

DYNEGY HOLDINGS INC
Form 8-K
November 17, 2010

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 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)
November 17, 2010 (November 16, 2010)

DYNEGY INC.
DYNEGY HOLDINGS INC
(Exact name of registrant as specified in its charter)

| | | |
|---|--------------------------|---|
| Delaware | 001-33443 | 20-5653152 |
| Delaware | 000-29311 | 94-3248415 |
| (State or Other Jurisdiction of Incorporation) | (Commission File Number) | (I.R.S. Employer Identification No.) |

1000 Louisiana, Suite 5800, Houston, Texas
(Address of principal executive offices)

77002
(Zip Code)

(713) 507-6400
(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))

Item 1.01 Entry into a Material Definitive Agreement.

On November 16, 2010, Dynegy Inc. ("Dynegy") entered into Amendment No. 1 to the Agreement and Plan of Merger among Dynegy, Denali Parent Inc. and Denali Merger Sub Inc. (the "Amendment"). The Amendment modifies the previously announced Agreement and Plan of Merger, dated as of August 13, 2010 (as amended, the "Merger Agreement"), which provides for the acquisition of Dynegy by Denali Parent Inc. ("Parent") (the "Merger"), an affiliate of The Blackstone Group L.P. ("Blackstone").

The Amendment increases the consideration to be paid to Dynegy's stockholders for their shares of Dynegy common stock if the merger is completed to \$5.00 per share in cash from \$4.50 per share in cash. The Amendment also requires Dynegy to pay Parent a termination fee equal to \$16.3 million, in the event that both (i) the Merger Agreement is terminated by either Parent or Dynegy because either (a) a Dynegy stockholder meeting to consider and vote on the Merger Agreement is held and completed and the Merger Agreement is not adopted or (b) the Merger is not consummated by February 13, 2011 (which may be extended by Parent or the Company to May 13, 2011 pursuant to the Merger Agreement under certain circumstances) and the Merger Agreement has not been adopted by Dynegy stockholders prior to such termination, and (ii) within 18 months of such termination, the Company consummates an alternative transaction having an aggregate value of more than \$4.50 per share.

The Amendment is attached hereto as Exhibit 2.01 and incorporated herein by reference.

Item 7.01 Regulation FD Disclosure

On November 17, 2010, Dynegy issued a press release announcing that Dynegy's Board of Directors approved an increased consideration and a break-up fee, under certain circumstances, related to the Merger. A copy of the press release is attached hereto as Exhibit 99.1 and incorporated herein by reference.

On November 17, 2010, Dynegy issued a press release announcing that its special meeting of stockholders has been recessed until 3:30 p.m. Eastern, on November 23, 2010. A copy of the press release is attached hereto as Exhibit 99.2 and incorporated herein by reference.

Cautionary Statement Regarding Forward-Looking Statements

This Current Report on Form 8-K and the exhibits hereto contain statements reflecting assumptions, expectations, projections, intentions or beliefs about future events that are intended as "forward looking statements." Discussion of risks and uncertainties that could cause actual results to differ materially from current projections, forecasts, estimates and expectations of Dynegy is contained in Dynegy's filings with the Securities and Exchange Commission (the "SEC"). Specifically, Dynegy makes reference to, and incorporates herein by reference, the section entitled "Risk Factors" in its most recent Form 10-K and subsequent reports on Form 10-Q, and the section entitled "Cautionary Statement Regarding Forward-Looking Statements" in its most recent definitive proxy statement filed with the SEC on October 4, 2010. In addition to the risks and uncertainties set forth in Dynegy's SEC filings, the forward-looking statements described in this presentation could be affected by, among other things, (i) the timing and anticipated benefits to be achieved through Dynegy's 2010-2013 company-wide cost savings program; (ii) beliefs and assumptions relating to liquidity, available borrowing capacity and capital resources generally; (iii) expectations regarding environmental matters, including costs of compliance, availability and adequacy of emission credits, and the impact of ongoing proceedings and potential regulations or changes to current regulations, including those relating to climate change, air emissions, cooling water intake structures, coal combustion byproducts, and other laws and regulations to which Dynegy is, or could become, subject; (iv) beliefs about commodity pricing and generation volumes; (v) anticipated liquidity in the regional power and fuel markets in which Dynegy transacts, including the extent to which such

