

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

**FORM S-8
REGISTRATION STATEMENT**
*UNDER
THE SECURITIES ACT OF 1933*

NRG Energy, Inc.

(Exact Name of Registrant as Specified in Its Charter)

Delaware

(State or other jurisdiction of incorporation or organization)

41-1724239

(I.R.S. Employer Identification Number)

**910 Louisiana Street
Houston, Texas 77002**

(Address of Principal Executive Offices)(Zip Code)

**NRG Energy, Inc.
Amended and Restated Employee Stock Purchase Plan**
(Full title of the plan)

Christine A. Zoino
Vice President, Deputy General Counsel and Corporate Secretary
NRG Energy, Inc.
910 Louisiana Street
Houston, Texas 77002
(Name and address of agent for service)

(713) 537-3000
(Telephone number, including area code, of agent for service)

Copies to:
Katayun I. Jaffari, Esquire
Mehrnaz Jalali, Esquire
Cozen O'Connor P.C.
1650 Market Street, Suite 2800
Philadelphia, Pennsylvania 19103
(215) 665-2000

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company" and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer	<input checked="" type="checkbox"/>	Accelerated filer	<input type="checkbox"/>
Non-accelerated filer	<input type="checkbox"/>	Smaller reporting company	<input type="checkbox"/>
		Emerging growth company	<input type="checkbox"/>

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(B) of the Securities Act.

EXPLANATORY NOTE

NRG Energy, Inc., a Delaware corporation (“NRG” or the “Registrant”), is filing this registration statement on Form S-8 (this “Registration Statement”) to register an additional 4,400,000 shares of its common stock, \$0.01 par value, issuable under the Registrant’s Amended and Restated Employee Stock Purchase Plan.

Pursuant to General Instruction E of Form S-8, the contents of the Registrant’s registration statements on Forms S-8, [SEC File No. 333-151992, filed on June 27, 2008](#), [SEC File No. 333-182379, filed on June 27, 2012](#), [SEC File No.333-197882 filed on August 5, 2014](#), and [SEC File No.333-217595 filed on May 2, 2017](#) are incorporated herein by reference and made a part of this registration statement, except as amended hereby.

PART I

All information required by Part I to be contained in the prospectus is omitted from this Registration Statement in accordance with Rule 428 under the Securities Act of 1933, as amended (“Securities Act”).

PART II INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The following documents previously filed by the Registrant with the U.S. Securities and Exchange Commission (the “SEC”) under the Securities Exchange Act of 1934, as amended (“Exchange Act”), are incorporated herein by reference:

- [the Registrant’s Annual Report on Form 10-K for the fiscal year ended December 31, 2022, filed with the SEC on February 23, 2023](#);
- the Registrant’s Quarterly Reports on Form 10-Q filed with the SEC on [May 4, 2023](#) and [August 8, 2023](#);
- the Registrant’s Current Reports on Form 8-K filed with the SEC on [February 15, 2023](#), [February 16, 2023](#), [March 1, 2023](#), [March 2, 2023](#), [March 10, 2023](#), [May 2, 2023](#), [May 4, 2023](#), [June 1, 2023](#), [June 1, 2023](#), [June 27, 2023](#), [August 1, 2023](#) and [August 8, 2023](#) (in each case, excluding those portions furnished pursuant to Item 2.02 and Item 7.01, if applicable); and
- the description of the Registrant’s common stock contained in [Exhibit 4.11](#) of the Registrant’s Annual Report on Form 10-K for the fiscal year ended December 31, 2022, filed with the SEC on February 23, 2023.

All documents filed by the Registrant pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act subsequent to the date of this Registration Statement, prior to the filing of a post-effective amendment to this Registration Statement which indicates that all securities offered hereby have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference in this Registration Statement and to be a part hereof from the date of filing of such documents.

Any statement contained in this Registration Statement or in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained or incorporated by reference herein or in any subsequently filed document that is deemed to be incorporated by reference herein modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

Notwithstanding the foregoing, no information is incorporated by reference in this Registration Statement where such information under applicable forms and regulations of the SEC is not deemed to be “filed” under Section 18 of the Exchange Act or otherwise subject to the liabilities of that section, unless the report or filing containing such information indicates that the information therein is to be considered “filed” under the Exchange Act or is to be incorporated by reference in this Registration Statement.

