

SECURITIES & EXCHANGE COMMISSION EDGAR FILING

Ocean Thermal Energy Corp

Form: S-8

Date Filed: 2017-10-03

Corporate Issuer CIK: 827099

FORM S-8

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

Ocean Thermal Energy Corporation

(Exact name of registrant as specified in its charter)

Nevada

(State or jurisdiction of incorporation or organization)

20-5081381

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

800 South Queen Street, Lancaster, PA 17603

(Address of Principal Executive Offices, including Zip Code)

Ocean Thermal Energy Corporation Consulting Agreement

(Full title of the plan)

Jeremy P. Feakins

(Name and address of agent for service)

(717) 715-0238

(Telephone number, including area code, of agent for service)

Copies of all communications to:

John P. Cleary, Esq.

Procopio, Cory, Hargreaves & Savitch LLP

12544 High Bluff Drive, Suite 300

San Diego, CA 92130

Telephone: (619) 515-3221

Facsimile: (619) 744-5459

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

Large accelerated filer ☐

Accelerated filer ☐

Non-accelerated filer ☐

Smaller reporting company ☒

Emerging growth company ☐

CALCULATION OF REGISTRATION FEE

Title of Securities To Be Registered	Amount To Be Registered⁽¹⁾	Proposed Maximum Offering Price Per Share	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee
Common Stock, \$0.001 par value ("Common Stock"), issuable under Ocean Thermal Energy Corporation Consulting Agreement	1,000,000	\$1.60 ⁽²⁾	\$1,600,000	\$199.20

(1) Pursuant to Rule 416, this registration statement also covers any additional shares of Registrant's Common Stock that become issuable respecting the securities identified in the above table by reason of any stock dividend, stock split, recapitalization, or other similar transaction effected without Registrant's receipt of consideration that results in an increase in the number of the outstanding shares of Registrant's Common Stock.

(2) Pursuant to Rule 457(h) of the Securities Act of 1933, the proposed maximum offering price per share for the purpose of calculating the registration fee related to the Consulting Agreement is \$1.75, the average of the high and low prices reported on the OTCQB Market for September 22, 2017.

INTRODUCTION

This Registration Statement on Form S-8 is filed by Ocean Thermal Energy Corporation (the "Company") relating to 1,000,000 shares of the Company's common stock, par value \$0.001 per share (the "Common Stock"), issuable under that certain Ocean Thermal Energy Corporation Consulting Agreement (the "Agreement").

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference

The following documents, as filed with the U.S. Securities and Exchange Commission (the "Commission") by Ocean Thermal Energy Corporation, a Nevada corporation (File No. 033-19411-C) (the "Company"), pursuant to the Securities Exchange Act of 1934, as amended (the "Exchange Act"), or the Securities Act of 1933, as amended (the "Securities Act"), are hereby incorporated by reference:

- Annual Report on Form 10-K for the year ended December 31, 2016, filed with the Commission on April 4, 2017
- Quarterly Report on Form 10-Q for the quarter ended March 31, 2017, filed with the Commission on May 8, 2017, together with Quarterly Report on Form 10-Q/A for the quarter ended March 31, 2017, filed with the Commission on May 8, 2017
- Quarterly Report on Form 10-Q for the quarter ended June 30, 2017, filed with the Commission on August 14, 2017
- Current Reports on Form 8-K filed with the Commission on March 2, 2017, March 10, 2017 and May 12, 2017
- Amendment to Current Report on Form 8-K/A filed with the Commission on July 19, 2017

All other documents filed by the Company with the Commission pursuant to Sections 13(a), 13(c), 14, or 15(d) of the Exchange Act after the date of this registration statement and before the filing of a post-effective amendment to this registration statement that indicates that all securities offered hereby have been sold, or that deregisters all such securities remaining unsold, shall be deemed to be incorporated by reference in this registration statement and to be a part hereof from the date of filing of such documents.

Item 4. Description of Securities

The Company's amended articles of incorporation authorize it to issue 205,000,000 shares of capital stock, consisting of: (i) 200,000,000 shares of common stock, par value \$0.001 per share, of which 118,192,114 shares are issued and outstanding; and (ii) 5,000,000 shares of preferred stock, par value \$0.001 per share, none of which is issued and outstanding.

Common Stock

The holders of common stock are entitled to one vote per share on each matter submitted to a vote at any meeting of shareholders. Shares of common stock do not carry cumulative voting rights and, therefore, a majority of the shares of outstanding common stock will be able to elect the entire board of directors and, if they do so, minority shareholders would not be able to elect any persons to the board of directors. The Company's bylaws provide that a majority of its issued and outstanding shares constitutes a quorum for shareholders' meetings, except respecting certain matters for which a greater percentage quorum is required by statute or the bylaws.

