

Resolute Energy Corp
Form 425
February 14, 2019

**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): **February 14, 2019**

CIMAREX ENERGY CO.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation)

001-31446
(Commission File Number)

45-0466694
(I.R.S. Employer
Identification No.)

1700 Lincoln Street, Suite 3700
Denver, Colorado 80203
(Address of principal executive offices)

80203
(Zip Code)

(303) 295-3995

(Registrant's telephone number, including area code)

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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))

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 8.01

OTHER EVENTS.

Supplemental Disclosures to the Proxy Statement

This Current Report on Form 8-K discloses certain additional information relating to the proposed acquisition by Cimarex Energy Co. (*Cimarex*) of Resolute Energy Corporation (*Resolute*). Subject to the terms and conditions of the Agreement and Plan of Merger (the *Merger Agreement*), dated as of November 18, 2018, by and among Cimarex, Resolute, CR Sub 1 Inc., a Delaware corporation and a direct wholly owned subsidiary of Cimarex (*Merger Sub 1*), and CR Sub 2 LLC, a Delaware limited liability company and a direct wholly owned subsidiary of Cimarex (*Merger Sub 2*), Merger Sub 1 will merge with and into Resolute, with Resolute continuing as the surviving corporation, and thereafter Resolute will merge with and into Merger Sub 2, with Merger Sub 2 continuing as the surviving company. In connection with the proposed transaction, Cimarex has filed with the Securities and Exchange Commission (the *SEC*) a registration statement on Form S-4, as amended, that includes a proxy statement of Resolute and a prospectus of Cimarex.

Resolute is making the following amended and supplemental disclosures (the *Supplemental Disclosures*) to the definitive proxy statement on Schedule 14A filed by Resolute with the SEC on January 30, 2019, which also constitutes a prospectus of Cimarex (the *Proxy Statement*). The Supplemental Disclosures should be read in conjunction with the Proxy Statement, which should be read in its entirety. Defined terms used but not defined herein have the meanings set forth in the Proxy Statement.

While Cimarex and Resolute believe that the disclosures set forth in the Proxy Statement comply fully with applicable law, to provide additional information to Resolute's stockholders, Resolute is making these Supplemental Disclosures. Nothing in the Supplemental Disclosures shall be deemed an admission of the legal necessity or materiality under applicable law of any of the disclosures set forth herein or in the Proxy Statement.

SUPPLEMENTAL DISCLOSURES

This supplemental information should be read in conjunction with the Proxy Statement, which should be read in its entirety. Defined terms used but not defined below have the meanings set forth in the Proxy Statement. All page references in the information below are to pages in the Proxy Statement. Paragraph references used herein refer to the Proxy Statement before any additions or deletions resulting from the supplemental disclosures. The information contained herein speaks only as of February 13, 2019 unless the information indicates another date applies.

1. The section of the Proxy Statement entitled "The Merger Resolute Board Recommendation and Its Reasons for the Merger Strategic Review Process" is hereby supplemented as follows:

The second bullet point on page 53 of the Proxy Statement is revised in its entirety:

Strategic Review Process.

- The Resolute board considered that (i) although Resolute's intention to review and consider its strategic alternatives had been publicly announced on multiple occasions during the period from May 2018 through November 2018, and (ii) during the fall of 2018, Resolute engaged in an organized process to solicit indications of interest for a business combination with or acquisition of Resolute, including contacting a total of 13 industry participants and entering into non-disclosure agreements with four of such industry participants, no indications of interest or proposals ultimately were received from any company or entity other than Cimarex. None of the non-disclosure agreements entered into with potentially-interested transaction counterparties during 2018 contain restrictive language that would prevent the counterparty from privately seeking a waiver of any standstill provision thereunder or otherwise from making a private proposal to Resolute.

