

ELECTRIC CITY CORP
Form DEF 14A
April 30, 2004

Table of Contents

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

SCHEDULE 14A

Proxy Statement Pursuant to Section 14(a) of the Securities
Exchange Act of 1934

Filed by the Registrant x
Filed by a Party other than the Registrant o

Check the appropriate box:

- o Preliminary Proxy Statement
- o **Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))**
- x Definitive Proxy Statement
- o Definitive Additional Materials
- o Soliciting Material Pursuant to §240.14a-12

ELECTRIC CITY CORP.

(Name of Registrant as Specified In Its Charter)

(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

Payment of Filing Fee (Check the appropriate box):

- x No fee required.
- o Fee computed on table below per Exchange Act Rules 14a-6(i)(4) and 0-11.

1) Title of each class of securities to which transaction applies:

2) Aggregate number of securities to which transaction applies:

3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (set forth the amount on which the filing fee is calculated and state how it was determined):

4) Proposed maximum aggregate value of transaction:

5) Total fee paid:

o Fee paid previously with preliminary materials.

o Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

Edgar Filing: ELECTRIC CITY CORP - Form DEF 14A

1) Amount Previously Paid:

2) Form, Schedule or Registration Statement No.:

3) Filing Party:

4) Date Filed:

Table of Contents

1280 Landmeier Road

Elk Grove Village, Illinois 60007

April 30, 2004

Dear Fellow Stockholder:

On behalf of the Board of Directors, I cordially invite you to attend the 2004 Annual Meeting of Stockholders to be held at 10:00 a.m., local time, on Wednesday, May 26, 2004 at the Best Western Hotel, 1600 Oakton Street, Elk Grove Village, Illinois 60007. The formal notice of the Annual Meeting appears on the following page.

The attached Notice of Annual Meeting and Proxy Statement contain detailed information about the matters that we expect to act upon at the Annual Meeting.

Please sign, date and specify your choices on the enclosed proxy card and promptly return it in the enclosed business reply envelope. This will help insure that your shares are represented at the Annual Meeting, whether or not you plan to attend the Annual Meeting. If you attend the meeting, you may revoke your proxy and personally cast your vote.

We look forward to seeing you at the Annual Meeting and urge you to return your proxy card as soon as possible.

Sincerely,

Electric City Corp.

/s/ John Mitola

John Mitola
Chief Executive Officer

TABLE OF CONTENTS

PROXY STATEMENT FOR ANNUAL MEETING OF STOCKHOLDERS

PROPOSAL 1 ELECTION OF DIRECTORS

SECURITY OWNERSHIP OF PRINCIPAL STOCKHOLDERS AND MANAGEMENT

EXECUTIVE COMPENSATION

COMMON STOCK PERFORMANCE GRAPH

INDEPENDENT PUBLIC ACCOUNTANTS

AUDIT COMMITTEE REPORT

MISCELLANEOUS AND OTHER MATTERS

APPENDIX A

APPENDIX B

Table of Contents

ELECTRIC CITY CORP.

**1280 Landmeier Road
Elk Grove Village, Illinois 60007**

**NOTICE OF ANNUAL MEETING OF STOCKHOLDERS
To be held May 26, 2004**

To the Stockholders of
ELECTRIC CITY CORP.:

NOTICE IS HEREBY GIVEN that the Annual Meeting of Stockholders of Electric City Corp. will be held at the Best Western Hotel, 1600 Oakton Street, Elk Grove Village, Illinois 60007 at 10:00 a.m. local time, on Wednesday, May 26, 2004, for the following purposes:

1. To elect six directors to our Board of Directors; and
2. To transact such other business as may properly come before the Annual Meeting or any adjournment thereof.

The foregoing items of business are more fully described in the proxy statement accompanying this notice. The Board of Directors has fixed the close of business on April 20, 2004 as the record date for determining stockholders entitled to notice of, and to vote at, the Annual Meeting or any adjournment thereof.

The Board of Directors encourages you to complete, sign and date the enclosed proxy card and promptly return it in the enclosed postage prepaid envelope, regardless of whether you plan to attend the Annual Meeting.

