DYNEGY INC.
Form PREM14A
September 03, 2010
Table of Contents

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

SCHEDULE 14A

Proxy Statement Pursuant to Section 14(a) of the

Securities Exchange Act of 1934

(Rule 14a-101)

Filed by the Registrant x Filed by a Party other than the Registrant ¨

Check the appropriate box:

x Preliminary Proxy Statement

¨ **Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))**

¨ Definitive Proxy Statement

¨ Definitive Additional Materials

¨ Soliciting Material Pursuant to §240.14a-12

DYNEGY INC.

(Name of Registrant as Specified In Its Charter)

(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

Payment of Filing Fee (Check the appropriate box):

¨ No fee required.

x Fee computed on table below per Exchange Act Rules 14a-6(i)(1) and 0-11.

(1) Title of each class of securities to which transaction applies:
Common stock, par value $0.01 per share.

(2) Aggregate number of securities to which transaction applies:
120,737,451 shares of the Registrant s common stock and 3,387,884 of the Registrant s phantom stock units.

(3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (set forth the amount on which the filing fee is calculated and state how it was determined):
Solely for the purpose of calculating the registration fee, the underlying value of the transaction was calculated as the *sum* of (A) 120,737,451 of the Registrant s shares of common stock (including restricted common stock), *multiplied* by $4.50 per share and (B) 3,387,884 of the Registrant s phantom stock units *multiplied* by $4.50 per phantom stock unit.

(4) Proposed maximum aggregate value of transaction:
$558,564,008

(5) Total fee paid:
$39,825.61, determined based upon multiplying 0.00007130 by the proposed maximum aggregate value of transaction of $558,564,008.

¨ Fee paid previously with preliminary materials.

¨ Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the form or schedule and the date of its filing.

(1) Amount Previously Paid:

(2) Form, Schedule or Registration Statement No.:

(3) Filing Party:

(4) Date Filed:

Table of Contents

[ ], 2010

Dear Stockholder:

We cordially invite you to attend a special meeting of stockholders of Dynegy Inc., a Delaware corporation, which we refer to as the Company, to be held on [ ], 2010 at [ ], at Dynegy s headquarters, Wells Fargo Plaza, 1000 Louisiana Street, Houston, Texas, 77002.

On August 13, 2010, the Company entered into a merger agreement providing for the acquisition of the Company by Denali Parent Inc., an entity formed by an affiliate of The Blackstone Group L.P. At the special meeting, you will be asked to consider and vote upon a proposal to adopt the merger agreement.

Concurrently with the execution of the merger agreement, an entity formed and wholly owned by Denali Parent Inc. entered into a purchase and sale agreement with NRG Energy, Inc., which we refer to as NRG, pursuant to which NRG will purchase four of our natural gas-fired assets. The completion of the merger is contingent upon the concurrent closing of the transaction with NRG. No approval of the holders of our common stock is required in order to complete the transaction with NRG and no such approval is being sought from you. The transaction with NRG will not occur if the merger is not consummated.

If the merger contemplated by the merger agreement is completed, you will be entitled to receive $4.50 in cash, without interest, less any applicable withholding taxes, for each share of our common stock owned by you (unless you have properly exercised your appraisal rights with respect to such shares), which represents a premium of approximately 62% to the closing price of our common stock on August 12, 2010, the last trading day prior to the public announcement of the execution of the merger agreement, and a premium of approximately 26% to the average closing price of our common stock during the 30-day trading period ended on August 12, 2010. The $4.50 per share is a discount to the trading price of our common stock for recent periods prior to June 28, 2010.

The board of directors of the Company has determined that the merger is fair to, and in the best interests of, the Company and its stockholders and approved and declared advisable the merger agreement and the merger and the other transactions contemplated by the merger agreement. The Company s board of directors made its determination after consultation with its legal and financial advisors and consideration of a number of factors. **The board of directors of the Company recommends that you vote FOR approval of the proposal to adopt the merger agreement and FOR approval of the proposal to adjourn the special meeting, if necessary or appropriate, to solicit additional proxies.**

Approval of the proposal to adopt the merger agreement requires the affirmative vote of holders of a majority of the outstanding shares of our common stock entitled to vote thereon.

Your vote is very important. Whether or not you plan to attend the special meeting, please complete, date, sign and return, as promptly as possible, the enclosed proxy card in the accompanying prepaid reply envelope, or submit your proxy by telephone or the Internet. If you attend the special meeting and vote in person, your vote by ballot will revoke any proxy previously submitted. **The failure to vote will have the same effect as a vote AGAINST approval of the proposal to adopt the merger agreement.**

If your shares of our common stock are held in street name by your bank, brokerage firm or other nominee, your bank, brokerage firm or other nominee will be unable to vote your shares of our common stock without instructions from you. You should instruct your bank, brokerage firm or other nominee to vote your shares of our common stock in accordance with the procedures provided by your bank, brokerage firm or other

Table of Contents

nominee. **The failure to instruct your bank, brokerage firm or other nominee to vote your shares of our common stock FOR approval of the proposal to adopt the merger agreement will have the same effect as voting AGAINST approval of the proposal to adopt the merger agreement.**

The accompanying proxy statement provides you with detailed information about the special meeting, the merger agreement, the merger, the NRG purchase and sale agreement and the NRG transaction. A copy of each of the merger agreement and the NRG purchase and sale agreement is attached as **Annex A** to the proxy statement. We encourage you to read the entire proxy statement and its annexes, including the merger agreement and the NRG purchase and sale agreement, carefully. You may also obtain additional information about the Company from documents we have filed with the Securities and Exchange Commission.

