DYNEGY INC.
Form SC 14D9
December 30, 2010
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UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

SCHEDULE 14D-9

SOLICITATION/RECOMMENDATION

STATEMENT UNDER SECTION 14(d)(4) OF THE

SECURITIES EXCHANGE ACT OF 1934

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.

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With copies to:

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(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.

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ITEM 1. ***SUBJECT COMPANY INFORMATION.***
Name and Address.

The name of the subject company to which this Solicitation/Recommendation Statement on Schedule 14D-9 (together with any exhibits and annexes attached hereto, this Statement) relates is Dynegy Inc., a Delaware corporation (Dynegy, the Company, we or our). The Company s principal executive offices are located at Wells Fargo Plaza, 1000 Louisiana Street, Suite 5800, Houston, Texas 77002. The Company s telephone number at this address is (713) 507-6400.

Securities.

The title of the class of equity securities to which this Statement relates is the common stock, par value $0.01 per share, of the Company (the Common Stock), 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 (as it may be further amended from time to time, the Rights Agreement), between the Company and Mellon Investor Services LLC, as rights agent, that are issued and outstanding (the Rights , and together with the Common Stock, the Shares). As of the close of business on December 28, 2010, there were 121,031,708 Shares issued and outstanding.

ITEM 2. ***IDENTITY AND BACKGROUND OF FILING PERSON.***
Name and Address.

The name, business address and business telephone number of Dynegy, which is the subject company and the person filing this Statement, are set forth in *Item 1. Subject Company Information* above.

Offer.

This 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., a Delaware limited partnership (Icahn Enterprises Holdings), as disclosed in the Tender Offer Statement on Schedule TO, dated December 22, 2010 (as amended or supplemented from time to time, the Schedule TO), to purchase all of the issued and outstanding Shares at a purchase price of $5.50 per share (the Offer Price), in cash, without interest, less any applicable withholding taxes, upon the terms and subject to the conditions set forth in the Offer to Purchase, dated December 22, 2010 (as amended or supplemented from time to time, the Offer to Purchase), and in the related Letter of Transmittal (the Letter of Transmittal , which, together with the Offer to Purchase and any amendments or supplements thereto from time to time, constitute the Offer). The Offer to Purchase and the Letter of Transmittal are filed as Exhibits (a)(1) and (a)(2) hereto, respectively, and are hereby incorporated herein by reference.

The Offer is being made pursuant to an Agreement and Plan of Merger, dated as of December 15, 2010 (as it may be amended from to time, the Merger Agreement), by and among the Company, the Offeror and IEP Merger Sub Inc., a Delaware corporation and a wholly-owned subsidiary of the Offeror (Merger Sub). The Offer is initially scheduled to expire at midnight (Eastern Time) on January 25, 2011 (the initial expiration date or such subsequent date to which the expiration of the Offer is extended pursuant to and in accordance with the terms of the Merger Agreement, the Expiration Date). The Offer is subject to certain conditions, which may be waived by the Offeror in whole or in part at any time and from time to time prior to the Expiration Date in the exercise of the reasonable good faith judgment of the Offeror subject to the terms of the Merger Agreement and subject to and to the extent permitted by applicable law, including the requirements of Rule 14d-4 under the Securities Exchange Act of 1934, as amended (the Exchange Act), in each case except for the conditions that (i) there are validly tendered in the Offer and not properly withdrawn prior to the Expiration Date that number of Shares which, when added to any Shares already owned by the Offeror, its subsidiaries and certain affiliates of the Offeror (including Shares that are subject to options to purchase Shares to the extent such options have been irrevocably exercised and paid for prior to the Expiration Date), represents at least a majority of the issued and outstanding Shares on a fully diluted basis as of the Expiration Date (assuming the issuance of all Shares that

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may be issued upon the vesting of outstanding restricted stock of the Company (Company Restricted Stock), plus Shares issuable upon the exercise of all outstanding options to purchase Shares under Company stock plans (Company Stock Options), warrants and other rights to purchase Shares with an exercise price per Share less than the Offer Price) (such condition, the Minimum Condition), (ii) the approval of the Federal Energy Regulatory Commission (FERC) under Section 203 of the Federal Power Act, as amended (the FPA), shall have been received and the approval, or a determination that no approval is required, of the New York State Public Service Commission (the NYPSC) under the New York Public Service Law, as amended, shall have been received with respect to the consummation of the Offer and the Merger, and (iii) the waiting period applicable to the consummation of the Offer under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the rules and regulations thereunder (the HSR Act), shall have expired or been terminated (the conditions set forth in clauses (ii) and (iii) above, the Regulatory Condition). The Offeror may waive the Minimum Condition and/or the Regulatory Condition only subject to and to the extent permitted by applicable law, including the requirements of Rule 14d-4 under the Exchange Act and only with the prior written consent of the Company.

Under the Merger Agreement, after the completion of the Offer and the satisfaction or waiver of all of the conditions applicable to the Merger (as defined below) set forth in the Merger Agreement, Merger Sub will be merged with and into the Company, with the Company surviving the Merger as a wholly-owned subsidiary of the Offeror (the Merger). The surviving company of the Merger (the Surviving Corporation) will be an indirect wholly-owned subsidiary of Icahn Enterprises Holdings. In certain circumstances, the parties have agreed to complete the Merger without the prior completion of the Offer, after receipt of the approval of a majority of the issued and outstanding Shares held by the Company s stockholders entitled to vote thereon for the adoption of the Merger Agreement. At the effective time of the Merger, each share of Common Stock then issued and outstanding (other than shares of Common Stock owned by the Company, the Offeror or Merger Sub, or any of their respective direct or indirect subsidiaries, all of which will convert into shares of a class of stock of the Surviving Corporation designated by the Offeror, and other than shares of Common Stock that are held by stockholders, if any, who are entitled to and have properly exercised their appraisal rights under Delaware law) will be converted into the right to receive $5.50 per Share (the Per Share Merger Consideration) in cash, without interest and less any applicable withholding taxes. The Merger Agreement is filed as Exhibit (e)(1) hereto and is hereby incorporated herein by reference.

As set forth in the Schedule TO, the address of the principal executive offices of the Offeror, Merger Sub, and Icahn Enterprises Holdings is 767 Fifth Avenue, 47th Floor, New York New York, 10153, where the business phone number is (212) 702-4300.

Upon filing this Statement with the Securities and Exchange Commission (the SEC), Dynegy will make this Statement publicly available on its website at www.dynegy.com.

ITEM 3. ***PAST CONTACTS, TRANSACTIONS, NEGOTIATIONS AND AGREEMENTS*.**

Except as set forth in this Statement or in the Information Statement attached to this Statement as Annex III and hereby incorporated herein by reference, or as otherwise incorporated by reference herein, as of the date of this Statement, there are no material agreements, arrangements or understandings, nor any actual or potential conflicts of interest, between (i) the Company or any of its affiliates, on the one hand, and (ii)(x) any of its executive officers, directors or affiliates, or (y) the Offeror, Merger Sub, Icahn Enterprises Holdings or any of their respective executive officers, directors or affiliates, on the other hand. The Information Statement is being furnished to the stockholders of the Company pursuant to Section 14(f) of the Exchange Act, and Rule 14f-1 promulgated thereunder, in connection with the Offeror s right, pursuant to the Merger Agreement, to designate persons to the Board of Directors of the Company (the Board) promptly following the Offeror s purchase of, and payment for, any Shares pursuant to the Offer which represent at least such number of Shares as shall satisfy the Minimum Condition.

Any information contained in the documents incorporated herein by reference shall be deemed modified or superseded for purposes of this Statement to the extent that any information contained herein modifies or supersedes such information.

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Relationship with the Offeror, Merger Sub, Icahn Enterprises Holdings and Certain of Their Affiliates

Merger Agreement

On December 15, 2010, the Company, the Offeror and Merger Sub entered into the Merger Agreement. A summary of the Merger Agreement is contained in the Offer to Purchase and is hereby incorporated herein by reference. This summary does not purport to be complete and is qualified in its entirety by reference to the Merger Agreement, which is filed as Exhibit (e)(1) hereto and is hereby incorporated herein by reference.

The Stockholder Support Agreement

Pursuant to a Stockholder Support Agreement (the Stockholder Support Agreement) entered into simultaneously with the Merger Agreement among certain stockholders affiliated with Icahn Enterprises Holdings (the Support Parties) and the Company, the Support Parties have agreed, subject to the terms and conditions of the Stockholder Support Agreement, to, among other things, vote Shares (and Shares underlying call options to the extent exercised), constituting up to approximately 14.9% of the issued and outstanding Shares, in favor of the adoption of the Merger Agreement, if necessary. A summary of the Stockholder Support Agreement is contained in the Offer to Purchase and is hereby incorporated herein by reference. This summary does not purport to be complete and is qualified in its entirety by reference to the Stockholder Support Agreement, which is filed as Exhibit (e)(2) hereto and is hereby incorporated herein by reference.

The Guarantee

Pursuant to a Guarantee Agreement (the Guarantee) entered into simultaneously with the Merger Agreement between Icahn Enterprises Holdings and the Company, Icahn Enterprises Holdings is guaranteeing the payment and other obligations of the Offeror and Merger Sub under the Merger Agreement and in connection with the Offer and the Merger, other than certain obligations related to indemnification of the Company s directors and officers and related matters. A summary of the Guarantee is contained in the Offer to Purchase and is incorporated herein by reference. This summary does not purport to be complete and is qualified in its entirety by reference to the Guarantee, which is filed as Exhibit (e)(3) hereto and is hereby incorporated herein by reference.

Explanatory Note

Stockholders and other interested parties should read the Merger Agreement, the Stockholder Support Agreement and the Guarantee for a more complete description of the provisions summarized in the Offer to Purchase. Each of the Merger Agreement, the Stockholder Support Agreement and the Guarantee has been provided solely to inform investors of its terms. The representations, warranties and covenants contained in each of the Merger Agreement, the Stockholder Support Agreement and the Guarantee were made only for the purposes of such agreement and as of specific dates, were made solely for the benefit of the parties to such agreement and may be intended not as statements of fact, but rather as a way of allocating risk to one of the parties if those statements prove to be inaccurate. In addition, such representations, warranties and covenants may have been qualified by certain disclosures not reflected in the text of the Merger Agreement, the Stockholder Support Agreement or the Guarantee, as applicable, and may apply standards of materiality and other qualifications and limitations in a way that is different from what may be viewed as material by stockholders of, or other investors in, the Company. The Company s stockholders and other investors are not third-party beneficiaries under the Merger Agreement, the Stockholder Support Agreement or the Guarantee and should not rely on the representations, warranties and covenants or any descriptions thereof as characterizations of the actual state of facts or conditions of the Company, the Offeror, Merger Sub, Icahn Enterprises Holdings or any of their respective subsidiaries or affiliates. Factual disclosures about the Company contained in public reports filed with the SEC may supplement, update or modify the factual disclosures contained in the Merger Agreement.

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Relationship with Current Officers and Directors of the Company

Overview

In considering the recommendation of our Board that you accept the Offer, tender your Shares into the Offer and, if required by applicable law, adopt the Merger Agreement, you should be aware that our directors and executive officers have interests in the Offer and the Merger that are different from, or in addition to, those of our stockholders generally. Each of a special committee of the Board consisting only of non-management independent directors of the Company (the Special Committee) and the Board was aware of and considered these interests, among other matters, in evaluating and negotiating the Merger Agreement and the Offer and the Merger, and in making its recommendation. For purposes of all of the agreements and plans described below, the completion of the transactions contemplated by the Merger Agreement will constitute a change in control.