By Order of the Board of Directors,

Robert J. Manning
Chairman of the Board of Directors

Elk Grove Village, Illinois
April 30, 2004

Table of Contents

ELECTRIC CITY CORP.

**1280 Landmeier Road
Elk Grove Village, Illinois 60007**

**PROXY STATEMENT
FOR ANNUAL MEETING OF STOCKHOLDERS
To be held Wednesday, May 26, 2004**

This proxy statement and the enclosed proxy card are being furnished to our stockholders in connection with the solicitation of proxies by the Board of Directors of Electric City Corp., a Delaware corporation (Electric City or the Company), for use at our Annual Meeting of Stockholders to be held at the Best Western Hotel, 1600 Oakton Street, Elk Grove Village, Illinois 60007 at 10:00 a.m. local time, on Wednesday, May 26, 2004, and any adjournments thereof. This proxy statement and the accompanying form of proxy are first being mailed to stockholders on or about April 30, 2004.

Solicitation

The cost of this proxy solicitation will be borne by Electric City. We may request banks, brokers, fiduciaries, custodians, nominees and certain other record holders to send proxies, proxy statements and other materials to their principals at our expense. Those banks, brokers, fiduciaries, custodians, nominees and other record holders will be reimbursed by us for their reasonable out-of-pocket expenses of solicitation. We do not anticipate that costs and expenses incurred in connection with this proxy solicitation will exceed an amount normally expended for a proxy solicitation for an election of directors in the absence of a contest. In addition to soliciting proxies by mail, Electric City and its directors, officers and regular employees may also solicit proxies personally, by telephone or by other appropriate means. No additional compensation will be paid to directors, officers or other regular employees for such services.

Record Date and Outstanding Shares

Our Board of Directors fixed the close of business on April 20, 2004 as the record date for the determination of stockholders entitled to notice of, and to vote at, the Annual Meeting or any adjournments thereof. As of the close of business on the record date, we had 40,922,021 shares of Common Stock and 217,030 shares of Preferred Stock with voting rights as to certain matters outstanding. Each outstanding share of Common Stock on such date will be entitled to one vote on each matter to be voted on at the Annual Meeting, and each outstanding share of Preferred Stock will be entitled to one hundred votes on each matter, other than the election of directors, to be voted at the Annual Meeting.

Required Vote

The affirmative vote of a majority of the shares of Common Stock voted in person or by proxy at the Annual Meeting is required to elect the nominees to the Board of Directors. Stockholders will not be allowed to cumulate their votes in the election of directors.

Quorum; Abstentions and Broker Non-Votes

The required quorum for transaction of business at the Annual Meeting will be a majority of the total votes of the shares of Common Stock and Preferred Stock issued and outstanding as of the record date. Votes cast by proxy or in person at the Annual Meeting will be tabulated by the election inspector appointed for the meeting and will be taken into account in determining whether or not a quorum is present. Abstentions and broker non-votes, which occur when a broker has not received customer instructions and indicates that it does not have the discretionary authority to vote on a particular matter on the proxy card, will be included in determining the presence of a quorum at the Annual Meeting. Neither abstentions nor broker non-votes will have any effect on the vote for the election of directors.

Table of Contents

Voting of Proxies; Revocability of Proxies

Our Board of Directors selected Jeffrey R. Mistarz and Denis Enberg, the persons named as proxies on the proxy card accompanying this proxy statement, to serve as proxy. Mr. Mistarz is our executive vice president, chief financial officer, treasurer and assistant secretary and Mr. Enberg is our senior vice president of engineering. The shares of Common Stock represented by each executed and returned proxy will be voted in accordance with the directions indicated thereon, or if no direction is indicated, the proxy will be voted in accordance with the recommendations of the Board of Directors contained in this proxy statement. Members of the Company's management intend to vote their shares in favor of the proposal.

You can revoke a proxy you have given at any time before the shares it represents are voted by giving our secretary either (1) an instrument revoking the proxy or (2) a duly executed proxy bearing a later date. Additionally, you may change or revoke a previously executed proxy by voting in person at the Annual Meeting. However, your attendance at the Annual Meeting will not, by itself, revoke your proxy.

