

Power REIT
Form 10-K
March 28, 2012

POWER REIT

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D. C. 20549

FORM 10-K

X Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934
for the fiscal year ended December 31, 2011

Commission File Number: 333-177802

Power REIT

(Exact name of registrant as specified in its charter)

Maryland

45-3116572

(State of organization)

(I.R.S. Employer Identification No.)

55 Edison Avenue, West Babylon, NY

11704

(Address of principal executive offices)

(Zip Code)

Registrant's telephone number, including area code (212) 750-0371

Securities Registered Pursuant to Section 12(b) of the Act:

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Title of each class: Common Shares of beneficial interest, with \$0.001 par value

Name of each exchange on which registered: American Stock Exchange

Securities Registered Pursuant to Section 12(g) of the Act: None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act.
Yes No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act Yes No

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirement for the past 90 days: Yes
No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See definition of "large accelerated filer, accelerated filer, and smaller reporting company" in Rule 12b-2 of the Exchange Act.

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

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act).

Yes No

The aggregate market value of the voting stock held by non-affiliates of the Registrant as of June 30, 2011, the Registrant's most recently completed second fiscal quarter, was approximately \$17,931,000 based upon the closing price on June 30, 2011. For purposes of this calculation, shares held by persons who hold more than 5% of the outstanding shares and shares held by executive officers and trustees have been excluded. This is not a determination of affiliate or executive officer status for any other purpose.

At March 1, 2012, there were 1,623,250 outstanding shares of beneficial interest.

Notices and communications from the Securities and Exchange Commission for the registrant may be sent to David H. Lesser, CEO and Chairman of the Board of Trustees, Power REIT, c/o Richard Baumann, Morrison & Cohen LLP, 909 Third Avenue, New York, New York 10022.

DOCUMENTS INCORPORATED BY REFERENCE

Part I and Part II of this annual report on Form 10-K incorporate by reference Registrant's prospectus filed with the Securities and Exchange Commission pursuant to Rule 424(b)(3) under the Securities Act as of December 1, 2011. Part III and Part IV of this annual report on Form 10-K incorporate by reference Registrant's definitive proxy statement to be filed with the Securities and Exchange Commission within 120 days after December 31, 2011.

PART I

Item 1 BUSINESS

Power REIT (the “Registrant”, the “Company” or “we”) is a Maryland real-estate investment trust focused on the development, acquisition and management of transportation and energy infrastructure. The Registrant was formed through a reorganization and reverse merger of the Pittsburgh & West Virginia Railroad (“P&WV”) on December 2, 2011. P&WV survives the reorganization as a wholly-owned subsidiary of the Registrant.

Registrant has embarked on a business plan to expand its current operations through the development and acquisition of additional income generating transportation and energy infrastructure assets. Its current operations are comprised of its ownership of P&WV. P&WV owns a railroad that it has leased to Norfolk Southern Corporation (“NSC”) under a 99-year lease with annual fixed rent of \$915,000 per year in cash, which amount is fixed and unvarying for the life of the lease, including any renewal periods.

P&WV has historically elected to be treated as a real-estate investment trust and Power REIT intends to elect to be treated as a real-estate investment trust. REITs are exempt from federal income tax, to the extent that a REIT’s income is distributed to its shareholders. However, dividends paid by REITs are generally taxable as ordinary income to its shareholders. In order to maintain Registrant’s REIT qualification, at least 90% of its ordinary taxable income must be distributed to shareholders.

Power REIT currently has no employees. Business development, accounting and other general administrative services are currently provided through a contract with a company affiliated with the Vice President, Secretary and Treasurer. As Power REIT’s business grows, Power REIT will re-evaluate its staffing needs and general and administrative overhead. Transfer agent services are provided by a third-party shareholder services company.

Item 1A RISK FACTORS

Information in response to this item is incorporated by reference to the Registrant's prospectus filed with the Securities and Exchange Commission (the “Commission”) pursuant to Rule 424(b)(3) under the Securities Act as of December 1, 2011.