Item 4. Description of Securities.

Not applicable.

Item 5. Interests of Named Experts and Counsel.

Not applicable.

Item 6. Indemnification of Directors and Officers.

Subsection (a) of Section 145 of the General Corporation Law of the State of Delaware (the “DGCL”) empowers a corporation to indemnify any person who was or is a party or who is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation) by reason of the fact that the person is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys’ fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by the person in connection with such action, suit or proceeding if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe the person’s conduct was unlawful.

Subsection (b) of Section 145 empowers a corporation to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that the person acted in any of the capacities set forth above, against expenses (including attorneys’ fees) actually and reasonably incurred by the person in connection with the defense or settlement of such action or suit if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation, except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

Section 145 further provides that to the extent a director or officer of a corporation has been successful on the merits or otherwise in the defense of any action, suit or proceeding referred to in subsections (a) and (b) of Section 145, or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorneys’ fees) actually and reasonably incurred by such person in connection therewith; that indemnification provided for by Section 145 shall not be deemed exclusive of any other rights to which the indemnified party may be entitled; and the indemnification provided for by Section 145 shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of such person’s heirs, executors and administrators. Section 145 also empowers the corporation to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against such person and incurred by such person in any such capacity, or arising out of his status as such, whether or not the corporation would have the power to indemnify such person against such liabilities under Section 145.

Section 102(b)(7) of the DGCL provides that a corporation’s certificate of incorporation may contain a provision eliminating or limiting the personal liability of a director to the corporation or its stockholders or monetary damages for breach of fiduciary duty as a director, provided that such provision shall not eliminate or limit the liability of a director (i) for any breach of the director’s duty of loyalty to the corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the DGCL, or (iv) for any transaction from which the director derived an improper personal benefit.

The Amended and Restated Certificate of Incorporation of the Registrant, as amended, provides, to the fullest extent permitted by the DGCL and except as otherwise provided in its by-laws, no director of the Registrant shall be liable to it or its stockholders for monetary damages for breach of fiduciary duty owed to the Registrant or its stockholders and the Registrant shall indemnify its officers and directors. Furthermore, the Fourth Amended and Restated By-laws of the Registrant provide that each person who was or is made a party or is threatened to be made a party to or is otherwise involved (including involvement as a witness) in any action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he or she is or was a director, officer or employee of the Registrant or a wholly owned subsidiary of the Registrant or, while a director or officer of the Registrant or a wholly owned subsidiary of the Registrant, is or was serving at the request of the Registrant or a wholly owned subsidiary of the Registrant as a director, officer, employee, partner, member, manager, trustee, fiduciary or agent of another corporation or of a partnership, joint venture, limited liability company, trust or other entity or enterprise, including service with respect to an employee benefit plan (an "indemnitee"), shall be indemnified and held harmless by the Registrant to the fullest extent authorized by the DGCL, against all expense, liability and loss (including attorneys' fees, judgments, fines, excise taxes or penalties and amounts paid in settlement) reasonably incurred or suffered by such indemnitee in connection therewith, and such indemnification shall continue as to an indemnitee who has ceased to be a director, officer, employee, partner, member, manager, trustee, fiduciary or agent and shall inure to the benefit of the indemnitee's heirs, executors and administrators. This right of indemnification includes the Registrant's obligation to provide an advance of expenses, although the indemnitee may be required to repay such an advance if there is a judicial determination that the indemnitee was not entitled to the indemnification.

The Sixth Amended and Restated By-laws of the Registrant also permits the Registrant to purchase and maintain insurance on its own behalf and on behalf of any other person who is or was a director, officer, employee or agent of the Registrant or a subsidiary of the Registrant or was serving at request of the Registrant or a subsidiary of the Registrant. The Registrant has purchased and maintains such insurance.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

