Power REIT
Form 10-K
March 29, 2013

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, 2012

Commission File Number: 000-54560

Power REIT

(Exact name of registrant as specified in its charter)

Maryland	45-3116572
(State of organization)	(I.R.S. Employer Identification No.)

301 Winding Road, Old Bethpage, NY	11804
(Address of principal executive offices)	(Zip Code)

Registrant's telephone number, including area code (212) 750-0373

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

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

Name of each exchange on which registered: NYSE MKT

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 X

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 X

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 X 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 X 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.

Large accelerated filer Accelerated filer

Non-accelerated filer Smaller reporting company X

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act).
Yes No X

The aggregate market value of the voting stock held by non-affiliates of the Registrant as of June 30, 2012, the Registrant's most recently completed second fiscal quarter, was approximately $11,995,000 based upon the closing price on June 29, 2012. 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, 2013, there were 1,623,250 outstanding common shares.

Notices and communications from the U.S. Securities and Exchange Commission (the "SEC" or the "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 III of this annual report on Form 10-K incorporates by reference Registrant's definitive proxy statement to be filed with the Commission within 120 days after December 31, 2012.

PART I

Item 1 BUSINESS

Power REIT ("Registrant", and together with its subsidiaries, the "Company", "Power REIT" or "we") is a Maryland domiciled real estate investment trust (REIT) that develops, acquires and manages transportation and energy infrastructure real estate assets within the United States, including its territories ("U.S."). Within the transportation and energy infrastructure sectors, Power REIT is currently primarily focused on new acquisitions of real estate that are or will be leased to renewable energy generation projects, such as utility-scale wind farms and solar farms, with low or minimal technology risk. Power REIT is structured as a holding company and owns its assets through special purpose subsidiaries that have been formed for the purpose of holding real estate assets and generating lease revenue. Power REIT was formed through a reorganization and reverse merger of the Pittsburgh & West Virginia Railroad ("P&WV") on December 2, 2011. P&WV survived the reorganization as a wholly-owned subsidiary of the Registrant.

As of December 31, 2012, the Company's assets consisted of railroad infrastructure and related real estate owned by P&WV and 54 acres of fee simple land leased to a 5.7MW solar farm in Massachusetts. The solar farm property was acquired by Power REIT on December 31, 2012 through our wholly-owned subsidiary, PW Salisbury Solar, LLC ("PWSS").

Due to the PWSS acquisition closing on the last day of 2012, PWSS did not contribute to the Company's operating results in 2012 and Power REIT's consolidated operating results during 2012 consisted solely of its ownership of P&WV. P&WV's railroad real estate is leased to Norfolk Southern Corporation ("NSC") under a 99-year, triple-net lease with base cash rent of $915,000 per year, which base amount is fixed and unvarying for the life of the lease, including any renewal periods. PWSS' land is leased to a solar farm pursuant to a twenty-two-year lease agreement that commenced on December 1, 2011 with $80,800 of annual cash rent to be paid from December 1, 2012 to November 30, 2013, with a 1.0% escalation each year thereafter. Rent from the lease is paid quarterly in advance and will be recorded on a straight-line basis, with $89,494 to be recorded during the 2013 calendar year. PWSS is expected to start contributing to the Company's operating results during the first quarter of 2013.

Power REIT has elected 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. In order to maintain the Company's REIT qualification, at least 90% of its ordinary taxable income must be distributed to shareholders.

Power REIT currently has no employees. Mr. David H. Lesser serves as our Chief Executive Officer and is the Chairman of our board of trustees. Business development, accounting and other general administrative services are currently provided through a consulting agreement with Caravan Partners, LLC, an affiliate of Mr. Arun Mittal, who serves as our 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

An investment in the Company's common shares involves risks. Investors who are making an investment decision regarding the Company's securities should carefully consider the following risk factors, together with all of the other information included in this annual report before making an investment decision. Some of these factors relate principally to the Company's business and business plans. The risks and uncertainties described below are not the only ones facing the Company. Additional risks and uncertainties not presently known to the Company or that are currently deemed immaterial may also have a material adverse effect on the Company's business and operations. If any of the matters included in the following risks were to occur, the Company's business, financial condition, results of operations, cash flows or prospects could be materially adversely affected. In such case, investors may lose all or part of their investment.

The Company's business strategy includes growth plans. The Company's financial condition and results of operations could be negatively affected if it fails to grow or fails to manage its growth effectively. Even if the Company is able to execute its business plan, its business or investment strategies may not be successful.

