ADA-ES INC
Form PRE 14A
October 22, 2008

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

SCHEDULE 14A

(Rule 14a-101)

INFORMATION REQUIRED IN PROXY STATEMENT

SCHEDULE 14A INFORMATION

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 ¨

Check the appropriate box:

x Preliminary Proxy Statement

¨ **Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))**

¨ Definitive Proxy Statement

¨ Definitive Additional Materials

¨ Soliciting Material Pursuant to Section 240.14a-12

ADA-ES, INC.

(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.

¨ Fee computed on table below per Exchange Act Rules 14a-6(i)(1) 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:

¨ Fee paid previously with preliminary materials:

¨ 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.

1) Amount previously paid:

2) Form, Schedule or Registration Statement No.:

3) Filing Party:

4) Date Filed:

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ADA-ES, INC.

8100 SouthPark Way, Unit B, Littleton, Colorado 80120-4525

NOTICE OF SPECIAL MEETING OF SHAREHOLDERS

To Be Held on __________, 2008

__________, 2008

Dear Shareholder:

You are cordially invited to attend a Special Meeting of Shareholders of ADA-ES, Inc. that will be held at the offices of ADA-ES at 8100 SouthPark Way, Unit B, Littleton, Colorado 80120-4525, on __________, 2008, at 9:00 a.m. Colorado time. I look forward to greeting as many of our shareholders as possible.

Details of the business to be conducted at the Special Meeting are given in the attached Notice of Special Meeting and Proxy Statement.

Whether or not you attend the Special Meeting, it is important that your shares be represented and voted at the meeting. Therefore, I urge you to vote your shares electronically on the Internet or on the telephone by following the instructions on the enclosed proxy card or complete, sign, date, and return the proxy card in the postage-paid envelope provided. If you decide to attend the Special Meeting, you will of course be able to revoke your proxy and vote in person.

On behalf of the Board of Directors, I would like to express our appreciation for your continued interest in the affairs of the Company.

Sincerely,

Mark H. McKinnies
Secretary

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ADA-ES, INC.

8100 SouthPark Way, Unit B, Littleton, Colorado 80120-4525

NOTICE OF SPECIAL MEETING OF SHAREHOLDERS

TO BE HELD ON __________, 2008

To the Shareholders of ADA-ES, Inc.:

NOTICE IS HEREBY GIVEN that a Special Meeting of Shareholders (the Special Meeting) of ADA-ES, Inc., a Colorado corporation (the Company, we or us), will be held on __________, 2008, at 9:00 a.m. Colorado time, at the offices of the Company at 8100 SouthPark Way, Unit B, Littleton, Colorado 80120-4525, to consider and vote upon the following proposals:

1. To approve the issuance and sale by the Company of 1,800,000 shares of Series A Convertible Preferred Stock and 1,800,000 shares of Series B Convertible Preferred Stock (collectively, the Preferred Stock) to Energy Capital Partners I, LP and its affiliated funds (ECP) (collectively, the Private Placement). We must use the net proceeds from the Private Placement to fund the construction of an activated carbon manufacturing facility (the Project) through our joint venture with ECP. The issuance of our common stock upon any conversion of the Preferred Stock will result in ECP acquiring approximately 35% of our common stock outstanding (based on the number of shares outstanding as of the Record Date).

2. To approve the issuance of up to 1,000,000 shares of our common stock in such amounts and on the terms and conditions determined by the Board, which may be issued directly or indirectly in the form of common stock underlying options, warrants, preferred stock, convertible debt or other derivative securities, in connection with raising capital for the Project (the Stock Issuance Plan). Any shares issued pursuant to the Stock Issuance Plan would be issued at no more than a 10% discount to the then-current market price of our common stock as of a specific trading day or market prices over a range of trading days. If approved, the authorization for the Stock Issuance Plan would expire on the date of our next annual meeting of shareholders.

All shareholders are cordially invited to attend; however, only shareholders of record at the close of business on __________, 2008 are entitled to vote at the Special Meeting or any postponements or adjournments thereof.

By Order of the Board of Directors,

Mark H. McKinnies
Secretary

Littleton, Colorado

__________, 2008

This is an important meeting and all shareholders are invited to attend the meeting in person. Whether or not you plan to attend the meeting in person, please vote your shares electronically on the Internet or on the telephone by following the instructions on the enclosed proxy card or complete, sign and date the proxy card and return it promptly in the return envelope provided. No postage is required if mailed in the United States. Shareholders who attend the meeting may revoke their proxy and vote their shares in person.

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ADA-ES, INC.

8100 SouthPark Way, Unit B, Littleton, Colorado 80120-4525

PROXY STATEMENT FOR THE SPECIAL MEETING OF SHAREHOLDERS

To be held __________, 2008 at 9:00 a.m. Colorado time at the offices of ADA-ES, located at

8100 SouthPark Way, Unit B, Littleton, Colorado 80120-4525

This Proxy Statement is furnished in connection with the solicitation by the Board of Directors of ADA-ES, Inc., a Colorado corporation (the Company, we, or us), of proxies from the holders of the Company s common stock for use at a special meeting of our shareholders, to be held at our offices, 8100 SouthPark Way, Unit B, Littleton, Colorado 80120-4525 at 9:00 a.m. Colorado time, or at any adjournment(s) or postponement(s) thereof (the Special Meeting), pursuant to the foregoing Notice of Special Meeting of Shareholders.

The approximate date that this Proxy Statement and the enclosed form of proxy are first being sent to shareholders is __________, 2008. The complete mailing address, including zip code, of our principal executive offices is 8100 SouthPark Way, Unit B, Littleton, Colorado 80120-4525 and our telephone number is (303) 734-1727.

PURPOSES OF THE MEETING

At the Special Meeting, our shareholders will consider and vote upon two proposals.

1. The Private Placement Proposal

The first proposal is to approve the issuance and sale by us of 1,800,000 shares of Series A Convertible Preferred Stock (the Series A Preferred Stock) and 1,800,000 shares of Series B Convertible Preferred Stock (the Series B Preferred Stock, and, together with the Series A Preferred Stock, the Preferred Stock) to Energy Capital Partners I, LP and its affiliated funds (ECP) (the Private Placement). We must use the net proceeds from the Private Placement to fund the construction of our planned activated carbon manufacturing facility (the Project) through our joint venture with ECP (Joint Venture). The purchase price of the Series A Preferred Stock is $9.37 per share (an aggregate of $16.9 million gross proceeds). The purchase price of the Series B Preferred Stock will be based on a 10% discount to market prices 10 trading days before and 9 trading days after the initiation of the second tranche of funding for the Joint Venture (described below), but will not exceed $16.50 per share (an aggregate of $29.7 million maximum gross proceeds). **The issuance of our common stock upon any conversion of the Series A and Series B Preferred Stock will result in ECP owning 35% or more of our common stock (based on the number of shares of our common stock outstanding as of the Record Date).**

Our Board of Directors has determined the Private Placement to be advisable and in the best interests of the Company and its shareholders. The Board of Directors recommends a vote FOR the Private Placement.

