

AETHER SYSTEMS INC
Form 10-Q
May 10, 2005

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, DC 20549

FORM 10-Q

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**QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d)
OF THE SECURITIES
EXCHANGE ACT OF 1934**

For the Period Ended March 31, 2005

Or

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**TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d)
OF THE SECURITIES
EXCHANGE ACT OF 1934**

Commission File Number: 000-27707

AETHER SYSTEMS, INC.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of
incorporation or organization)

52-2186634

(IRS Employer Identification Number)

621 E. Pratt St., Suite 601, Baltimore, MD

(Address of principal executive offices)

21202

(Zip Code)

(Registrant's telephone number, including area code): **(443) 573-9400**

Securities registered Pursuant to Section 12(b) of the Act: **NONE.**

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

Common Stock, Par Value \$.01

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 requirements for the past 90 days. Yes No

Indicate by check mark whether the registrant is an accelerated filer (as defined in Rule 12b-2 of the Act) Yes No

Indicate the number of shares outstanding of each of the issuer's classes of common stock, as of the latest practicable date:

As of May 3, 2005, 44,008,946 shares of the Registrant's common stock, \$.01 par value per share, were outstanding.

AETHER SYSTEMS, INC.

QUARTERLY REPORT ON FORM 10-Q
FOR THE QUARTER ENDED MARCH 31, 2005

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PART I FINANCIAL INFORMATION**ITEM I: FINANCIAL STATEMENTS**

AETHER SYSTEMS, INC.
CONDENSED CONSOLIDATED BALANCE SHEETS
(IN THOUSANDS, EXCEPT SHARE DATA)

	March 31, 2005 (Unaudited)	December 31, 2004
ASSETS		
Cash and cash equivalents	\$ 24,669	\$ 60,723
Mortgage-backed securities, at fair value	434,358	62,184
Interest receivable	1,510	356
Prepaid expenses and other assets	1,965	4,124
Restricted cash	8,832	8,832
Property and equipment, net	259	367
Total assets	\$ 471,593	\$ 136,586
LIABILITIES AND STOCKHOLDERS EQUITY		
Accounts payable and accrued expenses	\$ 3,694	\$ 3,494
Forward purchase obligations	318,068	
Repurchase agreements	19,443	
Accrued employee compensation and benefits	100	186
Accrued restructuring	14	259
Accrued interest payable	12	
Other long term liabilities	2,057	2,057
Total liabilities	343,388	5,996
Stockholders' equity:		
Preferred stock, \$0.01 par value; 1,000,000 shares authorized; 0 shares issued and outstanding at March 31, 2005 and December 31, 2004		
Common stock, \$0.01 par value; 1,000,000,000 shares authorized; 44,000,821 and 43,963,963 shares issued and outstanding at March 31, 2005 and December 31, 2004, respectively	440	440
Additional paid-in capital	2,593,069	2,592,977
Accumulated deficit	(2,463,276)	(2,462,611)
Unrealized loss on investments available for sale	(2,028)	(216)
Total stockholders' equity	128,205	130,590
Commitments and Contingencies		
Total liabilities and stockholders' equity	\$ 471,593	\$ 136,586

See accompanying notes to Condensed Consolidated Financial Statements.

AETHER SYSTEMS, INC.
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS AND COMPREHENSIVE INCOME (LOSS)
(IN THOUSANDS, EXCEPT PER SHARE DATA)
(unaudited)

	Three Months Ended	
	2005	2004
	March 31,	
Interest income from MBS portfolio	\$ 808	\$
Interest expense from MBS portfolio	12	
Net interest income from MBS portfolio	796	
Operating expenses:		
Selling, general and administrative	1,783	3,286
Depreciation	49	628
Stock compensation expense	76	422
Other income	(188)	(30)
Restructuring charge	(7)	415
Total operating expenses	1,713	4,721
Operating loss	(917)	(4,721)
Interest income from other than MBS portfolio	269	1,354
Interest expense from subordinated notes		(2,604)
Investment gain (loss), including impairments, net	(10)	557
Loss from continuing operations	(658)	(5,414)
Loss from discontinued operations		(3,836)
Gain on sale of discontinued operations		18,396
Net income (loss)	\$ (658)	\$ 9,146
Other comprehensive income (loss):		
Foreign currency translation adjustment	\$	\$ (3,883)
Unrealized holding gains (losses) on investments available for sale	(1,812)	669
Comprehensive income (loss)	\$ (2,470)	\$ 5,932