Annual Report to Stockholders

We are simultaneously furnishing to you with this proxy statement our Annual Report to Stockholders for the fiscal year ended December 31, 2003, which contains financial and other information pertaining to us.

Table of Contents

PROPOSAL 1

ELECTION OF DIRECTORS

At the Annual Meeting, six nominees to the Board of Directors will be elected to hold office for a one year term ending at our 2005 Annual Meeting of stockholders or until their respective successors are duly elected and qualified. All nominees listed below are currently members of our Board of Directors and have consented to being named in this proxy statement and to serve as directors, if elected. If, at the time of the Annual Meeting, any nominee becomes unavailable or declines to serve as a director for any reason, the persons named in the proxy will vote for the substitute nominee(s) as the Board of Directors recommends, or vote to allow the vacancy created by the nominee who is unable or declines to serve to remain open until filled by the Board of Directors, as the Board of Directors recommends. The Board of Directors has no reason to believe that any nominee will be unable or decline to serve if elected to office.

The number of directors has been set at 12 by resolution of the Board. On September 7, 2001, we closed on an issuance of our Series A Convertible Preferred Stock (Series A Preferred Stock) with five investors. With respect to this issuance, we entered into a Stockholders Agreement with the investors that provided (among other things) the investors the right to elect up to (i) four directors for so long as at least 800,000 shares of Series A Preferred Stock remained issued and outstanding, (ii) three directors for so long as at least 600,000 but less than 800,000 shares of Series A Preferred Stock remained issued and outstanding, (iii) two directors for so long as at least 400,000 but less than 600,000 shares of Series A Preferred Stock remained issued and outstanding and (iv) one director for so long as at least 200,000 but less than 400,000 shares of Series A Preferred Stock remained issued and outstanding.

On June 4, 2002, we closed on an issuance of Series C Convertible Preferred Stock with an individual and amended the Stockholders Agreement to include the Series C Preferred Stockholder's participation in the Stockholders Agreement. Shares of Series C Preferred Stock were included with the Series A Preferred Stock in determining the number of directors the holders thereof could elect.

On June 27, 2003, we closed on an issuance of our Series D Convertible Preferred Stock with a group of investors. These holders did not have a right to vote with the Series A Preferred Stock and Series C Preferred Stock in choosing directors.

On March 19, 2004, we entered into a Redemption and Exchange Agreement with the holders of our outstanding Series A Preferred Stock, Series C Preferred Stock and Series D Preferred Stock (collectively, the Existing Preferred Stock) under which we agreed to redeem 538,462 shares of Existing Preferred Stock (the Redemption) and to exchange shares of our newly authorized Series E Convertible Preferred Stock (the Series E Preferred) for all remaining outstanding shares of Existing Preferred Stock on a 1 for 10 basis (one share of Series E Preferred exchanged for 10 shares of Existing Preferred Stock). The holders of the Series E Preferred Stock have the right to elect up to (i) four directors for so long as at least 90,000 shares of Series E Preferred Stock remain issued and outstanding, (ii) three directors for so long as at least 65,000 but less than 90,000 shares of Series E Preferred Stock remain issued and outstanding, (iii) two directors for so long as at least 45,000 but less than 65,000 shares of Series E Preferred Stock remain issued and outstanding and (iv) one director for so long as at least 20,000 but less than 45,000 shares of Series E Preferred Stock remain issued and outstanding. If less than 20,000 shares of Series E Preferred Stock remain issued and outstanding, unless otherwise provided by law, each holder of record of Series E Convertible Preferred Stock has the right to vote on an as-converted basis together with the holders of Common Stock on all matters on which holders of Common Stock are entitled to vote, including the election of directors.

On April 20, 2004, the preferred stockholders held 217,030 shares of the Series E Preferred Stock. Accordingly, the holders of the Series E Preferred Stock are entitled to elect up to four directors (out of 12) to our board. Except for the election of directors nominated by our Board of Directors for election, holders of the Series E Preferred Stock are entitled to vote with the holders of our Common Stock on an as-converted basis on all matters on which our holders of Common Stock are entitled to vote.

