broker-dealer.

The following individuals share voting and investment power with respect to the shares of common stock held by Leaf Mountain: Messrs. Vincent W. Foglia, Paul F. Hills, Richard D. Naponelli, John J. Jiganti, John G. Moore, John D. Secker, Theodore A. Sinars, Paul M. Sheridan, Joseph S. Capitani and Gerald A. Pientka, of which Mr. Jiganti is the Managing Director. The aforementioned individuals are the current members of Leaf Mountain and may be subject to subsequent change. The business address of Leaf Mountain is 190 South LaSalle Street, Suite 1700, Chicago, Illinois, 60603.

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As noted in the preceding disclosure, Mr. Gerald Pientka, who is one of our directors, is also a member of Leaf Mountain. Of the \$3,000,000 invested by Leaf Mountain in the Company's Series A Preferred Stock, Mr. Pientka, through Leaf Mountain, contributed \$75,000. It is the policy of the Company that any officer or director who has a direct or indirect conflict in a contemplated or pending business matter must abstain from discussions or votes of our board of directors regarding such matter. Accordingly, Mr. Pientka did not participate in any such discussions or votes relating to the sale to Leaf Mountain. In addition, Mr. Pientka was not aware of any matters involving or affecting the Company that were not disclosed to Leaf Mountain by the Company during the due diligence review conducted prior to the closing of the transaction.

The Company had, and currently has, no agreements, plans or understandings with any party to distribute these securities.

- (14) Includes warrants to acquire 3,314,830 shares of common stock at an initial exercise price of \$1.00 per share held by Newcourt Capital Securities, Inc.
- (15) Morgan Stanley is a wholly owned subsidiary of Morgan Stanley Dean Witter & Co. OIP is a limited partnership, of which the sole general partner is MSDW OIP Investors, Inc., also a wholly owned subsidiary of Morgan Stanley Dean Witter & Co. Accordingly, Morgan Stanley is an affiliate of, and is deemed to be the beneficial owner of the shares held by, OIP.
- (16) Mr. Marino holds options to acquire 450,000 shares of common stock which are being registered pursuant to this offering. Pursuant to an employment agreement between the Company and Mr. Marino dated January 1, 1999, Mr. Marino was granted stock options to acquire 450,000 shares of the Company's common stock with an exercise price of \$3.50 per share. These option shares were to vest equally over the four-year term of the employment agreement. During July 1999, the Company's board of directors approved a 2 for 1 stock split, which resulted in a post-split grant of 900,000 shares with an exercise price of \$1.75 per share. During December 2000, Mr. Marino resigned his position as Chairman of the Company, at which time stock options to acquire 450,000 shares of the Company's common stock had become vested.
- (17) On August 31, 2000, we acquired Switchboard Apparatus, Inc. ("Switchboard") in a stock transaction. In exchange for ownership of Switchboard, the selling stockholders, which included Dale Hoppensteadt, Helmut Hoppe and George Miller, received 385,858, 82,684 and 82,684 shares of the Company's common stock, respectively. Subsequent to the acquisition, Mr. Hoppensteadt distributed 36,400 shares of his 385,858 shares of his common stock and Messrs. Hoppe and Miller each distributed 7,800 shares of their 82,684 shares of common stock to the following employees of Switchboard: 12,000 shares to Phil Johnson; 10,500 shares to each of Kevin Hoppensteadt and Jim Manhart; 5,250 shares to Steve Solecki; 3,750 shares to Brian Elia and 2,500 shares to each of Don Bezek, Mike Galvin, Larry Gramit and Mike Pacione.
- (18) Mr. Hoppensteadt is, and has been, the President of our wholly owned subsidiary, Switchboard Apparatus, Inc. since its acquisition in August 2000. Prior to our acquisition, he was a stockholder, director and officer of Switchboard Apparatus, Inc. The business address of Mr. Dale Hoppensteadt is c/o Switchboard Apparatus, Inc, 2820 South 19<sup>th</sup> Avenue, Broadview, Illinois 60155.
- (19) The business address of Mr. Helmut Hoppe is c/o Goschi & Goschi, Ltd., 120 S. LaSalle Street, Suite 1720, Chicago, Illinois 60603. Mr. Hoppe was a stockholder, director and officer of Switchboard Apparatus, Inc. prior to our acquisition of Switchboard

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Apparatus, Inc.

