

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, DC 20549**

**FORM S-8  
REGISTRATION STATEMENT  
UNDER  
THE SECURITIES ACT OF 1933**

**SM Energy Company**

(Exact name of registrant as specified in its charter)

Delaware  
(State or other jurisdiction of  
incorporation or organization)

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

1775 Sherman Street, Suite 1200  
Denver, Colorado 80203  
(Address of principal executive offices and zip code)

SM Energy Company Employee Stock Purchase Plan  
(Full title of the plan)  
David W. Copeland  
Executive Vice President, General Counsel and Corporate Secretary  
SM Energy Company  
1775 Sherman Street, Suite 1200  
Denver, Colorado 80203  
(303) 861-8140

(Name, address, including zip code, and telephone number, including area code, of agent for service)

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company or an emerging growth company. See the definitions of “large accelerated filer,” “accelerated filer,” “smaller reporting company,” and “emerging growth company” in Rule 12b-2 of the Exchange Act.

Large accelerated filer	<input type="checkbox"/>	Accelerated filer	<input checked="" type="checkbox"/>
Non-accelerated filer	<input type="checkbox"/>	Smaller reporting company	<input type="checkbox"/>
		Emerging growth company	<input type="checkbox"/>

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 7(a)(2)(B) of the Securities Act.

**CALCULATION OF REGISTRATION FEE**

Title of securities to be registered	Amount to be registered <sup>(1)</sup>	Proposed maximum offering price per share <sup>(2)</sup>	Proposed maximum aggregate offering price <sup>(2)</sup>	Amount of registration fee
Common Stock, \$0.01 par value (“Common Stock”)	3,600,000	\$ 22.95	\$ 82,620,000.00	\$ 9,013.84

(1) Pursuant to Rule 416 of the Securities Act of 1933, as amended (the “Securities Act”), this registration statement shall be deemed to cover an indeterminate number of additional shares of Common Stock of the registrant as may be offered or issued or become issuable to prevent dilution as a result of any stock splits, stock dividends or similar transactions which result in an increase in the number of the registrant’s shares of outstanding Common Stock.

(2) Estimated solely for the purpose of determining the registration fee in accordance with Rule 457(c) and Rule 457(h) under the Securities Act based on the average of the high and low sales prices of the registrant’s Common Stock as reported on the New York Stock Exchange on June 8, 2021.

**PART I**

**INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS**

The documents containing the information specified in Part I will be sent or given to participants in the Plan as specified by Rule 428(b)(1) under the Securities Act. In accordance with the instructions to Part I of Form S-8, such documents will not be filed with the Commission either as part of this Registration Statement or as prospectuses or prospectus supplements pursuant to Rule 424 under the Securities Act. These documents and the documents incorporated by reference pursuant to Item 3 of Part II of this Registration Statement, taken together, constitute a prospectus that meets the requirements of Section 10(a) of the Securities Act.

**Item 1. Plan Information.**

Not required to be filed with this Registration Statement.

**Item 2. Registrant Information and Employee Plan Annual Information.**

Not required to be filed with this Registration Statement.

**PART II**

**INFORMATION REQUIRED IN THE REGISTRATION STATEMENT**

**Item 3. Incorporation of Documents by Reference.**

We “incorporate by reference” in this prospectus certain documents that we have previously filed with the Commission. This means that we are disclosing important information to you without actually including that information in this prospectus by referring you to other documents that we have filed separately with the Commission. The information incorporated by reference is an important part of this prospectus. Information that we later provide to the Commission, and which is deemed “filed” with the Commission, will automatically update information that we previously filed with the Commission, and may replace information in this prospectus and information that we previously filed with the Commission. We incorporate by reference the following documents in this prospectus, which you should review in connection with this prospectus:

- [The Company’s Annual Report on Form 10-K for its fiscal year ended December 31, 2020, filed with the Commission on February 18, 2021 \(the “2020 Form 10-K”\);](#)
- [The Company’s Proxy Statement on Schedule 14A relating to our annual meeting of stockholders, filed on April 16, 2021 \(with respect to those portions incorporated by reference into our 2020 Form 10-K\);](#)
- [The Company’s Quarterly Report on Form 10-Q for the quarter ended March 31, 2021, filed with the Commission on April 30, 2021;](#)
- The Company’s Current Reports on Form 8-K filed with the Commission on [March 25, 2021](#), [June 1, 2021](#), [June 9, 2021](#) and [June 10, 2021](#), excluding any information furnished pursuant to Item 2.02, Item 7.01 or Item 9.01 on any Current Report on Form 8-K;
- All other reports filed pursuant to Section 13(a) or 15(d) of the Exchange Act since the end of the fiscal year covered by the annual report referred to in (a) above (excluding any information furnished pursuant to Item 2.02 or Item 7.01 contained in any Current Report on Form 8-K); and
- [The description of the Company’s Common Stock contained in Exhibit 4.14 of the 2020 Form 10-K, and any amendment or report filed with the Commission for the purposes of updating such description.](#)

