ENVIRONMENTAL POWER CORP
Form S-1/A
May 27, 2009
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As filed with the Securities and Exchange Commission on May 27, 2009

Registration Statement No. 333-158286

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

AMENDMENT NO. 3

TO

FORM S-1

REGISTRATION STATEMENT

UNDER

THE SECURITIES ACT OF 1933

ENVIRONMENTAL POWER CORPORATION

(Exact name of registrant as specified in its charter)

Delaware	**1311**	**75-3117389**
(State or other jurisdiction of incorporation or organization)	**(Primary Standard Industrial Classification Code Number)**	**(I.R.S. Employer Identification No.)**

120 White Plains Road, 6th Floor

Tarrytown, New York 10591

(914) 631-1435

(Address, including zip code, and telephone number, including area code, of registrant s principal executive offices)

Richard E. Kessel

President and Chief Executive Officer

Environmental Power Corporation

120 White Plains Road, 6th Floor

Tarrytown, New York 10591

(914) 631-1435

(Name, address, including zip code, and telephone number, including area code, of agent for service)

With copies to:

Dennis Haines	**Scott Pueschel, P.C.**
Vice President and General Counsel	**Pierce Atwood LLP**
Environmental Power Corporation	**One New Hampshire Avenue, Suite 350**
120 White Plains Road, 6th Floor	**Portsmouth, New Hampshire 03801**
Tarrytown, New York 10591	**Tel: (603) 433-6300**
Tel: (914) 631-1435	**Fax: (603) 433-6372**
Fax: (914) 631-1436	

Approximate date of commencement of proposed sale to public: As soon as practicable after this Registration Statement becomes effective.

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. ¨

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ¨

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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. ¨

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 large accelerated filer, accelerated filer, and smaller reporting company in Rule 12b-2 of the Exchange Act. (check one):

Large accelerated filer ¨	Accelerated filer þ
Non-accelerated filer ¨	Smaller reporting company þ

(Do not check if a smaller reporting company)

The Company hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the Company shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the Registration Statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), shall determine.

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

SUBJECT TO COMPLETION, DATED MAY 27, 2009

Prospectus

Energy that is Beyond Renewable®

$5,000,000

14% Convertible Notes due January 1, 2014

We are offering our 14% Convertible Notes due January 1, 2014, referred to as the notes, in the aggregate original principal amount of $5,000,000. The notes will bear interest at the rate of 14% per year. Interest will be paid on January 1 and July 1 of each year, commencing on July 1, 2009 (or if such date is not a business day, then on the next business day), subject to limited exceptions if the notes are converted or redeemed prior to an applicable interest payment date.

The notes are not listed for trading on any national securities exchange, and we have no plans to list the notes on any exchange. There is no established trading market for the notes.

Our common stock is quoted on The NASDAQ Capital Market under the symbol EPG. On May 26, 2009, the last reported sale price of our common stock on The NASDAQ Capital Market was $0.51 per share.

An investment in the notes involves a high degree of risk. Potential investors are advised to read the prospectus in its entirety. Please see the section entitled RISK FACTORS beginning on page 7 of this prospectus to read about risks you should consider carefully before buying our securities.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

	Per Note	Total
Public Offering Price	100%	$ 5,000,000
Underwriting discount	6%	$ 300,000
Proceeds, before expenses, to us	94%	$ 4,700,000

The offering prices set forth above do not include accrued interest, if any. Interest on the notes will accrue from the date of original issuance of the notes.

We estimate the total expenses of this offering, excluding the underwriting discount, will be approximately $225,000.

The underwriter is expected to deliver the notes in book-entry form only through the facilities of The Depository Trust Company in New York, New York on or about , 2009.

ZIEGLER CAPITAL MARKETS

a division of B.C. Ziegler and Company

The date of this prospectus , 2009

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ABOUT THIS PROSPECTUS

We are offering to sell, and seeking offers to buy, our notes only in jurisdictions where offers and sales are permitted. The distribution of this prospectus and the offering of the notes in certain jurisdictions may be restricted by law. Persons outside the United States who come into possession of this prospectus must inform themselves about, and observe any restrictions relating to, the offering of the notes and the distribution of this prospectus outside the United States. This prospectus does not constitute, and may not be used in connection with, an offer to sell, or a solicitation of an offer to buy, any securities offered by this prospectus by any person in any jurisdiction in which it is unlawful for such person to make such an offer or solicitation.

You should rely only on the information contained in this prospectus and the documents incorporated by reference in this prospectus or to which we have referred you. We have not, and the underwriter has not, authorized anyone to provide you with different information. If anyone provides you with different or inconsistent information, you should not rely on it. You should not assume that the information contained in this prospectus or any document incorporated by reference herein is accurate as of any date other than the date on the front cover of the applicable document. Neither the delivery of this prospectus nor any distribution of securities pursuant to this prospectus shall, under any circumstances, create any implication that there has been no change in the information set forth or incorporated by reference into this prospectus or in our affairs since the date of this prospectus. Our business, financial condition, results of operations and prospects may have changed since that date.

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PROSPECTUS SUMMARY

The following summary highlights the key information contained elsewhere or incorporated by reference in this prospectus. It does not contain all the information that may be important to you. You should carefully read this prospectus as well as the documents incorporated by reference in this prospectus in their entirety, especially the discussion of RISK FACTORS , before deciding to invest in the notes. In this prospectus, when we use phrases such as we, our and us, we are referring to Environmental Power Corporation and its subsidiaries as a whole, except where it is clear from the context that any of these terms refers only to Environmental Power Corporation or a particular subsidiary.

ENVIRONMENTAL POWER CORPORATION

Overview

We are a developer, owner, and operator of renewable energy production facilities. Our goal is to produce Energy that is . . . Beyond Renewable®, which we define as energy that not only uses waste materials instead of limited resources, but that also is clean, reliable, and cost-effective.

Our wholly owned subsidiary, Microgy, Inc., referred to as Microgy, is a developer of renewable energy facilities for the production and commercial application of methane-rich biogas produced from livestock and food industry wastes, as well as wastes from other organic sources. The biogas is a versatile renewable energy source and can be sold to an end user or used to produce pipeline-grade methane, which we refer to as renewable natural gas, or RNG®, liquefied natural gas, or LNG, compressed natural gas, or CNG, renewable electrical energy or thermal energy as well as other useful by-products. Microgy s systems utilize a proven biogas production technology that we believe is superior to other such technologies.

Microgy intends to continue to focus on a strategy of developing large-scale standardized facilities utilizing an ownership model, pursuant to which Microgy will construct, own and operate facilities and profit from the ongoing sale of biogas or RNG produced by such facilities, as well as sales of greenhouse gas sequestration credits or other marketable environmental benefits. The strategy encompasses the construction and operation of stand-alone plants like the Huckabay Ridge facility described below, as well as facilities dedicated to the needs of a single customer at one or more customer locations. Microgy s goal is to negotiate mid- to long-term offtake arrangements through which it can obtain a premium price for the gas produced by its facilities.

Microgy began commercial operations at the Huckabay Ridge facility in Stephenville, Texas in the first quarter of 2008. Huckabay Ridge consists of eight 916,000-gallon digesters which operate together to process the manure from approximately 10,000 dairy cows. The gas is treated and compressed to produce pipeline-grade methane. Huckabay Ridge is expected to produce approximately 635,000 million British Thermal Units, or MMBtus, of pipeline-grade methane per year.

Microgy also operates three single digester facilities in Wisconsin. In accordance with our previous business model of selling digester facilities to farms, Microgy sold these projects to the farms on which they are located and developed them in conjunction with Dairyland Power Cooperative, an electric cooperative utility, referred to as Dairyland. The biogas from these projects is used by Dairyland to generate electricity.

Environmental Power and Microgy pursue Microgy s business through several subsidiaries and special purpose entities. The principal such entity is Microgy Holdings, LLC, which was formed in 2006 as a subsidiary of Environmental Power Corporation in connection with the $60 million tax-exempt bond financing we completed in November 2006 relating to the construction and operation of four RNG® facilities in Texas,

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including the Huckabay Ridge facility, and which is the obligor for our $62.425 million tax-exempt bond financing we completed in September 2008 relating to our proposed California facilities. We currently anticipate pursuing an additional $26.02 million in tax-exempt bond financing in California. The assets financed by the Texas and California tax-exempt bond financings are pledged as collateral to secure such obligations. The debt held by Microgy Holdings is non-recourse to Environmental Power, although Environmental Power is required to provide at least 20% of the construction costs of these facilities, as well as to cover any cost overruns in construction and certain other costs. Another such entity is Microgy Grand Island, LLC, which was formed to own and operate our facility currently under construction at the JBS Swift & Co. beef processing facility in Grand Island, Nebraska, and which is the obligor under our $7.0 million tax-exempt bond financing for such facility.

In the past, we operated in two major segments: through Microgy, as described above, and through EPC Corporation and its subsidiary, Buzzard Power Corporation, referred to as Buzzard, as holder of a leasehold interest in a waste-coal fired generating facility in Pennsylvania known as the Scrubgrass facility. On February 29, 2008, we completed the disposition of the leasehold interest in the Scrubgrass facility, as it was no longer within our core business model. As a result, for financial reporting purposes, we are now consolidating all segments of continuing operations and reporting the results of Buzzard as discontinued operations . We now operate only in Microgy s renewable energy segment.

Risk Factors

Investing in the notes involves a high degree of risk. You should carefully consider all of the information included and incorporated by reference in this prospectus. In particular, you should consider carefully the factors discussed under RISK FACTORS beginning on page 7 of this prospectus, before deciding to invest in our common stock.

Corporate Information

Environmental Power Corporation was incorporated in May 2003 and is the successor holding company to our subsidiary, EPC Corporation, which was originally incorporated in Delaware in 1986. EPC Corporation became a publicly traded company in 1986, and its successor, Environmental Power Corporation is currently quoted on The NASDAQ Capital Market (symbol: EPG). The address of our principal executive offices is 120 White Plains Road, Suite 610, Tarrytown, New York 10591-5546 and our telephone number is (914) 631-1435. Our Internet address is www.environmentalpower.com. The information on our Internet website is not incorporated by reference in this prospectus, and you should not consider it to be a part of this document. Our website address is included as an inactive textual reference only.

Ratio of Earnings (Deficit) to Fixed Charges

	Three Months Ended March 31, 2009	Year Ended December 31, 2008	2007	2006	2005	2004
Ratio of earnings (deficit) to fixed charges	(1.0)	(4.4)	(4.9)	(29.0)	(39.3)	(60.2)

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THE OFFERING

The Company	Environmental Power Corporation, a Delaware corporation.
Securities Offered	Our 14% Convertible Notes due January 1, 2014, referred to as the notes, in the aggregate original principal amount of $5,000,000, to be sold in denominations of $5,000 or whole multiples of $1,000 in excess thereof.
Unsecured Debt	The debt evidenced by the notes is not secured by any of our assets or any other assets.
Voluntary Conversion	Holders may voluntarily convert the notes into shares of our common stock, $0.01 par value per share, referred to as the common stock, on any date after the issuance date at a conversion price determined as follows:

Conversion Date		Conversion Price
From the Issue Date through December 31, 2009	$	5.40
From January 1, 2010 through December 31,2010	$	6.35
From January 1, 2011 through December 31, 2011	$	7.65
From January 1, 2012 through December 31, 2012	$	9.75
From January 1, 2013 through December 31, 2013	$	11.00

The applicable Conversion Price will be adjusted proportionately if:

- we dividend or distribute shares of our common stock to the holders of our common stock;
- we split, subdivide or combine our common stock; or
- we reclassify or recapitalize our common stock.

Repurchase Upon a Change in Control	Upon the acquisition by a person or group of persons acting in concert of a majority of the voting shares (including warrants or rights to purchase or exchange for voting shares) of Environmental Power Corporation, referred to as a Change in Control, holders of the notes will have the right to require us to repurchase, and we will have the right to require holders of the notes to sell to us, all or any portion of the notes at a price described herein.
Mandatory Conversion at Our Option or Redemption	At any time after the third anniversary of the date of the first issuance of notes (March 13, 2009), we may require the holders to convert all of the notes into common stock if at the time less than 20% of the aggregate principal amount of securities originally issued remain outstanding and the conversion market price is greater than the stock price on the date the notes were originally issued, provided that such holders shall have the right to elect not to have their securities converted to common stock, in which case their securities shall be redeemed at the redemption price equal to 110% of the principal

amount thereof, plus accrued interest.