- (20) Mr. Miller is, and has been, employed by Switchboard Apparatus, Inc. since its acquisition in August 2000. Prior to our acquisition, Mr. Miller was a stockholder and employee of Switchboard Apparatus, Inc. The business address of Mr. George Miller is c/o Switchboard Apparatus, Inc, 2820 South 19<sup>th</sup> Avenue, Broadview, Illinois 60155.
- (21) The business address of each of Messrs. Bezek, Elia, Galvin, Gramit, K. Hoppensteadt, Manhart, Pacione and Solecki, each a current employee of Switchboard Apparatus, is c/o Switchboard Apparatus, Inc., 2820 South 19<sup>th</sup> Avenue, Broadview, Illinois 60155. Mr. Johnson is no longer employed by Switchboard Apparatus, Inc.
- (22) Christopher Kelly acquired 275,000 shares of the Company's common stock in a private purchase from an existing shareholder during January 2000 for investment purposes and was granted registration rights pursuant to a registration rights agreement dated January 17, 2000. The business address of Mr. Kelly is 3062 W. 167<sup>th</sup> Street, Markham, Illinois 60426.
- (23) thestockpage.com was issued warrants to purchase 200,000 shares of the Company's common stock at an exercise price of \$2.00 per share for services provided pursuant to a consulting agreement dated January 15, 1999. In addition, thestockpage.com was issued 58,600 shares of the Company's common stock for services provided pursuant to a consulting agreement dated August 1, 2000. Messrs. Glen Akselrod, Robert Landau and David Roff, executive officers of thestockpage.com, share voting and investment power with respect to shares of common stock held by thestockpage.com. The business address of thestockpage.com, inc. is 141 Adelaide Street West, Suite 1004, Toronto, Ontario M5H-3L5.
- (24) R & R Investments, LLC acquired 250,000 shares of the Company's common stock in a private purchase from an existing shareholder during January 2000 for investment purposes. R & R investments was issued 5,000 shares of the Company's common stock in January 2001 as consideration for consulting services provided during the first quarter of 2001. R & R Investments was granted registration rights pursuant to a registration rights agreement dated January 17, 2000. R & R Investments is not affiliated with any broker-dealer. Messrs. Ronald Rossi and Robert Rossi, members of R & R Investments, share voting and investment power with respect to the shares of common stock held by R & R Investments. The Company had, and currently has, no agreements, plans or understandings with any party to distribute these securities. The business address of R&R Investments, L.L.C. is c/o Rossi Contractors, 201 W. Lake Street, Northlake, Illinois 60164.
- (25) David Limanowski purchased 69,358 shares of the Company's common stock from the Company in July 1999 and an additional 30,000 shares from the Company in December 1999. Mr. Limanowski has been a distributor of the Company's EnergySaver products in New Jersey since June 1999 and in Illinois since September 1999. The business address of Mr. Limanowski is c/o U.S. Power Corp., 425 N. Michigan Avenue, 25<sup>th</sup> Floor, Chicago, Illinois 60611.
- (26) Delano Group Securities, LLC, a registered broker-dealer, was issued warrants to purchase 100,000 shares of the Company's common stock at an exercise price of \$4.71 per share as consideration for acting as placement agent for the Company's issuance of its Series B Convertible Preferred Stock in October 2000. The Company had, and currently has, no agreements, plans or understandings with any party to distribute these securities. The controlling members, directors and officers, all of whom are David Asplund, Thomas Duszynski, David Matteson, Brian Porter and John Porter, may be deemed to share power to vote or dispose of the shares held by Delano Group Securities, LLC. The business address of Delano Group Securities, LLC is 141 W. Jackson Blvd., Suite 2176, Chicago, Illinois 60604.
- (27) Pursuant to a stock option agreement between Stephanie Cox and the Company dated January 2, 1999, Ms. Cox was granted options to acquire 50,000 shares of the Company's common stock with an exercise price of \$3.50 per share. During July 1999, the Company's board of directors approved a 2 for 1 stock split, which resulted in a post-split grant of 100,000 shares with an exercise price of \$1.75 per share. These options became fully vested on January 1, 2000. Ms. Cox was employed in a sales position with the Company from September 1998 through October 2000. The business address of Ms. Cox is 2305 A Voorhees Avenue, Redondo Beach, California 90278