---

We also incorporate by reference each of the documents that we file with the Commission (excluding any portion of those filings furnished under Items 2.02 or 7.01 of Form 8-K or other information furnished to the Commission) under Sections 13(a), 13(c), 14, or 15(d) of the Exchange Act on or after this registration statement and prior to the filing of a post-effective amendment that indicates that all shares of Common Stock offered hereby have been sold or that deregisters all such shares of Common Stock then remaining unsold. Any statements made in such documents will automatically update and supersede the information contained in this prospectus, and any statements made in this prospectus update and supersede the information contained in past Commission filings incorporated by reference into this prospectus.

You should rely only on the information contained or incorporated by reference in this prospectus, any applicable prospectus supplement, or any free writing prospectus we may authorize to be delivered to you. You should not assume that the information incorporated by reference or provided in this prospectus, any applicable prospectus supplement or any free writing prospectus is accurate as of any date other than the date on the front of each document.

**Item 4. Description of Securities.**

Not applicable.

**Item 5. Interests of Named Experts and Counsel.**

Not applicable.

**Item 6. Indemnification of Officers and Directors.**

Except to the extent indicated below, there is no charter provision, bylaw, contract, arrangement or statute under which any director or officer of SM Energy is insured or indemnified in any manner against any liability which he or she may incur in his or her capacity as such.

Article FIFTEENTH of SM Energy’s restated certificate of incorporation contains a provision, permitted by Section 102(b)(7) of the Delaware General Corporation Law, limiting the personal monetary liability of directors for breach of fiduciary duty as a director. This provision and Delaware law provide that the provision does not eliminate or limit liability:

- for any breach of the director's duty of loyalty to SM Energy or its stockholders;
- for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law;
- for unlawful payments of dividends or unlawful stock repurchases or redemptions as provided in Section 174 of the Delaware General Corporation Law; or
- for any transaction from which the director derived an improper benefit.

Section 145 of the Delaware General Corporation Law permits indemnification against expenses (including attorneys’ fees), judgments, fines and amounts paid in settlement actually and reasonably incurred in connection with actions, suits or proceedings in which a director, officer, employee or agent is a party by reason of the fact that he or she is or was such a director, officer, employee or agent, if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best

interests of the corporation and with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. However, in connection with actions by or in the right or the corporation, such indemnification is not permitted if such person has been adjudged liable to the corporation unless the court determines that, under all of the circumstances, such person is nonetheless fairly and reasonably entitled to indemnify for such expenses as the court deems proper. Article FOURTEENTH of SM Energy's restated certificate of incorporation provides for such indemnification.

---

Section 145 of the Delaware General Corporation Law also permits a corporation to purchase and maintain insurance on behalf of its directors and officers against any liability that may be asserted against, or incurred by, such persons in their capacities as directors or officers of the corporation whether or not the corporation would have the power to indemnify such person against such liabilities under the provisions of such sections. SM Energy has purchased such insurance.

Section 145 of the Delaware General Corporation Law further provides that the statutory provision is not exclusive of any other right to which those seeking indemnification or advancement of expenses may be entitled under any bylaw, agreement, vote of stockholders or independent directors, or otherwise, both as to action in such person's official capacity and as to action in another capacity while holding such office.

Article FOURTEENTH of SM Energy's restated certificate of incorporation and Section 19 of the Company's By-laws contain provisions regarding indemnification that parallel those described above.

#### **Item 7. Exemption from Registration Claimed.**

Not applicable.

#### **Item 8. Exhibits.**

The following exhibits are filed as part of this registration statement.

<u>Exhibit No.</u>	<u>Description of Exhibit</u>
<a href="#">4.1</a>	<a href="#">Restated Certificate of Incorporation of SM Energy Company, as amended through June 1, 2010 (filed as Exhibit 3.1 to the registrant's Quarterly Report on Form 10-Q for the quarter ended June 30, 2010 and incorporated herein by reference).</a>
<a href="#">4.2</a>	<a href="#">Amended and Restated By-Laws of SM Energy Company, amended and restated effective as of February 21, 2017 (filed as Exhibit 3.2 to the registrant's Annual Report on Form 10-K for the year ended December 31, 2016 and incorporated herein by reference).</a>
<a href="#">4.3</a>	<a href="#">Description of the Securities of SM Energy Company registered pursuant to Section 12 of the Exchange Act (filed as Exhibit 4.11 to the registrant's Annual Report on Form 10-K for the year ended December 31, 2019 and incorporated herein by reference).</a>
<a href="#">4.4</a>	<a href="#">SM Energy Company Employee Stock Purchase Plan, adopted effective as of April 5, 2021 (filed as Annex A to the registrant's Proxy Statement on Schedule 14A filed with the Commission on April 16, 2021 and incorporated herein by reference).</a>
<a href="#">5.1*</a>	<a href="#">Opinion of Holland &amp; Hart LLP with respect to the legality of the Common Stock registered hereby.</a>
<a href="#">23.1*</a>	<a href="#">Consent of Holland &amp; Hart LLP (contained in its opinion filed herewith as Exhibit 5.1).</a>
<a href="#">23.2*</a>	<a href="#">Consent of Ernst &amp; Young LLP, Independent Registered Public Accounting Firm.</a>
<a href="#">23.3*</a>	<a href="#">Consent of Ryder Scott Company, L.P.</a>
<a href="#">24.1*</a>	<a href="#">Power of Attorney (included on the signature page to this Registration Statement).</a>

---

\*Filed herewith.

#### **Item 9. Undertakings.**

The undersigned Company hereby undertakes:

---

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement:

(i) to include any prospectus required by section 10(a)(3) of the Securities Act;

(ii) to reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if total dollar value securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) under the Securities Act if, in the aggregate, the changes in volume and price represent no more than 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement; and

(iii) to include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;

provided, however, that paragraphs (1)(i) and (1)(ii) do not apply if the registration statement is on Form S-8 and information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed with or furnished to the Commission by the Company pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference herein.

(2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

The Company hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the Company's annual report pursuant to Section 13(a) or Section 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the Company pursuant to the foregoing provisions, or otherwise, the Company has been advised that in the opinion of the Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Company of expenses incurred or paid by a director, officer or controlling person of the Company in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Company will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

---

## SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, the Company certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Denver, State of Colorado, on June 11, 2021.

SM Energy Company

By: /s/ Herbert S. Vogel

Name: Herbert S. Vogel

Title: President and Chief Executive Officer

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints each of Herbert S. Vogel and A. Wade Pursell with full power to act alone, as his or her true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution, for him or her and in his or her name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) and supplements to this Registration Statement, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or any of them, or their or his or her substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, as amended, this Registration Statement has been signed by the following persons in the capacities and on the date indicated.

<u>SIGNATURE</u>	<u>TITLE</u>	<u>DATE</u>
<u>/s/ Herbert S. Vogel</u> Herbert S. Vogel	President, Chief Executive Officer, and Director (Principal Executive Officer)	June 11, 2021
<u>/s/ A. Wade Pursell</u> A. Wade Pursell	Executive Vice President and Chief Financial Officer (Principal Financial Officer)	June 11, 2021
<u>/s/ Patrick A. Lytle</u> Patrick A. Lytle	Vice President – Chief Accounting Officer and Controller and Assistant Secretary (Principal Accounting Officer)	June 11, 2021
<u>/s/ William D. Sullivan</u> William D. Sullivan	Chairman of the Board of Directors	June 11, 2021
<u>/s/ Carla J. Bailo</u> Carla J. Bailo	Director	June 11, 2021
<u>/s/ Stephen R. Brand</u> Stephen R. Brand	Director	June 11, 2021
<u>/s/ Ramiro G. Peru</u> Ramiro G. Peru	Director	June 11, 2021
<u>/s/ Julio M. Quintana</u> Julio M. Quintana	Director	June 11, 2021
<u>/s/ Rose M. Robeson</u> Rose M. Robeson	Director	June 11, 2021

---



June 11, 2021

Board of Directors  
SM Energy Company  
1775 Sherman Street, Suite 1200  
Denver, Colorado 80203

Re: Registration Statement on Form S-8

Ladies and Gentlemen:

We have acted as counsel to SM Energy Company, a Delaware corporation (the "**Company**"), in connection with its Registration Statement on Form S-8 filed with the Securities and Exchange Commission (the "**Commission**") on the date hereof (the "**Registration Statement**"), pursuant to the Securities Act of 1933, as amended (the "**Securities Act**"). Pursuant to the Registration Statement, the Company is registering for issuance under the SM Energy Company Employee Stock Purchase Plan, as adopted by the Board of Directors of the Company (the "**Board**") effective as of April 5, 2021 and approved by the stockholders of the Company effective as of May 27, 2021 (the "**Plan**"), 3,600,000 shares (the "**Shares**") of the Company's common stock, par value \$0.01 per share ("**Common Stock**"). This opinion letter is furnished to you at your request to enable you to fulfill the requirements of Item 601(b)(5) of Regulation S-K under the Securities Act in connection with the Registration Statement, and no opinion is expressed or may be implied herein as to any matter pertaining to the contents of the Registration Statement other than as to the valid issuance of the Shares.

