

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 18, 2022

SM Energy Company
(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of incorporation)

001-31539
(Commission File Number)

41-0518430
(I.R.S. Employer Identification No.)

1700 Lincoln Street, Suite 3200
Denver, Colorado
(Address of principal executive offices)

80203
(Zip Code)

Registrant's telephone number, including area code: **(303) 861-8140**

Not applicable
(Former name or former address, if changed since last report.)

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.):

- 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))

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

Title of each class	Trading symbol(s)	Name of each exchange on which registered
Common stock, \$0.01 par value	SM	New York Stock Exchange

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

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 13(a) of the Exchange Act.

Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

On December 21, 2022, SM Energy Company ("**Company**") announced that Lehman E. Newton, III, its Senior Vice President – Operations, has advised its Board of Directors of his intention to resign from his current position effective January 1, 2023. Mr. Newton will remain with the Company following his resignation and serve as Senior Operations Advisor until July 1, 2023, at which time he will retire from all employment with the Company ("**Separation Date**").

In connection with Mr. Newton's resignation, Mr. Newton and the Company entered into a Non-Competition and Non-Solicitation Agreement on December 18, 2022 ("**Non-Competition Agreement**"), pursuant to which, among other customary agreements, Mr. Newton covenants not to compete with the Company's business and not to solicit the Company's employees for a period of two years following the Separation Date. Subject to Mr. Newton's continued compliance with such covenants, the Company will pay Mr. Newton an aggregate of \$800,000 in two equal annual cash installments of \$400,000 on the first and second anniversaries of the Separation Date. The foregoing description of the Non-Competition Agreement is qualified in its entirety by reference to the full text of the Non-Competition Agreement, a copy of which is attached hereto as Exhibit 10.1 and incorporated into this Item 5.02 by reference.

In addition, under the Non-Competition Agreement, Mr. Newton will remain eligible to receive a cash bonus under the Company's Cash Bonus Plan, as amended and restated as of February 1, 2014 ("**STIP**"), for the year ended December 31, 2022. The cash bonus will be determined by the Compensation Committee, based on Mr. Newton's individual performance and Company performance as measured against the pre-established metrics applicable to all employees under the STIP, and will be paid at the same time as cash bonuses are paid to all other Company employees, on or before March 31, 2023.

Mr. Newton and the Company also entered into a new Change of Control Severance Agreement on December 18, 2022, to be effective January 1, 2023 ("**Change of Control Agreement**"), pursuant to which Mr. Newton would receive certain payments and benefits upon his termination in connection with or within one year following a change of control of the Company, including a lump sum payment equal to the sum of (i) one times his then current base salary, (ii) his then current target bonus, pro-rated for the portion of the year in which the termination occurs and (iii) twelve times the Company's then current monthly contribution for medical, dental, and vision insurance on behalf of him and his family. The foregoing description of the Change of Control Agreement is qualified in its entirety by reference to the full text of the Change of Control Agreement, a copy of which is attached hereto as Exhibit 10.2 and incorporated into this Item 5.02 by reference.

Item 7.01 Regulation FD Disclosure.

In accordance with General Instruction B.2. of Form 8-K, the following information shall not be deemed filed for purposes of Section 18 of the Securities Exchange Act of 1934, as amended ("**Exchange Act**"), or otherwise subject to the liabilities of that section, nor shall such information be deemed incorporated by reference in any filing under the Securities Act of 1933, as amended, or the Exchange Act, except as shall be expressly set forth by specific reference in such a filing.

On December 21, 2022, the Company issued a press release announcing the organizational changes referenced herein. A copy of the press release is furnished as Exhibit 99.1 to this report and is incorporated by reference herein.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

Exhibit Number	Description
10.1	Non-Competition and Non-Solicitation Agreement dated December 18, 2022 between Lehman E. Newton, III and SM Energy Company
10.2	Change of Control Severance Agreement dated December 18, 2022 between Lehman E. Newton, III and SM Energy Company
99.1	Press release of SM Energy Company dated December 21, 2022, entitled "SM Energy Announces Officer Retirements and New Appointments"
104	Cover Page Interactive Data File (formatted as Inline XBRL and included as Exhibit 101)

SIGNATURES

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

SM ENERGY COMPANY

Date: December 21, 2022

By: /s/ ANDREW T. FISKE

Andrew T. Fiske

Deputy General Counsel and Corporate Secretary

NON-COMPETITION AND NON-SOLICITATION AGREEMENT

This Non-Competition and Non-Solicitation Agreement (this “**Agreement**”) is made by and between Lehman E. Newton, III (“**Executive**”) and SM Energy Company (“**Company**”).

WHEREAS, Executive is currently employed as Senior Vice President - Operations of the Company, and Executive has agreed with the Company that he is resigning from such position on January 1, 2023 to accept the position of Senior Operations Advisor and retiring from all employment with the Company on July 1, 2023 (“**Separation Date**”) pursuant to the terms of the offer letter attached as Exhibit 2; and

WHEREAS, (i) in the course of Executive's employment with the Company, Executive has obtained and continues to have access to its goodwill, confidential information, and trade secrets concerning the business and operations of the Company and its Affiliates that could be used to compete unfairly with or otherwise disadvantage the Company; (ii) the covenants and restrictions contained in Section 1 and 2 are intended to protect the legitimate interests of the Company and its shareholders with respect to its goodwill, confidential information, trade secrets, business prospects, and employees; and (iii) Executive has agreed to be bound by such covenants and restrictions.

NOW, THEREFORE, in consideration of the mutual covenants set forth herein and for other good and valuable consideration, receipt of which is hereby acknowledged, the Company and Executive agree as follows:

1. **Confidential Information; Intellectual Property.**

A. **Confidential Information.** Executive acknowledges that in the course of Executive's employment with Company, Executive has received, and will continue to receive, information that has not been made generally available to the public and is applicable or of value to the Company's current or anticipated business, research or development activities, or those of any client, customer, Affiliate, or partner of the Company. All such information has commercial value in the business in which the Company is engaged and is hereinafter called “**Confidential Information.**” By way of illustration, but not limitation, Confidential Information includes any and all technical and non-technical information including patent disclosures and applications, copyright applications, trade secrets, seismic and well log data, surveys, analyses, testing materials, techniques, models, business plans, bids, contractual terms, business acquisitions, processes, product or service research and development methods or techniques, training methods and other operational methods or techniques, quality assurance procedures or standards, operating procedures, specifications, proposals, drawings, charts, graphs, support data, supplier lists, supplier information, purchasing methods or practices, distribution and selling activities, consultants' reports, marketing and engineering or other technical studies, maintenance records, employment or personnel data, marketing data, strategies or techniques, financial reports, budgets, projections, cost analyses, price lists, formulae and analyses, employee lists, customer records, customer lists, customer source lists, proprietary computer software, previous legal disputes and settlements, and internal notes and memoranda relating to any or the foregoing. Confidential Information does not include information that is or becomes known to the general public through lawful means. Executive shall keep all Confidential Information confidential and shall not use it or disclose it to third parties without the prior written consent of Company.

Notwithstanding the foregoing, Executive understands that, in accordance with the Defend Trade Secrets Act of 2016, an individual cannot be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret that: (1) is made in

confidence to a federal, state, or local government official (either directly or indirectly), or to an attorney, solely for the purpose of reporting or investigating a suspected violation of law, or (2) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal. Executive understands that an individual who files a lawsuit for retaliation by an employer for reporting a suspected violation of law may disclose the trade secret to the attorney of the individual and use the trade secret information in a court proceeding, if the individual files any document containing the trade secret under seal, and does not disclose the trade secret, except pursuant to a court order.

B. Intellectual Property. Executive agrees that all right, title, and interest to all works of whatever nature generated in the course of his employment with the Company resides exclusively with the Company. Executive agrees that he will return to the Company, not later than the Separation Date, all property, in whatever form (including computer files and other electronic data), of the Company in his possession, including without limitation, all copies (in whatever form) of all files or other information pertaining to the Company, its officers, employees, directors, shareholders, customers, suppliers, vendors, or distributors and any business or business opportunity of the Company.

2. Non-Compete and Non-Solicitation.

A. Non-Solicitation Covenants. During the “Restricted Period” (defined below), Executive shall not directly or indirectly:

(a) solicit (regardless of which party initiated contact), induce, or attempt to induce (or approach, authorize, solicit, hire, retain, or assist any person or entity for the foregoing purposes) any current subcontractors, clients, customers, vendors, or suppliers of the Company or its Affiliates, as the case may be, with whom Executive had business contact or as to whom Executive had access to Confidential Information, to cease or otherwise modify its doing business, in whole or in part, with or through the Company or its Affiliates or to become a client or customer of any Competitor (defined below); or

(b) recruit, solicit, induce, or attempt to induce (regardless of which party initiated contact), any other employee of any of the Company or its Affiliates, with whom Executive had business contact or as to whom Executive had access to Confidential Information, to (A) leave the employ of the Company or its Affiliates, (B) deviate from full-time employment and devotion of full-time effort in his or her employment with the Company or its Affiliates, or (C) otherwise directly or indirectly own, manage, operate, control, be employed by, perform any services for, consult with, solicit business for, participate in, or be connected with the ownership, management, operation, or control of any business, other than that of the Company or its Affiliates, or assist any Person, in any manner, in doing any of the foregoing actions. Notwithstanding the foregoing, general solicitations not specifically targeting such restricted employees (such as through the placing of a classified ad in a newspaper) shall not be a breach of this provision.

B. Non-Competition Covenants. During the Restricted Period, Executive shall not, directly or indirectly, (A) own any equity or other ownership interest in a Competitor engaged in business anywhere in the Geographic Area (defined below), (B) manage, operate, finance, or control a Competitor engaged in business anywhere in the Geographic Area, or (C) in a similar role or function as that which Executive performed for the Company (whether prior to the execution of this Agreement or after the execution of this Agreement), work for, be employed by, engage in duties, provide services to, consult, or advise a Competitor anywhere in the Geographic Area. The term “*Competitor*” means any person, firm, entity, business, or organization that is engaged in, or is planning to engage in, the “*Business*”. Competitor expressly includes Executive acting on Executive’s own behalf; provided, however, that

ownership of less than one percent (1%) of the outstanding equity securities of any publicly-traded entity shall not be deemed as Executive engaging in the business of that entity solely by reason of such ownership of less than one percent (1%) of that entity's equity securities.

C. Business. For purposes of this Agreement, the Parties acknowledge and agree that the Company is an energy company engaged in the acquisition of land (including mineral rights, water rights and surface rights), and the exploration, development, production and marketing of crude oil, natural gas, and natural gas liquids and that those activities, both independently and collectively, constitute the "**Business**".

D. Restricted Period. The term "**Restricted Period**" means the period beginning on the Effective Date of this Agreement and ending two (2) years after the date on which Executive's employment with the Company expires or is terminated for any reason.

E. Geographic Area. The term "**Geographic Area**" means the counties in which the Company has conducted business during the term of the Executive's employment including Midland County, Texas, Upton County, Texas, Howard County, Texas, Martin County, Texas, and Webb County, Texas.

F. Affiliates. The term "**Affiliate**" means (i) any parent or subsidiary of the Company and (ii) any person or entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, the Company.

G. Tolling of Covenant Periods. The Restricted Period shall not include, and shall be extended beyond, any time during which Executive is failing to comply with any provision of this Agreement.

H. Scope and Reasonableness. This Section 2 is intended to limit Executive's right to compete only to the extent necessary to protect the Company from unfair competition. Executive acknowledges that Executive will be reasonably able to earn a livelihood without violating the terms of this Section 2. Each of the restrictive covenants contained in this Section 2 shall be construed as a separate covenant with respect to each geographic area and each activity to which it applies, (B) if, in any judicial proceeding, a court shall deem any of the restrictive covenants invalid, illegal, or unenforceable because its scope is considered excessive, such restrictive covenant shall be modified so that the scope of the restrictive covenant is reduced only to the minimum extent necessary to render the modified covenant valid, legal, and enforceable, and (C) if any restrictive covenant (or portion thereof) is deemed invalid, illegal, or unenforceable in any jurisdiction, and it cannot be reformed, as to that jurisdiction such restrictive covenant (or portion thereof) shall be ineffective to the extent of such invalidity, illegality, or unenforceability, without affecting in any way the remaining restrictive covenants (or portion thereof) in such jurisdiction or rendering that or any other restrictive covenant (or portion thereof) invalid, illegal, or unenforceable in any other jurisdiction.

3. Consideration. In exchange for the execution of this Agreement, and the mutual covenants and promises contained herein, the Company agrees to provide the Executive with the following (collectively the "**Consideration**")

- A. **\$800,000.00** in two substantially equal annual installments of \$400,000.00 each, commencing on the first anniversary of the Separation Date. The Consideration shall not be taken into account as compensation and no service credit shall be given after the Separation Date for purposes of determining the benefits payable under any benefit plan, program, agreement, or arrangement of the Company.

- B. The 2022 STIP bonus that Executive would have received had he remained employed in his current position through the payment date (the “**STIP Payment**”). The STIP Payment, less applicable taxes and other withholdings, shall be payable on or before March 31, 2023.

All rights of Executive to receive any portion whatsoever of the Consideration, shall be expressly conditioned upon the execution of a full general release substantially in the form attached hereto as Exhibit 1, delivered by Executive to Company within forty-five (45) days of the Separation Date, releasing all claims, known or unknown, that Executive may have against Company arising out of or in any way related to Executive’s employment or termination of employment with Company.

4. **Certain Forfeitures in Event of Breach.** Executive acknowledges and agrees that, notwithstanding any other provision of this Agreement, in the event Executive materially breaches any of his obligations under this Agreement, Executive will forfeit his right to receive the Consideration under Section 3 of this Agreement to the extent not previously paid to him as of the date of such breach and, if already made as of the time of breach, Executive agrees that he will reimburse the Company, immediately, for the amount of such payments on a pre-tax basis. In the event that Executive does not immediately reimburse the Company, the Company shall have the right to claw back all amounts previously paid to Executive pursuant to this Agreement and recover all fees and costs incurred in connection with doing so.

5. **Offer Letter.** As a material condition to entering into this Agreement, Executive must contemporaneously execute and deliver the offer letter attached hereto as Exhibit 2.

6. **General Provisions.**

A. **Amendment; Waiver.** The terms of this Agreement may be changed, modified, or discharged only by an instrument in writing signed by the parties hereto. A failure of the Company or Executive to insist on strict compliance with any provision of this Agreement shall not be deemed a waiver of such provision or any other provision hereof. In the event that any provision of this Agreement is determined to be so broad as to be unenforceable, such provision shall be interpreted to be only so broad as is enforceable.

B. **Choice of Law.** This Agreement will be governed by, and construed in accordance with, the laws of the State of Texas, without regard to any conflict of laws, rule, or principle that might refer the governance or construction of this Agreement to the laws of another jurisdiction.

C. **Withholding.** The Company may withhold from any and all amounts payable under this Agreement such federal, state, and local taxes or other withholdings as may be required to be withheld pursuant to any applicable law or regulation.

D. **Section 409A Compliance.** The intent of the parties is that payments and benefits under this Agreement comply with, or are exempt from, the requirements of Internal Revenue Code Section 409A and, accordingly, to the maximum extent permitted, this Agreement shall be limited, construed and interpreted in accordance with such intent. It is intended that each installment, if any, of the payments and benefits provided hereunder shall be treated as a separate "payment" for purposes of Section 409A.