Number of Shares or Units of Stock That Have Not Vested
 (#)

Market Value of Shares or Units of Stock That Have Not Vested
 (\$)

Equity Incentive Plan Awards: Number of Unearned Shares, Units or Other Rights That Have Not Vested
 (#)

Equity Incentive Plan Awards: Market or Payout Value of Unearned Shares, Units or Other Rights That Have Not Vested
 (\$)

Richard E. Gathright,
 Chairman of the Board,
 CEO and President

0
 0

5,556
 16,668

 0
 2.475
 2.475

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	10/12/2014						
	10/8/2017						
	0						
	0						
0							
0							
Michael S. Shore, CFO, Senior V.P. and Treasurer							13,334
							5,556
							8,889
0							
0							
0							
	0						
	2.475						
	2.475						
	2.475						
	2/12/2012						
	10/12/2014						
	10/8/2017						
	0						
	0						
0							
0							
L. Patricia Messenbaugh, Vice President, Finance and Accounting, Chief Accounting Officer and Principal Accounting Officer							10,001
							2,223
0							
0							
	0						
	2.475						
	2.475						
	4/18/2017						
	10/8/2017						
	0						
	0						
0							
0							

Non-Employee Director Compensation

The following table discloses the cash, equity awards and other compensation earned, paid or awarded, as the case may be, to each of our non-employee Directors during the fiscal year ended June 30, 2011.

Name	Fees Earned or Paid in Cash	Stock Awards (\$)(1)	Option Awards (\$)	Non-Equity Incentive Plan Compensation (\$)	Nonqualified Deferred Compensation Earnings	All Other Compensation (\$)	Total (\$)
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(\$)

Wendell R. Beard	36,000 (2)	5,780	0	0	0	2,210 (3)	43,990
Steven R. Goldberg	33,000 (4)	5,780	0	0	0	2,210 (3)	40,990
Nat Moore	25,500 (5)	5,780	0	0	0	2,210 (3)	33,490
Larry S. Mulkey	20,000 (6)	5,780	0	0	0	2,415 (3)	28,195
C. Rodney O'Connor	17,000	5,780	0	0	0	2,210 (3)	19,210
Robert S. Picow	20,000 (7)	5,780	0	0	0	2,210 (3)	27,990
Peter H. Woodward	0	1,360	0	0	0	450 (8)	1,810

- (1) Amounts shown do not reflect compensation actually received by our directors or the actual value that may be recognized by the directors with respect to these awards in the future. Instead, the amounts shown are the grant date fair values determined in accordance with FASB ASC Topic 718 for stock-based awards granted pursuant to our 2009 Equity Incentive Plan. The calculation of those amounts are included in Note 8 to our audited financial statements for the fiscal year ended June 30, 2011, included in our Annual Report on Form 10-K filed with the SEC on September 28, 2011.
- (2) Includes a \$5,000 payment per quarter for management consultation and oversight duties as liaison between management and the other non-employee directors.
- (3) This amount represents cash payments in the amount of \$2,210 in connection with tax reimbursements with regard to grants of restricted stock, as well as reimbursable out-of-pocket expenses if applicable.
- (4) Includes a \$4,000 payment per quarter for duties as the Chairman of the Audit Committee.
- (5) Includes a \$1,500 payment per quarter for duties as the Chairman of the Compensation Committee.
- (6) Includes a \$1,000 payment per quarter as Chairman of the Corporate Governance Committee.
- (7) Includes a \$1,000 payment per quarter as Chairman of the Nominating Committee.
- (8) Joined the Board of Directors on May 11, 2011. This amount represents reimbursable out-of-pocket expenses.

During the fiscal year ended June 30, 2011, we compensated each non-employee director with a director's fee of \$5,000 per quarter. In addition, our directors are reimbursed for any out-of-pocket expense incurred by them for attendance at meetings of the Board of Directors or committees thereof. The Chairman of the Audit Committee received an additional fee of \$4,000 per quarter, the Chairmen of the Compensation, Corporate Governance and Nominating Committees received additional fees of \$1,500, \$1,000 and \$1,000 per quarter, respectively.