If you have any questions or need assistance voting your shares of our common stock, please contact MacKenzie Partners, Inc., our proxy solicitor, by calling toll-free at (800) 322-2885 or (212) 929-5500 (call collect) or by e-mailing dynegy@mackenziepartners.com.

Thank you in advance for your cooperation and continued support.

Sincerely,

Bruce A. Williamson

Chairman of the Board, President and Chief Executive Officer

The proxy statement is dated [ ], 2010, and is first being mailed to our stockholders on or about [ ], 2010.

NEITHER THE SECURITIES AND EXCHANGE COMMISSION NOR ANY STATE SECURITIES COMMISSION HAS APPROVED OR DISAPPROVED THE MERGER, PASSED UPON THE MERITS OR FAIRNESS OF THE MERGER AGREEMENT OR THE TRANSACTIONS CONTEMPLATED THEREBY, INCLUDING THE PROPOSED MERGER AND THE NRG SALE, OR PASSED UPON THE ADEQUACY OR ACCURACY OF THE INFORMATION CONTAINED IN THIS DOCUMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

Table of Contents

DYNEGY INC.

1000 Louisiana Street, Suite 5800

Houston, TX 77002

NOTICE OF SPECIAL MEETING OF STOCKHOLDERS [ ], 2010

DATE:	[ ], 2010
TIME:	[ ]
PLACE:	Dynegy s headquarters, Wells Fargo Plaza, 1000 Louisiana Street, Houston, Texas, 77002
ITEMS OF BUSINESS:	1. To consider and vote on a proposal to adopt the Agreement and Plan of Merger, dated as of August 13, 2010, as it may be amended from time to time, which we refer to as the merger agreement, among the Company, Denali Parent Inc., a Delaware corporation, which we refer to as Parent, and Denali Merger Sub Inc., a Delaware corporation and a wholly owned subsidiary of Parent, which we refer to as Merger Sub. A copy of the merger agreement is attached as **Annex A** to the accompanying proxy statement. 2. To consider and vote on a proposal to adjourn the special meeting, if necessary or appropriate, to solicit additional proxies if there are insufficient votes at the time of the special meeting to approve the proposal to adopt the merger agreement. 3. To transact any other business incident to the conduct of the meeting that may properly come before the special meeting, or any adjournment or postponement of the special meeting, by or at the direction of the board of directors of the Company.
RECORD DATE:	Only stockholders of record at the close of business on [ ], 2010 are entitled to notice of, and to vote at, the special meeting. All stockholders of record as of that date are cordially invited to attend the special meeting in person.

PROXY VOTING:	**Your vote is very important, regardless of the number of shares of common stock of the Company you own.** The merger cannot be completed unless the merger agreement is adopted by the affirmative vote of the holders of a majority of the outstanding shares of the Company s common stock entitled to vote thereon. Even if you plan to attend the special meeting in person, we request that you complete, sign, date and return, as promptly as possible, the enclosed proxy card

Table of Contents

	in the accompanying prepaid reply envelope or submit your proxy by telephone or the Internet prior to the special meeting to ensure that your shares of common stock of the Company will be represented at the special meeting if you are unable to attend. If you fail to return your proxy card or fail to submit your proxy by phone or the Internet, your shares of common stock of the Company will not be counted for purposes of determining whether a quorum is present at the special meeting and will have the same effect as a vote **AGAINST** approval of the proposal to adopt the merger agreement.
	If you are a stockholder of record, voting in person at the special meeting will revoke any proxy previously submitted. If you hold your shares of common stock of the Company through a bank, brokerage firm or other nominee, you should follow the procedures provided by your banker, brokerage firm or other nominee in order to vote.
RECOMMENDATION:	The board of directors of the Company has determined that the merger is fair to, and in the best interests of, the Company and its stockholders and approved and declared advisable the merger agreement and the merger and the other transactions contemplated by the merger agreement. The board of directors of the Company made its determination after consultation with its legal and financial advisors and consideration of a number of factors. **The board of directors of the Company recommends that you vote FOR approval of the proposal to adopt the merger agreement and FOR approval of the proposal to adjourn the special meeting, if necessary or appropriate, to solicit additional proxies.**
ATTENDANCE:	Only stockholders of record, their duly authorized proxy holders, beneficial stockholders with proof of ownership and our guests may attend the special meeting. To gain admittance, you must present valid photo identification, such as a driver s license or passport. If your shares of common stock of the Company are held through a bank, brokerage firm or other nominee, please bring to the special meeting a copy of your brokerage statement evidencing your beneficial ownership of the common stock of the Company and valid photo identification. If you are the representative of a corporate or institutional stockholder, you must present valid photo identification along with proof that you are the representative of such stockholder. Please note that cameras, recording devices and other electronic devices will not be permitted at the special meeting.
APPRAISAL:	Stockholders of the Company who do not vote in favor of the proposal to adopt the merger agreement will have the right to seek appraisal of the fair value of their shares of common stock of the Company if they deliver a demand for appraisal before the vote is taken on the merger agreement and comply with all the requirements of Delaware law, which are summarized in the accompanying proxy statement and reproduced in their entirety in **Annex D** to the accompanying proxy statement.