2. The Stock Issuance Plan Proposal

The second proposal is to approve the issuance of up to 1,000,000 shares of our common stock in such amounts and on the terms and conditions determined by the Board, which may be issued directly or indirectly in the form of common stock underlying options, warrants, preferred stock, convertible debt or other derivative securities, in connection with raising capital for the Project (the Stock Issuance Plan). If this proposal is approved, the Company may issue some, all or none of the 1,000,000 shares, at the price, on the terms and conditions and in the manner determined by the Board of Directors in its sole discretion, except that such shares would be issued at no more than a 10% discount to the then-current market price of our common stock as of a specific trading day or market prices over a range of trading days.

The NASDAQ Capital Market requires us to include in this proposal a maximum offering price for shares issued pursuant to the Stock Issuance Plan. Although we would strive to obtain the highest per-share price available to us in any issuance of shares pursuant to the Stock Issuance Plan, we do not expect that the per-share price in any offering under the Stock Issuance Plan would exceed $50.

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ECP has preemptive rights to purchase certain shares we may offer. See the section entitled *The Preferred Stock Purchase Agreement Preemptive Rights* contained in Proposal 1 for more information about ECP s preemptive rights. If approved, the authorization for the Stock Issuance Plan would expire on the date of our next annual meeting of shareholders.

The Company s Board of Directors has determined the Stock Issuance Plan to be advisable and in the best interests of the Company and its shareholders. The Board of Directors recommends a vote FOR the Stock Issuance Plan.

Unless contrary instructions are indicated on the enclosed proxy card, all shares represented by valid proxies received pursuant to this solicitation (and which have not been revoked in accordance with the procedures set forth below) will be voted **FOR** the approval of the Private Placement and **FOR** the approval of the Stock Issuance Plan.

If a shareholder specifies a different choice by means of the enclosed proxy card, the shareholder s shares will be voted in accordance with that specification.

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QUESTIONS AND ANSWERS ABOUT THIS PROXY STATEMENT AND VOTING

Who can vote?

You can vote your shares of common stock if our records show that you owned the shares on __________, 2008 (also referred to as the Record Date). A total of__________ shares of common stock can vote at the Special Meeting. Shares of our common stock issued in our August Private Placement (as defined below) are not eligible to vote at the meeting. See *What is a quorum?* for more information regarding such shares. Pursuant to our Amended and Restated Articles of Incorporation, you are entitled to one vote for each share of common stock. As of the Record Date, ECP, the proposed purchaser of the shares in the Private Placement, did not hold any shares of our common stock.

How do I vote by proxy?

Follow the instructions on the enclosed proxy card to vote on each proposal to be considered at the Special Meeting. You may vote electronically on the Internet or on the telephone by following the instructions on the enclosed proxy card or by completing, signing and dating the proxy card and mailing it back to us in the enclosed envelope. All proxies properly submitted, and that are not revoked, will be voted at the Special Meeting in accordance with the instructions indicated thereon. If no instructions are provided, such proxies will be voted FOR each of the proposals described in this Proxy Statement.

Can I vote in person at the Special Meeting rather than by voting electronically on the Internet or by telephone or by completing the proxy card?

Although we encourage you to vote electronically on the Internet or on the telephone or by completing and returning the proxy card to ensure that your vote is counted, you can attend the Special Meeting and vote your shares in person.

Can I change or revoke my vote?

Yes. At any time before the vote on a proposal, you can change or revoke your vote by:

- giving our secretary a written notice revoking your proxy card at or before the Special Meeting;
- submitting a new proxy electronically on the Internet or on the telephone by following the instructions on the proxy card or by signing, dating, and returning to the Company a new proxy card at or before the Special Meeting; or
- attending the Special Meeting and voting in person.

Attendance at the Special Meeting will not, by itself, revoke a proxy. Any written notice of revocation or subsequent proxy card may be sent to ADA-ES, Inc., 8100 SouthPark Way, Unit B, Littleton, Colorado 80120-4525, Attn: Mark H. McKinnies, Secretary, or hand delivered to our Secretary at or before voting at the Special Meeting.

What if other matters come up at the Special Meeting?

As of the date of this proxy statement, we know of no business that will be presented for consideration at the Special Meeting other than Proposals 1 and 2. If any other matter is properly brought before the Special Meeting for action by shareholders, proxies in the enclosed form returned to us will be voted in accordance with the recommendation of the Board of Directors or, in the absence of such a recommendation, in accordance with the judgment of the proxy holder.

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What do I do if my shares are held in street name ?

If your shares are held in the name of your broker, a bank, or other nominee, that party should give you instructions for voting your shares.

What is a broker non-vote?

Under the rules that govern brokers who have record ownership of shares that they hold in street name for their clients who are the beneficial owners of the shares, brokers have the discretion to vote such shares on routine matters but not on non-routine matters. Broker non-votes generally occur when shares held by a broker nominee for a beneficial owner are not voted with respect to a proposal because the nominee has not received voting instructions from the beneficial owner and lacks discretionary authority to vote the shares. Brokers normally have discretion to vote on routine matters, such as uncontested director elections and ratification of independent registered public accounting firms, but not on non-routine matters. The proposals contained in this Proxy Statement are considered non-routine matters. *If your shares are held in street name and you do not provide instructions as to how your shares are to be voted with respect to the Private Placement and the Stock Issuance Plan, your broker or other nominee will not be able to vote your shares at the Special Meeting.* We urge you to provide instructions to your broker or nominee so that your votes may be counted on these important matters.

What is a quorum?

A quorum is the number of shares that must be present, in person or by proxy, in order for business to be transacted at the Special Meeting.

At least one-third of the outstanding shares eligible to vote must be represented at the Special Meeting, either in person or by proxy, in order to transact business. As of the record date, we had __________ outstanding shares of our common stock.

In August 2008, we sold 909,092 shares of our common stock to three institutional accredited investors in a private placement (the August Private Placement). We intend to use the net proceeds of the August Private Placement for the Project. Because the August Private Placement is close in time to the Private Placement, the use of proceeds is the same as the Private Placement, and the Private Placement contemplates the issuance of convertible Preferred Stock, which is considered under NASDAQ Marketplace Rules that apply to our company to be the same class of securities as our common stock, the issuance of common stock in the August Private Placement could be deemed to be aggregated with the Private Placement under such Rules. If the issuance of stock in the August Private Placement is aggregated with the Private Placement, the shares issued in the August Private Placement cannot be counted for purposes of determining a quorum.

If you sign and return your proxy card, your shares will be counted to determine whether a quorum is present even if you abstain or fail to vote on any of the proposals listed on the proxy card.

If a quorum is not obtained, we expect to postpone or adjourn the Special Meeting in order to permit additional time for soliciting and obtaining additional proxies or votes, and at any subsequent reconvening of the Special Meeting, all proxies will be voted in the same manner as such proxies would have been voted at the original convening of the Special Meeting, except for any proxies that theretofore have been effectively revoked or withdrawn.

Who pays for this proxy solicitation?

We will bear the expense of soliciting proxies including the cost of preparing, printing and mailing this Proxy Statement and the accompanying proxy card.

What am I voting on?

You are being asked to vote on two proposals: the Private Placement and the Stock Issuance Plan.