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- (28) Pursuant to a stock option agreement between Mark Swartz and the Company dated January 2, 1999, Mr. Swartz was granted options to acquire 50,000 shares of the Company's common stock
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- with an exercise price of \$3.50 per share. During July 1999, the Company's board of directors approved a 2 for 1 stock split, which resulted in a post-split grant of 100,000 shares with an exercise price of \$1.75 per share. These options became fully vested on January 1, 2000. Mr. Swartz has, and continues to be, employed in a sales position with the Company since July 1998. The business address of Mr. Swartz is c/o Electric City Corp., 1280 Landmeier Road, Elk Grove, Illinois 60007.
- (29) Pursuant to a stock option agreement between Matthew Soltis and the Company dated January 2, 1999, Mr. Soltis was granted options to acquire 50,000 shares of the Company's common stock with an exercise price of \$3.50 per share. During July 1999, the Company's board of directors approved a 2 for 1 stock split, which resulted in a post-split grant of 100,000 shares with an exercise price of \$1.75 per share. These options became fully vested on January 1, 2000. Mr. Soltis was employed in a sales position with the Company from November 1998 until September 2001.
- (30) Wall & Broad Equities was issued warrants to purchase shares of the Company's common stock as consideration for consulting services provided as follows: warrants to purchase 50,000 shares of the Company's common stock at \$5.50 per share issued in July 2000; warrants to purchase 20,000 shares of the Company's common stock at \$3.30 per shares issued in January 2001; warrants to purchase 10,000 shares of the Company's common stock at \$2.15 per share issued in March 2001; warrants to purchase 30,000 shares of the Company's common stock at \$2.50 per share issued in May 2001. Mr. Howard Bash, an executive officer of Wall Y Broad Equities, has sole voting and investment power with respect to the shares of common stock held by Wall & Broad Equities. The business address of Wall and Broad Equities is 4424 Sixteenth Avenue, Brooklyn, New York 11204.
- (31) John Prinz & Associates LLC ("Prinz & Associates") was issued warrants to purchase 40,000 shares of the Company's common stock at \$1.36 per share pursuant to a settlement agreement dated June 30, 2000 regarding a dispute with respect to amounts owed by the Company for consulting services provided by Prinz & Associates. During March 2001, Prinz & Associates was issued 15,000 shares of the Company's common stock for consulting services provided pursuant to a consulting services agreement between Prinz & Associates and the Company dated March 20, 2001. Mr. John Prinz, the managing member of Prinz & Associates, has sole voting and investment power with respect to the shares of common stock held by Prinz & Associates. The business address of Prinz & Associates is Edens-Tower Plaza, 790 Frontage Road, Northfield, IL 60093.
- (32) Investor Awareness, Inc. was issued warrants to purchase 25,000 shares of the Company's common stock at \$3.875 per share for consulting services provided pursuant to a consulting services agreement dated October 20, 2000. Mr. Anthony Shor, an executive officer of Investor Awareness, has sole voting and investment power with respect to the shares of common stock held by Investor Awareness. The business address of Investor Awareness, Inc. is 1181 Lake Cook Road, Suite A, Deerfield, Illinois 60015.
- (33) Mr. Paul Stock was issued warrants to purchase 5,000 shares of the Company's common stock at \$4.00 per share for consulting services provided during the fourth quarter of 2000. Mr. Stock's business address is 300 East 51<sup>st</sup> Street, Apt. 8D, New York, NY 10022.
- (34) Pursuant to a settlement agreement dated May 26, 200 between the Company and Curtis Vernon, Jeffrey Dome and Ronald Stone, Messrs. Vernon, Dome and Stone were issued options to purchase 10,000, 20,000 and 35,000 shares of the Company's common stock, respectively, at a price of \$2.50 per share. The settlement agreement was in regard to a dispute involving certain of the Company's distribution territories.
- (35) The business address of Mr. Curtis Vernon is c/o Mr. William Ziegelmueller, Stetler & Duffy Ltd., 140 S. Dearborn Street, Suite 400, Chicago, Illinois 60603.
- (36) The business address of Mr. Jeffrey Dome is c/o Mr. William Ziegelmueller, Stetler & Duffy Ltd., 140 S. Dearborn Street, Suite 400, Chicago, Illinois 60603.



- (37) The business address of Mr. Ronald Stone is c/o Mr. William Ziegelmueller, Stetler & Duffy Ltd., 140 S. Dearborn Street, Suite 400, Chicago, Illinois 60603.

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- (38) On June 7, 2001, the Company acquired Great Lakes Controlled Energy Corp. ("Great Lakes") in a stock transaction. In exchange for the ownership of Great Lakes, the selling stockholders, Eugene Borucki and Denis Enberg, each received 106,452 shares of the Company's common stock.

- (39) Eugene Borucki is, and has been, the president of Great Lakes Controlled Energy Corp., a wholly-owned subsidiary of the Company since its acquisition in June 2001. Mr. Borucki was a stockholder, director and officer of Great Lakes prior to our acquisition of that company. The business address of Mr. Borucki is c/o Great Lakes Controlled Energy Corp., 630 Bonnie Lane, Elk Grove Village, Illinois 60007.

- (40) Denis Enberg is, and has been, a Senior Vice President of the Company since our acquisition of Great Lakes in June 2001. Mr. Enberg was a stockholder, director and officer of Great Lakes prior to our acquisition of that company. The business address of Mr. Enberg is c/o Electric City Corp., 1280 Landmeier Road, Elk Grove Village, Illinois 60007.

- (41) Reflects stock options awarded to Paul McGlenn, a director of the Company, pursuant to the Directors Stock Option Program. The policies of EP Power Finance, L.L.C., who is Mr. McGlenn's employer, provide that director compensation be paid to the company rather than to the individual.