Long-Term Incentive Awards

As of the date of this Statement, certain of the Company s executive officers hold (i) Company Stock Options, (ii) shares of Company Restricted Stock, (iii) phantom stock units (Company Phantom Stock Units), which entitle the holder to cash awards in accordance with the terms and conditions of the applicable awards, and (iv) performance units (Company Performance Awards), which entitle the holder to cash awards in accordance with the terms and conditions of the applicable awards.

The Offer is made only for Shares and is not made for any Company Stock Options, Company Restricted Stock, Company Phantom Stock Units or Company Performance Awards. Holders of vested but unexercised Company Stock Options may exercise such options in accordance with the terms of the applicable equity compensation plan and award agreement and tender some or all of the Shares issued upon such exercise. Holders of Company Restricted Stock may tender some or all of the Shares received upon vesting and settlement of Company Restricted Stock in accordance with the terms of the applicable equity compensation plan and award agreement. However, at the effective time of the Merger, each outstanding Company Stock Option, vested or unvested, shall be cancelled for no payment if such Company Stock Option has an exercise price greater than the Offer Price and, if such Company Stock Option exercise price is not greater than the Offer Price, shall only entitle the holder thereof to receive, as soon as reasonably practicable (but in any event no later than three (3) business days after the effective time of the Merger), an amount in cash equal to the product of (i) the total number of shares of Common Stock subject to the applicable Company Stock Option immediately prior to the effective time of the Merger and (ii) the excess, if any, of the Offer Price *over* the exercise price per share of Common Stock under such Company Stock Option, less applicable taxes required to be withheld with respect to such payment. In addition, at the effective time of the Merger, each outstanding share of Company Restricted Stock, if any, shall only entitle the holder thereof to receive, as soon as reasonably practicable and 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, for each share of the Company Restricted Stock, equal to the Offer Price, less applicable taxes required to be withheld with respect to such payment. At the earlier to occur of the time the Offeror accepts for payment and pays for all Shares validly tendered and not withdrawn pursuant to the Offer or the effective time of the Merger (such earlier time, the Acceleration Time), each outstanding Company Phantom Stock Unit will be cancelled and will only entitle the holder thereof to receive, as soon as reasonably practicable after the Acceleration Time, but in any event no later than the earlier of (i) the second payroll period or (ii) thirty (30) days following the Acceleration Time, an amount in cash, for each Company Phantom Stock Unit, equal to the Offer Price, less applicable taxes required to be withheld with respect to such payment. At the Acceleration Time, (i) Company Performance Awards granted in 2009 and 2010 will be payable at 100% of target (as defined in the applicable agreements for such awards), fully vested and settled for a payment of cash, as required by the terms of the agreements governing such Company Performance Awards, and (ii) each outstanding Company Performance Award granted prior to 2009 will be fully vested and canceled for no payment in accordance with the terms of the agreements governing such Company Performance Awards. Further, at the Acceleration Time, each outstanding Company Stock Option, share of Company Restricted Stock and Company Phantom Stock Unit will fully vest.

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The following table sets forth, as of December 28, 2010, the long-term incentive award holdings of the Company s executive officers and the gross value of such holdings assuming (i) in the case of shares of Company Restricted Stock, the Merger is consummated and (ii) in the case of the Company Phantom Stock Units and the Company Performance Awards, either the Offer or the Merger is consummated:

	Number of Shares of Company Restricted Stock	Value of Company Restricted Stock	Number of Company Phantom Stock Units	Value of Company Phantom Stock Units	Number of Company Performance Awards	Value of Company Performance Awards[1]
Bruce A. Williamson[2]	132,501	$ 728,755.50	318,584	$ 1,752,212.00	54,000	$ 5,400,000.00
Holli C. Nichols	34,514	$ 189,827.00	79,646	$ 438,053.00	13,800	$ 1,380,000.00
J. Kevin Blodgett	25,852	$ 142,186.00	59,236	$ 325,798.00	10,304	$ 1,030,400.00
Lynn A. Lednicky	25,123	$ 138,176.50	59,236	$ 325,798.00	10,147	$ 1,014,700.00
Charles C. Cook	26,861	$ 147,735.50	55,752	$ 306,636.00	9,818	$ 981,800.00
TOTAL	244,850	$ 1,346,675.00	572,454	$ 3,148,497.00	98,069	$ 9,806,900.00

(1) Based on a target price of $100 per unit.
(2) Mr. Williamson also serves as the chairman of the Board.

Each outstanding Company Stock Option has an exercise price greater than the Offer Price and would be cancelled for no payment upon the effective time of the Merger.

As of the date of this Statement, our non-employee directors hold Company Phantom Stock Units, which are granted on an annual basis and credited quarterly to the non-employee directors pursuant to the Company s Deferred Compensation Plan for Certain Directors (as amended and restated, the Directors Deferred Compensation Plan). The Directors Deferred Compensation Plan states that quarterly contributions of Company Phantom Stock Units are to be made on the last day of each calendar quarter. Given that these contributions represent compensation for amounts earned by non-employee directors for service during the calendar quarter, the Company intends to make cash payments to non-employee directors following their termination of service from the Board in amounts equal to the value of the Company Phantom Stock Units that would have been contributed but for the failure of such termination to occur on the last day of the applicable calendar quarter, prorated as appropriate.

Generally, upon termination of service as a director, the Company Phantom Stock Units become payable in cash or Shares, based on each director s one-time election, and in a lump-sum payment or in monthly, quarterly or annual installments over a specified term, also at the director s election. All of the Company s current non-employee directors have previously elected to receive the value of the Company Phantom Stock Units in cash rather than Shares. If a director s service as a director terminates no later than two years following a change in control, the total unpaid balance in the director s accounts under the plan (determined as of the later of the date of the change in control or the date the director has a termination of service with the Company or any successor (the computation date)), will be paid to the director in a single, lump sum cash payment as soon as administratively feasible, but no later than 30 days, after the computation date. A change in control does not increase a director s benefit under the plan and may also impose a time of payment of the benefit that is different from the director s prior election.

Change in Control Arrangements

We maintain certain policies, plans and agreements, including our Executive Change in Control Severance Pay Plan (the Change in Control Plan), which provide for certain change in control benefits for our executives. The Change in Control Plan provides for the payment of certain severance benefits to our executives if, (i) in connection with but no earlier than 60 days before or (ii) on or within two years after, in each case, a change in control , as defined in this plan, any such executive is subject to an involuntary termination , as defined in this plan. In general, an executive experiences an involuntary termination if such executive s employment is terminated without cause or such executive resigns for good reason , generally meaning he or she suffers a material reduction in authority or duties, a material reduction in total compensation or relocation to a location 50 miles or more from the previous principal employment location.

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Severance benefits for certain of our executive officers under the Change in Control Plan include:

- a lump sum cash payment equal to:
  - for our Chief Executive Officer, 2.99 times such executive s compensation , which is defined under the plan as the sum of any covered executive s (i) annual base salary based on the greater of the rate in effect immediately prior to the change in control, 60 days prior to an involuntary termination or the date of any such involuntary termination and (ii) the greater of a covered executive s target annual bonus under our short-term incentive plan for the fiscal year in which the change in control occurs, any fiscal year beginning after the fiscal year in which the change in control occurs and before the year in which such covered executive s involuntary termination occurs or the fiscal year in which such covered executive s involuntary termination occurs; or
  - for any Executive Vice President, 2.5 times such executive s compensation;
- a lump sum cash payment equal to the aggregate target annual incentive compensation under any applicable short-term incentive compensation plan for the fiscal year during which such involuntary termination of employment occurs (determined as if all applicable goals and targets had been satisfied in full), pro-rated to the date of such executive s termination;
- all medical, dental, vision and life insurance benefits maintained for such executive as of the termination date, contingent upon continued payment of premiums by such executive based on rates no greater than the lesser of the cost of coverage paid by such executive immediately before the involuntary termination or the change in control, for a period equal to (i) 36 months from termination for our Chief Executive Officer and (ii) 30 months from termination for any Executive Vice President, so long as such executive does not obtain new employment and eligibility for coverage under a similar benefit plan maintained by the new employer; and
- outplacement assistance benefits at least equivalent to those that would have been provided to the executive officer before the change in control.

The Board has appointed David Biegler, a member of the Board, as the plan administrator of the Change in Control Plan. This appointment is contingent upon, and is effective as of, the Acceleration Time. Mr. Biegler is not a beneficiary of the Change in Control Plan and will no longer be a member of the Board as of the closing of the Merger. The Company intends to enter into customary agreements with Mr. Biegler prior to the Acceleration Time pursuant to which Mr. Biegler will receive customary compensation, expense reimbursement and indemnification for his services as plan administrator. The Board has appointed Bill Trubeck, a member of the Board, as the contingent plan administrator, to serve as plan administrator in the event that Mr. Biegler resigns or is otherwise unwilling or unable to serve as plan administrator.

In connection with a change in control, such as the completion of the Offer or the Merger, any outstanding Company Stock Options, Company Restricted Stock, Company Phantom Stock Units and other equity-based awards previously granted to our executives will vest in accordance with the terms of the underlying award agreements. For additional detail regarding the treatment of such awards in connection with the merger, see *Relationship with Current Officers and Directors of the Company Long-Term Incentive Awards* above.

In addition, pursuant to our Excise Tax Reimbursement Policy, any of our executive officers who incurs excise taxes under Section 4999 of the Internal Revenue Code of 1986, as amended, as a result of a payment in connection with a change in control is entitled to receive an additional payment in an amount equal to the excise tax, interest on the excise tax amount and any penalties related to the excise tax payment imposed. Under the Dynegy Inc. Restoration Pension Plan and Restoration 401(k) Savings Plan, which are nonqualified supplemental executive retirement plans, participants, including all executives, fully vest in their benefits under the plans to the extent not already vested upon a change in control. However, all current participants under the plans are already fully vested based on their years of service, so a change in control will not alter their vesting under the plans.

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The following table sets forth the estimated total payouts (excluding any effect related to long-term incentive awards discussed above) to our executive officers following a change in control transaction assuming each such executive s employment is involuntarily terminated as contemplated by the change in control agreements:

	Bruce A. Williamson	Holli C. Nichols	J. Kevin Blodgett	Lynn A. Lednicky	Charles C. Cook
Cash Severance (Multiple of Annual Compensation)	$ 5,980,000	$ 2,625,000	$ 2,250,000	$ 2,175,000	$ 2,175,000
Pro-rated Short-term Incentive Bonus	$ 249,315	$ 130,890	$ 112,192	$ 108,452	$ 108,452
Medical, Dental, Vision and Life Insurance Benefits	$ 37,008	$ 10,290	$ 30,660	$ 31,020	$ 31,020
Outplacement Services	$ 25,000	$ 25,000	$ 25,000	$ 25,000	$ 25,000
Tax Gross-Up	$ 0	$ 1,554,562	$ 1,197,811	$ 1,205,486	$ 1,283,490
TOTAL[(1)]	$ 6,291,323	$ 4,345,742	$ 3,615,663	$ 3,544,958	$ 3,622,962

(1) Amounts reflected assume no increase in salaries or changes in rates and coverage regarding medical, dental, vision and life insurance benefits and the executive s termination occurs on April 1, 2011. As described below, no discussions have occurred between any members of the Company s current management team and representatives of Offeror, Merger Sub or their affiliates regarding continuing employment of our executive officers or any termination thereof.

Receipt of the cash severance payment and other severance benefits under the Change in Control Plan is subject to forfeiture if the executive materially breaches his or her confidentiality and non-disparagement agreement and is further subject to the executive s execution of a general release of claims in favor of the Company.

Deferred Compensation Plan

Mr. Lednicky is the only named executive officer with a balance in our suspended non-qualified executive deferred compensation plan. This plan provides that, upon a change in control, participants fully vest in their employer contributions under the plan to the extent not already vested. However, Mr. Lednicky is already fully vested based on his years of service, so a change in control will not alter his vesting under the plan.