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Optional Redemption	At any time after the third anniversary of the date of first issuance of the notes (March 13, 2009), we have the right to redeem all or part of the notes at a redemption price equal to 110% of the principal amount of the notes to be redeemed plus accrued interest through the day prior to the redemption date, provided that our common stock has traded at a volume weighted average price of at least $6.40 per share for the 45-day period ending on the date immediately prior to the date on which we give notice of such redemption.
Mandatory Redemption upon Certain Sales of Assets or Certain Sale and Leaseback Transactions	The notes are subject to redemption in whole or in part at a redemption price equal to 100% of the principal amount of the notes to be redeemed plus accrued interest through the day prior to the redemption date, to the extent that we or one of our subsidiaries engaged in an Asset Sale, as defined, or certain sale and leaseback transactions, and the net proceeds of such Asset Sale or sale and leaseback transactions are not reinvested in a permitted business as described herein, within two years of the receipt thereof.
Maturity Date	January 1, 2014.
Interest Rate Calculation	The interest rate on the notes will be calculated on the basis of a 360-day year of twelve 30-day months.
Interest Payment Dates	Interest on the notes will be payable January 1 and July 1 of each year commencing July 1, 2009, and on any date the principal of the notes is paid, including at maturity or if such day is not a business day, the immediately succeeding business day, and on any conversion date applicable to such notes (except as otherwise provided herein), each of which is referred to as an interest payment date.
Defaults and Remedies	The principal of and accrued interest on all of the notes may be declared immediately due and payable upon the occurrence and continuation of certain events of default described in the Trust Indenture, dated as of March 1, 2009, by and between us and Wells Fargo Bank, National Association, in its capacity as trustee, paying agent, registrar and exchange agent, referred to as the trustee, as amended and supplemented by the First Supplemental Trust Indenture, dated as of March 1, 2009. The Trust Indenture, as so amended and supplemented, is referred to as the indenture. *See* DESCRIPTION OF THE NOTES AND THE INDENTURE Events of Default and Remedies.
Outstanding and Additional Notes	The indenture provides that we may issue notes having an aggregate principal amount of $53,000,000, inclusive of the principal amount of the notes offered hereby and notes currently outstanding. As of the date hereof, we have issued $8,000,000 aggregate original principal amount of the notes under the indenture. We may issue additional notes from time to time up to this aggregate amount.

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Trustee, Exchange Agent, Paying Agent and Registrar	Wells Fargo Bank, National Association.
Amendments to Indenture	We and the trustee have the right to amend the indenture in certain instances without the consent of the holders of the notes. *See* DESCRIPTION OF THE NOTES AND THE INDENTURE.
Payments	We are required to pay to the trustee, on each interest payment date, the amount necessary to make the amount on deposit in the interest account equal to the amount of accrued and unpaid interest on the notes payable on that interest payment date. We are required to pay to the trustee such amounts as are required to pay the principal or the redemption price of the notes at the time and in the manner provided in the indenture. No payment of principal is scheduled to be made until the maturity date. *See* DESCRIPTION OF THE NOTES AND THE INDENTURE.
Risk Factors	Investment in the notes involves a high degree of risk. There are a number of risks that may affect the repayment of the notes. *See* RISK FACTORS.
Federal Income Tax Consequences	Some federal income tax consequences are associated with purchasing, holding and disposing of the notes. Prospective investors are urged to consult their own tax advisors regarding the tax consequences of acquiring, holding or disposing of the notes. *See* CERTAIN U.S. FEDERAL INCOME TAX CONSIDERATIONS.
Net proceeds	We estimate that the net proceeds from this offering will be approximately $4,475,000, after deducting the underwriting discount and commission and the estimated offering expenses payable by us.
Use of proceeds	Our subsidiary, Microgy Holdings, LLC, referred to as Microgy Holdings, has, together with its subsidiaries, entered into project financings in Texas, California and Nebraska in the form of tax-exempt bond financings described elsewhere in this prospectus. The proceeds of the notes will be contributed by us as equity to Microgy Holdings or Microgy Grand Island, LLC pursuant to the support agreements entered into by us in connection with the Texas, California and Nebraska project financings, which require us to make these equity contributions to fund certain costs relating to the construction and operation of the facilities. In addition, we are issuing the notes pursuant to the loan agreement and related documentation entered into by Microgy Holdings in connection with the California project financing, which includes as a condition to Microgy Holdings ability to draw the proceeds of such financing that we raise at least $45 million in additional capital, of which $17.5 million must be available for the construction and operation of Microgy Holdings facilities in California. In the event that we do not sell any additional bonds to finance our proposed Bar 20 facility in California, the Bar 20 facility, which is currently a proposed part of such facilities, will not

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be part of such California project, and the foregoing capital requirements will be reduced to $39,825,000 and $12,325,000, respectively.

The costs of construction and operation of the Texas, California and Nebraska facilities which may be funded with the proceeds of this offering include, among other things, costs of materials, equipment and labor, debt service, license fees which may become due to Danish Biogas Technology, A.S. referred to as DBT, the licensor of Microgy s anaerobic digestion technology, under Microgy s license agreement with DBT, operations and maintenance costs, and reimbursement or repayment of Environmental Power or its affiliates of equity contributions, subordinated debt or other project-related expenses advanced by us or such affiliates in anticipation of receipt of the proceeds of this offering.

We will need to raise substantial additional financing, in addition to the proceeds of this offering, in the first half of 2009, as outlined above, to finance development and construction of our planned projects, to fund ongoing general and administrative expenses associated with our corporate overhead, as well as interest and dividend requirements, and to continue as a going concern. If we are unable to raise sufficient additional financing on a timely basis, we may have to reduce the number of projects we construct, or even curtail or cease our business operations.

Source of Repayment of the Notes	We intend to repay the notes from cash flow derived by us from our ownership and operation of Microgy s projects in California, Texas, Nebraska and elsewhere, or from other sources of income we may develop from time to time.
Book-Entry, Delivery and Form	The notes will initially be issued in the form of one or more global securities registered in the name of The Depository Trust Company, referred to as DTC, as depositary, or a nominee of the depositary. A global security may not be transferred or registered in the name of anyone other than the depositary, its nominee or a successor depositary, unless special termination situations arise. Only the person in whose name a note is registered is recognized as the holder of that note. Consequently, for notes issued in global form, we will recognize only the depositary as the holder of the notes, and we will make all payments on the notes to the depositary. *See* DESCRIPTION OF THE NOTES AND THE INDENTURE Legal Ownership of Securities.
Notes Not Listed for Trading	The notes are not expected to be listed for trading on any market. Our common stock is traded on The NASDAQ Capital Market under the symbol EPG.

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RISK FACTORS

Investing in our securities, including the notes and our common stock, involves a high degree of risk. Prospective purchasers are advised to read this prospectus, as well as each of the documents incorporated by reference in this prospectus, in their entirety. Prospective investors should carefully consider the following risk factors, as well as other information set forth in this prospectus and the documents incorporated by reference, before making an investment in the notes.

The risks and uncertainties described below are not the only ones facing our company. Additional risks and uncertainties may also impair our business operations and adversely affect our prospects. The order in which such risks are presented does not necessarily reflect the relative importance of such risks or the likelihood that any of the events or circumstances described below will occur or exist.

If any of the following risks actually occur, our business, financial condition or results of operations would likely suffer. In that case, the trading price of our common stock could fall, we may not be able to make timely payments, or any payments, on amounts owed under the notes, and you may lose all or part of the money you paid to buy the notes.

Risks Relating to Our Business

We have experienced losses to date, and we anticipate that we will continue to experience losses through at least 2010, which means that we will have to raise significant additional financing in the first half of 2009 in order to continue our business operations.

We are a company in the process of pursuing an aggressive and novel business approach to the construction and operation of renewable energy facilities and the production of renewable natural gas. As noted below, our sole operating business, Microgy, is in the early stages of its development. As a result, we have a history of losses. For the three months ended March 31, 2009, we incurred a net loss from continuing operations of $2,935,000. For the year ended December 31, 2008, we incurred a net loss from continuing operations of $22,996,000, which includes a non-cash, non-recurring expense for the impairment of goodwill of $4,913,000. For the years ended December 31, 2007 and 2006, we incurred net losses from continuing operations of $11,161,000, and $11,399,000, respectively. We expect to continue to incur losses, reduce our earnings or, as the case may be, add to our earnings deficit as we seek to further develop our business. We currently expect that these ongoing losses will adversely affect our financial condition through at least 2010. As a result of these losses, we anticipate that we will, in all likelihood, have to rely on external financing for most of our capital and operational requirements. Even after completion of this offering, we will need to raise substantial additional financing in the first half of 2009 in order to finance development and construction of our planned projects, to fund ongoing general and administrative expenses associated with our corporate overhead as well as interest and dividend requirements and to continue as a going concern. We currently have no commitments for any such financing. We cannot assure you such financing will be available on reasonable terms or in a timely fashion, or at all, particularly in the current economic environment, in which capital raising activities are especially challenging. Future losses are likely to continue unless we successfully implement our business plan. If we are not successful in reaching and maintaining profitable operations, we may not be able to attract sufficient capital to continue our operations and avoid defaulting on our corporate and subsidiary debt and other obligations. Our inability to obtain adequate financing would likely result in the need to reduce the number of projects we construct and even to curtail or cease our business operations and would materially impair the value of your investment in our securities, including the notes and our common stock.

Our sole operating business, Microgy, has limited operating history from which to evaluate its business and products.

Our sole operating business, Microgy, was formed in 1999 and remains in the early stages of its development. Microgy is developing facilities that use environmentally friendly anaerobic digestion and other technologies to produce biogas from animal and organic wastes. Although Microgy has developed and is operating three single digester facilities in Wisconsin and the multi-digester Huckabay Ridge facility, Microgy

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still has limited experience in the construction and operation of multiple digester facilities such as those Microgy is currently constructing or intends to construct, and limited experience in gas conditioning or the sale of gas as a commodity. In addition, Microgy has experienced challenges during the startup and initial operation of the Huckabay Ridge facility that have resulted in outages for corrective measures. We took advantage of such an outage to complete comprehensive upgrades to process-instrumentation and controls, the gas conditioning system, and the gas-collection system in order to achieve anticipated performance levels. While we gained valuable knowledge as to our processes and incorporated the lessons learned into future projects, we cannot assure you that similar challenges will not be encountered with respect to future facilities. Because of Microgy s limited experience, there is a risk that Microgy may never be profitable.

Microgy cannot predict when any facility will be completed, what Microgy s costs will be or, consequently, whether Microgy or any facility developed by Microgy will be profitable.

Development of Microgy s facilities is an inherently risky activity, subject to significant uncertainties and a lengthy development cycle. Uncertainties and risks include those relating to costs and availability of supplies and labor, costs and quality of facility components and installation services, fluctuations in the prices available for the sale of facility output and timing of completion of construction and commencement of commercial operations. Furthermore, obtaining the large number of agreements, permits and approvals necessary to develop, install, operate and manage any of Microgy s facilities, as well as to market the energy and other co-products and to provide necessary related resources and services, involves a long development cycle and decision-making process. Microgy is required to enter into or obtain some or all of the following in connection with the development of its facilities:

- Off-take interconnection agreements;
- Site agreements;
- Supply contracts;
- Design/build or other construction-related agreements;
- Off-take agreements for gas produced;
- Power sales contracts for facilities dedicated to the generation of electricity;
- Agreements for the sale of greenhouse gas offset credits or other tradable environmental attributes;
- Various co-product sales agreements;
- Waste disposal agreements;
- Environmental and other permits and licenses;
- Government approvals; and

Financing commitments required for the successful completion of facilities under consideration.

Microgy s failure to accomplish any of these objectives could materially increase the cost, or prevent the successful completion of, development or operation of facilities and incur the loss of any investment made. Many of these objectives are dependent upon decisions by third parties. Delays in such parties decision-making process are outside of our control and may have a negative impact on our development costs, cost of operations, receipt of revenue and revenue projections. We expect that, in some cases, it may take a year or more to obtain decisions on permits and approvals and to negotiate and close these complex agreements. Such delays could harm our operating results and financial condition.

As a result of the foregoing uncertainties we are unable to project with certainty Microgy s organizational, structural, staffing or other overhead costs, the construction or operating costs associated with any facility, or whether any facility, or Microgy as a whole, will generate a profit. If Microgy fails to generate a profit, your investment in our securities will be materially adversely affected.

