ELECTRIC CITY CORP
Form POS AM
May 03, 2004

AS FILED WITH THE SECURITIES AND EXCHANGE COMMISSION ON MAY 3, 2004

REGISTRATION NO. 333-109835

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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.
(Exact Name of Registrant as Specified in its Charter)

DELAWARE	3699
(State or other jurisdiction of incorporation or organization	(Primary Standard Industrial Classification Code Number)

1280 LANDMEIER ROAD, ELK GROVE VILLAGE, ILLINOIS, 60007, (847) 437-1666
(Address, and Telephone Number of Principal Executive Offices)

JEFFREY R. MISTARZ
CHIEF FINANCIAL OFFICER AND TREASURER
ELECTRIC CITY CORP., 1280 LANDMEIER ROAD, ELK GROVE VILLAGE,
ILLINOIS, 60007, (847) 437-1666
(Name, Address, and Telephone Number of Agent for Service)

COPIES TO:
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SCHWARTZ COOPER GREENBERGER & KRAUSS, CHTD.
180 N. LASALLE STREET, SUITE 2700
CHICAGO, ILLINOIS 60601
(312) 346-1300

APPROXIMATE DATE OF COMMENCEMENT OF PROPOSED SALE TO THE PUBLIC:

From time to time after the effective date of this registration statement.

If 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. [ ]

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. [ ]

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PROSPECTUS

(ELECTRIC CITY CORP. LOGO)

ELECTRIC CITY CORP.

941,698 SHARES OF COMMON STOCK

The selling stockholders are offering up to 941,698 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 , in the over the counter market, or in privately negotiated transactions, whenever they decide and at the prices they set. We may issue up to 420,000 of these shares upon exercise of 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 warrants.

Our Common Stock is quoted on The American Stock Exchange under the symbol "ELC." On April 29, 2004, the closing sale price for shares of our Common Stock was $1.71 per share.

Our principal executive office is located at 1280 Landmeier Road, Elk Grove Village, Illinois, 60007. Our telephone number at that address is (847) 437-1666. Our web site is located at http://www.elccorp.com. The information contained on our web site is not part of this prospectus.

INVESTING IN OUR COMMON STOCK INVOLVES RISKS DESCRIBED BEGINNING ON PAGE 3.

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 May 3, 2004.

TABLE OF CONTENTS

ABOUT THIS PROSPECTUS

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

any supplement or amendment.

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

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 2004 and beyond to differ materially from those expressed in, or implied by, these forward-looking statements. These factors include, without limitation, our limited operating history, our history of operating losses, our reliance on licensed technologies, customers' acceptance of our new and existing products, the risk of increased competition, 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 stockholders of Pice Products Corporation ("Pice"), an

inactive, unaffiliated company with minimal assets, pursuant to the merger of Pice with and into Electric City. This merger facilitated the establishment of a public trading market for our Common Stock. Trading in our Common Stock commenced on August 14, 1998 through the OTC Bulletin Board under the trading symbol "ECCC". Since December 12, 2000, our Common Stock has traded on the American Stock Exchange under the trading symbol "ELC".

OUR PRODUCTS

We are a developer, manufacturer and integrator of energy saving technologies and building automation controls as well as an independent developer of scalable, negative power systems. Our premier energy saving product is the EnergySaver system, which reduces energy consumed by lighting, typically by 20% to 30%, with minimal lighting level reduction. This technology has applications in commercial buildings, factories and office structures, as well as street lighting and parking lot lighting. Our GlobalCommander integrates with the EnergySaver allowing us to link multiple EnergySaver units together and to provide remote communications, measurement and verification of energy savings. The combined technology of the EnergySaver and GlobalCommander led to the development of our Virtual "Negawatt" Power Plan ("VNPP"), which is essentially a negative power system which we market primarily to utilities as a demand response system. In addition to our EnergySaver system, we also provide, through our subsidiary, Great Lakes Controlled Energy Corporation ("Great Lakes"), integrated building and environmental control solutions for commercial and industrial facilities. Until June 1, 2003, we also manufactured custom electrical switchgear through Switchboard Apparatus Inc. ("Switchboard"), a wholly owned subsidiary located in Broadview, Illinois. In an effort to refocus our resources and shed the continuing losses from the switchgear business, we sold the operating assets of Switchboard to a group of investors, including the President of Switchboard, effective as of May 31, 2003.

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

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

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

THE OFFERING

Securities Offered.	The selling stockholders are offering up to 941,698 shares of our Common Stock.

Terms of the Offering.	We have agreed to use our best efforts to keep this registration statement effective until all the registered shares of Laurus Master Fund, Ltd., one of the selling stockholders, 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 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 SIGNIFICANT OPERATING LOSSES SINCE INCEPTION AND MAY NOT ACHIEVE OR SUSTAIN PROFITABILITY IN THE FUTURE.

We have incurred substantial net losses in each year since we commenced operations in December 1997. We must overcome significant manufacturing and marketing hurdles to sell large quantities of our products. In addition, we may be required to reduce the prices of our products in order to increase sales. If we reduce product prices, we may not be able to reduce product costs sufficiently to achieve acceptable profit margins. As we strive to grow our business, we expect to spend significant funds (1) for general corporate purposes, including working capital, marketing, recruiting and hiring additional personnel; and (2) for research and development. To the extent that our

revenues do not increase as quickly as these costs and expenditures, our results of operations and liquidity will be materially adversely affected. If we experience slower than anticipated revenue growth or if our operating expenses exceed our expectations, we may not achieve profitability. Even if we achieve profitability in the future, we may not be able to sustain it.

A DECREASE IN ELECTRIC RETAIL RATES COULD LESSEN DEMAND FOR OUR ENERGYSAVER PRODUCTS.

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

WE HAVE A LICENSE UNDER CERTAIN PATENTS AND OUR ABILITY TO SELL OUR PRODUCTS MAY BE ADVERSELY IMPACTED IF THE LICENSE EXPIRES OR IS TERMINATED.

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

IF WE ARE NOT ABLE TO PROTECT OUR INTELLECTUAL PROPERTY RIGHTS AGAINST INFRINGEMENT OR OTHERS OBTAIN INTELLECTUAL PROPERTY RIGHTS RELATING TO ENERGY MANAGEMENT TECHNOLOGY, WE COULD LOSE OUR COMPETITIVE ADVANTAGE IN THE ENERGY MANAGEMENT MARKET.

We regard our intellectual property rights, such as patents, licenses of patents, trademarks, copyrights and trade secrets, as important to our success. Although we entered into confidentiality and rights to inventions agreements with our non-union employees and consultants during March 2001 (and non-union employees hired since March 2001 have also signed these agreements), the steps we have taken to protect our intellectual property rights may not be adequate. Third parties may infringe or misappropriate our intellectual property

rights or we may not be able to detect unauthorized use and take appropriate steps to enforce our rights. Failure to take appropriate protective steps could materially adversely affect our competitive advantage in the energy management market. Furthermore, our license to use Mr. 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 we

might not be successful or such modifications might not avoid infringing on the intellectual property rights of third parties.

Claims of patent infringement against us, regardless of merit, could result in the expenditure of significant financial and managerial resources by us. We may be forced to seek to enter license agreements with third parties (other than Mr. 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, because he is critical to obtaining and retaining customers, managing our growth and the future development of our Virtual Negawatt Power Plan ("VNPP") concept. Our future success will also depend upon our ability to attract and retain highly qualified technical, operating and marketing personnel. We believe that there is intense competition for qualified personnel in the energy management industry. If we cannot hire, train and retain qualified personnel or if a significant number of our current employees depart, we may be unable to successfully manufacture and market our products.

IF WE ARE UNABLE TO MANAGE OUR GROWTH, IT WILL ADVERSELY AFFECT OUR BUSINESS, THE QUALITY OF OUR PRODUCTS AND OUR ABILITY TO ATTRACT AND RETAIN KEY PERSONNEL.