The Company intends to pursue a growth strategy focused on acquiring infrastructure properties that qualify as real estate for REIT purposes. The Company's business prospects must be considered in light of the risks, expenses and difficulties frequently encountered by companies in significant growth stages of development. General and administrative ("G&A") expenses, including expenses related to tax, legal and audit, have been increasing and are expected to continue to increase due to the complexities of the holding company structure, our intention to form an umbrella partnership REIT in the future for the purposes of facilitating asset acquisitions ("URPEIT" or "Operating Partnership"), expenses related to litigation and other expenses related to our growth. The Company cannot assure stockholders that it will be able to expand its market presence in existing markets or successfully enter new markets or that any such expansion will not adversely affect its results of operations. Failure to manage growth effectively could have a material adverse effect on the Company's business, future prospects, financial condition or results of operations and could adversely affect the Company's ability to successfully implement its business strategy or pay a dividend.

Even if the Company is able to expand its business as expected, its investments may not be successful due to a variety of factors, including but not limited to asset underperformance, higher than forecasted expenses related to its investments, failure of the Company's lessees or changes in market conditions, any of which may result in lower returns than expected and may adversely affect the Company's financial condition, results of operations, cash flow and ability to pay a dividend, and the market price of the Company's securities.

The Company operates in a highly competitive market for investment opportunities.

The Company competes with public and private funds, commercial and investment banks and commercial financing companies to make the types of investments that it seeks to make in the U.S. infrastructure sector. Many of the Company's competitors are substantially larger and have considerably greater financial, technical and marketing resources than the Company. For example, some competitors may have a lower cost of funds and access to funding sources that are not currently available to the Company. In addition, some of the Company's competitors may have higher risk tolerances or different risk assessments, allowing them to consider a wider variety of investments. Furthermore, many of the Company's competitors are not subject to the restrictions that the Company is subject to as a real estate investment trust. These competitive conditions may adversely affect the Company's ability to make investments in the infrastructure sector and could adversely affect distributions to stockholders.

Because the Company expects to distribute substantially all of its free cash-flow to stockholders or lenders, the Company will continue to need additional capital to make new investments. If additional funds are unavailable

or not available on favorable terms, the Company's ability to make new investments will be impaired. Issuance of additional securities will result in dilution of ownership.

If the Company distributes substantially all of its investment income to stockholders and desires to make new investments, it will require a substantial amount of capital. The Company may raise additional capital from the issuance of securities senior to our common shares, including additional borrowings or other indebtedness or the issuance of additional securities, including limited partnership interests. The Company may also raise additional capital through the issuance of additional equity. However, the Company may not be able to raise additional capital in the future on favorable terms or at all. Unfavorable economic conditions could increase the Company's funding costs, limit our access to the capital markets or result in a decision by lenders not to extend credit to the Company. This may materially affect the Company's business and ability to grow and may impact the market's perception of the Company and impact its share price.

Additional issuance of equity securities may result in dilution to stockholders. Although the Company expects to deploy additional capital for the purpose of making accretive transactions, such additional dilution may reduce existing stockholders' percentage ownership of the Company and voting percentage.

The Company's investment portfolio is currently concentrated and in the future it may continue to have concentrated exposure to a relatively few number of investments, industries and lessees. Furthermore, the Company will continue to be subject to its current and future lessees' financial condition.

As of December 31, 2012, the Company has two investments consisting of its ownership of its two wholly-owned subsidiaries: PWSS and P&WV. P&WV constituted approximately 100% of the Company's operating results in 2012. Not accounting for any impact of growth, P&WV is projected to comprise more than 90% of the Company's revenue on a consolidated basis in 2013 and beyond. The Company is exposed to concentration risks and the underperformance or non-performance of any of its assets may severely impact the Company's results from operations. Furthermore, P&WV is currently in litigation with its lessee, Norfolk Southern Corporation. The result of the litigation is uncertain, and may result in an unfavorable outcome to P&WV, which may impact the Company's operations and ability to execute its business plan.

Any economic slowdown may have a negative impact on the operations of the Company's lessees due to downturns in their business and/or their inability to make lease payments when due. The Company's lessees may seek the protection of bankruptcy, insolvency or similar laws, which could result in the rejection and termination of our lease agreements and could cause a reduction in the Company's cash flow and adversely affect the Company's financial condition.