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The Private Placement proposal is to approve the issuance and sale by us of 1,800,000 shares of Series A Preferred Stock and 1,800,000 shares of Series B Preferred Stock to ECP. We must use the net proceeds from the Private Placement to fund the construction of the Project through the Joint Venture. The purchase price of the Series A Preferred Stock is $9.37 per share (an aggregate of $16.9 million gross proceeds). The purchase price of the Series B Preferred Stock will be based on a 10% discount to market prices 10 trading days before and 9 trading days after date of the initiation of the second tranche of funding for the Joint Venture (described below), but will not exceed $16.50 per share (an aggregate of $29.7 million maximum gross proceeds). The issuance of our common stock upon any conversion of the Preferred Stock will result in ECP owning 35% or more of our common stock (based on the number of shares of our common stock outstanding as of the Record Date).

The Stock Issuance Plan proposal is to approve the issuance of up to 1,000,000 shares of our common stock in such amounts and on the terms and conditions determined by the Board, which may be issued directly or indirectly in the form of common stock underlying options, warrants, preferred stock, convertible debt or other derivative securities, in connection with raising capital for the Project. If this proposal is approved, the Company may issue some, all, or none of the 1,000,000 shares, at the price, on the terms and conditions and in the manner determined by the Board of Directors in its sole discretion, except that such shares would be issued at no more than a 10% discount to the then-current market price of our common stock as of a specific trading day or market prices over a range of trading days. The NASDAQ Capital Market requires us to include in the description of the Stock Issuance Plan a maximum offering price for shares issued pursuant to the Stock Issuance Plan. Although we would strive to obtain the highest per-share price available to us in any issuance of shares pursuant to the Stock Issuance Plan, we do not expect that the per-share price in any offering under the Stock Issuance Plan would exceed $50. ECP has preemptive rights to purchase certain shares we may offer. See the section entitled *The Preferred Stock Purchase Agreement Preemptive Rights* contained in Proposal 1 for more information about ECP s preemptive rights. If approved, the authorization for the Stock Issuance Plan would expire on the date of our next annual meeting of shareholders. The Stock Issuance Plan is in addition to 250,938 shares of our common stock we may issue to raise additional capital for the Project without shareholder approval. See *Why is the Company seeking shareholder approval for the Private Placement and the Stock Issuance Proposal?* below.

What is the Private Placement?

On October 1, 2008, we entered into a securities purchase agreement (the Purchase Agreement) pursuant to which we agreed to sell and issue to ECP an aggregate of 1,800,000 shares of our Series A Convertible Preferred Stock and 1,800,000 shares of our Series B Convertible Preferred Stock. The Series A Preferred Stock will be issued at $9.37 per share, as set forth in the Purchase Agreement, for gross cash proceeds to us of $16.9 million. The Series B Preferred Stock will be priced based on a 10% discount to market prices as described in more detail below; therefore we cannot know at this time the exact proceeds from the sale of the Series B Preferred Stock. However, the purchase price of the Series B Preferred Stock will not exceed $16.50 per share, so we know that the gross cash proceeds to us from the sale of the Series B Preferred Stock will be a maximum of $29.7 million. The Preferred Stock is convertible into shares of our common stock on a one-for-one basis, subject to adjustments for stock splits, recapitalizations and similar transactions described in more detail below (see *Terms of the Preferred Stock Conversion Rights*). If the proposal is approved and we issue the Preferred Stock, the Preferred Stock will initially be convertible into 3.6 million shares of our common stock, or 35% of the total shares outstanding following the completion of the Private Placement.

Why is the Company selling the Preferred Stock?

The sole purpose of the Private Placement is to fund the construction of the Project and the net proceeds must be used solely for that purpose. We and ECP are 50/50 joint venture partners in the Project as members of a limited liability company formed for that purpose as of the same date that we signed the Purchase Agreement. Each of us has committed to contribute additional capital based on the completion of certain milestones (see *Direct & Indirect Relationships between ECP and the Company The Project, a Joint Venture with ECP*). The Private Placement is contingent upon shareholder approval, the closing of the debt financing necessary for the Project to move forward and other matters.

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What will happen to the Company if the issuance of the Preferred Stock is not approved?

If the shareholders do not approve the issuance of the Preferred Stock, we will not be able to complete the Private Placement, and ECP may terminate the Purchase Agreement. If the Purchase Agreement is terminated because we fail to obtain shareholder approval of the Private Placement by January 31, 2009, we will be required to pay ECP an amount equal to all reasonable out-of-pocket fees and expenses incurred by ECP in connection with the Purchase Agreement and the transactions contemplated thereby, including the fees of counsel, financial advisors, and accountants, not to exceed $1,500,000 (the Termination Fee) plus $2,000,000 (the Breakup Fee). Such actions would, in our view, substantially diminish the value of our common stock and thus your investment in us. The Purchase Agreement may be terminated by us or ECP upon the occurrence of several factors in addition to termination caused by not receiving shareholder approval. Please see *The Preferred Stock Purchase Agreement Termination* for a description of the termination provisions.

What is the Stock Issuance Plan?

The Stock Issuance Plan proposal is to approve the issuance of up to 1,000,000 shares of our common stock in such amounts and on the terms and conditions determined by the Board, which may be issued directly or indirectly in the form of common stock underlying options, warrants, preferred stock, convertible debt, or other derivative securities, in connection with raising capital for the Project. If this proposal is approved, the Company may issue some, all, or none of the 1,000,000 shares, at the price, on the terms and conditions and in the manner determined by the Board of Directors in its sole discretion, except that such shares would be issued at no more than a 10% discount to the then-current market price of our common stock as of a specific trading day or market prices over a range of trading days. The NASDAQ Capital Market requires us to include in the description of the Stock Issuance Plan a maximum offering price for shares issued pursuant to the Stock Issuance Plan. Although we would strive to obtain the highest per-share price available to us in any issuance of shares under the Stock Issuance Plan, we do not expect that the per-share price in any offering under the Stock Issuance Plan would exceed $50.

ECP has preemptive rights to purchase certain shares we may offer. See the section entitled *The Preferred Stock Purchase Agreement Preemptive Rights* contained in Proposal 1 for more information about ECP s preemptive rights. The Stock Issuance Plan is in addition to 250,938 shares of our common stock we may issue to raise additional capital for the Project without shareholder approval. If approved, the authorization for the Stock Issuance Plan would expire on the date of our next annual meeting of shareholders.

What will happen to the Company if the Stock Issuance Plan is not approved?

If the shareholders do not approve the Stock Issuance Plan, we will most likely be required to seek shareholder approval for any additional issuances of common stock within six months of the Private Placement. Seeking shareholder approval would use our cash resources and require management to devote significant additional time and energy to securing shareholder approval, whereas if the Stock Issuance Plan is approved, management and the Board of Directors will have the flexibility of entering into capital-raising or other transactions with our common stock without the additional step of soliciting shareholder approval. If we do not obtain shareholder approval, we would likely not be able to raise sufficient funds for our capital contributions to the Joint Venture in a timely manner, potentially resulting in dilution of our 50% interest in the Joint Venture, loss of decision making ability and rights of ECP to buy our interest at a discount or sell or dissolve the Joint Venture. If we own less than 50% of the Joint Venture, we would likely not be able to consolidate the Joint Venture s financial statements with our own, which may adversely affect the value of our common stock and your investment in us.

Will the issuance of the Preferred Stock in the Private Placement and the common stock in the Stock Issuance Plan dilute our existing shareholders percentage ownership of the Company?

Our shareholders will incur immediate and substantial dilution of their percentage ownership in the Company if the Private Placement proposal is approved by you and the Preferred Stock is issued. Based on the number of shares outstanding on __________, 2008, the aggregate ownership of all holders of our outstanding common stock immediately prior to the issuance of the Preferred Stock will be reduced to approximately __% of the outstanding shares of common stock on an as-converted basis. As explained in the answer to the question *What will happen to the Company if the issuance of the Preferred Stock is not approved?*, failure to issue the Preferred Stock could significantly impair our business and diminish to an even greater extent the value of our common stock because of our inability to fund our required capital contributions to the Joint Venture. Even though the percentage ownership interest of the holders of our outstanding common stock will be substantially reduced upon the issuance of the Preferred Stock, the proceeds from the sale of those shares will provide the funds necessary to substantially advance our business and future prospects.

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Similarly, our shareholders will incur immediate dilution of their percentage ownership in the Company if the Stock Issuance Plan is approved and all of the shares authorized to be issued under the Stock Issuance Plan are issued. The Stock Issuance Plan is in addition to 250,938 shares of our common stock we may issue to raise additional capital for the Project without shareholder approval. Assuming (1) approval and completion of the Private Placement, (2) that we issue such 250,938 shares of our common stock, and (3) that we issue all 1,000,000 shares authorized for issuance under the Stock Issuance Plan, the aggregate ownership of all holders of our outstanding common stock immediately prior to the issuance of such 250,938 shares and the 1,000,000 shares authorized under the Stock Issuance Plan will be reduced to approximately __% of the outstanding shares of common stock on an as-converted basis, based on the number of shares outstanding on __________, 2008.

Why is the Company seeking shareholder approval for the Private Placement and the Stock Issuance Proposal?

We are subject to the NASDAQ Marketplace Rules because our common stock is currently listed on The NASDAQ Capital Market. These rules require us to obtain shareholder approval for any issuance or sale of common stock, or securities convertible into or exercisable for common stock, that is (1) equal to 20% or more of our outstanding common stock before such issuance or sale and (2) at a price per share below the greater of book or market value at the time of such issuance or sale. These rules also require shareholder approval of any issuance of voting stock that would result in a change in control of the issuer, which is defined as the ownership by any shareholder or group of affiliated shareholders of 20% or more of an issuer s voting stock immediately following the issuance. These rules apply to the sale and issuance of the Preferred Stock and the Stock Issuance Plan because:

- the purchase price of the Series B Preferred Stock to be issued pursuant to the Purchase Agreement is based on a 10% discount to market prices 10 trading days before and 9 trading days after the date of the initiation of the second tranche of funding for the Joint Venture. (See *Direct & Indirect Relationships between ECP and the Company The Project, a Joint Venture with ECP Second Funding Tranche*.) Use of this pricing formula may result in the per-share sales price of the Series B Preferred Stock being less than the per-share closing sales price of our common stock on the date of issuance of the Series B Preferred Stock;

- the total number of shares of common stock issuable upon any conversion of the Preferred Stock will comprise approximately 35% of our common stock outstanding (on an as-converted basis, based on the number of shares outstanding on the Record Date);

- the issuance of the shares of common stock issuable upon any conversion of the Preferred Stock will constitute a change in control under the NASDAQ Marketplace Rules because ECP will beneficially own more than 20% of our common stock following completion of the Private Placement; and

- if the Board of Directors issues stock pursuant to the Stock Issuance Plan in one or more transactions, those issuances could be deemed to be aggregated, or combined, with the Private Placement under NASDAQ Marketplace Rules, which would require shareholder approval of those issuances. In order to conserve resources, the Board of Directors believes it to be in the best interests of the Company and its shareholders to request shareholder approval of the Stock Issuance Plan now, rather than holding one or more additional special meetings of the shareholders in order to approve the issuances of common stock in the future.

For these reasons, we are required under NASDAQ Marketplace Rules to obtain shareholder approval prior to issuing the Preferred Stock and we have elected to request shareholder approval of the Stock Issuance Plan. In addition, under the Purchase Agreement, we agreed to seek shareholder approval of the Private Placement and the Stock Issuance Plan.

Immediately prior to the August Private Placement, 5,811,878 shares of our common stock were outstanding. At that time, we could issue up to 19.9% of our common stock outstanding, or 1,160,030 shares, without prior shareholder approval pursuant to NASDAQ Marketplace Rules. We issued 909,092 shares of our common stock in the August Private Placement, leaving 250,938 shares available for issuance in connection with financing for the Project without shareholder approval.

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What is the vote required to approve Proposal 1 and Proposal 2?

The approval of at least a majority of shares of our common stock present and voting either in person or by proxy at the Special Meeting must be obtained in order for each proposal to be adopted.

In August 2008, we sold 909,092 shares of our common stock to three institutional accredited investors in a private placement. We intend to use the net proceeds of the August Private Placement for the Project. Because the August Private Placement is close in time to the Private Placement, the use of proceeds is the same as the Private Placement, and the Private Placement contemplates the issuance of convertible Preferred Stock, which is considered under NASDAQ Marketplace Rules that apply to our company to be the same class of securities as our common stock, the issuance of common stock in the August Private Placement could be deemed to be aggregated with the Private Placement under such Rules. If the issuance of stock in the August Private Placement is aggregated with the Private Placement, the shares issued in the August Private Placement cannot be counted for the approval of the Private Placement.

Do I have any appraisal rights?

Neither the Private Placement nor the Stock Issuance Plan gives rise to any appraisal rights or similar rights of dissenters.

Prior to the Special Meeting, we will select one or more inspectors of election for the meeting. These inspectors will determine the number of shares of common stock represented at the Special Meeting, the existence of a quorum and the validity and effect of proxies and shall receive, count and tabulate ballots and votes, and determine the results thereof.

A list of shareholders entitled to vote at the Special Meeting will be available at our offices, 8100 SouthPark Way, Unit B, Littleton, Colorado 80120-4525, for 10 days prior to the Special Meeting and at the Special Meeting itself, for examination by any shareholder.

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PROPOSAL NO. 1: APPROVAL OF THE PRIVATE PLACEMENT

Introduction

We are seeking your approval of the Private Placement.

If shareholders approve the Private Placement and other conditions to closing are satisfied, we will issue to ECP 1,800,000 shares of Series A Preferred Stock and 1,800,000 shares of Series B Preferred Stock in accordance with the terms of the Purchase Agreement. The purchase price of the Series A Preferred Stock is $9.37 per share (an aggregate of $16.9 million gross proceeds). The purchase price of the Series B Preferred Stock will be based on a 10% discount to market prices 10 trading days before and 9 trading days after the initiation of the second tranche of funding for the Joint Venture (as described below), but will not exceed $16.50 per share (an aggregate of $29.7 million maximum gross proceeds). The Preferred Stock will represent approximately 35% of our common stock on an as-converted basis. The sole purpose of the Private Placement is to fund our required capital contributions to the Joint Venture for the Project and the cash proceeds must be used solely for that purpose. The Private Placement is contingent upon the closing of the debt financing necessary for the Project to move forward and other matters relating to the Joint Venture (as well as our obtaining shareholder approval for the issuance of the Preferred Stock at the Special Meeting for which this proxy statement is being delivered).

Upon closing of the Private Placement, we have agreed to increase the size of our Board of Directors to accommodate the members of the Board of Directors to be designated by the holders of the Series A and Series B Preferred Stock. The Preferred Stock holders will have the right to designate that number of members of the Board of Directors equal to the percentage of all outstanding shares of common stock held by them, assuming conversion, multiplied by the total number of members of the Board of Directors following such election, provided that the number of shares of common stock held by such holders assuming conversion shall not exceed the number obtained by multiplying the number of shares of Preferred Stock held by such holders by the Limiting Percentage, multiplied by the total number of members of the Board of Directors following such election. The Limiting Percentage means the number obtained by multiplying the number of shares of Preferred Stock held by such holder by the percentage obtained by dividing the original purchase price of the series of Preferred Stock by the consolidated closing bid price of our common stock at 4 p.m. Eastern time on the day prior to the closing (i.e. the date of issuance of the Preferred Stock), or if the closing occurs after 4 p.m. Eastern time, on the day of the closing (as adjusted for any splits, dividends, etc.). We have agreed that for so long as the holders of the Preferred Stock are entitled to elect at least two directors, at least one of those directors will be appointed to the Audit Committee of our Board of Directors (provided that such appointee meets all applicable independence or other requirements for membership on our Audit Committee).

Each share of Preferred Stock will be convertible into one share of our common stock. The Preferred Stock has no price-based antidilution protections. The Preferred Stock does have protection from antidilution events based on general recapitalizations, such as stock splits, reverse splits, and stock dividends.

The Preferred Stock will have the rights, preferences, and privileges set forth in the Certificates of Designation to our Amended and Restated Articles of Incorporation (the Certificates of Designation). A summary of the Certificates of Designation appears below in the Section entitled Terms of the Preferred Stock and a copy of the Certificates of Designation is enclosed with this Proxy Statement as Annex A.

Reasons for the Private Placement

As described in detail in our Annual Report on Form 10-K, we develop and implement proprietary environmental technology and provide specialty chemicals that enable coal-fueled power plants to enhance existing air pollution control equipment, maximize capacity and improve operating efficiencies. As a part of this business, we are actively involved in designing, marketing and supplying mercury emissions control systems to coal-fueled power plants. A key compound used in the mercury emissions control systems we provide is powdered activated carbon (AC), which is typically injected in the ductwork after the boiler and acts to reduce mercury emissions from the flue gas. An important aspect of this part of our business requires that we be able to supply our customers with an adequate supply of AC meeting standards required for effective mercury emissions reduction.

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We believe that the current production capacity of AC will be inadequate for the demand created by the developing mercury emissions control market. We project shortages of the material as early as 2010. In 2006, we commissioned a market study from an independent third party and used multiple-client market studies to estimate the current worldwide production and expected future demand for AC in both the conventional water treatment markets and the developing mercury control market. The study we commissioned documented that the current United States market for AC, which is primarily for water treatment, is approximately $200 million per year. With regulations in place today to reduce mercury emissions, this could more than double by 2010. If a more stringent federal regulation comes into effect, the demand for AC could more than triple by that time.

In 2004, we initiated activities aimed at positioning ADA-ES to supply AC to meet the needs of coal-fueled power plants. Initially, these activities involved obtaining manufacturing capacity through the possible acquisition of existing facilities. This strategy did not prove successful and, in 2006, we determined to pursue the Project (our planned AC manufacturing facility in Coushatta, Red River Parish, Louisiana) which, if completed, will be the largest AC manufacturing facility built to date in the United States. We, together with our Joint Venture partners, are designing the facility to maximize efficiency and produce the most cost-effective AC product for the mercury control market. The AC will be designed to be effective for capturing mercury produced as a byproduct of burning Western lignite and subbituminous coals, which we believe represents the largest potential market for AC mercury emission reduction. We expect the Joint Venture s AC product to meet the required, stringent quality specifications of this market.

Completion of the Project will require funding well beyond our present cash availability. We will be using all of the proceeds from the Private Placement to fund our required capital contributions to the Project. We expect that the first production line of the Project will have a total all-in cost of approximately $350 million and will be capable of producing approximately 125 to 175 million pounds of AC per year. We expect to fund future capital contributions to the Joint Venture with funds from the Private Placement, working capital (if deemed appropriate), and shares issued under the Stock Issuance Plan. We are working to obtain debt financing for the Project and expect to support the debt with long-term take-or-pay off-take contracts for the AC that the Joint Venture will be supplying through both interim sources and the new production from the Project. The Joint Venture has already signed AC sales contracts that, subject to certain conditions, could contribute up to $160 million in revenues through 2014.

If we are unable to obtain shareholder approval of the Private Placement, our ability to participate in the Project will be significantly endangered. ECP may terminate the Purchase Agreement and may elect to purchase our 50% interest in the Joint Venture or sell or dissolve the Joint Venture. In addition, we would be required to pay ECP the Breakup Fee plus the Termination Fee. See *The Preferred Stock Purchase Agreement Termination* for more detail on the effects of termination of the Purchase Agreement. In addition, in connection with our preliminary work on the Project, we have guaranteed payment obligations under the engineering, procurement and construction contract, a contract to purchase furnaces and an AC sales agreement for the Project as described below. If the Joint Venture is sold or dissolved, for whatever reason, we will still be required to fulfill our obligations under the guarantees that we have provided. Such actions would, in our view, substantially diminish the value of our common stock and, thus, your investment in us.

The Board of Directors believes the Private Placement to be advisable and in the best interests of the Company and its shareholders.

ECP

ECP is a private equity firm dedicated to investing in the power generation, midstream gas, renewable and electric transmission sectors of North America s energy infrastructure. The firm s management has substantial experience leading successful energy companies and energy infrastructure investments. ECP has offices in Short Hills, N.J., and San Diego, CA.

The above summary was provided to us by ECP.

ECP is an accredited investor as that term is defined in Rule 501 of Regulation D under the Securities Act.

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Direct & Indirect Relationships between ECP and the Company

The Project, a Joint Venture with ECP

On the date that we signed the Purchase Agreement, we also entered into a Joint Development Agreement (JDA) and Limited Liability Company Agreement (the LLC Agreement) with ECP and related agreements for the purposes of funding and constructing the Project. We and ECP each own 50% of Crowfoot Development, LLC, the Joint Venture operating company.

On October 1, 2008, pursuant to the terms of the JDA, we transferred the development assets and certain liabilities relating to our AC production business (collectively, the Business) to certain wholly-owned subsidiaries of ours and then transferred the equity in those subsidiaries and certain contracts, goodwill and intellectual property relating to the Business to the Joint Venture as our initial contribution to the Joint Venture. The JDA contains representations, warranties and indemnities with respect to the contributed assets and excluded liabilities, and certain indemnification claims are subject to a threshold, cap and time limitation. Our indemnity obligations as to excluded liabilities under the JDA are secured by our equity interest in the Joint Venture.

Management of Joint Venture. The Joint Venture will be managed by a Board of Managers comprised of two representatives from each party, subject to change if a member s ownership falls below 35% of the Joint Venture s outstanding membership interests. Specified Joint Venture transactions will require Board approval, and certain major transactions will require approval of members holding at least 75% of the Joint Venture s membership interests.

First, Second and Third Tranches of Funding. Our initial contribution to the Joint Venture was valued by the parties at approximately $17.0 million. ECP contributed approximately $0.2 million to the Joint Venture at the time of signing the JDA and, pursuant to the terms of the LLC Agreement, ECP will contribute an additional $16.8 million in cash by October 23, 2008. We and ECP have each committed on a 50/50 basis to contribute a second tranche of $17 million in capital to meet the capital requirements of the Joint Venture. ECP has committed to contribute the third tranche of capital up to 200% of the expected net proceeds of the Private Placement (the Third Tranche Amount), in exchange for non-voting preferred equity in the Joint Venture, until the time that the Private Placement is completed. One-half of any preferred equity received by ECP pursuant to its capital contributions under the third tranche would bear a preferred return of 12% per annum, and the other half would not bear a preferred return.

We are required to contribute the net proceeds of the Private Placement and of any equity financing, asset sale or other transaction outside of the ordinary course of business (other than any debt financing) resulting in cash proceeds to us (collectively, Other Financing Proceeds) to the Joint Venture, and upon such contribution, an equal amount of ECP s outstanding preferred equity bearing a 12% preferred return, plus the applicable 12% preferred return, would be redeemed and a matching amount of ECP s preferred equity that does not bear a preferred return would be converted into ordinary capital contributions. We and ECP would then continue to contribute capital on a 50/50 basis under the third tranche until we have contributed all net proceeds of the Private Placement. However, if a Funding Stop (as defined below), a material default by ADA-ES under the LLC Agreement, an ADA-ES Triggering Event, a material uncured breach of the Purchase Agreement by ECP prior to closing the Private Placement, or a termination of the Purchase Agreement were to occur, neither we nor ECP would be required to make any further capital contributions under the third tranche. In addition, as discussed below, the failure of certain conditions to a party s obligations to fund capital contributions, occurrence of an ADA-ES Triggering Event or ECP Triggering Event (as defined below) or a party s default under the LLC Agreement gives rise to special consequences and alters the parties rights and obligations to contribute capital under any of the capital contribution tranches. An ADA-ES Triggering Event means (1) any material uncured breach of the Purchase Agreement by us prior to closing the Private Placement, (2) termination of the Purchase Agreement by one party or failure to close the Private Placement by March 2, 2009, in each case other than due to a material uncured breach of the Purchase Agreement by ECP, or (3) our failure to obtain shareholder approval of the Private Placement by January 31, 2009.

After any material uncured breach of the Purchase Agreement by ECP prior to closing the Private Placement (an ECP Triggering Event) and until the earliest of (1) the date on which we have made capital contributions equal to one-half of the Third Tranche Amount, (2) the three-month anniversary of such ECP Triggering Event, and (3) if we have delivered an Election Notice

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(as defined below) pursuant to such ECP Triggering Event, the date of the consummation of the remedy we have elected, we may, but are no longer required to, contribute any Other Financing Proceeds to the Joint Venture. Contributions of Other Financing Proceeds that we make would be used to redeem ECP s preferred equity in the Joint Venture plus the 12% preferred return on such preferred equity, and a matching amount of ECP s preferred equity (but excluding the 12% preferred return) would be converted into ordinary capital contributions.

Failure to Redeem Preferred Equity. If any of the preferred equity that ECP receives in connection with funding for the third tranche is not redeemed by the earliest of (1) the four-month anniversary of the date of such funding, (2) if such funding was made prior to the closing of the Private Placement, the closing date of the Private Placement, (3) the date of an ADA-ES Triggering Event, (4) immediately prior to the closing of any Joint Venture Sale (as defined below), and (5) immediately prior to any determination to dissolve the Joint Venture, then ECP would receive priority distributions on such preferred equity until it is redeemed or converted, and would have the option to convert any unredeemed preferred equity into ordinary capital contributions, resulting in a dilution of our percentage interest and dilution and possible loss of our voting and management rights.

Fourth Tranche Additional Capital. If at any time prior to the Joint Venture s receipt of debt financing for the Project, ECP reasonably determines, based on negotiations with lenders, anticipated delays or additional capital requirements of the Joint Venture, that the Project will need equity financing beyond that contemplated for the first three tranches, ECP may notify the Joint Venture of the amount of equity financing it believes will be required (the Fourth Tranche Amount) and may irrevocably commit to fund all or any portion of the Fourth Tranche Amount. If ECP commits to fund less than the entire Fourth Tranche Amount ECP specifies, we have the right to fund the balance. Any funding of the Fourth Tranche Amount would be in the form of capital contributions to the Joint Venture.

Capital to Satisfy Cost Overruns After Debt Financing. After the Joint Venture s receipt of debt financing for the Project, if either we or ECP reasonably determines that the Joint Venture requires additional capital for the Project, then we and ECP each will have the opportunity to fund the amount needed on a pro rata basis, subject to a right of oversubscription in the form of ordinary capital contributions or preferred equity if one member chooses not to fund its full share. Any such preferred equity would bear a return of 12% per annum, would be entitled to priority distributions until redeemed or converted and would be convertible at the owner s option to ordinary capital contributions from and after the earliest to occur of (1) 90 days after the date of issuance, (2) 150 days after the date on which the Joint Venture provided notice to the members of the need for such additional capital, (3) immediately prior to the closing of any Joint Venture Sale, and (4) immediately prior to any determination to dissolve the Joint Venture.

Contribution of Returned Capital. If the Joint Venture makes any distribution which the Board of Managers of the Joint Venture specifically designates as a return of capital, then the parties to the Joint Venture will be obligated to contribute such returned capital contributions when needed to satisfy the Joint Venture s capital requirements.

Funding Conditions; Joint Venture Sale. Each funding tranche is subject to the satisfaction of certain developmental milestones, the absence of any adverse development that has a material adverse effect on the Joint Venture or any of its subsidiaries and other conditions relating to the Project. Upon a Funding Stop, the members will negotiate in good faith to determine whether ECP will waive the funding condition or amend the LLC Agreement on terms mutually acceptable to all members. If the members cannot so timely agree, then we have the option to either unconditionally commit to fund all capital requirements of the Joint Venture or stop all funding. If we elect to stop funding, then the members must promptly use their reasonable best efforts to pursue a sale of the Joint Venture (a Joint Venture Sale). If we and ECP cannot reach agreement as to the aggregate price and other material terms of a Joint Venture Sale within 45 days or cannot consummate such a sale within 150 days after we elect to stop funding, the Joint Venture will be dissolved. If ECP notifies us that it is stopping funding of the Joint Venture, certain of our non-solicitation obligations under the Purchase Agreement will terminate.

