

BALLARD POWER SYSTEMS INC
Form 40-F/A
August 06, 2004

U.S. Securities and Exchange Commission

Washington, D.C. 20549

Form 40-F /A

Amendment No. 1

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Registration statement pursuant to section 12 of the Securities
Exchange Act of 1934

or

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Annual report pursuant to section 13(a) or 15(d) of the Securities
Exchange Act of 1934

For the fiscal year ended December 31, 2003

Commission File Number 0-25270

Ballard Power Systems Inc.

(Exact name of Registrant as specified in its charter)

CANADA

(Province or other jurisdiction of incorporation or organization)

3261

(Primary Standard Industrial Classification Code Number (if applicable))

Not applicable

(I.R.S. Employer Identification Number (if applicable))

4343 North Fraser Way
Burnaby, British Columbia V5J 5J9
(604) 454-0900

Corporation Trust Company

1633 Broadway

New York, New York 10019

(212) 894-8940

Address (including zip code) and telephone number (including area code)
of agent for service in the United States)

Securities registered or to be registered pursuant to Section 12(b) of the Act.

Title of each class
Not applicable

Name of each exchange on which registered
Not Applicable

Securities registered or to be registered pursuant to Section 12(g) of the Act.

Common Shares

Securities for which there is a reporting obligation pursuant to Section 15(d) of the Act.

Non-Applicable

For annual reports, indicate by check mark the information filed with this Form:

☒ Annual information form

☐ Audited annual financial
statements

Indicate the number of outstanding shares of each of the issuer's classes of capital or common stock as of the close of the period covered by the annual report.

118,187,877 Common Shares

Indicate by check mark whether the Registrant by filing the information contained in this Form is also thereby furnishing the information to the Commission pursuant to Rule 12g3-2(b) under the Securities Exchange Act of 1934 (the "Exchange Act"). If "Yes" is marked, indicate the filing number assigned to the Registrant in connection with such Rule.

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Yes ☐

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No ☒

Indicate by check mark whether the Registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Exchange Act during the preceding 12 months (or for such shorter period that the Registrant was required to file such reports) and (2) has been subject to such filing requirements for the past 90 days.

Yes ☒

No ☐

Explanatory Note

This Amendment No. 1 to the Annual Report of Ballard Power Systems Inc. (the Company) on Form 40-F/A for the year ended December 31, 2003 is filed herewith for the sole purpose of disclosing that pursuant to Rule 4350(a)(i) of the Nasdaq Stock Market, Inc. Marketplace Rules, Company relies on an exemption from Rule 4350(h) of the Marketplace Rules, requiring that each Nasdaq-quoted company have in place a minimum quorum requirement for shareholder meetings of 33 1/3% of the outstanding shares of the company's voting common stock. The Company's by-laws currently provide that a quorum is met if holders of at least 5% of the votes eligible to be cast at a meeting are present or represented by proxy at a shareholder meeting. At the Company's 2004 Annual General Meeting of Shareholders, holders of 64.99% of the common shares were present or represented by proxy at the meeting.

Undertaking

The Registrant undertakes to make available, in person or by telephone, representatives to respond to inquiries made by the Commission staff, and to furnish promptly, when requested to do so by the Commission staff, information relating to: the securities registered pursuant to Form 40-F/A; the securities in relation to which the obligation to file an annual report on Form 40-F/A arises; or transactions in said securities.

Signatures

Pursuant to the requirements of the Exchange Act, the Registrant certifies that it meets all of the requirements for filing on Form 40-F/A and has duly caused this annual report to be signed on its behalf by the undersigned, thereto duly authorized.

Registrant: Ballard Power Systems Inc.

By (Signature and Title)

/s/Noordin S. K. Nanji
Noordin S. K. Nanji
Vice President, Marketing & Business Development and Corporate Secretary

Date: August 5, 2004

EXHIBIT LIST

Exhibit	Description
99.1	Certification pursuant to Section 302 of the Sarbanes-Oxley Act of 2002