The Company's shareholders have no preemptive rights to acquire additional shares of common stock or other securities. The common stock is not subject to redemption and carries no subscription and conversion rights. In the event of the Company's liquidation, the shares of common stock are entitled to share equally in corporate assets after satisfaction of all liabilities. Holders of common stock are entitled to receive such dividends as the board of directors may, from time to time, declare out of funds legally available for the payment of dividends. The Company seeks growth and expansion of its business through the reinvestment of profits, if any, and does not anticipate that it will pay dividends in the foreseeable future.

Preferred Stock

The Company's amended articles of incorporation authorize the issuance of 5,000,000 shares of preferred stock. The board of directors is empowered, without stockholder approval, to designate and issue one or more series of preferred stock with dividend, liquidation, conversion, voting, and other rights and restrictions, including the right to issue convertible securities with no limitations on conversion, which could adversely affect the voting power and other rights of the holders of the Company's common stock, substantially dilute a common stockholder's interest, and depress the price of the Company's common stock.

Authority to Issue Stock

The board of directors has the authority to issue the authorized but unissued shares of common stock without action by the stockholders. The issuance of such shares would reduce the percentage ownership held by current shareholders.

Item 5. Interests of Named Experts and Counsel

None.

Item 6. Indemnification of Directors and Officers

Subsection 1 of Section 78.7502 of the Nevada Revised Statutes empowers a corporation to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative (other than an action by or in the right of the corporation), by reason of the fact that he is or was a director, officer, employee, or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee, or agent of another corporation or other enterprise, against expenses (including attorneys' fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit, or proceeding if he is not liable pursuant to Section 78.138 of the Nevada Revised Statutes or if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation and, respecting any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. Section 78.138 of the Nevada Revised Statutes provides that, with certain exceptions, a director or officer is not individually liable to the corporation or its stockholders for any damages as a result of any act or failure to act in his capacity as a director or officer unless it is proven that: (i) his act or failure to act constituted a breach of his fiduciary duties as a director or officer; and (ii) his breach of those duties involved intentional misconduct, fraud, or a knowing violation of law.

Subsection 2 of Section 78.7502 empowers a corporation to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that such person acted in any of the capacities set forth above against expenses, including amounts paid in settlement and attorneys' fees actually and reasonably incurred by him in connection with the defense or settlement of such action or suit, if he acted under similar standards, except that no indemnification may be made in respect of any claim, issue, or matter as to which such person shall have been adjudged by a court of competent jurisdiction to be liable to the corporation or for amounts paid in settlement to the corporation, unless and only to the extent that the court in which such action or suit was brought determines that, despite the adjudication of liability, such person is fairly and reasonably entitled to indemnity for such expenses as the court deems proper.

Section 78.7502 further provides that to the extent a director or officer of a corporation has been successful in the defense of any action, suit, or proceeding referred to in subsections (1) and (2) of Section 78.7502, or in the defense of any claim, issue, or matter therein, he shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith. Section 78.751 of the Nevada Revised Statutes provides that the indemnification provided for by Section 78.7502 shall not be deemed exclusive or exclude any other rights to which the indemnified party may be entitled and that the scope of indemnification shall continue as to directors, officers, employees, or agents that have ceased to hold such positions and to their heirs, executors, and administrators. Section 78.752 of the Nevada Revised Statutes empowers the corporation to purchase and maintain insurance or make other financial arrangements on behalf of a director, officer, employee, or agent of the corporation against any liability asserted against him or incurred by him in any such capacity or arising out of his status as such whether or not the corporation would have the power to indemnify him against such liabilities under Section 78.7502.

Article VIII of the Company's bylaws provides that the Company may indemnify directors, officers, employees, and agents of the Company to the extent authorized by the board of directors and in the manner set forth in the Company's bylaws. The bylaws provide, pursuant to Subsection 2 of Section 78.751, that the expenses of directors, officers, employees, and agents incurred in defending any action, suit, or proceeding, whether civil or criminal, may be paid by the corporation as they are incurred and in advance of the final disposition of the action, suit, or proceeding, upon approval by the majority vote of a quorum of the board of directors and upon delivery of an undertaking by or on behalf of the director or officer to repay all amounts so advanced if it is ultimately determined by a court of competent jurisdiction that the officer or director is not entitled to be indemnified by the corporation. Article VIII of the bylaws also provides the Company's directors, officers, employees, and agents may be indemnified against certain liabilities pursuant to a liability insurance policy.

