

PLUG POWER INC
Form SC 13D
March 27, 2009

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549**

SCHEDULE 13D

Under the Securities Exchange Act of 1934

PLUG POWER INC.

(Name of Issuer)

Common Stock, par value \$0.01 per share

(Title of Class of Securities)

72919P103

(CUSIP Number)

Gregory J. Golden

Baker Botts L.L.P.

The Warner

1299 Pennsylvania Avenue, N.W.

Washington, D.C. 20004-2400

(202) 639-7700

(Name, Address and Telephone Number of Person
Authorized to Receive Notices and Communications)

December 20, 2008

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(Date of Event Which Requires Filing of this Statement)

If the filing person has previously filed a statement on Schedule 13G to report the acquisition that is the subject of this Schedule 13D, and is filing this schedule because of Rule 13d-1(e), 13d-1(f) or 13d-1(g), check the following box o

Note. Schedules filed in paper format shall include a signed original and five copies of the schedule, including all exhibits. See Rule 13d-7(b) for other parties to whom copies are to be sent.

* The remainder of this cover page shall be filled out for a reporting person's initial filing on this form with respect to the subject class of securities, and for any subsequent amendment containing information which would alter the disclosures provided in a prior cover page.

The information required in the remainder of this cover page shall not be deemed to be filed for the purpose of Section 18 of the Securities Exchange Act of 1934 (the Act), or otherwise subject to the liabilities of that section of the Act but shall be subject to all other provisions of the Act (however, see the Notes).

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CUSIP NO. 72919P103

1	Names of Reporting Persons I.R.S. Identification Nos. of above Persons (Entities Only) OJSC Third Generation Company of the Wholesale Electricity Market
2	Check the Appropriate Box if a Member of a Group (a) <input checked="" type="checkbox"/> x (b) <input type="checkbox"/> o
3	SEC Use Only
4	Source of Funds WC
5	Check Box if Disclosure of Legal Proceedings Is Required Pursuant to Item 2(d) or 2(e) <input type="checkbox"/> o
6	Citizenship or Place of Organization Russian Federation
7	Sole Voting Power 0
8	Shared Voting Power 44,626,939
9	Sole Dispositive Power 0
10	Shared Dispositive Power 44,626,939
11	Aggregate Amount Beneficially Owned by Each Reporting Person 44,626,939
12	Check if the Aggregate Amount in Row (11) Excludes Certain Shares <input type="checkbox"/> o
13	Percent of Class Represented by Amount in Row (11) 34.84%
14	Type of Reporting Person CO

Number of
Shares
Beneficially
Owned by
Each
Reporting
Person

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

SCHEDULE 13D

Statement of

OJSC Third Generation Company of the Wholesale Electricity Market

**Pursuant to Section 13(d) of the Securities Exchange Act of 1934
in respect of**

Plug Power Inc.

Item 1. Security and Issuer

This Statement on Schedule 13D (this Statement) is being filed with respect to the common stock, \$0.01 per share (the Common Stock) of Plug Power Inc., a Delaware corporation (the Issuer). The Issuer's principal executive offices are located at 968 Albany-Shaker Road, Latham, New York 12110.

Item 2. Identity and Background

Pursuant to Rule 13d-1(k)(1) of the Securities Exchange Act of 1934, as amended (the Act), this Statement is being filed by OJSC Third Generation Company of the Wholesale Electricity Market (the Reporting Person). The Reporting Person is an open joint stock company organized under the laws of the Russian Federation and a subsidiary of OJSC MMC Norilsk Nickel (Norilsk Nickel), which directly and indirectly owns approximately 74% of the Reporting Person as of the date hereof. The Reporting Person engages in the generation and sale of electric and heat energy in Russia. It operates six thermal power plants with a total installed capacity of 8497 megawatts. The Reporting Person's business address is 165, stroyeniye I, Mozhaiskoye Shosse Moscow, 121596, Russia. In accordance with the provisions of General Instruction C to Schedule 13D, information concerning the executive officers, directors and each person controlling the Reporting Person, as applicable (collectively, the Listed Persons), required by Item 2 of Schedule 13D is provided on Exhibit A hereto and is incorporated by reference herein.

