

Edgar Filing: CorEnergy Infrastructure Trust, Inc. - Form 10-K/A

CorEnergy Infrastructure Trust, Inc.
Form 10-K/A
March 31, 2014

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

FORM 10-K/A
Amendment No. 2

☒ ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the fiscal year ended December 31, 2013

OR

☐ TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from _____ to _____

Commission file number: 001-33292

COREENERGY INFRASTRUCTURE TRUST, INC.
(Exact name of registrant as specified in its charter)

Maryland

(State or other jurisdiction of incorporation or organization)

1100 Walnut, Ste. 3350

Kansas City, MO

(Address of Principal Executive Offices)

20-3431375

(IRS Employer Identification No.)

64106

(Zip Code)

Registrant's telephone number, including area code: (816) 875-3705

Title of Each Class

Common Stock, par value \$0.001 per share

Name of Each Exchange On Which Registered

New York Stock Exchange

Securities registered pursuant to Section 12(g) of the Act: None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act.

Yes ☐ No ☒

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes ☐ No ☒

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes ☒ No ☐

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. ☐

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Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer", "accelerated filer", and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer	<input type="checkbox"/>	Accelerated filer	<input checked="" type="checkbox"/>
Non-accelerated filer	<input type="checkbox"/> (Do not check if a smaller reporting company)	Smaller reporting company	<input type="checkbox"/>

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act)

Yes ☐ No ☒

The aggregate market value of common stock held by non-affiliates of the registrant on June 28, 2013, the last business day of the registrant's most recently completed second fiscal quarter, based on the closing price on that date of \$6.96 on the New York Stock Exchange was \$167,051,416. Common shares held by each executive officer and director and by each person who owns 10% or more of the outstanding common shares (as determined by information provided to the registrant) have been excluded in that such persons may be deemed to be affiliates. This determination of affiliate status is not necessarily a conclusive determination for other purposes.

As of February 28, 2014, the registrant had 31,635,537 common shares outstanding.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the registrant's Proxy Statement for its 2014 Annual Meeting of Stockholders to be filed not later than 120 days after the end of the fiscal year covered by this Annual Report on Form 10-K are incorporated by reference into Part III of this Form 10-K.

EXPLANATORY NOTE

Our Annual Report on Form 10-K for the fiscal year ended December 31, 2013, as amended by Amendment No. 1 thereto on Form 10-K/A filed on March 19, 2014 (as amended to date, our “Form 10-K”), is further amended and revised by this Amendment No. 2 on Form 10-K/A (“Amendment No. 2”) (i) to update certain cross-references in Part III to information to be incorporated by reference from the Company’s Proxy Statement for its 2014 Annual Meeting of Stockholders and (ii) to include the separate financial statements of VantaCore Partners LP (“VantaCore”), in accordance with Rule 3-09 of Regulation S-X (“Rule 3-09”), as new Exhibit 99.1, in Part IV, Item 15, Exhibits, Financial Statement Schedules (“Item 15”). The Company owns equity interests in VantaCore and is required to include its financial statements pursuant to Rule 3-09(a) and Rule 1-02(w) of Regulation S-X. In accordance with Rule 3-09(b)(1), the separate financial statements of VantaCore are being filed as an amendment to our Form 10-K, within 90 days after the end of our fiscal year, as they were not available prior to the filing of our Form 10-K.

In addition, this Amendment No. 2 (i) revises Part III, Item 10, Item 12 and Item 13 to update certain cross-references to information to be incorporated by reference from the Company’s Proxy Statement for its 2014 Annual Meeting of Stockholders and (ii) revises Part IV, Item 15 to include new Exhibits 31.3, 31.4, and 32.2, certifications of the Chief Executive Officer and Chief Financial Officer, pursuant to Rule 13a-14(a) and (b), and new Exhibit 23.2, consent of McGladrey LLP and Exhibit 23.3, consent of Cooper, Travis & Company, PLC.

Except as described above, no other amendments are being made to the Form 10-K. This Amendment No. 2 does not update or modify the disclosure contained in our Form 10-K in any way other than as required to reflect the items discussed above and does not reflect events occurring after the March 19, 2014 filing of our Amendment No. 1 to Form 10-K.

