

PLUG POWER INC
Form S-4/A
February 11, 2003
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As filed with the Securities and Exchange Commission on February 11, 2003

Registration No. 333-101567

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

PRE-EFFECTIVE
AMENDMENT NO. 3 TO
FORM S-4
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

PLUG POWER INC.

(Exact Name of Registrant as Specified in Its Charter)

Delaware
(State or Other Jurisdiction of
Incorporation or Organization)

3629
(Primary Standard Industrial
Classification Code Number)

22-3672377
(I.R.S. Employer

Identification Number)

968 Albany-Shaker Road

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Latham, New York 12110

(518) 782-7700

(Address, Including Zip Code, and Telephone Number, Including Area Code, of Registrant's Principal Executive Offices)

Roger Saillant

President and Chief Executive Officer

Plug Power Inc.

968 Albany-Shaker Road

Latham, New York 12110

(518) 782-7700

(Name, Address, Including Zip Code, and Telephone Number, Including Area Code, of Agent For Service)

Copies to:

Stuart M. Cable, P.C.

Merrill M. Kraines, Esq.

Robert P. Whalen, Jr., P.C.

Fulbright & Jaworski, L.L.P.

Goodwin Procter LLP

666 Fifth Avenue

Exchange Place

New York, NY 10103

Boston, Massachusetts 02109

(212) 318-3000

(617) 570-1000

Approximate date of commencement of proposed sale to the public: As soon as possible after the effective date of this registration statement and the consummation of the merger described in this registration statement.

If the securities being registered on this form are being offered in connection with the formation of a holding company and there is compliance with General Instruction G, check the following box. "

If this form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement number for the same offering. "

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If this form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. "

The registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933, as amended, or until this registration statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.

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The boards of directors of Plug Power Inc. and H Power Corp. have each approved an agreement and plan of merger that would result in H Power becoming a wholly-owned subsidiary of Plug Power.

The board of directors of each company believes that the merger is advisable and in the best interests of its stockholders. The board of directors of H Power unanimously recommends that its stockholders vote to adopt and approve the merger agreement and approve the transactions contemplated by the merger agreement, and the board of directors of Plug Power unanimously recommends that its stockholders vote to approve the issuance of shares of Plug Power common stock pursuant to the merger agreement.

If the merger agreement is adopted and approved and the merger is subsequently completed, and you are an H Power stockholder, it is estimated that you will receive approximately .84 shares of Plug Power common stock for each share of H Power common stock you own, which provides an estimated aggregate consideration value of \$47,455,577, or \$4.40 per share, based on the closing price per share of Plug Power's common stock on February 6, 2003. The actual amount of shares of Plug Power common stock you will receive in the merger will depend upon certain factors described in the attached joint proxy statement/prospectus. The minimum aggregate consideration that H Power stockholders can receive in the merger is \$29,675,000, or \$2.75 per share, unless H Power determines not to exercise its right to terminate the merger agreement. In such event, H Power stockholders will not be guaranteed to receive any minimum consideration in the merger. You will also receive cash, without interest, rather than a fractional share of Plug Power common stock that you otherwise would be entitled to receive in the merger. Plug Power common stock is listed on the Nasdaq National Market under the symbol PLUG. At your stockholders meeting, you will be asked to vote on the merger agreement, the merger and the other transactions contemplated by the merger agreement.

If you are a Plug Power stockholder, after the merger you will continue to own your existing shares of Plug Power common stock. At your stockholders meeting, you will be asked to vote on the issuance of shares of Plug Power common stock in the merger.

Stockholders of Plug Power are also being asked to vote upon a proposal to permit Plug Power's employees to exchange options to purchase shares of Plug Power common stock held by them for shares of restricted common stock of Plug Power, in accordance with the terms and conditions described in the accompanying joint proxy statement/prospectus. The board of directors of Plug Power believes that the proposed stock option exchange is advisable and in the best interests of its stockholders and unanimously recommends that Plug Power stockholders vote to approve the stock option exchange.