During the past five years, neither the Reporting Person nor, to the best of the Reporting Person's knowledge, any of the Listed Persons have been convicted in a criminal proceeding (excluding traffic violations or similar misdemeanors). During the past five years, neither the Reporting

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Person nor, to the best of the Reporting Person's knowledge, any of the Listed Persons were a party to a civil proceeding of a judicial or administrative body of competent jurisdiction and as a result of such proceeding was or is subject to a judgment, decree or final order enjoining future violations of, or prohibiting or mandating activities subject to, federal or state securities laws or finding any violation with respect to such laws.

Item 3. Source and amount of Funds and other Consideration

This Statement relates to the Reporting Person's acquisition of beneficial ownership of 44,626,939 shares of Common Stock, representing approximately 34.84% of the Issuer's outstanding Common Stock. This transaction was previously disclosed in Amendments No. 4 and No. 5 of Statement on Schedule 13D of Smart Hydrogen Inc. ("Smart Hydrogen"), Norilsk Nickel, Clayburn Development Inc., Branton Limited, and Vladimir O. Potanin filed on October 21, 2008 and December 23, 2008 respectively (collectively, the "Norilsk Nickel Schedule 13D"). The ownership percentages contained in this Statement and in the cover pages hereto are based upon information contained in the Issuer's most recently available filings with the Securities and Exchange Commission that, as of March 6, 2009, 128,093,232 shares of Common Stock were outstanding.

As disclosed in the Norilsk Nickel Schedule 13D, on October 14, 2008, the Reporting Person and Smart Hydrogen entered into a Share Purchase Agreement, a copy of which is attached hereto as Exhibit B and is incorporated by reference herein (the "Share Purchase Agreement"), whereby Smart Hydrogen and the Reporting Person agreed that Smart Hydrogen would sell its entire beneficial interest in the Issuer to the Reporting Person. On December 20, 2008, Smart Hydrogen and the Reporting Person completed the sale of Smart Hydrogen's entire beneficial interest in the Issuer to the Reporting Person. The purchased shares consisted of 5,126,939 shares of Common Stock and 395,000 shares of Class B Capital Stock. Pursuant to the terms of the Issuer's Certificate of Designations relating to the Class B Capital Stock, upon the sale of such Class B Capital Stock, the 395,000 shares of Class B Capital Stock automatically converted into 39,500,000 shares of Common Stock.

The consideration paid by the Reporting Person consisted of US\$33,023,935 and such funds came from the Reporting Person's working capital.

Item 4. Purpose of the Transaction

The information contained in Items 3, 5 and 6 of this Statement are hereby incorporated by reference to this item 4.

The purchase of the Issuer's Common Stock is a component of the Reporting Person's diversification and investment strategy that it has implemented to broaden its future revenue streams and position itself in transformational technologies. The purchase represents the first investment for the Reporting Person in the alternative/clean energy space which has been acknowledged as being a potential global economic driver in the next decade.

As the largest single holder of the Issuer's shares, the Reporting Person intends to seek appropriate representation on the Issuer's board of directors and is currently engaged in discussions with the Issuer regarding the same.

Except as set forth in this Statement, the Reporting Person does not have any present plans or proposals that relate to or would result in the occurrence of any of the events specified in clauses (a) through (j) of the instructions to Item 4 of Schedule 13D. The Reporting Person reserves the right to formulate plans or make proposals, and take such actions with respect to its investment in the Issuer, including any action that relates to or would result in the occurrence of any or all of the events specified in clauses (a) through (j) of the instructions to Item 4 of Schedule 13D, and any other actions, as they may determine.

The Reporting Person intends to review continually its investment in the Issuer, depending upon future evaluations of the business prospects of the Issuer and upon other developments, including but not limited to, general economic and business conditions and stock market conditions. The Reporting Person may determine to increase or decrease its equity position in the Issuer by acquiring additional shares or disposing of some of the shares it may hold, in each case in accordance with the terms and conditions of the IRA.

Item 5. Interest in Securities of the Issuer

The information included in Items 2, 3, 4, and 6 of this Statement is hereby incorporated by reference into this Item 5.

