

LIME ENERGY CO.
Form PRER14C
August 06, 2015
[Table of Contents](#)

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

SCHEDULE 14C INFORMATION

(Amendment No. 1)

Information Statement Pursuant to Section 14(c) of the Securities Exchange Act of 1934

Check the appropriate box:

- | | |
|-------------------------------------|---|
| <input checked="" type="checkbox"/> | Preliminary Information Statement |
| <input type="checkbox"/> | Confidential, for Use of the Commission Only (as permitted by Rule 14c-5(d)(2)) |
| <input type="checkbox"/> | Definitive Information Statement |

LIME ENERGY CO.

(Name of Registrant as Specified In Its Charter)

Payment of Filing Fee (Check the appropriate box):

- | | |
|-------------------------------------|---|
| <input checked="" type="checkbox"/> | No fee required |
| <input type="checkbox"/> | Fee computed on table below per Exchange Act Rules 14c-5(g) 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: |
| <input type="checkbox"/> | Fee paid previously with preliminary materials. |
| <input type="checkbox"/> | 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: |
-

Table of Contents

**NOTICE OF STOCKHOLDER ACTION BY WRITTEN CONSENT
AND INFORMATION STATEMENT**

**WE ARE NOT ASKING YOU FOR A PROXY AND YOU ARE
REQUESTED NOT TO SEND US A PROXY.**

To our fellow Stockholders:

Notice is hereby given that holders of a majority of the voting power represented by the issued and outstanding shares of common stock and Series C Convertible Preferred Stock of Lime Energy Co., a Delaware corporation (which we refer to in this notice as the Company, we, us, or our), have ratified and approved by written consent (the Written Consent) the Company's potential issuance of common stock upon conversion of a convertible note (the Note) issued to Bison Capital Partners IV, L.P., a Delaware limited partnership (Bison), under that certain Note Purchase Agreement (the Note Purchase Agreement), dated March 24, 2015, between the Company and Bison, in order to finance, in part, the consideration for the Company's acquisition of EnerPath International Holding Company, a Delaware corporation (the EnerPath Acquisition).

The Company's entry into the Note Purchase Agreement and the EnerPath Acquisition, both of which are discussed in the accompanying information statement, did not require approval of our stockholders. However, under the Note, the number of shares issuable upon conversion of the Note is subject to a 19.99% cap that must remain in place until our stockholders approve its removal. The cap and the conditions to its removal were included in the Note in order to conform to applicable rules of the NASDAQ Stock Market LLC. The Written Consent was executed on March 24, 2015, but the removal of the cap will not become effective until a date that is at least 20 calendar days after the mailing of the accompanying information statement.

The Written Consent has already been delivered and we are not soliciting your vote or consent. This notice and the accompanying information statement constitute notice to you from the Company of the approval by written consent, as contemplated by Section 228(e) of the Delaware General Corporation Law, of certain corporate actions by less than the unanimous written consent of our stockholders.

The information statement is first being mailed to our stockholders on or about August , 2015.