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

- further develop and improve our operating, information, accounting, financial and other internal systems and controls on a timely basis;
- improve our business development, marketing and sales capabilities; and

- expand, train, motivate and manage our employee base.

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

IF OUR ENERGYSAVER PRODUCTS DO NOT ACHIEVE OR SUSTAIN MARKET ACCEPTANCE, OUR ABILITY TO COMPETE WILL BE ADVERSELY AFFECTED.

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

cost-effective basis will have a material adverse effect on our ability to compete in the energy management market.

FAILURE TO MEET CUSTOMERS' EXPECTATIONS OR DELIVER EXPECTED TECHNICAL PERFORMANCE COULD RESULT IN LOSSES AND NEGATIVE PUBLICITY.

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

- delayed or lost revenues due to adverse customer reaction;
- requirements to provide additional products and/or services to a customer at no charge;
- negative publicity regarding us and our products, which could adversely affect our ability to attract or retain customers; and
- claims for substantial damages against us, regardless of our responsibility for such failure.

IF SUFFICIENT ADDITIONAL FUNDING IS NOT AVAILABLE TO US, THE COMMERCIALIZATION OF OUR PRODUCTS AND OUR ABILITY TO GROW MAY BE HINDERED.

Our operations have not generated positive cash flow since the inception of the Company in 1997. We have funded our operations through the issuance of common and preferred stock and secured debt. Our ability to continue to operate until our cash flow turns positive may depend on our ability to continue to raise funds through the issuance of equity or debt. If we are not successful in raising additional funds, we might have to significantly scale back or delay our growth plans, or possibly cease operations altogether. Any reduction or delay in our growth plans could materially adversely affect our ability to compete in the marketplace, take advantage of business opportunities and develop or enhance our products.

RAISING ADDITIONAL CAPITAL OR CONSUMMATION OF ADDITIONAL ACQUISITIONS THROUGH THE ISSUANCE OF EQUITY OR EQUITY-LINKED SECURITIES COULD DILUTE YOUR OWNERSHIP INTEREST IN US.

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

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

FAILURE TO EFFECTIVELY MARKET OUR ENERGY MANAGEMENT PRODUCTS COULD IMPAIR OUR ABILITY TO SELL LARGE QUANTITIES OF THESE PRODUCTS.

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

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

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

IF OUR "VIRTUAL NEGAWATT POWER PLAN" CONCEPT IS UNSUCCESSFUL, DISTRIBUTION OF OUR ENERGYSAVER PRODUCT LINE MAY BE IMPAIRED AND OUR GROWTH COULD SUFFER.

During 2001, we announced our "Virtual Negawatt Power Plan" concept. The VNPP is intended to allow a utility to remotely control commercial, industrial and government lighting systems over a managed and secure IP network. It is envisioned that through the use of the EnergySaver/GlobalCommander system, a utility will be able to reduce electric demand requirements during periods of peak demand, providing nearly instantaneous control, measurement and verification of load reduction. The successful implementation of the VNPP concept could significantly increase the sales and profitability of our EnergySaver product line. We recently announced an agreement with Commonwealth Edison to implement a 50-Megawatt VNPP system in northern Illinois. A VNPP agreement was executed with ComEd during the third quarter of 2003 under which ComEd will make quarterly payments for verified load reduction capacity, and we began installing product under the program in late 2003. As of December 31, 2003 we had begun installing EnergySavers but we have not recognized revenue on the shipments. We are currently negotiating to transfer the ComEd VNPP contract to a limited liability company (the "LLC") being created by a Chicago based investment bank. The LLC would in turn purchase from us all the equipment installed under the ComEd program and receive payment for the curtailment capacity from ComEd over the term of the contract. Under this arrangement the LLC is expected to pay us approximately $17 million to $20 million for equipment and installation as the equipment is installed and accepted. We expect to receive these payments over an 18 to 24 month period.

While we have made significant progress toward implementing this program with ComEd, we still have a number of hurdles to clear before we can start recognizing revenue related to this program,

including legal and financing issues, the failure to accomplish any one of which could delay or cancel the program. Also, if we fail to recruit enough customers to participate in the program we may not be able to deliver 50MW of demand curtailment, which would result in less revenue from the program than we expect. If our attempts to advance the VNPP concept are unsuccessful, our plans to significantly increase the distribution of our EnergySaver product line may not develop and our growth may be impaired.

IF WE DO NOT SUCCESSFULLY COMPETE WITH OTHERS IN THE VERY COMPETITIVE ENERGY MANAGEMENT MARKET, WE MAY NOT ACHIEVE PROFITABILITY.

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

PRODUCT LIABILITY CLAIMS COULD RESULT IN LOSSES AND COULD DIVERT OUR MANAGEMENT'S TIME AND RESOURCES.

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

OUR CURRENT INTERNAL MANUFACTURING CAPACITY IS LIMITED AND IF DEMAND FOR OUR PRODUCTS INCREASES SIGNIFICANTLY AND WE ARE UNABLE TO INCREASE OUR CAPACITY QUICKLY AND EFFICIENTLY OUR BUSINESS COULD SUFFER.

Our EnergySaver products are manufactured at our facilities. To be financially successful, we must manufacture our products, including our EnergySaver products, in substantial quantities, at acceptable costs and on a timely basis. While we have produced over 1,000 EnergySaver units over the past six years, we have never approached what we believe is our production capacity. To produce larger quantities of our EnergySaver products at competitive prices and on a timely basis, we will have to further develop our processing, production control, assembly, testing and quality assurance capabilities. We will probably have to hire contract manufacturers and outsource the manufacturing of some or all of our products. We have had discussions with several potential contract manufacturers and they have produced units on a trial basis, but their ability to deliver significant quantities of product in a timely manner is still unproven. We may be unable to manufacture our EnergySaver products in sufficient volume and may incur substantial costs and expenses in connection with manufacturing larger quantities of our EnergySaver products. If we are unable to make the transition to large-scale commercial production successfully, our business will be negatively affected. We could encounter substantial difficulties if we decide to outsource the manufacturing of our products, including delays in manufacturing and poor production quality.

RISKS RELATED TO THIS OFFERING

BECAUSE OF THE CURRENT MARKET PRICE OF OUR COMMON STOCK, IN CONJUNCTION WITH THE FACT THAT WE ARE A RELATIVELY SMALL COMPANY WITH A HISTORY OF OPERATING LOSSES, THE FUTURE TRADING MARKET FOR

OUR STOCK MAY NOT BE ACTIVE ON A CONSISTENT BASIS, WHICH MAY MAKE IT DIFFICULT FOR YOU TO SELL YOUR SHARES.

The trading volume of our stock in the future will depend in part on our ability to increase our revenue and reduce or eliminate our operating losses, which should increase the attractiveness of our stock as an investment, thereby leading to a more liquid market for our stock on a consistent basis. If an active and liquid trading market does not exist for our Common Stock on AMEX, you may have difficulty selling your shares.

THE NEED TO RAISE ADDITIONAL CAPITAL WILL MOST LIKELY BE DILUTIVE TO OUR CURRENT STOCKHOLDERS AND COULD RESULT IN NEW INVESTORS RECEIVING RIGHTS THAT ARE SUPERIOR TO THOSE OF EXISTING STOCKHOLDERS.