Each non-employee who served as a member of our Board of Directors as of May 10, 2001, the effective date of the 2001 Directors Stock Option Plan (the "2001 Directors Plan") received a fully vested option to purchase 4,445 shares of stock at an exercise price equal to the Fair Market Value (as determined under the 2001 Directors Plan) of a share of stock on the Grant Date. In addition, on the last day of each fiscal quarter until and including December 31, 2009, each non-employee director received an additional grant of an option to purchase 334 shares at an exercise price equal to the Fair Market Value (as determined under the 2001 Directors Plan) of a share of stock on the Grant Date. Prior to March 31, 2007, the grant was 162 shares (as adjusted for our reverse stock split).

On December 10, 2009, our stockholders approved the adoption of our 2009 Equity Incentive Plan (the "Plan"). The Plan authorizes the Compensation Committee (the "Committee") to grant to eligible participants, including officers, directors, employees and certain consultants to the Company, (i) stock options (which may be non-qualified options or incentive stock options for tax purposes), (ii) stock appreciation rights (which may be issued in tandem with stock options), (iii) restricted stock awards, (iv) performance units (which may be denominated in shares of our Common Stock, cash or a combination thereof), and (v) supplemental cash payments (collectively, "Awards"). Any of the Awards may be conditioned upon the achievement of stated performance objectives, as selected by the Committee, vesting after the completion of a stated period of service with the Company, or both. Under the Plan, the Committee may also waive any conditions or restrictions on Awards, in whole or in part, based on performance or such other factors as it determines, in its sole discretion.

The Committee determined that it was reasonable and appropriate to commence a program of making stock grants under the Plan to the non-employee members of the Board of Directors in lieu of our historical practice of quarterly stock option grants to those directors. The Committee resolved that, in order to better align the interests of the non-employee directors with those of our stockholders and to provide additional non-cash compensation to the non-employee directors commensurate with their increased duties and responsibilities, each non-employee director will receive an automatic grant of 1,000 shares of restricted stock under the Plan on the last day of each fiscal quarter. The Committee determined that, in light of the limitations imposed by law and by our insider trading policy on any sale of stock by the non-employee directors, it was reasonable and appropriate to waive any restrictions on

these quarterly Awards upon delivery of the shares to non-employee directors, and to make an additional cash payment equal to 50% of the value of the shares to such director valued at the closing price of the Common Stock on Nasdaq on the trading day immediately preceding the date of the grant in order to encourage the directors to hold on to the stock rather than selling all or a portion thereof to pay taxes due therefor.

Compensation Committee Interlocks and Insider Participation

Messrs. Moore, Mulkey and Picow served as members of the Compensation Committee during the last fiscal year. No member of the Compensation Committee during fiscal 2011 was an officer, former officer or employee of the Company or had any financial relationship with the Company other than the compensation they received for serving as independent directors of the Company. The Company is not aware of any interlocks or insider trading participation required to be disclosed under applicable rules of the Securities and Exchange Commission.

Compensation Committee Report

The Compensation Committee has reviewed and discussed the Compensation Discussion and Analysis with management, and based on the review and discussions, recommended to the Board of Directors that the Compensation Discussion and Analysis be included in the SMF Energy Corporation 2011 Annual Report on Form 10-K/A.

The Compensation Committee

Nat Moore
 Larry S. Mulkey
 Robert S. Picow

October 28, 2011

1 The material in this report is not soliciting material, is not deemed filed with the SEC, and is not incorporated by reference in any filing of the Company under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended, whether made on, before, or after the date of this annual report on Form 10-K/A and irrespective of any general incorporation language in such filing.

Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters

Equity Compensation Plan Information

Information about the Company's equity compensation plan at June 30, 2011 was as follows:

Plan Category	Number of securities to be issued upon exercise of outstanding options, warrants and rights (a)	Weighted average exercise price of outstanding options, warrants and rights (b)	Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in column (a)) (c)
Equity compensation plans approved by security holders	2000 Employee Stock Option Plan – 165,231 2001 Directors Stock Option Plan – 63,552 2009 Equity Incentive Plan – 2,004	\$ 2.451 \$ 6.801 \$ 1.400	-0- -0- 841,496
Equity compensation plans not approved by security holders	Not Applicable	Not Applicable	Not Applicable
Total	230,787	\$ 3.640	841,496

Security Ownership of Certain Beneficial Owners and Management

The following table sets forth certain information with respect to the beneficial ownership of our Common Stock and Preferred Stock by: (i) persons known to us to beneficially own more than 5% of our Common Stock and Preferred Stock, (ii) each of our directors, (iii) our principal executive officer and our two other most highly compensated executive officers and (iv) all directors and executive officers of the Company as a group. Except as otherwise indicated, each person has sole voting and investment power with respect to all shares shown as beneficially owned, subject to community property laws where applicable. Voting power is the power to vote or direct the voting of securities, and investment power is the power to dispose of or direct the disposition of securities.