Indemnification; Directors and Officers Insurance

The Company s directors and officers are entitled under the Merger Agreement to continued indemnification, advancement of expenses and director and officer insurance coverage. For additional information regarding these arrangements, see The Merger Agreement Indemnification; Directors and Officers Insurance in the Offer to Purchase.

Employment Agreements

The Company maintains a philosophy of employing executives without employment agreements and believes that the compensation, severance and benefit plans offered to eligible officers provide appropriate reward opportunities and benefits for the Company s executive officers.

Arrangements with the Surviving Corporation

The Merger Agreement provides that the officers of the Company immediately prior to the effective time of the Merger will, from and after the effective time of the Merger, be the officers of the Surviving Corporation until their successors have been duly elected or appointed and qualified or until their earlier death, resignation or removal in accordance with the organizational documents of the Surviving Corporation.

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As of the date of this Statement, no members of the Company s current management have entered into any agreement, arrangement or understanding with the Offeror, Merger Sub or their affiliates to provide continuing employment with, or the right to convert into or reinvest or participate in the equity of, the Offeror, the Surviving Corporation or any of its subsidiaries. Moreover, as of the date of this Statement, no discussions have occurred between members of the Company s current management and representatives of the Offeror, Merger Sub or their affiliates with respect to any such agreement, arrangement or understanding. Although it is possible that certain members of the Company s current management team will enter into arrangements with the Offeror or its affiliates regarding employment (and severance arrangements) with, and the right to purchase or participate in the equity of, the Offeror (and/or a subsidiary of the Offeror), as of the date of this Statement no discussions have occurred between members of the Company s current management and representatives of the Offeror, Merger Sub or their affiliates regarding any such arrangements, and there can be no assurance that any parties will reach an agreement. Any new arrangements would not become effective until after the Acceleration Time.

ITEM 4. ***THE SOLICITATION OR RECOMMENDATION.***
Solicitation or Recommendation.

The Board, at a meeting held on December 14, 2010, acting upon the unanimous recommendation of the Special Committee, has, upon the terms and subject to the conditions set forth in the Merger Agreement, unanimously (i) determined that the Offer and the Merger are fair to, and in the best interests of, the Company and its stockholders, (ii) approved and declared advisable the Merger Agreement, the Offer, the Merger and the other transactions contemplated thereby, and (iii) recommended that the Company s stockholders accept the Offer, tender their Shares into the Offer and, if required by applicable law, adopt the Merger Agreement.

Background and Reasons for the Recommendation

Background of the Offer

The Board and management of the Company have been engaged for over two years in an ongoing review of the Company s operating and strategic opportunities and risks. This review has been conducted against a backdrop of continuing declines in the market prices of natural gas and wholesale electricity. These declines have reduced the outlook for the cash flow that can be expected to be generated by the Company in the next several years, and the Board has not identified any economic or industry factors that create a reasonable basis for believing that the market price declines will reverse in the next several years. The declining cash flow generation capacity of the Company, combined with its high level of indebtedness and the need to incur additional indebtedness to fund operations and required environmental capital expenditures, have led the Board to conclude that the risks of pursing a standalone business strategy are considerable.

In April 2007, the Company consummated a transaction with LSP Gen Investors, L.P., LS Power Partners, L.P., LS Power Equity Partners PIE I, L.P., LS Power Equity Partners, L.P. and LS Power Associates, L.P. (collectively, LS Power), pursuant to which LS Power contributed certain power generation assets to the Company in exchange for approximately 40% of the Common Stock. The transaction with LS Power was entered into to increase the scale of, and to diversify, the Company s asset base in part to make the Company a more attractive acquisition candidate or merger partner for another merchant generating company or utility company. However, not long after that transaction was completed, natural gas prices began what has been on ongoing decline, and the Company, despite efforts in the spring of 2009 and the spring of 2010, was unable to find a party willing to pursue a business combination with it.

In the spring and summer of 2009, Dynegy engaged in negotiations with LS Power and ultimately agreed to a transaction regarding the purchase by LS Power of (i) the Company s interests in eight power generating project companies and Dynegy Sandy Creek Holdings, LLC and (ii) $235 million aggregate principal amount of 7.5% Senior Unsecured Notes due 2015 of Dynegy Holdings Inc., a wholly-owned subsidiary of the Company, in exchange for approximately $970 million in cash (after working capital adjustments made at closing but subject to post-closing adjustments) and relinquishment of 245 million shares of Class B common stock of the Company held by LS Power. The Company and LS Power entered into a definitive agreement with respect to this transaction in August 2009, and the transaction was completed in December 2009. In connection with the completion of this transaction, various special approval, Board representation and other blocking and governance rights held by LS Power were eliminated.

In April 2010, the Company began preliminary discussions with NRG Energy, Inc. (NRG) regarding a possible acquisition of the Company by NRG. However, in June 2010 NRG advised the Company that it was not interested in acquiring the Company. NRG had been working with The Blackstone Group L.P. (Blackstone) to determine whether Blackstone would be willing to acquire the Company s coal generation assets as part of an acquisition by NRG of all of the Company. When NRG ended discussions with the Company, representatives of Blackstone contacted the Company to see if the Company would be willing to permit Blackstone to attempt to develop a proposal of its own to acquire all of the Company for cash. The Company agreed to do so, and on August 13, 2010, the Company entered into an Agreement and Plan of Merger (as amended on November 16, 2010, the Prior Merger Agreement) with affiliates of Blackstone, pursuant to which the Company would have been acquired and our stockholders would have received $4.50 per share of Common Stock in cash.

On October 12, 2010 Carl Icahn and certain of his affiliates (collectively, the Icahn Entities) filed a Schedule 13D with the SEC disclosing that the Icahn Entities beneficially owned approximately 9.9% of the Common Stock. The Icahn Entities filed several subsequent amendments to their Schedule 13D, and based on the Icahn Entities most recent Schedule 13D amendment filed with the SEC as of the date of this Statement, the Icahn Entities beneficially own approximately 14.9% of the Common Stock, including approximately 5% owned through options to acquire Common Stock. The Icahn Entities stated that they intended to vote against approval of the proposal to adopt the Prior Merger Agreement. Another entity, Seneca Capital Investments L.P. and certain of its affiliates (collectively, Seneca), also acquired beneficial ownership of approximately 9.3% of our Common Stock and indicated that they intended to vote against approval of the proposal to adopt the Prior Merger Agreement. Seneca also subsequently solicited proxies in opposition to the proposal to approve the Prior Merger Agreement.

On October 19, 2010, senior management of the Company met with Carl Icahn and other representatives of the Icahn Entities at the Icahn Entities offices to seek his support for the Prior Merger Agreement. Representatives of Greenhill & Co., LLC, one of the Company s financial advisors (Greenhill), attended the meeting.

On November 12, 2010, the Icahn Entities amended their Schedule 13D to disclose that they intended to vote against approval of the proposal to adopt the Prior Merger Agreement and would demand appraisal rights under Delaware law. In addition, the Icahn Entities indicated that they would consider offering a short-term replacement credit facility if that would mitigate the Company s liquidity concerns. The Company subsequently responded that the Company required a long-term solution rather than a short-term solution provided by the short-term replacement facility offered by the Icahn Entities.

On November 16, 2010, representatives of Blackstone advised senior management of the Company that Blackstone intended to increase the merger consideration to $5.00 per share of Common Stock in cash. Later that day the Board met and approved an amendment to the Prior Merger Agreement to, among other things, increase the merger consideration. The special meeting of stockholders of the Company that had been called for November 17, 2010 was convened on that date, and in order to provide stockholders of the Company time to consider the price increase, the polls were declared open until 4 p.m., central time, on November 23, 2010, and the meeting was recessed until a half an hour before the polls were to close.

On November 22, 2010, the Board held a meeting. Several members of senior management and representatives from Greenhill, Goldman, Sachs & Co. (Goldman Sachs), and Sullivan & Cromwell LLP, the Company s outside counsel (Sullivan & Cromwell), participated in this meeting. Members of senior management updated the Board with respect to the transaction with Blackstone, the meeting of stockholders of

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the Company to consider the Prior Merger Agreement that was scheduled to continue on November 23, 2010, and the alternatives available to the Company in the event that Company stockholders did not approve the Prior Merger Agreement, which at that point seemed highly likely. Members of senior management, representatives from Sullivan & Cromwell and the directors discussed the creation of the Special Committee to be comprised of non-management independent directors to oversee a continuation of the Company s review of strategic alternatives on a basis that would be open to all potential acquirors and to review again the value-creation potential of asset sale and restructuring possibilities. The mandate of the Special Committee included, without limitation, consideration of (i) a possible restructuring of the operations of the Company and its subsidiaries, (ii) possible changes to the capital structure of the Company, including, without limitation, the issuance, repurchase and/or prepayment of indebtedness or equity securities, (iii) a possible sale of a material amount of the assets of the Company, (iv) a possible sale of the Company and (v) any corporate governance matters relating to the foregoing matters or the composition of the Board (collectively, the Strategic Alternatives). At the conclusion of the meeting, and generally at the conclusion of all meetings of the Board described below, the Board held an executive session with only representatives of Sullivan & Cromwell and members of the Board present and then an executive session with only non-executive members of the Board and representatives of Sullivan & Cromwell present.

On November 23, 2010, the Company announced that it intended to immediately commence an open strategic alternatives process to solicit proposals from potentially interested parties, including the Icahn Entities and Seneca, and carefully review its standalone strategic alternatives if the Prior Merger Agreement was not approved by stockholders of the Company, as well as the creation of the Special Committee and the adoption of the Rights Agreement and certain procedural bylaw amendments relating to the calling of meetings of the Board and procedures for action by written consent. The special meeting of stockholders of the Company was reconvened on that day and the Prior Merger Agreement was not approved. The Prior Merger Agreement was then terminated.

On November 23, 2010, following the termination of the Prior Merger Agreement, Mr. Williamson contacted Mr. Carl Icahn to discuss Mr. Icahn s interest in the Company s open strategic alternatives process. Mr. Icahn informed Mr. Williamson that he was potentially interested in exploring a transaction involving the Company.

On November 24, 2010, Mr. Williamson received a call from Mr. Icahn and they discussed Mr. Icahn s interest in the Company s open strategic alternatives process further. Mr. Icahn indicated he would be interested in moving quickly towards determining whether he would be interested in a potential transaction with the Company, and Messrs. Icahn and Williamson agreed to have their respective representatives begin work on a confidentiality agreement that would permit the Icahn Entities to receive certain material non-public information concerning the Company in order to permit them to determine if they wished to make a proposal to acquire the Company.

On November 26, 2010, the Board held a meeting. Several members of senior management and representatives from Sullivan & Cromwell participated in this meeting. Senior management discussed with the Board the parties that would potentially have an interest in a transaction involving the Company and the strategy for contacting such parties during the open strategic alternatives process.

On November 29, 2010, at the direction of the Special Committee, representatives of Greenhill and Goldman Sachs began contacting parties to assess their interest in a potential transaction involving the Company, including those parties that had previously expressed an interest in a transaction with the Company and/or executed a confidentiality agreement with the Company during the go-shop period under the Prior Merger Agreement.

On November 30, 2010, Mr. Williamson, Holli Nichols, Executive Vice President and Chief Financial Officer of the Company, and representatives from Greenhill, Goldman Sachs and Sullivan & Cromwell met with Mr. Icahn and representatives from the Icahn Entities at the Icahn Entities offices. At that meeting, the parties

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discussed the Company s strategic options in light of the termination of the Prior Merger Agreement as well as the parties entering into a confidentiality agreement. In the following days, representatives from the Icahn Entities, the Company and their respective advisors exchanged drafts of, but did not execute, a confidentiality agreement that also included a standstill agreement that, among other things, restricted the Icahn Entities ability to buy or sell the Company s securities for a limited period of time.