Since September 2001, we have issued shares of our preferred stock convertible into 21,703,000 shares of our Common Stock. These shares of preferred stock are accruing dividends at the rate of 6% per year, though prior to March 22, 2004 they were accruing at the rate of 10% per year. To date we have issued shares of convertible preferred stock convertible into 5,967,689 shares of Common Stock in satisfaction of accrued dividends. The preferred stockholders all have rights that are superior to the rights of our Common Stockholders, including:

- a liquidation preference of $200 per share (under our Series E Preferred which was issued on March 22, 2004 in a 1 for 10 exchange for the outstanding Series A, C and D Preferred shares. See Liquidity and Capital Resources.);
- special approval rights in respect of certain actions by the Company, including any issuance of shares of capital stock by the Company that would have the right to receive dividends or the right to participate in any distribution upon liquidation which was senior to or equal to the rights of the Series E Preferred (other than to pay dividends on the preferred and under certain other limited exceptions such as conversion of outstanding convertible securities) and any acquisition, sale, merger, joint venture, consolidation or reorganization involving the Company or any of its subsidiaries;
- a conversion price that may be below the market price of our Common Stock;
- the right to elect up to four directors;
- the right to vote with the holders of Common Stock on an "as converted" basis on all matters on which holders of our Common Stock are entitled to vote, except with respect to the election of directors or as otherwise provided by law;
- a right of first offer on the sale of equity by the Company in a private transaction; and
- anti-dilution protection that would adjust the conversion price on their preferred shares and the exercise price on their warrants in the event we issue equity at a price which is less than the conversion price or exercise price of their securities.

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

the value of our Common Stock.

JOSEPH MARINO, RICHARD KIPHART AND DYDX MAY BE ABLE TO CONTROL MATTERS REQUIRING STOCKHOLDER APPROVAL OR COULD CAUSE OUR STOCK PRICE TO DECLINE THROUGH FUTURE SALES BECAUSE THEY BENEFICIALLY OWN A LARGE PERCENTAGE OF OUR COMMON STOCK.

There are 40,922,021 shares of our Common Stock outstanding as of April 20, 2004, of which Joseph C. Marino beneficially owns approximately 20%, Richard Kiphart beneficially owns approximately 18% and DYDX beneficially owns

approximately 8% (each of the aforementioned percentages include stock options that are currently exercisable). As a result of their significant ownership, Mr. Marino, Mr. Kiphart and DYDX may have the ability to exercise a controlling influence over our business and corporate actions requiring stockholder approval, including the election of our directors (other than those directors to be chosen by the holders of our preferred stock), a sale of substantially all of our assets, a merger between us and another entity or an amendment to our certificate of incorporation. This concentration of ownership could delay, defer or prevent a change of control and could adversely affect the price investors might be willing to pay in the future for shares of our Common Stock. Also, in the event of a sale of our business, Mr. Marino and Mr. Kiphart and DYDX could elect to receive a control premium to the exclusion of other stockholders.

A significant percentage of the outstanding shares of our Common Stock, including the shares beneficially owned by Mr. Marino, Mr. Kiphart or DYDX and the shares offered under this prospectus 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, Mr. Kiphart, DYDX or other stockholders (including the selling stockholders under this prospectus) in the public market or due to the perception that these sales could occur. This could also make it more difficult for us to raise funds through future offerings of our equity securities.

PROVISIONS OF OUR CHARTER AND BY-LAWS, IN PARTICULAR OUR "BLANK CHECK" PREFERRED STOCK, COULD DISCOURAGE AN ACQUISITION OF OUR COMPANY THAT WOULD BENEFIT OUR STOCKHOLDERS.

Provisions of our charter and by-laws may make it more difficult for a third party to acquire control of our company, even if a change in control would benefit our stockholders. In particular, shares of our preferred stock have been issued and may be issued in the future without further stockholder approval and upon those terms and conditions, and having those rights, privileges and preferences, as our Board of Directors may determine and which are acceptable to

the holders of our Series E Preferred Stock. The rights of the holders of our Common Stock will be subject to, and may be adversely affected by, the rights of the holders of any of our preferred stock which is currently outstanding or which may be issued in the future. The issuance of our preferred stock, while providing desirable flexibility in pursuing possible additional equity financings and other corporate purposes, could have the effect of making it more difficult for a third party to acquire control of us. This could limit the price that certain investors might be willing to pay in the future for shares of our Common Stock and discourage these investors from acquiring a majority of our Common Stock. In addition, the price that future investors may be willing to pay for our Common Stock may be lower due to the conversion price and exercise price granted to investors in any such private financing.

USE OF PROCEEDS

We will not receive any of the proceeds from any sale of the shares offered by this prospectus by the selling stockholders. If and when the selling stockholders exercise their warrants, we will receive up to $1,201,800 from the issuance of shares of Common Stock to the selling stockholders. Under such warrants, the selling stockholders have exercise prices ranging from $2.44 to $3.18 per share. To the extent the selling stockholders exercise their 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 warrants or the conversion of convertible notes we have issued. We have agreed to use our best efforts to keep this registration statement effective until all the shares of Laurus Master Fund, Ltd. registered under the applicable registration statement have been sold or may be sold without volume restrictions pursuant to Rule 144(k) 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:

- 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;
- 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 a 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 stockholder. 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.

Certain of the selling stockholders have agreed not to engage in short sales, but from time to time the other 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.

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

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

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

The selling stockholders and any other person participating in such distribution will be subject to applicable provisions of the Exchange Act and the rules and regulations thereunder, including, without limitation, Regulation M of the Exchange Act, which may limit the timing of purchases and sales of any of the shares of Common Stock by the selling stockholders and any other participating person.

A portion of the shares of Common Stock which are being registered hereunder may be issued upon conversion of promissory notes which we have issued, or may in the future issue, to Laurus Master Fund, Ltd. See "Description of Securities" and "Management's Discussion and Analysis or Plan of Operation - Liquidity and Capital Resources". This prospectus does not cover the sale or transfer of such convertible promissory notes or of any of the warrants referred to under "Description of Securities". If the selling stockholders transfer any of those derivative securities prior to conversion or exercise, the transferee of such derivative securities may not sell the shares of Common Stock issuable upon conversion or exercise of such derivative securities under the terms of this prospectus unless we amend or supplement this prospectus to cover such sales.

Regulation M may also restrict the ability of any person engaged in the distribution of the shares of Common Stock to engage in market-making activities with respect to the shares of Common Stock. All of the foregoing may affect the marketability of the shares of Common Stock and the ability of any person or

entity to engage in market-making activities with respect to the shares of Common Stock.

We 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) which we estimate to be $38,198 in total, including, without limitation, Securities and Exchange Commission filing fees, expenses of compliance with state securities or "blue sky" laws, legal fees and transfer agent fees relating to sales pursuant to this prospectus; provided, however, that the selling stockholders will pay all underwriting discounts and selling commissions, if any. We have agreed to indemnify certain of the selling stockholders against certain losses, claims, damages and liabilities, including liabilities under the Securities Act of 1933, as amended.

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

LEGAL PROCEEDINGS

From time to time, the Company has been a party to pending or threaten legal proceedings and arbitrations that are routine and incidental to its business. In early October 2003, the Company notified one of its significant distributors that the Company was terminating the distributorship agreement between the parties due to certain unresolved issues (including breaches by such distributor), such termination to be effective after 60 days. In such notice, the Company indicated that it would be willing to enter into a new agreement with such distributor if the disputed issues could be resolved to the mutual satisfaction of the parties. Subsequent to giving such notice, the Company has received a demand for arbitration from such distributor pursuant to the provisions of the agreement, seeking, among other things, money damages in an unspecified amount and a declaration of the meaning of certain provisions of the distributorship agreement. The Company intends to defend the arbitration, but cannot predict the outcome at this time. Based upon information presently available, and in light of legal and other defenses available to the Company, management does not consider the liability from any threatened or pending litigation (including the foregoing arbitration) to be material to the Company.