Your Vote is Very Important. Whether or not you plan to attend your company's stockholders' meeting, please take the time to vote on the proposal(s) submitted for your company's meeting by completing and mailing the enclosed proxy card to us. If you sign, date and mail your proxy card without indicating how you wish to vote, your proxy will be counted as a vote in favor of the proposal(s) submitted at your meeting. If you are an H Power stockholder, failure to return or sign your proxy card will have the effect of a vote against the merger agreement and the merger, unless you attend your stockholders meeting and vote in person. If you are a Plug Power stockholder, failure to return or sign your proxy card will have no effect on the proposal to issue shares of Plug Power common stock in the merger and no effect on the proposal to exchange Plug Power options for shares of restricted stock of Plug Power.

The dates, times and places of the stockholders meetings are as follows:

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For **Plug Power Inc.** stockholders: , 2003 at a.m. local time, at the Albany Marriott, 189 Wolf Road, Albany, New York.

For **H Power Corp.** stockholders: , 2003 at local time at .

Following this letter you will find a formal notice of the special meeting of each company's stockholders and a joint proxy statement/prospectus. The joint proxy statement/prospectus provides you with detailed information concerning the merger agreement, the merger, the issuance of shares of Plug Power common stock pursuant to the merger agreement, the proposed stock option exchange and Plug Power and H Power. You may also obtain more information about Plug Power and H Power from documents that each company has filed with the Securities and Exchange Commission.

Dr. Roger B. Saillant
President and Chief Executive Officer of Plug Power Inc.

Dr. H. Frank Gibbard
Chief Executive Officer of H Power Corp.

Please give all of the information contained or incorporated by reference in the joint proxy statement/prospectus your careful attention. In particular, you should carefully consider the discussion in the section entitled Risk Factors beginning on page 27 of the joint proxy statement/prospectus. Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of the shares to be issued under, or passed upon the adequacy of, this joint proxy statement/prospectus. Any representation to the contrary is a criminal offense.

The accompanying joint proxy statement/prospectus is dated , 2003 and was first mailed to stockholders of Plug Power and H Power on or about , 2003.

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PLUG POWER INC.

968 Albany-Shaker Road

Latham, NY 12110

(518) 782-7700

NOTICE OF SPECIAL MEETING OF STOCKHOLDERS

to be held on _____, 2003

To the Stockholders of Plug Power Inc.:

A special meeting of stockholders of Plug Power Inc. will be held on _____, 2003 at _____ a.m., local time, at the Albany Marriott, 189 Wolf Road, Albany, New York. The board of directors asks you to attend this meeting (in person or by proxy) for the following purposes:

1. To consider and vote on a proposal to approve the issuance of shares of common stock of Plug Power Inc. pursuant to the Agreement and Plan of Merger, dated as of November 11, 2002, by and among Plug Power Inc., a Delaware corporation, Monmouth Acquisition Corp., a Delaware corporation and a wholly-owned subsidiary of Plug Power Inc., and H Power Corp., a Delaware corporation, as amended, a copy of which is attached as Annex A to the accompanying joint proxy statement/prospectus.
2. To consider and vote on a proposal to exchange options to purchase shares of common stock of Plug Power Inc. held by its employees for shares of restricted common stock of Plug Power Inc., in accordance with the terms and conditions described in the accompanying joint proxy statement/prospectus.
3. To transact any other business as may properly come before the special meeting and any adjournments or postponements of the special meeting.

Only stockholders of record of Plug Power Inc. as of the close of business on February 7, 2003 are entitled to notice of, and will be entitled to vote at, the special meeting or any adjournment or postponement thereof. Approval of each of the proposals will require the affirmative vote of the holders of a majority of the shares of Plug Power common stock present in person or by proxy at the special meeting.

We invite you to attend the special meeting because it is important that your shares be represented at the meeting. Whether or not you plan to attend the special meeting, please sign, date and return the enclosed proxy card in the accompanying postage-paid envelope. Please note that, by delivering a proxy to vote at the special meeting, you are also granting a proxy to vote at any adjournments or

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postponements of the special meeting. If you attend the meeting, you may vote in person, which will revoke a signed proxy if you have already sent one in. You may also revoke your proxy at any time before the meeting in the manner described in the accompanying joint proxy statement/prospectus.