Buy-Sell Provisions. Upon any ADA-ES Triggering Event (other than termination of the Purchase Agreement by ECP because it determines that the conditions to closing are incapable of fulfillment) or ECP Triggering Event, each of ECP (in the case of an ADA-ES Triggering Event) or the Company (in the case of an ECP Triggering Event) has three months to elect by written notice to the

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other (an Election Notice) to (1) buy the other party s membership interests in the Joint Venture at a purchase price equal to its capital contributions, plus the preferred equity redemption price of the outstanding preferred equity of such party, plus the amount of any capital default loan made by such party together with interest thereon, plus the amount of any guaranties, letters of credit, or other credit support obligations it has provided that are not terminated or replaced (the Call Purchase Price), (2) dissolve the Joint Venture, or (3) cause a Joint Venture Sale. The non-electing party will have 30 days prior to the electing party s being able to dissolve or sell the Joint Venture to buy out the electing party s interests in the Joint Venture for the Call Purchase Price and continue the Joint Venture.

Buy-Sell Provisions under Deadlock and Upstream Changes of Control. If there is a deadlock between the parties after the six-month anniversary of the Joint Venture, either party may offer to buy the other s membership interests in the Joint Venture at a specified price and the other party will then have the option to either accept such offer or purchase the offering member s membership interest at the same price. In addition, if there is an upstream change of control with respect to a party within the first four years, the other party may offer to buy the other s membership interest in the Joint Venture at the price specified by the party that experienced a change of control, sell its interest in the Joint Venture to such party at the specified price, or take no action.

Default. If either ADA-ES or ECP fails to make a timely capital contribution when required (and such failure continues for five business days), defaults in complying with its exclusivity obligations as described above (and such default continues for 30 days), terminates its legal existence, engages in a prohibited transfer or becomes insolvent or bankrupt (each, an LLC Agreement Default), the other party can take any one or more of the following actions:

(1) buy out the defaulting party s interest for 80% of its value (as determined by an investment bank) or sell its interest to the defaulting party for 110% of such value or (2) reduce the defaulting party s ownership by up to 20%;

dissolve the Joint Venture;

institute legal proceedings to recover damages;

stop making capital contributions to the Joint Venture; or

if such default is a failure to make capital contributions, fund such contributions at the Joint Venture or Project level as common or preferred equity or loan the unfunded portion to the defaulting party.

In addition, if we are in default of our indemnity obligations as to excluded liabilities under the JDA, then ECP will have the option to satisfy such indemnity obligations with our equity in the Joint Venture. A party that is in default is prohibited from participating in any management (whether by the Board or the members) of the Joint Venture.

Transfers. Except for transfers to affiliates, subsidiaries and certain transfers expressly contemplated by the LLC Agreement, neither we nor ECP may transfer any membership interests during the first two years after commencement of the Joint Venture. Between the second and fourth anniversaries of the commencement of the Joint Venture, each party has a right of first offer on any proposed transfer by the other party of its membership interest or any portion thereof. Subject to such restrictions, each party may transfer any or all of its rights or obligations under the LLC Agreement, provided that, except in the case of the transfer of 100% of the membership interests of the Joint Venture, the rights and restrictions applicable to the Company and ECP relating to (1) exclusivity (described below), (2) the ADA-ES or ECP Triggering Events, (3) the buy-sell provisions, and (4) the right of first offer provisions may not be transferred.

Exclusivity. During the first three years of the Joint Venture, neither we nor ECP may pursue additional investments in carbon lines for the Project or additional investments in AC production projects without the agreement of the other party. Between the third and fifth anniversaries of commencement of the Joint Venture, each party will have a right to participate in future similar projects or investments on a 50/50 basis or in such lesser amount as a party may choose so long as it participates in at least 25% of the total investment in the proposed project or investment. In addition, until the later of October 1, 2013 and the date on which such party no longer holds a 15% interest in the Joint Venture, neither we nor ECP may, directly or indirectly, except to the extent provided in the

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License Agreement and Master Services Agreement described below, (1) transfer, lease, license or otherwise provide any intellectual property of such party or any of its affiliates to any third party to be used in connection with the manufacture, production, processing or supply of activated carbon relating to the control of mercury emissions from coal fired power plants, or (2) provide consulting or other services to any third party for such purpose. These provisions will not prevent us from developing technology primarily for the injection of AC or restrict our ability to develop new AC technologies for applications other than mercury control.

Engineering, Procurement and Construction Agreement. As previously reported, on September 8, 2008, Red River Environmental Products, LLC, a wholly-owned subsidiary of the Joint Venture (Red River) and BE&K Construction Company, LLC, of Birmingham, Alabama (BE&K) entered into an Amended and Restated Engineering, Procurement and Construction Agreement (EPC Agreement) for the turn-key engineering, design, procurement, construction, construction management, testing, commissioning, and related balance of plant services for the Project. We provided BE&K with a guaranty pursuant to which we are obligated to pay all amounts owed by Red River under the EPC Agreement.

In August 2008, on behalf of Red River, we delivered an irrevocable letter of credit to BE&K in the amount of $6.6 million (which is secured by a promissory note and account pledge agreement from us) to secure BE&K s purchase of a boiler and for certain site work. On October 1, 2008, on behalf of Red River, ECP delivered an additional letter of credit in the amount of $9.1 million. In addition, on September 30, 2008, BE&K and Red River agreed that Red River would deliver irrevocable letters of credit totaling $19.3 million in November 2008, $16.0 million in December 2008, $17.7 million in January 2009 and $21.4 million beginning February 1, 2009 (the LC Amounts). Each of the LC Amounts would include the $6.6 million and $9.1 million letters of credit described above if they were still outstanding at the time. For example, by November 2008, Red River would be required to deliver an additional letter of credit for $3.6 million. Our guaranty and the letters of credit will terminate and be released once (1) Red River has obtained binding arrangements for construction, interim and/or long-term financing on terms acceptable to Red River, the proceeds of which are intended to be used for all or part of the costs of the Project, and (2) the initial proceeds from such financing have been released to BE&K.

Credit Support for the Joint Venture. We and ECP and our respective affiliates may provide credit support for or on behalf of the Joint Venture to support its obligations to third parties in connection with the Project, in the form and amount as determined by the Board of Managers of the Joint Venture and such member. Unless otherwise agreed, each member would provide such credit support based on their percentage ownership interest in the Joint Venture. With respect to the LC Amounts required by the EPC Agreement (described above), (1) we must maintain letters of credit necessary to cover $6.6 million of the stated amount of such required letters of credit until such time as we are required to make capital contributions under the second tranche of capital contributions described above, and (2) ECP shall cause the aggregate stated amount of such letters of credit to be equal to the LC Amounts (except that during any period in which our letter of credit is required to be issued such amount will be reduced by $6.6 million) except that ECP is not obligated to: (a) increase the stated amount of such letter of credit or extend the maturity date thereof at any time on or after the occurrence of an ADA-ES Triggering Event or a material default by us or at any time during which a default or event of default has occurred and is continuing under the Financing Documents (described below); (b) replenish the stated amount of any such letter of credit to the extent drawn; or (c) increase the stated amount of any such letter of credit or extend the maturity date thereof at any time on or after February 28, 2009.