DIRECTORS, EXECUTIVE OFFICERS, PROMOTERS AND CONTROL PERSONS

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

NAME	AGE	PRINCIPAL POSITIONS

John P. Mitola.....	39	Chief Executive Officer and Director (1)
Jeffrey R. Mistarz.....	46	Executive Vice President, Chief Financia Treasurer and Assistant Secretary
Denis Enberg.....	55	Senior Vice President, Engineering
Michael S. Stelter.....	47	Director (1)
David Asplund.....	46	Director (1)(5)
Frederic F. Brace.....	46	Director (2)
John C. Bukovski	61	Director (3)
Felicia Ferguson.....	44	Director (2)(5)
Robert J. Manning.....	61	Director (1)(4)(5)
Gerald A. Pientka.....	48	Director (1)(3)(4)
Robert D. Wagner, Jr.....	62	Director (2)(3)(4)

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(1) These directors were elected by a majority of stockholder votes cast during our Annual Meeting of Stockholders held September 24, 2003.

(2) Messrs. Brace, and Wagner and Ms. Ferguson were appointed by the holders of our Convertible Preferred Stock.

(3) Member of our Audit Committee.

(4) Member of our Compensation Committee.

(5) Member of our Governance and Nominating Committee.

Our Board of Directors is currently authorized for a membership of twelve directors, up to four of which (depending on the number of shares of Series E Preferred Stock outstanding) are to be elected by the holders of the Series E Preferred Stock. As of March 31, 2004, our Board of Directors had three vacancies, of which one is to be filled by the holders of our Series E Convertible Preferred Stock.

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(TM) 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. Since April 2003, Mr. Mitola has also served as the chairman of the Illinois State Toll Highway Authority, appointed by the Governor of Illinois.

Jeffrey R. Mistarz has been our chief financial officer since January 2000, our treasurer since October 2000 and our assistant secretary since February 2003. 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 positions in corporate lending, investment banking and credit strategy.

Denis Enberg has been our Senior Vice President of Engineering since Electric City acquired his company, Great Lakes Controlled Energy Corporation, in June 2001. Mr. Enberg co-founded Great Lakes Controlled Energy Corp in 1985. From 1975 to 1985 he was president of C.E. Electric Incorporated, a Chicago licensed commercial and industrial electrical contracting firm that also specialized in industrial automation and controls. Mr. Enberg is a charter life member of the Association of Energy Engineers and holds certifications as "Certified Energy Manager", "Certified Lighting Efficiency Professional" and "Certified Demand-Side Management" professional and is considered one of the early pioneers in the building automation industry.

David R. Asplund was nominated to our board of directors during June 2002. Mr. Asplund is, and has been, the founder and President of Delano Group Securities, LLC since October 1999. From March 1995 through October 1999, Mr. Asplund was employed by Bear, Stearns and Company, Inc., serving as a Senior Managing Director from July 1997 until October 1999.

John C. Bukovski has been one of our directors since January 2004. From January 1992 until his retirement in January 2002, Mr. Bukovski was the Senior Vice President and Chief Financial Officer of Commonwealth Edison Company, the largest subsidiary of Unicom Corporation (now Exelon). During his thirty-seven year career with Commonwealth Edison Mr. Bukovski held a variety of management positions within the company. During the 1990's Mr. Bukovski served on the Board of Directors of Northwestern Memorial Hospital in Chicago Illinois.

Frederic F. Brace has been one of our directors since October 2001 and is an appointee of the holders of our Series E Convertible Preferred Stock. Mr. Brace is, and has been, the Executive Vice President and Chief Financial Officer of UAL Corporation, the parent of United Airlines since July 2002. From September 2001 through July 2002, Mr. Brace was Senior Vice President and Chief Financial Officer of UAL Corporation. 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.

Felicia A. Ferguson has been one of our directors since February 2004 and is an appointee of the holders of our Series E Convertible Preferred Stock. Ms. Ferguson is the Managing Director of Cinergy Ventures, LLC, the private equity investment unit of Cinergy Corp. Prior to becoming the Managing Director, Ms. Ferguson was Vice President and Chief Financial Officer of Cinergy's Power Technology and Infrastructure Services business unit, which was responsible for investments in non-regulated domestic energy infrastructure services businesses. Ms. Ferguson has also held management positions in finance, accounting, information technology, and investor relations at Cinergy Corp. Besides Electric City, Ms. Ferguson is the Chairman of the Board of Reliant Services, Inc.

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 Unicom 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.

Gerald A. Pientka has been one of our directors since May 2000. Mr. Pientka is currently, and has been since September 2003, a Principal of Verus Partners, a real estate development company located in Chicago, Illinois. Prior to this, from May 1999 through March 2003, Mr. Pientka was President of Higgins Development Partners, LLC (the successor to Walsh, Higgins & Company), a national real estate development company controlled by the Pritzker family interest. From May 1992 until May 1999, Mr. Pientka served as President of Walsh, Higgins & Company. Mr. Pientka is also a member of Leaf Mountain Company, LLC, which is an investor in our Series E Convertible Preferred Stock.

Michael S. Stelter is one of our co-founders and has been one of our directors since our incorporation in June 1998. Currently, Mr. Stelter is employed by and a part owner of Switchboard Apparatus, Inc., which was divested by Electric City effective May 31, 2003. Since our organization as a limited liability company in December 1997, through May 2003, Mr. Stelter served as our Vice President of Switchgear 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.

Robert D. Wagner, Jr. has been one of our directors since October 2001 and is an appointee of the holders of our Series E Convertible Preferred Stock. Mr. Wagner is currently a partner of Rivington Capital, which provides advisory services and debt and equity placements for independent oil and gas producers. Mr. Wagner served as Managing Director of the corporate finance group of Arthur Andersen LLP 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, Mr. Wagner served as Managing Director for Bankers Trust/BT Alex Brown.

SELLING SECURITY HOLDERS

All of the selling stockholders named below acquired or have the right to acquire upon the exercise of warrants or the conversion of notes we have issued into Common Stock, the shares of our Common Stock being offered under this prospectus directly from us in a private transaction. The following table sets forth information known to us with respect to the beneficial ownership of

our Common Stock as of April 29, 2004 as provided by the selling stockholders. In accordance with the rules of the SEC, beneficial ownership includes the shares issuable pursuant to warrants or the conversion of notes that are exercisable within 60 days of April 30, 2004. Shares issuable pursuant to warrants or the conversion of notes are considered outstanding for computing the percentage of the person holding the warrants or such notes but are not considered outstanding for computing the percentage of any other person.

The percentage of beneficial ownership for the following table is based on 40,922,021 shares of Common Stock outstanding as of April 29, 2004 (excluding shares issuable on exercise of outstanding options and warrants or pursuant to conversion of outstanding Series E Preferred Stock or convertible debt securities). To our knowledge, except as indicated in the footnotes to this table, each person named in the table has sole voting and investment power with respect to all shares of Common Stock shown in the table to be beneficially owned by such person.

None of the selling stockholders has had any position, office or other material relationship with us within the past three years. The table assumes that the selling stockholders will sell all of the shares offered by them in this offering. However, we are unable to determine the exact number of shares that will actually be sold or when or if these sales will occur, except that as of the date of this prospectus 50,000 of the shares offered hereby have been sold by Wall & Broad Equities. All of such shares were

acquired pursuant to exercise of warrants and we received $50,000 of proceeds from such exercise. We will not receive any of the proceeds from the sale of the shares offered under this prospectus.

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

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OWNERSHIP PRIOR TO OFFERING

SELLING STOCKHOLDER (23)	SHARES	%	SECURITIES BEING OFFERED	SHARE
Laurus Master Fund, Ltd.	891,698(1)	2.157%	891,698(1)	
Wall & Broad Equities	100,000	*	50,000	

* Less than 1%

(1) Includes warrants to purchase 420,000 shares of Common Stock.

