

Westinghouse Solar, Inc.
Form 10-K/A
June 14, 2011

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

FORM 10-K/A
Amendment No. 1

(Mark one)

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE
SECURITIES EXCHANGE ACT OF 1934

For the fiscal year ended December 31, 2010

or

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE
SECURITIES EXCHANGE ACT OF 1934

For the transition period from _____ to _____

Commission file number: 001-33695

Westinghouse Solar, Inc.
(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

90-0181035
(I.R.S. Employer
Identification No.)

1475 S. Bascom Ave., Suite 101
Campbell, CA
(Address of principal executive offices)

95008
(Zip Code)

(408) 402-9400
(Registrant's telephone number, including area code)

Securities registered pursuant to Section 12(b) of the Act:

Common Stock, par value \$0.001 per share
(Title of each class)

The NASDAQ Stock Market LLC
(Name of each exchange on which registered)

Securities registered pursuant to Section 12(g) of the Exchange Act:
None

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Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or 15(d) of the Act. Yes No

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such requirements for the past 90 days. Yes No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Website, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes No

DOCUMENTS INCORPORATED BY REFERENCE

Selected portions of the Registrant's definitive proxy statement for the 2011 annual meeting of stockholders are incorporated by reference into Part III of this Form 10-K.

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Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K (§229.405 of this chapter) is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference to Part III of this Form 10-K or any amendment to this Form 10-K. x

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

Large accelerated filer o
Non-accelerated filer o
(Do not check if a smaller reporting company)

Accelerated filer o
Smaller reporting company x

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act). Yes o No x

The aggregate market value of the Common Stock held by non-affiliates of the registrant, based on the closing sales price of the Common Stock as reported on The NASDAQ Capital Market on June 30, 2010, was approximately \$21.8 million. For purposes of this computation, all officers and directors of the registrant are deemed to be affiliates.

As of February 24, 2011, 46,294,093 shares of common stock of the registrant were outstanding.

EXPLANATORY NOTE

The sole purpose of this amendment is to amend Exhibit 10.26 to the registrant's Annual Report on Form 10-K for the year ended December 31, 2010, as originally filed with the SEC on March 2, 2011 (the "Original 10-K"), to include certain portions of the Exhibit that had previously been omitted (or "redacted") pursuant to a request for confidential treatment, and to make corresponding changes to the text of Item 15 and the Exhibit Index. This amendment provides a revised redacted version of Exhibit 10.26. Accordingly, Exhibit 10.26 is hereby amended and restated in its entirety. Pursuant to Rule 12b-15 under the Securities and Exchange Act of 1934, as amended, the registrant is including only Item 15 of Part IV below.

Except as described above, this amendment does not amend, update or change the financial statements of the Company or any other items or disclosures contained in the Original 10-K and does not otherwise reflect events occurring after the original filing date of the Original 10-K. Accordingly, this amendment should be read in connection with the Company's filings with the SEC subsequent to the filing of the Original 10-K.