**THIS IS NOT A NOTICE OF A MEETING OF STOCKHOLDERS AND
NO STOCKHOLDER MEETING WILL BE HELD TO CONSIDER THIS MATTER.**

Edgar Filing: LIME ENERGY CO. - Form PRER14C

By Order of the Board of Directors,

Mary Colleen Brennan
Secretary

Woodbridge, New Jersey
August , 2015

Table of Contents

TABLE OF CONTENTS

	Page
<u>INTRODUCTION</u>	1
<u>SUMMARY TERM SHEET OF THE MERGER</u>	2
<u>THE MERGER</u>	4
<u>The Parties to the Merger</u>	4
<u>The Merger</u>	5
<u>The Merger Consideration</u>	5
<u>Background to the Merger</u>	5
<u>Approval by the Board of Directors of the Company; Reasons for the Merger</u>	7
<u>Approval by the Stockholders</u>	7
<u>Regulatory Approvals</u>	8
<u>Funding of the Merger</u>	8
<u>Accounting Treatment of the Merger</u>	8
<u>Certain U.S. Federal Income Tax Consequences of the Merger</u>	8
<u>THE MERGER AGREEMENT</u>	10
<u>Conditions to the Merger</u>	10
<u>Representations and Warranties; Indemnification</u>	10
<u>Employment Matters</u>	12
<u>THE ISSUANCE OF SECURITIES</u>	13
<u>SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT</u>	15
<u>Changes in Control</u>	17
<u>No Dissenters' Right of Appraisal</u>	17
<u>ENERPATH AUDITED FINANCIAL STATEMENTS</u>	18
<u>INDEPENDENT ACCOUNTANTS' AUDIT REPORT</u>	19
<u>Combined Balance Sheet as of December 31, 2014 and 2013</u>	21
<u>Combined Statement of Operations for the Years Ended December 31, 2014 and 2013</u>	22
<u>Combined Statement of Changes in Retained Earnings for the Years Ended December 31, 2014 and 2013</u>	23
<u>Combined Statement of Cash Flows for the Years Ended December 31, 2014 and 2013</u>	24
<u>Notes to Financial Statements</u>	26
<u>UNAUDITED PRO FORMA CONDENSED CONSOLIDATED COMBINED FINANCIAL INFORMATION</u>	32
<u>Unaudited Pro Forma Condensed Consolidated Combined Statement of Operations</u>	33
<u>Notes to Unaudited Pro Forma Condensed Consolidated Combined Financial Information</u>	35
<u>MARKET PRICE AND DIVIDEND INFORMATION</u>	37
<u>ENERPATH MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS</u>	38
<u>Overview</u>	38
<u>Results of Operations - Years Ended December 31, 2014 and 2013</u>	40
<u>Liquidity and Capital Resources - Years Ended December 31, 2014 and 2013</u>	41
<u>FORWARD-LOOKING STATEMENTS AND INFORMATION</u>	44
<u>WHERE YOU CAN FIND MORE INFORMATION</u>	44
<u>DELIVERY OF DOCUMENTS TO STOCKHOLDERS SHARING AN ADDRESS</u>	44
<u>ANNUAL REPORT ON FORM 10-K, INCORPORATION BY REFERENCE, AND ADDITIONAL INFORMATION</u>	44
<u>ANNEX A MERGER AGREEMENT</u>	46

Table of Contents

LIME ENERGY CO.

3 Convery Blvd., Suite 600

Woodbridge, New Jersey 07095

INFORMATION STATEMENT

Pursuant to Section 14(c) of the Securities Exchange Act of 1934

THIS INFORMATION STATEMENT IS BEING SENT TO YOU FOR INFORMATIONAL PURPOSES ONLY AND NO VOTE OR OTHER ACTION OF THE COMPANY'S STOCKHOLDERS IS REQUIRED IN CONNECTION WITH THIS INFORMATION STATEMENT.

We Are Not Asking You for a Proxy and You are Requested Not to Send Us a Proxy.

INTRODUCTION

On March 24, 2015, Lime Energy Co., a Delaware corporation, which we refer to as the Company, Lime, we, us or our, and Bison Capital Partners IV, L.P., a Delaware limited partnership (Bison), entered into a Note Purchase Agreement (the Note Purchase Agreement), pursuant to which the Company issued a subordinated convertible note due March 24, 2020 (the Note) in the principal amount of \$11.75 million (the Note Issuance). The proceeds from the Note Issuance were used to finance the Company's acquisition of EnerPath International Holding Company, a Delaware corporation (EnerPath), which we refer to as the EnerPath Acquisition.

On the earlier of March 24, 2018 or a change of control of the Company, up to the original principal amount of the Note may, at the election of the Note holder, be converted into shares of our common stock, par value \$0.0001 per share (the Common Stock). However, the Note provides that no portion of the amount due under the Note may be converted into more than 19.99% of the outstanding Common Stock (the Conversion Cap) without the approval of our stockholders, as required by the rules of the NASDAQ Stock Market LLC (Nasdaq) on which our Common Stock is traded.

Pursuant to the requirements of Section 14(c) of the Securities Exchange Act of 1934 and Section 228(d) of the Delaware General Corporation Law (the DGCL), this Information Statement is being furnished to the stockholders of record as of March 24, 2015, in connection with the approval of the potential issuance of our Common Stock in excess of the Conversion Cap, which approval will not become effective until 20 calendar days after the date this Information Statement is first mailed to our stockholders (the Cap Removal Effective Date).

Except as to the removal of the Conversion Cap discussed above, no separate vote of our stockholders was required with respect to the Note Issuance or the EnerPath Acquisition, which was effected by way of a merger of EnerPath with a wholly-owned subsidiary of the Company as

Edgar Filing: LIME ENERGY CO. - Form PRER14C

further discussed in this Information Statement. On March 24, 2015, three of our stockholders (the Majority Stockholders) owning, together, 6,055,452 shares of Common Stock and 10,000 shares of our Series C Convertible Preferred Stock (the Series C Preferred Stock), or approximately 75% of our then outstanding voting securities, executed a written consent (the Written Consent) approving and adopting the potential issuance of our Common Stock in excess of the Conversion Cap, but only after the Cap Removal Effective Date. There are no rights of appraisal or similar rights of dissenters with respect to the Note Issuance or the EnerPath Acquisition.