DESCRIPTION OF SECURITIES

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

GENERAL

As of April 29, 2004, we had 120,000,000 authorized shares of Common Stock of which:

- 40,922,021shares are issued and outstanding;
- 21,703,000 shares of Common Stock are issuable upon conversion of Series E Convertible Preferred Stock
- 11,119,867 shares of Common Stock are issuable upon exercise of outstanding Common Stock warrants;
- 375,000 shares of Common Stock are issuable upon exercise of outstanding Series E Convertible Preferred Stock warrants and conversion of the shares of Series E Convertible Preferred Stock which is issuable thereunder;
- 10,622,181 shares of Common Stock are issuable upon exercise of outstanding stock options,

- 319,240 shares of Common Stock issuable upon conversion of a secured convertible term note, and
- up to 943,396 shares of Common Stock issuable upon conversion of a secured convertible revolving notes which we may issue to Laurus Master Fund, Ltd. (see "Management's Discussion and

Analysis or Plan of Operation - Liquidity and Capital Resources").

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 E Preferred have the right to appoint and elect up to four of the members of our board of directors (out of a board of 12) and the holders of Series E Preferred have the right to approve certain other actions by the Company (See "Series E Preferred Stock - Voting Rights"). 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 agreements entered into with our preferred stockholders applicable to certain shares of Common Stock held or hereafter acquired by such preferred stockholders, 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. Any shares of Common Stock which the selling stockholders acquire through exercise of their warrants or conversion of convertible notes will also be fully paid and nonassessable.

SERIES E PREFERRED STOCK

On March 19, 2004, we entered into a Redemption and Exchange Agreement with the holders of our outstanding Series A Convertible Preferred Stock, Series C Convertible Preferred Stock and Series D Convertible Preferred Stock (collectively, the "Existing Preferred Stock") under which we agreed to redeem 538,462 shares of Existing Preferred Stock at a price of $13 per share (the "Redemption") and to exchange shares of our newly authorized Series E Convertible Preferred Stock (the "Series E Preferred") for all remaining outstanding shares of Existing Preferred Stock (the "Exchange") on a 1 for 10 basis (one share of Series E Preferred exchanged for 10 shares of Existing Preferred Stock). We used $7 million of the proceeds from an issuance on March 19, 2004 of our Common Stock and warrants to accomplish the Redemption, which closed on March 22, 2004.

Under the Redemption and Exchange transaction, the Company redeemed 538,462 shares of our outstanding Existing Preferred Stock which were convertible into 5,384,620 shares of Common Stock, at a price equivalent to $1.30 per common share, and exchanged 210,451 shares of the new Series E Preferred for the remaining 2,104,509 outstanding shares of the Existing Preferred Stock. All of the Existing Preferred Stock has been cancelled.

TERMS OF THE SERIES E CONVERTIBLE PREFERRED STOCK

CONVERSION

Each share of Series E Convertible Preferred Stock is convertible at the option of the holder into a number of shares of our Common Stock as determined by dividing $100.00 by the conversion price, which was initially and is currently $1.00.

All outstanding shares of Series E 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 E Convertible Preferred Stock have, subject to certain exceptions, anti-dilution protection that will automatically adjust the conversion price of the Series E 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 E Convertible Preferred Stock. For example, if we issue shares of Common Stock at $0.50 per share, the conversion price of the Series E Convertible Preferred Stock will automatically be adjusted from $1.00 to $0.50. The Series E 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 E Convertible Preferred Stock is entitled to cumulative quarterly dividends at a rate of 6% per annum of its stated value, which is $100.00. Dividends on the Series E Convertible Preferred Stock are payable and compounded quarterly. The Series E Convertible Preferred Stock dividends are payable, at our option, in cash or additional shares of Series E Convertible Preferred Stock.

LIQUIDATION

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

- $200 plus accrued and unpaid dividends; or

- an amount equal to the "Market Price" of our Common Stock into which one share of Series E Convertible Preferred Stock is then convertible. "Market Price" means the average 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)

over a period of ten consecutive days ending two days prior to the date as of which "Market Price" is being determined.

REDEMPTION

Outstanding shares of the Series E Convertible Preferred Stock are not subject to mandatory redemption. At any time, we have the option to redeem all outstanding shares of Series E 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 securities 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 or redemption to all holders of Series E Convertible Preferred Stock; and

- the average daily trading volume of our Common Stock for the same period exceeds 500,000 shares.

We also have a right to redeem in connection with a sale or merger of the Company which the holders of the Series E Preferred do not approve if less than 45,000 shares of Series E Preferred Stock are then outstanding. See "Special Approval Rights" below.

The redemption price will be:

1. cash in the amount of $100.00 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 securities 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 E Convertible Preferred Stock is then convertible, over (ii) $10.00.

VOTING RIGHTS

The Series E Convertible Preferred Stock has the right to elect up to four directors depending on the number of shares of Series E 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 90,000 shares of Series E Convertible Preferred Stock remain issued and outstanding, holders of Series E Convertible Preferred Stock, voting as a single class, will be entitled to elect four directors;

- for so long as at least 65,000 but less than 90,000 shares of Series E Convertible Preferred Stock remain issued and outstanding, holders of Series E Convertible Preferred Stock, voting as a single class, will be entitled to elect three directors;

- for so long as at least 45,000 but less than 65,000 shares of Series E Convertible Preferred Stock remain issued and outstanding, the holders of Series E Convertible Preferred Stock, voting as a single class, will be entitled to elect two directors; and

- for so long as at least 20,000 but less than 45,000 shares of Series E Convertible Preferred Stock remain issued and outstanding, the holders of Series E Convertible Preferred Stock, voting as a single class, shall be entitled to elect one director.

Except for the election of directors and as to any special approvals or as otherwise provided by law, the Series E Convertible Preferred Stock is 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 20,000 shares of Series E Convertible Preferred Stock remain issued and outstanding, unless otherwise provided by law, each holder of record of Series E 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.

SPECIAL APPROVAL RIGHTS

The holder of Series E Convertible Preferred Stock also has the following approval rights with respect to certain actions of the Company:

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

  - enter into any agreement that would restrict our ability to perform under the Redemption and Exchange 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 E Convertible Preferred Stock;

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

  - sell control of the Company or 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 45,000 shares of the Series

E Convertible Preferred Stock are then outstanding and the then holders of Series E Convertible Preferred Stock refused to consent to such a transaction, we may at our option, in connection with consummating such transactions, redeem all, but not less than all, of such Series E Convertible Preferred Stock at a redemption price per share equal to the amount the Series E Convertible Preferred Stock would receive upon a liquidation); or

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

- For so long as at least 90,000 shares in the aggregate of Series E Convertible Preferred Stock remain issued and outstanding we cannot, without the approval of at least 66-2/3% of the aggregate shares of Series E Convertible Preferred Stock then outstanding:

- 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 as of March 19, 2004 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 E 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 E 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.

- For so long as at least 130,000 shares of Series E Convertible Preferred Stock remain issued and outstanding we cannot, without the approval of the holders representing 66-2/3% of the shares of Series E 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 E Convertible Preferred Stock,

the holders of the Series E 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 Redemption and Exchange Agreement, the holders of our Series E Convertible Preferred Stock, CIT Capital Securities, Inc. (which acquired certain Common Stock warrants in connection with the initial issuance of our Series A Preferred Stock in 2001) and the Company entered into three ancillary agreements, each of which is described below. These three agreements amended and restated certain existing agreements entered into in connection with the original issuances of Existing Preferred Stock.

AMENDED AND RESTATED INVESTOR RIGHTS AGREEMENT

Under the Amended and Restated Investor Rights Agreement, the holders of our Series E Convertible Preferred Stock and CIT Capital Securities, Inc. may require the Company to register "Eligible Securities" as defined therein. The holders of Eligible Securities, 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 holders of Eligible Securities 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 such 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 holders of Eligible Securities, however, any shares registered pursuant to a registration requested by the holders of Eligible Securities will have priority over the shares sought to be included therein by any other selling stockholder.