(a) - (b) As of the date hereof, the Reporting Person is the beneficial owner of 44,626,939 shares of Common Stock, or approximately 34.84% of the Issuer's outstanding Common Stock. In the Norilsk Nickel Schedule 13D, Norilsk Nickel and Mr. Vladimir O. Potanin disclosed that, by virtue of their respective direct and indirect ownership interests in the Reporting Person, they could, pursuant to Section 13(d) of the Act and the rules of the Securities and Exchange Commission adopted thereunder, be deemed to have the power to vote or direct the voting of and the power to dispose or direct the disposition of the Common Stock owned by the Reporting Person. However, pursuant to Rule 13d-4 of the Act, the filing of the Norilsk Nickel Schedule 13D is not be construed as an admission that Norilsk Nickel or Mr. Potanin is, for the purpose of section 13(d) or 13(g) of the Act, the beneficial owner of such shares of Common Stock.

(c) None.

(d) All persons known to have the right to receive or the power to direct the dividends from, or the proceeds from the sale of, the securities described in this Item 5 are described in this Statement.

(e) Not applicable.

Item 6. Contracts, Arrangements, Understandings or Relationships With Respect to Securities of the Issuer

As described in Items 3 through 5 of this Statement, which are hereby incorporated by reference in this Item 6, on October 14, 2008, Smart Hydrogen and the Reporting Person entered into the Share Purchase Agreement, whereby Smart Hydrogen agreed to sell all of the Issuer Stock to the Reporting Person for an aggregate purchase price of \$33,023,935. On December 20, 2008, Smart Hydrogen and the Reporting Person completed the sale of Smart Hydrogen's entire beneficial interest in the Issuer to the Reporting Person.

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On December 20, 2008, the Reporting Person and the Issuer entered into a Joinder Agreement, a copy of which is attached hereto as Exhibit C and is incorporated by reference herein, whereby the Reporting Person agreed to be bound by the terms of that certain Investor Rights Agreement, dated as of June 29, 2006, among the Issuer and the parties named therein, as amended (the "IRA").

On January 19, 2009, Smart Hydrogen notified the Issuer of the transfer to the Reporting Person of Smart Hydrogen's rights under the Registration Rights Agreement, dated as of June 29, 2006, between the Issuer and Smart Hydrogen (the "Registration Rights Agreement"). The Reporting Person entered into the Agreement to be Bound by the Registration Rights Agreement, dated as of January 15, 2009 a copy of which is attached hereto as Exhibit D and is incorporated by reference herein, whereby the Reporting Person agreed to be bound by the terms of the Registration Rights Agreement.

Except as described in this Statement, neither the Reporting Person nor, to the knowledge of the Reporting Person, any of the Listed Persons has any contract, arrangement, understanding, or relationship (legal or otherwise) with any person with respect to any securities of the Issuer, including but not limited to transfer or voting of such securities, finder's fees, joint ventures, loan or option arrangements, puts or calls, guarantees of profits, division of profits or loss, or the giving or withholding of proxies.

Item 7. Materials to be Filed as Exhibits

The following documents are filed as exhibits to this Statement:

- | | |
|-----------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Exhibit A | Officers and Directors of Persons Named in Item 2. |
| Exhibit B | Share Purchase Agreement, by and between Smart Hydrogen Inc. and OJSC Third Generation Company of the Wholesale Electricity Market with respect to 34.97% of Plug Power Inc. dated October 14, 2008. |
| Exhibit C | Joinder Agreement by and between the Issuer and the Reporting Person dated December 20, 2008. |
| Exhibit D | Agreement to be Bound by the Registration Rights Agreement executed by the Reporting Person dated January 15, 2009. |

SIGNATURE

After reasonable inquiry and to the best of my knowledge and belief, I certify that the information set forth in this Statement is true, complete and correct.