Table of Contents

WHETHER OR NOT YOU PLAN TO ATTEND THE SPECIAL MEETING, PLEASE COMPLETE, DATE, SIGN AND RETURN, AS PROMPTLY AS POSSIBLE, THE ENCLOSED PROXY CARD IN THE ACCOMPANYING PREPAID REPLY ENVELOPE, OR SUBMIT YOUR PROXY BY TELEPHONE OR THE INTERNET. IF YOU ATTEND THE SPECIAL MEETING AND VOTE IN PERSON, YOUR VOTE BY BALLOT WILL REVOKE ANY PROXY PREVIOUSLY SUBMITTED.

By Order of the Board of Directors,

Kimberly M. O Brien

Corporate Secretary

Dated: [ ], 2010

Houston, Texas

Table of Contents

TABLE OF CONTENTS

Table of Contents

Table of Contents

This proxy statement and a proxy card are first being mailed on or about [ ], 2010 to stockholders who owned shares of the Company s common stock as of the close of business on [ ], 2010.

SUMMARY

The following summary highlights selected information in this proxy statement and may not contain all the information that may be important to you. Accordingly, we encourage you to read carefully this entire proxy statement, its annexes and the documents referred to in this proxy statement. Each item in this summary includes a page reference directing you to a more complete description of that topic. You may obtain the information incorporated by reference in this proxy statement without charge by following the instructions under Where You Can Find More Information beginning on page [ ].

Parties to the Merger (Page [ ])

Dynegy Inc., or Dynegy, the Company, we or us, is a Delaware corporation headquartered in Houston, Texas. Our primary business is the production and sale of electric energy, capacity and ancillary services to regional transmission organizations and independent system operators, integrated utilities, electric cooperatives, municipalities, transmission and distribution utilities, industrial customers, power marketers, financial participants, other power generators and commercial end-users in seven U.S. states in the midwest, the northeast and the west regions of the U.S.

Denali Parent Inc., or Parent, is a Delaware corporation that was created by an affiliate of The Blackstone Group L.P., which we refer to as Blackstone, solely for the purpose of entering into the merger agreement and completing the transactions contemplated by the merger agreement. Blackstone is one of the world s leading investment and advisory firms. Its alternative asset management businesses include the management of private equity funds, real estate funds, hedge funds, credit-oriented funds, collateralized loan obligation vehicles (CLOs) and closed-end mutual funds. Blackstone also provides various financial advisory services, including mergers and acquisitions advisory, restructuring and reorganization advisory and fund placement services. Upon completion of the merger, the Company will be a direct wholly owned subsidiary of Parent.

Denali Merger Sub Inc., or Merger Sub, is a Delaware corporation that was formed by Parent solely for the purpose of entering into the merger agreement and completing the transactions contemplated by the merger agreement and entering into the NRG PSA and completing the transactions contemplated by the NRG PSA. For a description of the NRG PSA and the transactions contemplated thereby, see The NRG PSA beginning on page [ ]. Upon completion of the merger, Merger Sub will cease to exist.

In this proxy, we refer to the Agreement and Plan of Merger, dated as of August 13, 2010, as it may be amended from time to time, among the Company, Parent and Merger Sub, as the merger agreement, and the merger of Merger Sub with and into the Company as the merger. We also refer to the Purchase and Sale Agreement, dated as of August 13, 2010, as it may be amended from time to time, between NRG Energy, Inc., which we refer to as NRG, and Merger Sub, as the NRG PSA.

The Special Meeting (Page [ ])

Time, Place and Purpose of the Special Meeting (Page [ ])

The special meeting will be held on [ ], 2010, at [ ], at Dynegy s headquarters, Wells Fargo Plaza, 1000 Louisiana Street, Houston, Texas, 77002.

At the special meeting, holders of our common stock, par value $0.01 per share, which we refer to as our common stock or the common stock, will be asked to approve the proposal to adopt the merger agreement, and to

Table of Contents

approve the proposal to adjourn the special meeting, if necessary or appropriate, for the purpose of soliciting additional proxies if there are insufficient votes at the time of the special meeting to approve the proposal to adopt the merger agreement.