BY THE ORDER OF THE BOARD OF DIRECTORS,

Roger Saillant,

President and Chief Executive Officer

Latham, New York

, 2003

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H POWER CORP.

60 Montgomery Street

Belleville, New Jersey 07109

(973) 450-4400

NOTICE OF SPECIAL MEETING OF STOCKHOLDERS

to be held on _____, 2003

To the Stockholders of H Power Corp.:

A special meeting of stockholders of H Power will be held on _____, 2003, at _____ a.m., local time, at _____, for the following purposes:

1. To consider and vote on a proposal to adopt and approve the Agreement and Plan of Merger, dated as of November 11, 2002, by and among Plug Power Inc., a Delaware corporation, Monmouth Acquisition Corp., a Delaware corporation and a wholly-owned subsidiary of Plug Power, and H Power Corp., a Delaware corporation, as amended, a copy of which is attached as Annex A to the accompanying joint proxy statement/prospectus, and to approve the merger as contemplated by the merger agreement.
2. To transact any other business that may properly come before the special meeting and any adjournment or postponement of the special meeting.

Only stockholders of record of H Power common stock at the close of business on February 7, 2003 are entitled to notice of, and will be entitled to vote at, the special meeting or any adjournment or postponement thereof. Approval of the merger agreement will require the affirmative vote of the holders of a majority of the shares of H Power common stock entitled to vote at the special meeting.

Your vote is important. To ensure that your shares are represented at the special meeting, you are urged to complete, date and sign the enclosed proxy card and mail it promptly in the postage-prepaid envelope provided, whether or not you plan to attend the special meeting in person. You may revoke your proxy in the manner described in the accompanying joint proxy statement/prospectus at any time before it has been voted at the special meeting. If you attend the special meeting, you may vote in person even if you returned a proxy.

BY ORDER OF THE BOARD OF DIRECTORS

Dr. H. Frank Gibbard

Chief Executive Officer

Belleville, New Jersey

, 2003

Please do not send your stock certificates at this time. If the merger is completed, you will be sent instructions regarding the surrender of your stock certificates.

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ADDITIONAL INFORMATION

This joint proxy statement/prospectus incorporates important business and financial information about Plug Power from other documents that are not included in or delivered with this document. We have listed the documents containing this information on page 167. This information is available to you without charge upon your written or oral request. You can obtain those documents relating to Plug Power, which are incorporated by reference in this joint proxy statement/prospectus, or any documents referred to in this joint proxy statement/prospectus relating to H Power by requesting them in writing or by telephone from the appropriate company at the following addresses and telephone numbers:

Plug Power Inc.
968 Albany-Shaker Road
Latham, New York 12110
Attn: David A. Neumann

Chief Financial Officer
(518) 782-7700

H Power Corp.
60 Montgomery Street
Belleville, NJ 07109
Attn: William Zang

Chief Financial Officer
(973) 450-4400

If you would like to request documents, you must do so by February 1, 2003 in order to receive them before the special meeting of your company's stockholders. You will not be charged for any of these documents that you request.

For additional information regarding where you can find information about Plug Power and H Power, please see the section entitled "Where You Can Find Additional Information" beginning on page 166 of this joint proxy statement/prospectus. The information contained in this joint proxy statement/prospectus with respect to H Power and its subsidiaries was provided by H Power and the information contained in this joint proxy statement/prospectus with respect to Plug Power and its subsidiaries was provided by Plug Power.

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QUESTIONS AND ANSWERS ABOUT THE MERGER

Q: Why are Plug Power and H Power proposing the merger? (See pages 59 and 72)

A: Plug Power and H Power are proposing the merger because they believe the resulting combined company will be a stronger, better capitalized and more competitive company. Plug Power and H Power believe that the merger will provide significant potential benefits and resources, including:

cash resources to fund the combined company's growth and development;

benefits created from the complementary resources of Plug Power and H Power, including complementary financial, technology and intellectual property resources; and

potential synergy benefits from cost savings and integration of the companies' strategic partners and suppliers.