Item 1B UNRESOLVED STAFF COMMENTS

None

Item 2 PROPERTIES

Registrant's property consists of its wholly-owned subsidiary, P&WV, which leases the entirety of its railroad property to NSC. The railroad consists of 112 miles of main line road extending from Pittsburgh Junction, Ohio, through parts of West Virginia, to Connellsville, Pennsylvania and approximately 20 miles of branch lines and real estate used in the operation of the railroad.

P&WV was organized in Pennsylvania in 1967 as a real-estate investment trust for the purpose of acquiring the business and property of a small leased railroad. The railroad was leased in 1964 to Norfolk and Western Railway Company, now known as Norfolk Southern Corporation ("NSC"), by P&WV's predecessor company for 99 years with the right of unlimited renewal for additional 99 year periods under the same terms and conditions, including annual rent payments.

The more significant provisions of the lease applicable to P&WV's leased railroad are:

- Annual Base Cash Rent. P&WV currently receives annual base cash rent of \$915,000 per year in cash, which amount is fixed and unvarying for the life of the lease, including any renewal periods.
- Triple Net Lease. NSC at its own expense and without deduction from the rent, will maintain, manage and operate the leased property and make such improvements thereto as it considers desirable. Such part of the leased property as is, in the opinion of NSC, not necessary, may be disposed of. The proceeds of dispositions, at NSC's option may be paid to NSC and treated as an indebtedness owed to P&WV by NSC.
- NSC Liability owed to P&WV. P&WV is owed an indeterminate amount from NSC; the amount, maturity and character of this indebtedness is currently in dispute (See Item 3, Legal Proceedings). According to the books and records maintained by NSC, the principal balance owed to P&WV is \$16,236,809 as of 12/31/2011. This indebtedness owed to P&WV by NSC has historically been reported as a "settlement account." This indebtedness amount is credited for sales transactions, whereby NSC sells portions of P&WV's real-estate, and P&WV's additional non-cash rent, which is defined in the lease as depreciation expenses and other items. Due to the historical indeterminate settlement date of this liability, for financial reporting purposes, the account balance and increase/decreases to the liability are not reported on the balance sheet or income statements. This accounting method has been applied to the NSC liability owed to P&WV since 1982; and
- Indemnification. Under the terms of the lease, NSC indemnifies P&WV for taxes, charges, damages and other losses imposed on it by virtue of its operation of the lease.

Registrant's revenue is highly concentrated with 100% of its consolidated revenues coming from its wholly-owned subsidiary, P&WV whose only sources of revenue are lease payments made by NSC under the lease. NSC is a Class I railroad and has approximately \$9.9 billion of stockholders' equity as of December 31, 2011 and earned \$1.9 billion of net income during fiscal year 2011 as reported in its Form 10-K filed with the SEC on February 15, 2012.

Item 3 LEGAL PROCEEDINGS

In December 2010, NSC approached P&WV regarding the potential sale of a portion of the leased property that NSC considers excess to its requirements. In response, P&WV proceeded to evaluate the proposed transaction and sought reimbursement of legal expenses related thereto pursuant to the lease, which NSC refused to pay.

On December 19, 2011, NSC (together with its sub-lessee, Wheeling & Lake Erie Railway Company, "Plaintiffs") commenced an action against Power REIT and P&WV ("Defendants") in the United States District Court for the Western District of Pennsylvania, seeking a declaratory judgment that, among other things, the lease is not in default as a result of NSC refusal to pay reimbursable amounts to P&WV and that Plaintiffs are not required to pay Defendants' legal expenses related to the sale of Defendant's property by Plaintiffs.

On February 15, 2012, Power REIT filed a motion to dismiss the action and P&WV filed an Answer, Affirmative Defenses and Counterclaims ("Answer"). In its Answer, P&WV seeks declaratory judgment that the failure to reimburse its legal expenses and other actions constitute defaults under the Lease and that certain amounts, including what NSC calls the "settlement account," are indebtedness owed by NSC to P&WV which are immediately due and payable.