This Information Statement is first being sent to stockholders on or about August , 2015. We will request brokerage houses, nominees, custodians, fiduciaries and other like parties to forward this Information Statement to the beneficial owners of the Common Stock held of record by them on March 24, 2015.

Table of Contents

SUMMARY TERM SHEET OF THE MERGER

On March 24, 2015, Lime Energy Co., a Delaware corporation, which we refer to as the *Company*, *Lime*, *we*, *us* or *our*, EIHC MergerSub, Inc., a Delaware corporation and a wholly-owned subsidiary of the Company, which we refer to as *Merger Sub*, EnerPath International Holding Company, a Delaware corporation, which we refer to as *EnerPath*, and all of the stockholders of EnerPath, including Janina Guthrie as the Stockholder Representative, entered into an Agreement and Plan of Merger, a copy of which is attached hereto as Annex A and which we refer to as the *Merger Agreement*, pursuant to which, among other things, EnerPath merged with and into Merger Sub, a transaction which we refer to as the *Merger*, with EnerPath surviving as a direct, wholly-owned subsidiary of the Company.

The following summary highlights selected information from this Information Statement and may not contain all of the information that is important to you. Accordingly, you should read carefully this entire Information Statement, including the annexes and documents incorporated by reference herein, as well as the other documents referred to in this Information Statement. Each item in this summary includes a page reference directing you to a more complete description of that item in this Information Statement. For information on how to obtain without charge the documents that are incorporated by reference into this Information Statement, please follow the instructions under *Where You Can Find More Information*.

The Parties to the Merger (page 4)

Lime Energy Co.

Lime is a provider of energy efficiency programs that enable utility clients to reach underserved markets and achieve energy reduction goals. The Company's principal executive offices are presently located at 3 Convery Blvd., Suite 600, Woodbridge, New Jersey 07095. Investors may contact the Company at (732) 791-5380.

EnerPath International Holding Company

EnerPath and its subsidiaries provide utility companies with comprehensive energy efficiency programs, which enable the utility companies to reduce the energy consumption of their utility customers and achieve overall energy reduction goals. Working on behalf of the utilities, EnerPath designs and implements turnkey demand-side-management programs (DSM Programs) for the utility companies' small- and mid-sized businesses and residential customers. EnerPath's principal place of business is at 1758 Orange Tree Lane, Redlands, California 92374, and its telephone number is (909) 335-1699.

Merger Sub

Edgar Filing: LIME ENERGY CO. - Form PRER14C

EIHC MergerSub, Inc. was formed as a wholly-owned subsidiary of Lime under the laws of the State of Delaware solely for the purpose of entering into the Merger Agreement and completing the Merger.

The Merger (page 5)

On March 24, 2015 (the Closing Date), the Company entered into the Merger Agreement with EnerPath, Merger Sub and the other parties thereto. Upon the terms and subject to the conditions of the Merger Agreement, at the effective time of the Merger:

- Merger Sub merged with and into EnerPath, with EnerPath continuing as the surviving entity.
- EnerPath became a wholly-owned subsidiary of the Company.

The Merger Consideration (page 5)

- The Company paid \$11 million in cash (the Purchase Price) for all of the outstanding stock of EnerPath.
- The Merger Agreement provided for an adjustment to the Purchase Price if EnerPath's tangible net worth (TNW) as of the closing was less than \$4,400,000 or more than \$4,900,000 (the TNW Range).

Table of Contents

- The parties to the Merger Agreement established escrow accounts equal to (i) \$250,000 to cover various claims relating to any post-closing adjustments in the event the final TNW was outside of the TNW Range, (ii) 10% of the Purchase Price to cover any post-closing indemnity obligations and (iii) \$75,000 to pay post-closing expenses of the stockholders' representative.
- Post-closing, the parties determined that the closing TNW (the Closing TNW) fell within the TNW Range, and the \$250,000 escrow was released to the stockholders' representative on June 25, 2015.

Approval of the Merger (page 7)

- The Board of Directors of the Company (the Board of Directors) unanimously approved the Merger on March 23, 2015. Under the DGCL, no stockholder approval was required for the Merger.
- EnerPath's board of directors and stockholders unanimously approved the Merger on March 23, 2015.