Dated: March 27, 2009

OJSC THIRD GENERATION COMPANY OF THE WHOLESAL
ELECTRICITY MARKET

By: /s/ Vladimir V. Kolmogorov
Vladimir V. Kolmogorov
General Director

EXHIBIT A**OFFICERS AND DIRECTORS OF PERSONS NAMED IN ITEM 2****Executive Officers of the Reporting Person**

Name	Present Principal Occupation	Citizenship
Vladimir Kolmogorov	General Director	Russian Federation
Vladislav Nazin	First Deputy General Director	Russian Federation
Andrey Vorobiev	Corporate Director	Russian Federation
Andrey Gainanov	Financial Director	Russian Federation
Alexandra Panina	Director for Electrical and Thermal Energy Sales	Russian Federation

Board of Directors of the Reporting Person

Name	Present Principal Occupation	Citizenship
Kirill Parinov	Chairman	Russian Federation
Sergey Batehin	Director	Russian Federation
Vladislav Davydov	Director	Russian Federation
Dmitriy Kostoev	Director	Russian Federation
Oleg Pivovarchuk	Director	Russian Federation
Alexandr Orelkin	Director	Russian Federation
Maxim Sokov	Director	Russian Federation
Sergey Emdin	Director	Russian Federation
Vladislav Solovyev	Director	Russian Federation
Oleg Surikov	Director	Russian Federation
Anton Chernyi	Director	Russian Federation

EXHIBIT B

SHARE PURCHASE AGREEMENT

B-1

SHARE PURCHASE AGREEMENT

by and between

SMART HYDROGEN INC.

and

**OJSC THIRD GENERATING COMPANY OF THE
WHOLESALE ELECTRICITY MARKET**

with respect to

**34.97% of
PLUG POWER INC.**

October 14, 2008

EXECUTION VERSION

THIS SHARE PURCHASE AGREEMENT, dated October 14, 2008 (the Agreement), is made by and between:

(1) **SMART HYDROGEN INC.**, an international business corporation incorporated under the laws of the British Virgin Islands, having its registered office at P.O. Box 3540, Road Town, Tortola, British Virgin Islands, registration number 1000518 (the Seller); and

(2) **OJSC THIRD GENERATING COMPANY OF THE WHOLESALE ELECTRICITY MARKET** , an open joint stock company organized and existing under the laws of the Russian Federation, having its registered office at 28, 50-letiya Oktyabrya Prospekt, Ulan-Ude, Buryatiya Republic, 670034, Russia, state registration number 1040302983093 (the Purchaser , and together with the Seller, the Parties and each individually a Party).

RECITALS

A. The Seller is the registered owner of the Sale Shares (as defined below) of Plug Power Inc., a company incorporated under the laws of the State of Delaware, USA, having its principal office at 968 Albany-Shaker Road, Latham, New York 12110 (the Company).

B. The Seller wishes to sell the Sale Shares to the Purchaser, and the Purchaser wishes to purchase the Sale Shares from the Seller, subject to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual promises, covenants, representations and warranties made herein and of the mutual benefits to be derived herefrom, the Parties agree as follows:

ARTICLE I DEFINITIONS; INTERPRETATIONS

1.1 Definitions. For the purposes of this Agreement, the following terms have the respective meanings given to them or as indicated below.

Affiliate means any Person that directly or indirectly through one or more intermediaries, Controls, is Controlled by, or is under common Control with, another Person.

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Business means the business and operations of the Company Group as conducted or intended to be conducted as of the date of this Agreement.

Business Day means any day (other than a Saturday or Sunday) on which banks in Moscow, Russia; Tortola, British Virgin Islands; and New York, USA are open for business.

Closing and Closing Date have the respective meanings set forth in Article 2.3.

Closing Notice has the meaning set forth in Article 2.3.

Company has the meaning set forth in the Recitals.

Company Group means the Company and each of its Controlled Affiliates, and Group Company means any of them individually.

Conditions Precedent means each of the conditions precedent to the Closing specified in Article VII and Article VIII.

Consent means any consent, approval, authorization, waiver, permit, grant, franchise, concession, agreement, license, certificate, exemption, order, registration, declaration, filing, report or notice of, with or to any Person and as well as consent of the Company for transferring of three hundred ninety-five thousand (395,000) shares of the Company's Class B Capital Stock.

Confidential Information has the meaning set forth in Article 9.1.3.

Control (including the terms Controlled, Controlled by and under common Control with) means, in relation to a Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of that Person, whether through the ownership of voting shares, by contract or credit arrangement, as trustee or executor, or otherwise.

Existing Dispute has the meaning set forth in Article 11.5.3.