- (42) Assumes all shares registered are sold even though the holders are not obligated to do so.

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## DESCRIPTION OF SECURITIES

*In the following summary, we describe the material terms of our capital stock by summarizing material provisions of our charter and by-laws and Series B convertible preferred certificate of designation. We have incorporated by reference these organizational documents as exhibits to the registration statement of which this prospectus is a part.*

### General

The Board of Directors unanimously approved an amendment to our Certificate of Incorporation to increase our authorized number of shares of capital stock from 65,000,000 to 90,000,000 and our authorized number of shares of Common Stock from 60,000,000 to 85,000,000. No changes were made to the number of authorized shares of our preferred stock, which is 5,000,000. This amendment was approved by our shareholders at our 2001 annual meeting held on August 30, 2001. Accordingly, our charter authorizes us to issue 90,000,000 shares of capital stock, of which 85,000,000 shares are designated as common stock and 5,000,000 shares are designated as preferred stock. As of December 1, 2001, we had 85,000,000 authorized shares of common stock of which:

31,113,841 shares are issued and outstanding;

19,000,000 shares of common stock are issuable upon conversion of Series A Convertible Preferred Stock;

237,333 shares of common stock are issuable upon

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conversion of Series A Convertible Preferred Stock issued pursuant to dividends paid on Series A Convertible Preferred Stock.

7,410,205 shares of common stock are issuable upon exercise of outstanding common stock warrants;

4,750,000 shares of common stock are issuable upon exercise of outstanding Series A Convertible Preferred Stock warrants and conversion of the shares of Series A Convertible Preferred Stock which is issuable thereunder; and

9,876,300 shares of common stock are issuable upon exercise of outstanding stock options.

### **Common Stock**

Holders of our common stock are entitled to one vote per share on all matters submitted to a vote of our stockholders, except that the holders of the Series A Preferred have the right (i) to appoint and elect up to four of the members of our board of directors (out of a board of 12) and (ii) to approve certain other actions by the Company. See "Series A Preferred Stock". Subject to the rights of holders of any outstanding preferred stock, the holders of outstanding shares of common stock will share ratably on a per share basis on any dividends. Except pursuant to the trading agreements entered into with certain of our stockholders (see "Certain Relationships and Related Transactions"), holders of our common stock have no preemptive, subscription, redemption or conversion rights. Subject to the rights of holders of any outstanding preferred stock, upon our liquidation, dissolution or winding up and after payment of all prior claims, the holders of shares of common stock will share ratably on a per share basis in all of our assets. All shares of common stock currently outstanding are fully paid and nonassessable.

### **Preferred Stock**

#### **Series B Preferred Stock**

On October 17, 2000, we completed the sale of 2,000 shares of the Series B Preferred Stock to the Augustine Fund L.P. ("Augustine") at a purchase price of \$1,000 per share and the issuance of warrants

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to purchase 200,000 shares of common stock at an exercise price of \$4.425 per share, subject to certain adjustments. The Series B Preferred Stock accrued dividends at the rate of 8% per annum, payable in cash or common stock, at our option. In the event of any liquidation, subject to the rights of any series of preferred stock that was senior to the Series B Preferred Stock, the holders of the Series B Preferred Stock were entitled to a liquidation preference of \$1,000 per share plus accrued and unpaid dividends. The Series B Preferred Stock was convertible at any time into shares of our common stock at an initial conversion ratio equal to the lower of \$4.06 per share or 75% of the average of the three lowest closing bid prices of our common stock during the 30 consecutive trading days immediately prior to conversion (The conversion ratio was subject to reduction for each 30 day period after April 16, 2001 that this registration statement was not declared effective). We could have redeemed all of the shares of the Series B Preferred Stock at any time prior to conversion for \$1,250 per share cash plus accrued unpaid dividends. The shares of Series B Preferred Stock would automatically have converted into common stock on October 17, 2003 if not previously converted or redeemed. Except as otherwise required by law or with respect to certain matters affecting the rights of the holders of preferred shares, the holders of the Series B Preferred Stock did not have voting rights.

Effective June 15, 2001, Augustine elected to convert their 2,000 shares of Series B Preferred Stock outstanding into 1,472,244 shares of our common stock. The conversion price was \$1.36 calculated as 71% (75% minus 2 percentage points for each thirty days that this registration statement was not declared effective, beginning on April 17, 2001 and ending on June 15, 2001) of the average of the three lowest selling prices per share of our common stock over the 30 consecutive trading days preceding June 15. In addition, we elected to pay the accrued dividends on the Series B Preferred Stock in 56,764 shares of our common stock, which dividends were calculated based upon a conversion price of \$1.36 per share.