Record Date and Quorum (Page [ ])

You are entitled to receive notice of, and to vote at, the special meeting if you owned shares of our common stock at the close of business on [ ], 2010, which the Company has set as the record date for the special meeting and which we refer to as the record date. You will have one vote for each share of our common stock that you owned on the record date. As of the record date, there were [ ] shares of our common stock outstanding and entitled to vote at the special meeting. A majority of the shares of our common stock outstanding at the close of business on the record date and entitled to vote, present in person or represented by proxy, at the special meeting constitutes a quorum for the purposes of the special meeting. Abstentions and broker non-votes are counted as present for the purpose of determining whether a quorum is present.

Vote Required (Page [ ])

Approval of the proposal to adopt the merger agreement requires the affirmative vote of the holders of a majority of the outstanding shares of our common stock entitled to vote thereon. Abstentions and broker non-votes will have the same effect as a vote **AGAINST** approval of the proposal to adopt the merger agreement.

Approval of the proposal to adjourn the special meeting, if necessary or appropriate, for the purpose of soliciting additional proxies requires the affirmative vote of the holders of a majority of the shares of our common stock present in person or represented by proxy and entitled to vote on the matter at the special meeting, whether or not a quorum is present. Abstentions will have the same effect as a vote **AGAINST** approval of this proposal. Broker non-votes are not counted for purposes of this proposal.

As of [ ], 2010, the record date, the directors and executive officers of the Company beneficially owned and were entitled to vote, in the aggregate, [ ] shares of our common stock (not including any shares of our common stock deliverable upon exercise or conversion of any options, or any phantom stock units), representing [ ]% of the outstanding shares of our common stock. The directors that approved the merger and the merger agreement and the executive officers of the Company beneficially owned and were entitled to vote, in the aggregate, [ ] shares of our common stock, representing [ ]% of the outstanding shares of our common stock, and these directors and executive officers have informed the Company that they currently intend to vote all of their shares of our common stock **FOR** approval of the proposal to adopt the merger agreement and **FOR** approval of the proposal to adjourn the special meeting, if necessary or appropriate, to solicit additional proxies.

Proxies and Revocation (Page [ ])

Any stockholder of record entitled to vote at the special meeting may submit a proxy by telephone, over the Internet, by returning the enclosed proxy card in the accompanying prepaid reply envelope, or may vote in person by appearing at the special meeting. If your shares of our common stock are held in street name through a bank, brokerage firm or other nominee, you should instruct your bank, brokerage firm or other nominee on how to vote your shares of our common stock using the instructions provided by your bank, brokerage firm or other nominee. If you fail to submit a proxy or to vote in person at the special meeting, or do not provide your bank, brokerage firm or other nominee with instructions, as applicable, your shares of our common stock will not be voted on the proposal to adopt the merger agreement, which will have the same effect as a vote **AGAINST** approval of the proposal to adopt the merger agreement, and your shares of our common stock will not have an effect on the proposal to adjourn the special meeting.

You have the right to revoke a proxy, whether delivered over the Internet, by telephone or by mail, at any time before it is exercised, by voting again at a later date through any of the methods available to you, by giving

Table of Contents

written notice of revocation to our Corporate Secretary, which must be filed with the Corporate Secretary by the time the special meeting begins, or by attending the special meeting and voting in person.

The Merger (Page [ ])

The merger agreement provides that Merger Sub will merge with and into the Company. The Company will be the surviving corporation in the merger, which we refer to as the surviving corporation, and will continue to do business following the merger. As a result of the merger, the Company will cease to be a publicly traded company. If the merger is completed, you will not own any shares of the capital stock of the surviving corporation.

Merger Consideration (Page [ ])

In the merger, each outstanding share of our common stock (except for shares owned by Parent, Merger Sub, the Company and their respective wholly owned subsidiaries and not held on behalf of third parties, and shares owned by stockholders who have properly demanded appraisal rights, which we refer to collectively as excluded shares) will be converted into the right to receive $4.50 in cash, without interest, which amount we refer to as the per share merger consideration, less any applicable withholding taxes.

The NRG Sale (Page [ ])

Concurrently with the execution of the merger agreement, Merger Sub and NRG entered into the NRG PSA pursuant to which NRG will purchase four of our natural gas-fired assets from the surviving corporation, which we refer to as the NRG sale. A copy of the NRG PSA is attached as **Exhibit A** to the merger agreement, which is attached hereto as **Annex A**. The completion of the merger between the Company and Merger Sub is contingent upon the concurrent closing of the NRG sale. The NRG sale will not occur if the merger is not consummated. The proceeds from the NRG sale will be paid to the surviving corporation, and will not be distributed to or held for the benefit of the holders of our common stock prior to the merger. No approval of the holders of our common stock is required to complete the NRG sale and no such approval is being sought from you. NRG has agreed with Merger Sub that it will not take certain actions related to the consummation of an acquisition of the Company by a third party, directly or indirectly, until the earliest to occur of (i) 270 days after the date the NRG PSA was signed, (ii) the consummation of an acquisition of the Company by a third party, and (iii) 90 days after the stockholder vote on the merger agreement.

