

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)
May 25, 2023

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 5.03 Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.

As described under Item 5.07 of this report, on May 25, 2023, at the Annual Meeting of Stockholders (**Annual Meeting**) of SM Energy Company (**Company**), the Company's stockholders approved an amendment (**Amendment**) to the Company's Restated Certificate of Incorporation (**Certificate of Incorporation**) to reflect new Delaware law provisions regarding officer exculpation. The Amendment was filed with the office of the Secretary of State of Delaware on May 25, 2023, and became effective upon filing.

The Amendment permits exculpation of certain officers only for direct claims brought by stockholders for breach of the fiduciary duty of care, but does not eliminate officers' monetary liability for breach of fiduciary duty claims brought by the Company itself, or for derivative claims brought by stockholders in the name of the Company. In addition, the Amendment does not apply to breaches of the duty of loyalty, acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law, or any transaction in which the officer derived an improper personal benefit.

The foregoing description of the Amendment does not purport to be complete and is qualified in its entirety by reference to the complete text of the Amendment, a copy of which is filed as Exhibit 3.1 to this report and is incorporated by reference herein.

Item 5.07 Submission of Matters to a Vote of Security Holders.

At the Annual Meeting, the Company's stockholders elected all of the incumbent directors that stood for reelection, and approved the four additional proposals described below. Each director was elected by a majority vote. The directors elected and the final vote tabulation for each director were as follows:

Director	For	Against	Abstain	Non-Votes
Carla J. Bailo	95,004,593	1,489,992	61,166	13,215,488
Stephen R. Brand	94,311,019	2,194,892	49,840	13,215,488
Ramiro G. Peru	96,035,730	470,261	49,761	13,215,487
Anita M. Powers	96,007,751	498,328	49,671	13,215,489
Julio M. Quintana	92,947,967	3,557,858	49,927	13,215,487
Rose M. Robeson	95,253,634	1,252,749	49,367	13,215,489
William D. Sullivan	94,859,748	1,646,531	49,473	13,215,487
Herbert S. Vogel	95,500,313	1,005,601	49,836	13,215,489

The Company's stockholders approved, by a non-binding advisory vote, the proposal regarding the compensation of the Company's named executive officers. The final vote tabulation for that proposal was as follows:

For	94,573,209
Against	1,708,739
Abstain	273,801
Non-Votes	13,215,490

The Company's stockholders approved, by a non-binding advisory vote, a frequency of every one year for future advisory votes on executive compensation (**Frequency Vote**). The final vote tabulation for that proposal was as follows:

1 Year	91,427,891
2 Years	117,669
3 Years	4,941,079
Abstain	69,108
Non-Votes	13,215,492

In light of the Frequency Vote and other considerations, the Company has decided to include an advisory stockholder vote on executive compensation in its proxy materials annually until the next required Frequency Vote.

The Company's stockholders approved the proposal to ratify the appointment by the Company's Audit Committee of Ernst & Young LLP, as the Company's independent registered public accounting firm for 2023. The final vote tabulation for that proposal was as follows:

For	108,990,411
Against	701,527
Abstain	79,301

The Company's stockholders approved the proposal to approve of an amendment of the Company's Certificate of Incorporation to limit the liability of certain officers of the Company as permitted by amendments to Delaware law. The final vote tabulation for that proposal was as follows:

For	80,470,292
Against	15,779,986
Abstain	305,469
Non-Votes	13,215,492

Item 9.01 Financial Statements and Exhibits

(d) Exhibits.

<u>Exhibit Number</u>	<u>Description</u>
3.1	Certificate of Amendment of Restated Certificate of Incorporation
104	Cover Page Interactive Data File (formatted as Inline XBRL and included as Exhibit 101)

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.

SM ENERGY COMPANY

Date: May 30, 2023

By: /s/ ANDREW T. FISKE
Andrew T. Fiske
Deputy General Counsel and Corporate Secretary

**CERTIFICATE OF AMENDMENT
OF
RESTATED CERTIFICATE OF INCORPORATION
OF
SM ENERGY COMPANY**

SM Energy Company (the “Company”), a corporation organized and existing under of the General Corporation Law of the State of Delaware (the “DGCL”), hereby certifies as follows:

1. Pursuant to action taken by unanimous written consent of the Board of Directors of the Company (the “Board”) on March 22, 2023, resolutions were duly adopted setting forth a proposed amendment (the “Amendment”) of the Company’s Restated Certificate of Incorporation filed with the Secretary of State of the state of Delaware on November 17, 1992, as the same has been amended by the Certificate of Amendment filed June 22, 1998, the Certificate of Amendment filed May 31, 2001, the Certificate of Amendment filed May 26, 2005, and the Certificate of Amendment filed June 1, 2010 (collectively, the “Restated Certificate of Incorporation”), declaring the Amendment to be in the best interests of the Company and its stockholders, and submitting the Amendment at a meeting of the stockholders of the Company for consideration thereof.
2. Pursuant to resolutions adopted by the Board on February 17, 2023, an annual meeting of stockholders of the Company was duly called and held on May 25, 2023, upon notice in accordance with Section 222 of the DGCL and at which meeting the necessary number of shares as required by the DGCL and the Restated Certificate of Incorporation were voted in favor of approval of the Amendment.
3. Accordingly, Article FIFTEENTH of the Restated Certificate of Incorporation of the Company is hereby amended and restated in its entirety as follows:

“FIFTEENTH: (a) A Director or officer of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director or officer, except that this Article FIFTEENTH shall not eliminate or limit a Director’s or officer’s liability to the extent such elimination or limitation is not permitted under Section 102(b)(7) of the Delaware General Corporation Law or (i) for any breach of the Director’s or officer’s duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the Delaware General Corporation Law, (iv) for any transaction from which the Director or officer derived an improper personal benefit, or (v) for any officer, in any action by or in the right of the Corporation. If the Delaware General Corporation Law is amended after approval by the stockholders of this Article FIFTEENTH to authorize corporate action further eliminating or limiting the personal liability of directors or officers, then the liability of a Director or officer of the Corporation shall be eliminated or limited to the fullest extent permitted by the Delaware General Corporation Law, as so amended from time to time.

(b) Any repeal or modification of this Article FIFTEENTH shall not increase the personal liability of any Director or officer of the Corporation for any act or occurrence taking place prior to such repeal or 64 modification, or otherwise adversely affect any right or protection of a Director or officer of the Corporation existing at the time of such repeal or modification.

(c) The provisions of this Article FIFTEENTH shall not be deemed to limit or preclude indemnification of a Director or officer by the Corporation for any liability of a Director or officer which has not been eliminated by the provisions of this Article FIFTEENTH.”

4. The Amendment was duly adopted by the Company in accordance with the provisions of Section 242 of the DGCL.
5. All other provisions of the Restated Certificate shall remain in full force and effect.
6. This Certificate of Amendment shall become effective immediately upon filing with the Secretary of State of Delaware.

[Signature Page Follows.]

IN WITNESS WHEREOF, the Company has caused this Certificate of Amendment to be signed by an authorized officer of the Corporation this 25th day of May, 2023.

SM Energy Company

By: /s/ James B. Lebeck

Name: James B. Lebeck

Title: Senior Vice President and General Counsel