

PLUG POWER INC
Form 8-A12B/A
May 06, 2011

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 8-A/A
(Amendment No. 1)

FOR REGISTRATION OF CERTAIN CLASSES OF SECURITIES

PURSUANT TO SECTION 12(b) OR (g) OF THE

SECURITIES EXCHANGE ACT OF 1934

PLUG POWER INC.

(Exact name of registrant as specified in charter)

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Delaware

(State of incorporation
or organization)

22-3672377

(IRS Employer
Identification No.)

968 Albany Shaker Road

Latham, New York

(Address of principal executive offices)

12110

(Zip Code)

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

Title of each class to be so registered	Name of each exchange on which each class is to be registered
Preferred Stock Purchase Rights	The NASDAQ Stock Market LLC

If this Form relates to the registration of a class of securities pursuant to Section 12(b) of the Exchange Act and is effective pursuant to General Instruction A.(c), check the following box. ☒

If this Form relates to the registration of a class of securities pursuant to Section 12(g) of the Exchange Act and is effective pursuant to General Instruction A.(d), check the following box. ☐

Securities Act registration statement file number to which this form relates: Not applicable.

Securities to be registered pursuant to Section 12(g) of the Act: None

EXPLANATORY NOTE

This Amendment No. 1 to Form 8-A amends and supplements the Registration Statement on Form 8-A filed by Plug Power Inc., a Delaware corporation (the Company), with the Securities and Exchange Commission on June 24, 2009 (including the exhibits thereto, the Form 8-A). Capitalized terms used without definition herein shall have the meaning set forth in the Shareholder Rights Agreement, dated June 23, 2009 (the Rights Agreement), between the Company and American Stock Transfer & Trust Company LLC, as rights agent.

Item 1. Description of Registrant's Securities to be Registered.

Item 1 of the Form 8-A is amended and supplemented by adding the following:

Amendment to Rights Agreement

On May 6, 2011, the Company entered into an Amendment to the Rights Agreement (the Amendment). The terms of the Amendment amend the Rights Agreement to provide that, generally, any deemed ownership of shares of Common Stock by OJSC INTER RAO UES, an open joint stock company organized under the laws of the Russian Federation (INTER RAO), and its Affiliates or Associates will not cause the Preferred Stock Purchase Rights to become exercisable under the Rights Agreement unless INTER RAO or such Affiliates or Associates acquire Beneficial Ownership of shares of Common Stock representing more than 34.09% (the INTER RAO Grandfathered Percentage) of the total outstanding shares of Common Stock. INTER RAO directly owns 81.9267% of the shares of OJSC Third Generation Company of the Wholesale Electricity Market, an open joint stock company organized under the laws of the Russian Federation (OGK-3). OGK-3 is the beneficial owner of 44,626,939 shares of Common Stock, or approximately 33.59% of the Company's outstanding shares of Common Stock. The INTER RAO Grandfathered Percentage represents 33.59% plus an additional 0.5%.

Miscellaneous

The Rights Agreement and the Amendment are filed as Exhibits 4.1 and 4.2, respectively, to this Amendment No. 1 to Form 8-A and incorporated herein by reference. The above description of the material terms of the Amendment as they relate to the Rights Agreement is qualified in its entirety by reference to such exhibits.

Item 2. Exhibits.

Exhibit No. Description

3.1	Certificate of Designations, Preferences and Rights of a Series of Preferred Stock of Plug Power Inc. classifying and designating the Series A Junior Participating Cumulative Preferred Stock (incorporated by reference to Exhibit 3.1 to the Company's Registration Statement on Form 8-A filed with the Securities and Exchange Commission on June 24, 2009).
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- 4.1 Shareholder Rights Agreement, dated as of June 23, 2009, between Plug Power Inc. and American Stock Transfer & Trust Company LLC, as Rights Agent (incorporated by reference to Exhibit 4.1 to the Company's Registration Statement on Form 8-A filed with the Securities and Exchange Commission on June 24, 2009).
- 4.2 Amendment, effective as of May 6, 2011, to the Shareholder Rights Agreement by and between Plug Power Inc. and American Stock Transfer & Trust Company LLC, as Rights Agent (incorporated by reference to Exhibit 4.1 to the Company's Current Report on Form 8-K filed with the SEC on May 6, 2011).

SIGNATURE

Pursuant to the requirements of Section 12 of the Securities Exchange Act of 1934, the registrant has duly caused this registration statement to be signed on its behalf by the undersigned, thereto duly authorized.

PLUG POWER INC.

Date: May 6, 2011

By: /s/ Andrew Marsh

Name: Andrew Marsh

Title: President and Chief Executive Officer

EXHIBIT INDEX

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