

ORION ENERGY SYSTEMS, INC.

Form 10-Q/A

June 14, 2012

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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-Q/A

(Amendment No.2)

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

For the Quarterly Period Ended December 31, 2010

OR

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

Commission file number 001-33887

Orion Energy Systems, Inc.

(Exact name of Registrant as specified in its charter)

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Wisconsin
(State or other jurisdiction of incorporation or organization)

39-1847269
(I.R.S. Employer Identification number)

2210 Woodland Drive, Manitowoc, Wisconsin
(Address of principal executive offices)

54220
(Zip code)

Registrant's telephone number, including area code: (920) 892-9340

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

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405) during the preceding 12 months (or for shorter period that the registrant was required to submit and post such files). Yes ☐ No ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer or a smaller reporting company. See the definitions of accelerated filer, large accelerated filer and smaller reporting company in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer ☐ Accelerated filer ☒

Non-accelerated filer ☐ (Do not check if a smaller reporting company) Smaller reporting company ☐

Indicate by check mark whether the Registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes ☐ No ☒

There were 22,818,902 shares of the Registrant's common stock outstanding on February 7, 2011.

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EXPLANATORY NOTE

As used herein, unless otherwise expressly stated or the context otherwise requires, all references to Orion, we, us, our, Company and similar references are to Orion Energy Systems, Inc. and its consolidated subsidiaries.

As previously disclosed, in this Amendment No. 2 to Form 10-Q/A (Amendment No. 2), we have restated our previously issued unaudited consolidated financial statements and related disclosures for the quarter ended December 31, 2010 to record our transactions from sales of our solar photovoltaic, or PV, systems using the percentage-of-completion method rather than based upon multiple deliverable elements.

Under our prior method of accounting for sales of our PV systems, we recognized revenue in two stages (i) when the title to the products had been transferred and (ii) when the service installation was complete. On February 2, 2012, we concluded that generally accepted accounting principles, or GAAP, required that revenue from the sales of solar PV systems be recognized under the percentage-of-completion method. The percentage-of-completion method requires revenue from the delivery of products to be deferred and the cost of such products to be capitalized as a deferred cost and current asset on the balance sheet. The difference between the percentage-of-completion method and the multiple deliverable elements method is a matter of timing, with no impact on overall earnings or cash flow from the individual contracts.

Previously, on August 2, 2011, we filed an Amendment No. 1 to Form 10-Q/A (Amendment No. 1) to record our transactions under our Orion Throughput Agreements, or OTAs, as sales-type leases instead of as operating leases. Our prior method of accounting for OTA transactions as operating leases deferred revenue recognition over the full term of the OTA contracts, only recognizing revenue on a monthly basis as customer payments became due, while the upfront sales, general and administrative expenses related to these OTA contracts were recognized immediately. Throughout this Amendment #2, all amounts presented from prior periods are labeled *As Previously Reported* and reflect the balances and amounts of our restatement related to the accounting change for OTA contracts as detailed in Amendment No. 1.

This Amendment No. 2 is being filed to reflect the financial statement restatement from sales of our solar PV systems. Generally, for the quarterly and year-to-date periods ended December 31, 2010, this change in accounting treatment and financial statement restatements has resulted in:

No impact to our cash, cash equivalents, short-term investments or overall cash flow;

A decrease in our revenue of \$6.4 million (21%), a decrease in our net income of \$0.9 million (124%) and a decrease in our income per share of \$0.04 (133%) for the quarter ended December 31, 2010 and a decrease in our revenue of \$6.4 million (10%), a decrease in our net income of \$0.9 million (124%) and a decrease in our income per share of \$0.04 (133%) for the nine months ended December 31, 2010; and

An increase in deferred contract costs of \$7.1 million, an increase in deferred revenue of \$2.7 million, a decrease in accounts receivable of \$4.1 million, a decrease in prepaid expenses and other current assets of \$1.6 million and a decrease in accrued expenses of \$0.3 million for the quarter ended December 31, 2010.

In addition to the impact of the accounting treatment change for solar PV sales described above, management's reassessment of the quarter ended December 31, 2010, resulted in the following additional change:

An increase in long-term assets of \$13.5 million and a decrease in current assets of \$13.5 million as a result of a reclassification of current inventory to long-term inventory related to our investment in wireless control products.

For a more detailed description of this financial statement restatement, see Note B, *Restatement of Financial Statements* to our consolidated financial statements and the section entitled *Restatement of Previously Issued Consolidated Financial Statements* in Management's Discussion and Analysis of Financial Condition and Results of Operations contained in this Amendment No. 2.

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This Amendment #2 only amends and restates Items 1, 2, and 4 of Part I of Amendment No. 1, in each case, solely as a result of, and to reflect, the restatement, and no other information is amended hereby. The foregoing items have not been updated to reflect other events occurring after February 9, 2011, the date of the filing of the initial Form 10-Q (the "Original Filing") or to modify or update those disclosures affected by subsequent events. In addition, pursuant to the rules of the SEC, Item 6 of Part II has been amended to contain currently-dated certifications from our Chief Executive Officer and Chief Financial Officer, as required by Section 302 and 906 of the Sarbanes-Oxley Act of 2002. The certifications of our Chief Executive Officer and Chief Financial Officer are attached to this Amendment No. 2 as Exhibits 31.1, 31.2, 32.1, and 32.2, respectively.