PART IV

Item 15. Exhibits, Financial Statement Schedules

Exhibit

Number Description

- | | |
|-----|--|
| 2.1 | Agreement of Merger and Plan of Reorganization, dated August 11, 2006, by and among Fairview Energy Corporation, Inc., ASI Acquisition Sub, Inc. and Akeena Solar, Inc. (incorporated herein by reference to Exhibit 2.1 to our Current Report on Form 8-K, dated August 11, 2006 (the “August 2006 8-K”)) |
| 3.1 | Certificate of Incorporation (incorporated herein by reference to Exhibit 3.1 to our Current Report on Form 8-K, dated August 3, 2006) |
| 3.2 | By-laws (incorporated herein by reference to Exhibit 3.2 to our Current Report on Form 8-K, dated August 3, 2006) |
| 3.3 | Certificate of Amendment to the Certificate of Incorporation (incorporated herein by reference to Exhibit 3.3 to the August 2006 8-K) |
| 3.4 | Certificate of Amendment to the Certificate of Incorporation (incorporated herein by reference to Exhibit 3.4 to our Current Report on Form 10-Q filed on July 30, 2010) |
| 4.1 | Form of Restricted Stock Agreement (incorporated herein by reference to Exhibit 4.1 to our Annual Report on Form 10-KSB filed with the SEC on March 29, 2007) |
| 4.2 | Registration Rights Agreement (incorporated herein by reference to Exhibit 10.2 to the March 8, 2007 8-K) |
| 4.3 | Form of Warrant to Purchase Common Stock, dated November 2007 (incorporated herein by reference to Exhibit 4.1 to our Current Report on Form 8-K, dated November 1, 2007) |
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| 4.5 | Certificate of Designation with respect to Series A Preferred Stock, as filed on March 3, 2009 (incorporated by reference to Exhibit 4.2 to our Current Report on Form 8-K filed on March 4, 2009) |
| 4.6 | Form of Securities Purchase Warrant (incorporated by reference to Exhibit 4.6 to our Current Report on Form 8-K filed on October 22, 2009) |
| 4.7 | Form of Series I Common Stock Purchase Warrant (incorporated by reference to Exhibit 4.1 to our Current Report on Form 8-K filed on May 17, 2010) |
| 4.8 | Form of Series J Common Stock Purchase Warrant (incorporated by reference to Exhibit 4.1 to our Current Report on Form 8-K filed on October 8, 2010) |

- 4.9 Form of Series K Common Stock Purchase Warrant (incorporated by reference to Exhibit 4.1 to our Current Report on Form 8-K filed on February 17, 2011)
- 4.10 Certificate of Designation with respect to Series B Preferred Stock, as filed on February 17, 2011 (incorporated by reference to Exhibit 4.2 to our Current Report on Form 8-K filed on February 17, 2011)
- 10.1 ‡Akeena Solar, Inc. 2006 Stock Incentive Plan (incorporated herein by reference to Exhibit 10.1 to the August 14, 2006 8-K)
- 10.1a ‡Akeena Solar, Inc. 2006 Stock Incentive Plan Form of Restricted Stock Agreement (incorporated herein by reference to Exhibit 10.11 to the August 14, 2006 8-K)
- 10.1b ‡Akeena Solar, Inc. 2006 Stock Incentive Plan Form of Nonqualified Stock Option Agreement (incorporated herein by reference to Exhibit 10.11 to the August 14, 2006 8-K)
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- 10.5 Form of Lockup Agreement (incorporated herein by reference to Exhibit 10.4 to the August 2006 8-K)
- 10.6 ‡Restricted Stock Agreement, dated December 29, 2006, between the Company and Edward Roffman (incorporated herein by reference to Exhibit 10.8 to our Annual Report on Form 10-KSB filed with the SEC on March 29, 2007)
- 10.7 Form of Director and Officer Indemnification Agreement (incorporated herein by reference to Exhibit 10.9 to the August 2006 8-K)
- 10.8 ‡Second Amendment to the Akeena Solar, Inc. 2006 Incentive Stock Plan (incorporated herein by reference to Exhibit 10.11 to our Quarterly Report on Form 10-KSB filed with the SEC on March 19, 2008)
- 10.9 Standard Industrial/Commercial Single-Tenant Lease - Net, dated September 30, 2002, between Mattiuz Children's Trust and the Company, as amended by First Addendum to Standard Industrial/Commercial Single-Tenant Lease — Net, dated April 26, 2004, Second Addendum Standard Industrial/Commercial Single-Tenant Lease — Net, dated April 30, 2005 and Third Addendum to Standard Industrial/Commercial Single-Tenant Lease, dated July 7, 2006 (incorporated herein by reference to Exhibit 10.11 to our Current Report on Form 8-K/A, dated August 11, 2006 (the "August 2006 8-K/A"))
- 10.10 Securities Purchase Agreement, dated March 8, 2007, between the Company and the purchasers signatory thereto (incorporated herein by reference to Exhibit 10.1 to the March 8, 2007 8-K)
- 10.11 Securities Purchase Agreement, dated May 25, 2007, between the Company and the purchasers signatory thereto (incorporated herein by reference to Exhibit 10.1 to our Current Report on Form 8-K, dated June 4, 2007)

