

Resolute Energy Corp
Form 425
February 11, 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 11, 2019**

Resolute Energy Corporation

(Exact name of Registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

001-34464
Commission
File Number

27-0659371
(I.R.S. Employer
Identification No.)

1700 Lincoln Street, Suite 2800, Denver CO
(Address of principal executive offices)

80203
(Zip Code)

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Registrant's telephone number, including area code: **(303) 534-4600**

(Former name, former address and former fiscal year, 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:

- 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.

As previously reported, on November 18, 2018, Resolute Energy Corporation, a Delaware corporation (Resolute), entered into an Agreement and Plan of Merger (the Merger Agreement) with Cimarex Energy Co., a Delaware corporation (Cimarex), 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 and, together with Merger Sub 1, the Merger Subs), pursuant to which Cimarex will acquire Resolute in exchange for a combination of shares of common stock, par value \$0.01 per share, of Cimarex and cash. Upon the terms and subject to the conditions of the Merger Agreement, (i) Merger Sub 1 will merge with and into Resolute (the First Merger), with Resolute continuing as the surviving corporation in the First Merger, and (ii) thereafter, Resolute will merge with and into Merger Sub 2, with Merger Sub 2 continuing as the surviving company (the Second Merger and, together with the First Merger, the Merger).

On February 11, 2019, Resolute and Cimarex issued a joint press release announcing that, in connection with Cimarex's pending acquisition of Resolute, the election deadline for holders of shares of Resolute's common stock and holders of shares of Resolute's restricted stock (time and/or performance-vested), outperformance share rights and/or options to elect the form of merger consideration they wish to receive in connection with the Merger, subject to the proration procedures described in the Merger Agreement, is 5:00 p.m., Eastern Time, on February 22, 2019. A copy of the press release is filed as Exhibit 99.1 hereto.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits.

| Exhibit Number | Description of Exhibits |
|----------------|--|
| 99.1 | <u>Joint Press Release dated February 11, 2019</u> |

Additional Information and Where to Find It

This report does not constitute an offer to buy or sell or the solicitation of an offer to buy or sell any securities or a solicitation of any vote or approval. This communication relates to a proposed transaction between Resolute and Cimarex. 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. The registration statement became effective on January 30, 2019. Resolute filed with the SEC a definitive proxy statement on Schedule 14A on January 30, 2019. The proxy statement/prospectus was mailed to stockholders of Resolute on or about January 30, 2019. Each of Resolute and Cimarex also plan to file other relevant documents with the SEC regarding the proposed transaction. No offering of securities shall be made except by means of a prospectus meeting the requirements of Section 10 of the U.S. Securities Act of 1933, as amended. INVESTORS AND SECURITY HOLDERS OF RESOLUTE ARE URGED TO READ THE REGISTRATION STATEMENT, PROXY STATEMENT/PROSPECTUS AND OTHER DOCUMENTS THAT MAY BE FILED WITH THE SEC CAREFULLY AND IN THEIR ENTIRETY IF AND WHEN THEY BECOME AVAILABLE BECAUSE THEY WILL CONTAIN IMPORTANT INFORMATION ABOUT THE PROPOSED TRANSACTION. Investors and security holders will be able to obtain free copies of these documents (if and when available) and other documents containing important information about Resolute and Cimarex, once such documents are filed with the SEC through the website maintained by the SEC at <http://www.sec.gov>. Copies of the documents filed with the SEC by Resolute will be available free of charge on Resolute's website at <https://www.resoluteenergy.com/> under the tab Investors and then under the heading SEC Filings. Copies of the documents filed with the SEC by Cimarex will be available free of charge on Cimarex's website at <https://www.cimarex.com/home/default.aspx> under the tab Investor Relations and then under the heading Financial Information.

Certain Information Concerning Participants

Resolute, Cimarex and certain of their respective directors, executive officers and other persons may be deemed to be participants in the solicitation of proxies from Resolute's stockholders in respect of the proposed transaction. Information about the directors and executive officers of Cimarex is set forth in Cimarex's definitive proxy statement for its 2018 annual meeting of stockholders, which was filed with the SEC on March 30, 2018. Information about the directors and executive officers of Resolute, including a description of their direct and indirect interests, by security holdings or otherwise, is set forth in the proxy statement/prospectus and is set forth in its definitive proxy statement for its 2018 annual meeting of stockholders, which was filed with the SEC on May 18, 2018. These documents can be obtained free of charge from the sources indicated above. Other information regarding the participants in the proxy solicitation and a description of their direct and indirect interests, by security holdings or otherwise, are contained in the proxy statement/prospectus and will be contained in other relevant materials to be filed with the SEC when such materials become available. Investors should read the proxy statement/prospectus carefully before making any voting or investment decisions. You may obtain free copies of these documents from Resolute or Cimarex using the sources indicated above.

Cautionary Statement Regarding Forward-Looking Information

This report includes forward-looking statements within the meaning of the safe harbor provisions of the United States Private Securities Litigation Reform Act of 1995. Words such as expect, estimate, project, budget, forecast, anticipate, intend, plan, may, will, poised, believes, predicts, potential, continue, and similar expressions are intended to identify such forward-looking statements; however the absence of these words does not mean the statements are not forward-looking. Forward-looking statements in this report include matters that involve known and unknown risks, uncertainties and other factors that may cause actual results, levels of activity, performance or achievements to differ materially from results expressed or implied by this report. Such risk factors include, among others: the expected timing

and likelihood of completion of the proposed transaction, the ability to successfully integrate the businesses, the occurrence of any event, change or other circumstances that could give rise to the termination of the merger agreement, the possibility that stockholders of Resolute may not approve the merger agreement, the risk that the parties may not be able to satisfy the conditions to the proposed transaction in a timely manner or at all, risks related to disruption of management time from ongoing business operations due to the proposed transaction, the risk that any announcements relating to the proposed transaction could have adverse effects on the market price of Cimarex's common stock or Resolute's common stock, the risk of any unexpected costs or expenses resulting from the proposed transaction, the outcome of any litigation relating to the proposed transaction, the risk that the proposed transaction and its announcement could have an adverse effect on the ability of Cimarex and Resolute to retain customers and retain and hire key personnel and maintain relationships with their suppliers and customers and on their operating results and businesses generally, the risk the pending proposed transaction could distract management of both entities and they will incur substantial costs, the risk that problems may arise in successfully integrating the businesses of the companies, which may result in the combined company not operating as effectively and efficiently as expected, the risk that the combined company may be unable to achieve synergies or other anticipated benefits of the proposed transaction or it may take longer than expected to achieve those synergies or benefits and other important factors that could cause actual results to differ materially from those projected. All such factors are difficult to predict and are beyond Resolute's control. Additional factors that could cause results to differ materially from those described above can be found in Cimarex's annual reports on Form 10-K, quarterly reports on Form 10-Q and current reports on Form 8-K that are available on its website at <http://www.cimarex.com> and on the SEC's website at <http://www.sec.gov>, and in Resolute's annual reports on Form 10-K, quarterly reports on Form 10-Q and current reports on Form 8-K that are available on Resolute's website at <http://www.resoluteenergy.com> and on the SEC's website at <http://www.sec.gov>.

Actual results may differ materially from those contained in the forward-looking statements in this report. Resolute undertakes no obligation and does not intend to update these forward-looking statements to reflect events or circumstances occurring after the date of this report. You are cautioned not to place undue reliance on these forward-looking statements, which speak only as of the date of this report.

SIGNATURE

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 thereunto duly authorized.

RESOLUTE ENERGY CORPORATION

Date: February 11, 2019

By:

/s/ Richard F. Betz
Richard F. Betz
Chief Executive Officer