Table of Contents**NOMINEES FOR DIRECTOR**

The following table presents the names of the nominees for the office of director, as well as certain information about them. As of the date of this filing, the Board of Directors has not nominated any individuals for the two vacant director positions.

<u>Name</u>	<u>Age</u>	<u>Position Held with the Company</u>	<u>Served as Director Since</u>
John P. Mitola	39	Chief Executive Officer and Director	1999
Robert J. Manning	61	Chairman of the Board of Directors and Director(2)(3)	2000
David R. Asplund	46	Director(3)	2002
John C. Bukovski	61	Director(1)	2004
Gerald A. Pientka	48	Director(1)(2)	2000
Michael S. Stelter	47	Director	1998

(1) Member of our Audit Committee.

(2) Member of our Compensation Committee.

(3) Member of our Governance and Nominating Committee

**DIRECTORS APPOINTED AND ELECTED BY THE HOLDERS OF OUR
SERIES E CONVERTIBLE PREFERRED STOCK**

The following table presents the names of the directors appointed and elected by the holders of our Series E Preferred Stock, as well as certain information about them. This information, as well as the informational disclosures regarding each, is presented for information purposes only. These holders are entitled to appoint and elect one additional director (for a total of 4 directors) which position is vacant as of April 20, 2004.

<u>Name</u>	<u>Age</u>	<u>Position Held with the Company</u>	<u>Served as Director Since</u>
Frederic F. Brace	46	Director	2001
Felicia A. Ferguson	44	Director(3)	2004
Robert D. Wagner, Jr.	62	Director(1)(2)	2001

(1) Member of our Audit Committee.

(2) Member of our Compensation Committee.

(3) Member of our Governance and Nominating Committee

Nominees for Election

John P. Mitola has been one of our directors since November 1999 and has been our chief executive officer since January 2000. From August 1993 until joining us, Mr. Mitola was with Unicom Thermal Technologies (now Exelon Thermal Technologies), Unicom (now Exelon) Corporation's largest (at that time) unregulated subsidiary, serving most recently as vice president and general manager. Mr. Mitola led the growth of Unicom Thermal through the development of Unicom Thermal's Northwind™ ice technology and through thermal energy joint ventures between Unicom Thermal and several leading electric utility companies across North America. Prior to his appointment at Unicom Thermal, Mr. Mitola was director of business development for Commonwealth Edison Company, the local electric utility serving Chicago, Illinois and the northern Illinois region. Since April 2003, Mr. Mitola has also served as the chairman of the Illinois State Toll Highway Authority, appointed by the Governor of Illinois.

Edgar Filing: ELECTRIC CITY CORP - Form DEF 14A

David R. Asplund was nominated to our Board of Directors during June 2002. Mr. Asplund is, and has been, the founder and President of Delano Group Securities, LLC since October 1999. From March 1995

Table of Contents

through October 1999, Mr. Asplund was employed by Bear, Stearns and Company, Inc., serving as a Senior Managing Director from July 1997 until October 1999.

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

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

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

Michael S. Stelter is one of our co-founders and has been one of our directors since our incorporation in June 1998. Currently, Mr. Stelter is employed by and a part owner of Switchboard Apparatus, Inc., which was divested by Electric City effective May 31, 2003. Since joining our organization in December 1997, through May 2003 Mr. Stelter served as our Vice President of Switchgear Sales. Mr. Stelter was our Corporate Secretary from June 1998 until October 2000. From 1986 until May 1999, Mr. Stelter served as Vice President of Marino Electric.

**DIRECTORS APPOINTED AND ELECTED BY THE HOLDERS OF OUR
SERIES E CONVERTIBLE PREFERRED STOCK**

Frederic F. Brace has been one of our directors since October 2001 and is an appointee of the holders of our Series E Convertible Preferred Stock. Mr. Brace is, and has been, the Executive Vice President and Chief Financial Officer of UAL Corporation, the parent of United Airlines since August 2002. From September 2001 through July 2002, Mr. Brace was Senior Vice President and Chief Financial Officer of UAL Corporation. From July 1999 through September 2001, Mr. Brace was Senior Vice President and Treasurer of United Airlines and its Vice President of Finance from October 1996 through July 1999.