Reasons for the Merger; Recommendation of the Board of Directors (Page [ ])

After careful consideration of various factors described in the section entitled The Merger Reasons for the Merger; Recommendation of the Board of Directors , beginning on page [ ], the board of directors of the Company, which we refer to as the board of directors, (i) determined that the merger is fair to, and in the best interests of, the Company and our stockholders, (ii) approved and declared advisable the merger agreement and the merger and the other transactions contemplated by the merger agreement, (iii) resolved that the merger agreement be submitted for consideration by the stockholders of the Company at a special meeting of stockholders and (iv) recommended that our stockholders vote to adopt the merger agreement. One director of the Company voted against approval of the merger and the merger agreement. See The Merger Background of the Merger beginning on page [ ].

In considering the recommendation of the board of directors with respect to the proposal to adopt the merger agreement, you should be aware that our directors and executive officers have interests in the merger that are different from, or in addition to, yours. The board of directors was aware of and considered these interests, among other matters, in evaluating and negotiating the merger agreement and the merger, and in recommending that the merger agreement be adopted by the stockholders of the Company. See the section entitled The Merger Interests of Certain Persons in the Merger beginning on page [ ].

The board of directors recommends that you vote FOR approval of the proposal to adopt the merger agreement and FOR approval of the proposal to adjourn the special meeting, if necessary or appropriate, to solicit additional proxies.

Table of Contents

Opinions of Financial Co-Advisors (Page [ ])

Opinion of Greenhill & Co., LLC (Page [ ])

Greenhill & Co., LLC, which we refer to as Greenhill, delivered its opinion to the board of directors that, as of August 13, 2010 and based upon and subject to the factors and assumptions set forth therein, the per share merger consideration to be received by the holders of our common stock (excluding Parent, Merger Sub and any of their affiliates) pursuant to the merger agreement was fair, from a financial point of view, to such holders.

The full text of Greenhill s written opinion dated August 13, 2010, which contains the assumptions made, procedures followed, matters considered and limitations on the review undertaken in connection with the opinion, is attached as Annex B to this proxy statement. The summary of Greenhill s opinion in this proxy statement is qualified in its entirety by reference to the full text of the opinion. Greenhill s written opinion was addressed to the board of directors. It was not a recommendation to the board of directors as to whether it should approve the merger or the merger agreement, nor does it constitute a recommendation as to whether the stockholders of the Company should adopt the merger agreement or take any other action with respect to the merger at any meeting of the stockholders convened in connection with the merger. Greenhill was not requested to opine as to, and its opinion did not in any manner address, the Company s underlying business decision to proceed with or effect the merger.

Under the terms of Greenhill s engagement with the Company, the Company has agreed to pay Greenhill a fee of $10 million in the aggregate, of which $5 million was paid following delivery of Greenhill s written opinion and $5 million is payable upon the consummation of the merger. For a more complete description, see Opinions of Financial Co-Advisors Opinion of Greenhill & Co., LLC beginning on page [ ]. See also **Annex B** to this proxy statement.

We encourage you to read the opinion of Greenhill described above in its entirety for a description of the assumptions made, procedures followed, matters considered and limitations on the review undertaken in connection with such opinion.

Opinion of Goldman, Sachs & Co. (Page [ ])

Goldman, Sachs & Co., which we refer to as Goldman Sachs, delivered its opinion to the board of directors that, as of August 13, 2010 and based upon and subject to the factors and assumptions set forth therein, the per share merger consideration to be paid to the holders of our common stock pursuant to the merger agreement was fair from a financial point of view to such holders.

The full text of the written opinion of Goldman Sachs, dated August 13, 2010, which sets forth assumptions made, procedures followed, matters considered and limitations on the review undertaken in connection with the opinion, is attached as Annex C to this proxy statement. Goldman Sachs provided its opinion for the information and assistance of the board of directors in connection with its consideration of the proposed merger. Goldman Sachs opinion is not a recommendation as to how any holder of our common stock should vote with respect to the merger or any other matter.

Under the terms of Goldman Sachs engagement with the Company, the Company has agreed to pay Goldman Sachs a fee of $10 million in the aggregate, of which $5 million was paid following delivery of Goldman Sachs written opinion and $5 million is payable upon the consummation of the merger. For a more complete description, see Opinions of Financial Co-Advisors Opinion of Goldman, Sachs & Co. beginning on page [ ]. See also **Annex C** to this proxy statement.

We encourage you to read the opinion of Goldman Sachs described above carefully in its entirety for a description of the assumptions made, procedures followed, matters considered and limitations on the review undertaken in connection with such opinion.

Table of Contents

Financing of the Merger (Page [ ])

We anticipate that the total funds needed by Parent and Merger Sub to complete the merger will be obtained as follows:

- the funds needed to pay our stockholders the amounts due to them under the merger agreement as holders of common stock and/or restricted stock (which we anticipate, based upon the shares of our common stock and restricted stock outstanding as of August 31, 2010, will be approximately $543 million), certain amounts due in connection with the merger and certain fees and expenses related to the merger, will be funded by equity financing of up to $580 million to be provided or secured by Blackstone Capital Partners V L.P., which we refer to as the guarantor, or other parties to whom it assigns a portion of its commitment; and

- the funds needed to (i) repay or refinance indebtedness outstanding under the Company s existing credit facility that will come due as a result of the merger (which we anticipate, based upon indebtedness outstanding as of August 30, 2010, will be approximately $918 million, consisting of an $850 million term letter of credit facility (Term LC Facility) and a $68 million senior secured term loan facility) and (ii) replace or refinance the letters of credit issued under the Term LC Facility (as of August 30, 2010, letters of credit issued under the Term LC Facility were approximately $470 million), will collectively be funded from the cash on hand of the Company, restricted cash of the Company associated with the Term LC Facility and proceeds the surviving corporation receives in the NRG sale (as of August 30, 2010, (a) the cash on hand of the Company was approximately $650 million and (b) restricted cash of the Company associated with the Term LC Facility was approximately $850 million).