Reasons for the Merger (page 7)

The Board of Directors considered the following factors in determining that the Merger was in the best interests of the Company and its stockholders:

- the acquisition of EnerPath, a leading provider of software and technology solutions for utilities, would provide the Company with a West Coast presence;
- the EnerPath Acquisition would bring together the software and technology platform of EnerPath and the sales and project implementation strengths of the Company; and
- the EnerPath Acquisition would bring utilities a new platform for engaging commercial customers while delivering substantial, cost-effective energy efficiency solutions.

Certain U.S. Federal Income Tax Consequences of the Merger (page 8)

Edgar Filing: LIME ENERGY CO. - Form PRER14C

The payment of the Merger consideration in exchange for the stock of EnerPath was a fully taxable transaction, in which each former holder of EnerPath stock recognized taxable income equal to the difference between the tax basis of his or her surrendered stock and the Merger consideration received. For general informational purposes only, and not as a substitute for individual tax advice, certain general federal income tax consequences of the Merger to the former stockholders of EnerPath are described in Certain U.S. Federal Income Tax Consequences of the Merger below. Each former stockholder of EnerPath should consult his or her own tax advisor with respect to the tax consequences of the Merger applicable to his or her own particular circumstances.

Funding of the Merger (page 8)

The Merger was an all-cash transaction. On March 24, 2015, the Company entered into a Note Purchase Agreement with Bison and received \$11,750,000 in cash proceeds to finance the Merger consideration and to pay fees and expenses incurred in connection therewith (including certain fees and expenses incurred by Bison in connection with the Note Purchase Agreement).

Employment Matters (page 12)

In connection with the closing of the EnerPath Acquisition, two executives of EnerPath, Stephen Guthrie and Steven Meyers, entered into employment and non-competition agreements with Lime.

Table of Contents

THE MERGER

This discussion of the Merger is qualified in its entirety by reference to the Merger Agreement, which is attached to this Information Statement as Annex A. You should read the entire Merger Agreement carefully.

The Parties to the Merger

Lime Energy Co.

Lime is a provider of energy efficiency programs that enable utility clients to reach underserved markets and achieve energy reduction goals. We focus on deploying energy solutions for small- and mid-sized commercial businesses that improve energy efficiency, reduce energy-related expenditures, and lessen the impact of energy use on the environment. Our small business energy solutions (SBES) programs provide a cost-effective avenue for our utility clients to offer products and services to a hard-to-reach customer base, while satisfying aggressive state-mandated energy reduction goals.

For additional information regarding the Company and its business, please see our filings with the Securities Exchange Commission (the "SEC") that are incorporated by reference into this Information Statement. See "Where You Can Find More Information" on page 46.

EnerPath International Holding Company

EnerPath, which has been in the energy efficiency business for over 20 years, delivers large-scale energy efficiency programs to utilities, cities and corporations in the United States and Canada.

EnerPath provides utilities with comprehensive energy efficiency programs that enable the utilities to reduce the energy consumption of their customers and achieve overall energy reduction goals. EnerPath delivers these energy efficiency programs on a performance basis where it is only paid for realized energy efficiency savings. Working on behalf of the utilities, EnerPath designs and implements DSM Programs for the utilities' customers (mainly small- and mid-sized businesses and residential customers) in order to deliver energy solutions that achieve improvements in energy efficiency and customer satisfaction. In designing a DSM Program, EnerPath works with the utility to understand its needs and constraints and configure the program to best achieve the utility's goals. Implementing a DSM Program involves contacting, on behalf of the utility, potential customers using customer lists and other marketing tools; performing energy audits; structuring and selling projects pursuant to program parameters; procuring equipment; installing energy efficiency measures through subcontractors; arranging financing as needed; and conducting completed project quality inspections and customer surveys.

Edgar Filing: LIME ENERGY CO. - Form PRER14C

EnerPath executes its programs through its proprietary EnerWorks software, which is a scalable, real-time delivery platform that greatly simplifies and streamlines the procedures involved in implementing a high-volume DSM Program. The multi-platform, multi-language system provides tools for field representatives, program managers, and utility customers that maximize the effectiveness of DSM Programs through improved customer participation and program management. The software enables real-time energy audits and engineering calculations, instant document production, and real-time web-based reporting and program management; all while creating a full audit trail for environmental and regulatory purposes. The EnerWorks platform also provides EnerPath and the utilities with rich data resources to apply to the design of future projects and programs.