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

Robert D. Wagner, Jr. has been one of our directors since October 2001 and is an appointee of the holders of our Series E Convertible Preferred Stock. Mr. Wagner is currently a principal and advisory director of Rivington Capital Advisors, LLC, which provides advisory services and private equity and debt placements for independent oil and gas producers. From May 1999 to March 2001, he served as a Managing Director of

Table of Contents

Arthur Andersen's Global Energy Corporate Finance Group. Prior to joining Arthur Andersen, from July 1998 to April 1999 Mr. Wagner was a Managing Director and Partner of M2 Capital Partners, a merchant banking firm specializing in private equity investment and financial advisory services for independent oil and gas producers. From 1989 to June 1998, Mr. Wagner was a Managing Director of Bankers Trust/ BT Alex Brown in their Energy Corporate Finance Group. Prior to his employment with Bankers Trust/ BT Alex Brown, Mr. Wagner was Executive Vice President of First City National Bank of Houston's energy division, and later, the special loans division. Mr. Wagner also serves as director of Comfort Systems USA, Inc.

THE BOARD OF DIRECTORS RECOMMENDS THAT THE STOCKHOLDERS VOTE FOR THE ELECTION OF ALL OF THE NOMINEES FOR THE OFFICE OF DIRECTOR.

Director Attendance

During the fiscal year ended December 31, 2003, the Board of Directors held eight formal meetings. In addition, there were five meetings of the Audit Committee and two meetings of the Compensation Committee. During 2003, all members of the Board of Directors attended at least 75% of the total of all board meetings and applicable committee meetings except Mr. Brace and Mr. Kushman, who each attended 50% of such meetings they were eligible to attend. We encourage our Board members to attend our Annual Meeting, but we do not have a formal policy requiring attendance. All but one of our Board members attended last year's Annual Meeting.

Compensation of Directors

Effective April 1, 2000, the Company adopted a stock option plan for all non-employee directors, which is separate and distinct from the 2001 Stock Incentive Plan described under "Stock Options and Incentive Compensation". The directors' stock option plan provides that eligible directors receive an initial option grant upon being appointed to our Board of Directors to purchase 75,000 shares of our Common Stock, and a grant of options to purchase an additional 25,000 shares on each anniversary of their appointment to the Board if they are still a member of the Board of Directors on such anniversary date. These options have an exercise price equal to the greater of the closing price of our Common Stock on the grant date, or \$1.00, and a term of ten years. These options vest in three equal amounts, beginning on the grant date and on each of the next two anniversaries of the grant date, if the individual is still a member of the Board of Directors on such anniversary date.

The Company granted options to purchase 200,000 shares under the directors' stock option plan during 2003, and options to purchase 983,335 shares were outstanding under this plan as of December 31, 2003.

Directors who are also employees of the Company receive no additional compensation for their services as directors. Directors who are not employees of the Company, in addition to stock options, are reimbursed for travel expenses and other out-of-pocket costs incurred in connection with their attendance at the meetings.

Committees of the Board of Directors

The Board of Directors has an Audit Committee, Compensation Committee and a Governance and Nominating Committee.

The Audit Committee, which is composed entirely of non-employee, independent directors, held five meetings during 2003. Each of the members of the Audit Committee attended all of the meetings of the Committee held in 2003. The Audit Committee meets periodically and separately in executive sessions with management and the independent auditors to review the activities of each. The Audit Committee possesses and may exercise the powers of the Board of Directors relating to accounting, auditing, and financial reporting matters of the Corporation, except when such powers are by statute or the Articles of Incorporation or Bylaws reserved to the full Board or delegated to another committee of the Board. The Audit Committee reports regularly to the full Board on these matters. The Audit Committee is directly responsible for the appointment,