We anticipate the remaining proceeds from the NRG sale will be used to provide liquidity to the Company in support of its operations and for other corporate purposes.

Parent has obtained the equity commitment letter described below, and the funding under the equity commitment letter is subject to certain conditions. In addition, Merger Sub has entered into the NRG PSA with NRG, and the closing of the merger is subject to the concurrent closing of the NRG sale. We believe the amounts committed under the equity commitment letter and to be received by the surviving corporation from the NRG sale, together with cash on hand of the Company and cash of the Company that is restricted under our existing credit facility, will be sufficient to complete the merger and to repay or refinance any outstanding indebtedness that will come due as a result of the merger, but we cannot assure you of that. Those amounts may be insufficient if, among other things, the guarantor fails to fund the committed amount in breach of the equity commitment, the outstanding indebtedness of the Company at the closing of the merger is greater than anticipated, cash on hand of the Company and cash of the Company that is restricted under the Company s existing credit facility are less than expected, or the fees, expenses or other amounts required to be paid in connection with the merger are greater than anticipated. Although obtaining the proceeds of the equity financing is not a condition to the completion of the merger, the failure of Parent and Merger Sub to obtain sufficient equity financing is likely to result in the failure of the merger to be completed. In that case, if a court of competent jurisdiction declines to specifically enforce the obligations of Parent and Merger Sub under the merger agreement, Parent may be obligated to pay the Company a fee of $100 million, which we refer to as the Parent fee. In addition, if the merger agreement is terminated or the merger is not consummated, Merger Sub may be obligated to pay the Company 50% of certain amounts Merger Sub or any of its affiliates receive from NRG negotiated in connection with a termination of the NRG PSA or a failure of the NRG sale to be consummated, which we refer to as the NRG payment. See The Merger Agreement Termination Fees beginning on page [ ] for a further discussion of the Parent fee and the NRG payment. The Parent fee and the NRG payment are guaranteed by the guarantor pursuant to the limited guaranty referred to below.

Equity Financing (Page [ ])

Parent has entered into a letter agreement, which we refer to as the equity commitment letter, with the guarantor, dated August 13, 2010, pursuant to which the guarantor has committed to make or secure capital

Table of Contents

contributions to Parent at or prior to the closing of the merger up to an aggregate amount of $580 million. The guarantor is permitted to capitalize Parent directly or indirectly through one or more affiliated entities or other designated co-investors (other than NRG or any of its affiliates), including with debt financing to the extent available from lenders other than NRG or the Company or any of their respective affiliates. However, in connection with the closing of the merger (i) no credit support in connection with any debt financing utilized to capitalize Parent may be provided by NRG, the Company or any of their affiliates and (ii) no new indebtedness of the Company or any of its subsidiaries, and no assets of the Company or any of its subsidiaries, will be used to pay any portion of the aggregate merger consideration to be paid to holders of our common stock.

The guarantor s obligation to fund the financing contemplated by the equity commitment letter is subject only to the satisfaction of the conditions to Parent s and Merger Sub s obligations to consummate the transactions contemplated by the merger agreement. The Company is a third party beneficiary of the equity commitment letter to the extent that the Company seeks specific performance of Parent s obligation to cause the guarantor to fund its equity commitment in certain limited circumstances in accordance with the terms of the merger agreement.

Limited Guaranty (Page [ ])

Pursuant to the limited guaranty delivered by the guarantor in favor of the Company, dated August 13, 2010, the guarantor has guaranteed the due and punctual payment when due of (i) the obligations of Parent under the merger agreement to pay the Parent fee and any NRG payment to the Company as and when due and (ii) certain expense reimbursement and indemnification obligations of Parent to the Company in connection with the Company s cooperation with certain financing and third party investment activities. See The Merger Agreement Termination Fees beginning on page [ ]. However, the guarantor s obligations under the limited guaranty are subject to a cap equal to (x) the sum of the Parent fee, the amount of any NRG payment and any expenses incurred by the Company in connection with enforcing its right to such amounts minus (y) any expense reimbursement and indemnification payments actually paid by Parent or Merger Sub to the Company in connection with the Company s cooperation with certain financing and third party investment activities.

