

On the Subject

Energy & Commodities Advisory

September 7, 2010

Market participants with reportable natural gas sales or purchases greater than 2.2 million MMBtu in 2009 must complete and submit their calendar year 2009 data to FERC using Form No. 552 no later than October 1, 2010.

Natural Gas Sellers and Buyers Required to Meet Upcoming FERC Reporting Deadline

On August 31, 2010, the Federal Energy Regulatory Commission (FERC) issued a notice announcing the deadline and revised forms to be used by natural gas market participants to report their sales and purchases of gas. Respondents must complete and submit their calendar year 2009 data to FERC no later than October 1, 2010.

FERC developed the Form No. 552 reporting obligations as part of its recent gas price transparency initiatives under the authority granted by section 23 of the Natural Gas Act. Form No. 552 collects transactional information from natural gas market participants regarding physical natural gas transactions that use an index or that contribute to, or may contribute to, the formation of a gas index. According to FERC, the completed reports will provide greater transparency concerning the use of indices to price natural gas, and will reveal how well index prices reflect market forces.

FERC recently revised the form following several rounds of industry commentary. Revisions to Form No. 552 include the following:

- An exemption from reporting any unexercised options to take gas under a take-or-release contract
- Clarification of the definition of exempt unprocessed natural gas transactions

- An exemption from reporting cash-out and imbalance transactions
- Removal of references to the blanket sales certificates
- Non-substantive modifications to make the form more user-friendly.

Market participants must complete the form annually if their reportable natural gas sales were greater than 2.2 million MMBtu in the reporting year, or if their reportable natural gas purchases were greater than 2.2 million MMBtu in the reporting year. According to FERC, market participants are not required to file the form if their reportable natural gas purchases and sales were less than 2.2 million MMBtu for 2009.

Form No. 552 defines “reportable” purchases or sales as the following:

- Transactions that use daily or monthly indices
- Transactions with fixed price next-day or next-month delivery
- NYMEX trigger transactions
- NYMEX plus contracts
- Physical basis transactions
- Volumes attributable to royalty-in-kind transactions
- Transactions involving possible international transportation
- Operational volume transactions that address system events
- Lean unprocessed natural gas that will not undergo processing before consumption

Transactions that are not “reportable” include the following:

- Cash-out and imbalance makeup volumes

- All unprocessed gas transactions that use a percentage of proceeds contract
- Transactions of natural gas that is unprocessed and upstream of a processing facility
- Transactions involving international transportation that originate outside the lower 48 states and which are delivered at locations outside the lower 48 states
- Transactions with retail consumers pursuant to a state-commission-approved bundled tariff
- Volumes associated with transactions among affiliates
- Volumes associated with any type of financially settled transaction
- Volumes traded in futures contracts
- Volumes of imported liquefied natural gas traded prior to regasification and exported liquefied natural gas traded after liquefaction
- Fixed price transaction volumes that are not next-day or next-month delivery

The updated version of Form No. 552 is available for e-filing on FERC's website at <http://www.ferc.gov/docs-filing/forms.asp#552>.

For more information, please contact your regular McDermott lawyer, or:

Kenneth W. Irvin: +1 202 756 8116 kirvin@mwe.com

Mustafa Ostrander: +1 202 756 8180 mostrander@mwe.com

Elizabeth P. Philpott: +1 202 756 8229 ephilpott@mwe.com

For more information about McDermott Will & Emery visit:
www.mwe.com

IRS Circular 230 Disclosure: To comply with requirements imposed by the IRS, we inform you that any U.S. federal tax advice contained herein (including any attachments), unless specifically stated otherwise, is not intended or written to be used, and cannot be used, for the purposes of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter herein.

The material in this publication may not be reproduced, in whole or part without acknowledgement of its source and copyright. *On the Subject* is intended to provide information of general interest in a summary manner and should not be construed as individual legal advice. Readers should consult with their McDermott Will & Emery lawyer or other professional counsel before acting on the information contained in this publication.

© 2010 McDermott Will & Emery. The following legal entities are collectively referred to as "McDermott Will & Emery," "McDermott" or "the Firm": McDermott Will & Emery LLP, McDermott Will & Emery/Stanbrook LLP, McDermott Will & Emery Rechtsanwälte Steuerberater LLP, MWE Steuerberatungsgesellschaft mbH, McDermott Will & Emery Studio Legale Associato and McDermott Will & Emery UK LLP. McDermott Will & Emery has a strategic alliance with MWE China Law Offices, a separate law firm. These entities coordinate their activities through service agreements. This communication may be considered attorney advertising. Previous results are not a guarantee of future outcome.