Insofar as indemnification for liabilities arising under the Securities Act of 1933, as amended, may be permitted to directors, officers, and controlling persons pursuant to the foregoing provisions, the Company has been informed that in the opinion of the U.S. Securities and Exchange Commission, such indemnification is contrary to public policy as expressed in the Securities Act and, therefore, is unenforceable.

Item 7. Exemption from Registration Claimed

None.

Item 8. Exhibits

Exhibit Number	Title of Document
4.1	Specimen Stock Certificate (incorporated by reference to Exhibit 4.1 of the Company's Registration Statement on Form S-8 filed with the Commission on August 25, 2017)
5.1	Opinion of Procopio, Cory, Hargreaves & Savitch LLP
10.1	Consulting Agreement dated September 27, 2017
23.1	Consent of Liggett & Webb P.A., independent registered public accounting firm
23.2	Consent of Procopio, Cory, Hargreaves & Savitch LLP (incorporated by reference to Exhibit 5.1 to this Registration Statement on Form S-8)
24.1	Power of Attorney (incorporated by reference to the Signature Page of this Registration Statement on Form S-8)

Item 9. Undertakings

Undertaking Required by Item 512(a) of Regulation S-K: The undersigned registrant hereby undertakes:

- (1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:
 - (i) To include any prospectus required by section 10(a)(3) of the Securities Act;
 - (ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the SEC pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement; and
 - (iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement.
- (2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.
- (3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

Undertaking Required by Item 512(b) of Regulation S-K: The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the registrant's annual report pursuant to section 13(a) or section 15(d) of the Securities Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to section 15(d) of the Securities Exchange Act) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

Undertaking Required by Item 512(h) of Regulation S-K: Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the SEC such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the city of Lancaster, state of Pennsylvania, on the 3rd day of October, 2017.

OCEAN THERMAL ENERGY CORPORATION

By: /s/ Jeremy P. Feakins
Jeremy P. Feakins
Chief Executive Officer and
Chief Financial Officer

POWER OF ATTORNEY

Each person whose signature appears below constitutes and appoints Jeremy P. Feakins, his or her true and lawful attorney-in-fact and agent with full power of substitution and resubstitution, for him or her and in his or her name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this Registration Statement on Form S-8 to be filed by Ocean Thermal Energy Corporation, and to file the same, with all exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents full power and authority to be done in and about the premises, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or their substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, as amended, this registration statement has been signed below by the following persons in the capacities indicated on the 3rd day of October, 2017:

/s/ Jeremy P. Feakins
Jeremy P. Feakins
Director, Chief Executive Officer, and Chief Financial Officer

/s/ Peter Wolfson
Peter Wolfson
Director

/s/ Antoinette K. Hempstead
Antoinette K. Hempstead
Director

October 3, 2017

Board of Directors
Ocean Thermal Energy Corporation
800 South Queen Street
Lancaster, PA 17603

Re: Registration Statement on Form S-8
Ocean Thermal Energy Corporation Consulting Agreement

Gentlemen:

We have acted as your counsel in the preparation of a Registration Statement on Form S-8 (the "Registration Statement") to be filed with the Securities and Exchange Commission to register 1,000,000 shares of common stock, \$0.001 par value per share (the "Common Stock"), of Ocean Thermal Energy Corporation, a Nevada corporation (the "Company"), to be issued pursuant to the Ocean Thermal Energy Corporation Consulting Agreement (the "Agreement").

For purposes of rendering this opinion, we have made such legal and factual examinations as we have deemed necessary under the circumstances and, as part of such examination, we have examined, among other things, originals and copies, certified or otherwise, identified to our satisfaction, of such documents, corporate records and other instruments as we have deemed necessary or appropriate. For the purposes of such examination, we have assumed the genuineness of all signatures on original documents and the conformity to original documents of all copies submitted to us.

On the basis of and in reliance upon the foregoing examination and assumptions, we are of the opinion that assuming the Registration Statement shall have become effective pursuant to the provisions of the Securities Act of 1933, as amended, the shares of Common Stock being offered under the Agreement, when issued in accordance with the Registration Statement and the provisions of the Agreement, will be validly issued, fully paid and nonassessable.

We hereby consent to the filing of this opinion as an exhibit to the Registration Statement.

Very truly yours,

/

s/ Procopio, Cory, Hargreaves & Savitch LLP

Procopio, Cory, Hargreaves & Savitch LLP

CONSULTING AGREEMENT

This Consulting Agreement (this "Agreement"), made this 27th day of September 2017, by and between James Mahoney, an individual, hereinafter referred to as the "Consultant", and Ocean Thermal Energy Corporation, a Delaware corporation, hereinafter referred to as "Company."