Table of Contents

compensation, and oversight of the Corporation's independent auditors. Among other duties, the Audit Committee:

selects the independent auditors

pre-approves all audit and non-audit services provided to the Corporation by the independent auditors

monitors the independence of the independent auditors

reviews and approves:

the scope and timing of work to be performed by the independent auditors

compensation to be paid to the independent auditors

financial accounting and reporting principles used by the Corporation

results of the audit and the report of the independent auditors

transactions involving the Company and its officers, directors, affiliates and significant stockholders

discusses the Corporation's annual audited financial statements and quarterly financial statements with management and the independent auditors

considers allegations made, if any, of possible financial fraud or other financial improprieties

prepares an Audit Committee report as required by the SEC to be in this proxy statement

The Audit Committee's current members are directors Robert Wagner, Jr. (Committee Chairman) John Bukovski and Gerald Pientka. Our Board of Directors has determined that Mr. Bukovski qualifies as an Audit Committee financial expert as defined in Item 401(h) of SEC Regulation S-K. The Board also believes that Messrs. Bukovski, Pientka and Wagner are independent directors as defined by Section 121(A) of The American Stock Exchange listing standards. The Board of Directors adopted an Audit Committee Charter effective April 19, 2000, which was amended effective January 31, 2001 to combine the Conflicts Committee with the Audit Committee. A copy of the Audit Committee's charter is appended to this proxy statement.

The Compensation Committee, which is composed of Robert Wagner, Jr. (Committee Chairman), Robert Manning, and Gerald Pientka, was formed on January 31, 2001 upon the Board of Directors' adoption of a Compensation Committee Charter. The Compensation Committee held two meetings during 2003 which were attended by all members. The Compensation Committee's responsibilities are to:

review and recommend to the Board of Directors the annual salary, bonus, stock options and other benefits of the Company's senior executives

review executive compensation programs and the administration thereof

plan for executive development and succession

review expense accounts and fringe benefits of executive management

administer the Company's stock option and stock incentive programs

review and recommend to the Board of Directors, the compensation of members of the Board of Directors.

The Governance and Nominating Committee, which is composed of David Asplund, Robert Manning, and Felicia Ferguson, was formed on April 7, 2004 upon the Board of Directors' adoption of a Governance and Nominating Committee Charter. A copy of the Governance and

Edgar Filing: ELECTRIC CITY CORP - Form DEF 14A

Nominating Committee's charter is appended to this proxy statement. The Board believes that Messrs. Asplund and Manning and Ms. Ferguson are independent directors as defined by Section 121(A) of The American Stock Exchange listing standards. Prior to the establishment of the Governance and Nominating Committee the recruitment and selection of candidates for Board of Directors was handled by the Compensation Committee. The Governance and

Table of Contents

Nominating Committee held no meetings in 2003. The Governance and Nominating Committee's responsibilities are to:

develop and recommend to the Board of Directors, policies and processes designed to provide for effective and efficient governance;

plan Board education activities, including new member orientation;

evaluate the size and composition of the Board of Directors, develop criteria for membership on the Board of Directors, and evaluate the independence of existing and prospective directors, and make recommendations to the Board concerning such matters;

seek and evaluate qualified individuals to become directors;

evaluate the nature, structure and composition of other committees of the Board of Directors and make recommendations to the Board concerning such matters; and

assess the performance of the Board of Directors.

Selection of Board Nominees

Our newly formed Governance and Nominating Committee will be responsible for identifying and evaluating Board candidates using one or more informal processes deemed appropriate for the circumstances. All of our directors and executive officers play a significant role in bringing potential candidates to the attention of the Committee. Last year, Mr. Manning recommended John C. Bukovski to the Committee. Mr. Bukovski became a member of the Board on January 28, 2004 and is standing for reelection at this meeting. A determination of whether to pursue discussions with a particular individual will be made after discussion by the Committee and may be preceded by formal or informal discussions involving one or all of the other Board members. Information considered by the Committee may include information provided by the candidate, the chief executive officer and one or more Committee or Board members. The Committee seeks candidates whose qualifications, experience and independence complement those of existing Board members. Board candidates are expected to possess high personal and professional ethics, integrity and values, relevant business experience and be committed to representing the long-term interests of all stockholders. They are also expected to have an inquisitive and objective perspective, practical wisdom and good judgment.

