Form No. 552 Frequently Asked Questions

Posting_1

1. What is meant by "could contribute to a price index"?

The Commission finds that volumes reportable on Form No. 552 should include volumes that utilize next-day or next-month price indices, volumes that are reported to any price index publisher, and any volumes that could be reported to an index publisher even if the respondent has chosen not to report to a publisher. By "could be reported to an index publisher," we mean bilateral, arms-length, fixed price, physical natural gas transactions between non-affiliated companies at all trading locations. Transactions that do not occur at a specific location currently designated by an index developer as a reporting location are nonetheless reportable on Form No. 552. (Order No. 704-A, paragraph 13)

2. Must a Canadian company holding a blanket certificate under either sections 284.284 or 284.402 but which has made no natural gas purchases or sales for calendar year 2008, submit Form No. 552?

Yes. The language in Order 704 states that holders of blanket certificates are required to file Form No. 552 regardless of whether their sales or purchases exceeded the de minimis threshold (though they will not need to provide volumetric data if the volumes are de minimis). Also, the first paragraph under "Who Must File" in the form's instructions indicates that all blanket certificate holders must file the form. (Order No. 704, paragraph 58)

3. Is there a way to note on Form No. 552 that data provided are incomplete or missing?

Form No. 552 does not currently have a feature that would allow this type of notation. Staff notes that the Commission adopted a one-year safe harbor, covering transactions occurring in calendar year 2008 and reported on Form No. 552 on May 1, 2009. The Commission stated that it does not intend to penalize respondents for errors in reporting on Form No. 552 provided that respondents use reasonable efforts to comply with the regulations regarding and instructions for Form No. 552. The Commission emphasized that it expects respondents submitting Form No. 552 in 2009 to do so in good faith and on a timely basis. (Order No. 704-A, paragraphs 59-67) During the safe harbor period, respondents may informally inform staff to the extent they are providing data that is incomplete or missing. However, once the safe harbor period has expired respondents should seek waiver from the Commission of the filing requirements prior to filing incomplete or missing data.

In addition, upon discovering missing data, the filing entity should promptly refile a corrected Form No. 552 by selecting the “Resubmission” feature.

4. Must individual subsidiaries of a Respondent submit information on Form No. 552?

A Respondent may aggregate volumes for its affiliates into a single form. If this method of reporting is chosen, then all affiliates that must report are required to aggregate their volumes with the Respondent’s and all affiliates must be identified. Alternately, each affiliate of a Respondent (including subsidiaries) may submit Form No. 552 as an individual Respondent if the affiliate’s reportable volumes either exceed the de minimis threshold or if it holds a blanket certificate. An affiliate that separately files Form No. 552 solely because it has a blanket certificate must complete only pages 1-3 of the form.

5. Are affiliates allowed to aggregate their reporting information under corporate parent?

Yes. Companies have the ability to report under a corporate parent; however, they are required to list the subsidiaries reported under that corporate parent on Page 3 “Schedule of Reporting Companies”, just as they are for other affiliates. (Order No. 704, paragraph 60(c))

6. Are fixed price trades done in 2008 for January 2009 reportable?
[*This response has been revised from the 2-3-09 posting*]

Yes, monthly January 2009 fixed priced transactions done during the December 2008 bid week for physical obligations are reported in Form No. 552 to be filed by May 1, 2010. In particular, the Commission stated, “Unlike in the NOPR, Form No. 552 now requires reporting based on date of contracted delivery and not date of execution.” (See, Order No. 704 P. 99.)

7. If an end-user filing Form No. 552 purchases natural gas at retail must they report the purchase of the natural gas?

Yes, unless the transaction neither uses an index nor could contribute to the formation of an index. One example of a transaction that cannot contribute to the formation of an index is a transaction in which a local distribution company is the seller, the transaction bundles commodity and transportation costs, the purchaser is a retail end-user, and the transaction is priced at a retail tariff rate.

8. If a public joint action agency separately purchases and then resells natural gas to its members as separate, independent transactions, are both of those transactions reportable?

Yes, both transactions are reportable.

9. If a company holds an energy management agreement (EMA) and sells and purchases physical natural gas on behalf of other companies, is it required to file Form No. 552?

Where a company does not take title to natural gas in a transaction it is neither a buyer nor seller and, therefore, need not report the transaction. However, if under the EMA the company takes title to the natural gas it should report volumes that can contribute to an index, reference an index, or use an index.

10. Can an asset manager file Form No. 552 on behalf of another company?

Provided a responsible corporate officer (of the buyer/seller respondent) signs the form, an asset manager may complete and file the form on behalf of an entity for which it manages assets (Form No. 552 - General Information section). Under these circumstances the asset manager must follow the aggregation rules outlined in the Commission's orders (e.g., an asset manager cannot aggregate volumes for all of its customers). (Order No. 704, paragraphs 97-98)

11. If a parent company chooses to aggregate volumes for reporting on Form No. 552, must it list affiliates that do not have blanket certificates and who also have no reportable volumes?