As the Company grows, its portfolio may be concentrated in a limited number of investments. An inherent risk associated with this investment concentration is that the Company may be adversely affected if one or more of our investments perform poorly or if the fair value of any one investment decreases. Financial difficulty or poor business performance on the part of any single lessee or the default on any single lease will expose the Company to a greater risk of loss than would be the case if the Company were "diversified" and holding numerous investments. Further, the Company intends to concentrate its investment activities in the infrastructure sector, including energy and transportation, which will subject the Company to more risks than if the Company were broadly diversified across sectors. At times, the performance of the infrastructure sector may lag the performance of other sectors or the broader market as a whole.

Power REIT and its wholly-owned subsidiary, P&WV, are in litigation with NSC, the lessee of P&WV's assets, and NSC's sub-lessee. The litigation involves various risks.

As previously disclosed in our public filings with the SEC, Power REIT and its wholly-owned subsidiary, P&WV, are in litigation with NSC and NSC's sub-lessee, Wheeling & Lake Erie Railroad (together with NSC, the "Litigants"). The case is pending in the Federal trial court in Pittsburgh, PA ("Court"). The Litigants initiated the litigation against Power REIT and P&WV in December 2011, seeking, among other things, a declaratory judgment that NSC was not in default under the 99-year lease that NSC had entered into with P&WV effective in 1964. P&WV, as lessor, has asserted counterclaims seeking determinations that NSC is in default under the lease for, among other things, failing to reimburse certain legal fees incurred by P&WV and failing to permit P&WV to inspect NSC's books and records as called for under the terms of the lease. P&WV also seeks determinations from the Court declaring (a) that NSC's obligation to repay the indebtedness owed under the lease is not indefinite in duration; and (b) that the indebtedness owed to P&WV is due on demand with interest. See "Legal Proceedings" under Item 3 for a further discussion of the litigation.

As part of the litigation proceedings, Power REIT filed a motion requesting that it be dismissed from the litigation on the ground that it is not in contractual privity with either of the Litigants. The Litigants opposed Power REIT's motion to dismiss, alleging that Power REIT is a successor in interest to P&WV in respect of the lease. Pursuant to applicable law, on a motion to dismiss, a court must accept as true all of the allegations contained in the challenged pleadings. On this ground, the Court overseeing the litigation denied Power REIT's motion to dismiss.

The litigation involves various risks. In regard to the Litigants' allegation that Power REIT is a successor in interest in respect of the lease, if that allegation were to be decided against us in a fact-finding stage of any proceeding, it could lead to liability, expenses or other adverse effects, including to the extent we have issued any stock or engaged in certain other financing without the prior written consent of the lessee. This is because, under the terms of the lease, the "lessor" may not (subject to certain exceptions) borrow money, issue debt or stock or engage in certain other financing without the prior written consent of the lessee (which, pursuant to the lease, may not be unreasonably withheld).

We believe that Power REIT is not the "lessor" under the lease and is not constrained by any of the lease restrictions. Nevertheless, there can be no assurance that Power REIT and P&WV will prevail in any determination on the merits of the Litigants' allegation or on any of the Litigants' other claims and allegations, and avoid an adverse judgment or other adverse effects.

In addition to the foregoing risks, the perception of the litigation in the market or to prospective business or finance counter-parties, whether or not accurate, may make it harder for us to source investment opportunities or obtain debt or equity financing on terms that would otherwise be available, which in turn might constrain Power REIT's ability to grow its asset base and diversify its business.

If we are unable to raise additional financing as a result of the litigation, our business could suffer.

We believe we have sufficient liquidity and access to financing to fund the litigation discussed above and our other operations; however, if we were unable to raise additional financing as a result of the litigation, we could be required to, among other things, cut or eliminate dividend payments in order to fund the litigation costs. Difficulties in growing or accessing financing, or a need to reduce or eliminate quarterly dividends, could adversely affect our business and our share price.

The Company's lease arrangements generally require its lessees to have insurance coverage and/or to indemnify the Company or to name the Company as an insured, but such indemnity or insurance provisions may not cover all losses to which the Company is potentially subject.

The Company's current lease agreements require the Company's lessees to carry insurance and/or provide broad indemnification to its subsidiaries, but such protection may not cover all losses to which the Company may be subject. The Company believes its properties are adequately covered by lease provisions. However, if the Company suffers loses that are not covered by indemnification provisions or under its lessee's insurance policies, or if the Company's lessees or insurance companies are unable to make payment on covered losses, the Company could experience a significant loss of capital invested and future revenue and may still be liable for any debt that was incurred in the acquisition or financing of the subject property.