EnerPath currently delivers energy efficiency solutions to four of the 25 largest electric utilities in the United States. These solutions, which include energy-efficient lighting upgrades, mechanical (HVAC) upgrades, water conservation measures, building controls, refrigeration, pool pumps, building shell improvements, and appliance recycling, are designed to reduce energy costs and lessen the impact of energy consumption on the environment.

Merger Sub

EIHC MergerSub, Inc. was formed as a wholly-owned subsidiary of Lime under the laws of the State of Delaware solely for the purpose of entering into the Merger Agreement and completing the Merger.

Table of Contents

The Merger

On March 24, 2015, the Company entered into the Merger Agreement, pursuant to which Merger Sub merged with and into EnerPath, with EnerPath continuing as the surviving entity and becoming a wholly-owned subsidiary of the Company.

The Merger Consideration

General

The total consideration paid by the Company to EnerPath's stockholders in connection with the Merger consisted of \$11 million in cash, of which, pursuant to an Escrow Agreement executed by the parties at the closing of the EnerPath Acquisition (the Closing), (i) \$629,387.38 (10% of the Purchase Price) was placed in escrow to cover various claims related to any post-closing indemnity obligations, (ii) \$250,000 was placed in escrow to cover any post-closing adjustments to the Purchase Price (the Purchase Price Escrow Amount), as described below, and (iii) \$75,000 was placed in escrow to pay post-closing expenses of the stockholders' representative (the Stockholder Representative Expense Amount). As discussed below, the Purchase Price was subject to adjustment based upon the TNW target, and was allocated among EnerPath's stockholders, certain holders of EnerPath's outstanding indebtedness, and certain other obligations.

Working Capital Adjustment

The Purchase Price was subject to an adjustment at the Closing if EnerPath's estimated TNW as of the Closing fell outside the TNW Range. The preliminary calculation of the estimated TNW at Closing was determined to be within the TNW Range. The calculation of the final TNW was to occur within 90 days following the Closing. On June 25, 2015, the parties agreed to a final calculation of the TNW and concurred that the Closing TNW was within the TNW Range; accordingly, the Purchase Price Escrow Amount was released to the stockholders' representative.

In addition, on June 25, 2015, the Stockholder Representative Expense Amount was released to the stockholders' representative.

Background to the Merger

In the Fall of 2013, EnerPath engaged the services of an investment banking firm, FMI Capital Advisors (FMI), for purposes of soliciting potential buyers who might be interested in acquiring EnerPath. Prior to that time, neither the Company, EnerPath, nor any of their respective affiliates or subsidiaries had engaged in any prior communications or transactions. In February 2014, the Company reached out to EnerPath outside the FMI process and expressed interest in acquiring EnerPath because it believed the EnerPath Acquisition would enhance the Company's energy efficiency programs business. In particular, the Company anticipated that EnerPath's enterprise software would facilitate cost-effective delivery of energy services to a broader range of commercial and residential utility customers than those serviced by the Company.

at that time. EnerPath also had a geographic presence complementary to that of Lime.

On July 2, 2014, the Company and EnerPath entered into a Confidentiality Agreement, and FMI delivered to the Company a Confidential Information Memorandum describing EnerPath's organizational structure, business, operations, and financial information. Immediately following the execution of the Confidentiality Agreement, and continuing for several months thereafter, the Company conducted its operational and financial due diligence on EnerPath, which included conversations with EnerPath principals Stephen Guthrie, Janina Guthrie, and Steven Meyers.

Concurrently with the ongoing due diligence investigation of EnerPath, in the Fall of 2014, the Company initiated discussions with Bison about Bison making a possible capital investment in the Company. Bison is an investment firm that makes growth capital investments in middle-market companies for expansion, acquisitions and balance sheet recapitalizations.

Table of Contents

On November 14, 2014, the Company submitted an indication of interest (the "IOI") to EnerPath offering to acquire EnerPath for a total purchase price of \$16 million, consisting of (i) a cash payment of \$8 million (net of EnerPath's outstanding indebtedness and transaction fees, which were estimated to be \$3 million), and (ii) the issuance of 2,666,667 shares of the Company's Common Stock (valued at \$3.00 per share). The IOI anticipated the retention of Stephen Guthrie, Steven Meyers and certain other members of EnerPath's management, and the entering into of mutually satisfactory employment agreements with Messrs. Guthrie and Meyers. The IOI also required EnerPath to agree to a six-month exclusivity period during which EnerPath would not engage in any discussions or negotiations with any other party regarding a possible acquisition of EnerPath.

