

ACORN ENERGY, INC.
Form S-1
May 03, 2019

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

**FORM S-1
REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933**

Acorn Energy, Inc.

(Exact Name of Registrant as Specified in Its Charter)

Delaware	7371	22-2786081
(State or Other Jurisdiction of Incorporation or Organization)	(Primary Standard Industrial Classification Code Number)	(I.R.S. Employer Identification Number)

**1000 N West Street, Suite 1200
Wilmington, Delaware 19801
(410) 654-3315**

(Address, Including Zip Code, and Telephone Number, Including Area Code, of Registrant's Principal Executive Offices)

Jan H. Loeb
President and Chief Executive Officer
Acorn Energy, Inc.
1000 N West Street, Suite 1200
Wilmington, Delaware 19801
(410) 654-3315

(Name, Address, Including Zip Code, and Telephone Number, Including Area Code, of Agent for Service)

Copies to:

Sheldon Krause
Eilenberg & Krause LLP
11 East 44th Street, 19th Floor
New York, New York 10017
(212) 994-4770

Approximate date of commencement of proposed sale to the public: As soon as practicable after this registration statement becomes effective.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, check the following box:

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering:

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same

offering:]

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering:]

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. (Check one):

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

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to section 7(a)(2)(B) of the Securities Act.]

CALCULATION OF REGISTRATION FEE

Title of each class of securities to be registered	Amount to be Registered ⁽¹⁾	Proposed maximum offering price per share	Proposed maximum aggregate offering price ⁽²⁾	Amount of registration fee
Non-transferable Rights (3)	N/A	N/A	N/A	N/A (4)
Common Stock, \$0.01 par value per share, underlying Rights		\$ []	\$2,400,000	\$ 291

In the event of a stock split, stock dividend or similar transaction involving our common stock, the number of (1) shares registered shall automatically be increased to cover the additional shares of common stock issuable pursuant to Rule 416 under the Securities Act of 1933, as amended.

(2) The offering price has been estimated solely for the purpose of computing the amount of the registration fee in accordance with Rule 457(o).

(3) We are granting, for no consideration, to our securityholders non-transferable Rights to purchase shares of our common stock.

(4)

The non-transferable Rights are being issued without consideration. Pursuant to Rule 457(g), no separate registration fee is payable with respect to the Rights being offered hereby because the Rights are being registered in the same registration statement as the securities being offered upon exercise of the Rights.

The registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933, as amended, or until this registration statement shall become effective on such date as the Securities and Exchange Commission, acting pursuant to said Section 8(a), may determine.

The information in this prospectus is not complete and may be changed without notice. We may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell these securities and we are not soliciting offers to buy these securities in any state where the offer or sale of these securities is not permitted.

**PRELIMINARY PROSPECTUS
SUBJECT TO COMPLETION, DATED MAY 3, 2019**

Acorn Energy, Inc.

**Rights to Purchase Shares of Common Stock
[] Shares of Common Stock**

We are distributing, at no charge, to holders of our outstanding Common Stock and to certain holders of outstanding warrants to purchase shares of our Common Stock, non-transferable subscription rights, which we refer to as the “Rights,” to purchase in the aggregate up to [] shares of our Common Stock at a cash subscription price of \$[] per whole share. We refer to the offering of our Common Stock through the Rights as the “Rights Offering.”

In the Rights Offering, you will receive one (1) Right for each one (1) share of our Common Stock you hold as of 5:00 p.m. Eastern Daylight Time, on [], 2019, the record date for the Rights Offering. If you hold warrants to purchase shares of our Common Stock, you will also receive one (1) Right for each one (1) share of our Common Stock that you could purchase as of 5:00 p.m. EDT on the record date by exercising your warrants. You will not need to exercise your warrants in order to receive Rights.

Each Right will entitle you to purchase [] of a share of our Common Stock at a subscription price of \$[] per whole share. The subscription price was determined by our Board of Directors. We will not issue fractional shares in the Rights Offering. You will not receive any Rights in our Rights Offering unless you hold, as of 5:00 p.m. EDT on the record date, shares of our Common Stock or warrants to purchase shares of our Common Stock.

You may exercise your Rights at any time beginning on the effective date of this prospectus and before the expiration of the Rights Offering, on [], 2019, at 5:00 p.m., Eastern Daylight Time, which is [] calendar days after the

effective date of this prospectus, unless we extend the Rights Offering period, as determined at our sole discretion, for up to [] calendar days.

We reserve the right to cancel the Rights Offering for any reason at our sole discretion any time before the expiration date. If we cancel the Rights Offering, any and all subscription payments that have been received by our Subscription Agent will be returned as soon as reasonably possible, without interest or penalty.

American Stock Transfer & Trust Company, LLC (referred to in this prospectus as the “Subscription Agent”) will serve as the Subscription Agent for the Rights Offering. The Subscription Agent will hold in escrow the funds we receive from subscribers until we complete or cancel the Rights Offering.

[] (referred to in this prospectus as the “Information Agent”) will act as our Information Agent in connection with the Rights Offering. You may contact them directly with any questions or comments toll-free at [].

We are directly offering the Rights and the shares of Common Stock issuable upon exercise of the Rights, all of which are covered by this Registration Statement. We have not engaged the services of any underwriters or selling agents. We will bear all costs, expenses and fees in connection with the registration of the shares of Common Stock issuable upon exercise of the Rights.

Our Common Stock is traded on the OTCQB marketplace under the symbol ACFN. The shares of Common Stock that we issue in connection with the Rights Offering will also trade on the OTCQB marketplace under the same symbol. The Rights will not be listed for trading on the OTCQB marketplace or any other stock exchange or market. On May [], 2019, the last reported sale price for our Common Stock was \$[] per share. As of the record date for the Rights Offering, our company had [] shares of Common Stock issued and outstanding, and warrants to purchase 2,357,142 shares of our Common Stock held by warrant holders who will receive Rights.

Neither our Board of Directors nor our management has made any recommendations regarding the exercise of your Rights. You may not revoke or revise any exercises of Rights once made, unless we cancel or make a fundamental change to the terms and conditions of the Rights Offering. You should carefully read this entire prospectus and all information that we incorporate by reference before you make any investment decision. See the section in this prospectus under the caption: “Incorporation of Certain Information by Reference.” **Investing in our Common Stock involves certain risks. See “Risk Factors” beginning on page 14 to read about factors you should consider before exercising your Rights.**

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or passed upon the adequacy or accuracy of this prospectus. Any representation to the contrary is a criminal offense.

The date of this prospectus is _____, 2019.

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ABOUT THIS PROSPECTUS

In considering any decision regarding an investment in the shares of our Common Stock which are the subject of this prospectus, you should rely only upon the information contained in this prospectus and the information that we incorporate by reference into this prospectus. We have not authorized any persons to provide you with information which is different from the information contained in this prospectus or the information that we incorporate by reference into this prospectus. We take no responsibility for, and can provide no assurances as to the reliability of, any other information that you may obtain from other sources. The information contained in this prospectus is accurate only as of the date on the front cover of this prospectus. Any and all information that we incorporate by reference is accurate only as of the date of the referenced document so incorporated.

This prospectus is an offer to sell only the securities that are offered hereby, and only where it is lawful to do so. This prospectus does not offer to sell, or ask for offers to buy, any shares of our Common Stock in any state or jurisdiction (within or outside the United States) where it would not be lawful or where the person making the offer is not qualified to do so.

This prospectus is part of a registration statement that we filed with the U.S. Securities and Exchange Commission (the "SEC"). Please carefully read both this entire prospectus together with all information that we incorporate by reference. See the section of this prospectus under the caption: "Incorporation of Certain Information by Reference."

Except as otherwise indicated herein or as the context otherwise requires, references in this prospectus to "Acorn Energy," "Acorn," "the Company," "we," "us," "our," and similar references refer to Acorn Energy, Inc. and its subsidiaries. References in this prospectus to "Subscription Agent" refer to American Stock Transfer & Trust Company, LLC. References in this prospectus to "Information Agent" refer to [].

DISCLOSURE REGARDING FORWARD-LOOKING STATEMENTS

This prospectus and the documents we incorporate by reference into this prospectus may contain forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended, about the us and our subsidiaries. We intend the coverage of our forward-looking statements to be within the safe harbor provisions of the Private Securities Litigation Reform Act of 1995. Forward-looking statements are not statements of historical fact, and can be identified by the use of forward-looking terminology such as "believes," "expects," "may," "will," "could," "should," "projects," "plans," "goal," "target," "potential," "estimates," "pro forma," "seeks," "intends," or "anticipates" or the negative form of these terms or comparable qualifying words. The basis for our forward-looking statements includes our current expectations and a number of known and unknown risks and uncertainties that could cause actual outcomes to differ materially from our

forward-looking statements. We caution readers not to place undue reliance on our forward-looking statements. In light of inherent uncertainties in forward-looking statements, the reader should not interpret inclusion of these statements as any representation by us or any other person that we will achieve or accomplish any of the matters expressed within the scope of any of our forward-looking statements. We assume no obligation to publicly update or revise our forward-looking statements or to advise of any changes regarding the basis of our assumptions and other factors relating to the forward-looking statements.

PROSPECTUS SUMMARY

This summary highlights information contained elsewhere in this prospectus. This summary is not complete and may not contain all of the information that you should consider before making any decision to invest in our Common Stock. Prior to making any investment decision, we encourage you to read the entire prospectus carefully, including the risks discussed in the “Risk Factors” section, as well as risk factors incorporated into this prospectus by reference to other documents. We also encourage you to review our financial statements and the other information that we provide in our periodic reports and other documents that we file with the SEC, as described under the caption: “Where You Can Find More Information.”

Our Company

Acorn Energy, Inc. is a holding company focused on technology driven solutions for energy infrastructure asset management. We provide the following services and products through our OmniMetrix™, LLC subsidiary:

Power Generation (“PG”) monitoring. OmniMetrix’s PG activities provide wireless remote monitoring and control systems and services for critical assets as well as Internet of Things applications.

Cathodic Protection (“CP”) monitoring. OmniMetrix’s CP activities provide for remote monitoring of cathodic protection systems on gas pipelines for gas utilities and pipeline companies.

Our Common Stock is traded on the OTCQB marketplace under the symbol ACFN. The address of our principal executive office is 1000 N West Street, Suite 1200, Wilmington, Delaware 19801.

The Rights Offering

Securities Offered

We are distributing, at no charge, to holders of our outstanding Common Stock and to certain holders of outstanding warrants to purchase shares of our Common Stock, non-transferable subscription rights (which we refer to as the “Rights”) to purchase in the aggregate up to [] shares of our Common Stock, \$0.01 par value per share. You will receive one (1) Right for each one (1) share of our Common Stock you hold as of 5:00 p.m. EDT on the record date. If you hold warrants to purchase shares of our Common Stock, you will also receive one (1) Right for each one (1) share of our Common Stock that you could purchase as of 5:00 p.m. EDT on the record date by exercising your warrants. You will not need to exercise your warrants in order to receive Rights. Each Right will entitle you to purchase [] of a share of our Common Stock.

<i>Subscription Price</i>	<p>The subscription price is \$[] per whole share, payable in cash. The subscription price was determined by our Board of Directors based upon a []% discount [expected to be between 15% and 20%] to the closing price of our Common Stock on the record date. To be effective, any payment related to the exercise of a Right must be received by the Subscription Agent before the expiration of the Rights Offering as described below.</p>
	<p>After the date of this prospectus, our Common Stock may trade at prices below the subscription price. In that event, our Board of Directors may change the subscription price of this offering or determine to cancel or otherwise alter the terms of the Rights Offering.</p>
<i>Subscription Right</i>	<p>Each Right will entitle you to purchase [] of a share of our Common Stock at a subscription price of \$[] per whole share. See the section in this prospectus under the caption: “The Rights Offering—The Rights.”</p>
<i>Record Date</i>	<p>5:00 p.m., Eastern Daylight Time, on [], 2019.</p>
<i>Expiration of the Offering Period</i>	<p>5:00 p.m., Eastern Daylight Time, on [], 2019 which is [] calendar days after the effective date of this prospectus. We may extend, in our sole discretion, the expiration of the offering period for exercising your Rights for a period not to exceed [] calendar days.</p>
<i>No Fractional Shares</i>	<p>We will not issue any fractional shares in the Rights Offering. You may only exercise your Rights to purchase shares in whole numbers.</p>
<i>Use of Proceeds</i>	<p>We intend to use the net proceeds from the Rights Offering to finance our contemplated reacquisition of the outstanding 20% minority interest in our OmniMetrix LLC subsidiary and to support the growth of our OmniMetrix business, with any net proceeds not so utilized to be used for general working capital purposes. See the section in this prospectus under the caption: “Use of Proceeds.”</p>
<i>Non-transferability of Rights</i>	<p>The Rights that we issue in the Rights Offering may not be sold, transferred or subject to any other disposition. See the section in this prospectus under the caption: “The Rights Offering—Non-transferability of Rights.”</p>
<i>No Board Recommendation</i>	<p>Our Board of Directors is making no recommendation regarding your exercise of the Rights. You should carefully consider all relevant facts and circumstances in determining whether or not to exercise your Rights. See the section in this prospectus under the caption: “Risk Factors” for a discussion of some of the risks related to exercising your Rights and investing in our Common Stock.</p>

No Revocation Except in the event we make a fundamental change to the terms and conditions of our Rights Offering, your exercise of Rights will be irrevocable, even if you later change your mind about exercising your Rights. The irrevocability of your exercise will apply even if new information comes to your attention or if the market price of our Common Stock falls below the subscription price of \$[] per whole share. Your exercise of the Rights will also remain irrevocable if the authorized period for the Rights Offering is extended by our Board of Directors. You should not exercise your Rights unless you are certain that you wish to purchase shares of our Common Stock at the subscription price of \$[] per whole share.

Extension We reserve the right to extend the Rights Offering period for a period not to exceed [] calendar days. If we decide to extend the Rights Offering period, we will issue a press release announcing the extension in advance of the expiration of the Rights Offering period. We may also extend the duration of the Rights Offering period if applicable law or regulations require us to do so. Our Board of Directors has broad discretion regarding any and all determinations whether or not to extend the Rights Offering period. See the section in this prospectus under the caption: “The Rights Offering—Expiration Date, Extension, and Amendments.”

Cancellation Our Board of Directors may at its sole discretion cancel the Rights Offering at any time before the expiration of the Rights Offering period. If we cancel the Rights Offering, we will issue a press release notifying all of our securityholders of the cancellation. If we cancel the Rights Offering, the Subscription Agent will promptly return all subscription payments, without interest or penalty, as soon as reasonably possible after the cancellation date. See the section in this prospectus under the caption: “The Rights Offering—Expiration Date, Extension, and Amendments.”

Amendment Our Board of Directors reserves the right to amend or modify the terms of the Rights Offering. The amendments or modifications may be made for any reason. These changes may include, for example, changes to the subscription price or other matters that may induce greater participation by our securityholders in the Rights Offering. See the section in this prospectus under the caption: “The Rights Offering—Expiration Date, Extension, and Amendments.”

***Fundamental
Changes***

If we make any fundamental change to the terms of the Rights Offering after the date of effectiveness of this prospectus, we will file a post-effective amendment to the registration statement in which this prospectus is included and offer subscribers the opportunity to cancel their subscriptions. In such event, if you have subscribed to purchase shares in the Rights Offering and request a refund, we will issue the refund to you and recirculate an amended prospectus after the post-effective amendment is declared effective with the SEC. If we extend the expiration date of the Rights Offering period in connection with any post-effective amendment, we will allow holders of Rights a reasonable period of additional time to make new investment decisions on the basis of the new information set forth in the amended prospectus that will form a part of the post-effective amendment registration statement. In such event, we will issue a press release announcing the changes to the Rights Offering and the new expiration date. See the section in this prospectus under the caption: “The Rights Offering—Expiration Date, Extension, and Amendments.”

***Procedures for
Exercising
Rights***

To exercise your Rights, you must complete the Rights certificate and deliver the certificate to the Subscription Agent before the expiration of the offering period. Your subscription must include full payment for the exercise of all of your Rights that you wish to exercise. For details regarding the procedure and requirements for exercising your Rights, see the section in this prospectus under the caption: “The Rights Offering—Method of Exercising Rights”

You may deliver the subscription documents and payments by mail or overnight commercial carrier. If regular mail is used for this purpose, we recommend that you use registered mail, properly insured, with return receipt requested.

***Brokerage
Account
Stockholders***

If you are a beneficial owner of shares that are registered in the name of a broker, dealer, bank or other nominee, and you wish to participate in the Rights Offering, you should immediately instruct your broker, dealer, bank or other nominee to exercise your Rights on your behalf and deliver all required documents and payment before the expiration of the Rights Offering period.

***Guaranteed
Delivery
Procedures***

If you are not able to deliver your Rights certificate to the Subscription Agent before the expiration of the Rights Offering period, you may follow the procedures that we describe in the section of this prospectus under the caption: “The Rights Offering—Guaranteed Delivery Procedures.”

Minimum Subscription Requirement We have not set any minimum subscription amount. You may exercise your Rights in the full amount of your allocation or in any partial amount that you determine. You may also choose not to exercise any of your Rights.

No Obligation to Participate in the Rights Offering You are under no obligation to exercise your Rights to subscribe for any shares in the Rights Offering. If you choose not to participate in the Rights Offering, you do not have to take any special action to decline to participate.

Backstop Purchasers We have entered into a Backstop Agreement with Leap Tide Capital Management LLC (“Leap Tide”), Michael Osterer (one of our Directors), and Gary Mohr (one of our Directors and, together with Leap Tide and Mr. Osterer, the “Backstop Purchasers”), pursuant to which each Backstop Purchaser has agreed to exercise in full all of the Rights distributed for the shares of Common Stock that they beneficially own and, upon expiration of the Rights Offering, to purchase from the Company (directly or through an affiliate), at the price per share equal to the subscription price of \$[] per share, any and all shares of Common Stock that other securityholders do not subscribe for in our Rights Offering (“Unsubscribed Rights Shares”), subject to the respective terms, conditions and limitations of the Backstop Agreement. Jan H. Loeb, our President and Chief Executive Officer, is the sole manager of Leap Tide, with sole voting and dispositive power over the securities held by such entity.

Backstop Agreement We have entered into a Backstop Agreement with the Backstop Purchasers. The Backstop Purchasers’ obligations under the Backstop Agreement are subject to various conditions as described in the section of this prospectus under the caption: “The Backstop Agreement.”

Commitments to Exercise Rights in Full Pursuant to the Backstop Agreement, each of the Backstop Purchasers has agreed to exercise in full all of the Rights distributed for the shares of Common Stock that they beneficially own. In addition, Mr. Loeb has agreed to exercise all of his Rights in full.

Backstop Commitments

Subject to the terms and conditions set forth in the Backstop Agreement, the Backstop Purchasers have agreed to purchase from us, substantially simultaneously with the completion of the Rights Offering, any and all of the Unsubscribed Rights Shares. The Backstop Agreement provides that, first, the three Backstop Purchasers shall each purchase one-third of the first \$300,000 of aggregate subscription price of Unsubscribed Rights Shares, and that Leap Tide shall then purchase any and all remaining Unsubscribed Rights Shares.

The Backstop Closing

The transactions contemplated by the Backstop Agreement will close substantially simultaneously with the completion of the Rights Offering, thus assuring the sale of all Unsubscribed Rights Shares.

Backstop Consideration

The Backstop Purchasers will not receive any compensation or other consideration for entering into the Backstop Agreement.

Backstop Purchasers' Share Ownership

As of the record date for the Rights Offering: (1) Leap Tide beneficially owned less than 1% of our Common Stock, and Mr. Loeb beneficially owned approximately []% of our Common Stock (including all of the shares beneficially owned by Leap Tide); (2) Michael Osterer beneficially owned approximately []% of our Common Stock; and (3) Gary Mohr owned approximately []% of our Common Stock.

Exclusion from Registration of shares sold pursuant to Backstop Agreement and upon Exercise of Rights by Mr. Loeb

We will sell the shares to the Backstop Purchasers pursuant to the Backstop Agreement, and to Mr. Loeb (our President and Chief Executive Officer and the sole manager of one of the Backstop Purchasers) upon the exercise of his Rights, on a private basis in transactions exempt from the registration requirements of the Securities Act of 1933, as amended (the "Securities Act"). We are not registering in the registration statement of which this prospectus forms a part any of the shares sold pursuant to the Backstop Agreement or pursuant to the exercise by Mr. Loeb of his Rights.

Registration Rights

We have entered into a Registration Rights Agreement with the Backstop Purchasers (the "Registration Rights Agreement")