#### **Series A Preferred Stock**

In September 2000, we engaged Newcourt Capital Securities, Inc. as our placement agent to find potential investors interested in investing in a private placement of our capital stock. We were seeking additional capital for corporate development, market expansion, the repurchase of

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certain distribution territories and general working capital needs.

A search by our placement agent culminated in locating five investors desiring to invest in our capital stock, including leaders in the banking and energy industries. These investors are: Newcourt Capital USA Inc. ("CIT"), Duke Capital Partners, LLC, Morgan Stanley Dean Witter Equity Funding, Inc., Originators Investment Plan, L.P. and EP Power Finance, L.L.C. (collectively, the "Investors") After extensive negotiations and subject to stockholder approval, the Investors and the Company entered into a securities purchase agreement, more fully described below.

On July 31, 2001, we entered into a securities purchase agreement with the Investors, which was approved by our shareholders at our 2001 annual meeting held on August 30, 2001. The transaction closed on September 7, 2001. Under the securities purchase agreement, each of the Investors (with Morgan Stanley and its affiliate, Originators Investment Plan, L.P., treated as one investor) were issued the following securities for an aggregate purchase price of \$4,000,000 at the closing of the transaction:

400,000 shares of our Series A Convertible Preferred Stock;

warrants to purchase 100,000 shares of Series A Convertible Preferred Stock, initially exercisable at a price of \$10.00 per share;

80,217 shares of our Common Stock; and

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warrants to purchase 750,000 shares of our Common Stock, initially exercisable at a price of \$1.00 per share.

### **Expected Use of Proceeds**

We expect to use the aggregate gross proceeds of \$16,000,000 raised from the sale and issuance of the above capital stock and warrants for:

payment of transaction expenses and general operating expenses until our sales increase to a point at which they can support our operations;

expansion of our corporate sales and marketing teams in order to increase sales of our EnergySaver<sup>®</sup> business;

research and development of new products, including modifications to our EnergySaver<sup>®</sup> product to improve our ability to target specific applications and a new line of EnergySaver<sup>®</sup> reliability switchgear targeted at the telecommunications and internet industries;

capital expenditures necessary to expand our manufacturing capacity, both for the production of both EnergySaver<sup>®</sup> and switchgear products; and

complete the repurchase of 10 distributor territories of amounts owing in respect of these repurchases and for the acquisition of companies with complementary technologies.

The placement agent received a fee equal to 5% of the \$16 million aggregate gross proceeds under the July 31, 2001 securities purchase agreement and will receive a further 5% of the aggregate gross proceeds from exercise of any of the warrants to purchase Series A Convertible Preferred Stock.

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On July 31, 2001, we also obtained an additional bridge loan from Newcourt Capital USA in the principal amount of \$1.2 million. We had previously borrowed \$2 million principal amount of bridge loans from Newcourt Capital USA. On July 31, 2001, in connection with the loans by CIT and services performed by the placement agent, an affiliate of Newcourt Capital USA, the placement agent received warrants to purchase 3,314,830 shares of Common Stock initially exercisable at a price of \$1.00 per share. Such warrants have an exercise period of seven years from the closing of the transactions contemplated by the securities purchase agreement, which was September 7, 2001. Upon closing of the Series A Convertible Preferred Stock transaction, Newcourt Capital USA applied our outstanding indebtedness, (excluding accrued interest of \$76,049.78, which was paid in cash) under the various bridge loans against payment of the purchase price of the capital stock and warrants purchased by Newcourt Capital USA under the securities purchase agreement. Accordingly, the Company received at the closing of the transaction approximately \$12 million in cash (after paying the placement agent fees and expenses of the private placement).

### **Conversion**

Each share of Series A Convertible Preferred Stock is convertible at the option of the holder into the number of shares of our Common Stock as determined by dividing \$10.00 by the conversion price, which is initially \$1.00.

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All outstanding shares of Series A Convertible Preferred Stock will be automatically converted if either of the following occurs:

at such time as the closing price of our Common Stock exceeds \$12.00 per share (as adjusted for stock splits, stock combinations and the like) as reported on the American Stock Exchange (or, if not traded on the American Stock Exchange, any national security exchange or automated quotation services on which our shares of Common Stock are listed for trading) for twenty consecutive trading days and the average trading volume for the same 20-day period exceeds 500,000 shares; or

we complete a firmly underwritten primary public offering of our Common Stock at a price of \$5.00 per share or more (as adjusted for stock splits, stock combinations and the like) in which we raise aggregate gross proceeds of at least \$35 million (a "Qualified Primary Offering").