Interests of Certain Persons in the Merger (Page [ ])

In considering the recommendation of our board of directors that you vote to approve the proposal to adopt the merger agreement, you should be aware that our directors and executive officers have interests in the merger that are different from, or in addition to, those of our stockholders generally. The board of directors was aware of and considered these interests, among other matters, in evaluating and negotiating the merger agreement and the merger, and in recommending that the merger agreement be adopted by the stockholders of the Company. These interests include the following:

- the vesting and cashing-out of all unvested shares of restricted stock, phantom stock and certain performance units held by our executive officers, and the payment in cash of the directors deferred compensation balances under the Company s Deferred Compensation Plan for Certain Directors; and

- pursuant to an executive change in control severance plan, the payment of severance payments (including, if applicable, a tax gross-up relating to parachute payment excise taxes resulting from such severance payments) in connection with a termination of employment that may occur in connection with or following the merger.

Material U.S. Federal Income Tax Consequences of the Merger (Page [ ])

The exchange of shares of our common stock for cash pursuant to the merger generally will be a taxable transaction to U.S. holders for U.S. federal income tax purposes. Stockholders who are U.S. holders and who exchange their shares of our common stock in the merger will generally recognize gain or loss in an amount equal to the difference, if any, between the cash payments made pursuant to the merger and their adjusted tax basis in their shares of our common stock. Backup withholding may also apply to the cash payments made pursuant to the merger unless the U.S. holder or other payee provides a taxpayer identification number, certifies that such number is correct and otherwise complies with the backup withholding rules. You should read The Merger Material U.S. Federal Income Tax Consequences of the Merger beginning on page [ ] for a definition of U.S. holder and a more detailed discussion of the U.S. federal income tax consequences of the merger. You

Table of Contents

should also consult your tax advisor for a complete analysis of the effect of the merger on your federal, state and local and/or foreign taxes.

Regulatory Approvals (Page [ ])

Under the terms of the merger agreement, the merger cannot be completed until the waiting periods applicable to the consummation of the merger and the NRG sale under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, or the HSR Act, have expired or been earlier terminated. On August 27, 2010, the Company and the guarantor filed notification of the proposed merger with the Federal Trade Commission, or the FTC, and the Antitrust Division of the Department of Justice, or the DOJ, under the HSR Act. On August 27, 2010, the guarantor and NRG filed notification of the proposed NRG sale with the FTC and the DOJ under the HSR Act.

In addition, the merger and the NRG sale cannot be completed without prior approval of the merger and the NRG sale by the Federal Energy Regulatory Commission, or FERC. The Company, certain of the Company s subsidiaries, Parent, Merger Sub and NRG filed with FERC a joint application for approval of the merger and the NRG sale under Section 203 of the Federal Power Act on August 27, 2010. FERC may grant approval subject to conditions, including conditions that would require divestiture of substantial assets of the Company, Parent, or NRG in order to consummate the merger and/or the NRG sale, and also retains the authority to issue supplemental orders imposing additional conditions at any time.

The merger and the NRG sale are, or may be, subject to the regulatory requirements of other state and federal regulatory agencies and authorities. The Company, Parent and Merger Sub filed a joint petition for approval, or a determination that no approval is required, for the merger with the New York Public Service Commission, or the NYPSC, under Sections 70 and 83 of the New York Public Service Law, or the PSL, on August 27, 2010. The NYPSC generally concludes that no approval is required by applying what is known as the *Wallkill* presumption , as further described under The Merger Regulatory Approvals .

The Company, on behalf of itself, Blackstone and NRG, also filed voluntary notifications relating to the merger and the NRG sale with the California Public Utilities Commission, or the CPUC, and the California Independent System Operator Corporation, or the CAISO, under CPUC General Order No. 167 on August 13, 2010. Although CPUC General Order No. 167 contemplates the filing of such notifications at least 90 days prior to consummation of the subject transactions, the CPUC has recognized that 90-day notice will not always be practical and has stated that the notice period will be enforced with reasonable flexibility, provided the notifications are made as soon as legally possible. No further action on these notifications is required.

Litigation Relating to the Merger (Page [ ])

In connection with the proposed merger, nineteen stockholder lawsuits have been filed against the Company, its directors and Blackstone in the District Courts of Harris County, Texas between August 13, 2010 and the date of this proxy statement; Parent, Merger Sub, the guarantor, NRG and/or certain executive officers of the Company have also been named as defendants in certain of these lawsuits. One stockholder lawsuit has been filed against the Company, its directors, Blackstone, Parent and Merger Sub in the United States District Court in the Southern District of Texas on August 31, 2010. Six similar stockholder actions against the Company, its directors and Blackstone were filed in the Court of Chancery of the State of Delaware between August 17, 2010 and August 23, 2010, and were consolidated on August 24, 2010. Each of the Texas and Delaware complaints generally alleges, among other things, that our board of directors and certain executive officers have violated various fiduciary duties. Further, certain of the complaints allege that the Company and/or Blackstone aided and abetted such alleged breaches of fiduciary duties. Among other remedies, the plaintiffs seek to enjoin the merger and/or the stockholder vote, declaratory relief with respect to the alleged breaches of fiduciary duty, and monetary damages including attorneys fees and expenses. All defendants deny any wrongdoing in connection with the proposed merger and plan to vigorously defend against all pending claims.