E. **Arbitration of Disputes.** Any dispute or controversy arising under, out of, or in connection with this Agreement shall be finally determined and settled by binding arbitration in Denver, Colorado, in accordance with the rules and procedures of the American Arbitration Association, and judgment upon the award may be entered in any court having jurisdiction thereof. In such arbitration, each party shall bear its own costs and fees, including attorneys' fees.

F. Severability. If any provision of this Agreement is held by a court of law to be illegal, invalid, or unenforceable, (i) that provision shall be deemed amended to achieve as nearly as possible the same economic effect as the original provision, and (ii) the legality, validity, and enforceability of the remaining provisions of this Agreement shall not be affected or impaired thereby.

7. Knowing and Voluntary Waiver. Executive acknowledges that, by Executive's free and voluntary act of signing below, Executive agrees to all of the terms of this Agreement and intends to be legally bound thereby. Executive represents that Executive has had a full opportunity to confer with an attorney and, if Executive has not done so, Executive has knowingly and voluntarily waived the right to confer with an attorney before entering into this Agreement.

* * * * *

IN WITNESS WHEREOF, the parties have executed this Agreement as of the dates set forth opposite their signatures below.

EXECUTIVE

Dated: December 18, 2022

By: /s/ LEHMAN E. NEWTON, III

Lehman E. Newton, III

COMPANY

Dated: December 18, 2022

By: /s/ HERBERT S. VOGEL

Herbert S. Vogel

EXHIBIT 1 – FORM OF RELEASE

GENERAL RELEASE

I, Lehman E. Newton, III in consideration of and subject to the performance by SM Energy Company (the “Company”), of its obligations under Section 3 of the Non-Competition and Non-Solicitation Agreement, dated as of December 18, 2022, between the undersigned and the Company (the “Agreement”), do hereby release and forever discharge as of the date hereof the Company and its respective subsidiaries and affiliates and all present, former and future managers, directors, officers, employees, agents, attorneys, representatives, trustees, employee benefit plans (including any administrators or fiduciaries of such plans), predecessors, successors and assigns of the Company and its subsidiaries and affiliates, each individually and in their representative capacities, and its and their respective direct or indirect owners (collectively, including the Company, the “Released Parties”) to the extent provided below (this “General Release”). The Released Parties are intended to be third-party beneficiaries of this General Release, and this General Release may be enforced by each of them in accordance with the terms hereof in respect of the rights granted to such Released Parties hereunder. Terms used herein but not otherwise defined shall have the meanings given to them in the Agreement.

1. I understand that any payments or benefits paid or granted to me under Section 3 of the Agreement represent, in part, consideration for signing this General Release and are not salary, wages or benefits to which I was already entitled. I understand and agree that I will not receive the payments and benefits specified in Section 3 of the Agreement unless I execute this General Release and do not revoke this General Release within the time period permitted hereafter. Such payments and benefits will not be considered compensation for purposes of any employee benefit plan, program, policy or arrangement maintained or hereafter established by the Company or its affiliates.

2. Except as provided in paragraphs 4 and 5 below and except for the provisions of the Agreement which expressly survive the termination of my employment with the Company, I hereby knowingly and voluntarily (for myself, my heirs, executors, administrators, representatives, successors, and assigns) release and forever discharge the Company and the other Released Parties from any and all claims, suits, controversies, actions, agreements, causes of action, claims, cross-claims, counter-claims, demands, debts, compensatory damages, liquidated damages, punitive or exemplary damages, other damages, claims for costs and attorneys’ fees, expenses, judgments, liabilities, losses, obligations, rights or suits of any nature whatsoever in law and in equity, both past and present (through the date that this General Release is signed by me), in any jurisdiction, and whether known or unknown, suspected, or claimed against the Company or any of the Released Parties which I, my spouse, or any of my heirs, executors, administrators, representatives, successors, or assigns, had, have or may have against each and all of the Released Parties, by reason of any actual or alleged act, event, occurrence, omission, practice or other matter whatsoever from the beginning of time up to and including the date that I sign this General Release (except as otherwise expressly set forth in this Agreement). These claims include, but are not limited to (a) any and all claims for compensation, wages, commissions, bonuses, stock options, deferred compensation, other monetary or equitable relief, vacation, personal or sick time, other fringe benefits, or attorney’s fees, (b) any and all claims based on violations of Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1991, the Americans with Disabilities Act, the Age Discrimination in Employment Act, the Employee Retirement Income Security Act, the Family and Medical Leave Act, the Equal Pay Act, the Older Worker’s Benefit Protection Act, Title 42 U.S.C. § 1981, the Occupational Safety and Health Act, the Pregnancy Discrimination Act, and claims for employment discrimination, harassment, retaliation, wrongful discharge, or breach of public policy, (c) any and all claims

under Texas or Colorado statutory or common law, including but not limited to claims brought under the Texas Commission on Human Rights Act, the Texas Labor Code, the Texas Pay Day Law, and the Colorado Anti-Discrimination Act, and (d) any and all claims or causes of action arising under any tort, any equitable theory, any express or implied contract, promissory estoppel, fraud, defamation, emotional distress, infliction of emotional harm, invasion of privacy rights, misrepresentation, or any whistleblower law (all of the foregoing collectively referred to herein as the “Claims”). I intend the release set forth above to be as broad and comprehensive as possible so that the Released Parties shall never be liable, directly or indirectly, to me for any claims, demands, actions, or causes of action of whatsoever nature or character released herein (except as otherwise expressly set forth in this Agreement). This release specifically does not apply to any claims that may arise after its execution.

3. I represent that I have made no assignment or transfer of any right, claim, demand, cause of action, or other matter covered by paragraph 2 above.

4. I acknowledge and agree that my separation from employment with the Company in compliance with the terms of the Agreement shall not serve as the basis for any claim or action (including, without limitation, any claim under the ADEA).

5. I agree that I hereby waive all rights to sue (other than a suit solely seeking to challenge the enforceability of this General Release under the ADEA) or obtain equitable, remedial or punitive relief from any or all Released Parties of any kind whatsoever in respect of any Claim, including, without limitation, reinstatement, back pay, front pay, and any form of injunctive relief. Notwithstanding the above, I further acknowledge that I am not waiving and am not being required to waive any right that cannot be waived under law, including the right to file an administrative charge or participate in an administrative investigation or proceeding; provided, that I disclaim and hereby waive any right to share or participate in any monetary award or personal relief resulting from the prosecution of such charge or investigation or proceeding. Additionally, I am not waiving (i) any rights to any payments, benefits, or reimbursements due to me under the Agreement or any equity or other award agreement referred to in the Agreement or otherwise, (ii) any rights to any vested benefits due to me under any employee benefit plans sponsored or maintained by any of the Company Entities or (iii) any claim relating to directors’ and officers’ liability insurance coverage or any right of indemnification under the Company’s organizational documents or otherwise.

6. In signing this General Release, I acknowledge and intend that it shall be effective as a bar to each and every one of the Claims hereinabove mentioned or implied. I expressly consent that this General Release shall be given full force and effect according to each and all of its express terms and provisions, including those relating to unknown and unsuspected Claims (notwithstanding any state or local statute that expressly limits the effectiveness of a general release of unknown, unsuspected and unanticipated Claims), if any, as well as those relating to any other Claims hereinabove mentioned or implied. I acknowledge and agree that this waiver is an essential and material term of this General Release and that without such waiver the Company would not have agreed to the terms of the Agreement. I further agree that in the event I should bring a Claim seeking damages against the Company, or in the event I should seek to recover against the Company in any Claim brought by a governmental agency on my behalf, this General Release shall serve as a complete defense to such Claims to the maximum extent permitted by law.

7. I agree that neither this General Release, nor the furnishing of the consideration for this General Release, shall be deemed or construed at any time to be an admission by the Company, any Released Party or myself of any improper or unlawful conduct.

8. I agree that if I violate this General Release by suing the Company or the other Released Parties (other than a suit solely seeking to challenge the enforceability of this General Release under the ADEA), I will pay all costs and expenses of defending against the suit incurred by the Released Parties, including reasonable attorneys' fees.

9. Nothing contained in this General Release limits my ability to file a charge or complaint with the Equal Employment Opportunity Commission, the Department of Justice, the Securities and Exchange Commission, Congress, and any agency Inspector General or any other federal, state or local governmental agency or commission ("Government Agencies"). Further, this Agreement does not limit my ability to communicate with any Government Agencies or otherwise participate in any investigation or proceeding that may be conducted by any Government Agency, including providing documents or other information, without notice to the Company. This Agreement does not limit my right to receive an award from a Government Agency for information provided to any Government Agencies. However, I agree that I have waived any right to recover monetary damages or other personal relief, where such rights can be lawfully waived, from the Releases in any action filed by me or by anyone else on my behalf.

10. I acknowledge that I have been notified, in accordance with the Defend Trade Secrets Act of 2016, that I will not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret that is made in confidence to a federal, state or local government official, either directly or indirectly, or to an attorney solely for the purpose of reporting or investigating a suspected violation of law, or is made in a complaint or other document that is filed under seal in a lawsuit or other proceeding. If I file a lawsuit for retaliation against a Released Party for reporting a suspected violation of law, I may disclose such Released Party's trade secrets to my attorney and use the trade secret information in the court proceeding if I file any document containing the trade secret under seal, and do not disclose the trade secret, except pursuant to court order.

11. I hereby acknowledge that paragraphs Sections 1-7 of the Agreement (the "Continuing Provisions") shall survive my execution of this General Release.

12. I represent that I am not aware of any claim by me including the claims that are released by this General Release. I acknowledge that, although I may hereafter discover claims or facts in addition to or different than those which I now know or believe to exist with respect to the subject matter of the release set forth in paragraph 2 above and which, if known or suspected at the time of entering into this General Release, may have materially affected this General Release and my decision to enter into it, I intend to provide a complete waiver and release of all Claims based on any facts and circumstances, whether known or unknown, up to and including the date that I sign this General Release.

13. I acknowledge and agree that I am owed no further compensation or benefits arising out of or related to my employment with the Company, other than my right, if I execute this General Release, to the payments set forth in Section 3 of the Agreement and subject to the terms and conditions set forth in the Agreement. Notwithstanding anything in this General Release to the contrary, this General Release shall not relinquish, diminish, or in any way affect any rights or claims arising out of any breach by the Company of Section 3 of the Agreement after the date hereof.

14. Whenever possible, each provision of this General Release shall be interpreted in, such manner as to be effective and valid under applicable law, but if any provision of this General Release is held to be invalid, illegal or unenforceable in any respect under any applicable law or rule in any jurisdiction (i) such provision shall be modified to make it valid, legal and enforceable to the maximum extent permitted by law or (ii) if such provision cannot be modified to make it valid, legal and enforceable, such invalidity, illegality or unenforceability

shall not affect any other provision or any other jurisdiction, but this General Release shall be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable provision had never been contained herein. I acknowledge and agree that each of the terms, conditions and covenants to which I am subject in this General Release shall be construed for all purposes to be separate and independent from any other terms, conditions and covenants of any of the Released Parties, whether in this Agreement or otherwise, and the existence of any claim by me against the Company or any of the other Released Parties under the Agreement or otherwise, will not excuse my breach of any of the terms, conditions or other covenants contained in this General Release.

15. I acknowledge and agree that, upon its effectiveness, this General Release (together with the Continuing Provisions, and any benefit plans relating to any COBRA benefits to which I am eligible pursuant to the Agreement) contains the entire agreement and understanding of the parties relating to my separation from the Company and supersedes and replaces all prior and contemporaneous agreements, representations and understandings (whether oral or written) my separation from the Company (other than any agreements or policies which contain continuing obligations of mine relating to confidential or proprietary information, restrictive covenants, trade secrets or intellectual property, all of which shall continue notwithstanding the termination of my employment). I acknowledge that no promises or representations, oral or written, have been made by any of the Released Parties other than those promises and representations expressly stated herein and in the Agreement, and that I have not relied on any other promises or representations in signing this General Release.

16. A facsimile or pdf copy of my executed signature page of this General Release will be deemed to be an executed original thereof.

BY SIGNING THIS GENERAL RELEASE, I REPRESENT AND AGREE THAT:

- (i) I HAVE READ IT CAREFULLY;
 - (ii) I UNDERSTAND ALL OF ITS TERMS AND KNOW THAT I AM GIVING UP IMPORTANT RIGHTS, INCLUDING BUT NOT LIMITED TO, RIGHTS UNDER THE AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967, AS AMENDED, TITLE VII OF THE CIVIL RIGHTS ACT OF 1964, AS AMENDED; THE EQUAL PAY ACT OF 1963, THE AMERICANS WITH DISABILITIES ACT OF 1990; AND THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, AS AMENDED;
 - (iii) I VOLUNTARILY CONSENT TO EVERYTHING IN IT;
 - (iv) I HAVE BEEN ADVISED TO CONSULT, AND HAVE CONSULTED WITH, AN ATTORNEY BEFORE EXECUTING IT AND I HAVE DONE SO OR, AFTER CAREFUL READING AND CONSIDERATION, I HAVE CHOSEN NOT TO DO SO OF MY OWN VOLITION;
 - (v) I HAVE HAD AT LEAST TWENTY ONE (21) DAYS FROM THE DATE OF MY RECEIPT OF THIS RELEASE TO CONSIDER IT, AND ANY CHANGES MADE SINCE MY RECEIPT OF THIS RELEASE ARE NOT MATERIAL OR WERE MADE AT MY REQUEST AND WILL NOT RESTART THE REQUIRED TWENTY ONE-DAY PERIOD;
 - (vi) I UNDERSTAND THAT I HAVE SEVEN (7) DAYS AFTER THE EXECUTION OF THIS RELEASE TO REVOKE IT, THAT ANY SUCH REVOCATION MUST BE IN WRITING AND DELIVERED TO, PRIOR TO
-

EXPIRATION OF THE SEVEN-DAY REVOCATION PERIOD, TO BPATTERSON@AKINGUMP.COM AND THAT THIS RELEASE SHALL NOT BECOME EFFECTIVE OR ENFORCEABLE UNTIL THE REVOCATION PERIOD HAS EXPIRED (AND THAT THIS RELEASE SHALL BECOME EFFECTIVE, ENFORCEABLE AND IRREVOCABLE UPON THE EXPIRATION OF THE REVOCATION PERIOD);

- (vii) I HAVE SIGNED THIS GENERAL RELEASE KNOWINGLY AND VOLUNTARILY AND WITH THE ADVICE OF ANY COUNSEL RETAINED TO ADVISE ME WITH RESPECT TO IT; AND
- (viii) I AGREE THAT THE PROVISIONS OF THIS GENERAL RELEASE MAY NOT BE AMENDED, WAIVED, CHANGED, OR MODIFIED EXCEPT BY AN INSTRUMENT IN WRITING SIGNED BY AN AUTHORIZED REPRESENTATIVE OF THE COMPANY AND BY ME, AND THAT NO HANDWRITTEN CHANGES TO THIS GENERAL RELEASE WILL BE BINDING UNLESS INITIALED BY AN AUTHORIZED REPRESENTATIVE OF THE COMPANY AND BY ME.

In witness whereof, and intending to be legally bound hereby, I have executed this General Release as of the date and year written below.

SIGNED: _____ DATED: _____

EXHIBIT 2 – OFFER LETTER

December 17, 2022

Sent via email to nnewton@sm-energy.com

Lehman E. Newton, III
3301 Ebbits
Midland, TX 79707

Dear Newt,

We are pleased to offer you a transfer to a new position with SM Energy:

1. Position and Responsibilities. Your new position will be Senior Operations Advisor reporting to me. In this role, you will be assigned special projects that utilize your skills and experience to benefit SM Energy operations.
2. Start Date. Your employment in the position of Senior Operations Advisor will commence on January 1, 2023.
3. Compensation. Your salary will continue at the same level that you currently receive, or \$13,946.16 biweekly. This position is exempt.

Your STIP bonus for 2022 will be paid in March 2023 at your current target level and utilizing the company multiplier based on 2022 company performance against targets.

You will be eligible to receive the company's STIP bonus for 2023 if you remain employed through the payment date during March of the following year. Your target bonus for 2023 will be 35%, but will only be paid if your employment is extended through the payment date in March, 2024.

4. Expected Term and At-Will Employment. Your new position is intended to be temporary and is expected to terminate on July 1, 2023. Unless extended by mutual written agreement, your position and employment will terminate on July 1, 2023 and such termination shall be considered a "voluntary resignation". While employed in your new position, your employment with the Company will be "at-will," meaning that either you or the Company may terminate the employment relationship at any time, for any reason, with or without notice.
 5. Location. You will be classified as a 'primary remote' employee and may reside anywhere in the state of Texas. As a 'primary remote' employee, you may be requested to attend meetings at any of the company's locations in the United States. When visiting these locations, you may expense reasonable travel and lodging expenses.
 6. Benefits. You will be eligible to participate in any applicable benefit plans or programs that the Company generally provides to similarly-situated employees as may exist from time to time, subject always to the terms and conditions of such plans and programs (including with respect to employee contribution requirements), which may be amended, suspended, or terminated from time to time by the Company in its sole discretion.
 7. Compliance with Policies. By continuing employment with the Company, you agree to comply with all Company policies, practices, and procedures.
-

8. Entire Agreement. This Agreement, the attached Non-Competition and Non-Solicitation agreement, and the attached Change of Control Severance Agreement replace and supersede any and all previous or existing agreements, arrangements, or understandings, oral or written, between you and the Company relating to the terms and conditions of your employment with the Company. You specifically acknowledge and agree that notwithstanding any discussions or negotiations you may have had with the Company prior to the execution of this Agreement, you are not relying on any promises or assurances other than those explicitly contained in this Agreement. This Agreement, together with the agreements and matters referenced above, contains the entire agreement and understanding of the parties with respect to the matters set forth herein, and the terms and conditions of your employment can be modified only in an agreement signed by you and an officer of the Company.
9. Amendments. No provision of this Agreement may be amended, modified, waived, or discharged except as agreed to in a writing signed by both you and an officer of the Company.
10. Governing Law/Disputes. All disputes regarding your employment and this Agreement shall be governed by and construed in accordance with the laws of the State of Texas (without regard to its choice-of-law provisions) and any dispute between the parties shall be resolved only in the federal or state courts of Texas.
11. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and both of which together shall constitute one and the same instrument. Facsimile, PDF, and other true and accurate copies of this offer letter shall have the same force and effect as originals hereof.

If you choose to accept this offer, please sign this letter in the space provided and return to Herb Vogel or Candace Lyon by December 18, 2022 (after which date this offer will be null and void). By signing below, you agree to all of the terms and conditions provided herein.

Sincerely,

/s/ HERBERT S. VOGEL
Herb Vogel
President & CEO

Signed: /s/ LEHMAN E. NEWTON III

Employee Name: Lehman E. Newton, III

Date: December 18, 2022

CHANGE OF CONTROL SEVERANCE AGREEMENT

This Change of Control Severance Agreement is entered into January 1, 2023, (the “*Effective Date*”), by and between SM Energy Company, a Delaware corporation (the “*Company*”), and Lehman E. Newton III (the “*Employee*”).

RECITALS

A. The Board of Directors of the Company (the “*Board*”) has determined that it is in the best interests of the Company to ensure that the Company will have the continued dedication of the Employee notwithstanding the possibility of a Change of Control (as defined in Section 1) of the Company and to provide the Employee with customary compensation and benefits arrangements upon a Change of Control which ensure that the compensation and benefits expectations of the Employee will be satisfied and which are competitive with those of other companies.

B. The Company desires to continue the employment of the Employee and the Employee desires to continue employment with the Company, all upon and subject to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the Employee’s continued employment with the Company and the mutual agreements set forth herein, the parties agree as follows:

AGREEMENT

Section 1. Certain Definitions. The following terms shall for purposes of this Agreement have the following respective definitions:

(a) “*Accrued Compensation*” shall mean all compensation amounts earned or accrued by the Employee through the Termination Date (as defined below) but not paid to the Employee as of the Termination Date, including (i) Base Salary (as defined below), (ii) PTO pay (to the extent provided by Company policy, plan, program or practice or applicable law), (iii) bonuses and incentive compensation, and (iv) reimbursement for reasonable and necessary business expenses incurred by the Employee on behalf of the Company during the period ending on the Termination Date. For the avoidance of doubt, if the Termination Date occurs prior to the payment of an award pursuant to the Company’s Short Term Incentive Plan but after the completion of the calendar year related to such award, then the amount of such award shall be included as Accrued Compensation.

(b) “*Base Salary*” shall mean the greater of (i) the Employee’s annual base salary at the rate in effect on the Termination Date or (ii) the Employee’s annual base salary at the rate in effect immediately prior to a Change of Control, and shall include all amounts of the Employee’s base salary that are deferred under the qualified and nonqualified employee benefits plans, policies, programs or practices of the Company or any other compensation agreement or arrangement.

(c) “*Cause*” shall mean for purposes of termination of employment (i) the conviction of the Employee of a felony involving moral turpitude or (ii) a resolution adopted in good faith by two-thirds of the members of the Board that the Employee (A) intentionally and continually failed to substantially perform the Employee’s reasonably assigned duties with the Company (other than a failure resulting from the Employee’s incapacity due to physical or mental illness or from the assignment to the Employee of duties that would constitute Good Reason (as defined below)), which failure continued for a period of at least 30 days after a written notice of demand

for substantial performance has been delivered by the Company to the Employee, which notice specifies the manner in which the Employee failed to substantially perform, or (B) intentionally engaged in conduct which is demonstrably and materially injurious to the Company; provided, however, that no termination of the Employee's employment shall be for Cause until written notice has been delivered to the Employee which sets forth the conduct under this Section 1(c) of which the Employee is allegedly guilty and specifying the particulars thereof in detail. Neither an act nor a failure to act on the Employee's part shall be considered "intentional" unless the Employee has acted or failed to act with a lack of good faith and with a lack of reasonable belief that the Employee's action or failure to act was in the best interests of the Company. Notwithstanding anything to the contrary contained in this Agreement, no failure to perform by the Employee after a Notice of Termination (as defined below) is given by the Employee to the Company shall constitute Cause for purposes of this Agreement.

(d) "**Change of Control**" shall mean any of the following events:

(i) (A) The acquisition by any individual or entity (a "Person") or group of Persons of beneficial ownership (within the meaning of Rule 13d-3 promulgated under the Securities Exchange Act of 1934) of more than 50% of either (1) the then value of the outstanding shares of common stock of the Company, or (2) the combined voting power of the then outstanding voting securities of the Company entitled to vote generally in the election of directors.

(B) For purposes of paragraph (A), Persons will not be considered to be acting as a group solely because they purchase or own stock of the same corporation at the same time, or as a result of the same public offering. However, Persons will be considered to be acting as a group if they are owners of a corporation that enters into a merger, consolidation, purchase or acquisition of stock, or similar business transaction with the Company. If a Person, including an entity, owns stock in both corporations that enter into a merger, consolidation, purchase or acquisition of stock, or similar transaction, such shareholder is considered to be acting as a group with other shareholders in a corporation prior to the transaction giving rise to the change and not with respect to the ownership interest in the other corporation. For purposes of determining stock ownership, see (d)(iv), below.

(ii) A majority of members of the Board is replaced during any 12-month period by directors whose appointment or election is not endorsed by a majority of the members of the Board prior to the date of the appointment or election; or

(iii) (A) Any one Person, or more than one Person acting as a group (as determined in (d)(iii)(C) below), acquires (or has acquired during the 12-month period ending on the date of the most recent acquisition by such Person or Persons) assets from the Company that have a total gross fair market value equal to or more than 50 percent of the total gross fair market value of all of the assets of the Company immediately prior to such acquisition or acquisitions. For this purpose, gross fair market value means the value of the assets of the Company, or the value of the assets being disposed of, determined without regard to any liabilities associated with such assets.

(B) A transfer of assets by the Company is not treated as a change in the ownership of such assets if the assets are transferred to –

- (1) A shareholder of the Company (immediately before the asset transfer) in exchange for or with respect to its stock;
- (2) An entity, 50 percent or more of the total value or voting power of which is owned, directly or indirectly, by the Company;
- (3) A Person, or more than one Person acting as a group, that owns, directly or indirectly, 50 percent or more of the total value or voting power of all the outstanding stock of the Company; or
- (4) An entity, at least 50 percent of the total value or voting power of which is owned, directly or indirectly, by a Person described in (d)(iii)(B)(3).

For purposes of this paragraph (d)(iii)(B) and except as otherwise provided, a Person's status is determined immediately after the transfer of the assets. For example, a transfer to a corporation in which the Company has no ownership interest before the transaction, but which is a majority-owned subsidiary of the Company after the transaction, is not treated as a change in the ownership of the assets of the Company.

(C) Persons will not be considered to be acting as a group for purposes of this paragraph (d)(iii) solely because they purchase assets of the Company at the same time, or as a result of the same public offering. However, Persons will be considered to be acting as a group if they are owners of a corporation that enters into a merger, consolidation, purchase or acquisition of assets, or similar business transaction with the Company. If a Person, including an entity shareholder, owns stock in both corporations that enter into a merger, consolidation, purchase or acquisition of stock, or similar transaction, such shareholder is considered to be acting as a group with other shareholders in a corporation only to the extent of the ownership in that corporation prior to the transaction giving rise to the change and not with respect to the ownership interest in the other corporation.

(D) For purposes of determining stock ownership, see (d)(iv) below.

(iv) For purposes of determining whether there has been a Change of Control, Code Section 318(a) applies to determine stock ownership. Stock underlying a vested option is considered owned by the individual who holds the vested option (and the stock underlying an unvested option is not considered owned by the individual who holds the unvested option). For purposes of the preceding sentence, however, if a vested option is exercisable for stock that is not substantially vested (as defined by §§1.83-3(b) and (j) of the income tax regulations promulgated by the Internal Revenue Service), the stock underlying the option is not treated as owned by the individual who holds the option.

(e) “**Change of Control Date**” shall mean the first date during the term of this Agreement (as specified in Section 2) on which a Change of Control occurs. Notwithstanding anything to the contrary contained in this Agreement, if a Change of Control occurs and if the Employee’s employment with the Company is terminated prior to the date on which the Change of Control occurs, and if it is reasonably demonstrated by the Employee that such termination of employment (i) was at the request of a third party who has taken steps reasonably calculated to effect the Change of Control or (ii) otherwise arose in connection with or anticipation of the Change of Control, then for all purposes of this Agreement the “Change of Control Date” shall mean the date immediately prior to the date of such termination of employment.

(f) “**Change of Control Period**” shall mean the period commencing on the Change of Control Date and ending on the date one year after the Change of Control Date.

(g) “**Code**” shall mean the Internal Revenue Code of 1986, as amended.

(h) “**Disability**” shall mean a physical or mental infirmity which impairs the Employee’s ability to substantially perform the Employee’s employment duties with the Company on a full-time basis for a period of 120 consecutive business days, and the Employee has not returned to full-time performance of the Employee’s employment duties within 30 days after notice by the Company of its intention to terminate employment of the Employee as a result thereof.

(i) “**Good Reason**” shall mean the occurrence after a Change of Control of any of the following events or conditions:

(i) a change in the Employee’s status, authority, position, offices, titles, duties or responsibilities (including reporting responsibilities) with the Company which in the Employee’s reasonable judgment represents a diminution or adverse change in, or are inconsistent with, such status, authority, position, offices, titles, duties or responsibilities in effect at any time within the 90 days preceding the Change of Control Date or at any time thereafter, excluding for this purpose (A) an isolated, unsubstantial and inadvertent action by the Company not taken in bad faith and which is remedied by the Company promptly after receipt of notice thereof given by the Employee and (B) any removal or failure to reappoint or reelect the Employee to any such position or offices in connection with the termination of the Employee’s employment for death, Disability or Cause;

(ii) any reduction in the Employee’s salary or any failure to pay the Employee any compensation or benefits to which the Employee is entitled within ten business days after notice thereof;

(iii) the failure by the Company to provide the Employee with compensation and benefits, in the aggregate, at least equal (in terms of benefit levels and/or incentive or reward opportunities) to those provided for under each compensation and employee benefit policy, plan, program and practice in which the Employee was participating at any time within 90 days preceding the Change of Control Date or at any time thereafter;

(iv) the Company’s requiring the Employee to be based at any place outside a 25-mile radius from the Employee’s current location of employment, except for reasonably required travel for the Company’s business which is not materially greater than such travel requirements prior to the Change of Control;

(v) any material breach by the Company of any provision of this Agreement;

(vi) any purported termination by the Company of the Employee's employment other than as expressly permitted by this Agreement; or

(vii) the failure by the Company to obtain an agreement reasonably satisfactory to the Employee from any successor to the Company to assume and agree to perform this Agreement as contemplated by Section 7(b).

Any event or condition described in clauses (i) through (vii) above which occurs prior to a Change of Control but which the Employee reasonably demonstrates (A) resulted from the request of a third party who has taken steps reasonably calculated to effect a Change of Control which actually occurs or (B) otherwise arose in connection with or anticipation of a Change of Control which actually occurs, shall constitute Good Reason for purposes of this Agreement notwithstanding the fact that it occurred prior to the Change of Control. The Employee's right to terminate the Employee's employment for Good Reason shall not be affected by the Employee's incapacity due to a Disability.

(j) "**Notice of Termination**" shall mean a written notice of termination of the Employee's employment which (i) indicates the specific termination provision in this Agreement relied upon for such termination, (ii) to the extent applicable sets forth in reasonable detail the facts and circumstances claimed to provide a basis for such termination under the provision so indicated and (iii) if the Termination Date is other than the date of receipt of such notice, specifies the Termination Date under such notice.

(k) "**Termination Date**" shall mean (i) if the Employee's employment is terminated by the Employee for Good Reason, the date of receipt of the Notice of Termination or any later date of employment termination as specified therein, (ii) if the Employee's employment is terminated by reason of death, the Termination Date shall be the date of death and (iii) in all other cases, the date of employment termination specified in the Notice of Termination; provided, however, that if the Employee's employment is terminated by the Company for Cause or due to a Disability, the date specified in the Notice of Termination shall be at least 30 days from the date the Notice of Termination is given to the Employee, provided that in the case of Disability the Employee shall not have returned to the full-time performance of the Employee's duties during such 30-day period.

Section 2. Term of Agreement. This Agreement shall commence as of the Effective Date and shall continue in effect until December 31, 2023; provided, however, that on December 31, 2023, and on each annual anniversary of such date (such date and each annual anniversary thereof shall be hereinafter referred to as the "**Renewal Date**"), the term of the Agreement shall be automatically extended so as to terminate one year from such Renewal Date, unless at least 60 days prior to the Renewal Date the Company has given written notice to the Employee that the term of the Agreement shall not be so extended, and provided further that notwithstanding any such notice by the Company not to extend, the term of the Agreement shall not expire after the occurrence of a Change of Control until the expiration of the Change of Control Period, as long as the term of the Agreement had not expired prior to the occurrence of the Change of Control.

Section 3. Payments and Benefits Upon Termination of Employment During Change of Control Period. If during the term of this Agreement the Employee shall cease to be employed by the Company within a Change of Control Period, the Employee shall be entitled to the following compensation payments and benefits:

(a) If the Employee's employment with the Company shall be terminated before the Employee's death either (i) by the Company other than for Cause or Disability or (ii) by the Employee for Good Reason, the Employee shall be entitled to the following:

- (i) the Company shall pay the Employee all Accrued Compensation;
- (ii) the Company shall pay the Employee a lump sum equal to 1.0 *multiplied by* Employee's Base Salary;
- (iii) the Company shall pay the Employee a lump sum equal to (A) the Employee's Short Term Incentive Plan target percentage *multiplied by* (B) the Employee's Base Salary *multiplied by* (C) a fraction, the numerator of which is the number of days between January 1 and the Termination Date and the denominator of which is 365; and
- (iv) the Company shall pay the Employee a lump sum equal to 12 *multiplied by* the Company's then monthly contribution for medical, dental, and vision insurance on behalf of the Employee and his or her family.

(b) Termination for Cause, Disability or Death or Other than for Good Reason. If the Employee's employment with the Company shall be terminated either (i) by the Company for Cause or Disability, (ii) by reason of the Employee's death, or (iii) by the Employee other than for Good Reason, the Company shall pay to the Employee all Accrued Compensation.

(c) Other Compensation and Benefits. The Employee's entitlement to any other compensation or benefits from or any indemnification by the Company shall be determined in accordance with the Company's employee benefit and other applicable compensation plans, programs, policies and practices, and any applicable indemnification provisions or agreements then in effect. Nothing in this Agreement shall prevent or limit the Employee's continuing or future participation in any plan, program, policy or practice provided by the Company or any of its affiliated companies and for which the Employee may qualify, nor shall anything herein limit or otherwise affect such rights as the Employee may have under any contract or agreement with the Company or any of its affiliated companies. Amounts which are vested benefits or which the Employee is otherwise entitled to receive under any plan, policy, practice or program of or any contract or agreement with the Company or any of its affiliated companies at or subsequent to the Termination Date shall be payable in accordance with such plan, policy, practice or program or contract or agreement except as explicitly modified by this Agreement. If the Employee is entitled to severance pay and benefits pursuant to Section 3(a)(ii) and (iii), such severance pay and benefits shall be reduced to the extent of any other severance or termination pay explicitly designated as such to which the Employee may be entitled under any agreement with the Company or any of its affiliated companies.

(d) Section 409A of the Code. This Agreement is intended in all respects to comply with the provisions of Section 409A of the Code and in particular, those provisions of Section 409A dealing with distributions. This Agreement shall be interpreted and applied in a manner consistent with Section 409A of the Code and any ambiguity shall be resolved in favor of compliance with Section 409A of the Code. In the event any payments or benefits pursuant to the other provisions of this Agreement would result in the imposition on the Employee of any additional taxes or interest pursuant to the provisions of Section 409A of the Code and final Treasury Regulations, Internal Revenue Service guidance or other provisions of law, the amount of such payments shall be appropriately and equitably adjusted in order that the Employee may receive the same economic benefits as provided under this Agreement and in compliance with Section 409A of the Code and without the imposition on the Employee of any additional taxes and interest thereunder. Any payments to the Employee under this Agreement which Section 409A(a)(2)(B)(i) of the Code indicates may not be made before the date which is six months after the date of Employee's separation from employment service (the "Section 409A Six-Month Waiting Period") shall not be made during the Section 409A Six-Month Waiting Period but rather shall be delayed and shall be paid upon the expiration of the Section 409A Six-Month

Waiting Period. In particular, with respect to severance payments provided for under Section 3(a)(ii) of this Agreement, such severance payments that would otherwise be paid during the Section 409A Six-Month Waiting Period shall be paid in lump sum upon the expiration of the Section 409A Six-Month Waiting Period, together with simple interest on the amount of each deferred payment at the short term applicable federal rate as of the date of termination of employment. For purposes of this Agreement, “termination of employment,” “separation from service” or similar language means separation from service by the Employee from the Company for any reason whatsoever within the meaning of Code Section 409A and Treasury Regulation § 1.409A-1(h).

Section 4. Notice of Termination. Following a Change of Control, any purported termination of the Employee’s employment by the Company, for Cause or otherwise, or by the Employee for Good Reason, shall be communicated by a Notice of Termination to the other party hereto given in accordance with Section 8(d). For purposes of this Agreement, no such purported termination shall be effective without such Notice of Termination. The failure by the Employee or the Company to set forth in the Notice of Termination any fact or circumstance which contributes to a showing of Good Reason or Cause shall not waive any right of the Employee or the Company hereunder or preclude the Employee or the Company from asserting such fact or circumstance in enforcing the Employee’s or the Company’s rights hereunder. If the Company determines in good faith that a Disability of the Employee has occurred while the Employee is employed by the Company during the Change of Control Period, it may give to the Employee written notice in accordance with Section 8(d) of its intention to terminate the Employee’s employment. In such event, the Employee’s employment with the Company shall terminate effective on the 30th day after receipt of such notice by the Employee, provided that within the 30 days after such receipt the Employee shall not have returned to full-time performance of the Employee’s duties.

Section 5. No Set-Off or Mitigation; Resolution of Disputes.

(a) No Set-Off. The Company’s obligation to make the payments provided for in this Agreement and otherwise to perform its obligations hereunder shall not be affected by any set-off, counterclaim, recoupment, defense or other claim, right or action which the Company may have against the Employee or others.

(b) No Mitigation Required. In no event shall the Employee be obligated to seek other employment or take any other action by way of mitigation of the amounts payable to the Employee under any of the provisions of this Agreement and, except as provided in Section 3(a)(iii), such amounts shall not be reduced whether or not the Employee obtains other employment.

(c) Payments Pending Resolution of Disputes. If there shall be any dispute between the Company and the Employee under this Agreement (i) in the event of any termination of the Employee’s employment by the Company, whether such termination was validly for Cause, or (ii) in the event of any termination of employment by the Employee, whether Good Reason existed, then, unless and until there is a final, non-appealable judgment by a court of competent jurisdiction declaring that such termination was for Cause or that the determination by the Employee of the existence of Good Reason was not made in good faith, the Company shall pay all amounts and provide all benefits to the Employee and/or the Employee’s dependents or other beneficiaries, as the case may be, that the Company would be required to pay or provide pursuant to Section 3(a) as though such termination were by the Company other than for Cause, or by the Employee for Good Reason; provided, however, that the Company shall not be required to pay any disputed amount pursuant to this Section 5(c) except upon receipt of an undertaking by or on behalf of the Employee to repay all such amounts to which the Employee is ultimately adjudged by such court not to be entitled.

(d) Attorney Fees and Expenses. The Company shall pay as they become due all attorney fees and related expenses (including the costs of experts, evidence and counsel) reasonably incurred by the Employee as a result of the Employee seeking to obtain or enforce any right or benefit provided by this Agreement.

Section 6. Excise Tax Limitation.

(a) Notwithstanding anything to the contrary contained in this Agreement, if the payments and benefits provided under this Agreement and benefits provided to, or for the benefit of, the Employee under any other Company plan or agreement (such payments or benefits are collectively referred to as the "Payments") would be subject to the excise tax (the "Excise Tax") imposed under Section 4999 of the Code, the Payments shall be reduced to the Limited Payment Amount of the greater of (i) the largest amount of Payments that would result in no portion of the Payments being subject to the Excise Tax, or (ii) the largest amount of Payments, up to and including the total Payments, after taking into account all applicable federal, state and local employment taxes, income taxes, and the Excise Tax (all computed at the highest applicable marginal rate), that results in the Employee's receipt, on an after-tax basis, of the greater amount of Payments notwithstanding that all or some portion of the Payments may be subject to the Excise Tax. The intent of the foregoing provision is to reduce the Payments only in the event and to the extent that doing so will maximize the net present value of the Payments, on an after-tax basis, to be received by the Employee. Unless the Employee shall have given prior written notice specifying a different order to the Company to effectuate any reduction in Payments, the Company shall reduce or eliminate the Payments by first reducing or eliminating the portion of the Payments which are not payable in cash and then by reducing or eliminating cash payments, in each case in reverse order beginning with payments or benefits which are to be paid the farthest in time from the Determination (as defined below). Any notice given by the Employee pursuant to the preceding sentence shall take precedence over the provisions of any other plan, arrangement or agreement governing the Employee's rights and entitlements to any benefits or compensation.

(b) The determination of whether the Payments shall be reduced to the Limited Payment Amount pursuant to this Agreement and the amount of such Limited Payment Amount shall be made, at the Company's expense, by an accounting firm selected by the Employee which is one of the four largest accounting firms in the United States (the "Accounting Firm"). The Accounting Firm shall provide its determination (the "Determination"), together with detailed supporting calculations and documentation, to the Company and the Employee within ten business days of the Termination Date, if applicable, or such other time as requested by the Company or by the Employee (provided that the Employee reasonably believes that any of the Payments may be subject to the Excise Tax), and if the Accounting Firm determines that no Excise Tax is payable by the Employee with respect to the Payments it shall furnish the Employee with an opinion reasonably acceptable to the Employee that no Excise Tax will be imposed with respect to any such Payments. The Determination shall be binding, final and conclusive upon the Company and the Employee.

Section 7. Successors and Assigns.

(a) This Agreement is personal to the Employee and without the prior written consent of the Company shall not be assignable by the Employee otherwise than by will or the laws of descent and distribution. This Agreement shall inure to the benefit of and be enforceable by the Employee's legal representatives.

(b) This Agreement shall inure to the benefit of and be binding upon the Company and its successors and assigns. The Company shall require any successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to the business and/or 50% or more of

the assets of the Company (on a consolidated basis) to expressly assume and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform it if no such succession had taken place. As used in this Agreement, the term "Company" shall mean the Company as previously defined and any successor to its business and/or assets which assumes and agrees to perform this Agreement by operation of law or otherwise.

Section 8. Miscellaneous.

(a) Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado, without reference to principles of conflict of laws. Any action brought by any party to this Agreement shall be brought and maintained in a court of competent jurisdiction located in Denver, Colorado.

(b) Captions. The captions of this Agreement are for convenience of reference only, are not part of the provisions hereof and shall have no force or effect in the interpretation of this Agreement.

(c) Amendment. This Agreement may not be amended or modified otherwise than by a written agreement executed by the parties hereto or their respective successors and legal representatives.

(d) Notice. All notices and other communications hereunder shall be in writing and shall be given by hand delivery to the other party, by confirmed telefax, or by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

If to the Employee: Lehman E. Newton III
3301 Ebbets
Midland, TX 79707

If to the Company: SM Energy Company
1775 Sherman Street, Suite 1200
Denver, CO 80203
Attention: Vice President, Human Resources
Telefax: (303) 861-0934

or to such other address as either party shall have furnished to the other in writing in accordance herewith. Notice and communications shall be effective when actually received by the addressee.

(e) Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, and any provision that is determined to be invalid or unenforceable shall be enforced to the maximum extent permissible under law.

(f) Entire Agreement. This Agreement constitutes the entire agreement between the parties concerning the subject matter hereof and supersedes all previous understandings, written or oral.

(g) Tax Withholding. The Company may withhold from any amounts payable under this Agreement such federal, state or local taxes as shall be required to be withheld pursuant to any applicable law or regulation.

(h) Waiver. The Employee's or the Company's failure to insist upon strict compliance with any provision hereof or the failure to assert any right the Employee or the Company may have hereunder, including, without limitation, the right of the Employee to terminate employment for Good Reason, shall not be deemed to be a waiver of such provision or right or any other provision or right of this Agreement.

(i) No Guaranteed Employment. The Employee and the Company acknowledge that, except as may otherwise be provided under any other written agreement between the Employee and the Company concerning the Employee's employment with the Company, the provisions of such other agreement not inconsistent herewith which shall remain in full force and effect, the employment of the Employee by the Company is "at will" and, prior to the Change of Control Date, may be terminated by either the Employee or the Company at any time.

(j) Execution in Counterparts and by Facsimile. This Agreement may be executed in counterparts and signature pages may be delivered by facsimile transmission.

* * * * *

IN WITNESS WHEREOF, this Change of Control Severance Agreement is hereby duly executed by each party hereto as of the day and year first above written.

COMPANY:

SM ENERGY COMPANY,
a Delaware corporation

By:

/s/ CANDACE LYON
Candace Lyon, Vice President, Human Resources

EMPLOYEE:

/s/ LEHMAN E. NEWTON III
Lehman E. Newton III

SM ENERGY ANNOUNCES OFFICER RETIREMENTS AND NEW APPOINTMENTS

DENVER, CO December 21, 2022 - SM Energy Company (the "Company") (NYSE: SM) today announced the retirement of Senior Vice President - Operations Newt Newton and Vice President - Human Resources Candace Lyon.

Chief Executive Officer Herb Vogel comments: "Newt joined SM Energy in 2006, overseeing Midland Basin assets until 2020 when he assumed responsibility for Company-wide operations. He was a key player in greatly expanding the Company's Midland Basin asset position. He was also a leader in ensuring safe and environmentally sound operations and in building the premier operator status that we enjoy today. Candace joined SM Energy in 2007 and has led the Human Resources team since 2017. Candace has been a proponent of leadership development programs, available to all employees, that have become a cornerstone of our strong SM Energy culture. We thank Newt and Candace for their contributions and wish them a long and healthy retirement."

The retirement of Mr. Newton and Ms. Lyon from their current positions will be effective January 1, 2023 and each will remain with the Company in advisory roles through July 1, 2023.

The Company also announces the promotions of Tom Morrow to Vice President - Operations Support, Richard Jenkins to Vice President – Operations and Susie Piehl to Vice President - Human Resources. Mr. Morrow will be responsible for operations planning, field EHS and regulatory compliance, facility engineering, supply chain management, measurement and the Midland office. Mr. Jenkins will assume responsibility for Company-wide drilling, completion and production operations and Ms. Piehl will assume oversight of Human Resources. Mr. Morrow, Mr. Jenkins and Ms. Piehl have been with the Company for 16, 12 and 13 years, respectively. All promotions are effective January 1, 2023.

Mr. Vogel adds: "We congratulate Tom, Richard and Susie on their promotions, and we have confidence that they will provide seamless transitions into their new roles."

ABOUT THE COMPANY

SM Energy Company is an independent energy company engaged in the acquisition, exploration, development, and production of crude oil, natural gas, and NGLs in the state of Texas. SM Energy routinely posts important information about the Company on its website. For more information about SM Energy, please visit its website at www.sm-energy.com.

SM ENERGY INVESTOR CONTACTS

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