Once appropriate candidates have been identified, the Committee will recommend nominations to our Board. Our Governance and Nominating Committee has not adopted a policy or procedure for the consideration of director candidates recommended by stockholders. Our Board does not recall an instance in which a Stockholder (other than a Stockholder serving as an officer or director) has recommended a director candidate; however the Governance and Nominations Committee will consider all timely Stockholder recommendations. For the 2005 Annual Meeting of Stockholders, nominations may be submitted to the Office of the Secretary, Electric City Corp., 1280 Landmeier Road, Elk Grove Village, IL 60007-2410, which will forward them to the Chairman of the Governance and Nominating Committee. Recommendations must be in writing, must specify the candidate's qualifications for serving as a director and must be received by the Company not later than February 1, 2005, in order for nominees to be considered for election at our 2005 Annual Meeting of Stockholders.

Stockholder Communications with the Board of Directors

The Company's Annual Meeting provides an opportunity each year for stockholders to ask questions of or otherwise communicate directly with directors on matters relevant to the Company. In addition, stockholders may, at any time, communicate with any of the Company's directors by sending a written communication to such director c/o the Company's Secretary at 1280 Landmeier Road, Elk Grove Village, IL 60007-2410.

All communications by stockholders or other interested parties addressed to the Board will be sent directly to Board members. While the Corporation's Corporate Secretary may review, sort, and summarize these communications, all direct communications will be presented to the non-management Directors unless

Table of Contents

there is instruction from them to filter such communications (and in such event, any communication that has been filtered out will be made available to any non-management director who wishes to review it).

Proposals of Stockholders for Next Year's Meeting

Stockholders may present proper proposals for inclusion in the proxy statement for our next annual meeting of stockholders by submitting their proposals to us in a timely manner. In order to be included in the proxy statement for our next annual meeting, stockholder proposals must be received by us no later than December 15, 2004, and must otherwise comply with the requirements of the applicable SEC rules. Notice of intention to present proposals at next year's annual meeting must be addressed to Chief Financial Officer, Electric City Corp., 1280 Landmeier Road, Elk Grove Village, Illinois 60007. Any Stockholder proposal to be considered at our 2005 Annual Meeting of Stockholders, but not included in the proxy materials, must be submitted to the Company's Corporate Secretary by February 14, 2005, or the persons appointed as proxies may exercise their discretionary voting authority with respect to that proposal. The persons appointed as proxies may also exercise their discretionary voting authority with respect to stockholder proposals submitted prior to February 14, 2005, unless the proponent otherwise complies with the requirements of the Commission's Rule 14a-4 or Rule 14a-8.

Code of Conduct and Business Ethics

The Company has a Code of Conduct and Business Ethics which is applicable to all of the Company's officers, directors and employees. The Code of Ethics is available on our website under the heading Investors and subheading Corporate Governance (www.elccorp.com). We intend to post amendments to or waivers from the Code of Ethics which are applicable to the Company's directors, principal executive officer and principal financial officer at this location on our website.

EXECUTIVE OFFICERS

The table below identifies our executive officer who is not identified in the table under Nominees For Director.

Name	Age	Position Held with the Company
Jeffrey R. Mistarz	46	Executive Vice President, Chief Financial Officer, Treasurer and Assistant Secretary

Jeffrey R. Mistarz has been our chief financial officer since January 2000, our treasurer since October 2000, an executive vice president since November 2002 and our assistant secretary since February 2003. From January 1994 until joining us, Mr. Mistarz served as chief financial officer for Nucon Corporation, a privately held manufacturer of material handling products and systems, responsible for all areas of finance and accounting, managing capital and stockholder relations. Prior to joining Nucon, Mr. Mistarz was with First Chicago Corporation (now Bank One Corporation) for 12 years where he held several positions in corporate lending, investment banking and credit strategy.