The Company may be exposed to various environmental risks that may result in unanticipated losses or liability that could affect its operating results and financial condition.

Although the Company believes that its lessees bear environmental risks through contractual provisions of the related lease agreements, if the Company's lessees fail to operate the leased properties in a manner compliant with environmental laws and is unable or unwilling to remediate the problem, the Company may be subject to significant liability. Under various federal, state and local laws, ordinances and regulations, a current or previous owner, developer or operator of real estate may be liable for the costs of removal or remediation of certain hazardous or toxic substances. The costs of removal or remediation of such substances could be substantial. Such laws often impose liability without regard to whether the owner or operator knew of, or was responsible for, the release or presence of such hazardous substances. In addition, third parties may sue the owner or operator of a site for damages based on personal injury, property damage or other costs, including investigation and cleanup costs, resulting from the environmental contamination.

The Company cannot give any assurance that other such conditions do not exist or may not arise in the future. The presence of such substances on our real estate properties could adversely affect the Company's ability to lease, develop or sell such properties or to borrow using such properties as collateral and may have an adverse effect on the Company's distributable cash flow.

Legislative, regulatory, accounting or tax changes or actions, or significant litigation, could adversely affect the Company, the infrastructure industry or the REIT industry.

The Company and its investments are and will be subject to federal, state and local laws and regulations and are subject to judicial and administrative decisions that affect operations, investments, accounting treatment, tax benefits and the economic health of lessees that lease the Company's properties. If these laws, regulations or decisions change, the Company may have to incur significant expenses in order to comply, or the Company may have to restrict its operations. In addition, if the Company does not comply with applicable laws, regulations and decisions, or fails to obtain licenses or approvals that may become necessary, the Company may be subject to civil fines and criminal penalties, any of which could have a material adverse effect upon the Company's business, results of operations or financial condition. Actions by regulatory agencies or significant litigation against the Company or by the Company could require significant time and resources and may lead to penalties that materially affect the Company and its stockholders. Proposed changes to the accounting treatment of leases by both lessors and lessees under U.S. GAAP may adversely impact the Company's financial statements and our growth plans.

Changes in interest rates or disruptions in the global capital or credit markets may negatively affect the value of the Company's assets, its ability to access debt financing and the trading price of its stock.

The Company's investment in certain assets will generally decline in value if long-term interest rates increase. If interest rates were to rise from their current historically low levels, it may affect the market perceived or actual value of the Company's assets and/or dividends and consequently the Company's stock price may decline in value. Further, the Company may borrow funds; a rise in interest rates may result in re-financing risk when those borrowings become due and the Company may be required to pay higher interest rates and/or issue additional equity to refinance its borrowings, which may adversely impact the Company's operating results and/or the Company's stock price. To the extent there is turmoil in the financial markets or tightening of the credit markets, it has the potential to materially affect the value of the Company's properties and investments in its subsidiaries, the availability or the terms of financing that the Company may have or may anticipate utilizing, the Company's ability to make principal and interest payments on, or refinance any outstanding debt when due and may impact the ability of the Company's lessees to satisfy rental payments under existing leases.

The Company's quarterly results may fluctuate.

The Company could experience fluctuations in its quarterly operating results due to a number of factors, including the return on current or future investments, including any future investments with revenue participation, the interest rates payable on our debt investments, the default rates on such investments, the level of the Company's expenses, variations in and the timing of the recognition of realized and unrealized gains or losses, the degree to which the Company encounters competition in its markets and general economic conditions. As a result of these factors, results for any period should not be relied upon as being indicative of performance in future periods.

The Company may fail to remain qualified as a REIT, which would reduce the cash available for distribution to stockholders and may have other adverse consequences.

Qualification as a REIT for federal income tax purposes is governed by highly technical and complex provisions of the U.S. Internal Revenue Code for which there are only limited judicial or administrative interpretations, including interpretation of lease agreements with our lessees, which may contain complex tax indemnification and non-cash payment provisions. The Company's qualification as a REIT also depends on various facts and circumstances that are not entirely within its control. In addition, legislation, new regulations, administrative interpretations or court decisions might change the tax laws with respect to the requirements for qualification as a REIT or the federal income tax consequences of qualification as a REIT.