Exhibit No. Description

- [4.1](#) [Amended and Restated Certificate of Incorporation of NRG Energy, Inc. \(incorporated herein by reference to Exhibit 3.1 to the Registrant's Quarterly Report on Form 10-Q \(File No. 001-15891\) filed with the Securities and Exchange Commission on May 3, 2012\)](#)
- [4.2](#) [Certificate of Amendment to Certificate of Incorporation of NRG Energy, Inc. \(incorporated herein by reference to Exhibit 3.1 to the Registrant's Current Report on Form 8-K \(File No. 001-15891\) filed with the Securities and Exchange Commission on December 14, 2012\)](#)
- [4.3](#) [Sixth Amended and Restated By-Laws of NRG Energy, Inc. \(incorporated herein by reference to Exhibit 3.2 the Registrant's Current Report on Form 8-K \(File No. 001-15891\) filed with the Securities and Exchange Commission on December 2, 2022\)](#)
- [4.4](#) [NRG Energy, Inc. Amended and Restated Employee Stock Purchase Plan \(incorporated herein by reference to Exhibit 10.1 of Registrant's Current Report on Form 8-K \(File No. 001-15891\), filed on May 2, 2023\).](#)
- [5.1](#) [Opinion of Cozen O'Connor with respect to the legality of the common stock being registered*](#)
- [23.1](#) [Consent of KPMG LLP, Independent Registered Public Accounting Firm of the Registrant*](#)
- [23.2](#) [Consent of Cozen O'Connor \(included in Exhibit 5.1 to this Registration Statement\)*](#)
- [24.1](#) [Powers of Attorney \(included on the signature page of this Registration Statement\)*](#)
- [107](#) [Filing Fee Table*](#)

*Filed herewith

Item 9. Undertakings

(a) Rule 415 Offering. The undersigned Registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933, as amended;

(ii) To reflect in the prospectus any facts or events arising after the effective date of this registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in this registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Securities and Exchange Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20 percent change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement; and

(iii) To include any material information with respect to the plan of distribution not previously disclosed in this registration statement or any material change to such information in this registration statement;

provided, however, that paragraphs (a)(1)(i) and (a)(1)(ii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Securities and Exchange Commission by the Registrant pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in this registration statement.

(2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(b) Subsequent Exchange Act Documents. The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the Registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(c) Indemnification. Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act of 1933 and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act of 1933 and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Houston, State of Texas, on August 8, 2023.

NRG, ENERGY, INC.

By: Mauricio Gutierrez

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each of the undersigned constitutes and appoints each of Brian E. Curci and Christine A. Zoino, each acting alone, their true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution, for such person and in their name, place and stead, in any and all capacities, to sign this Registration Statement on Form S-8 and all post-effective amendments thereto, of NRG Energy, Inc., and to file the same, with all exhibits thereto, and other document in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, each acting alone, full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming that any such attorney-in-fact and agent, or his or her substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on August 8, 2023.

Signature	Title
<u>/s/ Mauricio Gutierrez</u> Mauricio Gutierrez	President, Chief Executive Officer and Director (Principal Executive Officer)
<u>/s/ Woo-Sung Chung</u> Woo-Sung Chung	Chief Financial Officer (Principal Financial Officer)
<u>/s/ Emily Picarello</u> Emily Picarello	Corporate Controller (Principal Accounting Officer)
<u>/s/ Lawrence S. Coben</u> Lawrence S. Coben	Chair of the Board
<u>/s/ E. Spencer Abraham</u> E. Spencer Abraham	Director
<u>/s/ Antonio Carrillo</u> Antonio Carrillo	Director
<u>/s/ Matthew Carter, Jr.</u> Matthew Carter, Jr.	Director
<u>/s/ Heather Cox</u> Heather Cox	Director
<u>/s/ Elisabeth B. Donohue</u> Elisabeth B. Donohue	Director
<u>/s/ Paul W. Hobby</u> Paul W. Hobby	Director
<u>/s/ Alexandra Pruner</u> Alexandra Pruner	Director
<u>/s/ Anne C. Schaumburg</u> Anne C. Schaumburg	Director



August 8, 2023

NRG Energy, Inc.
910 Louisiana Street
Houston, Texas 77002

Ladies and Gentlemen:

We have acted as counsel to NRG Energy, Inc., a Delaware corporation (the "Company"), in connection with the preparation of the Company's registration statement on Form S-8, filed with the U.S. Securities and Exchange Commission (the "Commission") on or about the date first written above (as amended from time to time, the "Registration Statement") under the Securities Act of 1933, as amended (the "Securities Act"), with respect to the registration of 4,400,000 shares (the "Plan Shares") of the Company's common stock, par value \$0.01 per share (the "Common Stock"), pursuant to the terms of the NRG Energy, Inc. Amended and Restated Employee Stock Purchase Plan (the "Plan").

