

PLUG POWER INC
Form 8-K
March 23, 2012

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 8 K

CURRENT REPORT

**Pursuant to Section 13 or 15(d) of the
Securities Exchange Act of 1934**

Date of Report (Date of earliest event reported): March 22, 2012

PLUG POWER INC.

(Exact name of registrant as specified in charter)

Delaware
(State or Other
Jurisdiction
of Incorporation)

1-34392
(Commission File Number)

22-3672377
(IRS Employer
Identification No.)

968 Albany Shaker Road, Latham, New York 12110
(Address of Principal Executive Offices) (Zip Code)

(518) 782-7700

(Registrant's telephone number, including area code)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (*see* General Instruction A.2. below):

- ☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
 - ☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
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- o Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

- o Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Item 1.01 Entry into a Material Definitive Agreement.

On March 23, 2012, Plug Power Inc. (the Company) entered into an underwriting agreement (the Underwriting Agreement) with Roth Capital Partners, LLC as the sole manager (the Underwriter), related to the public offering of an aggregate of 13,000,000 shares of the Company's common stock, par value \$0.01 per share (Common Stock), at a public offering price of \$1.15 per share, less the underwriting discounts and commissions payable by the Company (the Offering). The Underwriter will purchase the Common Stock at a discounted price of \$1.0695 per share, representing a seven percent (7.0%) discount to the public offering price. The Company has granted the Underwriter the option to purchase, at the same discounted price, an aggregate of up to an additional 1,950,000 shares of Common Stock as may be necessary to cover over-allotments made in connection with the Offering.

The Offering is expected to close on March 28, 2012, subject to the satisfaction of customary closing conditions. The net proceeds to the Company are expected to be approximately \$13,603,500 after deducting underwriting discounts and commissions and estimated expenses payable by the Company associated with the Offering. The Offering is being made pursuant to the Company's existing shelf registration statement on Form S-3 (File No. 333-173268), which was filed with the Securities and Exchange Commission (the Commission) on April 1, 2011 and declared effective by the Commission on April 8, 2011 and is described in more detail in a prospectus supplement dated March 22, 2012 and to be filed with the Commission on March 23, 2012 and an accompanying base prospectus dated April 1, 2011.

The Underwriting Agreement contains customary representations, warranties, and agreements by the Company, and customary conditions to closing, indemnification obligations of the Company and the Underwriter, including for liabilities under the Securities Act of 1933, as amended, other obligations of the parties, and termination provisions.

Pursuant to the Underwriting Agreement, the Company agreed, subject to certain exceptions, not to offer, issue or sell any shares of Common Stock or securities convertible into or exercisable or exchangeable for shares of Common Stock for a period of ninety (90) days following the Offering without the prior written consent of the Underwriter.

The Underwriting Agreement has been attached hereto as an exhibit to provide investors and security holders with information regarding its terms. It is not intended to provide any other factual information about the Company. The representations, warranties and covenants contained in the Underwriting Agreement were made only for purposes of the Underwriting Agreement and as of specific dates, were solely for the benefit of the parties to the Underwriting Agreement, and may be subject to limitations agreed upon by the contracting parties, including being qualified by confidential disclosures exchanged between the parties in connection with the execution of the Underwriting Agreement.

A copy of the opinion of Goodwin Procter LLP relating to the legality of the issuance and sale of the securities in the Offering is attached as Exhibit 5.1 hereto. A copy of the Underwriting Agreement is filed herewith as Exhibit 1.1 and is incorporated herein by reference. The foregoing description of the Offering by the Company and the documentation related thereto does not purport to be complete and is qualified in its entirety by reference to such Exhibit.

Item 9.01 Financial Statements and Exhibits

(d) Exhibits.

1.1 Underwriting Agreement dated as of March 23, 2012 by and between Plug Power Inc. and Roth Capital Partners, LLC

5.1 Opinion of Goodwin Procter LLP

23.1 Consent of Goodwin Procter LLP (contained in Exhibit 5.1)

99.1 Press release of Plug Power Inc. issued March 22, 2012

99.2 Press release of Plug Power Inc. issued March 23, 2012

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

PLUG POWER INC.

Date: March 23, 2012

By: /s/ Andrew Marsh
Andrew Marsh

Chief Executive Officer.

EXHIBIT INDEX

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