Governmental Authority means (i) any supranational organization or any state or political subdivision thereof, (ii) any entity, authority or body exercising executive, legislative, judicial, regulatory or administrative functions on behalf of the supranational organization, the state or its political subdivision, including, without limitation, any supranational authority, government authority, ministry, agency, department, board, commission or instrumentality and subdivisions thereof, (iii) the Committee on Foreign Investments in the United States (CFIUS); (iv) the U.S. Securities and Exchange Commission (SEC); (v) any court, tribunal or arbitrator and (iv) any self-regulatory organization acting on behalf of the state or itself pursuant to the rights granted thereto by applicable Law.

Governmental Approval means any Consent (including but not limited to filing under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (HSR) and filing of the Schedule 13D on file with the SEC relating to Company) of or from a Governmental Authority, including without limitation any certificates, licenses or permits issued by a Governmental Authority.

Law means all applicable (i) provisions of all constitutions, treaties, statutes, laws, customs, codes, rules, regulations, ordinances or orders of any Governmental Authority, (ii) Governmental Approvals and (iii) orders,

decisions, injunctions, judgments, awards and decrees of any Governmental Authority.

Liability means any liability (whether known or unknown, whether asserted or unasserted, whether absolute or contingent, whether accrued or unaccrued, whether liquidated or unliquidated, and whether due or to become due), including any liability for Taxes and any indebtedness, borrowing, debt, credit obligation or guarantee of another Person's Liability.

Lien means any mortgage, pledge, deed of trust, hypothecation, right of others, claim, security interest, title defect, title retention agreement, lease, sublease, license agreement, occupancy agreement, easement, covenant, condition, encroachment, voting trust agreement, interest, option, right of first offer, lien, charge or other restrictions or limitations of any nature whatsoever, including but not limited to any Lien as may arise under a written agreement or contract.

Litigation means any action, cause of action, claim, demand, suit, proceeding, citation, summons, subpoena, inquiry or investigation of any nature, civil, criminal, regulatory or otherwise, in law or in equity, pending or threatened, by or before any court, tribunal, arbitrator or other Governmental Authority.

Longstop Date means December 31, 2009.

Organizational Documents means, as to any Person, its certificate or articles of incorporation or association, by-laws, charter, certificate of registration and other organizational documents.

Person means any natural person, firm, partnership, association, corporation, company, limited liability company, trust, joint stock company, business trust, Governmental Authority or other entity.

Purchaser has the meaning set forth in the Preamble.

Purchaser Account means the account of the Purchaser in roubles (RUR) No. 40702810500000018881, with OJSC JSCB ROSBANK, Moscow, BIC 044525256, corr. acc. 30101810000000000256 or such other bank account of the Purchaser about which the Purchaser shall notify the Seller prior to the payment under this Agreement.

Purchaser Group means the Purchaser and its Affiliates, excluding the Seller Group.

Purchaser Warranties means the representations and warranties of the Purchaser set forth in Schedule B.

Purchase Price has the meaning set forth in Article 2.2.

Related Dispute has the meaning set forth in Article 11.5.3.

Representatives has the meaning set forth in Article 9.1.1.

Sale Shares means forty-four million six hundred twenty-six thousand nine hundred thirty-nine (44,626,939) shares, consisting of (i) five million one hundred twenty-six thousand nine hundred thirty-nine (5,126,939) shares of the Company's Common Stock and (ii) three hundred ninety-five thousand (395,000) shares of the Company's Class B Capital Stock (each of which is convertible into one hundred shares of the Company's Common Stock), representing approximately thirty-four and ninety-seven hundredths percent (34.97%) of the Company's Common Stock.

Seller has the meaning set forth in the Preamble.

Seller Account means the account of the Seller No. 4080781050000050359 (in Russian Roubles) with OJSC JSCB ROSBANK, 11 Masha Poryvaeva Str., Moscow 107078 Russia, BIC: 044525256, corr. acc. No. 3010181000000000256, or such other bank account of the Seller about which the Seller shall notify the Purchaser prior to the payment under this Agreement.

Seller Group means the Seller and its Affiliates, but excluding the Purchaser Group.

Seller Warranties means the representations and warranties of the Seller set forth in Schedule A.

Tax or Taxes means all (i) taxes, fees, duties, tariffs, levies, imposts, or other public charges of any kind, including, without limitation, taxes, required contributions or other charges on or with respect to income, franchise, gross receipts, property, sales, use, profits, capital stock, payroll, employment, social security, health insurance fund, pension fund and other social funds, workers compensation and unemployment or related compensation; taxes or charges in the nature of excise, withholding, ad valorem, stamp, transfer, value added or gains taxes, (ii) license registration or documentation fees, (iii) customs duties, tariffs and similar charges of any kind whatsoever and (iv) any interest, penalties, additions to tax or additional amounts imposed by any taxing authority with respect to those items enumerated in clauses (i), (ii) and (iii) of this definition.

Transaction Documents mean, collectively, this Agreement and any and all other documents, agreements, instruments, certificates, consents, waivers entered into or issued in connection with this Agreement and the Closing.

U.S. Dollars or \$ means United States Dollars, the lawful currency of the United States of America.

1.2 Headings, References and Usage of Terms. The headings contained in this Agreement are for purposes of convenience only and shall not affect the meaning or interpretation of this Agreement. The singular includes the plural and vice versa. Save where the context requires otherwise, references to Articles and Schedules shall be references to the Articles and Schedules of this Agreement.

1.3 Performance of Obligations. Where any obligation pursuant to this Agreement is expressed to be undertaken or assumed by any Party, such obligation shall be construed as requiring the Party concerned to exercise all rights and powers of control over the affairs of any other Person which that Party is able to exercise (whether directly or indirectly) in order to secure performance of such obligation as soon as reasonably practicable.

1.4 Reference to Period. Where any period in days is referred to in this Agreement, such period shall be calculated in calendar days unless expressly provided otherwise (and the day on which any such period is expressed to commence shall not be counted for the purpose of such period's calculation).

1.5 Schedules an Integral Part of Agreement. The Schedules form an integral part of this Agreement and shall be interpreted as though they were set out in the main text of this Agreement.

ARTICLE II SALE AND PURCHASE OF THE SALE SHARES

2.1 Purchase and Sale. Upon and subject to the terms and conditions of this Agreement, (i) the Seller shall, with full title guarantee, sell and deliver the Sale Shares to the Purchaser, and (ii) the Purchaser shall purchase the Sale Shares from the Seller, for the consideration set forth in Article 2.2.

2.2 Consideration. Upon and subject to the terms and conditions of this Agreement, the Purchaser hereby agrees to pay as total consideration under this Agreement the sum equal to thirty three million twenty three thousand nine hundred thirty five U.S. Dollars (\$33,023,935) (the Purchase Price). The Purchase Price shall not be subject to any adjustment.

2.3 Closing. Upon fulfilment (or waiver by the relevant Parties) of the Conditions Precedent and any other applicable terms and conditions specified in this Agreement, the Seller shall send the Purchaser written notice thereof in the form of Schedule E, which notice, subject to satisfaction or waiver of the Conditions Precedent, the Purchaser shall duly execute and return to the Seller as confirmation that both Parties are ready to proceed to the Closing (the Closing Notice). The completion of the transfer of the Sale Shares and release of the Purchase Price (the Closing) shall take place on the date set forth in the Closing Notice (the Closing Date).

2.4 Advance of Purchase Price Subject to Closing. Within ten (10) Business Days after the date of this Agreement, the Purchaser shall transfer to the Seller, as

an advance, the full amount of the Purchase Price by wire transfer to the Seller Account, and the Seller shall retain such amount subject to the terms and conditions of this Agreement until the earlier to occur of (i) the Closing (in which case such amount shall be irrevocably released to the Seller as payment in full of the Purchase Price) and (ii) termination of this Agreement pursuant to Article X prior to the Closing having occurred (in which case the Seller shall immediately return such amount by wire transfer to the Purchaser Account). The purchase Price shall be paid in roubles at the Central Bank of the Russian Federation exchange rate on the date of payment. The Purchase Price can be paid in tranches.

2.5 Actions at the Closing. At the Closing, the Parties shall take the following actions:

2.5.1 The Seller shall provide the Purchaser with the executed Officer's Certificate in the form set forth in Schedule C.

2.5.2 The Purchaser shall provide the Seller with the executed Officer's Certificate in the form set forth in Schedule D.

2.5.3