Table of Contents**SECURITY OWNERSHIP OF PRINCIPAL STOCKHOLDERS AND MANAGEMENT**

The following tables list certain information, as of April 15, 2004, regarding the beneficial ownership of our outstanding Common Stock by (1) each of our directors and named executive officers, (2) the persons known to us to beneficially own greater than 5% of each class of our voting securities and (3) our directors and executive officers, as a group. Beneficial ownership is determined in accordance with the rules of the SEC. Except as otherwise noted, (1) the persons or entities named have sole voting and investment power with respect to all shares shown as beneficially owned by them and (2) the address of each person listed in the following table (unless otherwise noted) is c/o Electric City Corp., 1280 Landmeier Road, Elk Grove Village, Illinois 60007-2410.

Common Stock

Name	Common Shares Directly Held	Common Shares Issuable upon Conversion of Preferred Stock(1)	Common Shares Issuable upon Exercise of Warrants	Common Shares Issuable upon Exercise of Options(2)	Total	%
<i>Directors, Executive Officers and 5% Holders</i>						
David Asplund	4,574	300,500	52,173(3)	91,667	448,914	1.085%
Frederic F. Brace				116,667	116,667	*
John Bukovski				25,000	25,000	*
Cinergy Ventures II(4)	73,199	3,119,400	834,375(5)	50,000(6)	4,076,974	9.075%
DYDX Consulting LLC(7)	2,491,954(8)			947,546(9)	3,439,500	8.215%
Felicia Ferguson(22)						*
Richard P. Kiphart(10)	563,594	7,261,500	1,259,128(11)		9,084,222	18.373%
Nikolas Konstant	2,491,954(8)			947,546(9)	3,439,500	8.215%
Kevin Kushman(22)				(6)		*
Leaf Mountain Company, LLC(12)	420,122	2,156,200	421,875		2,998,197	6.892%
Robert J. Manning	2,000			141,667	143,667	*
Joseph C. Marino	6,615,016(13)			2,150,000(14)	8,765,016	20.350%
Jeffrey R. Mistarz	9,200			311,112	320,312	*
John P. Mitola	9,750(15)			1,250,000	1,259,750	2.987%
CIT Capital Securities, Inc.(16)	80,217	3,347,300	4,064,830(17)		7,492,347	15.501%
Newcourt Capital USA, Inc.(16)	80,217	3,347,300	4,064,830(17)		7,492,347	15.501%
Gerald A. Pientka(18)	22,000			133,333	155,333	*
Pino Manufacturing, LLC(13)	6,224,352			1,700,000	7,924,352	18.592%
Security Benefit Group	6,000,000		1,750,000		7,750,000	18.162%
SF Capital Partners Ltd.(19)	471,276	2,404,200	(20)		2,875,476	6.637%
Michael S. Stelter	1,044,252				1,044,252	2.552%
Robert D. Wagner, Jr.				116,667	116,667	*
All directors and executive officers as a group (10 persons)**	1,091,776	300,500	52,173	2,186,113	3,630,562	8.354%

* Denotes beneficial ownership of less than 1%.

** Eliminates duplication

Table of Contents**Series E Convertible Preferred Stock(21)**

Name	Series E Shares Directly Held	Series E Shares Issuable upon Exercise of Warrants	Total	% of Class
<i>Directors, Executive Officers and 5% Holders</i>				
David Asplund	3,005	94	3,099	1.427%
Augustine Fund, L.P.	14,869		14,869	6.851%
Frederic F. Brace				
John Bukovski				
Cinergy Ventures II(4)	31,194	1,500	32,694	14.961%
Felicia Ferguson				
Richard P. Kiphart(10)	72,615	1,312	73,927	33.858%
Kevin Kushman				
Leaf Mountain Company, LLC(12)	21,562		21,562	9.935%
Robert J. Manning				
Jeffrey R. Mistarz				
John P. Mitola				
CIT Capital Securities, Inc.(16)	33,473		33,473	15.423%
Newcourt Capital USA, Inc.(16)	33,473		33,473	15.423%
Gerald A. Pientka(19)				