On December 3, 2010, the Special Committee held a meeting. Mr. Williamson and representatives from Sullivan & Cromwell participated in the meeting. Representatives from Sullivan & Cromwell reviewed with the directors their fiduciary duties under applicable law. Mr. Williamson then updated the Special Committee on the status of discussions with the Icahn Entities regarding the confidentiality agreement as well as a potential structure and terms of a transaction with the Icahn Entities. The Special Committee, Mr. Williamson and representatives from Sullivan & Cromwell discussed the status of discussions with the Icahn Entities as well as the potential structure and terms of a transaction with the Icahn Entities, including terms the Company might seek to make clear its ability to continue to pursue the open strategic review process with minimal impediments. The Special Committee, Mr. Williamson and representatives from Sullivan & Cromwell also discussed the status of the solicitation of interest from potential acquirors, and other matters related to the Company s strategic alternatives process.

Beginning on December 6, 2010, representatives from Greenhill and Goldman commenced sending confidentiality agreements to potential acquirors who had not previously entered into confidentiality agreements with the Company.

On December 7, 2010, representatives from the Icahn Entities and representatives from the Company and Sullivan & Cromwell participated in a teleconference to discuss the confidentiality agreement. Representatives from the Icahn Entities informed representatives from the Company and Sullivan & Cromwell that in connection with entering into the confidentiality agreement, the Icahn Entities would also want the Company to amend the Rights Agreement in order to count shares already beneficially owned by a party launching a tender offer towards the majority of Shares minimum condition in the definition of Qualifying Offer , count readily marketable securities for purposes of determining if an offer is fully financed, remove the requirement that the funds with respect to funding the offer be segregated and maintained solely for the purpose of funding the offer and remove limitations on the ability of persons who conduct unsuccessful tender offers to conduct subsequent tender offers within one year. During this teleconference, representatives from the parties and their respective advisors also discussed a potential structure and general terms of a transaction between the Icahn Entities and the Company.

On December 8, 2010, Mr. Icahn called Mr. Williamson and informed Mr. Williamson that he had decided that the Company s publicly available information was sufficient for he and his representatives to assess the Company and that the parties should focus their efforts on reaching an agreement with respect to the key terms of a definitive agreement with respect to an acquisition of the Company. Mr. Icahn also informed Mr. Williamson that the price per Share he was considering offering was $5.50 in cash, and that he was inclined to agree to effect a back-end merger for any Shares not acquired in a first-step tender offer at the same price paid for Shares tendered in the tender offer and to vote and/or tender Shares he owned in support of a higher cash offer in the event he decided not to offer to top such a higher cash offer. Mr. Williamson informed Mr. Icahn that he thought that approach could be a basis for further discussion but that he needed to discuss it with the Special Committee.

On December 9, 2010, the Special Committee held a meeting. Several members of senior management and representatives from Greenhill, Goldman Sachs, and Sullivan & Cromwell participated in this meeting. Mr. Williamson updated the Special Committee regarding the discussions with Mr. Icahn, including Mr. Icahn s then current preference to proceed directly to discussions regarding a transaction involving the Company rather than the confidentiality agreement the parties had been discussing. Mr. Williamson also updated the Special Committee regarding the price of $5.50 per Share in cash that Mr. Icahn indicated he was considering offering in a transaction, and Mr. Icahn s inclination to agree to effect a back-end merger for any Shares not acquired in a first-step tender offer at the same price paid for Shares tendered in the tender offer and to vote and/or tender Shares he owned in support of a higher cash offer in the event he decided not to offer to top such a higher cash offer. The Special Committee, Mr. Williamson and representatives from Greenhill, Goldman Sachs, and Sullivan & Cromwell then discussed the proposed terms of a transaction with the Icahn Entities, including the fact that the Icahn Entities were prepared to enter into a definitive agreement with the Company without conducting any due diligence. Representatives from Greenhill and Goldman Sachs were then excused from the meeting, and senior management of the Company then updated the Special Committee on the status of discussions with potential financial advisors regarding an analysis of the Company s restructuring alternatives. Following discussion among the Special Committee, the Special Committee determined that Mr. Williamson should continue discussions with the Icahn Entities regarding a potential transaction and that the Company should provide the Icahn Entities with a proposed merger agreement on the terms discussed with the Special Committee. The Special Committee also instructed members of senior management not to discuss any management retention, post-closing employment or equity investment in a potential transaction with representatives from the Icahn Entities without authorization from the Special Committee, and members of senior management confirmed that no such discussions had taken place. At the conclusion of the meeting, and generally at the conclusion of all meetings of the Special Committee described below, the Special Committee held an executive session with only representatives of Sullivan & Cromwell and members of the Special Committee present. Immediately following the conclusion of the Special Committee meeting, the Board held a meeting. Several members of senior management and representatives from Sullivan & Cromwell participated in this meeting. Representatives from Sullivan & Cromwell discussed with the Board the proposed amendments to the Rights Agreement requested by representatives of Icahn, and following discussion among the Board, the Board authorized senior management of the Company to implement the proposed amendments to the Rights Agreement.

On December 10, 2010, representatives from Sullivan & Cromwell sent representatives of the Icahn Entities a draft Merger Agreement. Later that same day, representatives from the Company and Sullivan & Cromwell attended a meeting with representatives of the Icahn Entities to discuss the draft Merger Agreement. From that day until the Merger Agreement and related documents were executed in the early morning of December 15, 2010, the parties and their respective representatives negotiated the terms of the definitive documents. Significant issues discussed included, but were not limited to, the conditions to closing of the Offer and the Merger, the circumstances under which the Merger Agreement could be terminated and the termination fees that would be payable, the definition of a superior proposal, the circumstances under which the Icahn Entities would be required to vote and/or tender their Shares in favor of a superior proposal, the ability of the Company to continue its standalone restructuring analysis during the pendency of a go-shop period, and the ability of the Icahn Entities to continue the Offer notwithstanding a termination of the Merger Agreement in certain circumstances. Also on December 10, 2010 and on a periodic basis until the Merger Agreement and related documents were executed in the early morning of December 15, 2010, Mr. Williamson negotiated with Mr. Icahn regarding an increase to the $5.50 per Share in cash offer price.

On December 11, 2010, representatives from Sullivan & Cromwell sent Icahn s representatives a revised draft of the Merger Agreement.

Later on December 11, 2010, the Special Committee held a meeting. Several members of senior management and representatives from Greenhill, Goldman Sachs, and Sullivan & Cromwell participated in this meeting. Representatives from Sullivan & Cromwell reviewed with the directors their fiduciary duties under applicable law. Mr. Williamson updated the Special Committee on the status of discussions with representatives of the Icahn Entities. Senior management reviewed with the Special Committee the Company s updated financial forecasts described in *Item 8. Additional Information Certain Company Forecasts* . Following discussion among the Special Committee, the Special Committee determined that it could agree to the Icahn Entities request that the Company postpone the retention of a restructuring financial advisor, which the Icahn Entities objected to as an unnecessary expense, during the pendency of the proposed transaction with the Icahn Entities and instructed senior management and representatives from Greenhill and Goldman Sachs to review restructuring alternatives that may be available to the Company.

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On December 12, 2010, the Special Committee and the Board held a joint meeting. Several members of senior management and representatives from Greenhill, Goldman Sachs, and Sullivan & Cromwell participated in this meeting. Mr. Williamson updated the directors regarding the discussions with the Icahn Entities. Mr. Williamson noted that the Icahn Entities and their representatives had not reached agreement with the Company on the circumstances under which the Icahn Entities would be required to vote and/or tender their Shares in favor of a superior proposal. The directors discussed with representatives of Greenhill and Goldman Sachs the impact that various requirements might have on a go-shop process. Representatives from Greenhill and Goldman Sachs and management then reviewed with the directors several potential standalone restructuring alternatives that may be available to the Company. The Special Committee discussed these alternatives with the financial advisors and management and concluded that the restructuring alternatives were not preferable to the Offer and the Merger and that under the circumstances the Special Committee was willing to defer the retention of a restructuring financial advisor during the pendency of a transaction with the Icahn Entities and completion of the open strategic alternatives process. However, the Special Committee also directed senior management to continue to prepare for the possibility that any transaction with the Icahn Entities might not be completed and that the Company might be required to pursue standalone alternatives.

Following the joint meeting of the Special Committee and Board, representatives of the Company, the Icahn Entities and their respective advisors continued discussions regarding the terms of the draft Merger Agreement and the related documents. Representatives of the Icahn Entities informed the Company that the Icahn Entities wanted to require the Company to confirm following the execution of the Merger Agreement that the Company s pension termination liability and environmental capital expenditures and environmental liabilities under applicable law would not exceed certain prescribed amounts. From that day until the Merger Agreement and related documents were executed in the early morning of December 15, 2010, representatives from the Company, the Icahn Entities and their respective advisors negotiated the terms of these requirements.

In the evening of December 14, 2010, the Special Committee held a meeting to discuss the potential transaction with the Icahn Entities, which meeting continued until the early morning (Eastern time) of December 15, 2010. Several members of senior management and representatives from Greenhill, Goldman Sachs and Sullivan & Cromwell participated in this meeting. Representatives from Sullivan & Cromwell reviewed with the directors their fiduciary duties under applicable law, as well as the terms of the draft Merger Agreement, the Stockholder Support Agreement, the Guarantee and amendments to the Rights Agreement. Such amendments would count Shares already beneficially owned by a party launching a tender offer towards the majority of Shares minimum condition in the definition of Qualifying Offer , count readily marketable securities for purposes of determining if an offer is fully financed, remove the requirement that the funds with respect to funding the offer be segregated and maintained solely for the purpose of funding the offer, remove limitations on the ability of persons who conduct failed tender offers to conduct subsequent tender offers within one year and exempt the Icahn Entities from the applicability of the Rights Agreement with respect to the transactions contemplated by the Merger Agreement and the Support Agreement. Senior management and representatives of Greenhill, Goldman Sachs and Sullivan & Cromwell updated the Special Committee on the status of discussions with the Icahn Entities with respect to the transaction and the transaction documents. In addition to considering the Icahn transaction, the Special Committee also reviewed restructuring alternatives and a commodity sensitivity analysis prepared by the financial advisors along with additional external analysis on the state of natural gas drilling economics in North America. The purpose of this additional analysis was to add commodity price upside potential into the valuation parameters. The conclusion was that the restructuring alternatives for a public stockholder were not likely to be more favorable than the Icahn transaction. Each of Greenhill and Goldman Sachs delivered its oral opinion to the Special Committee and the Board (which was subsequently confirmed by delivery of a written opinion), to the effect that, as of the date of their respective opinions, and based on and subject to various assumptions and limitations described in its written opinion, the $5.50 in cash per share to be received by, or paid to (as set forth in the applicable written opinion) the holders (excluding the Offeror, Merger Sub and any of their affiliates) of Common Stock pursuant to the Merger Agreement was fair, from a financial point of view, to such holders. Following these discussions, the Special Committee determined that moving

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forward with the terms contained in the draft Merger Agreement with the Offeror and Merger Sub was in the best interests of the Company s stockholders. Thereafter, the Special Committee unanimously recommended that the Board approve and recommend the Merger Agreement and the transactions contemplated thereby, the Support Agreement, the Guarantee and the amendment to the Rights Agreement. Immediately following conclusion of the Special Committee meeting, the Board held a meeting. Several members of senior management and representatives from Greenhill, Goldman Sachs and Sullivan & Cromwell participated in this meeting. The Board, based on the foregoing recommendation of the Special Committee and for the reasons detailed in Reasons for Recommendation , unanimously (i) determined that the Offer and the Merger are fair to, and in the best interests of, the Company and its stockholders, (ii) approved and declared advisable the Merger Agreement and the transactions contemplated thereby, including the Offer and the Merger, (iii) recommended that holders of Shares accept the Offer, tender their Shares into the Offer, and, if required by applicable law, vote their shares of Common Stock in favor of adoption of the Merger Agreement, (iv) directed that, to the extent required by applicable law, the Merger Agreement be submitted to the holders of shares of Common Stock for their adoption at a stockholders meeting in accordance with applicable law or regulation (unless the Offeror notifies the Company that it elects to proceed by written consent of stockholders in lieu of a meeting of stockholders), and (v) approved the Support Agreement, the Guarantee and the amendment to the Rights Agreement.

In the early morning of December 15, 2010, the Offeror, Merger Sub and the Company executed the Merger Agreement, the Company and the Support Parties executed the Support Agreement, the Company and Icahn Enterprises Holdings executed the Guarantee, and the Company and Icahn Enterprises Holdings issued a joint press release announcing the execution of the Merger Agreement.

The Merger Agreement provides that, until 11:59 p.m., Eastern time, on January 24, 2011, the Company is allowed to initiate, solicit and encourage any alternative acquisition proposals from third parties, provide non-public information 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 are conducting this go-shop process on behalf of the Company and as of the date of this Statement have contacted more than 50 potentially interested parties. The Special Committee has not authorized any member of senior management to discuss any management retention, post-closing employment or equity investment in a potential transaction with representatives from the Icahn Entities or any other interested party.

Reasons for Recommendation

Special Committee

Following the stockholders failure to approve the Prior Merger Agreement and the termination of the Prior Merger Agreement, the Board determined to continue with a comprehensive review of the Company s various strategic alternatives, including, if appropriate, a possible sale of the Company. The Board determined to form the Special Committee consisting of non-management independent directors for the purpose of directing this review process. The Board appointed each of Patricia A. Hammick, David W. Biegler, Victor E. Grijalva, Howard B. Sheppard and William L. Trubeck as members of the Special Committee, with Ms. Hammick serving as the chairman of the Special Committee. The Board delegated to the Special Committee the full power and authority to, among other things, (a) explore any Strategic Alternatives; (b) take all such actions as it may deem necessary or appropriate in connection with effecting any Strategic Alternative; (c) initiate and participate in discussions with, or otherwise assist or facilitate proposals from, any parties regarding any Strategic Alternative; (d) review, evaluate or negotiate the terms of any Strategic Alternative, including negotiating a definitive agreement or agreements; (e) determine whether any Strategic Alternative is advisable, fair to and in the best interests of the Company s stockholders (other than any stockholders who are interested in any such Strategic Alternative); and (f) report to the Board its recommendation with respect thereto in a manner designed to serve the best interests of the Company and its stockholders.

The Special Committee, at a meeting held on December 14, 2010, unanimously (i) determined that the Offer and the Merger are fair to, and in the best interests of, the Company and its stockholders, (ii) approved and declared advisable the Merger Agreement, the Offer, the Merger and the other transactions contemplated thereby,

(iii) recommended that holders of Shares accept the Offer, tender their Shares into the Offer and, if required by applicable law, adopt the Merger Agreement and (iv) approved the Support Agreement, the Guarantee and the amendment to the Rights Agreement. At this same meeting, the Special Committee also unanimously recommended to the Board that it (I) determine that the Offer and the Merger are fair to, and in the best interests of, the Company and its stockholders, (II) approve and declare advisable the Merger Agreement and the transactions contemplated thereby, including the Offer and the Merger, (III) recommend that holders of Shares accept the Offer, tender their Shares into the Offer, and, if required by applicable law, vote their shares of Common Stock in favor of adoption of the Merger Agreement, (IV) direct that, to the extent required by applicable law, the Merger Agreement be submitted to the holders of shares of Common Stock for their adoption at a stockholders meeting in accordance with applicable law or regulation (unless the Offeror notifies the Company that it elects to proceed by written consent of stockholders in lieu of a meeting of stockholders), and (V) approve the Support Agreement, the Guarantee and the amendment to the Rights Agreement. We refer to the foregoing determination, approval, declaration of advisability, resolution and recommendation of the Special Committee as the Special Committee Approval and Recommendation.

In evaluating the Merger Agreement, the Offer, the Merger and the other transactions contemplated by the Merger Agreement and making the Special Committee Approval and Recommendation, the Special Committee consulted with our management team, as well as our outside legal and financial advisors, and considered a number of factors. Some of the factors considered by the Special Committee and described below weighed in favor of having the Company continue as an independent entity and thus not making the Special Committee Approval and Recommendation. However, the Special Committee determined that more of the factors that it considered, including the qualitative importance of such factors, weighed in favor of the Special Committee Approval and Recommendation and outweighed the potential benefits of the Company continuing as an independent entity and initiating necessary financial restructuring activities based on possible improvements in commodities and financing conditions and other fundamentals underlying the Company s business. In particular, the Special Committee concluded that if such improvements occurred, continuing the Company as an independent entity could potentially permit the Shares to trade at prices higher than the Offer Price and the Per Share Merger Consideration but that the Company s ability to successfully implement a financial restructuring and operate during the interim period before such improvements, if any, occurred would be attended by significant risk and made such a strategy inadvisable.

In reaching the determination to make the Special Committee Approval and Recommendation, the Special Committee considered the following material factors as supporting its decision (not necessarily in any relative order of importance):

- management s and the Special Committee s views and opinions regarding the electric generation industry;

- the Special Committee s understanding of the business, operations, financial condition, earnings and prospects of the Company, including the prospects and risk profile of the Company as an independent entity;

- the Company s ability, under the Merger Agreement, during the period beginning on the date of the Merger Agreement and continuing until 11:59 p.m., Eastern time, on January 24, 2011, to initiate, solicit and encourage alternative acquisition proposals from third parties and to provide non-public information and to engage in discussions and negotiations with third parties with respect to such proposals;

- the Special Committee s belief that the Offer and the Merger were likely to establish a $5.50 per Share in cash floor price for any acquisition transaction, the ability of the Company to continue until 11:59 p.m., Eastern time, on January 24, 2011 its solicitation of acquisition proposals and the Special Committee s belief that creating a path for a potential buyer to obtain the support of the Icahn Entities for a superior proposal improved the prospects for persuading another buyer to make an acquisition proposal;

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the Special Committee s belief that the Offer and/or the Merger are more favorable to our stockholders than the alternatives to the Offer and/or Merger, which belief was formed based on the Company s previous discussions with potentially interested parties with respect to potential strategic transactions, including discussions during the go-shop period under the Prior Merger Agreement, and the Special Committee s review, with the assistance of its financial advisors and senior management of the Company, of the strategic alternatives available to the Company, including the Company s standalone restructuring alternatives and the fact that the depressed market for sales of generating facilities as of December 15, 2010 makes it challenging to fund cash flow requirements through sales of assets. In particular, the Special Committee believed that pursuing such a strategy would increase the leverage and risk profile of the Company and amplify the risk associated with a further deterioration in values of generating plants, or adverse regulatory, operating or financial developments. The Special Committee further believed, on the basis of the above-described review, that, on the whole, the strategic alternatives available to the Company, including its standalone restructuring alternatives, were not of themselves likely to yield long-term value to our stockholders that was more attractive than the value offered by the transactions contemplated by the Merger Agreement, particularly in light of the attendant risks.

the presentations to the Special Committee and the Board on December 14, 2010 and the financial analyses reviewed therewith of Greenhill and Goldman Sachs, and the oral opinions of each of Greenhill and Goldman Sachs delivered to the Special Committee and the Board on December 14, 2010 (which were subsequently confirmed by delivery of written opinions) to the effect that, as of the date of their respective opinions, and based on and subject to various assumptions and limitations described in its written opinion, the $5.50 in cash per share to be received by, or paid to (as set forth in the applicable written opinion) the holders (excluding the Offeror, Merger Sub and any of their affiliates) of Common Stock pursuant to the Merger Agreement was fair, from a financial point of view, to such holders, as more fully described below under the captions *Opinions of the Company s Financial Advisors Opinion of Greenhill & Co.* and *Opinions of the Company s Financial Advisors Opinion of Goldman Sachs & Co.* ;

the absence of any meaningful economic or industry indicator suggesting that the forward curves for natural gas and electricity prices were too low, which indicated that any increase in the fundamental value of the Company, which ordinarily would be expected to increase with increases in the price of natural gas and electricity, may not occur until at least several years into the future;

the fact that the Offer Price and the Per Share Merger Consideration represented:

a premium of approximately 98% to the closing share price of our Common Stock on August 12, 2010, the last trading day prior to the public announcement of the Prior Merger Agreement; and

a premium of 10% to the per share merger consideration contained in the Prior Merger Agreement.

the fact that (i) the Company is projected, based upon the Company forecasts described under *Item 8. Additional Information Certain Company Forecasts* (which used commodity pricing assumptions through 2012 based upon November 29, 2010 price curves; commodity pricing assumptions after 2012 were based upon November 29, 2010 price curves and adjusted based upon management s fundamental outlook), to have substantial negative operating cash flow less total capital expenditures over the next four fiscal years starting in fiscal year 2011, (ii) while mandated environmental expenditures in the Company s plants under current law and under a consent decree to which the Company is subject are a significant factor in these negative cash flows, these Company forecasts do not assume any incremental expenditures mandated by new laws or regulations that may come into effect in the future, and (iii) the Company would be dependent on the bank and capital markets to fund these negative amounts through additional borrowings, sales of assets or sales of debt and/or equity securities, and, in light of the Company s substantial leverage, access to the bank and capital markets, particularly on reasonable economic or operating terms, could be difficult or impossible to achieve;

the fact that (i) absent significant improvements in market and operating conditions or a successful refinancing, it is projected that the Company would require a waiver by the middle of 2011 of the

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requirement of its existing credit facility that it comply with certain financial covenants, (ii) the revolving portion of the Company s credit facility expires by its terms in 2012 and the term letter of credit and senior secured term loan portions of the Company s credit facility expire by their terms in 2013, (iii) management believes that the existing credit facility could be amended to address the projected need for a financial covenant waiver for the near term, but that the terms of the amendment, combined with the terms of other debt securities that would need to be issued, would likely significantly restrict the Company s future financial flexibility and (iv) management believes it is uncertain whether credit would be available in sufficient amounts after expiration of the credit facility to permit the Company to fund its operations on a reasonable basis, indicating that the amount of time available for improved electricity prices to emerge and to be of substantial benefit to the Company could be limited;

the fact that although a substantial majority of the Company s indebtedness is trading at a discount to its principal amount, with an aggregate discount of approximately $907 million or approximately $7.50 per Share, the Company s limited financial flexibility and past experience with debt repurchases suggested, in the opinion of management of the Company and assuming that the Company were able to raise sufficient funds, that fully capturing this discount for the benefit of the holders of Shares would likely not occur in practice;

the potential materially adverse earnings and cash flow impact on the Company if it is unable to enter into new coal transportation contracts on pricing terms comparable to its existing coal transportation contracts, which expire in 2013 and contain pricing terms significantly more favorable to the Company than current market rates;

the likelihood that the Offer and the Merger would be completed, based on, among other things (not necessarily in any relative order of importance):

the reputation and financial condition of Icahn Enterprises Holdings;

Icahn Enterprises Holdings ability to complete large acquisition transactions;

the fact that there is no financing condition to the completion of the Offer or the Merger in the Merger Agreement;

the Guarantee from Icahn Enterprises Holdings to the Company guaranteeing certain of the Offeror s and Merger Sub s obligations under the Merger Agreement prior to the closing of the Merger, including the payment of the aggregate Offer Price and the Per Share Merger Consideration, which, in the reasonable judgment of the Special Committee, increases the likelihood of the Offer and/or the Merger being completed;

the Company s ability under the Merger Agreement to seek specific performance to prevent breaches of the Merger Agreement by the Offeror and Merger Sub and to enforce specifically the terms of the Merger Agreement; and

the Company s ability under the Merger Agreement to pursue damages after any termination of the Merger Agreement, which the parties have acknowledged and agreed in the Merger Agreement will not be limited to reimbursement of expenses or out-of-pocket costs, and may include to the extent proven the benefit of the bargain lost by the Company s stockholders (taking into consideration relevant matters, including the transaction premium, other transaction opportunities and the time value of money);

the fact that the all-cash Offer Price and Per Share Merger Consideration will provide our stockholders with immediate fair value, in cash, for their Shares, while avoiding medium- and long-term business risk, and while also providing stockholders certainty of value for their Shares and the opportunity to reinvest in other investments that would permit stockholders to benefit from any improvement in the prices of natural gas and electricity, with less risk of loss if those prices do not increase in the medium- or long-term;

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the Company s ability, under certain circumstances specified in the Merger Agreement, at any time from and after 12:00 a.m., Eastern time, on January 25, 2010 and prior to the earlier of the time the Company stockholders adopt the Merger Agreement and the closing of the Offer, to consider and respond to a written acquisition proposal or provide non-public information to or engage in discussions or negotiations with the person making such a proposal if the Board, prior to taking any such actions, determines in good faith, after consultation with its outside legal counsel, that failure to take such actions could be inconsistent with the Board fiduciary duties under applicable law and, after consultation with its financial advisor, that such acquisition proposal either constitutes a superior proposal or could reasonably be expected to result in a superior proposal, and to, or propose to, authorize, adopt, approve, recommend or otherwise declare advisable such acquisition proposal, if, prior to taking any such action, the Board complies with its obligations relating to the taking of such action under the Merger Agreement and determines in good faith after consultation with its financial advisor and outside legal counsel that such acquisition proposal is a superior proposal;

the Company s ability, under certain circumstances, to terminate the Merger Agreement in order to enter into an agreement providing for a superior proposal; provided that the Company complies with its obligations relating to the entering into of any such agreement and immediately prior to or substantially concurrently with the termination of the Merger Agreement the Company pays a termination fee of $16.3 million, which termination fee obligation the Special Committee concluded was reasonable in the context of termination fee obligations in comparable transactions and in light of the overall terms of the Merger Agreement, including the Offer Price and the Per Share Merger Consideration;

the obligation of the Offeror, Merger Sub and certain of their respective affiliates to vote, tender for purchase or deliver a consent with respect to their Shares in favor of the adoption of an alternative acquisition agreement with respect to a superior proposal and any transaction set forth in such an alternative acquisition agreement and/or into any tender offer contemplated by such alternative acquisition agreement, if the superior proposal set forth in such alternative acquisition agreement meets certain criteria, including that the superior proposal be an all-cash, all shares offer from a person that meets certain financial requirements and that the alternative acquisition agreement contain certain terms;

the Company s ability, under the Merger Agreement, to withhold, withdraw, qualify or modify the Board s recommendation under any circumstance, subject to the Offeror s subsequent right to terminate the Merger Agreement and, in such event, the Company s obligation to pay to the Offeror a termination fee of $16.3 million;

the Special Committee s review of the potential costs associated with executing the Merger Agreement, including change in control severance and related costs as well as estimated advisor fees, which the Special Committee concluded were reasonable and would not affect the advice from, or the work performed by, senior management of the Company or the Company s financial advisors in connection with the evaluation of the Offer, the Merger and the Merger Agreement by the Special Committee or the Board;

in the event the Merger is completed, the availability of appraisal rights under the DGCL to holders of Common Stock who comply with all of the required procedures under the DGCL, which allows such holders in connection with the Merger to seek appraisal of the fair value of their shares of Common Stock as determined by the Delaware Court of Chancery; and

the fact that the termination date under the Merger Agreement allows for sufficient time to complete the Offer and/or the Merger.

As noted above, in reaching the decision to make the Special Committee Approval and Recommendation, the Special Committee also considered a variety of potentially negative factors concerning the Offer, the Merger and the Merger Agreement, including the following (not necessarily in any relative order of importance):

the fact that completion of the Merger would preclude our stockholders from having the opportunity to participate in the future performance of the Company s assets and any potential future appreciation of the value of our Shares;

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the fact that holders of only approximately 27% of our Common Stock supported approval of the Prior Merger Agreement, which provided, after amendment, for the sale of the Company for $5.00 per Share in cash;

the low proportion of equity value (approximately $659 million based on the closing price of our Shares on December 14, 2010) as a proportion of the Company s enterprise value (approximately $4.6 billion, including capitalized lease obligations as of September 30, 2010 and based on the book value of the Company s indebtedness as of September 30, 2010 and the Offer Price and the Per Share Merger Consideration) means that relatively small percentage changes in enterprise value will have substantially larger percentage effects on equity value, which means that improvements in market or operating conditions or Company performance over those projected could increase the value of our Shares to levels in excess of the Offer Price and the Per Share Merger Consideration (while corresponding declines in gas or electricity prices or Company performance under those projected could decrease the value of our Shares to levels below the Offer Price and the Per Share Merger Consideration);

the fact that (i) a substantial majority of the Company s indebtedness is trading at a discount to its principal amount, with an aggregate discount of approximately $907 million or approximately $7.50 per Share, and (ii) if the Company were able to raise sufficient funds and purchase the indebtedness at a discounted amount, that could benefit holders of Shares;

the fact that, as of December 14, 2010, a few research analysts had target prices for our Shares in excess of the Offer Price and the Per Share Merger Consideration, with nine analysts having an average target price of $5.33 per Share;

although the Special Committee believed it had a strong basis, based upon frequent periodic reviews of the Company s value and strategic alternatives over the prior several years, past discussions with potential strategic acquirors and financial acquirors, including during the go-shop period under the Prior Merger Agreement, and after considering the views of the financial advisors as to the likely universe of potential acquirors, for believing that the Offer and the Merger were the best transactions reasonably likely to be available, it is possible that conclusion of the open strategic alternatives process in the absence of the Merger Agreement would have discovered a buyer willing to pay more than the Offer Price and the Per Share Merger Consideration;

the fact that significant costs are involved in connection with entering into and completing the Offer and the Merger and substantial time and effort of management is required to complete the Offer and the Merger, potentially resulting in disruptions to the operation of and planning for the Company s business;

the fact that the Offeror may continue the Offer notwithstanding a termination of the Merger Agreement under certain circumstances, including in connection with a termination of the Merger Agreement for a superior proposal that does not meet certain specified requirements, if the Offer continues to meet certain requirements;

the restrictions placed on the conduct of the Company s business prior to the earlier of the completion of the Offer and the Merger pursuant to the terms of the Merger Agreement, which could delay or prevent the Company from undertaking business opportunities that may arise or any other action it would otherwise take with respect to the operations of the Company absent the pending completion of the Offer and the Merger;

the announcement and pendency of the Offer and the Merger, or failure to complete the Offer and the Merger, may cause substantial harm to relationships with the Company s employees, suppliers and customers and may divert management and employee attention away from the day-to-day operation of our business;

the fact that while the Company expects that the Offer and the Merger will be consummated, there can be no assurance that all conditions to the parties obligations to complete the Offer and the Merger will be satisfied;

the fact that the Offeror has the right to terminate the Merger Agreement on or prior to January 17, 2011 if the Company s pension termination liability or environmental capital expenditures and environmental liabilities under applicable law are estimated to exceed certain prescribed amounts in the Merger Agreement;

the Offeror and Merger Sub are newly-formed corporations with essentially no assets;

any gain realized in an all-cash transaction would be taxable to our stockholders that are U.S. holders for U.S. federal income tax purposes;

the fact that the Prior Merger Agreement requires the Company to pay within three business days of the Acceleration Time a termination fee equal to $16.3 million to Denali Parent Inc. in the event that the Minimum Condition is satisfied and the Offer is consummated, or the Merger is consummated; and

our directors and executive officers have interests in the Offer and the Merger that are different from, or in addition to, our stockholders. See *Item 3. Past Contacts, Transactions, Negotiations and Agreement Relationship with Current Officers and Directors of the Company* .

The foregoing discussion of the factors considered by the Special Committee is not intended to be exhaustive, but rather includes the material factors considered by the Special Committee. In reaching its decision to make the Special Committee Approval and Recommendation, the Special Committee did not quantify or assign any relative weights to the factors considered and individual directors may have given different weights to different factors. The Special Committee did not undertake to make any specific determination as to whether any factor, or any particular aspect of any factor, supported or did not support its ultimate determination. The Special Committee based its recommendation on the totality of the information presented.

Board of Directors

The composition of our Board is identical to the composition of the Special Committee except that the one management member of the Board, Mr. Williamson, is not a member of the Special Committee. The Board, at a meeting held on December 14, 2010 and based on the Special Committee Approval and Recommendation, (a) determined that the Offer and the Merger are fair to, and in the best interests of, the Company and its stockholders, (b) approved and declared advisable the Merger Agreement and the transactions contemplated thereby, including the Offer and the Merger, (c) recommended that holders of Shares accept the Offer, tender their Shares into the Offer, and, if required by applicable law, vote their shares of Common Stock in favor of adoption of the Merger Agreement, (d) directed that, to the extent required by applicable law, the Merger Agreement be submitted to the holders of shares of Common Stock for their adoption at a stockholders meeting in accordance with applicable law or regulation (unless the Offeror notifies the Company that it elects to proceed by written consent of stockholders in lieu of a meeting of stockholders) and (e) approved the Support Agreement, the Guarantee and the amendment to the Rights Agreement. We refer to the foregoing determination, approval, declaration of advisability, resolution and recommendation of the Board as the Board Approval and Recommendation.

In evaluating the Merger Agreement, the Offer, the Merger and the other transactions contemplated by the Merger Agreement and making the Board Approval and Recommendation, the Board consulted with our management team, as well as our outside legal and financial advisors, and considered a number of factors, including the following material factors (not necessarily in any relative order of importance):

the unanimous determination of the Special Committee to make the Special Committee Approval and Recommendation; and the factors referred to above as having been taken into account by the Special Committee.

In its deliberations concerning the Merger Agreement, the Offer and the Merger, the Board also considered the potentially negative factors considered by the Special Committee described above.

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The foregoing discussion of the information and factors considered by the Board is not intended to be exhaustive, but includes the material factors considered by the Board. In reaching its decision to make the Board Approval and Recommendation, the Board did not quantify or otherwise assign relative weights to the factors considered and individual directors may have given different weights to different factors. The Board did not undertake to make any specific determination as to whether any factor, or any particular aspect of any factor, supported or did not support its ultimate determination. The Board based its recommendation on the totality of the information presented.

Intent to Tender.

As of December 28, 2010, the directors and executive officers of the Company beneficially owned 510,823 Shares (not including any Shares deliverable upon exercise or conversion of any Company Stock Options or Company Phantom Stock Units), representing less than one percent of the outstanding Shares. The directors and executive officers of the Company have informed the Company that they intend to tender or cause to be tendered all Shares held of record or beneficially by them pursuant to the Offer (other than Shares as to which such holder does not have discretionary authority and Shares which may be retained in order to facilitate estate and tax planning dispositions) and, if necessary, to vote such Shares in favor of the adoption of the Merger Agreement. The directors and executive officers of the Company have also informed the Company that they would not tender or cause to be tendered any Shares held of record or beneficially owned by them pursuant to the Offer, and would withdraw from the Offer any Shares previously tendered, and would not vote such Shares in favor of the adoption of the Merger Agreement, if any person makes a Superior Proposal (as defined in The Merger Agreement; Other Agreements Solicitation of Acquisition Proposals in the Offer to Purchase) to the Company or if the Board effects a Change of Recommendation (as defined in The Merger Agreement; Other Agreements Solicitation of Acquisition Proposals in the Offer to Purchase).

Opinion of the Company s Financial Advisors.

Opinion of Greenhill & Co., LLC

On December 14, 2010, at meetings of the Special Committee and the Board held to consider the Merger Agreement, Greenhill rendered to the Special Committee and the Board an oral opinion, which was confirmed by delivery of a written opinion, dated December 14, 2010, to the effect that, as of the date of the opinion, and based upon and subject to the limitations and assumptions set forth therein, the $5.50 per share in cash to be received by the holders (excluding Offeror, Merger Sub and any of their affiliates) of Common Stock 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 December 14, 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 I to this Schedule 14D-9 and is incorporated herein by reference. The summary of Greenhill s opinion in this Schedule 14D-9 is qualified in its entirety by reference to the full text of the opinion.

In arriving at its opinion described above, Greenhill, among other things:

- reviewed a draft of the Merger Agreement dated as of December 14, 2010 and certain related documents;

- reviewed certain publicly available financial statements of the Company;

- reviewed certain other publicly available business and financial information relating to the Company that Greenhill deemed relevant;

- reviewed certain information, including financial forecasts and other financial and operating data concerning the Company, prepared by the management of the Company, including the financial forecasts prepared by the management of the Company, reflecting, among other things, updated commodity pricing and financing assumptions, and described under *Item 8. Additional Information Certain Company Forecasts* which we refer to as the financial forecasts;

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- discussed the past and present operations and financial condition and the prospects of the Company with senior executives of the Company;

- reviewed the historical market prices and trading activity for the Common Stock and analyzed its implied valuation multiples;

- compared the value of the Offer Price to a range of implied valuations for the Common Stock based on valuation multiples implied by the trading values of certain publicly traded companies that Greenhill deemed relevant;

- compared the value of the Offer Price to a range of implied valuations for the Common Stock derived by discounting future cash flows and a terminal value of the Company at discount rates Greenhill deemed appropriate;

- compared the value of the Offer Price to a range of implied valuations for the Common Stock based on multiples implied by certain publicly available transactions that Greenhill deemed relevant involving merchant generation companies;

- compared the value of the Offer Price to a range of implied valuations for the Common Stock based on premiums paid in certain publicly available transactions that Greenhill deemed relevant;

- participated in discussions and negotiations among representatives of the Company and its legal advisors and representatives of the Offeror and its legal advisors; and

- performed such other analyses and considered such other factors as Greenhill deemed appropriate.

Greenhill s written opinion was addressed to the Special Committee and the Board. It was not intended to be and did not constitute a recommendation to the Special Committee or the Board as to whether they should recommend or approve the Offer, Merger or the Merger Agreement, nor does it constitute a recommendation as to whether the stockholders of the Company should tender Shares in connection with the Offer or approve the Merger or take any other action in respect of the Offer or the Merger at any meeting of the stockholders convened in connection with the Offer or 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 Offer or the Merger. Greenhill did not express any opinion with respect to any aspect of the Offer or the Merger other than the fairness to the holders of the Common Stock (excluding the Offeror, Merger Sub and any of their affiliates) of the $5.50 per share in cash to be received by them from a financial point of view. Greenhill did not express any opinion with respect to the amount or nature of any compensation to any officers, directors or employees of the Company, or any class of such persons, relative to the $5.50 per share in cash to be received by the holders of Common Stock in the Offer and the Merger or with respect to the fairness of any such compensation. Greenhill expressed no opinion as to the impact of the Offer or the Merger on the solvency or viability of the Company or the Offeror or the ability of the Company or the Offeror to pay its obligations when they come due. Greenhill s opinion was approved by its fairness committee.

In conducting its review and analysis and rendering its opinion, Greenhill assumed and relied upon, without independent verification, the accuracy and completeness of the information publicly available, supplied or otherwise made available to it by representatives and management of the Company for the purposes of its opinion and further relied upon the assurances of the representatives and management of the Company that they were not aware of any facts or circumstances that would make such information inaccurate or misleading. With respect to the most recent financial forecasts and projections and other data that was furnished or otherwise provided to it, Greenhill assumed that such projections and data were reasonably prepared on a basis reflecting the best currently available estimates and good faith judgments of the management of the Company as to those matters, and Greenhill relied upon such financial forecasts and data in arriving at its opinion. Greenhill expressed no opinion with respect to such projections and data or the assumptions upon which they were based.

Greenhill did not make any independent valuation or appraisal of the assets or liabilities of the Company, nor was it furnished with any such appraisals. Greenhill assumed that the Offer and the Merger will be consummated in accordance with the terms set forth in the Merger Agreement and without waiver of any

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material terms or conditions set forth in the Merger Agreement. Greenhill further assumed that all material governmental, regulatory and other consents and approvals necessary for the consummation of the Offer or the Merger will be obtained without any effect on the Offer or the Merger meaningful to its analysis.

Greenhill s opinion was necessarily based on financial, economic, market and other conditions as in effect on, and the information made available to it, as of December 14, 2010. Subsequent developments may affect its opinion, and Greenhill does not have any obligation to update, revise, or reaffirm its opinion.

The Special Committee and the Board retained Greenhill based on its qualifications and expertise in providing financial advice and on its reputation as an internationally recognized investment banking firm. Greenhill acted as financial advisor to the independent director committee of the Board in connection with the purchase by LS Power of (i) the Company s interests in eight power generating project companies and Dynegy Sandy Creek Holdings, LLC and (ii) $235 million aggregate principal amount of 7.5% Senior Unsecured Notes due 2015 of Dynegy Holdings Inc., a wholly-owned subsidiary of the Company, in exchange for approximately $1.0135 billion in cash and the relinquishment of 245 million shares of Class B Common Stock of the Company by LS Power, announced in August 2009. In addition, Greenhill acted as financial advisor to the Company in connection with the proposed acquisition of the Company by Denali Parent Inc., an affiliate of the Blackstone Group L.P., announced in August 2010.

Under the terms of Greenhill s engagement with the Company, the Company has agreed to pay Greenhill a fee of $11.5 million in the aggregate, of which $5 million was paid following delivery of Greenhill s written opinion dated August 13, 2010, rendered in connection with the Board s consideration of the Prior Merger Agreement and $6.5 million is payable upon consummation of the Offer or the Merger. The Company has also agreed to reimburse Greenhill for certain out-of-pocket expenses incurred by it in connection with its engagement and will indemnify Greenhill against certain liabilities that may arise out of its engagement.

Greenhill s opinion was one of the many factors considered by the Special Committee and the Board in evaluating the Merger Agreement and should not be viewed as determinative of the views of the Special Committee or the Board with respect to the Offer or the Merger.

Opinion of Goldman, Sachs & Co.

On December 14, 2010, at meetings of the Special Committee and the Board held to consider the Merger Agreement, Goldman Sachs rendered to the Special Committee and the Board an oral opinion, which was confirmed by delivery of a written opinion, dated December 15, 2010, to the effect that, as of the date of the opinion, and based upon and subject to the factors, assumptions and limitations set forth therein, $5.50 per share in cash to be paid to the holders (other than the Offeror and its affiliates) of 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 December 15, 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 II to this Schedule 14D-9. Goldman Sachs provided its opinion for the information and assistance of the Special Committee and the Board in connection with their consideration of the Merger Agreement. The Goldman Sachs opinion is not a recommendation as to whether or not any holder of Common Stock should tender their Common Stock in connection with the Offer or how any holder of Common Stock should vote with respect to the Merger or any other matter.

In connection with rendering the opinion described above and performing its related financial analyses, Goldman Sachs reviewed, among other things:

- the Merger Agreement;

- annual reports to stockholders and Annual Reports on Form 10-K of the Company for the five fiscal years ended December 31, 2009;

- certain interim reports to stockholders and Quarterly Reports on Form 10-Q of the Company;
- certain other communications from the Company to its stockholders;
- certain publicly available research analyst reports for the Company; and
- certain internal financial analyses and forecasts for the Company prepared by its management and approved for Goldman Sachs use by the Company, reflecting updated commodity pricing and financing assumptions, as disclosed under *Item 8. Additional Information Certain Company Forecasts*.

Goldman Sachs also held discussions with members of the senior management of the Company regarding their assessment of the past and current business operations, financial condition and future prospects of the Company; reviewed the reported price and trading activity for the Common Stock and the publicly traded debt securities of the Company and its subsidiaries; compared certain financial and stock market information for the Company with similar information for certain other companies the securities of which are publicly traded; reviewed the financial terms of certain recent business combinations in the unregulated merchant power generation industry and in other industries; and performed such other studies and analyses, and considered such other factors, as Goldman Sachs deemed appropriate.

For purposes of rendering the opinion described above, Goldman Sachs relied upon and assumed, without assuming any responsibility for independent verification, the accuracy and completeness of all of the financial, legal, regulatory, tax, accounting and other information provided to, discussed with or reviewed by it and Goldman Sachs did not assume any responsibility for any such information. In that regard, Goldman Sachs assumed with the consent of the Special Committee and the Board that the most recent internal financial analyses and updated financial forecasts for the Company prepared by its management were reasonably prepared on a basis reflecting the best currently available estimates and judgments of the management of the Company. Goldman Sachs did not make an independent evaluation or appraisal of the assets and liabilities (including any contingent, derivative or other off-balance-sheet assets and liabilities) of the Company or any of its subsidiaries, nor was any evaluation or appraisal of the assets or liabilities of the Company or any of its subsidiaries furnished to Goldman Sachs. Goldman Sachs assumed that all governmental, regulatory or other consents and approvals necessary for the consummation of the Offer or the Merger will be obtained without any adverse effect on the Company or on the expected benefits of the Offer and the Merger in any way meaningful to its analysis. Goldman Sachs also assumed that the Offer and the Merger will be consummated on the terms set forth in the Merger Agreement, without the waiver or modification of any term or condition of the Merger Agreement the effect of which would be in any way meaningful to its analysis.

Goldman Sachs opinion did not address the underlying business decision of the Company to engage in the Offer or the Merger, or the relative merits of the Offer or the Merger as compared to any strategic alternatives that may be available to the Company; nor did it address any legal, regulatory, tax or accounting matters. Goldman Sachs opinion addresses only the fairness from a financial point of view, as of December 15, 2010, of the $5.50 per share in cash to be paid to the holders (other than the Offeror and its affiliates) of Common Stock pursuant to the Merger Agreement. Goldman Sachs opinion did not express any view on, and did not address, any other term or aspect of the Merger Agreement or the Offer or the Merger or any term or aspect of any other agreement or instrument contemplated by the Merger Agreement or entered into or amended in connection with the Offer or the Merger, or the impact thereof, the fairness of the Offer or the Merger to, or any consideration received in connection therewith by, the holders of any other class of securities, creditors, or other constituencies of the Company; nor as to the fairness of the amount or nature of any compensation to be paid or payable to any of the officers, directors or employees of the Company, or class of such persons, in connection with the Offer or the Merger, whether relative to the Offer Price and the Per Share Merger Consideration to be paid to the holders of Shares pursuant to the Merger Agreement or otherwise. Goldman Sachs did not express any opinion as to the impact of the Offer or the Merger or any transaction entered into in connection therewith on the solvency or viability of the Company or the Offeror or the ability of the Company or the Offeror to pay its obligations when they come due. Goldman Sachs opinion was necessarily based on economic, monetary market and other conditions, as in effect on, and the information made available to it as of, December 15, 2010 and Goldman Sachs assumed no responsibility for updating, revising or reaffirming its opinion based on circumstances, developments or events occurring after December 15, 2010. Goldman Sachs opinion was approved by a fairness committee of Goldman Sachs.

Goldman Sachs opinion to the Special Committee and the Board was one of many factors taken into consideration by the Special Committee and the Board in making their determinations to recommend and approve the Merger Agreement, the Offer and the Merger.

Goldman Sachs and its affiliates are engaged in investment banking and financial advisory services, commercial banking, securities trading, investment management, principal investment, financial planning, benefits counseling, risk management, hedging, financing, brokerage activities and other financial and non-financial activities and services for various persons and entities. In the ordinary course of these activities and services, Goldman Sachs and its affiliates may at any time make or hold long or short positions and investments, as well as actively trade or effect transactions, in the equity, debt and other securities (or related derivative securities) and financial instruments (including bank loans and other obligations) of the Company, any of their respective affiliates, or third parties, including Icahn Enterprises L.P., an affiliate of the Offeror, which is referred to as Icahn Enterprises, or any of the affiliates and portfolio companies of Icahn Enterprises or its affiliates or any currency or commodity that may be involved in the Offer or the Merger for their own account and for the accounts of their customers. Goldman Sachs has acted as financial advisor to the Company in connection with, and participated in certain of the negotiations leading to, the Offer and the Merger.

Goldman Sachs has provided certain investment banking services to the Company and its affiliates from time to time for which its investment banking division has received, and may receive, compensation, including having acted as financial advisor to the independent director committee of the Board in connection with the dissolution of the Company s power development joint venture with LS Power in December 2008, as financial advisor to the Company in connection with the exchange of the Company s interests in eight power generation facilities and Dynegy Sandy Creek Holdings, LLC and $235 million aggregate principal amount of 7.5% Senior Unsecured Notes due 2015 of a subsidiary of the Company, for cash and shares of Class B common stock of the Company relinquished by LS Power, announced in August 2009, and as financial advisor to the Company in connection with the proposed acquisition of the Company by Denali Parent Inc., an affiliate of the Blackstone Group L.P., announced in August 2010. Goldman Sachs may also in the future provide investment banking services to the Company and its affiliates and Icahn Enterprises and its affiliates and its and its affiliates portfolio companies for which its investment banking division may receive compensation. Affiliates of Goldman Sachs also may have co-invested with Icahn Enterprises and its affiliates from time to time and may have invested in limited partnership units of affiliates of Icahn Enterprises from time to time and may do so in the future.

The Special Committee and the Board selected Goldman Sachs as one of its financial co-advisors because it is an internationally recognized investment banking firm that has substantial experience in transactions similar to the Offer and the Merger. Under the terms of Goldman Sachs engagement with the Company, the Company has agreed to pay Goldman Sachs a fee of $11.5 million in the aggregate, of which $5 million was paid in connection with the announcement in August 2010 of the Prior Merger Agreement and $6.5 million is payable upon consummation of the Offer or the Merger. In addition, the Company has agreed to reimburse Goldman Sachs for its expenses, including attorneys fees and disbursements, and to indemnify Goldman Sachs and related persons against various liabilities, including certain liabilities under the federal securities laws.

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Financial Analyses by Financial Co-Advisors

The following is a summary of the material financial analyses presented by Greenhill and Goldman Sachs, which we refer to collectively as the financial co-advisors, to the Special Committee and the Board in connection with rendering the respective opinions described above. The following summary, however, does not purport to be a complete description of the financial analyses performed by the financial co-advisors, nor does the order of analyses described represent the relative importance or weight given to those analyses by the financial co-advisors. Some of the summaries of the financial analyses include information presented in tabular format. In order to fully understand the financial analyses performed by the financial co-advisors, the tables must be read together with the full text of each summary and are alone not a complete description of the financial co-advisors financial analyses. Considering the data set forth in the tables below without considering the narrative description of the financial analyses, including the methodologies and assumptions underlying the analyses, could create a misleading or incomplete view of the financial co-advisors financial analyses. Except as otherwise noted, the following quantitative information, to the extent that it is based on market data, is based on market data as it existed on or before December 14, 2010, and is not necessarily indicative of current market conditions.

Selected Companies Analysis

The financial co-advisors reviewed and compared certain financial information for the Company to corresponding financial information and public market multiples for the following publicly traded companies in the merchant power generation industry, which are collectively referred to below as the selected companies:

- Calpine Corporation (basic share count includes 44 million shares held in trust for settlement of future bankruptcy creditor claims. Adjusted pro forma for the Conectiv acquisition, the acquisition of the Broad River and South Point facilities, the sale of the Blue Spruce and Rocky Mountain facilities, and the sale of a partial interest in the Freestone facility);

- GenOn Energy, Inc. (formerly RRI Energy, Inc.) (adjusted for the merger of RRI Energy, Inc. and Mirant Corporation at the applicable exchange ratio and based on EBITDA estimates derived by combining estimates for both companies and adjusting for the forecasted synergies for the combined company as publicly disclosed by the parties to that merger); and

- NRG Energy, Inc. (adjusted pro forma for the acquisition of Green Mountain Energy Company and the Cottonwood Generating Station facility).

Although none of the selected companies is directly comparable to the Company, these companies were chosen because they are publicly traded companies with operations that for the purposes of this analysis may be considered similar to certain operations of the Company. With respect to the Company and the selected companies, the financial co-advisors calculated:

- The rent-adjusted enterprise value, referred to as Rent-Adjusted EV, which is defined as the market value of common equity plus the book value of debt and preferred stock, plus an estimate of the present value of anticipated rent expense, plus minority interest, less cash, as a multiple of estimated earnings plus rent expense, before interest, taxes, depreciation and amortization, referred to as Rent-Adjusted EBITDA, for calendar year 2010;

- The Rent-Adjusted EV as a multiple of estimated Rent-Adjusted EBITDA for calendar year 2011; and

- The Rent-Adjusted EV as a multiple of estimated Rent-Adjusted EBITDA for calendar year 2012.

For purposes of this analysis, the multiples for each of the selected companies were calculated using (i) Rent-Adjusted EV amounts derived using the closing price of the Company s and the selected companies common stock on December 14, 2010, and book value of debt, preferred stock, minority interest and cash amount reflected in, and an estimate of the present value of anticipated rent expense under operating leases based on, publicly available information regarding the selected companies as of December 14, 2010 and (ii) Rent-Adjusted EBITDA estimates for the selected companies based on the median estimates of the Company s and the selected

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companies earnings before interest, taxes, depreciation and amortization, referred to as EBITDA, most recently published by Institutional Broker s Estimate System, or IBES, as of December 14, 2010 and publicly available information regarding the selected companies anticipated rent expense as of December 14, 2010. These multiples based on December 14, 2010 data are summarized as follows:

	Selected Companies	
	Range	Median
Rent-Adjusted EV as a Multiple of:		
2010E Rent-Adjusted EBITDA	4.5x 8.5x	5.4x
2011E Rent-Adjusted EBITDA	6.0x 8.5x	6.7x
2012E Rent-Adjusted EBITDA	6.1x 8.9x	7.7x

The multiples for the Company and each of the selected companies were also calculated using (i) Rent-Adjusted EV amounts derived using the closing price of the Company s and the selected companies common stock on August 12, 2010 (the last trading day prior to the announcement of the proposed acquisition of the Company by Denali Parent Inc.), and book value of debt, preferred stock, minority interest and cash amount reflected in, and an estimate of the present value of anticipated rent expense under operating leases based on, publicly available information regarding the Company and the selected companies as of August 12, 2010 (the last trading day prior to the announcement of the proposed acquisition of the Company by Denali Parent Inc.) and (ii) Rent-Adjusted EBITDA estimates for the Company and the selected companies based on the median estimates of the Company s and the selected companies EBITDA, most recently published by IBES, as of August 12, 2010 and publicly available information as of August 12, 2010 regarding the Company s and the selected companies anticipated rent expense.

These multiples based on August 12, 2010 data are summarized as follows:

	Selected Companies		
	Range	Median	Company
Rent-Adjusted EV as a Multiple of:			
2010E Rent-Adjusted EBITDA	4.8x 8.7x	5.6x	7.9x
2011E Rent-Adjusted EBITDA	6.1x 8.3x	6.6x	8.1x
2012E Rent-Adjusted EBITDA	6.1x 8.2x	6.6x	8.0x

Based on these analyses and utilizing their professional judgment and experience, the financial co-advisors applied selected multiples ranging from 6.5x to 8.5x to estimated 2011 Rent-Adjusted EBITDA for the Company derived from the consensus estimates of the Company s 2011 EBITDA most recently published by IBES as of December 14, 2010 and the Company s estimated 2011 rent expense under its Central Hudson lease to derive a range of implied Rent-Adjusted EVs for the Company. The financial co-advisors then calculated an indicative range of implied equity values for the Company by reducing the range of implied Rent-Adjusted EVs by the book value of the Company s net debt as of September 30, 2010 and by the present value of the Company management s estimated future rent expenses under its Central Hudson lease, calculated using a 10% discount rate, based on public presentations made by Company management. By dividing this range of implied equity values by the number of fully-diluted shares of Common Stock outstanding, the financial co-advisors calculated a range of illustrative value indications per share for the Common Stock, summarized as follows:

	Illustrative Per Share Value Indications
Company 2011E IBES Rent-Adjusted EBITDA	$(4.00) $4.83

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Selected Transactions Multiples Analysis

The financial co-advisors analyzed, to the extent publicly available, certain information relating to the following selected pending or previously proposed merchant power corporate transactions:

Date Announced	Acquiror	Target	Status
04/11/2010	RRI Energy, Inc. (merger of equals)	Mirant Corporation	Closed
07/02/2009 (*Second Bid)*	Exelon Corporation	NRG Energy, Inc.	Failed
10/19/2008 (*First Bid)*	Exelon Corporation	NRG Energy, Inc.	Failed
05/21/2008	NRG Energy, Inc.	Calpine Corporation	Failed

For each of the selected transactions, the financial co-advisors calculated and reviewed the enterprise value of the target company as a multiple of estimated EBITDA for the first full fiscal year period beginning after the applicable transaction announcement date, or FY1 EBITDA, based on IBES estimates most recently published prior to the date of the announcement of the applicable transaction. For purposes of this analysis, the target companies enterprise values were generally calculated by multiplying the announced per-share transaction price by the number of that target company s fully diluted outstanding shares as disclosed in the target company s most recent filings with the SEC prior to the announcement of the applicable transaction and adding to that result the target company s net debt as disclosed in the target company s most recent public filings with the SEC prior to the announcement of the applicable transaction. While none of the companies that participated in the selected transactions are directly comparable to the Company, the companies that participated in the selected transactions are publicly traded companies with operations that, for the purposes of analysis, may be considered similar to certain of the Company s operations. The results of this analysis are summarized as follows:

	Selected Transactions[(1)] Range	Median
Enterprise Value as a Multiple of:		
FY1 EBITDA	5.5x 11.4x	6.3x

(1) Excluding NRG s attempted acquisition of Calpine Corporation from the analysis results in a range from 5.5x to 6.4x and a median of 6.2x.

Based on this analysis, and utilizing their professional judgment and experience, the financial co-advisors applied selected multiples ranging from 5.5x to 6.5x to the unadjusted IBES consensus EBITDA estimate for the Company for calendar year 2011 to determine an indicative range of implied enterprise values of the Company. The financial co-advisors then calculated an indicative range of implied equity values for the Company by reducing the range of implied enterprise values by the amount of the Company s net debt as of September 30, 2010. By dividing this range of implied equity values by the number of fully-diluted Common Stock outstanding, the financial co-advisors calculated a range of illustrative value indications per share for the Common Stock, summarized as follows:

	Illustrative Per Share Value Indications