As the basis for the opinion hereinafter expressed, we have reviewed originals or copies of the following:

- A. an executed copy of the Registration Statement;
- B. a copy of the Restated Certificate of Incorporation of the Company, as filed with the Secretary of State of the State of Delaware on November 17, 1992, as 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, and certified as of a recent date;
- C. a copy of the Amended and Restated By-Laws of the Company effective as of February 21, 2017;
- D. a copy of the resolutions adopted by the Board relating to, among other things, adoption of the Plan and approval of the filing of the Registration Statement;

T 303.295.8000 F 303.295.8261  
555 17th Street, Suite 3200, Denver, CO 80202-3921  
Mail to: P.O. Box 8749, Denver, CO 80201-8749  
www.hollandhart.com

Alaska  
Colorado  
Idaho

Montana  
Nevada  
New Mexico

Utah  
Washington, D.C.  
Wyoming



June 11, 2021  
Page 2

- E. a report of the inspector of election at the annual meeting of the stockholders of the Company held on May 27, 2020, indicating the election of the directors who unanimously adopted the resolutions approving the Plan;
- F. a report of the inspector of election at the annual meeting of the stockholders of the Company held on May 27, 2021, indicating that the adoption of the Plan was approved by the stockholders; and
- G. the certificate of good standing covering the Company, issued by the Secretary of State of the State of Delaware as of a recent date (the "**Good Standing Certificate**").

We have relied upon the foregoing and upon certificates and other assurances of officers of the Company and others as to factual matters without having independently verified such factual matters. We have assumed for purposes of this opinion: (a) information contained in documents reviewed by us is true, complete and correct; (b) the genuineness and authenticity of all signatures on original documents; (c) the accuracy and completeness of all documents delivered to us and the authenticity of all documents submitted to us as originals; (d) the conformity to originals of all documents submitted to us as copies; (e) the accuracy, completeness and authenticity of certificates of public officials; (f) the legal capacity of all natural persons; and (g) the due authorization, execution and delivery of all documents by parties other than the Company.

We are opining herein as to the Delaware General Corporation Law, as amended, and we express no opinion with respect to the applicability thereto, or the effect thereon, of the laws of any other jurisdiction, or as to any matters of municipal law or the laws of any local agencies within any state.

Based on the foregoing, and subject to the qualifications, assumptions and limitations stated herein, we are of the opinion that the Shares have been duly authorized for issuance pursuant to the Plan and, when issued in accordance with the terms of the Plan, will be validly issued, fully paid and nonassessable.

We expressly disavow any obligation to advise you with respect to future changes in law or in our knowledge or as to any event or change of condition occurring subsequent to the date of this letter. This opinion is for your benefit in connection with the Registration Statement and may be relied upon by you and by persons entitled to rely upon it pursuant to the applicable provisions of the Securities Act.

We consent to the filing of this opinion as Exhibit 5.1 to the Registration Statement. In giving these consents, we do not thereby admit that we are within the category of persons whose consent is required under Section 7 of the Securities Act or the rules and regulations of the Commission.

Very truly yours,

/s/ Holland & Hart LLP

Holland and Hart LLP

---

**Consent of Independent Registered Public Accounting Firm**

We consent to the incorporation by reference in the Registration Statement (Form S-8) pertaining to the SM Energy Company 2021 Employee Stock Purchase Plan of our reports dated February 18, 2021, with respect to the consolidated financial statements of SM Energy Company and the effectiveness of internal control over financial reporting of SM Energy Company included in its Annual Report (Form 10-K) for the year ended December 31, 2020, filed with the Securities and Exchange Commission.

/s/ Ernst & Young LLP

Denver, Colorado  
June 11, 2021

---



**RYDER SCOTT COMPANY**

**PETROLEUM CONSULTANTS**

TBPE REGISTERED ENGINEERING FIRM F-1580

1100 LOUISIANA SUITE 4600

HOUSTON, TEXAS 77002-5294

FAX (713) 651-0849

TELEPHONE (713) 651-9191

**CONSENT OF INDEPENDENT PETROLEUM ENGINEERS AND GEOLOGISTS**

We hereby consent to the incorporation by reference in the Registration Statement on Form S-8 of SM Energy Company of information contained in our audit report as of December 31, 2020, setting forth estimates of revenues from SM Energy Company's oil, gas and NGL reserves.

/s/ RYDER SCOTT COMPANY, L.P.

**RYDER SCOTT COMPANY, L.P.**

TBPE Firm Registration No. F-1580

Houston, Texas

June 11, 2021

SUITE 2800, 350 7TH AVENUE, S.W.  
633 17TH STREET, SUITE 1700

CALGARY, ALBERTA T2P 3N9  
DENVER, COLORADO 80202

TEL (403) 262-2799  
TEL (303) 339-8110

---