2. The section of the Proxy Statement entitled "The Merger Opinions of Resolute's Financial Advisors" Opinion of Goldman Sachs Selected Transactions Analysis is hereby supplemented as follows:

The chart and second paragraph on page 60 of the Proxy Statement are revised in their entirety:

Selected Transactions Analysis. Goldman Sachs analyzed certain information relating to the following selected transactions involving oil and gas-related assets in the Delaware Basin region announced from January 2018 through November 16, 2018 for aggregate consideration greater than \$100 million:

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Announcement Date	Transaction	Adj \$ / Acre
02/06/2018	Halcón Resources Corporation's acquisition of certain acreage from Royal Dutch Shell	\$ 15,868
02/06/2018	Halcón Resources Corporation's acquisition of certain acreage from an undisclosed seller	22,037
02/20/2018	Luxe Energy II LLC's acquisition of certain acreage from Concho Resources Inc.	12,545
02/26/2018	Luxe Energy II LLC's acquisition of certain acreage from Centennial Resource Development, Inc.	15,488
05/10/2018	Matador Resources Company's acquisition of acreage from an undisclosed seller	12,487
05/24/2018	Callon Petroleum Company's acquisition of certain oil and gas properties from Cimarex Energy Co.	12,739
08/14/2018	Carrizo Oil & Gas, Inc.'s acquisition of Delaware Basin properties from Devon Energy Corporation	14,583

While none of the companies or assets that were sold in the selected transactions are directly comparable to Resolute or its assets, the companies or assets sold in the selected transactions, for the purposes of analysis, in Goldman Sachs' professional judgment and experience, may be considered similar to certain of Resolute's assets. Additionally, while none of the transactions used in the above analyses as a comparison is directly comparable to the contemplated transaction, the companies or assets sold in such transactions, along with the timing and size of such transactions, for purposes of analysis, in Goldman Sachs' professional judgment, may be considered similar to the contemplated transaction.

3. The section of the Proxy Statement entitled "The Merger - Opinions of Resolute's Financial Advisors - Opinion of Goldman Sachs - Premia Analysis" is hereby supplemented as follows:

The chart on page 61 of the Proxy Statement is revised in its entirety:

Premia Analysis. Using publicly available information, Goldman Sachs reviewed and analyzed the acquisition premia for the following U.S. E&P acquisition transactions announced from January 1, 2009 through November 16, 2018 involving a public company target where the disclosed enterprise value was between \$1 billion and \$10 billion:

Announcement Date	Acquiror(s)	Target	Premia
11/01/2009	Denbury Resources Inc.	Encore Acquisition Company	34.9%
04/04/2010	SandRidge Energy, Inc.	Arena Resources, Inc.	16.8%
11/09/2010	Chevron Corporation	Atlas Energy, Inc.	36.6%
10/17/2011	Statoil ASA	Brigham Exploration Company	20.2%
04/25/2012	Halcón Resources Corporation	GeoResources, Inc.	23.4%
02/21/2013	LINN Energy, LLC and LinnCo, LLC	Berry Petroleum Company	19.8%
09/29/2014	Encana Corporation	Athlon Energy Inc.	25.2%
05/11/2015	Noble Energy, Inc.	Rosetta Resources Inc.	37.7%
05/16/2016	Range Resources Corporation	Memorial Resource Development Corp.	17.1%
01/16/2017	Noble Energy, Inc.	Clayton Williams Energy, Inc.	33.7%
06/19/2017	EQT Corporation	Rice Energy Inc.	37.4%
03/28/2018	Concho Resources Inc.	RSP Permian, Inc.	29.1%
08/14/2018	Diamondback Energy, Inc.	Energen Corporation	19.0%
10/28/2018	Denbury Resources Inc.	Penn Virginia Corporation	18.4%
10/30/2018	Chesapeake Energy Corporation	WildHorse Resource Development Corporation	24.0%
11/01/2018	Encana Corporation	Newfield Exploration Company	35.4%

4. The section of the Proxy Statement entitled "The Merger Opinions of Resolute's Financial Advisors" Opinion of Goldman Sachs General is hereby supplemented as follows:

The fourth paragraph on page 62 of the Proxy Statement is revised in its entirety:

The Resolute board selected Goldman Sachs as its financial advisor because it is an internationally recognized investment banking firm that has substantial experience in transactions similar to the merger. Pursuant to a letter agreement dated November 18, 2018, Resolute engaged Goldman Sachs to act as its financial advisor in connection with the contemplated transaction. The engagement letter between Resolute and Goldman Sachs provides for a transaction fee that is estimated, based on the information available as of the date of public announcement of the merger, at approximately \$7.5 million, \$2.5 million of which was payable on announcement of the transaction and the remainder of which is contingent upon consummation of the merger. In addition, Resolute has agreed to reimburse Goldman Sachs for certain of its expenses, including attorney's fees and disbursements, and to indemnify Goldman Sachs and related persons against various liabilities, including certain liabilities under the federal securities laws.