In response to the IOI, EnerPath asked for, and the Company provided, clarification on a number of points related to the IOI, including (i) the Company's capital structure; (ii) the Company's sources of acquisition financing and working capital; (iii) any transfer restrictions that would be imposed upon, and any registration rights that would be made available to, former EnerPath stockholders following the EnerPath Acquisition; (iv) any contractual rights Bison would have in connection with any possible investment by Bison in the Company; and (v) any necessary approvals that would have to be obtained by the Company in order to consummate a transaction.

On November 23, 2014, EnerPath, through FMI, proposed the following terms (the "EnerPath Response"): (i) a cash payment of \$9 million (net of EnerPath's outstanding indebtedness and transaction fees); (ii) the issuance of 2,900,000 shares of the Company's Common Stock (valued at \$3.00 per share); (iii) an adjustment, upward or downward, in the cash payable at Closing, based upon the TNW of EnerPath at Closing equaling \$5 million; (iv) no escrow or holdback to cover indemnity claims; and (v) an exclusivity period of 60 days.

On November 26, 2014, the Company sent a counterproposal to EnerPath, as follows: (i) a cash payment of \$8.75 million (versus \$9 million); (ii) the issuance of 2,666,667 shares (versus 2,900,000 shares) of the Company's Common Stock; and (iii) an escrow in an amount equal to 10% of the Purchase Price as a reserve to cover indemnity claims for a period of one year following the Closing.

Thereafter, between December 1 and December 3, 2014, the Company and FMI continued to negotiate certain provisions of the IOI, including (i) a potential cap on indemnity claims, and (ii) the TNW target.

As the Company continued its due diligence review of EnerPath, it also finalized negotiations with Bison regarding an equity infusion by Bison into the Company. On December 23, 2014, the Company issued to Bison 10,000 shares of Series C Preferred Stock for \$10 million (the "Series C Preferred Stock Purchase"), which amount was to be used to fund the Company's working capital needs. Following the Series C Preferred Stock Purchase, the Company pursued various alternatives to finance the cash portion of the proposed purchase price for EnerPath, including a potential issuance of convertible debt to Bison.

On January 28, 2015, the Company received a draft term sheet from Bison containing a proposal for Bison to purchase \$12.25 million in notes convertible into shares of the Company's Common Stock. Following a series of discussions on the terms of the financing transaction, the Company and Bison signed a letter of intent on February 24, 2015, and the parties proceeded toward negotiation of definitive documentation relating to the Note Issuance. For additional information, see the discussion of "The Issuance of Securities" beginning on page 13. In the meantime, the Company sent EnerPath a revised offer as follows: the Company would acquire EnerPath for a total purchase price of \$12 million, which would include (i) a cash payment of \$9 million (net of EnerPath's outstanding indebtedness and transaction fees, which were estimated to be \$3 million); (ii) a potential earn-out of up to \$3 million payable in 50% increments on January 1, 2016 and 2017 based upon the achievement of certain revenue targets; and (iii) a TNW target of \$5.65 million with no adjustment to the Purchase Price, either up or down, so long as any variance in the final TNW target was \$250,000 or less. Following further negotiations, EnerPath agreed to accept a total purchase price of \$11 million in cash. Thereafter, the Company and EnerPath, through their respective counsel, continued to negotiate and exchange drafts of the

Edgar Filing: LIME ENERGY CO. - Form PRER14C

Merger Agreement and employment agreements for each of Mr. Guthrie and Mr. Meyers.

Prior to the Closing of the Merger, Stephen Guthrie and Janina Guthrie, majority stockholders and principal executive officers of EnerPath, executed and delivered to the Company a voting agreement in which they agreed to vote all of their shares of EnerPath common stock in favor of the Merger Agreement.

Table of Contents

Approval by the Board of Directors of the Company; Reasons for the Merger

On March 23, 2015, the Board of Directors approved (i) unanimously, the terms and execution of the Merger Agreement and the transactions and documents contemplated by the Merger Agreement, and (ii) by a majority, the terms and conditions of the Note Purchase Agreement and the Note Issuance (Andreas Hildebrand and Peter Macdonald, two directors affiliated with Bison, recused themselves from the Board of Directors consideration of the Note Issuance).

In approving the Merger, the Board of Directors considered a variety of factors weighing in favor of or relevant to the Merger including, without limitation, those described below:

- the acquisition of EnerPath, a leading provider of software and technology solutions for utilities, would provide the Company with a West Coast presence;
- EnerPath's enterprise software, EnerWorks, would enable the Company to expand cost-effective delivery of energy services to a broader range of commercial and residential utility customers;
- the EnerPath Acquisition would bring together the software and technology platform of EnerPath and the sales and project implementation strengths of the Company, which would significantly enhance the Company's energy efficiency programs; and
- the EnerPath Acquisition would bring utilities a new platform for engaging commercial customers while delivering substantial, cost-effective energy efficiency solutions.