If, with respect to any taxable year, the Company were to fail to maintain its qualification as a REIT, it would not be able to deduct distributions to our shareholders in computing our taxable income and would have to pay federal corporate income tax (including any applicable alternative minimum tax) on its taxable income. If the Company had to pay federal income tax, the amount of money available to distribute to stockholders would be reduced for the year or years involved. In addition, the Company would be disqualified from treatment as a REIT for the four taxable years following the year during which qualification was lost and thus its cash available for distribution to stockholders would be reduced in each of those years, unless it were entitled to relief under relevant statutory provisions. Failure to qualify as a REIT may also subject the Company to regulation under the Investment Company Act of 1940 ("1940 Act") and could result in additional expenses or adverse consequences.

Although the Company currently intends to operate in a manner designed to allow it to continue to qualify as a REIT, future economic, market, legal, tax or other considerations might cause the Company to revoke or lose its REIT status, which could have a material adverse effect on the Company's business, future prospects, financial condition or results of operations and could adversely affect its ability to successfully implement its business strategy or pay a dividend.

In order to maintain the Company's status as a REIT, the Company may be forced to borrow funds or sell assets during unfavorable market conditions.

As a REIT, the Company must distribute at least 90% of its annual taxable income, subject to certain adjustments, to stockholders. To the extent that the Company satisfies the REIT distribution requirement but distributes less than 100% of its taxable income, the Company will be subject to federal corporate income tax on its undistributed taxable income. In addition, the Company will be subject to a 4% nondeductible excise tax if the actual amount that it pays to stockholders in a calendar year is less than a minimum amount specified under federal tax laws.

From time to time, the Company may have taxable income greater than cash flow available for distribution to stockholders (for example, due to substantial non-deductible cash outlays, such as capital expenditures or principal payments on debt). If the Company did not have other funds available in these situations, it could be required to borrow funds, sell investments at disadvantageous prices or find alternative sources of funds to make distributions sufficient to enable it to pay out enough of its taxable income to satisfy the REIT distribution requirement and to avoid income and excise taxes in a particular year. These alternatives could increase its operating costs and diminish available cash flow, sustainable future cash flow or future ability to grow.

If an investment that was initially believed to be a real asset is later deemed not to have been a real asset at the time of investment, the Company could lose its qualification as a REIT or be precluded from investing according to its business plan.

The Company must meet income and assets tests to qualify as a REIT. If an investment that was originally believed to be a real asset is later deemed not to have been a real asset at the time of investment, its qualification as a REIT may be jeopardized or the Company may be precluded from investing according to its then current business plan, either of which would have a material adverse effect on the Company's business, financial condition and results of operations. The Company may also be required to dispose of investments, which could have a material adverse effect on the Company and its stockholders, because even if the Company were successful in finding a buyer, it may have difficulty in finding a buyer to purchase such investments on favorable terms or in a sufficient timeframe.

Issuance of securities with claims that are senior to those of the common shares of the Company may limit or prevent the Company from paying dividends on its common shares and there is no limitation on the amount of indebtedness that the Company may incur in the future.

The Company's common shares are equity interests. As such, common shares rank junior to any indebtedness and other non-equity claims with respect to assets available to satisfy claims on the Company. The Company may issue senior securities or guarantee the debt of its subsidiaries (or any indirect subsidiaries or Operating Partnership formed in the future), which may expose the Company to typical risks associated with leverage, including increased risk of loss. If the Company issues preferred securities, which will rank "senior" to common shares in the Company's capital structure, the holders of such preferred securities may have separate voting rights and other rights, preferences or privileges more favorable than those held by owners of the Company's common shares, and the issuance of such preferred securities could have the effect of delaying, deferring or preventing a transaction or a change of control that might involve a premium price for security holders or otherwise be in Company's best interest.

In addition, limited partnership interests or other securities issued by the Operating Partnership may have a senior priority on cash-flow or liquidation proceeds generated by the Operating Partnership. To the extent, the Operating Partnership is unable to make cash distributions to the Company, the Company may be forced to issue additional equity or debt, at unfavorable terms, to maintain compliance with IRS rules that require it to distribute 90% of its taxable income to its shareholders. If the Company is unable to make such distributions, it may lose its REIT qualification.