WITNESSETH:

WHEREAS, the Company desires to engage the services of the Consultant to perform for the Company consulting services as an independent contractor and not as an employee; and

WHEREAS, Consultant desires to consult with the Company as more fully set forth herein.

NOW, THEREFORE, it is agreed as follows:

1. Term. The respective duties and obligations of the contracting parties shall be for a period of six (6) months commencing on October 1, 2017, and may be terminated by either party giving thirty (30) days' written notice to the other party.

2. Services. Consultant shall be available at the request of the Company to consult regarding the matters set forth in Schedule A-1. Notwithstanding the foregoing, Consultant may not perform, and is prohibited from performing, any services or assistance related to or in connection with capital raising transactions, promotion or maintenance of a market for the Company's securities, shareholder communications, investor communications or any other activities relating to the publishing or dissemination of information that could reasonably expect to influence the price of the Company's securities.

3. Liability. With regard to the services to be performed by the Consultant pursuant to the terms of this agreement, the Consultant shall not be liable to the Company, or to anyone who may claim any right due to any relationship with the Corporation, for any acts or omissions in the performance of services on the part of the Consultant or on the part of the agents or employees of the Consultant, except when said acts or omissions of the Consultant are due to willful misconduct or gross negligence. The Company shall hold the Consultant free and harmless from any obligations, costs, claims, judgments, attorneys' fees, and attachments arising from or growing out of the services rendered to the Company pursuant to the terms of this agreement or in any way connected with the rendering of services, except when the same shall arise due to the willful misconduct or gross negligence of the Consultant and the Consultant is adjudged to be guilty of willful misconduct or gross negligence by a court of competent jurisdiction.

4. Compensation. The Consultant shall receive from the Company for the performance of the services rendered to the Company, 1 million free trading shares that shall be issued upon the later to occur of (a) execution of the Agreement, or (b) the Company's filing of its Form S-8 with the Securities and Exchange Commission (SEC) (the "Form S-8") covering the shares issuable pursuant to this Agreement. The shares shall be fully-earned upon issuance. If the Form S-8 covering the shares issuable pursuant to this Agreement has not been filed at the time of the execution of this Agreement, the Company will use its best efforts to promptly effect the filing of the Form S-8.

5. Arbitration. Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration in accordance of the rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator(s) shall be entered in any court having jurisdiction thereof. For that purpose, the parties hereto consent to the jurisdiction and venue of an appropriate court located in County of San Diego, State of California. In the event that litigation results from or arises out of this Agreement or the performance thereof, the parties agree to reimburse the prevailing party's reasonable attorney's fees, court costs, and all other expenses, whether or not taxable by the court as costs, in addition to any other relief to which the prevailing party may be entitled. In such event, no action shall be entertained by said court or any court of competent jurisdiction if filed more than one year subsequent to the date the cause(s) of action actually accrued regardless of whether damages were otherwise as of said time calculable.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first written above.

JAMES MAHONEY - CONSULTANT

By: /s/ James Mahoney
James Mahoney

OCEAN THERMAL ENERGY CORPORATION

By: /s/ Jeremy P. Feakins
Jeremy P. Feakins
CEO

SCHEDULE A-1

- Assistance with requests by shareholder base to tender restricted shares to have legend removed under Rule 144 and deposit with broker. Consultant shall act solely as an administrative agent, and shall not provide advice or recommendations to any shareholders concerning the merits of an investment in the Company, or whether the shareholder shall sell, hold or increase his or her stock position.
- Consult with management of the Company regarding strategies to communicate with shareholder base, including a determination whether corporate events and occurrences warrant the issuance of a press release to the public.
- Consult with management of the Company regarding public awareness of the Company and its business; provided, that such efforts to build public awareness of the Company shall be for the purposes of developing public awareness and not for the purpose of enticing or soliciting any person to invest in the Company's stock.



432 Park Avenue South, 10th Floor
New York, NY 10016 / (212) 481-3490

1901 South Congress Avenue, Suite 110
Boynton Beach, FL 33426 / (561) 752-1721

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We have issued our report dated, March 31, 2017 on the December 31, 2016 and 2015 consolidated financial statements of Ocean Thermal Energy Corp. included in the Form 8-K/A of Ocean Thermal Energy Corp. (f/k/a Tetridyn Solutions, Inc.) filed on July 19, 2017. We hereby consent to the incorporation by reference of said report in the Registration Statement of Ocean Thermal Energy Corp. (f/k/a Tetridyn Solutions, Inc.) on Form S-8.

Liggett & Webb, P.A.

LIGGETT & WEBB, P.A.
Certified Public Accountants
Boynton Beach, Florida
October 2, 2017