PART III

ITEM 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE

Code of Ethics

We have adopted a code of ethics, which applies to our principal executive officer and principal financial officer. We have also adopted a code of ethics that establishes procedures for personal investments and restricts certain personal securities transactions. Personnel subject to the code of ethics may invest in securities for their personal investment accounts, including securities that may be purchased or held by us, so long as such investments are made in accordance with the code of ethics. This information may be obtained, without charge, upon request by calling us at (816) 875-3705 or toll-free at (877) 699-2677 and on our Web site at <http://corenergy.corridortrust.com>.

You may also read and copy the codes of ethics at the Securities and Exchange Commission's Public Reference Room in Washington, D.C. You may obtain information on the operation of the Public Reference Room by calling the Securities and Exchange Commission at (800) SEC-0330. In addition, the codes of ethics are available on the EDGAR Database on the Securities and Exchange Commission's Internet site at <http://www.sec.gov>. You may obtain copies of the codes of ethics, after paying a duplicating fee, by electronic request at the following email address: publicinfo@sec.gov, or by writing the Securities and Exchange Commission's Public Reference Section, Washington, D.C. 20549.

Sarbanes-Oxley Act of 2002

The Sarbanes-Oxley Act of 2002 (the "Sarbanes-Oxley Act") imposes a wide variety of regulatory requirements on publicly-held companies and their insiders. The Sarbanes-Oxley Act requires us to review our policies and procedures to determine whether we comply with the Sarbanes-Oxley Act and the regulations promulgated thereunder. We will continue to monitor our compliance with all future regulations that are adopted under the Sarbanes-Oxley Act and will take actions necessary to ensure that we are in compliance therewith.

As of December 31, 2013, we are an accelerated filer. As an accelerated filer for the fiscal year ended December 31, 2013, we are required to prepare and include in our annual report to stockholders for such period a report regarding management's assessment of our internal control over financial reporting under the Securities Exchange Act of 1934 (the "1934 Act") and have included this report in Item 9A of this Annual Report on Form 10-K.

Additional information is incorporated by reference to the sections captioned "Nominees for Directors," "Incumbent Directors Continuing in Office," "Information About Executive Officers," "Board of Directors Meetings and Committees," "Section 16(a) Beneficial Ownership Reporting Compliance" and "Stockholder Proposals and Nominations for the 2015 Annual Meeting" in our proxy statement for our 2014 Annual Stockholder Meeting, to be filed with the Securities and Exchange Commission within 120 days after the end of the fiscal year covered by this Annual Report.

ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS

Incorporated by reference to the sections captioned "Security Ownership of Management and Certain Beneficial Owners" and "Proposal 3 - Approval of Director Compensation Plan" in our proxy statement for our 2014 Annual Stockholder Meeting, to be filed with the Securities and Exchange Commission within 120 days after the end of the fiscal year covered by this Annual Report.

ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE

Incorporated by reference to the sections captioned “Election of Directors,” “Nominees for Director,” “Incumbent Directors Continuing in Office,” “Board of Directors Meetings and Committees” and “Certain Relationships and Related Party Transactions” in our proxy statement for our 2014 Annual Stockholder Meeting, to be filed with the Securities and Exchange Commission within 120 days after the end of the fiscal year covered by this Annual Report.

PART IV

ITEM 15. EXHIBITS, FINANCIAL STATEMENT SCHEDULES

The following documents are filed as part of this Annual Report on Form 10-K/A:

1. The Financial Statements listed in the Index to Financial Statements on Page F-1 of the Annual Report on Form 10-K/A (Amendment No. 1) filed on March 19, 2014, which are incorporated herein by reference.