Unlike indebtedness, for which principal and interest customarily are payable on specified due dates, in the case of common shares, dividends are payable only when, as and if declared by the Company's board of trustees and depend on, among other things, the Company's results of operations, financial condition, debt service requirements, distributions received from subsidiaries or Operating Partnership, other cash needs and any other factors the board of trustees may deem relevant or as required by law. The Company may incur substantial amounts of additional debt and other obligations that will rank senior to its common shares.

Factors may cause the Company to lose its NYSE MKT listing.

The Company could lose its listing on the NYSE MKT depending on a number of factors, including failure to qualify as a REIT, or failure to meet the NYSE MKT ongoing listing requirements, including those relating to the number of shareholders, the price of the Company's common shares and the amount and composition of assets.

Low trading volume in the Company's common shares may adversely affect stockholders' ability to resell shares at prices that are attractive, or at all.

Power REIT common shares are traded on the NYSE MKT under the ticker "PW". The average daily trading volume for Power REIT's common shares is less than larger companies. During the 12 months ending December 31, 2012, the average daily trading volume for the Company's common shares was approximately 4,600 shares. Due to its relatively small trading volume, sales of the Company's common shares may place significant downward pressure on the market price of the Company's shares. Furthermore, it may be difficult for holders to sell their shares at prices they find attractive, or at all.

The price of the Company's common shares may fluctuate significantly and this may make it difficult for stockholders to sell the Company's common shares when desired or at prices that are attractive.

The market value of the Company's common shares will likely continue to fluctuate in response to a number of factors, including factors that are beyond the Company's control. The market value of the Company's common shares may also be affected by conditions affecting the financial markets generally, including the volatility of the trading markets. These conditions may result in: (i) fluctuations in the market prices of stocks generally and, in turn, the Company's common shares; and (ii) sales of substantial amounts of the Company's common shares in the market, in each case to a degree that could be unrelated or disproportionate to any changes in the Company's operating performance. Such market fluctuations could adversely affect the market value of the Company's common shares. A significant decline in the Company's share price could result in substantial losses for stockholders and could lead to costly and disruptive securities litigation.

Item 1B UNRESOLVED STAFF COMMENTS

None

Item 2 PROPERTIES

Registrant's property consists of its wholly-owned subsidiaries:

1. Pittsburgh & West Virginia Railroad ("P&WV"). P&WV leases the entirety of its railroad property to NSC. The railroad property 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 other related real estate. 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 to Norfolk and Western Railway Company, now known as Norfolk Southern Corporation ("NSC"), effective in 1964, 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, paid quarterly, which amount is fixed and unvarying for the life of the lease, including any renewal periods. In addition to annual base cash rent, NSC pays additional rent to P&WV, which it can elect to pay in cash or treat as an indebtedness owed to P&WV by NSC.

– Triple Net Lease. NSC at its own expense and without deduction from the rent, maintains, manages and operates 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. According to the books and records maintained by NSC, the unpaid principal balance of the indebtedness owed to P&WV from NSC is approximately $16,600,000 as of December 31, 2012. This amount results primarily from Section 4(b)(1) rent payments from NSC, which NSC has historically elected to pay in the form of indebtedness rather than cash. Section 4(b)(1) rent is calculated based on the annual amount of tax depreciation and amortization of P&WV's assets that are leased to NSC. The indebtedness amount also includes the gross amount of sales transactions, whereby NSC sells portions of P&WV's real-estate and has the option to retain the proceeds from such sales as indebtedness to P&WV.

Due to the ongoing litigation over the amount, term and character of this indebtedness, for financial reporting purposes, additional rent payments and the indebtedness amount are not reported on P&WV's, or the Registrant's, consolidated GAAP balance sheet or statement of operations. Although, the Company does not record these items for GAAP purposes, the Company has historically booked taxable income from Section 4(b)(1) rent payments and capital gains from asset sales and maintains that the indebtedness is a valid amount that is due on demand, with interest. See Item 3, Legal Proceedings.

– 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.

2. PW Salisbury Solar, LLC ("PWSS"). PWSS owns approximately 54 acres of fee simple land located in Salisbury, Massachusetts that is leased to an operational solar farm. Pursuant to the lease agreement, the tenant is required to pay an annual cash payment of $80,800 to be paid during December 1,2012 to November 30, 2013, with a 1.0% escalation each year thereafter. Rent from the lease is paid quarterly in advance and will be recorded on a straight-line basis, with $89,494 to be recorded during the 2013 calendar year. At the end of the twenty-two year lease, which commenced on December 1, 2011, the tenant has renewal options with terms to be mutually agreed upon.

The Company's revenue is highly concentrated, with lease payments from NSC to P&WV representing 100% of its consolidated revenues in 2012. NSC is a Class I railroad and, as reported in its Form 10-K filed with the SEC on February 15, 2013, has approximately $9.8 billion of stockholders' equity as of December 31, 2012 and earned $1.7 billion of net income during fiscal year 2012. Assuming no acquisitions during 2013, P&WV will represent over 90% of the Company's consolidated revenue in 2013.

Item 3 LEGAL PROCEEDINGS

As previously disclosed in our public filings with the SEC, Power REIT and its wholly-owned subsidiary, P&WV, are in litigation with NSC and NSC's sub-lessee, Wheeling & Lake Erie Railroad (together with NSC, the "Litigants"). The case is pending in Federal trial court in Pittsburgh, PA ("Court"). The Litigants initiated the litigation against Power REIT and P&WV in December 2011, seeking, among other things, a declaratory judgment that NSC was not in default under the 99-year lease that NSC had entered into with P&WV effective in 1964. P&WV, as lessor, has asserted counterclaims seeking determinations that NSC is in default under the lease for, among other things, failing to reimburse certain legal fees incurred by P&WV and failing to permit P&WV to inspect NSC's books and records as called for under the terms of the lease. P&WV also seeks determinations from the Court declaring (a) that NSC's obligation to repay the indebtedness owed under the lease is not indefinite in duration; and (b) that the indebtedness owed to P&WV is due on demand with interest.

The indebtedness owed to P&WV under the lease (the "Indebtedness") is the cumulative result of additional rent and other sums that NSC owes to P&WV but has elected under the lease to pay to P&WV via indebtedness rather than cash. These sums include amounts received by NSC from its sale of portions of P&WV's assets. The Indebtedness has not been reported in the consolidated balance sheets as prepared under GAAP due to the dispute on when these amounts are due. Similarly the amounts of additional rent paid by NSC that have been treated as indebtedness have not been included in PWV's statement of operations prepared under GAAP; however these additional rent amounts have historically been recorded as taxable income.

As part of the litigation proceedings, Power REIT filed a motion requesting that it be dismissed from the litigation on the ground that it is not in contractual privity with either of the Litigants. The Litigants opposed Power REIT's motion to dismiss, alleging that Power REIT is a successor in interest to P&WV in regard to the lease. Pursuant to applicable law, on a motion to dismiss, a court must accept as true all of the allegations contained in the challenged pleadings. On this ground, the Court overseeing the litigation denied Power REIT's motion to dismiss. We believe that there is no merit to the successor-in-interest allegation and intend to vigorously defend our position; however there can be no assurance that we will prevail.

As of the date of this filing, the fact discovery phase of the litigation has been mostly completed. The parties are currently in the expert witness discovery phase of the litigation. At this stage, limited guidance on the ultimate outcome of the litigation can be provided by management due to the unpredictable nature of court proceedings.

In 2012, P&WV incurred approximately $700,000 of legal expenses in connection with the litigation. P&WV has taken the position with NSC that the costs associated with the litigation are reimbursable by NSC under the lease as additional rent. Nevertheless, there can be no assurance that P&WV will be successful in recovering its costs associated with the litigation.

As of the date of this filing, NSC has continued to make all quarterly base cash rental payments due during the pendency of the litigation. P&WV expects that NSC will continue to make such payments, since a failure to do so would be a clear default under the lease and NSC initiated the litigation in an effort to avoid a default and potential termination of the lease by P&WV. Nevertheless, in light of the ongoing litigation, there can be no assurance that NSC will continue to make such payments.

See "Risk Factors" under Item 1A for a discussion of risks related to the litigation.

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 common shares of $0.001 par value are listed for trading on the NYSE MKT under the symbol of "PW". At February 15, 2013, there were approximately 525 registered holders of registrant's common shares of beneficial interest.

Stock Market and Dividend information per common share:

	Quarters Ended 2012			
	3/31	**6/30**	**9/30**	**12/31**
Closing Price:				
High....	$11.53	$10.11	$9.00	$10.35
Low ...	9.28	6.91	7.05	7.16
Dividends Paid	0.10	0.10	0.10	(*)

	Quarters Ended 2011			
	3/31	**6/30**	**9/30**	**12/31**
Closing Price:				