Overall, both Plug Power and H Power believe that the merger will provide added value to their respective stockholders. Achieving these anticipated benefits, however, is subject to certain risks discussed in the section entitled "Risk Factors" beginning on page 27.

Q: What will I receive in the merger? (See page 79)

A: *H Power Stockholders:*

If the merger is completed, Plug Power and H Power estimate that each H Power stockholder will receive approximately .84 shares of Plug Power common stock for each share of H Power common stock. This amount is an estimate based on (1) an estimated transaction value price of \$48,000,000 based on the estimated value of H Power's net cash of \$34,000,000 (as defined in the merger agreement) as of the date of this joint proxy statement/prospectus; (2) an estimated average trading price of \$5.29 per share of Plug Power common stock and (3) 10,776,548 shares of H Power common stock outstanding as of the date of this joint proxy statement/prospectus. The estimated average trading price is based on the closing price of \$5.23 per share of Plug Power common stock on February 6, 2003, adjusted to \$5.29 per share due to the collar between \$5.29 per share and \$6.47 per share. As a result of the collar, the average trading price per share of Plug Power common stock for purposes of calculating the merger consideration can never be below \$5.29 or above \$6.47, and trading below or above these amounts, respectively, will have no effect on the average trading price for this purpose.

As further described below in this question and answer, the minimum aggregate consideration that H Power stockholders can receive in the merger is \$29,675,000, or \$2.75 per share, unless H Power determines not to exercise its right to terminate the merger agreement, which termination is subject to Plug Power's right to issue additional shares such that the minimum aggregate consideration equals \$29,675,000. If H Power does not exercise its right to terminate the merger agreement, H Power stockholders will not be guaranteed to receive any minimum consideration because the amount that H Power stockholders will receive will decrease below \$2.75 per share if (1) the trading price of Plug Power common stock declines, and/or (2) H Power's net cash (as defined in the merger agreement) declines.

The actual number of shares of Plug Power common stock that each H Power stockholder will receive for each share of H Power common stock may be different than the estimated .84 as the exchange ratio for H Power common stock is determined based in part on:

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the transaction value price, which is determined based in part on the value of H Power's net cash (as defined in the merger agreement) at the effective time of the merger as calculated in accordance with the formula described on page 80 of this joint proxy statement/prospectus;

the average trading price for shares of Plug Power common stock for 10 randomly selected days in the 20 trading day period ending on the second trading day prior to the effective time of the merger, subject to the collar adjustment; and

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the number of shares of H Power common stock outstanding immediately prior to the effective time of the merger (which is not expected to change from the 10,776,548 shares outstanding as of the date of this joint proxy statement/prospectus).

To illustrate the impact of changes in H Power's net cash on the exchange ratio, if H Power's net cash (as defined in the merger agreement) is equal to an amount between \$32,000,000 and \$36,000,000 then the number of shares of Plug Power common stock that each H Power stockholder will receive for each share of H Power common stock will, depending on the number of shares of H Power common stock outstanding immediately prior to the effective time of the merger and the average Plug Power common stock price, range between .66 and .88.

To illustrate the impact of changes in Plug Power's average trading price, if H Power's net cash (as defined in the merger agreement) is equal to \$34,000,000, the estimated value of H Power's net cash as of the date of this joint proxy statement/prospectus as calculated in accordance with the formula described on page 80 of this joint proxy statement/prospectus, then the number of shares of Plug Power common stock that each H Power stockholder will receive for each share of H Power common stock will, depending on the number of shares of H Power common stock outstanding immediately prior to the effective time of the merger and the average Plug Power common stock price, range between .69 and .84.

Each H Power stockholder will also receive cash, without interest, rather than a fractional share of Plug Power common stock that he, she or it would otherwise be entitled to receive in the merger.