There can be no assurance that P&WV will prevail with its defenses or counterclaims or that Power REIT will prevail with its motion to dismiss. P&WV believes its primary exposure in the litigation is to its ongoing legal expense, which it believes is reimbursable by NSC pursuant to the lease. There can be no assurance that P&WV will prevail with any claims for reimbursement of its expenses. By initiating the litigation, NSC is seeking to preserve the lease and past practices related thereto. NSC has continued to make timely quarterly payments of the base cash rent (\$915,000 per annum).

Item 4 MINE SAFETY DISCLOSURES

Not Applicable

PART II**Item 5 MARKET FOR REGISTRANT'S COMMON EQUITY, RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES**

Registrant's shares are listed for trading on the American Stock Exchange under the symbol of "PW". At March 1, 2012, there were approximately 550 registered holders of registrant's common shares of beneficial interest.

Stock Market and Dividend information per common share:

2011 Quarters Ended	3/31	6/30	9/30	12/31
Sales price of traded shares				
High.....	\$13.43	\$12.50	\$12.99	\$15.37
Low	9.02	10.34	11.00	10.70
Dividends paid	0.10	0.10	0.10	0.10
2010 Quarters Ended	3/31	6/30	9/30	12/31
Sales price of traded shares				
High.....	\$11.40	\$11.51	\$13.00	\$11.97
Low	10.31	9.41	10.30	10.55
Dividends paid	0.12	0.12	0.13	0.13

February 29, 2012

Sales price of traded shares

High.....	\$ 10.21
Low.....	9.50

It is the Registrant's intention to distribute quarterly dividends. A quarterly dividend of \$.10 per share is payable March 30, 2012 to shareholders of record on March 19, 2012.

Item 6 SELECTED FINANCIAL DATA

The financial data below presents the condensed, consolidated financial statements of Power REIT and its wholly-owned subsidiary, Pittsburgh & West Virginia Railroad ("P&WV"), as if Power REIT had historically consolidated P&WV as a subsidiary.

(\$Thousands, except per share amounts)

	Year Ended December 31,				
	2011	2010	2009	2008	2007
Statement of Income					
Revenues	\$915	\$915	\$915	\$915	\$915
Expenses	278	151	165	145	135
Net Income	637	764	750	770	781
Balance Sheet Data					
Total Assets	\$10,135	\$9,199	\$9,190	\$9,195	\$9,196
Total Liabilities	10	--	--	--	--
Shareholder Equity	10,125	9,199	9,190	9,195	9,196
Per Share and Distribution Data					
Earnings Per Share	\$0.40	\$0.51	\$0.50	\$0.51	\$0.52
Cash Dividends Per Share	\$0.40	\$0.50	\$0.50	\$0.51	\$0.52

Item 7 MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

NOTE REGARDING FORWARD-LOOKING STATEMENTS

This Annual Report on Form 10-K includes forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. Forward-looking statements are those that predict or describe future events or trends and that do not relate solely to historical matters. You can generally identify forward-looking statements as statements containing the words "believe," "expect," "will," "anticipate," "intend," "estimate," "project," "plan," "assume" or other similar expressions, or negatives of those expressions, although not all forward-looking statements contain these identifying words. All statements contained in this report regarding our future strategy, future operations, projected financial position, estimated future revenues, projected costs, future prospects, the future of our industries and results that might be obtained by pursuing management's current or future plans and objectives are forward-looking statements.

You should not place undue reliance on any forward-looking statements because the matters they describe are subject to known and unknown risks, uncertainties and other unpredictable factors, many of which are beyond our control. Our forward-looking statements are based on the information currently available to us and speak only as of the date of the filing of this report. New risks and uncertainties arise from time to time, and it is impossible for us to predict these matters or how they may affect us. Over time, our actual results, performance or achievements will likely differ from the anticipated results, performance or achievements that are expressed or implied by our forward-looking statements, and such difference might be significant and materially adverse to our security holders.