Table of Contents

The Merger Agreement (Page [ ])

Treatment of Common Stock, Options and Other Equity Awards (Page [ ])

Common Stock. At the effective time of the merger, each share of our common stock issued and outstanding (except for the excluded shares) will be converted into the right to receive the per share merger consideration of $4.50 in cash, without interest, less any applicable withholding taxes.

Options. None of the outstanding Company stock options has an exercise price that is lower than the per share merger consideration. Accordingly, holders of Company stock options will not be entitled to receive any payment in exchange for their options. All Company stock options will be cancelled for no payment at the effective time of the merger.

Restricted Stock. At the effective time of the merger, each outstanding share of restricted stock will fully vest and be cancelled and converted into the right to receive, as soon as reasonably practicable after the effective time of the merger, but in any event no later than the earlier of (i) the second payroll period or (ii) thirty (30) days following the effective time of the merger, an amount in cash equal to the per share merger consideration, less any applicable withholding taxes.

Phantom Stock Units. At the effective time of the merger, each outstanding phantom stock unit will fully vest and be cancelled and converted into the right to receive, as soon as reasonably practicable after the effective time of the merger, but in any event no later than the earlier of (i) the second payroll period or (ii) thirty (30) days following the effective time of the merger, an amount in cash equal to the per share merger consideration, less any applicable withholding taxes.

Performance Awards. At the effective time of the merger, the Company s performance awards granted in 2009 and 2010 will be payable at 100% of target , fully vested and settled in cash, and each outstanding performance award granted prior to 2009 will be fully vested and cancelled for no payment in accordance with the terms of the agreements governing such Company performance awards.

Solicitation of Acquisition Proposals (Page [ ])

The merger agreement provides that for the period beginning on August 13, 2010 and continuing until 11:59 p.m., Eastern time, on September 22, 2010, which we refer to as the go-shop period, we are permitted to solicit any inquiry or the making of any acquisition proposals from third parties and to participate in any negotiations or discussions with third parties with respect to any acquisition proposals. From and after 12:00 a.m., Eastern time, on September 23, 2010, which we refer to as the no-shop period start date, and until the effective time of the merger or the termination of the merger agreement, we are not permitted to solicit any inquiry or the making of any acquisition proposals or engage in any negotiations or discussions with any person relating to an acquisition proposal. Notwithstanding these restrictions, under certain circumstances, we may, from and after the no-shop period start date and prior to the time our stockholders adopt the merger agreement, respond to a written acquisition proposal or engage in discussions or negotiations with the person making such an acquisition proposal. At any time before the merger agreement is adopted by our stockholders, if the board of directors determines that an acquisition proposal is a superior proposal, we may terminate the merger agreement and enter into any acquisition, merger or similar agreement, which we refer to as an alternative acquisition agreement, with respect to such superior proposal, so long as we comply with certain terms of the merger agreement, including paying a termination fee to Parent. See The Merger Agreement Solicitation of Acquisition Proposals beginning on page [ ] and The Merger Agreement Termination Fees beginning on page [ ].

Conditions to the Merger (Page [ ])

The respective obligations of the Company, Parent and Merger Sub to consummate the merger are subject to the satisfaction or waiver of certain customary conditions, including the adoption of the merger agreement by our stockholders, receipt of required regulatory approvals, the absence of any legal prohibitions, the accuracy of the representations and warranties of the parties and compliance by the parties with their respective obligations under

8

Table of Contents

the merger agreement. Parent s and Merger Sub s obligations to consummate the merger are also subject to the satisfaction or waiver of the conditions to the obligations of NRG and Merger Sub to effect the NRG sale under the NRG PSA (other than those conditions that by their nature are to be satisfied at the closing of the NRG sale, and the condition relating to the consummation of the merger) and to NRG being ready, willing and able to complete the NRG sale. See The NRG PSA Conditions to the NRG Sale beginning on page [ ].

Termination (Page [ ])

We and Parent may, by mutual written consent, terminate the merger agreement and abandon the merger at any time prior to the effective time of the merger, whether before or after the adoption of the merger agreement by our stockholders.

The merger agreement may also be terminated and the merger abandoned at any time prior to the effective time of the merger as follows:

by either Parent or the Company, if:

the merger has not been consummated by February 13, 2011, which we refer to as the termination date and which may be extended by either Parent or the Company to May 13, 2011 if any of the conditions to the closing of the merger are not fulfilled or waived but remain capable of being satisfied on February 13, 2011;

our stockholders meeting has been held and completed and our stockholders have not adopted the merger agreement at such meeting or any adjournment or postponement of such meeting; or

a law or an order permanently restraining, enjoining or otherwise prohibiting or making illegal the consummation of the merger, which we refer to as an order, has become final and non-appealable.

However, none of the termination rights described in the preceding bullet points will be available to any party if the failure to consummate the merger prior to the termination date was primarily due to the failure of such party to perform any of its obligations under the merger agreement.

by the Company, if:

at any time prior to the adoption of the merger agreement by our stockholders, (i)