Reimbursement Agreement. Concurrently with signing of the JDA, we, ECP and Red River entered into a Reimbursement Agreement, providing for Red River to reimburse us for amounts we may be required to pay under the following guaranties and letters of credit that we have issued:

- a guaranty in favor of BE&K under the EPC Agreement;

- a guaranty in favor of Industrial Furnace Company, Inc. (IFCo) under the Multiple Hearth Furnace Contracts, dated as of September 5, 2008, between IFCo and Red River;

- a guaranty in favor of Luminant Generation Company under the Carbon Supply Agreement, dated as of September 3, 2008, between Red River and Luminant, LLC (Luminant); and

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the $6.6 million letter of credit issued on our behalf in favor of BE&K described above.

In addition, the Reimbursement Agreement provides for Red River to reimburse ECP for the letter of credit issued on its behalf in favor of BE&K (described above). Under the Reimbursement Agreement, Red River may request additional credit support or extensions or changes to the initial credit support from ECP and us, and each party may elect to provide such support in its sole discretion.

Other Financing Documents. The obligations of Red River to ECP and us under the Reimbursement Agreement were guaranteed by the Joint Venture (pursuant to a Guaranty). The obligations of the Joint Venture under this guaranty and Red River under the Reimbursement Agreement are secured by a security interest in substantially all of the assets of Red River (pursuant to a Security Agreement) and a pledge by the Joint Venture of its rights under Red River s limited liability company agreement and its membership interests in Red River (pursuant to a Pledge Agreement). The Reimbursement Agreement, Security Agreement, Pledge Agreement, and Guaranty are collectively referred to as the Financing Documents.

Pursuant to the terms of an Assignment Agreement, we assigned all of our rights under the Financing Documents to ECP until any preferred equity ECP receives in connection with the third tranche of capital contributions under the LLC Agreement has been fully redeemed or converted. Any amounts payable to us under the Financing Documents would be paid directly to ECP, and the payment of such proceeds to ECP would reduce ECP s unreturned preferred equity (including the 12% preferred return, if applicable) in the Joint Venture.

Master Services Agreement. Pursuant to a Master Services Agreement between us and the Joint Venture executed concurrently with the JDA, we will provide certain accounting, administrative, oversight, insurance, and other services to the Joint Venture at agreed-upon rates.

Intellectual Property License. Pursuant to a License Agreement between us and the Joint Venture executed concurrently with the JDA, we have licensed to the Joint Venture all intellectual property that relates primarily to the production, processing or supply of AC for the control of mercury emissions from coal fired power plants or any application or use competitive with the control of such emissions (the Field) on an exclusive, perpetual, royalty-free basis and have provided certain rights of first refusal to the Joint Venture with respect to intellectual property relating to the Field we may develop in the future. The intellectual property held by us primarily relating to the Business or the assets we contributed to the Joint Venture was transferred to the Joint Venture under the JDA and is not part of the license.

<u>Incentive Program for Certain Executives Relating to the Project</u>

In March 2008, the Board of Directors approved an incentive program (the Program) pursuant to the 2007 Equity Incentive Plan (the 2007 Plan) under which 172,500 shares of ADA-ES common stock were reserved for award to four of our executive officers and an independent consultant as an incentive for the executives and the consultant to work diligently to attain certain milestones related to progress on the development, construction and operation of an AC manufacturing facility. The Project, which will be funded by the proceeds of the Private Placement, qualifies as an AC manufacturing facility under the Program. Therefore, if the Private Placement is approved, certain milestones under the Program will be more likely to be met and certain members of our executive management team will receive additional shares of our common stock pursuant to the Program. A set number of shares are reserved for award to each recipient, and a portion of those shares will vest upon attainment of each defined milestone. In no event will the shares attributable to a milestone ever vest in the recipient if the milestone is not attained by a certain date.

Each milestone has a target date by which the milestone is intended to be satisfied. The number of shares that become eligible for vesting diminishes by 5% of the number committed to a particular milestone for each month after the target date that the milestone remains unsatisfied. Therefore, if a particular milestone remains unsatisfied for 20 months after its target date, no shares will ever vest for that milestone and all shares attributed to that milestone will be eligible for repurchase by us for $.01 per share. As previously reported, on October 15, 2008, the Compensation Committee of our Board of Directors extended certain milestone deadlines due to delays arising from a merger of BE&K with another firm prior to the date of the signing of the documents relating to the Private Placement and the Project.

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The recipients of awards under the Program, and the number of shares reserved for awards to each, are as follows:

Michael Durham 57,500 shares;

Mark McKinnies 46,000 shares;

C. Jean Bustard 46,000 shares;

Richard Miller 11,500 shares; and

Financial Consultant 11,500 shares.

Share awards were authorized in March 2008 to the maximum extent possible for each recipient under the 2007 Plan, and additional awards will be available for award in 2009 to the extent that (1) the number of reserved shares had not been granted in 2008, and (2) the recipient remains as an employee or consultant to the Company and is actively working on the Project. Such additional awards may be made at the discretion of the Board.

Each recipient can request that we purchase up to 35% of the shares upon vesting for the fair market value of the shares (as defined in the 2007 Plan) to assist the recipient with tax obligations that may be owing at the time of vesting. The determination as to whether to purchase such shares rests solely in our discretion.

Other than as described above, to the best of our knowledge, none of our directors or executive officers has a substantial interest, direct or indirect, by security holdings or otherwise in the Private Placement. Other than as set forth above, we are not aware of any relationships between ECP, the Company or any of our executive officers or directors.

Background

In August 2007, we engaged Credit Suisse Securities (USA) LLC (Credit Suisse) to act as our exclusive financial advisor and placement agent for equity and debt financings associated with the Project. After a review of financing alternatives, we determined to finance the Project through equity and debt to be issued by a new joint venture formed to hold the Project. The joint venture would be owned approximately 50% by us and 50% by a third-party partner. In September 2007 we initiated a marketing process to identify potential partners for the Project. We sought a strategic partner who would be able to commit approximately $60 to $70 million to the Project through the purchase of up to 50% of the equity interest in the joint venture and who could provide other strategic benefits to the Project. From October 2 to November 28, 2007, Credit Suisse approached approximately 35 potential strategic partners, to which it sent non-disclosure agreements and a summary of the investment opportunity. The potential partners were identified based on their knowledge of the Project, access to capital, ability to transact, and strategic fit with the Project including potential users of AC and suppliers of fuel for the Project. Twelve companies returned executed non-disclosure agreements and were provided with a confidential information memorandum describing the Project. The potential investors were given a deadline of December 19, 2007 to submit indicative indications of interest.

We received indications of interest from five interested parties in December 2007, and our Board of Directors discussed them on a teleconference in mid-January 2008. After the Board of Directors meeting we decided to continue discussions with all but one of the interested parties, Credit Suisse circulated our proposed term sheet along with detailed final bid instructions to the four interested bidders remaining in the process. Management presentations were also offered to the bidders in Denver in February 2008. The four parties were also given access to an electronic data room. By the deadline of February 13, 2008, we received firm proposals from three of the bidders. Credit Suisse prepared a bid summary for ou