Under the Amended and Restated Investor Rights Agreement, each investor and CIT Capital Securities, Inc., subject to certain exceptions, have a right of first offer with respect to future sales by the Company of shares of its capital stock, in order to maintain their respective percentage ownership interests, and also have the right to acquire any shares that the other parties within this group decline to purchase.

AMENDED AND RESTATED STOCKHOLDERS AGREEMENT

The holders of our Series E Convertible Preferred Stock (other than SF Capital Partners, Ltd.) and the Company also entered into an Amended and Restated Stockholders Agreement (the "Stockholders Agreement"). Under the Stockholders Agreement, the Company and such holders (the "Holders") agree:

- For so long as the aggregate number of issued and outstanding shares of Series E Preferred Stock is at least 90,000 shares, the four Holders holding the greatest number of shares of Series E Preferred Stock, for so long as each such Holder and its Affiliates hold in the aggregate at least 12.5% of the aggregate number of issued and outstanding shares of

Series E Preferred Stock as of March 22, 2004, shall each be entitled to designate for nomination by the Board one nominee for election to the Board by the holders of the Series E Preferred Stock each time Directors of the Company are to be elected.

- For so long as the aggregate number of issued and outstanding shares of Series E Preferred Stock is at least 65,000 shares but less than 90,000 shares, the three Holders holding the greatest number of shares of Series E Preferred Stock, for so long as each such Holder and its Affiliates hold in the aggregate at least 9.375% of the aggregate issued and outstanding shares of Series E Preferred Stock as of March 22, 2004 shall each be entitled to designate for nomination by the Board one nominee for election to the Board by the holders of the Series E Preferred Stock each time Directors of the Company are to be elected.

- For so long as the aggregate number of issued and outstanding

shares of Series E Preferred Stock is at least 45,000 shares but less than 65,000 shares, a majority-in-interest of the outstanding shares of Series E Preferred Stock shall be entitled to designate for nomination by the Board two nominees for election to the Board by the holders of the Series E Preferred Stock each time Directors of the Company are to be elected.

- For so long as the aggregate number of issued and outstanding shares of Series E Preferred Stock is at least 20,000 shares but less than 45,000 shares a majority-in-interest of the outstanding shares of Series E Preferred Stock shall be entitled to designate for nomination by the Board one nominee for election to the Board by the holders of the Series E Preferred Stock each time Directors of the Company are to be elected.

If a Holder possesses the right to designate for nomination to the Board its nominee, or no longer possesses a right to designate for nomination to the Board a nominee, but such Holder and its Affiliates hold at least an aggregate of 2,000,000 shares of the Common Stock (calculated assuming the exercise of all rights, options and warrants to purchase Common Stock or securities convertible or exchangable for shares of Common Stock, and the exchange or conversion of all securities convertible or exchangeable for Common Stock), then such Holder shall be entitled to designate one individual to serve as a Board Observer, provided that, notwithstanding the foregoing, (i) while Leaf Mountain Company LLC holds 10,000 or more shares of Series E Preferred Stock (as adjusted for stock splits, stock combinations and the like), Leaf Mountain shall be entitled to designate one individual to serve as a Board Observer , and (ii) while Morgan Stanley Dean Witter Equity Funding, Inc. and Originators Investment Plan, L.P. collectively hold 7,500 or more shares of Series E Preferred Stock (as adjusted for stock splits, stock combinations and the like), Morgan Stanley Dean Witter Equity Funding, Inc. shall be entitled to designate one individual to serve as a Board Observer.

Each Holder also agrees that if it converts more than 50% of the Series E Convertible Preferred Stock received by it upon closing under the Redemption and Exchange Agreement, it will, at the request of the Company, convert the remainder of its Series E Convertible Preferred Stock into shares of Common Stock.

AMENDED AND RESTATED STOCK TRADING AGREEMENT

Each holders of our Series E Convertible Preferred Stock, CIT Capital Securities, Inc. and certain officers of the Company entered into an Amended and Restated Stock Trading Agreement that provides for restrictions on their sale of Common Stock into the public market. Under such Amended and Restated Stock Trading Agreement, the terms of the prior Stock Trading Agreements (the "Prior

Agreements") continue to be effective through September 7, 2004. As part of the Prior Agreements the parties agree not to sell their respective shares of Common Stock into the public market except that 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;

- 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 pursuant to which such party executed the applicable Prior Agreement (as adjusted for stock splits, stock combinations and the like); and

- sales of 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 national security exchange or automated quotation service on which our shares of Common Stock are listed for trading).

Also under the Prior Agreements, subject to the expiration of any "lock-up period" related to a qualified primary offering, each party may sell shares of Common Stock into the public market following a "Qualified Primary Offering" (a firmly underwritten primary public offering of our Common Stock at a price of $5.00 per share or more in which we raise gross proceeds of at least $35 million) subject to the following restrictions:

- 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,

- the number of shares of Common Stock sold by a party into the public market in any three-month period may not exceed twenty 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 pursuant to which such party executed the applicable Prior Agreement (as adjusted for stock splits, stock combinations and the like), and

- sales of at least 10,000 shares 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 national security exchange or automated quotation services on which our shares of Common Stock are listed for trading).

Each party to a Prior Agreement has a right of first offer if any other party to such Prior Agreement intends to sell its shares in a private transaction. The Prior Agreements were scheduled to terminate September 7, 2004. However, if a Qualified Primary Offering is completed prior to September 7, 2004, two of the Prior Agreements would instead terminate 18 months after the completion of the Qualified Primary Offering.

Under the Amended and Restated Stock Trading Agreement, effective September 8, 2004, the foregoing restrictions will end and thereafter no party may sell any of its Common Stock into the public market except in accordance with the following trading restrictions:

(a) At any time the Closing Price on the then prior trading day is $4.00 per share or more, no trading restrictions shall apply.

(b) Until September 8, 2007, at any time the Closing Price on the prior trading day is at least $2.00 per share but less than $4.00 per share, such party may sell any of its Common Stock into the public market, subject to the following conditions:

(i) the number of shares of Common Stock sold by such party on any trading day may not exceed fifteen percent (15%) of the average daily trading volume; and

(i) (ii) sales of 10,000 shares or more by such party must be executed at a minimum price per share of 90% of the ask price 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).

(c) Until September 8, 2007, at any time the Closing Price on the prior trading day is at least $1.00 per share but less than $2.00 per share, such party may sell any of its Common Stock into the public market, subject to the following conditions:

(i) the number of shares of Common Stock sold by such party on any trading day may not exceed ten percent (10%) of the average daily trading volume; and

(ii) sales by such party of 10,000 shares or more must be executed at a minimum price per share of 90% of the ask price 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).

(d) Until September 8, 2007, at any time the Closing Price on the prior trading day is less than $1.00 per share, such Party may sell any of its Common Stock into the public market, subject to the following conditions:

(i) the number of shares of Common Stock sold by such party on any trading day may not exceed five percent (5%) of the average daily trading volume; and

(ii) sales by such party of 10,000 shares of more must be executed at a minimum price per share of 90% of the ask price 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).

Certain shares held by Leaf Mountain Company, LLC, SF Capital Partners, Ltd., and Richard Kiphart are not subject to the Amended and Restated Trading Agreement.

OTHER PREFERRED STOCK

Our board of directors, without further stockholder approval (other than the approval of the holders of the Series E Convertible Preferred Stock

described above under "Special Approval Rights"), may issue additional preferred stock in one or more series from time to time and fix or alter the designations, relative rights, priorities, preferences, qualifications, limitations and restrictions of the shares of each series. The rights, preferences, limitations and restrictions of different series of preferred stock may differ with respect to dividend rates, amounts payable on liquidation, voting rights, conversion rights, redemption provisions, sinking fund provisions and other matters. Subject, in each case, to obtaining any required approval of the holders of the Series E Convertible Preferred Stock, our board of directors (1) may authorize the issuance of preferred stock that ranks senior to our Common Stock for the payment of dividends and the distribution of assets on liquidation, (2) can fix limitations and restrictions upon the payment of dividends on our Common Stock to be effective while

any shares of preferred stock are outstanding, and (3) can also issue preferred stock with voting and conversion rights that could adversely affect the voting power of the holders of Common Stock.