MANAGEMENT DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION

Power REIT ("Registrant" or "Company") is seeking to create shareholder value by expanding its business plan and investment strategy to include investments in additional infrastructure assets consistent with maintaining its REIT status. Currently, the Company is pursuing opportunities in the energy and transportation sectors. The Company expects its broadened investment strategy should enable it to utilize its public REIT status and capitalize on the significant opportunities that exist to unlock and monetize real-estate embedded in infrastructure projects. The Company's business plan and infrastructure investment strategy is expected to build on its historical ownership of the real-estate assets of Pittsburgh & West Virginia Railroad ("P&WV"), which is currently triple-net leased to Norfolk Southern Corporation.

As a means to facilitate its broadened investment strategy, the Company completed a reorganization and reverse merger on December 2, 2011, whereby the Company established a more traditional REIT holding company structure and P&WV became a wholly-owned subsidiary of the Company. After the consummation of the reorganization, Power REIT was listed on the AMEX under ticker "PW" and P&WV has been re-organized as a special purpose subsidiary whose sole purpose is the operations and administration of its railroad property and the lease with NSC. Power REIT intends to acquire and finance additional transportation and energy infrastructure assets directly or through the formation of additional special purpose subsidiaries. The Company expects to complete its reorganization in calendar year 2012 by establishing an umbrella partnership real estate investment trust ("Power UPREIT") by contributing the shares of P&WV and its other assets, including any special purpose subsidiaries that have been formed, to Power UPREIT in exchange for Power UPREIT Operating Units. Power REIT intends to serve as the general partner of Power UPREIT.

The Company believes the "Power REIT" name is more reflective of its broadened business plan. Further, by conforming to REIT industry conventions for domicile and corporate structure, the Company believes it will have

greater flexibility in future acquisition and financing transactions such as by making available certain tax advantages to sellers of assets, lenders and investors.

Currently, the Company's sole income generating asset is its 100% ownership of P&WV. All of P&WV's railroad properties are leased to Norfolk Southern Corporation (NSC), for 99 years, with unlimited renewals at NSC's option on the same terms. The base cash rental is a fixed amount of \$915,000 per year, with no provision for change during the term of the lease and any renewal periods.

The Company's current cash outlays, other than dividend payments, are for general and administrative expenses, which include professional fees, consultants and director's fees, AMEX listing fees and auditing costs. Professional fees have increased primarily due to the costs of complying with the requirements of the Sarbanes-Oxley Act of 2002 and the Company's expanded business plan. Stock exchange fees and costs related to shareholder services have also increased. The leased properties are maintained entirely at NSC's expense. Net income available for distribution in 2011 and in 2010 was approximately \$637,000 and \$764,000, respectively. Compared to 2010, the Company had additional legal and consulting expenses in 2011 related to the reorganization and expanded business plan as well as significant legal costs related to a proxy contest last year by a small shareholder seeking control of the Registrant's board. The Company expects that expenses will continue to rise due to increased compliance costs and implementation of the Company's expanded business plan.

There can be no assurance that the Company will be successful in broadening its business. See Note Regarding Forward-Looking Statements and additional risk factors that are more fully disclosed in Registrant's prospectus filed with the SEC pursuant to Rule 424(b)(3) under the Securities Act as of December 1, 2011.

Item 7A QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Not applicable.

Item 8 FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

Quarterly financial data (in \$thousands, except per share amounts)

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		2011 Quarter Ended		
	3/31	6/30	9/30	12/31
Revenues	\$ 229	\$229	\$229	\$229
Net Income	169	127	174	168
Net Income Per Share	0.11	0.08	0.11	0.10

		2010 Quarter Ended		
	3/31	6/30	9/30	12/31
Revenues	\$ 229	\$229	\$229	\$229
Net Income	158	190	202	214
Net Income Per Share	0.10	0.13	0.13	0.14

Detailed financial statements of Registrant appear on pages F-3 through F-10 of this report. Per share data for the year is slightly different from the sum of four quarters due to rounding.

Item 9 CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE