

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**
Washington, DC 20549

Form 8-K

**CURRENT REPORT
Pursuant to Section 13 or 15(d)
of the Securities Exchange Act of 1934**

Date of Report (Date of earliest event reported): October 4, 2021

Energous Corporation

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation)

001-36379
(Commission
File Number)

46-1318953
(IRS Employer
Identification No.)

3590 North First Street, Suite 210
San Jose, California 95134
(Address of principal executive offices) (Zip Code)

(408) 963-0200
(Registrant's telephone number, including area code)

N/A
(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, \$0.00001 par value	WATT	The Nasdaq Stock Market LLC

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

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 13(a) of the Exchange Act.

Item 8.01 Other Events.

On October 4, 2021, Energen Corporation (the “**Company**”) filed with the SEC a prospectus supplement dated October 4, 2021 covering the issuance and sale of shares of the Company’s common stock having an aggregate offering price of up to \$35,000,000 (the “**Shares**”) pursuant to the Company’s at-the-market offering program with B. Riley Securities, Inc., Roth Capital Partners, LLC and Ladenburg Thalmann & Co. Inc. The sale of the Shares will be made pursuant to the Registration Statement on Form S-3 (File No. 333-248832) and the prospectus contained therein, as supplemented by the prospectus supplement.

A copy of the opinion of Fenwick & West LLP, relating to the validity of the Shares in connection with the Offering, is filed with this Current Report on Form 8-K as Exhibit 5.1.

This Current Report on Form 8-K shall not constitute an offer to sell or the solicitation of an offer to buy the Common Stock discussed herein, nor shall there be any offer, solicitation, or sale of common stock in any state in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such state.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits.

<u>Exhibit No.</u>	<u>Description</u>
5.1	Opinion of Fenwick & West LLP
23.1	Consent of Fenwick & West LLP (contained in Exhibit 5.1)
104	The cover page on this Current Report on Form 8-K, formatted in Inline XBRL

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Date: October 4, 2021

By: /s/ William Mannina
William Mannina
Acting Chief Financial Officer



801 California Street
Mountain View, CA 94041

650.988.8500
Fenwick.com

October 4, 2021

Energous Corporation
3590 North First Street, Suite 210
San Jose, CA 95134

Gentlemen/Ladies:

We deliver this opinion with respect to certain matters in connection with the offering by Energous Corporation, a Delaware corporation (the "**Company**"), of the Company's common stock, par value \$0.00001 per share (the "**Common Stock**"), with an aggregate maximum offering price of up to \$35,000,000 (the "**Placement Shares**"), to be issued from time to time pursuant to that certain At Market Issuance Sales Agreement, dated October 11, 2019, between the Company and B. Riley Securities, Inc. ("**B. Riley**"), as amended by Amendment No. 1 to At Market Issuance Sales Agreement, dated September 14, 2020, and by Amendment No. 2 to At Market Issuance Sales Agreement, dated October 4, 2021 (as amended, the "**Sales Agreement**"), between the Company, B. Riley, Roth Capital Partners, LLC and Ladenburg Thalmann & Co. Inc. The Placement Shares were registered pursuant to the effective Registration Statement on Form S-3 (File No. 333-248832) filed by the Company with the Securities and Exchange Commission (the "**Commission**") on September 15, 2020 (the "**Registration Statement**") under the Securities Act of 1933, as amended (the "**Securities Act**"), the base prospectus included therein (the "**Base Prospectus**"), and the related prospectus supplement dated October 4, 2021 filed with the Commission pursuant to Rule 424(b) under the Securities Act (the "**Prospectus Supplement**," and together with the Base Prospectus, the "**Prospectus**"). The offering of the Placement Shares is referred to herein as the "**Offering**." The Placement Shares are to be sold by the Company as described in the Registration Statement, the Prospectus and the Sales Agreement.