5. The section of the Proxy Statement entitled "The Merger Opinions of Resolute's Financial Advisors" Opinion of Petrie Partners Comparable Transaction Analysis is hereby supplemented as follows:

The second full paragraph on page 66 of the Proxy Statement is revised in its entirety:

Comparable Transaction Analysis

Petrie Partners reviewed selected publicly-available information for 14 oil and gas transactions announced since July 2016 that included assets in the Texas Delaware Basin and had a value greater than or equal to \$400 million. Petrie Partners reviewed all transactions with publicly-available information that it deemed to have certain characteristics similar to those of Resolute, although Petrie Partners noted that none of the reviewed transactions or the companies that participated in the selected transactions were directly comparable to Resolute.

Precedent Transactions for Resolute

Date Announced	Buyer	Seller
05/24/18	Callon Petroleum Company	Cimarex Energy Co.
12/11/17	Oasis Petroleum Inc.	Forge Energy, LLC
06/28/17	Carrizo Oil & Gas, Inc.	ExL Petroleum Management, LLC
01/24/17	Halcón Resources Corporation	Samson Exploration LLC
01/12/17	WPX Energy, Inc.	Panther Energy Company II, LLC; Carrier Energy Partners, LLC
12/20/16	KLR Energy Acquisition Corp.	Tema Oil and Gas Company
12/14/16	Diamondback Energy, Inc.	Brigham Resources Operating, LLC
12/13/16	Callon Petroleum Company	American Resource Development LLC
11/28/16	Centennial Resource Development, Inc.	Silverback Exploration, LLC

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10/31/16	Occidental Petroleum Corporation	J Cleo Thompson Operating; Et al.
10/13/16	RSP Permian, Inc.	Silver Hill Energy Partners, LLC; Silver Hill E&P II, LLC
08/23/16	PDC Energy Inc.	Arris Petro. and 299 Resources
07/13/16	Diamondback Energy, Inc.	Luxe Energy LLC
07/06/16	Silver Run Acquisition Corporation	Centennial Resource Production, LLC

The minimum, mean, median and maximum price per acre multiples implied by the precedent transactions are set forth below.

Measure	Minimum	Mean	Median	Maximum
Production-Adjusted Transaction Value/Acre (1)	\$ 12,739	\$ 33,073	\$ 31,132	\$ 63,234

(1) Production-Adjusted Transaction Value per acre multiples calculated by subtracting the estimated value of current production at \$30,000 per barrel of oil equivalent per day (Boepd) from the transaction value for each selected transaction and then dividing the remaining value by the net acreage acquired.

6. The section of the Proxy Statement entitled "The Merger Opinions of Resolute's Financial Advisors, Opinion of Petrie Partners, Precedent Transactions, Oil & Gas Corporate Transactions" is hereby supplemented as follows:

The chart on page 67 of the Proxy Statement is revised in its entirety:

Date Announced	Date Closed	Acquiring Company	Target Company
11/01/18	02/13/19	Encana Corporation	Newfield Exploration Company
10/30/18	02/01/19	Chesapeake Energy Corporation	WildHorse Resource Development Corporation
10/28/18	Pending	Denbury Resources Inc.	Penn Virginia Corporation
08/14/18	11/29/18	Diamondback Energy, Inc.	Energen Corporation
06/18/18	10/18/18	MLCJR LLC (Cox Oil)	Energy XXI Gulf Coast, Inc.
03/28/18	07/19/18	Concho Resources Inc.	RSP Permian, Inc.
06/19/17	11/13/17	EQT Corporation	Rice Energy Inc.
01/16/17	04/24/17	Noble Energy, Inc.	Clayton Williams Energy, Inc.
05/16/16	09/16/16	Range Resources Corporation	Memorial Resource Development Corp.
05/11/15	07/20/15	Noble Energy, Inc.	Rosetta Resources Inc.
09/29/14	11/13/14	Encana Corporation	Athlon Energy Inc.
07/13/14	12/08/14	Whiting Petroleum Corporation	Kodiak Oil & Gas Corp.
03/12/14	06/03/14	Energy XXI (Bermuda) Limited	EPL Oil & Gas, Inc.
04/30/13	10/02/13	Contango Oil & Gas Company	