

DYNEGY INC.  
Form SC 14D9/A  
January 25, 2011

---

---

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

---

SCHEDULE 14D-9/A

SOLICITATION/RECOMMENDATION  
STATEMENT UNDER SECTION 14(d)(4) OF THE  
SECURITIES EXCHANGE ACT OF 1934  
(AMENDMENT NO. 5)

DYNEGY INC.  
(Name of Subject Company)

---

DYNEGY INC.  
(Names of Persons Filing Statement)

COMMON STOCK, PAR VALUE \$0.01 PER SHARE,  
INCLUDING THE ASSOCIATED RIGHTS  
(Title of Class of Securities)

---

26817G300  
(CUSIP Number of Class of Securities)

---

J. Kevin Blodgett  
General Counsel  
Dynegy Inc.  
1000 Louisiana, Suite 5800  
Houston, Texas 77002  
(713) 507-6400  
With copies to:  
Joseph B. Frumkin  
Krishna Veeraraghavan  
Sullivan & Cromwell  
125 Broad Street  
New York, NY 10004  
(212) 558-4000

(Name, address, and telephone numbers of person authorized to receive notices and communications on behalf of the persons filing statement)

Check the box if the filing relates solely to preliminary communications made before the commencement of a tender offer.

---

---

---

## INTRODUCTION

This Amendment No. 5 (this “Amendment”) amends and supplements the Solicitation/Recommendation Statement on Schedule 14D-9 filed with the Securities and Exchange Commission (the “SEC”) by Dynegy Inc. (the “Company”) on December 30, 2010, as amended (as may be further amended or supplemented from time to time, the “Statement”). The Statement relates to the tender offer by IEH Merger Sub LLC, a Delaware limited liability company (the “Offeror”) and a wholly-owned subsidiary of Icahn Enterprises Holdings L.P. (“IEH”), and IEH, as a co-bidder, as disclosed in a Tender Offer Statement on Schedule TO dated December 22, 2010, as amended (as may be further amended or supplemented from time to time, the “Schedule TO”), to purchase for cash all of the issued and outstanding shares of common stock of the Company, including the associated rights issued pursuant to the Stockholder Protection Rights Agreement, dated as of November 22, 2010, and as amended on December 15, 2010, between the Company and Mellon Investor Services LLC, as Rights Agent, that are issued and outstanding (such shares of common stock and such rights collectively, the “Shares”), at a price of \$5.50 per Share, without interest and less any required withholding taxes, if any, upon the terms and subject to the conditions set forth in the Offeror’s offer to purchase dated December 22, 2010, as amended or supplemented from time to time, and in the related letter of transmittal, as amended or supplemented from time to time, copies of which are attached to the Schedule TO as Exhibits (a)(1)(i) and (a)(1)(ii), respectively.

Except as otherwise set forth below, the information set forth in the Statement remains unchanged and is incorporated herein by reference as relevant to the items in this Amendment. Capitalized terms used but not defined herein have the meanings ascribed to them in the Statement.

## ITEM THE SOLICITATION OR RECOMMENDATION

4.

Item 4, “The Solicitation or Recommendation” is hereby amended and supplemented by deleting the last paragraph of the section “Background and Reasons for the Recommendation—Background of the Offer” and inserting the following paragraph:

“The Merger Agreement provides that, until 11:59 p.m., Eastern time, on January 24, 2011, the Company was allowed to initiate, solicit and encourage alternative acquisition proposals from third parties, provide non-public information to, and participate in discussions and negotiate with, third parties with respect to acquisition proposals. At the direction of the Special Committee, Greenhill and Goldman Sachs conducted this “go-shop” process on behalf of the Company. Representatives from Greenhill and Goldman Sachs contacted 54 parties to determine whether they would be interested in exploring a transaction with the Company that would be superior to the proposed transaction, including several parties that had been previously contacted during the “go-shop” process conducted in connection with the Prior Merger Agreement. Of the 54 parties contacted, 48 parties declined to participate in the “go-shop process” or did not respond to repeated contacts from representatives from Greenhill and Goldman Sachs, four parties were given access to confidential information regarding the Company and offered the opportunity to receive a presentation from Company management and two parties indicated that they would perform due diligence on the Company using publicly available information. Two large private equity firms given access to confidential information separately devoted substantial efforts to due diligence. Of the four parties given access to confidential information, one party participated in meetings with Company management (another of these parties had previously participated in meetings with Company management under the “go-shop” process conducted in the fall of 2010). After completing their due diligence, representatives of each of the two large private equity firms that separately devoted substantial efforts to due diligence separately informed representatives from Greenhill and Goldman Sachs that they did not believe they would be able to offer to acquire the Company at a price above the Offer Price and that they would not submit an acquisition proposal. Of the two other parties given access to the data room, one party informed representatives from Greenhill and Goldman Sachs that they were only interested in acquiring certain assets of the Company and needed to

partner with another party interested in acquiring the Company as an entirety, and the other party informed representatives from Greenhill and Goldman Sachs that they would not submit an acquisition proposal and subsequently ceased communications with representatives from Greenhill and Goldman Sachs regarding their interest in a transaction with the Company despite follow-up inquiries from representatives from Greenhill and Goldman Sachs. The two parties performing due diligence on the Company using publicly available information were made aware of the "go-shop process" timeline by representatives of Greenhill and Goldman Sachs, but neither party submitted an acquisition proposal. Separately, an individual claiming to represent an entity named "Buisson Baudoin Rondeleux, Inc." sent a letter via regular mail to the Company dated January 13, 2011 and received January 19, 2011. The letter purported to express an interest in acquiring the Company, but, after a brief initial conversation, the individual listed as a contact did not respond to repeated telephonic and written attempts by Goldman Sachs, Greenhill and the Company to contact him until January 24, 2011, when he returned a call from a representative of Goldman Sachs. The entity, which used a phone number associated with a Columbia, South Carolina telephone exchange and a return address associated with a homeless shelter, did not appear in searches of public records and the internet. In the conversation with the representative of Goldman Sachs, the person indicated that he did not have financing for the purported proposal and had no prior experience in acquiring public companies; the person also requested a copy of the Company's financial statements and was directed to the Company's publicly available financial statements that are filed with the SEC. On January 25, 2011, the Company issued a press release indicating that it did not receive any bona fide acquisition proposals during the "go-shop" period, which is filed as Exhibit (a)(17) hereto. During the "go-shop" period (as had been the case during the period leading up to the Merger Agreement), the Special Committee did not authorize senior management to discuss any management retention, post-closing employment or equity investment in a potential transaction with representatives from the Offeror or any other interested party."

---

ITEM 9.

EXHIBITS.

Item 9, "Exhibits" is hereby amended and supplemented by inserting the following exhibit thereto:

"(a)(17) Press Release issued by Dynegy Inc. on January 25, 2011."

---

SIGNATURE

After due 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.

DYNEGY INC.

Dated: January 25, 2011

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

---

Exhibit (a)(17)

FOR IMMEDIATE RELEASE

Dynegy Announces Expiration of Open Strategic Alternatives Process

Board of Directors Reaffirms Recommendation that  
Stockholders Tender Shares into the Icahn Tender Offer

HOUSTON, January 25, 2011 – Dynegy Inc. (NYSE: DYN) today announced that it did not receive any bona fide acquisition proposals prior to the expiration of its open strategic alternatives process on January 24, 2011. Goldman, Sachs & Co. and Greenhill & Co., LLC, which conducted the process at the direction of the Special Committee of Dynegy’s Board of Directors, had contacted over 50 parties to determine whether they would be interested in exploring a transaction with Dynegy. After working with several of these parties, Dynegy received no such acquisition proposal.

Tender Offer

On December 15, 2010, the Company entered into an Agreement and Plan of Merger with affiliates of Icahn Enterprises LP (NYSE:IEP). On December 22, 2010, an affiliate of IEP commenced a tender offer to purchase all of the outstanding shares of Dynegy common stock for \$5.50 per share in cash, or approximately \$665 million. The only remaining regulatory approval necessary to satisfy the closing conditions of the IEP tender offer relates to the Federal Energy Regulatory Commission (“FERC”). A joint application filed by Dynegy and IEP is currently pending before FERC, and approval is expected to be forthcoming. The IEP tender offer is currently set to expire at midnight (Eastern Time) on January 25, 2011. The parties have agreed in the merger agreement that the affiliate of IEP will extend the tender offer if the conditions to the closing of the tender offer are not satisfied by midnight (Eastern Time) on January 25, 2011.

The Dynegy Board, in consultation with its independent financial and legal advisors and based upon the unanimous recommendation of the Special Committee comprised solely of non-management independent directors, has unanimously determined that the tender offer is in the best interests of all Dynegy stockholders. The Dynegy Board unanimously recommends that Dynegy stockholders accept the tender offer and tender their Dynegy shares into the tender offer.

Dynegy has filed with the Securities and Exchange Commission (“SEC”) a Solicitation/Recommendation Statement on Schedule 14D-9 regarding the tender offer.

Shareholders are encouraged to read the Schedule 14D-9 filing, which is available on the SEC’s website, [www.sec.gov](http://www.sec.gov). In addition, the Schedule 14D-9 filing, this press release and other materials related to the IEP offer are available in the “Investor Relations” section of Dynegy’s website at [www.dynegy.com](http://www.dynegy.com).

About Dynegy Inc.

Through its subsidiaries, Dynegy Inc. produces and sells electric energy capacity and ancillary services in key U.S. markets. The power generation portfolio consists of approximately 11,800 megawatts of baseload, intermediate and peaking power plants fueled by a mix of natural gas, coal and fuel oil. For more information, please visit [www.dynegy.com](http://www.dynegy.com).

#### Cautionary Statement Regarding Forward-Looking Statements

This press release contains 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, the section entitled “Cautionary Statement Regarding Forward-Looking Statements” in its preliminary proxy statement filed with the SEC on January 10, 2011 and the section entitled “Forward-Looking Statements” in its preliminary consent revocation statement filed with the SEC on November 26, 2010. In addition to the risks and uncertainties set forth in Dynegy’s SEC filings, the forward-looking statements described in this press release 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) expectations regarding Dynegy’s revolver capacity, credit facility compliance, collateral demands, capital expenditures, interest expense and other payments; (xiii) Dynegy’s focus on safety and its ability to efficiently operate its assets so as to maximize its revenue generating opportunities and operating margins; (xiv) beliefs about the outcome of legal, regulatory, administrative and legislative matters; (xv) expectations and estimates regarding capital and maintenance expenditures, including the Midwest Consent Decree and its associated costs; (xvi) uncertainties associated with the consent solicitation (the “Seneca Capital Solicitation”) engaged in by Seneca Capital International Master Fund, L.P., Seneca Capital, L.P., Seneca Capital Investments, L.P., Seneca Capital Investments, LLC, Seneca Capital International GP, LLC, Seneca Capital Advisors, LLC and Douglas A. Hirsch (“Seneca Capital”) and (xvii) uncertainties associated with the proposed acquisition of Dynegy by an affiliate of Icahn Enterprises LP (the “Transaction”), including uncertainties relating to the anticipated timing of filings and approvals relating to the Transaction, the outcome of legal proceedings that may be instituted against Dynegy and/or others relating to the Transaction, the expected timing of completion of the Transaction, the satisfaction of the conditions to the consummation of the Transaction and the ability to complete the Transaction. 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.

#### Notice to Investors

This press release is neither an offer to purchase nor a solicitation of an offer to sell any securities. The solicitation and the offer to buy the outstanding shares of common stock of Dynegy Inc. (the “Company”) is being made pursuant to an offer to purchase and related materials that IEH Merger Sub LLC, an affiliate of Icahn Enterprises LP, and Icahn Enterprises Holdings L.P., as a co-bidder (collectively with IEH Merger Sub LLC, the “Offeror”), have filed with the SEC. The Offeror has filed a tender offer statement on Schedule TO with the SEC in connection with the



commencement of the offer, and the Company has filed a solicitation/recommendation statement on Schedule 14D-9 with respect to the offer. The tender offer statement (including an offer to purchase, a related letter of transmittal and other offer documents) and the solicitation/recommendation statement contain important information that should be read carefully and considered before any decision is made with respect to the tender offer. These materials have or will be sent free of charge to all stockholders of the Company. In addition, all of these materials (and all other materials filed by the Company with the SEC) are or will be available at no charge from the SEC through its website at [www.sec.gov](http://www.sec.gov). The Schedule 14D-9 and related materials may be obtained for free from D.F. King & Co., Inc., Toll-Free Telephone: (800) 697-6975. Investors may also obtain copies of the Schedule TO and the related materials free from Morrow & Company; banks and brokerage firms can call Morrow & Company at (203) 657-9400, and stockholders can call Morrow & Company toll free at (800) 607-0088 . Investors and security holders may also obtain free copies of the documents filed with the SEC by the Company 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 Dynegy's website, <http://www.dynegy.com>.

---

**Additional Information About the Merger and Where to Find It**

In connection with the potential merger, the Company filed a preliminary proxy statement with the SEC on January 10, 2011. When completed, a definitive proxy statement and a form of proxy will be mailed to the stockholders of the Company. **BEFORE MAKING ANY VOTING DECISION, THE COMPANY'S STOCKHOLDERS ARE URGED TO READ THE PROXY STATEMENT REGARDING THE MERGER CAREFULLY AND IN ITS ENTIRETY BECAUSE IT WILL CONTAIN IMPORTANT INFORMATION ABOUT THE PROPOSED MERGER.** The Company's stockholders will be able to obtain, without charge, a copy of the preliminary proxy statement, the definitive proxy statement (when available) and other relevant documents filed with the SEC from the SEC's website at <http://www.sec.gov>. The Company's stockholders will also be able to obtain, without charge, a copy of the preliminary proxy statement, the definitive proxy statement (when available) 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 Company'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 the Company and its directors and executive officers in the Merger, which may be different than those of the Company's stockholders generally, by reading the preliminary proxy statement, the definitive proxy statement (when available) and other relevant documents regarding the Merger, when filed with the SEC.

**CONTACT:**

**Media:**

David Byford, 713-767-5800

**Analysts:**

Laura Hrehor, 713-507-6466

Joele Frank / James Golden / Matthew Cuneo

Joele Frank, Wilkinson Brimmer Katcher

212-355-4449