

DYNEGY INC.
Form 425
April 05, 2018

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, DC 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): April 4, 2018

VISTRA ENERGY CORP.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

6555 Sierra Drive

001-38086
(Commission
File Number)

36-4833255
(I.R.S. Employer
Identification No.)

75039

Irving, TX
(Address of principal executive offices)
(214) 812-4600
(Zip Code)

(Registrant's telephone number, including area code)

N/A

(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:

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

Vistra Energy Corp., a Delaware corporation (the Company or Vistra Energy), and Dynegy Inc., a Delaware corporation (Dynegy), have agreed to close the previously announced merger of Dynegy with and into the Company, with the Company continuing as the surviving entity (the Merger), on or around April 9, 2018, subject to the satisfaction or waiver of the outstanding conditions to closing described in that certain Agreement and Plan of Merger, dated as of October 29, 2017, by and between the Company and Dynegy. Such agreement follows the receipt of regulatory approval of the Merger by the Federal Energy Regulatory Commission on April 4, 2018, which was the final regulatory condition to closing the Merger.

There can be no assurance that any of the outstanding conditions to closing will be satisfied or waived or that other events will not intervene to delay or result in the failure to consummate the Merger.

Cautionary Note Regarding Forward-Looking Statements

The information presented herein includes forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. These forward-looking statements, which are based on current expectations, estimates and projections about the industry and markets in which Vistra Energy and Dynegy operate and beliefs of and assumptions made by Vistra Energy's management and Dynegy's management, involve risks and uncertainties, which are difficult to predict and are not guarantees of future performances, that could significantly affect the financial results of Vistra Energy or Dynegy or the combined company. All statements, other than statements of historical facts, are forward-looking statements. These statements are often, but not always, made through the use of words or phrases such as may, might, should, could, predict, potential, believe, will likely result, expect, continue, seek, estimate, intend, plan, project, forecast, goal, target, would, guidance, and outlook, or those words or other comparable words of a future or forward-looking nature. Readers are cautioned not to place undue reliance on forward-looking statements. Although Vistra Energy and Dynegy believe that in making any such forward-looking statement, Vistra Energy's and Dynegy's expectations are based on reasonable assumptions, any such forward-looking statement involves uncertainties and risks that could cause results to differ materially from those projected in or implied by any such forward-looking statement, including but not limited to (i) the failure to consummate or delay in consummating the Merger; (ii) the risk that a condition to closing of the Merger may not be satisfied; (iii) the effect of the Merger on Vistra Energy's and Dynegy's relationships with their respective customers and their operating results and businesses generally (including the diversion of management time on transaction-related issues); (iv) the risk that the credit ratings of the combined company or its subsidiaries are different from what Vistra Energy and Dynegy expect; (v) adverse changes in general economic or market conditions (including changes in interest rates) or changes in political conditions or federal or state laws and regulations; (vi) the ability of the combined company to execute upon the contemplated strategic and performance initiatives (including the risk that Vistra Energy's and Dynegy's respective businesses will not be integrated successfully or that the cost savings, synergies and growth from the Merger will not be fully realized or may take longer to realize than expected); (vii) there may be changes in the trading prices of Vistra Energy's and Dynegy's common stock prior to the closing of the Merger; (viii) the outcome of lawsuits that have been filed, or other lawsuits that may be filed, against Vistra Energy or Dynegy related to the proposed transaction; and (ix) those additional risks and factors discussed in reports filed with the Securities and Exchange Commission (SEC) by Vistra Energy and Dynegy from time to time, including (a) the uncertainties and risks discussed in the sections entitled Update to Risk Factors, Risk Factors and Cautionary Statement Regarding Forward-Looking Statements in Vistra Energy's prospectus filed with the SEC pursuant to Rule 424(b) of the Securities Act on March 21, 2018, and (b) the uncertainties and risks discussed in the sections entitled Risk Factors and Forward-Looking Statements in Vistra Energy's and Dynegy's respective annual reports on Form 10-K for the fiscal year ended December 31, 2017.

Any forward-looking statement speaks only at the date on which it is made, and except as may be required by law, neither Vistra Energy nor Dynegy undertake any obligation to update any forward-looking statement to reflect events

or circumstances after the date on which it is made or to reflect the occurrence of unanticipated events. New factors emerge from time to time, and it is not possible to predict all of them; nor can Vistra Energy or Dynegy assess the impact of each such factor or the extent to which any factor, or combination of factors, may cause results to differ materially from those contained in any forward-looking statement.

Additional Information about the Merger and Where to Find It

This communication relates to the proposed merger pursuant to the terms of the Agreement and Plan of Merger, dated as of October 29, 2017, by and between Vistra Energy and Dynegy. In connection with the proposed merger, Vistra Energy has filed with the SEC a registration statement on Form S-4 that includes a joint proxy statement of Vistra Energy and Dynegy that also constitutes a prospectus of Vistra Energy (the "joint proxy statement"), which joint proxy statement which has been mailed or otherwise disseminated to Vistra Energy stockholders and Dynegy stockholders, and a post-effective amendment thereto. Vistra Energy and Dynegy also plan to file other relevant documents with the SEC regarding the proposed transaction. **INVESTORS ARE URGED TO READ THE JOINT PROXY STATEMENT AND OTHER RELEVANT DOCUMENTS FILED WITH THE SEC IF AND WHEN THEY BECOME AVAILABLE BECAUSE THEY WILL CONTAIN IMPORTANT INFORMATION ABOUT VISTRA ENERGY, DYNEGY, THE PROPOSED MERGER AND RELATED MATTERS.** You may obtain a free copy of the joint proxy statement and other relevant documents (if and when they become available) filed by Vistra Energy and Dynegy with the SEC at the SEC's website at www.sec.gov.

Copies of the documents filed by Vistra Energy with the SEC will be available free of charge on Vistra Energy's website at www.vistraenergy.com or by contacting Vistra Energy Investor Relations at 214-812-0046 or at investor@vistraenergy.com. Copies of the documents filed by Dynegy with the SEC will be available free of charge on Dynegy's website at www.dynegy.com or by contacting Dynegy Investor Relations at (713) 507-6466 or at ir@dynegy.com.

Certain Information Regarding Participants in the Solicitation

Vistra Energy and Dynegy and certain of their respective directors and executive officers and other members of management and employees may be deemed to be participants in the solicitation of proxies in respect of the proposed merger. You can find information about Vistra Energy's directors and executive officers in Vistra Energy's prospectus filed with the SEC pursuant to Rule 424(b) of the Securities Act on March 21, 2018, and on its website at www.vistraenergy.com. You can find information about Dynegy's directors and executive officers in its proxy statement for its 2017 annual meeting of stockholders, which was filed with the SEC on March 30, 2017, and on its website at www.dynegy.com. Additional information regarding the interests of such potential participants will be included in the joint proxy statement and other relevant documents filed with the SEC if and when they become available. You may obtain free copies of these documents from Vistra Energy or Dynegy using the sources indicated above.

No Offer of Solicitation

This document shall not constitute an offer to sell or the solicitation of an offer to buy any securities, nor shall there be any sale of securities in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such jurisdiction. 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.

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 thereunto duly authorized.

Vistra Energy Corp.

Dated: April 5, 2018

/s/ Cecily Small Gooch

Name: Cecily Small Gooch

Title: Senior Vice President, Associate General

Counsel, Chief Compliance Officer and

Corporate Secretary