As counsel to the Company, we have examined and are familiar with originals or copies, certified or otherwise identified to our satisfaction of the Plan; the Certificate of Incorporation of the Company as currently in effect; the Bylaws of the Company as currently in effect the Registration Statement, together with the exhibits filed as part thereof or incorporated therein by reference, covering the registration of the Plan Shares under the Securities Act; and such other corporate records, certificates, other documents, and questions of law as we have considered necessary or appropriate for the purposes of this opinion.

In our examination, we have assumed the legal capacity of all natural persons, the genuineness of all signatures, the authenticity of all documents submitted to us as originals, the conformity to original documents of all documents submitted to us as certified or photostatic copies, and the authenticity of the originals of such copies. As to any facts material to this opinion that we did not independently establish or verify, we have relied upon oral or written statements and representations of officers and other representatives of the Company. We have made no independent investigation or other attempt to verify the accuracy of any of such information or to determine the existence or non-existence of any other factual matters.

Based on the foregoing, and subject to the assumptions, qualifications and limitations set forth herein, we are of the opinion that the Plan Shares have been duly authorized and when the Plan Shares have been duly issued and delivered pursuant to the terms of the Plan, and in a manner and for the consideration stated in the Registration Statement and the prospectus thereto, such Plan Shares will be validly issued, fully paid and non-assessable.

We express no opinion as to the applicability or compliance with or effect of federal law or the law of any other jurisdiction other than the General Corporation Law of the State of Delaware (including the statutory provisions, the applicable provisions of the Delaware Constitution and reported judicial decisions interpreting the foregoing).

We hereby consent to the filing of this opinion as an exhibit to the Registration Statement. In giving such consent, we do not hereby admit that we are in the category of persons whose consent is required under Section 7 of the Securities Act, or the rules and regulations of the Securities and Exchange Commission. This opinion is being delivered in accordance with the requirements of Item 601(b)(5) of Regulation S-K under the Securities Act.

This opinion has been prepared for your use in connection with the issuance of the Plan Shares under the Plan and speaks as of the date hereof. We assume no obligation to advise you of any fact, circumstance, event or change in the law or the facts that may hereafter be brought to our attention, whether or not such occurrence would affect or modify the opinions expressed herein.

It is understood that this opinion is to be used only in connection with the issuance of the Plan Shares while the Registration Statement is in effect.

Very truly yours,
/s/ Cozen O'Connor P.C.



KPMG LLP
1601 Market Street
Philadelphia, PA 19103-2499

Consent of Independent Registered Public Accounting Firm

We consent to the use of our reports dated February 23, 2023, with respect to the consolidated financial statements of NRG Energy, Inc., and the effectiveness of internal control over financial reporting, incorporated herein by reference.

/s/ KPMG LLP

Philadelphia, Pennsylvania
August 8, 2023

Calculation of Filing Fee Tables

Form S-8

(Form Type)

NRG Energy, Inc.

(Exact Name of Registrant as Specified in its Charter)

Table 1 – Newly Registered Securities

Security Type	Security Class Title	Fee Calculation Rule	Amount Registered(1)	Proposed Maximum Offering Price per Unit(2)	Maximum Aggregate Offering Price	Fee Rate	Amount of Registration Fee
Equity	Common Stock, par value \$0.01 per share		4,400,000	\$ 37.35	\$ 164,340,000	\$0.00011020	\$ 18,110.27
Total Offering Amounts					\$	\$0.00011020	\$ 18,110.27
Total Fee Offsets							\$ 0.00
Net Fee Due							\$ 18,110.27

- (1) This Registration Statement shall also cover an indeterminate number of additional shares of common stock of the Registrant which may become issuable under the Amended and Restated Employee Stock Purchase Plan described herein by reason of any stock dividend, stock split, or any other similar transactions.
- (2) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(h) under the Securities Act, based upon the average of the high and low selling prices of the Common Stock on August 2, 2023, as reported on the New York Stock Exchange.

Table 2 – Fee Offset Claims and Sources

N/A