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Name and Address(1)	Common Stock Beneficially Owned(2)		Series D Convertible Preferred Stock Beneficially Owned(3)		Common Stock and Series D Convertible Preferred Stock ("Voting Shares")(4)	
	Shares	%	Shares	%	Shares	%
Directors and Named Executive Officers						
Richard E. Gathright, Chairman of the Board, Chief Executive Officer and President	170,270 (5)	1.99			144,823	1.70
Michael S. Shore, Chief Financial Officer, Senior Vice President and Treasurer	56,245 (6)	*			28,466	*
L. Patricia Messenbaugh, Vice President, Finance and Accounting, Chief Accounting Officer and Principal Accounting Officer	21,494 (7)	*			9,270	*
Wendell R. Beard, Director	12,908 (8)	*			5,889	*
Steven R. Goldberg, Director	14,379 (9)	*			5,000	*
Nat Moore, Director	13,939 (10)	*			5,000	*
Larry S. Mulkey, Director	15,908 (11)	*			5,000	*
C. Rodney O'Connor, Director	333,656 (12)	3.84	312	58.43	257,616 (13)	3.02
Robert S. Picow, Director	55,903 (14)	*			48,884	*
Peter H. Woodward, Director	452,000 (15)	5.30			452,000	5.29
All directors and executive officers as a group (9 individuals)	1,146,702 (16)	13.43	312	58.43	961,948 (17)	11.28
Beneficial Owners of More Than 5% of Common Stock						
Leonid Frenkel	479,258 (24)	5.61	—	—	479,258 (24)	5.61
Beneficial Owners of More Than 5% of Series D Preferred Stock						
Gabriel & Alma Elias JT WROS	57,018 (18)	*	125	23.41	29,365 (19)	*
Mark D. Wittman	13,334 (20)	*	60	11.24	60 (21)	*
Michael Bevilacqua	9,353 (22)	*	37	6.93	1,167 (23)	*

*

Less than one percent.

(1) The address of each of the executive officers and directors identified is c/o SMF Energy Corporation, 200 West Cypress Creek Road, Suite 400, Fort Lauderdale, Florida 33309.

(2) Based on 8,541,523 shares of Common Stock outstanding as of October 25, 2011. Pursuant to the rules of the Securities and Exchange Commission (the "Commission"), certain shares of Common Stock which a person has the right to acquire within 60 days of October 25, 2011 pursuant to the exercise of stock options, warrants and conversion of convertible promissory notes and preferred stock, are deemed to be outstanding for the purpose of computing the percentage ownership of that person, but not the percentage ownership of any other person.

(3) Based on 534 shares of Series D Convertible Preferred Stock outstanding as of October 25, 2011.

(4) This column reflects the record ownership of the listed stockholders and excludes shares that are beneficially owned by virtue of stock options, conversion rights and related parties, and is based on 8,542,057 shares of Common Stock and Series D Convertible Preferred Stock issued and outstanding as of October 25, 2011.

- (5) Includes 144,823 shares of Common Stock, 22,224 shares of Common Stock issuable upon the exercise of certain stock options, 1,000 shares of Common Stock and 2,223 shares of Common Stock issuable upon the exercise of certain stock options held by Louise P. Lungaro, his spouse.
- (6) Includes 28,466 shares of Common Stock and 27,779 shares of Common Stock issuable upon the exercise of certain stock options.
- (7) Includes 9,270 shares of Common Stock and 12,224 shares of Common Stock issuable upon the exercise of certain stock options.
- (8) Includes 5,889 shares of Common Stock and 7,019 shares of Common Stock issuable upon the exercise of certain stock options.
- (9) Includes 5,000 shares of Common Stock and 9,379 shares of Common Stock issuable upon the exercise of certain stock options.
- (10) Includes 5,000 shares of Common Stock and 8,939 shares of Common Stock issuable upon the exercise of certain stock options.
- (11) Includes 5,000 shares of Common Stock and 10,908 shares of Common Stock issuable upon the exercise of certain stock options.
- (12) Includes 257,304 shares of Common Stock, 7,019 shares of Common Stock issuable upon the exercise of certain stock options and 69,333 shares of Common Stock issuable upon conversion of Series D Convertible Preferred Stock.
 - (13) Includes 257,304 shares of Common Stock and 312 shares of Series D Convertible Preferred Stock.
- (14) Includes 48,884 shares of Common Stock and 7,019 shares of Common Stock issuable upon the exercise of certain stock options.
- (15) Includes 2,000 shares of Common Stock and 450,000 shares of Common Stock held by MHW Partners, LP. Mr. Woodward is the Managing Partner of MHW Capital LLC, the general partner of MHW Partners, LP, and therefore has investment, dispositive and voting power over, and beneficial ownership of, the 450,000 shares of Common Stock held by MHW Partners, LP.
- (16) Includes 962,636 shares of Common Stock, 114,733 shares of Common Stock issuable upon the exercise of certain stock options and 69,333 shares of Common Stock issuable upon conversion of Series D Convertible Preferred Stock.
 - (17) Includes 962,748 shares of Common Stock and 312 shares of Series D Convertible Preferred Stock.
- (18) Includes 29,240 shares of Common stock and 27,778 shares of Common Stock issuable upon conversion of Series D Preferred Stock. The address for Gabriel and Alma Elias is P.O. Box 340, 206 N. Bowman Ave., Merion Station, PA 19066.
 - (19) Includes 29,240 shares of Common Stock and 125 shares of Series D Convertible Preferred Stock.
- (20)

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Includes 13,334 shares of Common Stock issuable upon conversion of Series D Preferred Stock. The address for Mr. Wittman is 20 Beacon Hill Lane, Phoenixville, PA 19460.

(21) Includes 60 shares of Series D Convertible Preferred Stock.

(22) Includes 1,130 shares of Common stock and 8,223 shares of Common Stock issuable upon conversion of Series D Preferred Stock. The address for Mr. Bevilacqua is 231 E. Hamilton Avenue, State College, PA 16801.

(23) Includes 1,130 shares of Common Stock and 37 shares of Series D Convertible Preferred Stock

(24) Includes 94,983 shares of common stock held by Periscope Partners LP, of which Mr. Frenkel is the general partner. Mr. Frenkel disclaims beneficial ownership of the Company's securities held by Periscope except to the extent of his pecuniary interest therein. Does not include 355,234 shares of common stock beneficially owned by Triage Capital Management, LP. Triage Capital Management, LP has identified Mr. Frenkel as the Managing Member of Triage Capital LF Group LLC, which acts as the general partner to a general partner of Triage Capital Management, LP. Mr. Frenkel disclaims beneficial ownership of the Company's securities held by Triage Capital Management, LP except to the extent of his pecuniary interest therein. Mr. Frenkel's address is 1600 Flat Rock Road, Penn Valley, PA 19072.

Item 13. Certain Relationships, Related Transactions, and Director Independence

Independence of the Board of Directors

After considering all of the relevant facts and circumstances, our Board of Directors has determined that each of Messrs. Goldberg, Moore, Mulkey, Picow and Woodward is independent from our management and qualifies as an "independent director" pursuant to Nasdaq Rule 5605(a)(2). The Board of Directors determined that none of the above referenced directors (1) is an officer or employee of the Company or its subsidiaries or (2) has any direct or indirect relationship that would interfere with the exercise of his independent judgment in carrying out the responsibilities of a director. A majority of our directors are therefore independent directors as required by Nasdaq Rule 5605(b)(1).

Certain Relationships and Related Transactions

C. Rodney O'Connor, a Director of the Company, also is Chairman of Cameron Associates, Inc., a financial consulting and investor relations public relations firm, that has provided investor relations services to the Company since 1997. During fiscal 2011, the Company paid \$78,000, plus \$1,105.58 for expenses, to Cameron Associates, Inc. for such services, compared to \$78,000 during fiscal 2010.

We have a stated policy against any conflict of interest transaction in our Code of Business Conduct, which was most recently revised by the Board of Directors in November 2010. The Code of Business Conduct specifically prohibits officers, directors and employees from employment by, or investment in, any current or prospective customer, supplier or competitor of the Company. The Code of Business Conduct also prohibits acceptance of commissions, compensation or excessive gifts or entertainment from persons or firms with which the Company does or may do business, as well as any exploitation of a corporate opportunity for personal profit. Exceptions to the prohibitions on conflict of interest transactions may be made on a case-by-case basis to avoid undue hardship, such as investments made before employment or other pre-existing relationships, such as our longstanding business relationship with Cameron Associates, Inc.