DELAWARE ANTI-TAKEOVER LAW

We are subject to the provisions of Section 203 of the Delaware General Corporation Law. In general, this section prohibits a publicly held Delaware corporation from engaging in a business combination with an interested stockholder for a period of three years after the date of the transaction in which the person becomes an interested stockholder, unless:

- before the date on which the stockholder became an interested stockholder, the corporation's board of directors approved either the business combination or the transaction in which the person became an interested stockholder;
- the stockholder acquires more than 85% of the outstanding voting stock of the corporation, excluding shares held by directors who are officers or held in certain employee stock plans, upon consummation of the transaction in which the stockholder becomes an interested stockholder; or
- the business combination is approved by the board of directors and by two-thirds of the outstanding voting stock of the corporation that is not held by the interested stockholder, at a meeting of the stockholders held on or after the date of the business combination.

An interested stockholder is a person who, together with affiliates and associates, owns, or at any time within the prior three years did own, 15% or more of the corporation's voting stock. Business combinations include, without limitation, mergers, consolidations, stock sales, asset sales or other transactions resulting in a financial benefit to interested stockholders.

ANTI-TAKEOVER EFFECTS OF CERTAIN CHARTER AND BY-LAW PROVISIONS

Our charter and by-laws contain provisions relating to corporate governance and to the rights of stockholders. Our by-laws provide that special meetings of stockholders may only be called by our Board of Directors, our Chairman of the Board or our President and shall be called by our Chairman, President or Secretary at the request in writing of stockholders owning at least one-fifth of the outstanding shares of capital stock entitled to vote. In addition, our charter provides that our Board of Directors may issue preferred stock without further stockholder approval (other than approval of the holders of Series E Convertible Preferred Stock described above under "Special Approval Rights") and upon those terms and conditions, and having those rights, privileges and preferences, as our Board of Directors may determine.

TRANSFER AGENT AND REGISTRAR

The transfer agent and registrar for our Common Stock is LaSalle Bank N.A.

EXPERTS

The financial statements included in this Prospectus and in the Registration Statement have been audited by BDO Seidman, LLP, independent certified public accountants to the extent and for the periods set forth in their report appearing elsewhere herein and in the Registration Statement, and are included in reliance upon such report given upon said authority of said firm as experts in auditing and accounting.

COMMISSION POSITION ON INDEMNIFICATION FOR SECURITIES ACT LIABILITY

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to our directors, officers and controlling persons pursuant to our charter, bylaws or otherwise, we have been advised that in the opinion of the SEC, such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim of indemnification against such liabilities (other than the payment by us of expenses incurred or paid by one of our directors, officers or controlling persons in the successful defense of any action, suit or proceeding) is asserted by one of our directors, officers or controlling persons in connection with the securities being registered, we will, unless in the opinion of our counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by us is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

DESCRIPTION OF BUSINESS

OVERVIEW/HISTORY

On December 5, 1997, we were initially formed as Electric City LLC, a Delaware limited liability company, by Joseph C. Marino, one of our principal stockholders, and NCVC, LLC, an entity controlled by Victor Conant, Kevin

McEneely and DYDX Consulting LLC, an entity that is controlled by Nikolas Konstant. In May 1998, Mr. Marino assigned his membership interest in us to Pino Manufacturing, LLC, an entity controlled by Mr. Marino.

On June 5, 1998, we changed from a limited liability company into a corporation by merging Electric City LLC into Electric City Corp., a Delaware corporation. In connection with our merger, NCVC, LLC and Pino Manufacturing, LLC received shares of Common Stock in Electric City Corp. in exchange for their membership interests in Electric City LLC.

On June 10, 1998, Electric City issued 1,200,272 shares of its Common Stock with a fair market value of $1,200,272 representing approximately six (6%) percent of Electric City's issued and outstanding Common Stock, to the approximately 330 shareholders of Pice Products Corporation ("Pice"), an inactive, unaffiliated company with minimal assets, pursuant to merger agreement under which Pice was merged with and into Electric City. The number of shares issued to Pice was determined and negotiated with the principals of Pice by the Company's Board of Directors as a whole and was concluded by the Board to be an "arm's length transaction" in that none of the Board of Directors was in any way affiliated with, or related to the principals of Pice. The purpose of the merger was to substantially increase the number of our shareholders to facilitate 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".

In May 1999, we purchased most of the assets of Marino Electric, Inc., an entity controlled by Mr. Marino, for $1,792,000 in cash and 1,600,000 shares of our Common Stock. Marino Electric was engaged in the business of designing and manufacturing custom electrical switchgear and distribution panels. Under the terms of the purchase agreement, we were obligated to pay the cash portion of the purchase price upon the closing of our private issuance of Common Stock that commenced in July 1999. In May 2000, Mr. Marino waived this requirement and instead received a payment of $820,000

in cash and a subordinated secured term note for the principal amount of $972,000 at an interest rate of 10% per annum, payable in equal installments over 24 months. This note was repaid in full in May 2002.

On August 31, 2000, pursuant to an Agreement and Plan of Merger among us, Switchboard Apparatus, Inc. and Switchboard Apparatus's stockholders, Dale Hoppensteadt, George Miller and Helmut Hoppe, we acquired Switchboard Apparatus in a transaction in which Switchboard Apparatus was merged into our wholly-owned subsidiary, with our subsidiary continuing as the surviving corporation under the name Switchboard Apparatus, Inc. The aggregate purchase price of $1,941,750 was paid in the form of 551,226 shares of our Common Stock.

Effective December 4, 2000, Joseph P. Marino, one of our founders and former Chairman of the Board of Directors, resigned his position as Chairman and terminated his employment with us. Concurrent with his resignation, Mr. Marino became a distributor for our EnergySaver products in the states of California, Arizona and Nevada (See, "Certain Relationships and Related Transactions").

On June 7, 2001, pursuant to an Agreement and Plan of Merger by and

among us, Electric City Great Lakes Acquisition Corporation, Great Lakes Controlled Energy Corporation ("Great Lakes") and Great Lakes' stockholders, Eugene Borucki and Denis Enberg, we acquired Great Lakes. Great Lakes is an independent systems integrator and facilities support specialist and focuses on building automation controls for lighting and HVAC systems for commercial applications. Great Lakes is also a national representative and distributor of select energy metering and control systems. In connection with the acquisition, Great Lakes was merged into our wholly-owned subsidiary Electric City Great Lakes Acquisition Corporation, with our subsidiary continuing as the surviving corporation under the name Great Lakes Controlled Energy Corporation The aggregate purchase price of $678,500 was paid to the Sellers in the form of 212,904 shares of our Common Stock.

On June 3, 2003, we entered into an Asset Purchase Agreement with Hoppensteadt Acquisition Corp. ("Hoppensteadt"), whereby Hoppensteadt acquired all of the assets, except for certain receivables and cash, and assumed all of the liabilities, except for bank debt, of Switchboard Apparatus, Inc., as of May 31, 2003 in exchange for $929,032 in cash. In addition, Electric City agreed to allow Hoppensteadt to assume the name "Switchboard Apparatus, Inc." after completion of the sale. Hoppensteadt is controlled by Dale Hoppensteadt, who was president of Switchboard from September 1, 2000 until the sale was consummated on June 3, 2003. As part of the transaction both parties entered into a Strategic Alliance, Co-Marketing and License Agreement under which Electric City will continue to market Switchboard products and Switchboard will continue to manufacture Electric City's TP3 line of switchgear.

