

# SPARK ENERGY, INC.

## **FORM 8-K** (Current report filing)

Filed 12/16/15 for the Period Ending 12/15/15

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**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): December 15, 2015**

**Spark Energy, Inc.**

**(Exact Name of Registrant as Specified in its Charter)**

**Delaware**  
**(State or Other Jurisdiction**  
**of Incorporation)**

**001-36559**  
**(Commission**  
**File Number)**

**46-5453215**  
**(IRS Employer**  
**Identification Number)**

**12140 Wickchester Ln, Suite 100**  
**Houston, Texas 77079**  
**(Address of Principal Executive Offices)**  
**(Zip Code)**

**(713) 600-2600**  
**(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:

- ☐ 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)
  - ☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
  - ☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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#### Item 1.01 Entry Into a Material Definitive Agreements.

On December 15, 2015, Spark HoldCo, LLC (“**Spark HoldCo**”), a Delaware limited liability company and a subsidiary of Spark Energy, Inc., a Delaware corporation (the “**Company**”), entered into a Master Service Agreement (the “**Agreement**”) with Retailco Services, LLC, a Texas limited liability company (“**Servco**”), and NuDevco Retail, LLC, a Texas limited liability company (“**NuDevco Retail**”). The Agreement becomes effective on January 1, 2016, and is for a one-year term and renews automatically for successive one-year terms unless the Agreement is terminated.

Servco will provide operational support services (the “**Services**”) under the Agreement, such as: enrollment and renewal transaction services; customer billing and transaction services; electronic payment processing services; customer services and information technology infrastructure and application support services.

Spark HoldCo will pay Servco a monthly fee consisting of a monthly fixed fee plus a variable fee per customer per month depending on market complexity. Fees will be fixed for the first six months of the Agreement, and thereafter the parties will meet quarterly to adjust fees and service levels based on changes in assumptions. The Agreement provides that Servco will perform the Services in accordance with specified service levels (the “**Service Levels**”), and in the event Servco fails to meet the Service Levels, Spark HoldCo will receive a credit against invoices or a cash payment (the “**Penalty Payment**”). The amount of the Penalty Payment is initially limited to \$138,000 monthly, but adjusts annually based upon the amount of fees charged by Servco for Services over the prior year. Furthermore, in the event that the Service Levels are not satisfied and Spark HoldCo suffers damages in excess of \$500,000 as a result of such failure, Servco will make a payment (the “**Damage Payment**”) to Spark HoldCo for the amount of the damages (less the amount of any Penalty Payments also due). The Agreement provides that in no event may the Penalty Payments and Damage Payments exceed \$2,500,000 in any twelve-month period.

In connection with the Agreement, certain of Spark HoldCo’s employees who previously provided Services similar to those to be provided under the Agreement will become employees of Servco, and certain contracts, assets, and intellectual property will be assigned to Servco. In addition, in order to facilitate the Services, Spark HoldCo has granted Servco a non-transferable, non-exclusive, royalty-free, revocable and non-sub-licensable license to use certain of its intellectual property.

Either Spark HoldCo or Servco is permitted to terminate the Agreement: (a) upon thirty (30) days prior written notice for convenience and without cause; (b) upon a material breach and written notice to the breaching party when the breach has not been cured thirty (30) days after such notice; (c) upon written notice if Servco is unable for any reason to resume performance of the services within sixty (60) days following the occurrence of an event of force majeure; and (d) upon certain events of insolvency, assignment for the benefit of creditors, cessation of business, or filings of petitions for bankruptcy or insolvency proceedings by the other party. In the event the Agreement is terminated for any reason, Servco will provide certain transition services to Spark HoldCo following the termination, not to exceed six months at the then current fees.

Servco and Spark HoldCo have agreed to indemnify each other from: (a) willful misconduct or negligence of the other; (b) bodily injury or death of any person or damage to real and/or tangible personal property caused by the acts or omission of the other; (c) any breach of any representation, warranty, covenant or other obligation of the other party under the Agreement, and (d) other standard matters. Subject to certain exceptions (including indemnification obligations, the obligations to pay fees and the Penalty Payments), each parties’ liability is limited to \$2,500,000 of direct damages.

Servco is owned indirectly by W. Keith Maxwell III, who serves as the Chairman of the Board of Directors of the Company and who indirectly owns NuDevco Retail Holdings, LLC and NuDevco Retail, which collectively own all of the Company’s outstanding Class B common stock (representing 77.63% of the Company’s voting power). NuDevco Retail has entered into the Agreement for the limited purpose of guarantying up to \$2,000,000 of any payment that Servco may be required to make under the Agreement.

The terms of the Agreement were unanimously approved by the Company’s board of directors (the “**Board**”) after a special committee of the Board (the “**Special Committee**”) recommended that the Board approve the Agreement. The Special Committee was composed exclusively of independent members of the Board.

The Company intends to submit a FOIA Confidential Treatment Request to the Securities and Exchange Commission pursuant to Rule 24b-2 under the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”) and Rule 406 of the Securities Act of 1933, as amended (the “**Securities Act**”), requesting that it be permitted to redact certain portions of the Agreement. The omitted material will be included in the request for confidential treatment. The foregoing summary does not purport to be complete and is qualified in its entirety by reference to the Agreement, a redacted copy of which will be attached as an exhibit to the Annual Report on Form 10-K for the fiscal year ended December 31, 2015.

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**Item 2.01 Completion of Acquisition or Disposition of Assets.**

The disclosures under Item 1.01 of this Current Report on Form 8-K regarding the transfer of certain employees, contracts, assets and intellectual property under the Agreement, are incorporated by reference into this Item 2.01.

**Item 7.01 Regulation FD Disclosure.**

On December 15, 2015, the Company issued a press release announcing the Agreement, a copy of which is attached hereto as Exhibit 99.1 and is incorporated herein by reference.

The information in this Item 7.01, including Exhibit 99.1, is being furnished and shall not be deemed “filed” for purposes of Section 18 of the Exchange Act, or otherwise subject to the liabilities of Section 18, and shall not be incorporated by reference in any filing under the Securities Act or the Exchange Act, except as set forth by specific reference in such filing.

**Item 9.01 Financial Statements and Exhibits.**

(d) Exhibits

Exhibit Number	Description
99.1	Press Release of Spark Energy, Inc. dated December 15, 2015

## 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.

Dated: December 16, 2015

**Spark Energy, Inc.**

By: /s/ Georganne Hodges

Name: Georganne Hodges

Title: Chief Financial Officer

(Principal Financial Officer and Principal Accounting Officer)

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## EXHIBIT INDEX

Exhibit Number	Description
99.1	Press Release of Spark Energy, Inc. dated December 15, 2015

## **Spark Energy, Inc. Announces Strategic Relationship**

HOUSTON, December 15, 2015 - Spark Energy, Inc. (NASDAQ: SPKE), a Delaware corporation (“Spark”) and a leading retail provider of electricity and natural gas, has entered into a strategic relationship with an affiliate, Retailco Services, LLC (“Retailco”). Retailco was formed by W. Keith Maxwell III, Spark’s founder and majority shareholder, to provide operational services to Spark and other affiliates of Mr. Maxwell. Effective January 1, 2016, Retailco will provide a multitude of Spark’s back office functions including customer operations and information technology services.

“We are extremely excited for many reasons, none more important than believing that Retailco’s services will provide our growing customer base an improved operations platform,” said Nathan Kroeker, Spark’s President and CEO. “The formation of this relationship represents a significant step forward in executing on our long-term M&A and organic growth strategy by providing more streamlined operations. Also, in our continued effort to drive down costs, with Retailco’s proposed increased scale and their plans to reduce the overall cost-to-serve, we expect that Spark will immediately realize approximately 5-8% savings in overall general and administrative expenses.”

Michael Kuznar, a retail energy veteran, has been appointed President of Retailco. “I am excited for the opportunity to lead a high-performing team with goals to provide Spark and its affiliates improved customer services and operations, comprehensive integration services, and improvements in overall cost-to-serve,” said Kuznar.

The master service agreement between the parties was approved by a special committee, formed by the Board of Directors, consisting solely of independent directors. Spark is filing a Form 8-K with the Securities and Exchange Commission in connection with the execution of this agreement that will include a summary of key terms.

### **About Spark Energy, Inc.**

Spark Energy, Inc. is an established and growing independent retail energy services company founded in 1999 that provides residential and commercial customers in competitive markets across the United States with an alternative choice for their natural gas and electricity. Headquartered in Houston, Texas, Spark currently operates in 16 states and serves 66 utility territories. Spark offers its customers a variety of product and service choices, including stable and predictable energy costs and green product alternatives.

### **Cautionary Note Regarding Forward-Looking Statements**

This press release contains forward-looking statements that are subject to a number of risks and uncertainties, many of which are beyond our control. These statements within the meaning of Section 27A of the Securities Act of 1933, as amended (the “Securities Act”) and Section 21E of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), can be identified by the use of forward-looking terminology including “may,” “should,” “likely,” “will,” “believe,” “expect,” “anticipate,” “estimate,” “continue,” “plan,” “intend,” “project,” or other similar words. All statements, other than statements of historical fact included in this release, regarding strategy, future operations, financial position, estimated revenues and losses, projected costs, prospects, plans, objectives and beliefs of management are forward-looking statements. Forward-looking statements appear in a number of places in this release and may include statements about business strategy and prospects for growth, customer acquisition costs, ability to pay cash dividends, cash flow generation and liquidity, availability of terms of capital, competition and government regulation and general

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economic conditions. Although we believe that the expectations reflected in such forward-looking statements are reasonable, we cannot give any assurance that such expectations will prove correct.

The forward-looking statements in this report are subject to risks and uncertainties. Important factors which could cause actual results to materially differ from those projected in the forward-looking statements include, but are not limited to:

- changes in commodity prices,
- extreme and unpredictable weather conditions,
- the sufficiency of risk management and hedging policies,
- customer concentration,
- federal, state and local regulation,
- key license retention,
- increased regulatory scrutiny and compliance costs,
- our ability to borrow funds and access credit markets,
- restrictions in our debt agreements and collateral requirements,
- credit risk with respect to suppliers and customers,
- level of indebtedness,
- changes in costs to acquire customers,
- actual customer attrition rates,
- actual bad debt expense in non-POR markets,
- accuracy of internal billing systems,
- ability to successfully navigate entry into new markets,
- whether our majority shareholder or its affiliates offers us acquisition opportunities on terms that are commercially acceptable to us,
- ability to successfully and efficiently integrate acquisitions into our operations,
- competition, and
- other factors discussed in “Risk Factors” in our Form 10-K for the year ended December 31, 2014, our quarterly reports on Form 10-Q for 2015 and in our other public filings and press releases.

You should review the risk factors and other factors disclosed throughout our Report on Form 10-K for the year ended December 31, 2014 and the Quarterly Reports on Form 10-Q for 2015, all of which are filed with the Securities and Exchange Commission, which could cause our actual results to differ materially from those contained in any forward-looking statement. All forward-looking statements speak only as of the date of this release. Unless required by law, we disclaim any obligation to publicly update or revise these statements whether as a result of new information, future events or otherwise. It is not possible for us to predict all risks, nor can we assess the impact of all factors on the business or the extent to which any factor, or combination of factors, may cause actual results to differ materially from those contained in any forward-looking statements.

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