The Charter of the Corporate Governance Committee includes a requirement for that committee to approve any transaction involving the Company and a related party in which the parties' relationship could enable the negotiation of terms on other than an independent, arm's length basis. For these purposes, a "related party transaction" includes any transaction that is required to be disclosed pursuant to Item 404 of SEC Regulation S-K. In making any determination concerning whether to approve a related party transaction, the Corporate Governance Committee is guided by our Code of Business Conduct. The Corporate Governance Committee Charter specifically provides that the Committee shall review with management actions taken to ensure compliance with the Code of Conduct. The Charter also requires the Corporate Governance Committee to review any conduct of executive officers or directors that is alleged to be in violation or potential violation of the Code and, in appropriate instances, grant a waiver or exception for specific individuals. The Corporate Governance Committee has the authority to cause the Company to take remedial, disciplinary or other measures against executive officers and directors who violate the Code of Conduct and to cause the prompt public disclosure of any waiver of or change to the Code as it relates to executive officers or directors.

Copies of the Code of Business Conduct and the Corporate Governance Committee Charter are available on our website at <http://www.mobilefueling.com>. To access these and other corporate governance materials, click on "Investors" and then click on "Corporate Governance."

Item 14. Principal Accounting Fees and Services

Audit and Audit Related Fees

Grant Thornton LLP served as our Independent Registered Public Accounting Firm for the fiscal years 2011 and 2010 and provided services in the following categories and for the amounts indicated:

	2011	2010
Audit Fees(1)	\$ 221,415	\$ 285,882
Audit Related Fees	\$ -	\$ -
Tax Fees	\$ -	\$ -
All Other Fees	\$ -	\$ -

(1)Represents the aggregate fees billed for professional services rendered for the audit and/or review of our financial statements and in connection with our regulatory filings or engagements. Also includes services related to consents for registration statements filings.

There were no non-audit related services rendered to the Company by Grant Thornton in fiscal 2011 or 2010. While the Audit Committee has not established formal policies and procedures concerning pre-approval of audit or non-audit services, our executive officers and the Audit Committee have agreed that all audit, audit related and non-audit services by our independent accountants will be approved in advance by the Audit Committee. The establishment of any such formal policies or procedures in the future is subject to the approval of the Audit Committee.

PART IV

Item 15. Exhibits and Financial Statement Schedules

(a) Exhibits

Exhibits	Description
*31.1	Certificate of Principal Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
*31.2	Certificate of Principal Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
*32.1	Certificate of Principal Executive Officer and Principal Financial Officer pursuant to Section 906 of The Sarbanes-Oxley Act of 2002

*Filed herewith

SIGNATURES

Pursuant to the requirement of Section 13 or 15(d) of the Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

Dated: October 28, 2011

SMF ENERGY CORPORATION

By: /s/ Richard E. Gathright
Richard E. Gathright, Chief
Executive Officer and President

Pursuant to the requirements of the Exchange Act, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

Name	Title	Date
By: /s/ Richard E. Gathright Richard E. Gathright	Chairman of the Board, Chief Executive Officer and President (Principal Executive Officer)	October 28, 2011
By: /s/ Michael S. Shore Michael S. Shore	Chief Financial Officer, Treasurer and Senior Vice President (Principal Financial Officer)	October 28, 2011
By: /s/ Laura Patricia Messenbaugh Laura Patricia Messenbaugh	Chief Accounting Officer and Vice President (Principal Accounting Officer)	October 28, 2011
By: /s/ Wendell R. Beard Wendell R. Beard	Director	October 28, 2011
By: /s/ Steven R. Goldberg Steven R. Goldberg	Director	October 28, 2011
By: /s/ Nat Moore Nat Moore	Director	October 28, 2011
By: /s/ Larry S. Mulkey Larry S. Mulkey	Director	October 28, 2011
By: /s/ C. Rodney O'Connor C. Rodney O'Connor	Director	October 28, 2011

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By: /s/ Robert S.
Picow
Robert S. Picow

Director

October 28, 2011

By: /s/ Peter H.
Woodward
Peter H. Woodward

Director

October 28, 2011