Shares of Series A Convertible Preferred Stock have, subject to certain exceptions, anti-dilution protection that will automatically adjust the conversion price of the Series A Convertible Preferred Stock to the price per share of any Common Stock we issue, or are deemed to have issued, if that price per share is less than the then existing conversion price for the Series A Convertible Preferred Stock. For example, if following the closing of the transactions contemplated by the securities purchase agreement we issue 1,000,000 shares of Common Stock at \$0.50 per share, the conversion price of the Series A Convertible Preferred Stock will automatically be adjusted from \$1.00 to \$0.50. The Series A Convertible Preferred Stock is also subject to other customary anti-dilution provisions with respect to stock splits, stock dividends, stock combinations, reorganizations, mergers, consolidations, special distributions, sales of all or substantially all of the Company's assets and similar events.

### **Dividends**

Each outstanding share of Series A Convertible Preferred Stock is entitled to cumulative quarterly dividends at a rate of 10% per annum of its stated value, which is \$10.00. Dividends on the Series A Convertible Preferred Stock are payable and compounded quarterly. Until the first dividend payment date that occurs after three years following the initial issuance of the Series A Convertible Preferred Stock, dividends are payable, at our option, in cash or additional shares of Series A Convertible Preferred Stock. After that date, dividends on the Series A Convertible Preferred Stock must be paid in cash and the dividend rate increases 0.5% every six months to a maximum rate of 15% per year.

### **Liquidation**

Upon a liquidation, dissolution or winding up of the affairs of the Company, each holder of Series A Convertible Preferred Stock will be entitled to receive for each share of Series A Convertible Preferred Stock it holds, before any other security holder of the Company, the higher of:

\$20 plus accrued and unpaid dividends; or

an amount equal to the closing price of our Common Stock as reported on the American Stock Exchange (or, if not traded on the American Stock Exchange, any national security exchange or automated quotation services on which our shares of Common Stock are listed for trading) multiplied by the number of shares of Common Stock into which one share of Series A Convertible Preferred Stock is then convertible.

### **Redemption**

Outstanding shares of the Series A Convertible Preferred Stock are not subject to mandatory redemption. At any time after the third anniversary of our initial issuance of shares of Series A

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Convertible Preferred Stock, we have the option to redeem all outstanding shares of Series A Convertible Preferred Stock if the following two conditions are satisfied:

the closing price of our Common Stock as reported on the American Stock Exchange (or, if not traded on the American Stock Exchange, any national security exchange or automated quotation services on which our shares of Common Stock are listed for trading) exceeds \$7.50 per share (as adjusted for stock splits, stock combinations and the like) for at least 20 consecutive trading days immediately preceding the date we send a notice of redemption to all holders of Series A Convertible Preferred Stock; and

the average daily trading volume for the same period exceeds 500,000 shares.

The redemption price will be:

1. cash in the amount of \$10.00 per share plus accrued but unpaid dividends; and
2. that number of shares of Common Stock having a value equal to 70% of the excess of (i) the closing price of our Common Stock as reported on the American Stock Exchange (or, if not traded on the American Stock Exchange, any national security exchange or automated quotation services on which our shares of Common Stock are listed for trading) on the day before the redemption date multiplied by the number of shares of Common Stock into which a share of Series A Convertible Preferred Stock is then convertible, and (ii) \$10.00.

### **Voting Rights**

The Investors have the right to elect up to four directors depending on the number of shares of Series A Convertible Preferred Stock outstanding at any time (as adjusted for stock splits, stock combinations and the like) as follows:

for so long as at least 800,000 shares of Series A Convertible Preferred Stock remain issued and outstanding, holders of Series A Convertible Preferred Stock, voting as a single class, will be

entitled to elect four directors;

for so long as at least 600,000 but less than 800,000 shares of Series A Convertible Preferred Stock remain issued and outstanding, holders of Series A Convertible Preferred Stock, voting as a single class, will be entitled to elect three directors;

for so long as at least 400,000 but less than 600,000 shares of Series A Convertible Preferred Stock remain issued and outstanding, the holders of Series A Convertible Preferred Stock, voting as a single class, will be entitled to elect two directors; and

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for so long as at least 200,000 but less than 400,000 shares of Series A Convertible Preferred Stock remain issued and outstanding, the holders of Series A Convertible Preferred Stock, voting as a single class, shall be entitled to elect one director.

Except for the election of directors or as otherwise provided by law, the Investors are entitled to vote with the holders of our Common Stock on an as-converted basis on all matters on which our holders of Common Stock are entitled to vote. However, if less than 200,000 shares of Series A Convertible Preferred Stock remain issued and outstanding, unless otherwise provided by law, each holder of record of Series A Convertible Preferred Stock has the right to vote on an as-converted basis together with the holders of Common Stock, on all matters on which holders of Common Stock are entitled to vote, including the election of directors.

Our board of directors has fixed by resolution the number of directors at 12. In order to maintain an appropriate number of directors, two of our directors, Victor Conant and James Stumpe, resigned their positions as directors following our 2001 annual meeting and those two seats, along with two currently vacant seats, will be filled by directors designated by each of the Investors.