In the event that H Power, during the period commencing 5 business days prior to the stockholder meetings of H Power and Plug Power to approve the transactions contemplated by the merger agreement and ending on the second business day prior to such meetings, notifies Plug Power that the product of (1) the anticipated number of shares of Plug Power common stock to be issued in the merger and (2) the reasonably anticipated average Plug Power common stock price is less than \$29,675,000, then H Power may terminate the merger agreement. As further described under the section of this joint proxy statement/prospectus titled "The Merger and Related Transactions - The Merger Agreement - Payment of Termination Fee and Expenses," such right of H Power to terminate the merger agreement is subject to Plug Power's right to issue additional shares of Plug Power common stock such that the aggregate consideration received by H Power stockholders is equal to \$29,675,000.

For a description of how the exchange ratio will be determined, and examples of the exchange ratio based on assumptions regarding H Power's net cash and the average Plug Power common stock price, each at the effective time of the merger, see the section of this joint proxy statement/prospectus titled "The Merger and Related Transactions - The Merger Agreement - Conversion of H Power Common Stock in the Merger." Prior to each company's respective special meeting of stockholders, the current estimated exchange ratio will be posted on Plug Power's website at www.plugpower.com and on H Power's website at www.hpower.com.

Plug Power Stockholders:

If you own shares of Plug Power common stock immediately prior to the merger, you will continue to own those shares immediately after the merger. Based on the estimated exchange ratio of .84, which is subject to potential adjustment, Plug Power stockholders immediately prior to the merger will hold approximately 84.9% of the outstanding shares of Plug Power common stock when the merger is complete.

Q: What are the tax consequences to me of the merger? (See page 100)

A:

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In the opinion of counsel, it is unclear whether the merger will qualify as a tax-free reorganization. It is possible that the H Power stockholders will be required to recognize gain or loss for U.S. federal income tax purposes in connection with the merger, and H Power

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stockholders should vote to approve the merger only if they are willing to approve a taxable transaction in which they recognize gain or loss. However, Plug Power and H Power intend to treat the merger in such a manner that receipt of Plug Power's common stock in the merger would be tax-free to H Power's stockholders. We urge you to consider carefully the discussion of tax consequences related to the merger in this joint proxy statement/prospectus and to review these tax consequences with your tax advisor.

Q: Will H Power stockholders be able to trade the Plug Power common stock that they receive in the merger? (See page 104)

A: Yes. The Plug Power common stock issued in the merger will be registered with the Securities and Exchange Commission and listed on the Nasdaq National Market under the symbol PLUG. All shares of Plug Power common stock that you receive in the merger will be freely transferable unless you are deemed to be an affiliate of H Power prior to the completion of the merger or an affiliate of Plug Power after the completion of the merger, or your shares are subject to other contractual restrictions. Shares of Plug Power common stock received by persons deemed to be affiliates in the merger may only be sold in compliance with Rule 145 under the Securities Act or as otherwise permitted under the Securities Act.

Q: When do Plug Power and H Power expect to complete the merger?

A: Plug Power and H Power expect to complete the merger when all of the conditions to completion of the merger contained in the merger agreement have been satisfied or waived. The stockholders of H Power must approve the merger agreement and the merger at their special stockholders meeting and the stockholders of Plug Power must approve the issuance of shares of Plug Power common stock pursuant to the merger agreement at their special stockholders meeting.

Plug Power and H Power are working toward satisfying these conditions and completing the merger as soon as practicable. Plug Power and H Power currently plan to complete the merger in the first quarter of 2003 following the respective special meetings of Plug Power's and H Power's stockholders, assuming the H Power stockholders approve the merger and the merger agreement, the Plug Power stockholders approve the issuance of shares of Plug Power common stock pursuant to the merger agreement and the other merger conditions are satisfied. However, because the merger is subject to some conditions which are beyond Plug Power's and H Power's control, the exact timing cannot be predicted.