EnerPath's Reasons for the Merger

EnerPath's board of directors and management considered a variety of possible alternatives to the Merger, including other acquisition or combination possibilities for EnerPath and the continuation of EnerPath as an independent entity. EnerPath's board of directors and management considered the range of possible benefits to EnerPath's stockholders, and the perceived risks, of each such alternative as well as the anticipated cost, timing and likelihood of success of each such alternative. Based on the foregoing considerations and other matters deemed relevant by EnerPath's board of directors and management, EnerPath's board of directors determined that entering into the Merger Agreement and consummating the Merger were in the best interests of EnerPath and its stockholders for a variety of business reasons including, but not limited to, the following:

- The EnerPath Acquisition would enable the EnerPath team to join forces with Lime to create an energy services company platform that is well positioned to respond to the needs of utility commercial customers and channel partners.
- Lime's interest in diversification with products, services and business lines aligned well with EnerPath.
- EnerPath felt a larger organization could invest in better infrastructure such as software, data analysis, and shared services to create a more sophisticated service offering to utility clients.
- Lime's existing utility clients complemented EnerPath's very well and provided strong geographic continuity across which to leverage supply chain and sales resources.
- EnerPath felt Lime's culture fit well with EnerPath's.

Approval by the Stockholders

Under Section 228 of the DGCL, unless prohibited in a corporation's certificate of incorporation, any action required or permitted by the DGCL to be taken at an annual or special meeting of stockholders of a Delaware corporation may be taken without a meeting, without prior notice, and without a vote if a consent in writing, setting forth the action so taken, is signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted. The Company's By-Laws allow for, and the Certificate of Incorporation does not prohibit, action by stockholders by written consent, without a meeting and without prior notice.

Table of Contents

Under the DGCL, approval of the Merger did not require a vote by Company stockholders, because the Merger was between a wholly-owned subsidiary of the Company and EnerPath. However, the Note Purchase Agreement required stockholder approval in order to remove the Conversion Cap in accordance with certain Nasdaq rules. For additional information, see the discussion under The Issuance of Securities beginning on page 13.

The stockholders of EnerPath unanimously approved the EnerPath Acquisition by written consent on March 23, 2015.

Regulatory Approvals

No regulatory approvals were required to consummate the Merger.

Funding of the Merger

On March 24, 2015, the Company and Bison entered into the Note Purchase Agreement. Pursuant to the Note Purchase Agreement, the Company issued a Note due March 24, 2020 in the principal amount of \$11,750,000. The proceeds from the Note Issuance were used to finance the EnerPath Acquisition and to pay fees and expenses incurred in connection therewith (including certain fees and expenses incurred by Bison in connection with the Note Purchase Agreement). For more information on the Note Issuance see The Issuance of Securities.

Accounting Treatment of the Merger

The EnerPath Acquisition will be accounted for as a purchase. Therefore, beginning on the Closing Date, the results of operations of EnerPath will be included in our consolidated results of operations. For purposes of preparing consolidated financial statements, the Purchase Price, including the costs associated with the EnerPath Acquisition at the date of completion, will be allocated to the assets and liabilities of EnerPath based on their fair market values, with the excess allocated to goodwill, which is required to be tested for impairment at least annually.

Certain U.S. Federal Income Tax Consequences of the Merger

The following is a summary of certain material U.S. federal income tax consequences of the Merger to the former stockholders of EnerPath. This summary is based on the Internal Revenue Code of 1986, as amended (the Code), final, proposed, and temporary regulations issued thereunder, administrative rulings and pronouncements issued by the Internal Revenue Service (IRS) and court decisions, all as now in effect. All of these authorities are subject to change, possibly with retroactive effect so as to result in tax consequences different from those described below. We have not sought (and do not intend to seek) any ruling from the IRS with respect to statements made and conclusions reached in this discussion, and the statements and conclusions in this Information Statement are not binding on the IRS or any court. This summary is provided for general information purposes only and is not intended as a substitute for individual tax advice. We can provide no assurances that the tax

Edgar Filing: LIME ENERGY CO. - Form PRER14C

consequences described below will not be challenged by the IRS or will be sustained by a court if so challenged. The discussion applies only to the former stockholders of EnerPath who held their stock as capital assets, and does not address the tax consequences that may be relevant to particular former holders subject to special treatment under certain federal income tax laws, such as persons subject to the alternative minimum tax, non-U.S. persons or U.S. expatriates. In addition, this summary does not discuss the state, local, foreign or non-income tax consequences of the Merger to the former stockholders of EnerPath. Former stockholders of EnerPath should consult their own tax advisors regarding the tax consequences of the Merger to them.