In connection with our opinion expressed below, we have examined originals or copies of the Company's Second Amended and Restated Certificate of Incorporation, as amended (the "**Certificate**"), and Amended and Restated Bylaws (together with the Certificate, the "**Charter Documents**"), certain corporate proceedings of the Company's board of directors (the "**Board**") and stockholders relating to the Registration Statement, the Charter Documents, and such other agreements, documents, certificates and statements of the Company, its transfer agent and public or government officials, as we have deemed advisable, and have examined such questions of law as we have considered necessary. We have assumed, and express no opinion as to, the genuineness of all signatures on documents submitted to us, the authenticity and completeness of all documents submitted to us as originals, the conformity to originals and completeness of all documents submitted to us as copies, the legal capacity of all persons or entities executing the same, the absence of any undisclosed termination, modification, waiver or amendment to any document reviewed by us, the absence of any other extrinsic agreements or documents that might change or affect the interpretation or terms of documents we have reviewed, and the due authorization, execution and delivery of all such documents where due authorization, execution and delivery are prerequisites to the effectiveness thereof. In giving our opinion, we have also relied upon a good standing certificate regarding the Company issued by the Delaware Secretary of State dated September 29, 2021 and a management certificate addressed to us and dated of even date herewith executed by the Company containing certain factual representations (the "**Management Certificate**").

As to matters of fact relevant to this opinion, we have relied solely upon our examination of the documents referred to above and the Management Certificate and have assumed the current accuracy and completeness of the

information obtained from the documents referred to above and the representations and warranties made by representatives of the Company to us, including but not limited to those set forth in the Management Certificate. We have made no independent investigation or other attempt to verify the accuracy of any of such information or to determine the existence or non-existence of any other factual matters.

We render this opinion only with respect to, and express no opinion herein concerning the application or effect of the laws of any jurisdiction other than, the existing laws of the Delaware General Corporation Law (the “**Applicable Laws**”). Without limitation, we express no opinion with respect to the federal laws of the United States of America or the securities or “blue sky” laws of any state or any local or regional laws.

In connection with our opinions expressed below, we have assumed that, (i) at or prior to the time of the delivery of any of the Placement Shares, there will not have occurred any change in the law or the facts affecting the validity of the Placement Shares, (ii) at the time of the offer, issuance and sale of any Placement Shares, no stop order suspending the Registration Statement’s effectiveness will have been issued and remain in effect, (iii) no future amendments will be made to the Charter Documents that would be in conflict with or inconsistent with the Company’s right and ability to issue the Placement Shares, (iv) at the time of each offer, issuance and sale of any Placement Shares, the Company will have a sufficient number of authorized and unissued and unreserved shares of the applicable class or series of its capital stock included in (or purchasable upon exercise or conversion of) the Placement Shares so issued and sold (after taking into account all other outstanding securities of the Company which may require the Company to issue shares of such applicable class or series) to be able to issue all such shares, and (v) the purchaser of the Placement Shares will timely pay in full to the Company all amounts they have agreed to pay to purchase such Placement Shares, as approved by the Board or a duly authorized committee thereof, and that the purchase price of any Placement Shares will not be less than the par value thereof.

The Company has informed us that the Company intends to issue the Placement Shares, from time to time on a delayed or continuous basis. This opinion is limited to the Applicable Laws, including the rules and regulations thereunder, as in effect on the date hereof.

Based upon the foregoing, we are of the opinion that the Placement Shares to be issued and sold by the Company, when issued, sold and delivered in the manner and for the consideration stated in the Registration Statement and the Prospectus and in accordance with the resolutions adopted and to be adopted by the Board or a committee thereof, will be validly issued, fully paid and nonassessable.

We consent to the use of this opinion as an exhibit to the Form 8-K with which it is filed and further consent to all references to us, if any, in the Registration Statement, the Prospectus constituting a part thereof and any amendments or supplements thereto. We do not thereby admit that we are within the category of persons whose consent is required under Section 7 of the Securities Act or the rules and regulations of the Commission thereunder.

[Concluding Paragraph Follows on Next Page]

This opinion is intended solely for use in connection with the issuance and sale of the Placement Shares subject to the Registration Statement, the Prospectus and the Agreement and is not to be relied upon for any other purpose. In providing this letter, we are opining only as to the specific legal issues expressly set forth above, and no opinion shall be inferred as to any other matter or matters. This opinion is rendered on, and speaks only as of, the date of this letter first written above, is based solely on our understanding of facts in existence as of such date after the aforementioned examination and does not address any potential changes in facts, circumstance or law that may occur after the date of this opinion letter. We assume no obligation to advise you of any fact, circumstance, event or change in the law or the facts that may hereafter be brought to our attention whether or not such occurrence would affect or modify any of the opinions expressed herein

Very truly yours,

/s/ Fenwick & West LLP

FENWICK & WEST LLP