### **Special Approval Rights**

Holders of Series A Convertible Preferred Stock also have the following approval rights with respect to certain actions of the Company:

For so long as any shares of Series A Convertible Preferred Stock remain issued and outstanding we cannot, without approval of at least 75% of the shares of Series A Convertible Preferred Stock then outstanding:

enter into any agreement that would restrict our ability to perform under the securities purchase agreement;

amend our Certificate of Incorporation or bylaws in any way that could adversely affect, alter or change the rights, powers or preferences of the Series A Convertible Preferred Stock;

engage in any transaction that would impair or reduce the rights, powers or preferences of the Series A Convertible Preferred Stock as a class;

sell all or substantially all of the assets of the Company or merge with or into another company, or liquidate the Company (provided that if less than 400,000 shares of the Series A Convertible Preferred Stock are then outstanding and the then holders of Series A Convertible Preferred Stock refused to consent to such a transaction, we may at our option, redeem all, but not less than all, of such Series A Convertible Preferred Stock at a redemption price per share equal to the amount the Series A Convertible Preferred Stock would receive upon a liquidation); or

change the authorized number of directors of our Board of Directors.

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For so long as at least 800,000 shares of Series A Convertible Preferred Stock remain issued and outstanding we cannot, without the approval of at least 66<sup>2</sup>/<sub>3</sub>% of the shares of Series A Convertible Preferred Stock then outstanding:

authorize or issue any capital stock with rights senior to or equal to the Series A Convertible Preferred Stock or securities convertible or exchangeable into such capital stock;

authorize or issue any options, rights or warrants to purchase capital stock of the Company;

amend or alter any outstanding options, rights or warrants in a manner that reduces or that has the effect of reducing the per share exercise price for any outstanding options, rights or warrants;

authorize or issue any debt securities of the Company or any of its subsidiaries, other than debt under the existing revolving lines of credit or the replacement thereof on substantially similar terms, except that we may issue additional debt up to \$1,000,000 in the aggregate in the ordinary course of business and may incur trade payables in the ordinary course of business;

purchase, redeem, or otherwise acquire any of the Company's capital stock, other than the redemption of the Series A Convertible Preferred Stock;

enter into an acquisition, sale, merger, joint venture, consolidation or reorganization involving the Company or any of its subsidiaries;

sell or lease assets of the Company or any of its subsidiaries, except in the ordinary course of business;

declare or pay any cash dividends or make any distributions on any of our capital stock, other than on the Series A Convertible Preferred Stock;

authorize the payment of, or pay to any individual employee of the Company, cash compensation in excess of \$500,000 per annum; or

enter into any transaction (or series of transactions), including loans, with any employee, officer or director of the Company or to or with his, her or its affiliates or family members (other than with respect to payment of compensation to actual full-time employees in the ordinary course of business) involving \$50,000 or more per year individually or \$250,000 or more per year in the aggregate.

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For so long as at least 1,200,000 shares of Series A Convertible Preferred Stock remain issued and outstanding we cannot, without the approval of the holders representing 66<sup>2</sup>/<sub>3</sub>% of the shares of Series A Convertible Preferred Stock then outstanding:

terminate or newly appoint the chief executive officer or president of the Company;

approve any annual capital expense budget if such budget provides for annual capital expenditures by the Company and its subsidiaries in excess of \$1,000,000 in the aggregate in any year; or

approve the incurrence of any single capital expenditure (or series of related capital expenditures) in excess of \$500,000.

#### **Violation of Special Approval Rights**

In the event we violate any of these special approval rights and do not cure the violation within the prescribed cure period, which is 30 days for the first such violation and 10 days for any subsequent violation, following notice of that violation from any holder of Series A Convertible Preferred Stock, the holders of the Series A Convertible Preferred Stock have the right to elect that number of additional directors to our board

of directors necessary for them to elect a majority of the Board of Directors.

### **Ancillary Agreements**

In addition to the securities purchase agreement, the Investors, the placement agent and/or the Company entered into three ancillary agreements, each of which is described below:

#### **Investor Rights Agreement**

Under the investor rights agreement, the Investors and the placement agent may require the Company to register "Eligible Securities." "Eligible Securities" are (1) the shares of Common Stock (a) issued or issuable upon the conversion of the Series A Convertible Preferred Stock issued pursuant to the securities purchase agreements or (b) issued or issuable upon exercise of the warrants to purchase Series A Convertible Preferred Stock and conversion into Common Stock of the Series A Convertible Preferred Stock issued or issuable pursuant to such exercise; (2) the shares of Common Stock issued or issuable upon exercise of the warrants issued to the placement agent; (3) the shares of Common Stock issued pursuant to the first securities purchase agreement; (4) the shares of Common Stock issued or issuable upon exercise of the warrants to purchase Common Stock issued under the first securities purchase agreement; and (5) any other shares of Common Stock issued as (or issuable upon the conversion or exercise of any warrant, right or other security that is issued as) a dividend or other distribution with respect to, or in exchange for or in replacement of, the shares described in clauses (1) - (4). The Investors and the placement agent, as a group, may require an aggregate of four such registrations provided that each such registration is of an amount of shares representing at least \$5 million of market value.

The Investors and the placement agent are also entitled to customary "piggy-back" registration rights in the event that the Company proposes to register shares of its Common Stock for sale to the public (excluding shares being registered hereunder and excluding any registration statements on Forms S-4 or S-8), whether for its own account or for the account of other security holders (or both). If such registration is, in whole or in part, an underwritten public offering and the underwriters institute customary cut-back procedures, then the Investors' piggy-back registration rights shall be subject to cut-back pro rata with any other shares proposed to be registered and sold in such offering, other than shares to be sold by the Company. In the event that underwriters institute customary cut-back procedures in respect of a registration requested by the Investors, however, any shares registered

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pursuant to a registration requested by the Investors will have priority over the shares sought to be included therein by any other selling stockholder.

Under the investor rights agreement, each investor and the placement agent, subject to certain exceptions, have a right of first offer with respect to future sales by the Company of shares of its capital stock. Specifically each investor and the placement agent have the right to acquire a portion of shares of capital stock, in order to maintain their percentage ownership interests. The Investors also have the right to acquire any shares that the other Investors decline to purchase.

#### **Stockholders Agreement**

The Investors and the Company have also entered into a stockholders agreement. Under the stockholders agreement, each investor has the right to designate one member to the Board of Directors and to have a representative attend all meetings of the Board of Directors as a board observer so long as it holds at least 200,000 shares of Series A Convertible Preferred Stock. Additionally, the Investors and the Company have agreed that for so long as an investor owns at least 2,000,000 shares of Common Stock (calculated assuming conversion of all Series A Convertible Preferred Stock and the exercise of all Series A Convertible Preferred Stock warrants and Common Stock warrants held by such investor), a representative of such investor is entitled to attend all meetings of the Board of Directors as an observer if such investor does not have a designated board member. For purposes of the stockholders agreement, Morgan Stanley and Originators Investment Plan, L.P. are collectively considered to be one investor.

Each investor also agrees that if it converts more than 50% of the Series A Convertible Preferred Stock it purchases under the securities purchase agreement, it will, at the request of the Company, convert the remainder of its Series A Convertible Preferred Stock.

#### **Stock Trading Agreement**

Each of the Investors, the placement agent and certain officers of the Company have entered into a stock trading agreement that provides for restrictions on their sale of Common Stock into the public market. Under the stock trading agreement, the parties will not be able to sell their respective shares of Common Stock into the public market before the successful completion by us of a Qualified Primary Offering except that, if



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a Qualified Primary Offering is not completed within 18 months after the closing of the transactions contemplated by the securities purchase agreement, the parties may sell their respective shares subject to the following restrictions:

the closing price of our Common Stock as reported on the American Stock Exchange (or, if not traded on the American Stock Exchange, any national securities exchange or automated quotation services on which the Common Stock is then listed for trading) must exceed \$4.00 per share (as adjusted for stock splits, stock combinations and the like) for each of the twenty (20) consecutive trading days immediately prior to the date of sale;

the number of shares of Common Stock sold by a party on any trading day may not exceed five percent of the average daily trading volume of the Common Stock as reported on the American Stock Exchange (or, if not traded on the American Stock Exchange, any national securities exchange or automated quotation services on which the Common Stock is then listed for trading) for the twenty (20) consecutive trading days (as adjusted to exclude the highest and the lowest volume trading days for such twenty (20) consecutive trading day period) ending on the date immediately prior to such trading day;

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the average daily trading volume of the Common Stock as reported on the American Stock Exchange (or, if not traded on the American Stock Exchange, any national securities exchange or automated quotation services on which the Common Stock is then listed for trading) for the twenty (20) consecutive trading days (as adjusted to exclude the highest and the lowest volume trading days for such twenty (20) consecutive trading day period) ending on the date immediately prior to such trading day must exceed 150,000 shares;

the number of shares of Common Stock sold by a party into the public market in any three-month period may not exceed fifteen percent of that party's total holdings of Common Stock (calculated assuming the exercise of all rights, options and warrants to purchase Common Stock or securities convertible or exchangeable for shares of Common Stock, and the conversion or exchange of all securities convertible or exchangeable for Common Stock) on the date of the closing of the transactions contemplated by the securities purchase agreement (as adjusted for stock splits, stock combinations and the like); and

sales of at least 10,000 shares or more of Common Stock must be executed at a minimum price of 90% of the ask price as reported on the American Stock Exchange (or, if not traded on the American Stock Exchange, any nat