2. The Exhibits listed in the Exhibit Index below.

Exhibit No.	Description of Document
3.1	Articles of Amendment and Restatement of CorEnergy Infrastructure Trust, Inc. (2)
3.2	Second Amended and Restated Bylaws (3)
4.1	Form of Stock Certificate for Common Stock of CorEnergy Infrastructure Trust, Inc. (2)
4.2	Form of Warrant dated December 2006 (5)
4.3	Registration Rights Agreements with Merrill Lynch & Co; Merrill Lynch, Pierce, Fenner & Smith Incorporated, and Stifel, Nicolaus & Company, Incorporated dated January 9, 2006 (1)
4.4	Registration Rights Agreement dated April 2007 (5)
10.1	Dividend Reinvestment Plan (6)
10.2	Management Agreement dated August 7, 2013, effective July 1, 2013 (13)
10.3(a)	Advisory Agreement dated December 1, 2011 (7)
10.3(b)	Amended Advisory Agreement dated December 21, 2012 (11)
10.4	Custody Agreement with U.S. Bank National Association dated September 13, 2005 (1)
10.5	First Amendment to the Custody Agreement with U.S. Bank National Association dated May 24, 2010 (7)
10.6	Stock Transfer Agency Agreement with Computershare Investor Services, LLC dated September 13, 2005 (1)
10.7(a)	Second Amended Administration Agreement dated December 1, 2011 (6)
10.7(b)	Amendment and Assignment to the Second Amended Administration Agreement dated August 7, 2012 (11)
10.8	Warrant Agreement with Computershare Investor Services, LLC as Warrant Agent dated December 8, 2005 (1)
10.9(a)	Purchase and Sale Agreement, dated December 7, 2012, by and between Ultra Wyoming, Inc. and Pinedale Corridor, LP (8)

- 10.9(b) Amendment to Purchase and Sale Agreement, dated December 13, 2012, by and between Ultra Wyoming, Inc. and Pinedale Corridor, LP (9)
- 10.10(a) Subscription Agreement, dated December 7, 2012, by and among Pinedale GP, Inc., Ross Avenue Investments, LLC and Pinedale Corridor, LP (8)
- 10.10(b) First Amendment to Subscription Agreement by and among Pinedale Corridor, LP, Pinedale GP, Inc. and Ross Avenue Investments, LLC (9)
- 10.11(a) Term Credit Agreement, dated December 7, 2012, by and among Pinedale Corridor, LP, KeyBank National Association, as lender and KeyBank National Association, as administrative agent (8)

- 10.11(b) Amended and Restated Term Credit Agreement, dated December 14, 2012, by and among Pinedale Corridor, LP, KeyBank National Association, as lender and KeyBank National Association, as administrative agent (9)
- 10.12(a) Lease Agreement dated December 20, 2012 by and between Pinedale Corridor, LP and Ultra Wyoming LGS, LLC (10)
- 10.12(b) First Amendment to Lease, dated June 19, 2013, by and between Pinedale Corridor, LP and Ultra Wyoming LGS, LLC (14)
- 10.13 First Amended and Restated Limited Partnership Agreement of Pinedale Corridor, LP by and between Pinedale GP, Inc. and Ross Avenue Investments, LLC (10)
- 10.14(a) Revolving Credit Agreement dated as of May 8, 2013 by and among CorEnergy Infrastructure Trust, Inc., KeyBank National Association and the other financial institutions party to the Credit Agreement, as lenders and KeyBank National Association, as administrative agent (12)
- 10.14(b) First Amendment to Revolving Credit Agreement, dated August 23, 2013, by and among CorEnergy Infrastructure Trust, Inc., KeyBank National Association and the other financial institutions party to the Credit Agreement, as lenders and KeyBank National Association, as administrative agent (14)
- 10.16 Membership Interest Purchase Agreement, dated January 14, 2014, by and among Lightfoot Capital Partners, LP, CorEnergy Infrastructure Trust, Inc. and Arc Terminals Holdings LLC (15)
- 10.17 Lease, dated January 21, 2014, by and between LCP Oregon Holdings, LLC and Arc Terminals Holdings LLC (16)
- 10.18 Asset Purchase Agreement, dated January 21, 2014, by and between LCP Oregon Holdings, LLC and Arc Terminals Holdings LLC (16)
- 14.1 Code of Ethics for Principal Executive Officer and Principal Financial Officer (10)
- 21.1 Subsidiaries of the Company (17)
- 23.1 Consent of Ernst & Young LLP dated March 19, 2014 (17)
- 23.2 Consent of McGladry LLP dated March 31, 2014 – filed herewith
- 23.3 Consent of Cooper, Travis & Company, PLC dated March 31, 2014 – filed herewith
- 31.1 Certification by Chief Executive Officer pursuant to Exchange Act Rule 13a-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 (17)
- 31.2 Certification by Chief Accounting Officer pursuant to Exchange Act Rule 13a-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 (17)
- 31.3 Certification by Chief Executive Officer pursuant to Exchange Act Rule 13a-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 – filed herewith
- 31.4 Certification by Chief Accounting Officer pursuant to Exchange Act Rule 13a-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 – filed herewith