Except for the foregoing amended information, this Amendment No. 2 continues to describe conditions as of the date of the Original Filing, and we have not updated the disclosures contained herein to reflect events that occurred at a later date. Throughout this Amendment No. 2, all amounts presented from prior periods and prior period comparisons that have been revised are labeled "As Restated" and reflect the balances and amounts on a restated basis. In addition, all amounts presented from prior periods are labeled "As Previously Reported" and reflect the restatement related to the accounting change for OTA contracts as detailed in Amendment No. 1.

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Orion Energy Systems, Inc.

Quarterly Report On Form 10-Q/A

For The Quarter Ended December 31, 2010

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(in thousands, except share and per share amounts)

	March 31, 2010	December 31, 2010 (As Restated)
Assets		
Cash and cash equivalents	\$ 23,364	\$ 9,858
Short-term investments	1,000	1,010
Accounts receivable, net of allowances of \$382 and \$467	15,991	22,173
Inventories, net	25,991	18,712
Deferred contract costs	1,553	7,115
Deferred tax assets	1,244	1,754
Prepaid expenses and other current assets	2,559	3,116
Total current assets	71,702	63,738
Property and equipment, net	28,193	30,991
Patents and licenses, net	1,590	1,634
Deferred tax assets	974	1,059
Long-term accounts receivable	2,092	5,963
Long-term inventories		13,518
Other long-term assets	27	1,886
Total assets	\$ 104,578	\$ 118,789
Liabilities and Shareholders' Equity		
Accounts payable	\$ 7,761	\$ 15,363
Accrued expenses and other	3,790	3,718
Deferred revenue, current	338	2,650
Current maturities of long-term debt	562	1,261
Total current liabilities	12,451	22,992
Long-term debt, less current maturities	3,156	4,618
Deferred revenue, long-term	186	1,036
Other long-term liabilities	398	399
Total liabilities	16,191	29,045
Commitments and contingencies (See Note G)		
Shareholders' equity:		
Preferred stock, \$0.01 par value: Shares authorized: 30,000,000 shares at March 31, 2010 and December 31, 2010; no shares issued and outstanding at March 31, 2010 and December 31, 2010		
Common stock, no par value: Shares authorized: 200,000,000 at March 31, 2010 and December 31, 2010; shares issued: 29,911,203 and 30,224,199 at March 31, 2010 and December 31, 2010; shares outstanding: 22,442,380 and 22,792,302 at March 31, 2010 and December 31, 2010		

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Additional paid-in capital	122,515	123,965
Treasury stock: 7,468,823 and 7,431,897 common shares at March 31, 2010 and December 31, 2010	(32,011)	(31,767)
Shareholder notes receivable		(157)
Accumulated deficit	(2,117)	(2,297)
Total shareholders' equity	88,387	89,744
Total liabilities and shareholders' equity	\$ 104,578	\$ 118,789

The accompanying notes are an integral part of these condensed consolidated statements.

Table of Contents**ORION ENERGY SYSTEMS, INC. AND SUBSIDIARIES****UNAUDITED CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS**

(in thousands, except share and per share amounts)

	Three Months Ended December 31,		Nine Months Ended December 31,	
	2009	2010 (As Restated)	2009	2010 (As Restated)
Product revenue	\$ 18,737	\$ 21,633	\$ 45,879	\$ 52,476
Service revenue	2,090	2,011	4,897	3,997
Total revenue	20,827	23,644	50,776	56,473
Cost of product revenue	11,860	14,134	30,729	34,186
Cost of service revenue	1,568	1,676	3,455	3,091
Total cost of revenue	13,428	15,810	34,184	37,277
Gross profit	7,399	7,834	16,592	19,196
Operating expenses:				
General and administrative	3,051	2,709	9,357	8,642
Sales and marketing	3,063	3,235	9,176	10,124
Research and development	404	614	1,315	1,797
Total operating expenses	6,518	6,558	19,848	20,563
Income (loss) from operations	881	1,276	(3,256)	(1,367)
Other income (expense):				
Interest expense	(66)	(98)	(192)	(223)
Dividend and interest income	157	189	539	435
Total other income (expense)	91	91	347	212
Income (loss) before income tax	972	1,367	(2,909)	(1,155)
Income tax expense (benefit)	218	1,549	(652)	(976)
Net income (loss)	\$ 754	\$ (182)	\$ (2,257)	\$ (179)
Basic net income (loss) per share	\$ 0.03	\$ (0.01)	\$ (0.10)	\$ (0.01)
Weighted-average common shares outstanding	21,792,175	22,726,426	21,709,799	22,629,776
Diluted net income (loss) per share	\$ 0.03	\$ (0.01)	\$ (0.10)	\$ (0.01)
Weighted-average common shares and share equivalents outstanding	22,567,575	22,726,426	21,709,799	22,629,776

The accompanying notes are an integral part of these condensed consolidated statements.

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ORION ENERGY SYSTEMS, INC. AND SUBSIDIARIES

UNAUDITED CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS

(in thousands)

	Nine Months Ended December 31,	
	2009	2010 (As Restated)
Operating activities		
Net loss	\$ (2,257)	\$ (179)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	1,956	2,414
Stock-based compensation expense	1,064	931
Deferred income tax benefit	(813)	(595)
Loss on sale of assets		13
Change in bad debt expense	384	85
Other	15	38
Changes in operating assets and liabilities:		