The payment of the Merger consideration in exchange for the stock of EnerPath was a fully taxable transaction, in which each former holder of EnerPath stock recognized taxable income equal to the difference between the tax basis of his or her surrendered stock and the Merger consideration received. In general, such income is long-term capital gain if such holder's holding period for his or her EnerPath stock is greater than one year as of the date of the closing. Under current law, holders are taxed on long-term capital gains at a maximum 20% U.S. federal rate. Short-term capital gains are taxed at ordinary income rates. Under current law, the highest marginal ordinary income tax rate for individuals is 39.6%. In addition, a 3.8% Medicare contribution tax will generally apply to all or a portion of the net investment income of a holder that is an individual, that is not a nonresident alien for

Table of Contents

federal income tax purposes, and that has adjusted gross income (subject to certain adjustments) that exceeds a threshold amount (\$250,000 if married filing jointly or if considered a surviving spouse for federal income tax purposes, \$125,000 if married filing separately, and \$200,000 in other cases).

At the Closing, the Company placed a certain portion of the Merger consideration into an escrow account to fund post-closing indemnification obligations, cover certain post-closing adjustments and to pay post-closing expenses of the stockholders' representative. Because some of the amounts held in escrow will, if distributed, be distributed to the former stockholders of EnerPath after the taxable year in which the Closing occurs, a former holder of EnerPath stock may apply the installment method of reporting to the gain recognized with respect to the former holder's disposition of his or her stock. Under the installment method, former holders should report gain in 2015 based upon such former holder's portion of the Merger consideration received at the Closing, any additional amounts received with respect to post-closing adjustments, and such former holder's share of the stockholders' representative expenses that are used to pay Closing costs in 2015. In determining the basis of the former holder's EnerPath stock that is taken into account in determining gain in 2015 and later, the holder's adjusted basis (including selling expenses) is allocated pro rata between payments received in 2015 and payments from the escrow account that will potentially be received in later taxable years. The remaining amount of gain would be included in gross income in the years in which payments on distributions from the escrow account, if any, are received.

It is possible that a former stockholder of EnerPath may be liable for interest on the amount of tax that is deferred under the installment method until after 2015. No interest, however, will be due if the total amount of installment obligations of such former holder (and related persons) is \$5 million or less (taking into account the former holder's share of the escrow account and other unrelated installment obligations) at the end of the applicable year.

Former holders may choose to elect out of the installment method treatment and to recognize the entire gain immediately. Such an election is made by reporting the gain in full on a timely-filed (including extensions) 2015 return. If an election not to apply the installment method is made, the former holder must include in the amount realized for the sale such former holder's portion of the escrow.

Because the payments to the holders, if any, from disbursements from the escrow do not provide for stated interest, each such payment in distribution from the escrow will be treated as a partial payment of interest and a partial payment of principal for tax purposes. This treatment will apply regardless of whether the former holder elects to not use the installment method. The amount of interest is determined on the federal short-term rate for the month that includes the closing (or the federal short-term rates for either of the previous two months if lower).

Table of Contents

THE MERGER AGREEMENT

This section describes the material terms of the Merger Agreement and certain other agreements contemplated by the Merger Agreement. The description of the Merger Agreement, in this section and elsewhere in this Information Statement, is qualified in its entirety by reference to the complete text of the Merger Agreement, a copy of which is attached as Annex A and is incorporated by reference into this Information Statement. We encourage you to read the Merger Agreement carefully and in its entirety.

Conditions to the Merger

Completion of the Merger was subject to a number of conditions, including:

- the absence of legal restraints to completion of the Merger;
- the receipt of all necessary third-party consents, authorizations and approvals;
- the absence of any material adverse changes in the business of EnerPath;
- the delivery of all closing deliverables and ancillary agreements contemplated by the Merger Agreement, including an executed escrow agreement and executed non-competition agreements and employment agreements with Stephen Guthrie and Steven Meyers; and
- the receipt of all necessary corporate approvals, including approvals of the Board of Directors of the Company, the Board of Directors of EnerPath, and the unanimous consent of EnerPath's stockholders.