10.12 Registration Rights Agreement (incorporated herein by reference to Exhibit 10.2 to our Current Report on Form 8-K, dated June 4, 2007)

10.13 Securities Purchase Agreement, dated November 1, 2007, between the Company and the investors signatory thereto (incorporated herein by reference to Exhibit 10.1 to our Current Report on Form 8-K, dated November 1, 2007)

10.14 Stock Purchase Agreement by and among Akeena Solar, Inc. and the Purchaser(s) (as defined therein), dated as of February 26, 2009 (incorporated by reference to Exhibit 10.1 to our Current Report on Form 8-K filed on February 26, 2009)

- 10.15 Loan and Security Agreement (Cash Collateral Account) with Comerica Bank, dated as of February 10, 2009 (incorporated by reference to Exhibit 10.1 to our Current Report on Form 8-K filed on March 9, 2009)
- 10.16 Amendment Agreement by and among Akeena Solar, Inc. and the Purchasers (as defined therein), dated as of June 1, 2009 (incorporated by reference to Exhibit 10.2 to our Current Report on Form 8-K filed on June 1, 2009)
- 10.17 Securities Purchase Agreement by and among Akeena Solar, Inc. and the Purchaser (as defined therein), dated as of October 21, 2009 (incorporated by reference to Exhibit 10.18 to our Current Report on Form 8-K filed on October 22, 2009)
- 10.18 ‡ Third Amendment to the Akeena Solar, Inc. 2006 Incentive Stock Plan (incorporated by reference to Exhibit 10.17 to our Annual Report on Form 10-K filed on March 16, 2009)
- 10.19 Stock Purchase Agreement by and among Akeena Solar, Inc. and the Purchaser (as defined therein), dated as of May 17, 2010 (incorporated herein by reference to Exhibit 10.1 to our Current Report on Form 8-K filed on May 17, 2010)
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- 10.21 § Master Assignment and Assumption Agreement by and among Akeena Solar, Inc., Real Goods Energy Tech, Inc. and SunRun Inc., dated as of October 12, 2010 (incorporated herein by reference to Exhibit 10.2 to our Current Report on Form 10-Q filed on November 10, 2010)
- 10.22 § Supply and Warranty Agreement by and between Akeena Solar, Inc. and Real Goods Energy Tech, Inc., dated as of October 7, 2010 (incorporated herein by reference to Exhibit 10.3 to our Current Report on Form 10-Q filed on November 10, 2010)
- 10.23 Business Financing Agreement by and among Akeena Solar, Inc. its subsidiaries and Bridge Bank, National Association, dated February 15, 2011.
- 10.24 Securities Purchase Agreement by and among Akeena Solar, Inc. and the Purchaser (as defined therein), dated as of February 17, 2011 (incorporated herein by reference to Exhibit 10.1 to our Current Report on Form 8-K filed on February 17, 2011)
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- 10.28 Trade Name Agreement by and among Akeena Solar, Inc. and Westinghouse Electric Corporation, dated on January 1, 2010.

21.1 List of Subsidiaries

23.1 Consent of Independent Registered Accounting Firm Burr Pilger Mayer Inc.

31.1 * Section 302 Certification of Principal Executive Officer

31.2 * Section 302 Certification of Principal Financial Officer

32.1 * Section 906 Certification of Principal Executive Officer

32.2 * Section 906 Certification of Principal Financial Officer

* Filed herewith.

§ Confidential treatment has been granted with respect to certain confidential portions of this exhibit pursuant to Rule 24b-2 under the Securities Exchange Act of 1934, which confidential portions have been omitted from the exhibit and filed separately with the Securities and Exchange Commission.

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‡ Management compensation agreement or plan.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the Registrant has duly caused this Report to be signed on its behalf by the undersigned, thereunto duly authorized.

Dated: June 14, 2011

WESTINGHOUSE SOLAR, INC.

/s/ Barry Cinnamon

Barry Cinnamon
President and Chief Executive Officer
(Principal Executive Officer)

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