Q: What happens if the merger is not completed? (See page 96)

A: If the merger is not completed, each of Plug Power and H Power will continue as independent companies. In addition, under the terms of the merger agreement, H Power may be required to pay Plug Power a termination fee of \$2,000,000. Also, each party may be required to reimburse the other for out-of-pocket expenses, including legal, accounting, investment banking, printing and other fees, related to this transaction if the merger is not completed. For a more complete discussion of requirements relating to payments of fees and expenses by each of Plug Power and H Power see the section entitled "The Merger and Related Transactions - The Merger Agreement - Payment of Termination Fee and Expenses" in this joint proxy statement/prospectus.

Q: What vote is required to approve the merger? (See page 49)

A: Approval of the merger agreement and the transactions contemplated by the merger agreement requires the affirmative vote of the holders of a majority of the outstanding shares of H Power common stock as of the record date. Although the approval of the stockholders of Plug Power is not required to effect the merger pursuant to Delaware general corporation law, Plug Power's organizational documents or any other regulatory or listing requirements applicable to Plug Power, the board of directors of Plug Power has determined that the issuance of shares of Plug Power common stock pursuant to the merger agreement will be subject to, and the merger agreement requires, the affirmative vote of the holders of a majority of the shares of Plug Power common stock present in person or represented by proxy at the special meeting of

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Plug Power stockholders on such matter. In addition, approval of the stock option exchange is subject to the same voting requirement as the merger.

The board of directors of H Power has approved the merger agreement and the merger. The board of directors of Plug Power has approved the merger agreement and merger including, without limitation, the issuance of shares of Plug Power common stock pursuant to the merger agreement, and has approved the stock option exchange.

Q: How do I vote on the merger? (See pages 48 and 51)

A: First, please review the information contained or incorporated by reference in this joint proxy statement/prospectus, including the annexes, as it contains important information about Plug Power, H Power and the merger. It also contains important information about what each of the boards of directors of Plug Power and H Power, respectively, considered in evaluating the merger. Next, complete and sign the enclosed proxy card, and then mail it in the enclosed return envelope as soon as possible so that your shares can be voted at your company's special meeting of stockholders at which, in the case of H Power, the merger agreement and the merger will be presented and voted upon, or, in the case of Plug Power, the issuance of shares of Plug Power common stock pursuant to the merger agreement and the approval of the stock option exchange will be presented and voted upon. You may also attend the special meeting of your company in person and vote at the special meeting instead of submitting a proxy.

Q: What happens if I don't indicate how to vote my proxy? (See pages 47 and 50)

A: If you sign and send in your proxy, but do not include instructions on how to vote your properly signed proxy card, your shares will be voted FOR adoption and approval of the merger agreement and approval of the merger if you are an H Power stockholder or FOR the issuance of shares of Plug Power common stock pursuant to the merger agreement and FOR the stock option exchange if you are a Plug Power stockholder.

Q: What happens if I don't return a proxy card? (See pages 47 and 50)

A: If you are a stockholder of H Power, not returning your proxy card will have the same effect as voting against adoption and approval of the merger agreement and against approval of the merger. If you are a stockholder of Plug Power, not returning your proxy card will have no effect as to the approval of the proposal to issue shares of Plug Power common stock pursuant to the merger agreement or the proposal to approve the stock option exchange.

Q: Can I change my vote after I have mailed my signed proxy card? (See pages 48 and 51)

A: Yes. You can change your vote at any time before your proxy is voted at the special meeting of your company's stockholders at which, in the case of H Power, the merger agreement and the merger will be presented and voted upon, and in the case of Plug Power, the issuance of shares of Plug Power common stock pursuant to the merger agreement and the proposal to approve the stock option exchange will be presented and voted upon. You can do this in one of three ways:

first, you can send a written notice stating that you would like to revoke your proxy to the appropriate address below;

second, you can complete and submit a later-dated proxy card to the appropriate address below; or

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third, you can attend the special meeting of Plug Power or H Power, as appropriate, and vote in person. Your attendance at the special meeting alone will not revoke your proxy. You must vote at the special meeting in order to revoke your previously submitted proxy.

You should send any notice of revocation or your completed new proxy card, as the case may be, to: