

ABLE ENERGY INC
Form PRER14A
July 14, 2006

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549
SCHEDULE 14A
(Rule 14a-101)

Proxy Statement Pursuant to Section 14(a) of the Securities Exchange Act of 1934
(Amendment No. 6)

Filed by the Registrant x
Filed by a Party other than the Registrant o
Check the appropriate box:

- x Preliminary Proxy Statement
- o Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))
- o Definitive Proxy Statement
- o Definitive Additional Materials
- o Soliciting Material Pursuant to Rule 14a-12

ABLE ENERGY, 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):

- x No fee required.
- o 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 \$0.001 per share

(2) Aggregate number of securities to which transaction applies:

(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):

(4) Proposed maximum aggregate value of transaction:

(5) Total fee paid:

- 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:
-

**ABLE ENERGY, INC.
198 GREEN POND ROAD
ROCKAWAY, NEW JERSEY 07866
(973) 625-1012**

Dear Stockholder:

We cordially invite you to attend a special meeting of stockholders to be held at 10:00 a.m. on _____, 2006 at the offices of Able Energy, 1140 6th Avenue, Suite 1800, New York, New York 10036.

At the special meeting, you will be asked to approve, for purposes of NASD Marketplace Rule 4350(i) and Delaware Section 203 of the Delaware General Corporation Law, an issuance of our common stock which will result in the acquisition of substantially all of the assets of All American Plazas, Inc., or All American, a Pennsylvania corporation, pursuant to the Stock Purchase Agreement, dated as of June 16, 2005, by and among the shareholders of All American and us (as amended and restated into the Asset Purchase Agreement as of the same date). Our board of directors recommends the approval of this proposal.

You will also be asked to approve, for purposes of NASD Marketplace Rule 4350(i) only, the potential issuance of our common stock through the exercise of certain convertible debentures we issued in connection with a \$2.5 million sale of such debentures which took place in July 12, 2005. A description of this convertible debenture financing together with the financing documents are disclosed in Form 8-K filed July 15, 2005.

In addition, you will be to approve an increase in the number of shares of common stock which we may issue from 10 million to 75 million. This increase in the number of shares of common stock is not only necessary in order to issue the shares the acquisition of the All American assets described above, but will likely also be necessary in order to provide us adequate capitalization on a going forward basis. Our board of directors recommends the approval of this proposal.

Finally, you will be asked to act on such other business as may properly come before the special meeting.

Enclosed is a notice of special meeting and proxy statement containing detailed information concerning the acquisition. Whether or not you plan to attend the special meeting, we urge you to read this material carefully. I look forward to seeing you at the meeting.

Sincerely,

Gregory D. Frost
Chief Executive Officer and Chairman of
the Board,

This proxy statement is dated _____, 2006 and is first being mailed to our stockholders on or about _____, 2006.

YOUR VOTE IS IMPORTANT. WHETHER YOU PLAN TO ATTEND THE SPECIAL MEETING OR NOT, PLEASE SIGN, DATE AND RETURN THE ENCLOSED PROXY CARD AS SOON AS POSSIBLE IN THE ENVELOPE PROVIDED.

**ABLE ENERGY, INC.
198 GREEN POND ROAD
ROCKAWAY, NEW JERSEY 07866**

**NOTICE OF SPECIAL MEETING OF STOCKHOLDERS
TO BE HELD ON _____, 2006**

TO THE STOCKHOLDERS OF ABLE ENERGY, INC.:

NOTICE IS HEREBY GIVEN that a special meeting of stockholders, including any adjournments or postponements thereof, of Able Energy, Inc., a Delaware corporation, will be held at 10:00 a.m. eastern time, on _____, 2006, at the offices of Able Energy, 1140 6th Avenue, Suite 1800, New York, New York 10036, for the following purposes:

- to consider and vote upon a proposal, for purposes of NASD Marketplace Rule 4350 and Section 203 of the Delaware General Corporation Law to effect an issuance of our common stock which will result in the acquisition of substantially all of the assets of All American Plazas, Inc., or All American, pursuant to the Stock Purchase Agreement, dated as of June 16, 2005 (as amended and restated into the Asset Purchase Agreement as of the same date), among All American and us;
- to consider and vote upon a proposal, for purposes of NASD Marketplace Rule 4350(i) only, the potential issuance of our common stock through the exercise of certain convertible debentures and warrants we issued in connection with a \$2.5 million sale of such debentures which took place in July 12, 2005;
- to consider and vote upon a proposal to increase the number of shares we are authorized to issue from 10 million to 75 million; and
- to consider and vote upon such other business as may properly come before the meeting or any adjournment or postponement thereof.

In connection with a July 12, 2005 financing transaction, we seek approval from the shareholders of an issuance of common stock which exceeds 20% of our issued and outstanding common stock as of July 11, 2005. Note that on November 16, the additional investment right described in Section 4.17 of the Securities Purchase Agreement dated July 12, 2005 was eliminated, and, in its place, investors were granted warrants to purchase shares of our common stock at an exercise price of \$7.50. If fully exercised, these additional warrants granted on November 16, 2005 would aggregate 5.25 million. As of July 11, 2005, the Company's total number of issued shares of common stock was 2,449,520. Twenty percent of the Company's total outstanding shares of common stock as of such date was 489,904. We estimate the total number of shares which may be issued in connection with the July 12, 2005 financing transaction as follows: (a) upon conversion of convertible debentures, including estimated interest - 415,361 shares of common stock; (b) upon exercise of the warrants granted in connection with the original July 12, 2005 transaction - 192,308 shares of common stock; and (c) upon exercise of warrants granted in connection with the November 16, 2005 amendment - 5,250,000 shares of common stock. Thus, we are seeking the approval to issue up to an additional 5,367,765 shares of our common stock along with any other shares which we may issue as a result of any interest or anti-dilution adjustment which is also described in the Securities Purchase Agreement.

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The proceeds of the July 12, 2005 financing was used for working capital purposes and to make a loan to All American Plazas, Inc. On July 27, 2005, the Company made a loan in the amount of \$1,730,000 to All American. All American executed and delivered a Promissory Note for the full amount of the loan in favor of our company. Under the terms of the Promissory Note, the outstanding principal of the loan bears interest at the rate of 3.5% per annum. The maturity date of the Promissory Note has been extended to March 30, 2006 and has since been further extended, in consideration of an increase of the interest rate to 6.5% per annum, to the earlier of either the closing of the acquisition or the closing of a financing transaction relating to the conveyance of All American's real estate assets to us (see our Current Report on Form 8-K filed March 27, 2006 with the SEC).

Background relating to the acquisition of All American's assets is contained in the "Q&A" section that follows as well as throughout this proxy statement.

The board of directors has fixed the close of business on _____, 2006 as the date for which our stockholders are entitled to receive notice of, and to vote at, the special meeting and any adjournments or postponements thereof. Only the holders of record of our common stock on that date are entitled to have their votes counted at the special meeting and any adjournments or postponements thereof.

We will not transact any other business at the special meeting, except for business properly brought before the special meeting or any adjournment or postponement by our board of directors.

Your vote is important. Please sign, date and return your proxy card as soon as possible to make sure that your shares are represented at the special meeting. If you are a stockholder of record of our common stock, you may also cast your vote in person at the special meeting. If your shares are held in an account at a brokerage firm or bank, you must instruct your broker or bank on how to vote your shares.

Our board of directors unanimously recommends that you vote "FOR" the proposal to effect an issuance of our common stock which will result in our acquisition of All American.

By Order of the Board of Directors,

Gregory D. Frost
Chief Executive Officer and Chairman of
the Board

_____, 2006

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PROXY CARD

QUESTIONS AND ANSWERS ABOUT THE MATTERS SUBJECT TO VOTE

What is being voted on?

You are being asked to consider and vote upon a proposal, for purposes of NASD Marketplace Rule 4350 and Section 203 of the Delaware General Corporation Law, to effect an issuance of our common stock which will result in our acquisition of All American Plazas, Inc., or All American, pursuant to the Asset Purchase Agreement, dated as of June 16, 2005, by and among All American and us (which agreement was originally entered into as the Stock Purchase Agreement, but was thereafter amended and restated as such Asset Purchase Agreement). We refer to this transaction in places throughout this proxy as the “acquisition”.

You will also be asked to approve, for purposes of NASD Marketplace Rule 4350(i) only, the potential issuance of our common stock through the exercise of certain convertible debentures we issued in connection with a \$2.5 million sale of such debentures which took place in July 12, 2005. A description of this convertible debenture financing together with the financing documents are disclosed in the Current Report on Form 8-K filed July 15, 2005. We refer to this financing transaction in places throughout this proxy as the “financing”.

In addition, you are also being asked to consider and vote upon a proposal to amend our Certificate of Incorporation to authorize 75 million shares of our common stock to be issued. Our current Certificate of Incorporation permits us to issue up to 10 million shares of common stock and 10 million shares of preferred stock. Approval of an increase in the number of shares of our common stock will be necessary to complete the acquisition since the acquisition contemplates the issuance of 11,666,667 shares of common stock. Regardless of whether or not the acquisition is completed, however, our Board of Directors believes that the benefits of providing it with the flexibility to issue shares without delay for any proper business purpose, including other potential acquisitions or as an alternative to an unsolicited business combination opposed by the Board, outweigh the possible disadvantages of dilution and that it is prudent and in the best interests of stockholders to provide the advantage of greater flexibility which will result from the such amendment. We refer to this proposal in places throughout this proxy as the “charter amendment”.

Why are we proposing the acquisition and seeking approval for the financing?

We will continue to operate in the same manner following our acquisition of All American in the home heating oil and HVAC business. The Board and management of the Company believe that based upon the acquisition, we will be able to expand our distribution of home heating oil. We believe that the increased buying power resulting from the acquisition will result in our ability to negotiate more financially advantageous fuel purchase credit terms. Also we plan to utilize the All American truck stop locations as additional distribution centers to store fuel and house home heating oil delivery vehicles for the sale of its primary product. As part of the relationship established between us and All American, both companies purchase their fuel requirements primarily through TransMontaigne Product Services, Inc. In addition, both us and All American have created additional business relationships with TransMontaigne. In this regard, we have an operations subsidiary named PriceEnergy.com which has created a network of distributors with the assistance of TransMontaigne and All American to deliver fuel upon receiving orders through use of the internet.

We plan with the assistance of All American, to continue to expand our third party dealer network to enable PriceEnergy.com to deliver home heating oil throughout the United States.

As a result, we believe that the acquisition of All American will provide our stockholders with an opportunity to acquire, and participate in, a company with significant growth potential.

What vote is required to approve the financing and charter amendment?

Approval of the financing and charter amendment requires the affirmative vote of a majority of the shares entitled to vote at the special meeting.

What vote is required in order to approve the acquisition proposal?

-2-

The approval of the acquisition of All American will require the vote of 66-2/3% of our outstanding voting common stock or two-thirds of the votes cast, in person or by proxy, at the special meeting, exclusive of shares of common stock held by All American.

Why are we seeking approval for the acquisition and the financing?

As a result of being listed for trading on the Nasdaq Capital Market, issuances of our common stock are subject to the NASD Marketplace Rules, such as Rule 4350. For example, under Rule 4350(i)(1)(B) and 4350(i)(1)(D), respectively, stockholder approval must be sought when (a) the issuance or potential issuance will result in a change of control of the issuer or (b) in connection with a transaction other than a public offering involving the sale, issuance or potential issuance by the issuer of common stock (or securities convertible into or exercisable common stock) equal to 20% or more of the common stock or 20% or more of the voting power outstanding before the issuance for less than the greater of book or market value of the stock. Furthermore, under Rule 4350(i)(1)(C), stockholder approval must be sought in connection with an acquisition of the stock or assets of another company if any director, officer or substantial shareholder of the issuer has a 5% or greater interest (or such persons collectively have a 10% or greater interest), directly or indirectly, in the company or assets to be acquired or in the consideration to be paid in the transaction or series of related transactions and the present or potential issuance of common stock, or securities convertible into or exercisable for common stock, could result in an increase in outstanding common shares or voting power of 5% or more.

Pursuant to the asset purchase agreement relating to the acquisition, we have agreed to issue shares of our common stock in consideration for substantially all of the assets of All American. The issuance of common stock to All American may result in a violation of the foregoing provisions of Rule 4350, absent stockholder approval for such issuance and the resulting acquisition. In addition, with respect to the financing, a total of 789,970 shares of our common stock may be issued assuming full conversion of all debentures and warrants issued in connection with the financing. On July 12, 2005, the date in which we entered into the documents relating to the financing, our closing price per share of our common stock was \$17.90 (which was greater than the book value of our shares). The exercise price of debentures and warrants issued in connection with the financing is less than the closing price for our shares on July 12, 2005.

The Company is subject to Section 203 of the Delaware General Corporation Law ("Section 203"), which restricts certain transactions and business combinations between a corporation and an "interested stockholder" for a period of three years from the date the stockholder becomes an interested stockholder. An "interested stockholder" is any entity (or related entities) which owns 15% or more of a corporation's outstanding voting stock. Subject to certain exceptions (which do not apply to the acquisition), unless the transaction is approved by the Board of Directors and the holders of at least 66-2/3% of the outstanding voting stock of the corporation (excluding shares held by any interested stockholder), Section 203 prohibits significant business transactions such as a merger with, disposition of assets to, or receipt of disproportionate financial benefits by the interested stockholder, or any other transaction that would increase the interested stockholder's proportionate ownership of any class or series of a corporation's stock.

On December 15, 2004, Timothy Harrington, our CEO at that time, sold an aggregate of 1,007,300 shares of our common stock to All American. The purchase price for the sale was \$7,500,000, of which \$2,750,000 was paid in cash and All American issued promissory notes in the aggregate principal amount of \$4,750,000 to Mr. Harrington. As a result of Mr. Harrington's sale, All American became an "interested stockholder" for purposes of Section 203 as described above. Additional details regarding Mr. Harrington's sale of his common stock to All American were described in the Current Report on Form 8-K filed with the SEC on December 21, 2004. In addition, as a result of the acquisition, we estimate that All American will own approximately 12.7 million shares of our common stock (out of a total of approximately 14.7 million issued and outstanding). Thus, approval under Section 203 is required by 66-2/3% of the stockholders of the company because All American's common stock ownership of the company will increase

from 32% as of the date hereof to approximately 85%. All of All American's shares received in connection with the acquisition will be restricted shares and not subject to any registration requirement. In addition, approximately up to 2.5 million of the 11.67 million