liquidity could be affected by poor economic and financial market conditions or new regulations and any resulting impacts on financial institutions and other current and potential counterparties; (vi) sufficiency of, access to and costs associated with coal, fuel oil and natural gas inventories and transportation thereof; (vii) beliefs and assumptions about market competition, generation capacity and regional supply and demand characteristics of the wholesale power generation market, including the potential for a market recovery over the longer term; (viii) the effectiveness of Dynegy's strategies to capture opportunities presented by changes in commodity prices and to manage its exposure to energy price volatility; (ix) beliefs and assumptions about weather and general economic conditions; (x) beliefs regarding the U.S. economy, its trajectory and its impacts, as well as Dynegy's stock price; (xi) projected operating or financial results, including anticipated cash flows from operations, revenues and profitability; (xii) beliefs and expectations regarding the Plum Point Project; (xiii) expectations regarding Dynegy's revolver capacity, credit facility compliance, collateral demands, capital expenditures, interest expense and other payments; (xiv) Dynegy's focus on safety and its ability to efficiently operate its assets so as to maximize its revenue generating opportunities and operating margins; (xv) beliefs about the outcome of legal, regulatory, administrative and legislative matters; (xvi) expectations and estimates regarding capital and maintenance expenditures, including the Midwest Consent Decree and its associated costs; and (xvii) uncertainties associated with the Merger, including uncertainties relating to the anticipated timing of filings and approvals relating to the Merger and the sale by an affiliate of Blackstone of certain assets to NRG Energy, Inc. (the "NRG Sale"), the outcome of legal proceedings that have been or may be instituted against Dynegy and/or others relating to the Merger and/or the NRG Sale, the expected timing of completion of the Merger, the satisfaction of the conditions to the consummation of the Merger and the NRG Sale and the ability to complete the Merger. Any or all of Dynegy's forward-looking statements may turn out to be wrong. They can be affected by inaccurate assumptions or by known or unknown risks, uncertainties and other factors, many of which are beyond Dynegy's control.

WHERE YOU CAN FIND MORE INFORMATION

In connection with Merger, Dynegy filed a definitive proxy statement with the SEC on October 4, 2010 and commenced mailing the definitive proxy statement and form of proxy to the stockholders of Dynegy. **BEFORE MAKING ANY VOTING DECISION, DYNEGY'S STOCKHOLDERS ARE URGED TO READ THE PROXY STATEMENT, AS SUPPLEMENTED, REGARDING THE MERGER CAREFULLY AND IN ITS ENTIRETY BECAUSE IT CONTAINS IMPORTANT INFORMATION ABOUT THE PROPOSED MERGER.** Dynegy's stockholders are able to obtain, without charge, a copy of the definitive proxy statement and other relevant documents filed with the SEC from the SEC's website at <http://www.sec.gov>. Dynegy's stockholders are also able to obtain, without charge, a copy of the definitive proxy statement and other relevant documents by directing a request by mail or telephone to Dynegy Inc., Attn: Corporate Secretary, 1000 Louisiana Street, Suite 5800, Houston, Texas 77002, telephone: (713) 507-6400, or from the Dynegy's website, <http://www.dynegy.com>.

PARTICIPANTS IN THE SOLICITATION

Dynegy and its directors and officers may be deemed to be participants in the solicitation of proxies from Dynegy's stockholders with respect to the Merger. Information about Dynegy's directors and executive officers and their ownership of Dynegy's common stock is set forth in the proxy statement for Dynegy's 2010 Annual Meeting of Stockholders, which was filed with the SEC on April 2, 2010. Stockholders may obtain additional information regarding the interests of Dynegy and its directors and executive officers in the Merger, which may be different than those of Dynegy's stockholders generally, by reading the definitive proxy statement and other relevant documents regarding the Merger.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits:

Exhibit No. Document

| | |
|------|---|
| 2.01 | Amendment No. 1 to the Agreement and Plan of Merger, dated as of November |
| 99.1 | 16, 2010 |
| 99.2 | Dynegy Inc. press release, dated November 17, 2010 |
| | Dynegy Inc. press release, announcing recess of special meeting of |
| | stockholders, dated November 17, 2010 |

SIGNATURES

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

DYNEGY INC.
(Registrant)

Dated: November 17, 2010

By: /s/ Kent R. Stephenson
Name: Kent R. Stephenson
Title: Senior Vice-President and Deputy
General Counsel

DYNEGY HOLDINGS INC.
(Registrant)

Dated: November 17, 2010

By: /s/ Kent R. Stephenson
Name: Kent R. Stephenson
Title: Senior Vice-President and Deputy
General Counsel

EXHIBIT INDEX

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