PRODUCTS AND SERVICES

The Company currently manufactures products or provides services under two distinct business segments; the energy technology segment and the building control and automation segment. The energy technology segment includes the EnergySaver and GlobalCommander product lines manufactured and sold by Electric City Corp. In addition, this segment markets the Virtual "Negawatt" Power Plan ("VNPP"), which is essentially a negative power system which is designed for utilities as a demand response system. The building control and automation segment is served by Great Lakes Controlled Energy Corporation, a wholly owned subsidiary of Electric City Corp., which specializes in the installation and maintenance of building control and automation systems. Until June 1, 2003, we also manufactured custom electrical switchgear through Switchboard Apparatus Inc., a wholly owned subsidiary located in Broadview Illinois. In an effort to refocus our resources and shed the continuing

losses from the switchgear business, we sold the operating assets of Switchboard to a group of investors, including the President of Switchboard, effective as of May 31, 2003.

ENERGYSAVER

The EnergySaver system is a state-of-the-art lighting control system that reduces energy consumption in indoor and outdoor commercial, institutional and industrial ballasted lighting systems, while maintaining appropriate lighting levels. The EnergySaver is a freestanding enclosure that contains control panels with electrical parts and is connected between the incoming power line and the building's electrical lighting circuits. The EnergySaver also contains a computer with software that allows the customer to control the amount of energy savings desired which, depending on the application, can be as high as

50%, and provides self-diagnosis and self-correction. The customer can access the EnergySaver's computer directly or remotely via modem, network or two-way radio.

The EnergySaver is manufactured to varying sizes and capacities to address differing lighting situations. We can interface our EnergySaver products with new and existing lighting panels, ballasts and lamps without modification. In addition, the EnergySaver system reduces the power consumed by lamps and ballasts and reduces power spikes, drops and surges inherent in any power supply, resulting in a reduction of heat generated within the lighting system, which enhances ballast and lamp life and reduces the amount of air conditioning necessary to cool the building.

GLOBALCOMMANDER

The GlobalCommander system is an advanced lighting controller capable of providing large-scale demand side management and savings measurement and verification without turning off the user's lights. The GlobalCommander bundles the EnergySaver technology with an area-wide communication package to allow for maximum energy reductions across entire systems in response to the guidelines of a customer's facility manager. In addition, the GlobalCommander has the ability to measure and store information about the actual savings generated from the use of the EnergySaver. This information, which can be viewed in a tabular or graphical format and can be downloaded to a user's computer, is often required for a customer to qualify for utility incentives for energy savings and curtailment. The GlobalCommander also allows customers to control their facilities' loads and lighting requirements from a single control point. This single-point control is available for a virtually unlimited number of remote facilities and can be accessed through the Internet, intranet or over standard telephone lines through dial-up modems.

VIRTUAL NEGAWATT POWER PLAN

The combined technology of the EnergySaver and GlobalCommander led to the development of our Virtual "Negawatt" Power Plan ("VNPP"), which is essentially a negative power system which we market primarily to utilities as a demand response system. The VNPP allows a utility to remotely control commercial, industrial and government lighting systems over a managed and secure IP network. Through the use of the EnergySaver/GlobalCommander system, the utility is able to reduce electric demand requirements during periods of peak demand, providing instantaneous control, measurement and verification of load reduction. The demand reduction can be specifically placed across a utility grid targeting potential "hot spots" such as particular substations, etc. We believe that the Electric City VNPP will be the first demand response system to provide this level of control to a utility without requiring active customer participation and without impacting a customer's operations or ability to do business.

Our first VNPP system is under development for ComEd in Chicago. The 50 MW system will represent one of the largest deployments of demand control

technology in the United States. The system will cost approximately $17 million to $20 million and is expected to incorporate approximately 1,500 EnergySaver systems (the actual cost and number of units installed will depend on many factors including the mix of EnergySaver models installed and the cost of installation which will vary by site). We expect that the cost of the system will be financed by third party investors, supported through a long-term agreement with ComEd. In exchange for hosting the system and allowing remote control over peak demand, ComEd customers will receive the technology for free and will receive free steady state energy savings. For additional information regarding the VNPP please see the discussion under the section entitled "Risks Related to Our Business."

BUILDING CONTROL AND AUTOMATION

Through our wholly owned subsidiary, Great Lakes Controlled Energy Corporation, we provide integration of building and automation control systems for commercial and industrial customers. Great Lakes has been providing building automation services for over 20 years and is an authorized distributor for Delta Controls, WattStopper and Power Measurement Ltd., and is a dealer for Novar Controls and ABB Drives.

MARKETING, SALES AND DISTRIBUTION

We have established relationships with distributors (also referred to as "State Representatives") to market and distribute our EnergySaver products to end-users. As of December 31, 2003, we had eight distributor/state representative agreements covering Arizona, California, Illinois, Indiana, Nevada, New Jersey, Pennsylvania, and Texas. Each distributor is responsible for developing and managing a sales network within its respective territory. Typically the distributor does this by establishing direct relationships with end-users or through dealerships within the territory and overseeing the sales, installation and maintenance of our products by those dealerships. If a distributor sells any of our products outside its territory, such distributor operates as a dealer, meaning it manages end-user sales only. The distributor earns a commission on any sale of our products in its territory whether initiated by the distributor itself, a dealer, or by us.

Our standard distribution agreement gives the distributor certain exclusive rights of distribution in a particular territory, includes sales quotas that increase periodically throughout the term of the agreement, and requires the distributor to make payment to us within 30 to 60 days of product shipment. The agreement contains penalties for failure to meet quotas or make payments, including the loss of certain exclusive rights of distribution. Currently, a number of our distributors have violated the terms of their agreements for failing to meet their quotas and are delinquent in payments due Electric City. We are working with our distributors to address these issues. In addition, the standard distribution agreement has a term of 10 years after which it is renewable at our discretion. The standard distribution agreement can be terminated at our discretion if the distributor fails to meet the terms of the distribution agreement.

National accounts (such as chain stores, and large multi-site corporations), municipalities and other large campus customers are managed by our corporate sales engineering group. This group concentrates its sales efforts on the energy engineering staffs of these types of entities, which analyze and recommend the purchase of products like ours for their multiple sites. The sales force also supports, coordinates and manages multiple sales channels.

Our Utility Development area is responsible for marketing the VNPP to utilities. Once a utility signs a VNPP agreement we work jointly with the utility to sign up energy users to participate in the curtailment program by agreeing to permit the installation of the EnergySaver in their facilities at no cost to the user.

Great Lakes sells its building automation control systems either directly to end-users (typically commercial or industrial building owners) or by bidding on contracts let by general contractors for new construction or building renovation projects.

CUSTOMERS

During 2003, sales to our top five EnergySaver customers accounted for 90% of total EnergySaver sales. The top five customers for 2003 were Cal State University, Electric City of Pennsylvania, M&A Railroad and Electric Supply, the New York Power Authority and Sports Chalet, two of which were dealers or distributors of the Company's products. End user customers for the EnergySaver during 2003 included, but were not limited to, A&P, Federal Express, Gillette, Raley's, Telmex, PetSmart and U.S. Foodservice. During 2002, sales to our top five EnergySaver customers accounted for 79% of total EnergySaver sales. The top five customers for 2002 were Electric City of Pennsylvania, The Illinois Department of Central Management Services, LGI Energy Solutions, M&A Railroad and Electric Supply and PSEG Energy Technologies, all but one of which are dealers or distributors of the Company's products. The end user customers of these dealers and distributors include Linens 'N Things, Toyota Motors, and Lifetime Fitness. Other end user customers for the EnergySaver during 2002 included, but were not limited to Bunzl Distribution, Gillette, Reckitt Benckiser, Sage Products, the U.S. Post Office and Union Pacific.

During