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If we are unable to obtain needed financing for Microgy s facilities, the value of our Microgy investment may be reduced significantly.

Because we have not yet generated sufficient positive cash flow, and do not expect to do so until at least 2011, we do not have adequate funds on hand to complete construction of the facilities we currently have planned. We are seeking and will require corporate, project or group financing to fund the cost of any development we may decide to pursue for Microgy s facilities. This financing may be difficult or impossible for us to obtain, particularly in the current economic environment, in which capital raising activities are especially challenging. If we are unable to obtain such financing, the value of our Microgy investment may be reduced significantly, and we may be required to substantially curtail our business or completely cease construction or operation of any facilities. The availability of additional financing will depend on prospective lenders or investors review of our financial capabilities as well as specific facilities and other factors, including their assessment of our ability to construct and manage each facility successfully and the current state of the economy. Such financing may not be available to us on acceptable terms, or at all. If we are unable to obtain the required financing, we will have to reduce the number of projects we construct and may even have to curtail or cease our business operations, which would have a material adverse effect on your investment in our securities.

If Microgy is unable to obtain sufficient manure and substrate for its facilities at an acceptable cost, such facilities, and Microgy as a whole, will likely not be profitable.

The performance of Microgy s facilities is dependent on the availability of large quantities of animal manure and substrates derived from animal and other organic waste resources to produce raw energy and meet performance standards in the generation of renewable natural gas. A substantial portion of the gas production of Microgy s facilities is derived from the co-digestion contribution enabled by substrate. While Microgy has or is expected to have agreements relating to the supply of manure and substrate, these agreements may not cover all of Microgy s requirements for such resources, and Microgy will be subject to the ability of the counterparties to such agreements to perform their obligations thereunder. Lack of manure or substrate or adverse changes in the nature or quality of such waste resources or the cost to supply or transport them would seriously affect the ability of Microgy s facilities to produce gas at profitable levels and, consequently, its ability to develop and finance facilities and to operate efficiently and generate income. As a result, its revenue and financial condition would be materially and negatively affected. For example, Microgy has recently experienced a decline in the volume of high quality substrate used by its Huckabay Ridge facility as a result of current economic conditions, which has had a negative impact on the facility s operations. We cannot assure you that the waste resources Microgy s facilities require will be available in the future in acceptable quantity or quality, for free or at prices that make them affordable or accessible.

Microgy is expected to derive a significant portion of its revenues from the sale of renewable natural gas; as a result it may have some exposure to volatility in the commodity price of natural gas.

Microgy is expected to derive a significant portion of its revenues from the sale of renewable natural gas. Microgy typically enters into medium-to-long-term off-take arrangements for the gas produced by its facilities as part of the planning and development of such facilities, and may enter into other hedging arrangements, in order to mitigate the associated commodity price risk. Furthermore, our subsidiary, Microgy Holdings, is required by the terms of its tax-exempt bonds to maintain certain gas price protection arrangements for specified periods of time. We believe that these arrangements will be considered normal purchases and sales and will not be subject to derivative accounting. However, there may be times when such off-take and hedging arrangements expire or otherwise terminate before new arrangements are put in place, and such arrangements are subject to the creditworthiness of the counterparties to them. In addition, we cannot assure you that any such risk management vehicles will always be available or successful. Because renewable natural gas commands a premium over, but still tracks prices for, conventional natural gas, Microgy will be exposed, to the extent not covered by long-term contracts, to market risk with respect to the commodity pricing of conventional natural gas. Historically, natural gas prices have been volatile and Microgy expects such volatility to continue.

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We expect revenues from sales of greenhouse gas sequestration credits and other environmental attributes, but the market for such attributes is nascent and may not develop in a manner that allows us to profit from the sales of such credits to the level projected, or at all.

The multiple digester facilities that we plan to implement through Microgy Holdings and our other subsidiaries are expected to produce greenhouse gas offset credits and other marketable environmental attributes. While there exist trading markets for these attributes, and additional trading markets or other commercial avenues may develop, the existing trading markets are new and experience thin trading and price volatility, which can hinder sales of credits and make their value unpredictable. The quantity of credits that may be generated are a function of the carbon credit offset characteristics as determined by protocols used to document and verify the carbon offset value. These protocols continue to evolve, and changes in these protocols could substantially diminish further carbon credit eligibility. Furthermore, much of the participation in these markets is voluntary, in response to social and environmental concerns, as opposed to being driven by regulatory requirements. While many states and the federal government are pursuing or are considering carbon emissions limits and related initiatives that may spur greater development of and participation in these markets, we are unable to determine the effect of these initiatives on these markets. We cannot assure you that these trading markets will develop further, or even that they will continue to exist. In addition, many of our agreements with our business partners and investors require us to share such credits or any revenues we derive from sales of such credits, and agreements we negotiate in the future may also include such requirements. As a result of the foregoing, we may recognize significantly smaller revenues than we anticipate from the sale of greenhouse gas sequestration credits or other environmental attributes.

We have pledged all of our interest in our facilities in Texas and California as security for the loans relating to Microgy Holdings tax-exempt bond financings in those jurisdictions, and our subsidiary, Microgy Grand Island, LLC, has entered into a financing lease with respect to the Grand Island facility.

We have invested, and expect to invest, substantial funds and resources in the Huckabay Ridge facility and the other multi-digester, renewable natural gas facilities in Texas, California and Nebraska. We have pledged all of our interest in the Huckabay Ridge facility, as well as the Rio Leche, Cnossen and Mission facilities in Texas as collateral security for the loan to our subsidiary, Microgy Holdings, from the Gulf Coast Industrial Development Authority of Texas relating to the $60 million tax-exempt bond financing we completed in November 2006. We have pledged all of our interest in the Riverdale and Hanford facilities in California as collateral security for the loan to our subsidiary, Microgy Holdings, from the California Statewide Communities Development Authority relating to the $62.425 million tax-exempt bond financing we completed in September 2008, and we expect to pledge all of our interest in the proposed Bar 20 facility in California if we pursue and are successful in closing a $26.02 million second tranche of such financing. While these loans are non-recourse to Environmental Power, Environmental Power is required to provide at least 20% of the construction costs of these facilities, as well as to cover any cost overruns in construction and certain other significant costs, which represents a substantial investment of corporate resources. If Microgy Holdings were to default on these loans, we would lose some or all of our investment in the Texas and California facilities, which would have a material adverse effect on our business, financial condition and results of operations. In addition, our subsidiary, Microgy Grand Island, LLC, has entered into a $7.0 million sale and leaseback transaction with the City of Grand Island, Nebraska in connection with its tax-exempt bond financing in Nebraska to finance the construction of the Grand Island facility, and has guaranteed the City s obligations under the tax-exempt bonds. Environmental Power has equity contribution and support obligations with respect to the Grand Island facility that are substantially similar to those under the Texas and California financings. If Microgy Grand Island defaults on its lease and guarantee obligations to the City of Grand Island, we would lose some or all of our investment in the Grand Island facility, which would have a material adverse effect on our business, financial condition and results of operations.

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Microgy faces competition in the renewable energy market as well as for the resources necessary to operate its facilities.

Microgy plans to generate revenue from the development and ownership of facilities that market renewable, green energy in addition to providing pollution control features to the agricultural and food industry markets. Microgy s green competitors include other energy producers using biomass combustion, biomass anaerobic digestion, geothermal, solar, wind, new hydro and other renewable sources. These companies represent a significant class of competitors because they will compete with Microgy for sale of marketable renewable energy credits and participation in various renewable portfolios and other programs.

Competition in the traditional energy business from electric utilities and other energy companies is well established, with many substantial entities having multi-billion dollar, multi-national operations. Many of these companies are beginning to compete in the alternative fuels and renewable energy business with the growth of the industry and the advent of many new technologies. Larger companies, due to their greater financial and other resources, will be better positioned than Microgy to develop new technologies and to install existing or more advanced renewable energy facilities, which could harm Microgy s business.

Microgy also faces many forms of competition with respect to the resources required to operate its facilities. Such competition includes other providers of pollution control, including environmental engineers, providers of pollution control systems, private companies, public companies, associations, cooperatives, government programs, foreign companies, and educational pilot programs. Furthermore, there are many companies that offer anaerobic digester systems. A number of these competitors have more mature businesses and have successfully installed anaerobic digester systems in the United States. Microgy may be forced to compete with any of these competitors for access to equipment, construction supplies, skilled labor for the construction and operation of its facilities and the supplies of manure and substrate required to operate its facilities. In addition, Microgy may also have to compete for access to substances that make desirable substrates with other users of these substances, such as recyclers of waste grease and producers of biodiesel and other biofuels. The effect of such competition could be reflected in higher costs associated with obtaining access to these resources, as well as an insufficient supply of these resources for the profitable operation of Microgy s facilities. If Microgy cannot obtain and maintain these supplies, or cannot obtain or maintain them at reasonable costs, the profitability of Microgy s business will be adversely affected.

Extreme weather events may have a material adverse effect on the operation on our facilities.

Microgy s facilities and sites are sensitive to extreme weather events. For instance, the anaerobic digestion process requires temperatures within a certain band, and extreme cold or heat may negatively impact the process or increase operating costs as a result of the need to counter such temperatures. This was the case in early 2007, when Texas experienced record cold temperatures that hindered startup of the Huckabay Ridge facility. Also, our sites contain retention ponds that have been designed with ample capacity to collect and retain storm water run-off, but, despite applying best maintenance practices, that capacity on rare occasions can be strained by severe rainfall. Thus, in August 2008, a 25-year record rainfall event caused a storm water retention pond breach and spill that required cleanup of a dry creek bed and reporting to the local environmental authorities. While Microgy considers typical local weather conditions in the design of its facilities and maintains appropriate insurance to mitigate associated risks to the extent commercially feasible, Microgy cannot anticipate all unusual weather events, and such events have had and may in the future have a material adverse effect on the operation of its facilities.

It is possible that we may expend large sums of money on individual projects to bring Microgy s products to market and that the revenue that Microgy derives from these products from new projects may be insufficient to fund our operations.

Microgy s business approach to the renewable energy may not produce results as anticipated, be profitable or be readily accepted by the marketplace. We cannot estimate whether the gas produced by facilities based on Microgy s technology will materialize at anticipated prices, or whether satisfactory profit margins will be achieved. If such pricing levels are not achieved or sustained, or if Microgy s technologies and business approach to Microgy s markets do not achieve or sustain broad acceptance, our business, operating results and financial condition will be materially and negatively impacted.

Because we have not filed patents to protect Microgy s intellectual property, we might not be able to prevent others from using Microgy s technology; conversely, others who have filed for patent or other protection might be able to prevent Microgy from using its technology.

Microgy has not filed any patent applications on any of its intellectual property. Should Microgy decide to file patent applications, we cannot assure you that any patent applications relating to Microgy s existing or future products or technologies will result in patents being issued, that any issued patents will afford adequate protection to Microgy, or that such patents will not be challenged, invalidated, infringed or circumvented. Furthermore, we cannot assure you that others have not developed, or will not develop, similar technologies that will compete with Microgy s without infringing upon Microgy s intellectual property rights or those of its licensor.

Third parties, including potential competitors, may already have filed patent applications relating to the subject matter of Microgy s current or future technology. In the event that any such patents are issued to such parties, such patents may preclude Microgy or its licensor from obtaining patent protection for its technologies, products or processes. In addition, such patents may hinder or prevent Microgy from commercializing its technology and could require Microgy to enter into licenses with such parties. We cannot assure you that any required licenses would be available to us on acceptable terms, or at all.

Microgy relies on confidentiality agreements and licensing agreements to maintain the proprietary nature of its technology. To compete effectively, Microgy may have to defend the rights to its intellectual property from time to time. Such defense costs may be significant and have a negative impact on our financial condition. In addition, we may lack the financial resources to adequately defend Microgy s intellectual property.

Microgy s facilities are likely to be subject to numerous governmental regulations.

We expect that Microgy s facilities are likely to be subject to various local, state and federal government regulations, including regulations covering air and water quality, solid waste disposal and related pollution issues. These regulations are mandated by the United States Environmental Protection Agency, or EPA, and state and local governments and are usually implemented through a permitting process, with ongoing compliance requirements thereafter. For example, grease-trap waste from restaurants and other food service providers is a desirable and highly available form of substrate for our facilities in Texas. However, the Texas environmental authorities required that we obtain a solid-waste permit for each of our planned facilities in Texas to the extent we desire to use grease-trap waste as substrate in the operation of such facilities. Furthermore, we have had to obtain water discharge permits for our planned California facilities, which typically involve a lengthy process. We expect that all of our facilities will be required to obtain various environmental and other permits and approvals, which will vary from location to location. In addition, our activities will fall under a number of health and safety regulations and laws and regulations relating to farming and zoning. Compliance with these regulations and permitting requirements could delay the development of facilities and could be costly and harm our financial condition.

Microgy s facilities may become subject to regulations or taxes based on carbon or other emissions.

Microgy s facilities produce and emit into the atmosphere carbon dioxide and hydrogen sulfide as a result of the anaerobic digestion gas conditioning processes that they employ. While such facilities capture and thereby reduce the amount of methane, a potent greenhouse gas, that would otherwise enter the atmosphere, there are direct emissions of carbon dioxide, another greenhouse gas. As such, Microgy s facilities may still be subject to future federal or state legislation or regulation, or the implementation of international treaties, which seek to limit

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or impose a cost on greenhouse gas emissions. If any such legislation, regulations or treaties were implemented, Microgy may be required to expend resources to capture the carbon dioxide it produces, pay a tax on its carbon dioxide emissions, purchase greenhouse gas offset credits, reduce the greenhouse offset credits claimed for such facilities or take similar actions. In addition, Microgy could become subject to federal, state and local taxes and regulations regarding its other emissions. Any of the foregoing could harm the profitability of Microgy s facilities.

Our operating results are difficult to predict in advance and may fluctuate significantly, which may result in a substantial decline in our stock price.

Our operating results are difficult to predict in advance and may fluctuate significantly, and a failure to meet the expectations of analysts or our stockholders would likely result in a substantial decline in our stock price.

Factors that are likely to cause our results to fluctuate include the following:

- the amount and timing of our operating expenses and capital expenditures;
- the success or failure of the facilities currently underway;
- our ability to specify, develop and complete facilities, and to introduce and market the energy created by such facilities and bring them to volume production in a timely manner;
- the rate of adoption and acceptance of new industry standards in our target markets; and
- other unforeseen activities or issues.

If our operating results fluctuate greatly, our business may be materially adversely affected and our stock price will likely decline.

If, by June 30, 2009, the Huckabay Ridge facility fails to meet certain performance tests, and we and our subsidiaries fail to achieve certain capital raising targets, Microgy Holdings may be required to repurchase or redeem the California bonds, making the funds from such financing unavailable for the planned California projects.

The terms of Microgy Holdings tax-exempt bond financing in California require that the following conditions be met before the proceeds of the financing can be drawn for the planned California projects:

- the Huckabay Ridge facility has produced an average of 1,525 MMBtu of RNG® per day for a period of 60 consecutive days and a gross profit of at least $350,000 during such period; and
- Environmental Power, Microgy Holdings or its subsidiaries has raised an aggregate of at least $45 million in additional capital after September 3, 2008, of which at least $17.5 million is available for investment in the planned California facilities, with such amounts being reduced by the amount of the anticipated equity contribution for the planned Bar 20 facility in California should there be no further bond financing for such facility.

If the foregoing conditions are not met, the holders of a majority of the California bonds have the right, exercisable by written notice to Microgy Holdings on or before July 31, 2009, to require Microgy Holdings to purchase all of the California bonds on or before August 31, 2009 at a purchase price of $62.425 million (the par amount of such bonds) plus accrued interest to the purchase date. If Microgy Holdings does not purchase the California bonds, it will be deemed to have abandoned construction of the planned California facilities, and the bondholders may cause the California bonds to be called for redemption to the extent of funds then held by the trustee. If the California bonds are called for redemption, Environmental Power has agreed to contribute an amount equal to the portion of the proceeds of the California bonds used to pay costs of issuance, which was approximately $1,248,500.

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We are currently in the last 60-day period prior to June 30, 2009, and, while we have substantially increased confidence in the reliability of the Huckabay Ridge facility, we cannot assure you that the foregoing conditions will be met, particularly as current economic conditions have led to decreased availability of optimal substrate supplies which has had an adverse impact on the performance of the Huckabay Ridge facility. If the foregoing conditions are not met and the holders of the California bonds require purchase or redemption of their bonds, then, assuming there are no defenses available to such actions and obligations, the proceeds of the California bonds would not be available for Microgy Holdings planned California projects and Environmental Power would have an obligation to pay approximately $1,248,500. We believe the loss of the proceeds of the California bonds and the payment by Environmental Power could have a material adverse effect on our financial condition, our results of operations and our ability to continue as a going concern if ongoing alternative financing efforts are not successful.

In addition, we have agreed with the holders of the bonds issued to finance the Texas facilities that we will not draw any proceeds from the Texas bonds to pay costs of the planned Mission project until the Huckabay Ridge facility has reached the production and profitability tests described above.

Risks Relating to Our Capital Stock

We have numerous outstanding shares of restricted common stock, as well as options, warrants and shares of preferred stock exercisable or convertible into a substantial number of shares of our common stock; the resale of outstanding restricted shares, as well as the exercise or conversion of these securities and the resale of the underlying shares, may adversely affect the price of our common stock.

The resale by our stockholders of shares of our restricted common stock or securities exercisable for or convertible into shares of our common stock could cause the market price of our common stock to decline.

A significant portion of our outstanding shares of common stock had been restricted from immediate resale, but is now available for sale in the market pursuant to Rule 144 under the Securities Act of 1933. As of December 31, 2008, we had approximately:

- 15,614,604 shares of our common stock issued and outstanding, of which 1,212,726 shares of common stock outstanding are restricted securities within the meaning of Rule 144 and 35,250 shares are subject to vesting pursuant to restricted stock awards granted to certain employees; and

- 2,823,659 shares of common stock issuable upon conversion of our series A preferred stock;

all of which shares, other than employee restricted stock awards subject to vesting, are eligible for resale without volume and manner of sale restrictions in accordance with Rule 144, except to the extent held by our affiliates. We are currently authorized to issue 50,000,000 shares of common stock.

We also currently have on file with the Securities and Exchange Commission an effective registration statement that permits the resale of up to 100,000 shares of our common stock subject to warrants exercisable at a price of $6.33 per share by the holders of such warrants. In addition, in connection with our sale of shares of our series A preferred stock and common stock warrants on November 9, 2006, we filed a registration statement to permit the resale of up to 4,387,360 shares of common stock issuable upon conversion of such shares of series A preferred stock and exercise of such warrants, which registration statement is currently effective. The shares of series A preferred stock were convertible at a conversion price of $5.27 per share, and the common stock warrants were exercisable at a price of $5.52 per share as to 1,406,205 of the warrants, and $5.27 per share as to 168,745 of the warrants. In October 2007, the exercise price of the warrants was reduced to $5.25 per share, and the preferred stock conversion price was reduced to $5.25 per share as a result of anti dilution adjustments triggered by the issuance of common stock in the October 2007 public offering, resulting in an increase of 11,250 in the number of shares of our common stock issuable upon conversion of the series A preferred stock.

In addition, pursuant to our business development agreement with Cargill, Incorporated, we may issue warrants to Cargill from time to time to acquire up to an aggregate of 4.99% of our outstanding common stock on a fully diluted basis, at an exercise price equal to 75% of the closing price of our common stock on the date on which such warrants are issued. In May 2007, we issued to Cargill warrants to purchase 175,912 shares of our common stock at an exercise price of $5.37 per share, representing 1% our fully diluted common stock at the time, as required by the business development agreement.

We currently have outstanding $5 million original principal amount of the notes issued in a prior public offering. These notes are convertible into an aggregate of up to approximately 925,926 shares of our common stock, based upon the minimum conversion price of the notes, all of which shares may be sold by the holders thereof without restriction, except to the extent held by our affiliates.

We also have outstanding an additional $3,000,000 original principal amount of the notes issued to the licensor of Microgy s technology as payment for certain license fees in a private placement transaction. These notes are convertible into up to approximately 555,556 shares of our common stock, based upon the minimum conversion price. These shares would be restricted securities within the meaning of Rule 144.

The notes issued in this offering will be convertible into an aggregate of up to approximately 925,926 shares of our common stock, based on the minimum conversion price of the notes, all of which shares may be sold by the holders thereof without restriction, except to the extent held by our affiliates.

As of December 31, 2008, we had outstanding options and warrants to acquire up to approximately 4,905,935 shares of our common stock at prices ranging from $1.75 to $8.89 per share, with a weighted average exercise price of $2.98 per share. The shares of common stock issuable upon exercise of these options will be freely transferable without restriction, except to the extent that they are held by our affiliates. Any shares held by our affiliates may only be sold in compliance with the volume limitations of Rule 144. These volume limitations restrict the number of shares that may be sold by an affiliate in any three-month period to the greater of 1% of the number of shares then outstanding, which equals approximately 156,000 shares as of December 31, 2008, or the average weekly trading volume of our common stock during the four calendar weeks preceding the filing of a notice on Form 144 with respect to the sale.

As a result of the resale of outstanding shares of our common stock, including restricted shares and shares issuable upon exercise or conversion of the foregoing securities, the price of our common stock may be adversely affected.

The issuance of preferred stock may adversely affect the value of our common stock or make it more difficult for a party to acquire a controlling interest in our company.

We are authorized to issue up to 2,000,000 shares of preferred stock, of which 281,241 shares have been designated as series A 9% cumulative convertible preferred stock, referred to as the series A preferred stock, and which are currently issued and outstanding. The preferred stock not already designated and issued may be issued in series from time to time with such designations, rights, preferences and limitations as our board of directors may determine by resolution without stockholder approval. While the terms of the series A preferred stock do not currently allow for the issuance of preferred stock having dividend and liquidation preferences greater than or senior to the series A preferred stock, any future issuances of preferred stock may enjoy dividend and liquidation preferences over our common stock, thereby diminishing the value of our common stock. Furthermore, the issuance of preferred stock, as well as any authorized but unreserved common stock, while providing flexibility in connection with possible future financings or acquisitions and other corporate purposes, could have the effect of making it more difficult for a third party to acquire, or could discourage a third party from seeking to acquire, a controlling interest in our company.

Our management and directors, as well as the holders of our series A preferred stock, are able to exercise significant control over our management and affairs.

As of February 28, 2009, executive officers and directors, including Richard E. Kessel, Joseph E. Cresci, Roger Ballentine, Kamlesh R. Tejwani, Robert I. Weisberg, John R. Cooper, August Schumacher, Jr., Lon

Hatamiya, Steven Kessner, Michael E. Thomas and Dennis Haines, beneficially owned approximately 18.3% of our outstanding common stock. In addition, the three holders of our series A preferred stock, two of which are affiliated with each other, control approximately 18.3% of the total number of votes currently entitled to be cast at any meeting of our stockholders. While there are no voting agreements among them, such persons, as a group, may be able to exercise some level of control over the outcome of matters submitted for stockholder action, including the election of members to our board of directors and the approval of significant change in control transactions. This may have the effect of delaying or preventing a change in control of our company and, therefore, your opportunity to sell your shares in such a transaction. Furthermore, the holders of our series A preferred stock have special approval rights with respect to certain changes to our certificate of incorporation and certain other corporate actions.

The lack of a developed trading market may make it difficult for you to sell shares of our common stock.

While our common stock is currently listed for trading on the NASDAQ Capital Market, trading activity in our common stock has fluctuated and has at times been limited. For example, for the one-month period from December 1, 2008 to December 31, 2008, our daily trading volume ranged from a low of 26,500 shares to a high of 1,363,500 shares, and averaged 144,600 shares. We cannot guarantee that a consistently active trading market will develop in the future. As a result, a holder of our common stock may find it difficult to dispose of our common stock.

If we fail to continue to meet all applicable continued listing requirements of The NASDAQ Capital Market and NASDAQ determines to delist our common stock, the market liquidity and market price of our common stock could decline.

Our common stock is currently listed on The NASDAQ Capital Market. In order to maintain that listing, we must satisfy minimum financial and other listing requirements. Among these requirements is that our common stock maintain a minimum closing bid price of at least $1.00 per share. If our common stock fails to maintain a minimum closing bid price of at least $1.00 per share for thirty consecutive business days, we will have a 180-day period to regain compliance with the minimum bid price rule. If we fail to regain compliance within such period, our common stock may be subject to delisting from The NASDAQ Capital Market. NASDAQ temporarily suspended its minimum bid price rule effective October 16, 2008, due to overall conditions affecting the stock markets. This suspension was recently extended to July 20, 2009. Our common stock has not had a minimum closing bid price of $1.00 per share since October 20, 2008. If we fail to continue to meet all applicable listing requirements of The NASDAQ Capital Market and NASDAQ determines to delist our common stock, an active trading market for our common stock may not be sustained and the market price of our common stock could decline. In addition, the delisting of our common stock would also trigger a right on the part of the holders of our outstanding shares of series A preferred stock to increase the cumulative dividend rate on such shares from 9% per year to 16% per year. We cannot assure you that we will not ultimately fail to comply with the minimum bid price rule or other NASDAQ listing standards.

The market price for our common stock has been and may continue to be volatile.

The market price for our common stock has been volatile, and it is likely to continue to be so. For instance, the closing price of our common stock reached a high of $6.25 in the first quarter of 2008 and a low of $0.28 in the fourth quarter of 2008, and has varied from a low of $0.36 to a high of $0.92 in the first quarter of 2009. While we cannot state with any certainty the specific reasons for the recent volatility of our stock price, we believe that such volatility could be due to the current financial recession and related economic uncertainties and their impact on the stock market generally as well as on the stock prices of early stage companies such as ours, in addition to the risks and uncertainties regarding our business described or incorporated by reference elsewhere in this prospectus. In addition, the market price for our common stock could be subject to significant fluctuations in response to variations in quarterly operating results, announcements of technological innovations or new facilities and products by us or our competitors, or our failure to achieve operating results consistent with any

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securities analysts projections of our performance. Furthermore, the stock market has experienced extreme price and volume fluctuations and volatility that have particularly affected the market price of many emerging growth and development stage companies such as ours. Such fluctuations and volatility have often been unrelated or disproportionate to the operating performance of such companies. As a result of fluctuations related or unrelated to our performance, the value of our common stock may be materially adversely affected.

We will require and are actively seeking significant additional financing, which may result in our issuing a significant number of shares of our common stock or preferred stock, which in turn may dilute the value of your shares.

We have historically needed to raise capital to fund our operating losses. We expect to continue to incur operating losses through at least 2010. In November 2006, we completed a tax-exempt bond financing in Texas to finance a portion of the construction costs of our Texas facilities, as well as a $15 million private placement of our series A preferred stock and common stock warrants. In October 2007, we completed a public offering of our common stock resulting in net proceeds to us of approximately $26.6 million. In July 2008, we completed a $7.0 million tax-exempt bond financing in Nebraska to finance a portion of the construction costs of our Grand Island facility. In September 2008, we completed a $62.425 million first tranche tax-exempt bond financing in California to finance a portion of the construction costs of our proposed California facilities, and anticipate pursuing a proposed $26.02 million second tranche financing. On March 13, 2009 we closed on a sale of $5.0 million original principal amount of our 14% convertible notes due January 1, 2014 for net proceeds of approximately $4.4 million, and we continue to work with our financial advisors to identify and explore various opportunities to raise the capital we require. However, we cannot assure you that we will be able to raise sufficient capital on acceptable terms, or at all. The level of funds we are able to raise, if any, will determine the level of development and construction activity that we can pursue and whether we will be able to continue as a going concern. We will require and will continue to seek corporate and project financing to fund our ongoing overhead and growth plans as well as the cost of any development we may decide to pursue for our facilities. Without limiting the foregoing, as described elsewhere in this prospectus, in addition to the proceeds of this offering, we will have to raise significant additional capital in the first half of 2009 in order to fund ongoing general and administrative expenses associated with our corporate overhead as well as interest and dividend requirements. We cannot assure you that such capital will be available in sufficient amounts or on terms acceptable to us, if at all. Any such financing could be in the form of debt or equity instruments or a combination of debt and equity instruments. To the extent any such financing involves equity or convertible debt, we may issue a significant number of shares of our common stock or preferred stock, which will dilute an existing investment in our common stock, and we may issue such shares at prices that may be lower than the price paid for our common stock by our stockholders. In addition, if we issue shares of preferred stock, such preferred stock may have rights and preferences that are superior to those of our common stock. Indeed, the shares of our series A preferred stock issued in our November 2006 private placement have rights and preferences that are superior to those of our common stock. Because we are authorized to issue shares of additional series of preferred stock, as designated by our board of directors, subject to certain limitations included in the terms of our series A preferred stock, we may issue more shares of preferred stock in the future.

Issuances of common stock or securities convertible into common stock in the future could dilute existing stockholders and adversely affect the market price of our common stock. Of the 50,000,000 shares of authorized common stock, 15,703,034 are issued, 15,614,604 are outstanding and 4,905,935 have been reserved for issuance upon the exercise of options and warrants outstanding as of December 31, 2008. An additional 2,823,660 shares have been reserved for issuance in connection with the conversion of shares of our series A preferred stock issued in our November 2006 private placement. We may also issue warrants to purchase up to 4.99% of our common stock, on a fully diluted basis, to Cargill, Incorporated pursuant to the terms of our business development agreement. In May 2007, we issued warrants to purchase 175,912 shares of our common stock at an exercise price $5.37 per share, representing 1% of our fully diluted common stock at the time to Cargill as required by the business development agreement. Additionally, in October 2007, we issued 5,400,000 shares of common stock in an underwritten public offering. We also have the authority to issue preferred stock as

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previously described, debt securities convertible into common stock, and options and warrants to purchase shares of our common stock. We may issue shares of common stock or securities convertible into common stock at values below our market price up to a maximum of 19.9% of our outstanding common stock without stockholder approval, which values may be substantially below the price paid for our common stock by our stockholders. We also do not need stockholder approval to issue an unlimited number of shares of common stock or securities convertible into common stock (provided sufficient shares of common stock are authorized and unreserved) at or above the market price for our common stock pursuant to certain NASDAQ Capital Market requirements. Any such issuances could be at values below the price paid for our common stock by our stockholders.

Our outstanding series A preferred stock has rights and preferences superior to that of our common stock, may impair our ability to raise additional financing, may harm our financial condition if we are required to redeem it and could have the effect of discouraging an acquisition or reducing the amount of proceeds available to common stockholders upon such an acquisition.

Our shares of series A preferred stock have rights and preferences which are superior to those of our common stock, including:

- an accruing dividend of 9% on the stated value of each outstanding share of series A preferred stock, payable before the payment of any dividends on our common stock;
- a preference upon liquidation, dissolution or winding up of Environmental Power equal to 200% of the stated value of each share of preferred stock, plus any accrued but unpaid dividends;
- the right to consent to certain changes to our certificate of incorporation and bylaws, and certain other significant corporate actions; and
- the right to a payment equal to 150% of the stated value of each outstanding share of Series A preferred stock upon certain change-in-control events.

Our series A preferred stock may also have a material adverse effect on our financial condition and results of operations. With certain exceptions, including exceptions for permitted indebtedness, as defined, we have agreed to limit our ability to incur additional indebtedness while such preferred stock is outstanding. Subject to other exceptions, we have also agreed with series A holders not to issue stock senior to or on a par with series A preferred stock. These constraints could materially and adversely affect our ability to raise funds necessary to continue our business. In addition, the series A preferred stock provides for various triggering events, such as our common stock not being listed for trading on the American Stock Exchange, NASDAQ Global Market, NASDAQ Capital Market or New York Stock Exchange, the failure to deliver shares of our common stock upon conversion and specified change of control transactions. Several other triggering events are described in the certificate of designations, preferences and rights of the series A preferred stock. If one of these triggering events occurs, we may be required to redeem all or part of the outstanding shares of series A preferred stock at 120% of their stated value (150% in the case of certain change in control transactions), including payment of accrued dividends and penalties, or the dividend rate on the series A preferred stock may be increased from 9% per year to 16% per year, depending on the triggering event and the elections made by the holders of the series A preferred stock. Some of the triggering events include matters over which we may have some, little, or no control. Any such redemption could leave us with little or no working capital for our business. Furthermore, by virtue of their voting power and other rights and preferences, the outstanding series A preferred stock could have the effect of blocking or discouraging certain acquisitions of our company or reducing the proceeds available to common stockholders as a result of any such acquisitions.

We do not intend to pay cash dividends on our common stock.

We have not paid cash dividends on our common stock since 2001, and we do not expect to pay cash dividends on our common stock at any time in the foreseeable future. The future payment of dividends directly depends upon the future earnings, capital requirements, financial requirements and other factors that our board of directors will consider, and is subject to the prior payment of all accrued but unpaid dividends on our series A preferred stock. Furthermore, the terms of our series A preferred stock prohibit the payment of dividends on our common stock while any shares of our series A preferred stock are outstanding. Because we do not anticipate paying cash dividends on our common stock, if you elect to convert the notes into shares of our common stock, the return on any investment in our common stock will depend solely on a change, if any, in the market value of our common stock.

Risks Relating to the Notes

Our subsidiaries have incurred and may in the future incur substantial indebtedness or issue equity interests to third party investors which are structurally senior to the notes and the terms of which limit the ability of such subsidiaries to distribute cash to Environmental Power.

Because we are a holding company, our right to participate in any distribution of assets of any of our subsidiaries upon any subsidiary s liquidation or reorganization or otherwise, is subject to the prior claims of their creditors, except to the extent we may be recognized as a creditor of that subsidiary. Our subsidiaries may also issue equity interests to third party investors. Accordingly, our obligations under the notes will be effectively subordinated to all existing and future indebtedness and liabilities of our subsidiaries, and may be limited by the terms of third party equity interests in our subsidiaries, and holders of the notes should look only to our assets for payment thereunder. In particular, our subsidiaries, Microgy Holdings, LLC and Microgy Grand Island, LLC, have incurred substantial indebtedness in connection with the financing of their facilities and proposed facilities. As of December 31, 2008, this indebtedness amounted to approximately $129.4 million. As previously noted, the terms of this indebtedness provide for a security interest in all of the assets of such entities and their subsidiaries, and also set forth certain conditions and limitations on the ability of such entities to distribute cash to Environmental Power. As a result, such indebtedness is structurally senior to the indebtedness represented by the notes. These entities, as well as other subsidiaries we may form to own and operate our projects, may incur additional indebtedness, issue equity interests to third party investors or enter into other agreements which similarly may be structurally senior to the notes and may otherwise limit the ability of such entities to distribute cash to Environmental Power.

There is no established trading market for the notes.

The notes are not listed for trading on any national securities exchange, and we have no plans to list the notes on any exchange. While there is currently outstanding $8,000,000 aggregate original principal amount of the notes, these notes were recently issued, and there is no established trading market for the notes. We have been advised by the underwriter that it intends to make a market in the notes but is not obligated to do so and may discontinue market making at any time without notice. No assurance can be given as to the liquidity of any trading market for the notes that may develop.

We cannot assure you that the IRS or a court will agree with the characterization of the notes as indebtedness for U.S. federal income tax purposes.

The notes are novel financial instruments, and there is no statutory, judicial or administrative authority that directly addresses the U.S. federal income tax treatment of an instrument similar to the notes. We cannot assure you that the IRS or a court will agree with the characterization of the notes as indebtedness for U.S. federal income tax purposes. If the notes were recharacterized as equity, we would not be entitled to deduct interest payments on the notes, which may result in an increase in our U.S. federal income tax liability. See the section of this prospectus entitled CERTAIN U.S. FEDERAL INCOME TAX CONSIDERATIONS.

Holders should consider the U.S. federal income tax consequences of owning and converting the notes.

The U.S. federal income tax treatment of the notes and the conversion of the notes into shares of our common stock is uncertain. Holders are urged to consult their tax advisors with respect to the U.S. federal

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income tax consequences resulting from the conversion of the notes into shares of our common stock. A discussion of the U.S. federal income tax consequences of ownership of the notes is contained in this prospectus under the heading CERTAIN U.S. FEDERAL INCOME TAX CONSIDERATIONS.

Holders may have to pay taxes with respect to distributions on our common stock that holders do not receive.

The conversion rate of the notes is subject to adjustment for certain events arising from stock splits and combinations, stock dividends and other actions we take that modify our capital structure. If the conversion rate is adjusted, under certain circumstances holders may be deemed to have received a constructive dividend from us, which may result in ordinary income to holders for U.S. federal income tax purposes, even though such holders would not receive any cash related to that adjustment and even though such holders might not exercise their conversion rights. See the section of this prospectus entitled CERTAIN U.S. FEDERAL INCOME TAX CONSIDERATIONS.

The holders will have a right to tender their notes, and we will have the right to repurchase the notes, following a change in control.

A change in control of Environmental Power could give rise to both an obligation and a right on our part to repurchase the notes at the request of the holders. *See* DESCRIPTION OF THE NOTES AND THE INDENTURE Repurchase upon Change in Control. We cannot assure you that sufficient monies will be available to pay the principal, accrued interest and premium due on the notes in the case of a voluntary tender by the holders. We cannot assure you that a refinancing to pay such amounts could be obtained. In the absence of such refinancing, we could be forced to dispose of assets or the assets of our subsidiaries in order to make payments due on our indebtedness under circumstances that might not be favorable to realizing the highest price for such assets. We cannot assure you that a refinancing of the notes can be obtained quickly enough or for sufficient amounts to enable us to meet our obligations, including our obligations with respect to the notes.

Upon a conversion of the notes, holders of notes will cease to have certain rights.

The holders of the notes have the right to elect to convert, and, under certain circumstances, we have the right to require the conversion of, outstanding notes into shares of our common stock. Should either the holders or we elect to effect such a conversion, holders will cease to have the protections afforded under the indenture governing the notes, including, among other things:

- the right to be paid principal, interest, and other amounts at maturity and at certain other times;
- the right to be paid principal, interest and other amounts on the notes in preference to any payments to holders of our common or preferred stock or holders of any of our subordinated indebtedness; and
- the rights associated with the various covenants and default provisions set forth in the indenture.

If the notes are redeemed, converted or repurchased, you may not receive the return on your investment that you anticipate.

The notes are subject to redemption, repurchase and conversion prior to their maturity date, both at the election of the holders and at our election, under certain circumstances. See DESCRIPTION OF THE NOTES AND THE INDENTURE for a description of the circumstances under which redemption, conversion or repurchase of the notes prior to maturity may occur. If any such redemption, conversion or repurchase occurs, the total return you receive on your investment in the notes may be materially less than the return you would have received had you held the notes to maturity.

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CAUTIONARY NOTE REGARDING FORWARD-LOOKING INFORMATION

The Private Securities Litigation Reform Act of 1995, referred to as the PSLRA, provides a safe harbor for forward-looking statements. Certain statements contained or incorporated by reference in this prospectus, such as statements concerning planned manure-to-energy systems, our sales pipeline, our backlog, our projected sales and financial performance, statements containing the words may, assumes, forecasts, positions, predicts, strategy, will, expects, estimates, anticipates, believes, projects, intends, plans, budgets, potential, continue, thereof, and other statements contained or incorporated by reference in this prospectus regarding matters that are not historical facts are forward-looking statements as such term is defined in the PSLRA. Because such statements involve risks and uncertainties, actual results may differ materially from those expressed or implied by such forward-looking statements. Factors that could cause actual results to differ materially include, but are not limited to:

- uncertainties involving early-stage companies, including our need for additional financing to continue as a going concern;
- uncertainties regarding the ability to obtain additional financing, and the timing, amount and terms of such financing;
- the lack of binding commitments and the need to negotiate and execute definitive agreements for the construction and financing of facilities;
- the lack of binding commitments for the purchase of gas produced by certain facilities;
- the lack of binding commitments for, and other uncertainties with respect to, supplies of substrate;
- uncertainties regarding the costs associated with substrate and other project inputs;
- risks and uncertainties relating to the development of markets for carbon sequestration credits and other marketable renewable attributes, and the level of revenues we may achieve from such sources;
- uncertainties regarding the amount and rate of growth in operating expenses;
- unpredictable developments, including plant outages and repair requirements as well as risks related to weather and the unpredictability of extreme weather events;
- risks related to performance on the part of suppliers of components, goods and services to our facilities;
- financing and cash flow requirements and uncertainties;
- inexperience with the design, construction, startup and operation of multi-digester facilities;

- difficulties involved in developing and executing a business plan;
- technological uncertainties, including those relating to competing products and technologies;
- unpredictable developments, including plant outages and repair requirements;
- commodity price volatility, particularly with respect to the price of natural gas;
- the difficulty of estimating construction, development, repair, maintenance and operating costs and timeframes;
- the uncertainties involved in estimating insurance and warranty recoveries, if any;
- the inability to predict the course or outcome of any negotiations with parties involved with our projects;
- uncertainties relating to general economic and industry conditions;
- uncertainties relating to government and regulatory policies, the legal environment, intellectual property issues and the competitive environment in which Environmental Power Corporation and its subsidiaries operate;

and other factors, including those described in this prospectus under the heading RISK FACTORS, as well as factors set forth in other filings we make with the Securities and Exchange Commission. Readers are cautioned not to place undue reliance on these forward-looking statements, which speak only as of the date that they are made. We undertake no obligation to publicly update or revise any forward-looking statements, whether as a result of new information, future events or otherwise.

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RATIO OF EARNINGS (DEFICIT) TO FIXED CHARGES

The following table sets forth our consolidated ratios of earnings (deficits) to fixed charges for the periods indicated:

	Three Months Ended March 31, 2009	Year Ended December 31, 2008	2007	2006	2005	2004
Ratio of earnings (deficit) to fixed charges	(1.0)	(4.4)	(4.9)	(29.0)	(39.3)	(60.2)

	Three Months Ended March 31, 2009	Year Ended December 31, 2008	2007	2006	2005	2004
Earnings deficiency (in thousands)	$ 5,194	$ 26,789	$ 13,272	$ 11,234	$ 8,987	$ 5,450

For purposes of this calculation, earnings or deficit refers to the sum of (1) pre-tax income from continuing operations and (2) fixed charges, less interest capitalized.

Fixed charges means the sum of (1) interest expensed and capitalized, (2) amortized premiums, discounts and capitalized expenses related to indebtedness and (3) an estimate of the interest within rental expense.

The ratio of earnings (deficit) to fixed charges has been prepared based on the requirements set forth in Item 503 of Regulation S-K under the Securities Act of 1933, as amended. Because we have losses from continuing operations before taxes for all periods presented, increases in the losses reduce the negative ratio. In reality, increases in our losses reduce our ability to pay fixed charges.

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USE OF PROCEEDS

The net proceeds to us from this offering are expected to be approximately $4,475,000, after deducting the underwriting discounts and commissions and the estimated offering expenses payable by us.

Our subsidiary, Microgy Holdings, LLC, referred to as Microgy Holdings, has, together with its subsidiaries, entered into project financings in Texas, California and Nebraska in the form of tax-exempt bond financings described elsewhere in this prospectus or the documents incorporated by reference in this prospectus. The proceeds of the notes will be contributed by us as equity or subordinated debt to Microgy Holdings or Microgy Grand Island pursuant to the support agreements entered into by us in connection with the Texas, California and Nebraska project financings, which require us to make these contributions to fund certain costs of construction and operation of the facilities financed thereby. In addition, we are issuing the notes pursuant to the loan agreement and related documentation entered into by Microgy Holdings in connection with the California project financing, which includes as a condition to Microgy Holdings ability to draw the proceeds of such financing that we raise at least $45 million in additional capital, of which $17.5 million must be available for the construction and operation of Microgy Holdings facilities in California. In the event that we do not sell any additional bonds to finance our proposed Bar 20 facility in California, the Bar 20 facility, which is currently a proposed part of such facilities, will not be part of such California project, and the foregoing capital requirements will be reduced to $39,825,000 and $12,325,000, respectively. The draw conditions on the California proceeds provide that we must obtain this additional financing by June 30, 2009 and that our Huckabay Ridge facility must also meet certain other performance and financial tests prior to that date, as set forth in more detail under the heading Risk Factors and in the agreements related to the California tax-exempt bond financing, which are filed as exhibits to the registration statement of which this prospectus is a part.

The costs of construction and operation of the Texas, California and Nebraska facilities which may be funded with the proceeds of this offering include, among other things, costs of materials, equipment and labor, debt service, license fees which may become due to Danish Biogas Technology, A.S., referred to as DBT, the licensor of Microgy s anaerobic digestion technology, under Microgy s agreements with DBT, operations and maintenance costs, and reimbursement or repayment of Environmental Power or its affiliates of equity contributions, subordinated debt or other project-related expenses advanced by us or such affiliates in anticipation of receipt of the proceeds of this offering.

We will need to raise substantial additional financing, in addition to the proceeds of this offering, in the first half of 2009, as outlined above, to finance development and construction of our planned projects, to fund ongoing general and administrative expenses associated with our corporate overhead, as well as interest and dividend requirements, and to continue as a going concern. We currently have no commitments for any such financing. We cannot assure you that any such financing will be available on reasonable terms or in a timely fashion, or at all, particularly in the current economic environment, in which capital raising activities are especially challenging. If we are unable to raise sufficient additional financing on a timely basis, we may have to reduce the number of projects we construct, or even curtail or cease our business operations.

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DESCRIPTION OF THE NOTES AND THE INDENTURE

The following summarizes the material provisions of the notes and the indenture. This summary is subject to and is qualified by reference to all the provisions of the notes and the indenture, and the other documents referred to herein.

Overview

We are offering our 14% Convertible Notes due January 1, 2014, referred to as the notes, in the aggregate original principal amount of $5,000,000. The notes will be our unsecured obligations and will be convertible into shares of our common stock as described under the headings Voluntary Conversion and Mandatory Conversion below. The notes will be issued in principal amounts of $5,000 and whole multiples of $1,000 in excess thereof and will mature on January 1, 2014 unless earlier converted or redeemed.

The notes will be issued pursuant to the terms of the Indenture for Senior Debt Securities, dated as of March 1, 2009, referred to as the Base Indenture, by and between us and Wells Fargo Bank, National Association, in its capacity as trustee, paying agent, exchange agent and registrar, referred to as the Trustee, as amended and supplemented by the First Supplemental Trust Indenture, dated as of March 1, 2009, referred to as the First Supplemental Indenture. The Base Indenture, as so amended and supplemented by the First Supplemental Indenture, is referred to as the indenture. The Base Indenture and the First Supplemental Indenture have been filed as exhibits to the registration statement of which this prospectus is a part. The Base Indenture relates to our issuance from time to time, of an unlimited amount of our senior debt securities, the terms of which are to be set forth in one or more supplements thereto, such as the First Supplemental Indenture. The First Supplemental Indenture provides that we may issue up to $53,000,000 aggregate principal amount of the notes, inclusive of the notes offered hereby and the notes previously issued by us. We currently have outstanding $8,000,000 aggregate principal amount of the notes. The indenture and the Trustee have been qualified under the Trust Indenture Act of 1939, as amended. All notes issued under the indenture are *pari passu* with each other.

We will pay principal and interest on the notes at the office or agency we maintain for such purpose, which shall initially be the office or agency of the Trustee, located in New York, New York. At our option, however, and with the written consent of the trustee, interest may be paid by check mailed to the address of a holder of the notes as it appears in the notes register. While the notes are held in book-entry form through The Depositary Trust Corporation, referred to as DTC, as described under the heading Book-Entry, Delivery and Form, interest and principal will be paid to DTC for the account of the beneficial owners of the notes.

We are restricted under the indenture from incurring indebtedness as described below under the heading Covenants.

You are not required to pay a service charge for registration or transfer of the notes. We may, however, require you to pay any tax or other governmental charge in connection with the transfer.

Certain defined terms used in the following discussion but not otherwise defined have the meanings ascribed to them under the heading Certain Defined Terms appearing at the end of this section of this prospectus.

We Are a Holding Company

Because we are a holding company, our right to participate in any distribution of assets of any of our subsidiaries upon the subsidiary s liquidation or reorganization or otherwise, is subject to the prior claims of its creditors, except to the extent we may be recognized as a creditor of that subsidiary. Our subsidiaries may also issue equity interests to third party investors. Accordingly, our obligations under the notes will be effectively subordinated to all existing and future indebtedness and liabilities of our subsidiaries, and may be limited by the terms of third party equity interests in our subsidiaries, and holders of the notes should look only to our assets for payment on the notes.

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Form, Exchange and Transfer

Each note will be represented by either one or more global securities registered in the name of DTC, as depositary, or a nominee of the depositary (as a book-entry debt security), or, under certain circumstances, a certificate issued in definitive registered form (as a certificated note). See Legal Ownership of Securities for a further description of the terms relating to any book-entry securities.

Interest

The notes will bear interest at the rate of 14% per annum from the Issue Date, payable in cash. Interest on each note will accrue interest from the Issue Date of such note. Interest generally will be computed on the basis of a 360-day year comprised of twelve 30-day months. We will pay interest semi-annually on January 1 and July 1 of each year (or, if such date is not a business day, the next business day), commencing on July 1, 2009, to the holders of record at the close of business on the preceding December 15 and June 15, respectively. Each date on which interest is to be paid is referred to as an Interest Payment Date. There are two exceptions to the preceding sentence:

If a holder converts notes prior to a record date for an interest payment, we will pay to that holder the amount of interest accrued through the conversion date. If a holder of notes converts after a record date for an interest payment but prior to the corresponding Interest Payment Date, the holder on the record date will receive on that Interest Payment Date accrued interest on those notes through the Interest Payment Date, notwithstanding the conversion of such notes prior to that Interest Payment Date, because the holder will have been the holder of record on the corresponding record date. However, at the time that the holder surrenders notes for conversion, the holder must pay to us an amount equal to the interest that has accrued between the conversion date and the related Interest Payment Date.

We will pay interest to a person other than the holder of record on the record date if we elect to redeem the notes on a date that is after a record date but on or prior to the corresponding Interest Payment Date. In this instance, we will pay accrued interest on the notes being redeemed until, but not including, the redemption date to the same person to whom we will pay the principal of those notes.

Voluntary Conversion

You may voluntarily convert your notes into shares of our common stock at any time at the applicable conversion price, subject to adjustment upon certain events, described below. This is referred to as a Voluntary Conversion.

You may effect a Voluntary Conversion in principal amounts of $5,000 of the notes and multiples of $1,000 in excess thereof at the applicable conversion price described below. The agent for accepting notices of conversion will be Wells Fargo Bank, National Association, referred to as the Exchange Agent. You can convert your notes by delivering to the Exchange Agent or its designee, through the broker or bank through which you hold your interest in the notes, a duly signed and completed irrevocable notice of conversion, a form of which is included in the indenture and which may be obtained from the Exchange Agent, and such other documents as the Exchange Agent or its designee may reasonably require, all of which must be delivered to the Exchange Agent no less than five business days prior to the indicated conversion date. As promptly as practicable on or after the conversion date, but no later than three business days after the conversion date, American Stock Transfer & Trust Company, LLC, as our transfer agent, referred to as the Transfer Agent , at our direction will issue and deliver the number of full shares of our common stock issuable upon conversion, together with any cash payment for fractional shares based on the market price of our common stock on the last business day before the conversion date. Any accrued and unpaid interest will be paid through the DTC facilities. DTC s practice is to credit direct participants accounts upon DTC s receipt of funds and corresponding detail information from the trustee. See Legal Ownership of Securities.

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The common stock issued upon conversion of the notes will be credited to the account of the beneficial owner of the notes converted. You will not be required to pay any stamp, transfer, documentary or similar taxes or duties upon conversion.

The Conversion Price

The number of whole shares of our common stock to be issued upon any voluntary conversion will be determined by dividing the principal amount of the notes to be converted by the then applicable conversion price set forth below, which is referred to as the Conversion Price.

Conversion Date	Conversion Price
From the Issue Date through December 31, 2009	$ 5.40
From January 1, 2010 through December 31, 2010	$ 6.35
From January 1, 2011 through December 31, 2011	$ 7.65
From January 1, 2012 through December 31, 2012	$ 9.75
From January 1, 2013 through December 31, 2013	$ 11.00

The applicable Conversion Price will be adjusted proportionately if:

- we dividend or distribute shares of our common stock to the holders of our common stock;
- we split, subdivide or combine our common stock; or
- we reclassify or recapitalize our common stock.

If we implement a stockholders rights plan, we will be required under the indenture to provide that the Holders of notes will receive the rights upon conversion of the notes, whether or not these rights were separated from the common stock prior to conversion.

Mandatory Conversion

We may require owners to convert the notes into shares of our common stock in certain circumstances. Owners may elect to have their notes redeemed in lieu of conversion.

At any time after the third anniversary of the date of the first issuance of notes, which was March 13, 2009, we may require the owners to convert all of the notes into shares of our common stock on any date after less than 20% of the aggregate principal amount of the notes originally issued remains outstanding. This is referred to as a Mandatory Conversion. The number of whole shares of our common stock to be issued in connection with a Mandatory Conversion will be determined by dividing the principal amount of the notes being converted by the Conversion Price then in effect. To effect the Mandatory Conversion, we will send a notice of Mandatory Conversion to the trustee, the Exchange Agent and the Transfer Agent not less than 40 days nor more than 60 days prior to the date fixed for Mandatory Conversion, and the trustee will send notice of the date fixed for Mandatory Conversion to DTC to be converted not less than 30 days prior to such date. As promptly as practicable on or after the conversion date, but no later than three business days after the conversion date, the Transfer Agent, at our direction will issue and deliver the number of full shares of our common stock issuable upon conversion, together with any cash payment for fractional shares based on the market price of our common stock on the last business day before the conversion date. Any accrued and unpaid interest will be paid through the DTC facilities. DTC s practice is to credit direct participants accounts upon DTC s receipt of funds and corresponding detail information from the trustee. See Legal Ownership of Securities. Notwithstanding the foregoing, owners of notes selected for Mandatory Conversion will have the right to have their notes redeemed at 110% of the principal amount thereof, plus accrued interest through the date prior to the redemption date, in lieu of such Mandatory Conversion. See Mandatory Redemption in Lieu of Mandatory Conversion below.

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The shares of our common stock issued upon conversion of the notes will be issued only to the account of the owners of the notes converted. You will not be required to pay any stamp, transfer, documentary or similar taxes or duties upon conversion.

Limitation on Conversion

No holder of notes may convert such notes to the extent that, as a result of such conversion, such holder, together with its Affiliates, would beneficially own a number of shares of our common stock in excess of 19.99% of the number of shares of our common stock outstanding immediately prior to such conversion, or would hold more than 19.99% of the voting power of all shares of our capital stock outstanding immediately prior to such conversion.

Mandatory Redemption in Lieu of Mandatory Conversion

Owners of notes that have been selected for Mandatory Conversion, may, in lieu of such Mandatory Conversion, require us to redeem their notes on the conversion date at a redemption price equal to 110% of the principal amount of such notes plus accrued interest through the business day prior to the conversion date. To exercise this right, the owner must, following receipt of the notice of Mandatory Conversion but not less than ten days prior to the Mandatory Conversion date, through the broker or bank through which the owner holds its beneficial interest instruct the Exchange Agent to notify the Trustee in writing of its election of Mandatory Redemption in Lieu of Mandatory Conversion.

Repurchase upon a Change in Control

Upon the acquisition by a Person or group of Persons acting in concert (other than a company whose shareholders are or are to consist substantially of existing shareholders of Environmental Power) of a majority of the voting shares (including warrants or rights to purchase or exchange for voting shares) of Environmental Power, referred to as a Change in Control, the holders of the notes will have the right but not the obligation to require us to repurchase, and we will have the right but not the obligation to require the holders of the notes to sell to us, all or any portion of the notes at the purchase price set forth below, plus accrued and unpaid interest through the business day prior to the purchase date to the holders of record of the notes on the purchase date.

Period	Purchase Price as Percentage of Principal
From the Issue Date to January 1, 2010	110%
From January 2, 2010 to maturity	115%

We must give written notice to the holders of the notes not less than ten business days after the date of the Change in Control transaction, and we must state in that notice if we intend to require the holders of the notes to sell such notes to us and, if so, what portion of the notes we wish to purchase. In the event that such notice indicates our intention to purchase notes, then the purchase date for such notes will be the 20th business day following the date of such notice. If we do not exercise our right to require the holders of the notes to sell all of the notes held by them, then such holders may exercise their right to require us to repurchase their notes by giving us written notice no later than ten business days after the date of our written notice described above, indicating the portion of such notes that we have not already indicated our intention to purchase which the holders will require us to purchase. The purchase date for such notes will be the 20th business day following the date of our original notice. In no event will any purchase of notes be effected pursuant to this provision subsequent to the maturity date of the notes.

Optional Redemption

At any time after the third anniversary of the date of first issuance of the notes, we have the right to redeem, in whole or in part (and, if in part, by lot), the notes at a redemption price equal to 110% of the principal amount

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of the notes to be redeemed plus accrued interest through the business day prior to the redemption date, provided that our common stock has traded at a volume weighted average price of at least $6.40 per share for the 45-day period ending on the date immediately prior to the date on which we give written notice of such redemption. Such redemption will be made on not less than 30 nor more than 60 days after notice of redemption is given to the owners of the notes.

Mandatory Redemption upon Certain Sales of Assets or Certain Sale and Leaseback Transactions

The notes are subject to redemption, in whole or in part (and if in part, by lot), at a redemption price equal to 100% of the principal amount of the notes to be redeemed plus accrued interest through the day prior to the redemption date, to the extent that we or one of our subsidiaries engages in an Asset Sale, as defined below, or certain sale and leaseback transactions, and the net proceeds of such Asset Sale or sale and leaseback transaction are not reinvested in a Permitted Business, as defined below, within two years of the receipt thereof. See Covenants Application of Proceeds Asset Sales and Covenants Limitation on Sale and Leaseback Transactions. Such redemption will be made on not less than 30 nor more than 60 days after the notice of redemption is given to the owners of the notes.

No Sinking Fund

No sinking fund will be provided for the notes, which means that the indenture will not require us to redeem or retire the notes periodically.

Covenants

Incurrence of Indebtedness and Issuance of Disqualified Stock

We will not, and will not permit any of our subsidiaries to, directly or indirectly, create, incur, issue, assume, guarantee or otherwise become directly or indirectly liable, contingently or otherwise, with respect to (collectively, incur) any Indebtedness (including Acquired Debt), and we will not issue any Disqualified Stock; *provided, however*, that we may incur Indebtedness (including Acquired Debt) or issue Disqualified Stock, and our subsidiaries may incur Indebtedness (including Acquired Debt), if the Debt to Capitalization Ratio for our most recently ended semi-annual period for which internal financial statements are available preceding the date on which such additional Indebtedness is incurred or such Disqualified Stock is issued would have been not greater than 0.5 to 1, determined on a pro forma basis (including a pro forma application of the net proceeds therefrom), as if the additional Indebtedness had been incurred or the Disqualified Stock had been issued, as the case may be, at the beginning of such quarterly period.

The foregoing will not prohibit the incurrence of any of the following items of Indebtedness, which are collectively referred to as Permitted Debt :

(1) the incurrence by us of Indebtedness under the indenture, as supplemented from time to time, including the notes, in an aggregate principal amount at any one time outstanding under this clause (1), not to exceed $53 million;

(2) the incurrence by us or any of our Subsidiaries of intercompany Indebtedness between or among us and any of our Subsidiaries;

(3) the incurrence by us or any of our Subsidiaries of Indebtedness or any other obligation pursuant to, in connection with or in furtherance of a Project Finance Transaction, including, without limitation, indebtedness incurred to satisfy draw conditions thereunder;

(4) the incurrence by us or any of our Subsidiaries of Hedging Obligations, Contract Security, and related Indebtedness not for speculative purposes;

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(5) the incurrence by us or any of our Subsidiaries of Indebtedness in respect of workers compensation claims, self-insurance obligations, bankers acceptances, reimbursement agreements in support of letters of credit and similar instruments, and performance and surety bonds provided by us or any of our Subsidiaries or on our behalf in the ordinary course of business;

(6) the incurrence by us or any of our Subsidiaries of Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument inadvertently drawn against insufficient funds, so long as such Indebtedness is covered within five business days;

(7) working capital debt, not exceeding an amount equal to $10 million at any time;

(8) Indebtedness of any of our Subsidiaries existing at the time it became a Subsidiary if such Indebtedness was not created in connection with or in anticipation of the transaction or series of transactions pursuant to which such Subsidiary became a Subsidiary or was acquired by us;

(9) Indebtedness under an indenture, loan obligation or other arrangement to which we are a party and which is entered into after the date hereof, the principal amount of which does not, in the aggregate, exceed $20 million outstanding at any given time;

(10) Indebtedness existing as of the date on which the notes are first issued; and

(11) Permitted Refinancing Indebtedness with respect to items (1) through (10) hereof.

The accrual of interest, the accretion or amortization of original issue discount, the payment of interest on any Indebtedness in the form of additional Indebtedness with the same terms, and the payment of dividends on Disqualified Stock in the form of additional shares of the same class of Disqualified Stock will not be deemed to be an incurrence of Indebtedness or an issuance of Disqualified Stock for purposes of this covenant.

Liens

We and our Subsidiaries will not directly or indirectly, create, incur, assume or otherwise cause or suffer to exist or become effective any Lien of any kind on any asset now owned or hereafter acquired, except Permitted Liens and Permitted Prior Liens.

Loans

We and our Subsidiaries will not make loans or extend credit to any Person other than us or another Subsidiary, except

(1) in the ordinary course of business;

(2) loans outstanding on the date the notes are first issued; or

(3) loans or credit extended to strategic partners in furtherance of the Permitted Businesses.

Limitation on Sale and Leaseback Transactions

We will not, and will not permit any of our Subsidiaries to, enter into any sale and leaseback transaction; *provided* that the we or any Subsidiary may enter into a sale and leaseback transaction if:

(1) we or that Subsidiary, as applicable, could have incurred Indebtedness in an amount equal to the Attributable Debt relating to such sale and leaseback transaction under the covenant described above under the caption Incurrence of Indebtedness and Issuance of Stock; or

(2) the transaction represents or replaces Indebtedness incurred in connection with a Project Finance Transaction; or

(3) the gross cash proceeds of that sale and leaseback transaction are at least equal to the Fair Market Value of the property that is the subject of that sale and leaseback transaction.

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Dividend and Other Payment Restrictions Affecting Subsidiaries

We will not, and will not permit any of our Subsidiaries to, directly or indirectly, create or permit to exist or become effective any consensual encumbrance or restriction on the ability of any Subsidiary to:

(1) pay dividends or make any other distributions on our Capital Stock or that of any of our Subsidiaries, or with respect to any other interest or participation in, or measured by, its profits, or pay any Indebtedness owed to us or any of our Subsidiaries;

(2) make loans or advances to us or any of our Subsidiaries; or

(3) transfer any of our properties or assets to us or any of our Subsidiaries.

The preceding restrictions shall not apply to encumbrances or restrictions existing under or by reason of:

(1) applicable law, rule, regulation or order or permit;

(2) customary non-assignment provisions in contracts, agreements, leases, permits and licenses entered into or issued in the ordinary course of business;

(3) purchase money, conditional sale or similar obligations for property acquired for use in the Permitted Business and Capital Lease Obligations that impose restrictions on the property purchased or leased;

(4) any agreement for the sale or other disposition of a Subsidiary that restricts distributions by that Subsidiary pending the sale or other disposition;

(5) Permitted Liens or Permitted Prior Liens which limit the right of the debtor to dispose of the assets subject to such Liens;

(6) restrictions on cash or other deposits or net worth imposed by customers under contracts entered into in the ordinary course of business;

(7) restrictions or conditions contained in any Hedging Obligation or related credit support or trading, netting, operating, construction, service, supply, purchase, sale or similar agreement to which we or any Subsidiary is a party entered into in the ordinary course of business; *provided* that such agreement prohibits the encumbrance of solely our property or assets or those of such Subsidiary that are the subject of such agreement, the payment rights arising thereunder and/or the proceeds thereof and not to any of our other asset or property or any other asset or property of such Subsidiary or the assets or property of any other Subsidiary;

(8) Indebtedness of a Subsidiary existing at the time it became a Subsidiary if such restriction was not created in connection with or in anticipation of the transaction or series of transactions pursuant to which such Subsidiary became a Subsidiary or was acquired by us;

(9) with respect to clauses (2) and (3) of the first paragraph of this covenant only, restrictions encumbering property at the time such property was acquired by the us or any of our Subsidiaries, so long as such restriction relates solely to the property so acquired and was not created in connection with or in anticipation of such acquisition; and

(10) restrictions or conditions contained in or relating to (i) any agreement or arrangement entered into in connection with any Project Finance Transaction, (ii) any agreement or arrangement entered into in connection with any other Permitted Debt, or (iii) any shares of our preferred stock outstanding from time to time.

Application of Proceeds of Asset Sales

We shall, within two years of receipt of the proceeds of any Asset Sale, either (i) reinvest not less than 95% of the net proceeds (after payment or accrual of all expenses and related costs) of such Asset Sale in assets to be used in a Permitted Business or (ii) apply 100% of the net proceeds to the redemption or purchase at a price not in excess of 100% of principal amount of the notes plus accrued interest to the date immediately prior to the date of redemption or purchase.

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Merger, Consolidation or Sale of Assets

We may not, directly or indirectly: (1) consolidate or merge with or into another Person, whether or not we are the surviving entity; or (2) sell, assign, transfer, convey or otherwise dispose of all or substantially all of our properties or assets or those of our Subsidiaries taken as a whole, in one or more related transactions, to another Person; unless:

(1) either:

(A) we are the surviving company; or

(B) the Person formed by or surviving any such consolidation or merger (if other than us) or to which such sale, assignment, transfer, conveyance or other disposition has been made is a corporation, partnership or limited liability company organized or existing under the laws of the United States, any state thereof or the District of Columbia;

(2) the Person formed by or surviving any such consolidation or merger (if other than us) or the Person to which such sale, assignment, transfer, conveyance or other disposition has been made assumes all of our obligations under the indenture pursuant to a supplemental indenture reasonably satisfactory to the Trustee;

(3) immediately after such transaction, no Default or Event of Default exists; and

(4) we or the Person formed by or surviving any such consolidation or merger (if other than us), or to which such sale, assignment, transfer, conveyance or other disposition has been made:

(A) will have Consolidated Net Worth immediately after the transaction equal to or greater than our Consolidated Net Worth immediately preceding the transaction; and

(B) will, on the date of such transaction after giving pro forma effect thereto and to any related financing transactions as if the same had occurred at the end of the most recent semi-annual period for which financial statements are available, either (i) have a pro forma Debt to Capitalization Ratio that is at least equal to our actual Debt to Capitalization Ratio as of such date or (ii) be permitted to incur at least $1.00 of additional Indebtedness pursuant to the Debt to Capitalization Ratio test set forth in the first paragraph of the covenant described above under the caption Incurrence of Indebtedness and Issuance of Stock.

In addition, we may not, directly or indirectly, lease all or substantially all of our properties or assets, in one or more related transactions, to any other Person except as permitted under Limitation on Sale and Leaseback Transactions.

Unless treated as an Asset Sale as provided under *Application of Proceeds of Asset Sales,* we shall not permit any Subsidiary, directly or indirectly, to: (1) consolidate or merge with or into another Person (whether or not the Subsidiary is the surviving corporation); or (2) sell, assign, transfer, convey or otherwise dispose of all or substantially all of its properties or assets in one or more related transactions, to another Person, unless:

(1) either:

(A) the Subsidiary is the surviving company; or

(B) the Person formed by or surviving any such consolidation or merger (if other than the Subsidiary) or to which such sale, assignment, transfer, conveyance or other disposition has been made is a corporation, partnership or limited liability company organized or existing under the laws of the United States, any state thereof or the District of Columbia;

(2) immediately after such transaction, no Default or Event of Default exists; and

(3) we:

(A) would have Consolidated Net Worth immediately after the transaction equal to or greater than our Consolidated Net Worth immediately preceding the transaction; and

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(B) would, on the date of such transaction after giving pro forma effect thereto and to any related financing transactions as if the same had occurred at the end of the most recent semi-annual period for which financial statements are available, either (i) have a pro forma Debt to Capitalization Ratio that is at least equal to our actual Debt to Capitalization Ratio as of such date or (ii) be permitted to incur at least $1.00 of additional Indebtedness pursuant to the Debt to Capitalization Ratio test set forth in the first paragraph under *Incurrence of Indebtedness and Issuance of Disqualified Stock*.

In addition, none of our Subsidiaries shall, directly or indirectly, lease all or substantially all of its properties or assets, in one or more related transactions, to any other Person except as permitted under Limitation on Sale and Leaseback Transactions.

Notwithstanding the foregoing:

(1) any Subsidiary may consolidate with, merge into or transfer all or part of its properties and assets to us or any of our other Subsidiaries; and

(2) we may merge with an Affiliate solely for the purpose of reorganizing our company, including as a holding company, or re-forming in another jurisdiction.

Subordination of Intercompany Indebtedness

We agree that any intercompany Indebtedness or other intercompany receivables, intercompany payables or intercompany advances directly owed by us to any Subsidiary of whatever nature at any time outstanding shall be subordinate and subject in right of payment to the prior indefeasible payment in cash of the notes as they become due, except to the extent that any of the foregoing relate to a Project Finance Transaction.

Transactions with Affiliates

We will not, and will not permit any of our Subsidiaries to, make any payment to, or sell, lease, transfer or otherwise dispose of any of its properties or assets to, or purchase any property or assets from, or enter into or make or amend any transaction, contract, agreement, understanding, loan, advance or guarantee with, or for the benefit of, any of our Affiliates, each of which is referred to as an Affiliate Transaction, unless:

(1) the Affiliate Transaction is on terms that are no less favorable (as reasonably determined by us) to us or the relevant Subsidiary than those that would have been obtained in a comparable transaction by us or such Subsidiary with an unrelated Person; and

(2) We deliver to the Trustee:

(A) with respect to any Affiliate Transaction or series of related Affiliate Transactions involving aggregate consideration in excess of 5% of Tangible Assets of any of the Parties to the Affiliate Transaction as of the end of the most recent fiscal quarter, referred to as the Asset Percentage, a resolution of our Board of Directors set forth in an Officers Certificate certifying that such Affiliate Transaction complies with this covenant and that such Affiliate Transaction has been approved by a majority of the disinterested members of the Board of Directors; and

(B) with respect to any Affiliate Transaction or series of related Affiliate Transactions involving aggregate consideration in excess of the Asset Percentage, an opinion as to the fairness to us of such Affiliate Transaction from a financial point of view issued by an accounting, appraisal or investment banking firm of national standing.

The following items will not be deemed to be Affiliate Transactions and, therefore, will not be subject to the provisions of the prior paragraphs:

(1) any employment agreement or director s engagement agreement, employee benefit plan, officer and director indemnification agreement or any similar arrangement entered into by us or any of our Subsidiaries in the ordinary course of business or approved by the relevant Board of Directors or equivalent governing body;

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(2) transactions between or among us and/or our Subsidiaries;

(3) transactions with a Person that is our Affiliate solely because we own, directly or through a Subsidiary, an Equity Interest in, or control, such Person;

(4) payment of reasonable directors fees to Persons who are not otherwise our Affiliates;

(5) any issuance of our Equity Interests (other than Disqualified Stock) to our Affiliates;

(6) any agreement, instrument or arrangement as in effect as of the date hereof or any amendment thereto or any transaction contemplated thereby (including pursuant to any amendment thereto) in any replacement agreement thereto so long as any such amendment or replacement agreement is not more disadvantageous to the holders of the notes in any material respect than the original agreement as in effect on the date hereof as determined by us;

(7) any pro rata distribution (including a rights offering) to all holders of a class of our Equity Interests or Indebtedness or that of any of our Subsidiaries, including Persons who are Affiliates of us or any of our Subsidiaries; and

(8) any transaction involving sales of gas, electric capacity, energy, fertilizer, ancillary services, transmission services and products, steam, emissions credits, fuel, fuel transportation, fuel storage, renewable energy credits and environmental attributes, on terms that are no less favorable (as reasonably determined by us) to us or the relevant Subsidiary than those that would have been obtained in a comparable transaction by us or such Subsidiary with an unrelated Person.

Business Activities

We will not, and will not permit any of our Subsidiaries to, engage in any business other than Permitted Businesses, except to such extent as would not be material to us and our Subsidiaries taken as a whole or to such extent as are incidental to or in furtherance of Permitted Businesses.

Use of Proceeds

We will use the proceeds of the notes only in connection with costs and expenses associated with the construction and operation of our Subsidiaries projects, which costs and expenses may include, without limitation, costs of materials, equipment and labor, debt service, license fees which may become due to DBT, operations and maintenance costs, and reimbursement of us or our Affiliates of equity contributions, subordinate debt or other project-related expenses advanced by us or such Affiliates in anticipation of receipt of the proceeds of any offering of the notes. In addition, notes may be issued under the indenture from time to time directly to third parties as payment for any of the foregoing costs and expenses.

Payments for Consent

We will not, and will not permit any of our Subsidiaries to, directly or indirectly, pay or cause to be paid any monetary consideration to or for the benefit of any holder of any notes for or as an inducement to any consent under or waiver or amendment of any of the terms or provisions of the notes unless such consideration is offered to be paid and is paid to all holders of the notes that consent.

Events of Default and Remedies

The following events constitute Events of Default under the indenture:

(1) we fail to pay the principal or premium, if any, on any of the notes when due and the time for payment has not been extended or delayed;