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- 32.1 Certification by Chief Executive Officer and Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (17)
- 32.2 Certification by Chief Executive Officer and Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 – filed herewith
- 99.1 Financial Statements of VantaCore Partners LP as of December 31, 2012 and 2013 and for the three years ended December 31, 2013 – filed herewith
- 101 The following materials from CorEnergy Infrastructure Trust, Inc.'s Annual Report on Form 10-K/A (Amendment No. 1) for the year ended December 31, 2013, formatted in XBRL (Extensible Business Reporting Language): (i) the Consolidated Balance Sheets, (ii) the Consolidated Statements of Operations, (iii) the Consolidated Statements of Cash Flows and (v) the Notes to Condensed Consolidated Financial Statements (17)
- (1) Incorporated by reference to the Registrant's Registration Statement on Form N-2, filed August 28, 2006 (File No. 333-136923).
- (2) Incorporated by reference to the Registrant's current report on Form 8-K, filed January 14, 2014 (the first Form 8-K filing on such date).

- (3) Incorporated by reference to the Registrant's current report on Form 8-K, filed July 31, 2013.
- (4) Incorporated by reference to Pre-Effective Amendment No. 2 to the Registrant's Registration Statement on Form N-2, filed January 9, 2007 (File No. 333-136923).
- (5) Incorporated by reference to Pre-Effective Amendment No. 1 to the Registrant's Registration Statement on Form N-2, filed July 3, 2007 (File No. 333-142859).
- (6) Incorporated by reference to the Registrant's Quarterly Report on Form 10-Q for the quarter ended August 31, 2007 and filed on October 12, 2007.
- Incorporated by reference to the Registrant's Annual Report on Form 10-K, for the year ended November 30, 2010.
- (7) Incorporated by reference to the Registrant's current report on Form 8-K, filed December 1, 2011.
- (8) Incorporated by reference to the Registrant's current report on Form 8-K, filed December 10, 2012.
- (9) Incorporated by reference to the Registrant's current report on Form 8-K, filed December 17, 2012.
- (10) Incorporated by reference to the Registrant's current report on Form 8-K, filed December 21, 2012.
- (11) Incorporated by reference to the Registrant's Annual Report on Form 10-K, for the year ended November 30, 2012, filed February 13, 2013.
- (12) Incorporated by reference to the Registrant's Quarterly Report on Form 10-Q for the quarter ended March 31, 2013, filed May 10, 2013.
- (13) Incorporated by reference to the Registrant's Quarterly Report on Form 10-Q for the quarter ended September 30, 2013, filed November 12, 2013.
- (14) Incorporated by reference to the Registrant's current report on Form 8-K, filed August 27, 2013.
- (15) Incorporated by reference to the Registrant's current report on Form 8-K, filed January 14, 2014 (the second Form 8-K filing on such date).
- (16) Incorporated by reference to the Registrant's current report on Form 8-K, filed January 22, 2014.
- (17) Incorporated by reference to the Registrant's Annual Report on Form 10-K/A (Amendment No. 1), for the year ended December 31, 2013, filed March 19, 2014.

All other exhibits for which provision is made in the applicable regulations of the Securities and Exchange Commission are not required under the related instruction or are inapplicable and therefore have been omitted.

COREENERGY INFRASTRUCTURE TRUST, INC.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) 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.

COREENERGY INFRASTRUCTURE TRUST, INC.

(Registrant)

By: /s/ Rebecca M. Sandring
Rebecca M. Sandring
Chief Accounting Officer
(Principal Accounting and Principal Financial Officer)

March 31, 2014