No.

12. Is a fixed price contract (that can not contribute to an index, reference an index, or use an index) but has a GDD knockout provision – that is the contract can be canceled for a period of time based on daily index prices – is this reportable?

Under these circumstances because the fixed price contract can not contribute to an index, reference an index, or use an index the fixed price portion of the contract is not reportable. The GDD knockout provision in and of itself does not make this contract reportable. In fact, if the GDD knockout provision is triggered then there is no sale or purchase and, therefore, no volumes to report.

13. Are "Exchange for Physical" transactions included in Form No. 552?

Exchange for Physical transactions are those transactions that involve an exchange of a futures contract and a related equivalent but opposite physical obligation. As defined by CME/NYMEX rule 868.12, exchange-traded natural gas futures contracts are not reportable because the physical obligation is strictly related to the futures contract, the physical obligation's price cannot contribute to an index, and the physical obligation does not use an index for its price.

14. How are prepays reported in Form No. 552?

A fixed price prepay that cannot contribute to a daily or a monthly index is not reportable. A prepay that uses an index is reportable in the year of delivery.

15. Does a Local Distribution Company (LDC) that buys natural gas for consumption by its own generation units report those volumes in Form No. 552?

Yes, unless the transaction neither uses an index nor could contribute to the formation of an index. (Order No. 704-A, paragraph 30)

Posting_2

16. **What are physical basis transactions?**

    Staff understands that a physical basis transaction involves the forming of a price for a physical delivery obligation which is dependent on a NYMEX futures contract final settlement price.

    As an example of a publisher describing physical basis transactions that can contribute to an index see The Platts' Methodology Guidelines (November 2008) which states, "report all physical basis transactions in which the basis value is negotiated on one of the first three days of bidweek and the price is set by the final closing value of the near-month NYMEX futures contract plus or minus the negotiated basis." Therefore, NYMEX last day settlement and a differential (premium or discount) are physical basis transactions and are reportable on page no. 4, line no. 7 of Form No. 552.

17. **What are NYMEX trigger transactions and are these transactions reportable?**

    A NYMEX trigger transaction is a transaction contingent upon a futures contract that trades on an exchange, resulting in an automatic physical trade at an agreed upon price. If such a Fixed Price physical transaction was triggered or originated by a NYMEX futures contract that can contribute to an index, it is reportable on line no. 6 of Form No. 552.

18. **What are NYMEX Plus transactions and are these transactions reportable?**

    NYMEX Plus transactions are monthly transactions that use a NYMEX price and a differential (premium or discount) to establish a Fixed Price.

    For any of these transactions to be reportable they must be able to contribute to an index. If they cannot contribute to an index they are not reportable. All NYMEX Plus transactions that can contribute to an index are reportable on line no. 6 of Form No. 552.

19. **Would a transaction that is priced at "index + 10 cents" be considered a "physical basis transaction" to be reported on page 4, line 6 of the form?**

    The example of an index plus 10 cents transaction is not referring to physical basis because it doesn't include the NYMEX futures final settlement price.

NYMEX final settlement plus 10 cents is by definition a physical basis transaction.

However, regardless of the fact that such a transaction is not a "physical basis transaction" it is a reportable transaction to the extent it uses an index for Next-Day or Next-Month delivery.

20. How are transactions that involve differing pricing structures and/or include a blended pricing mechanism reported?

Form No. 552 is designed to capture volumes of natural gas that contribute to, can contribute to, or use an index price. Staff recommends that for these types of complex structured transactions, companies report their good faith estimates. To the extent that a company has and exercises the option on the pricing mechanism for physical gas and cannot predict how it will price its obligation prior to delivery, Staff recommends these companies use actual volumes as opposed to contracted volumes in the year the delivery occurred.

21. Must a Respondent report cash-out transactions if those transactions are not Next-Day Delivery or Next-Month Delivery?

Yes, provided the cash-out provision relied upon, contributed to, or could contribute to a price index.

Though cash-out provisions are after the fact balancing activities this does not remove the requirement to report such transactions. In particular, with regard to cash-out provisions, the Commission stated that it has been its experience that a significant number of balancing, cash-out, and similar transactions include references to price indices. The Commission expressed a disagreement with the proposition that balancing transactions, as described by commenters, could not themselves contribute to the formation of price indices. The fact that a purchase or sale is made for operational or balancing, rather than market, reasons is irrelevant. Accordingly, the Commission stated that "Balancing, cash-out, operational, in-kind, and similar transactions must be reported on Form No. 552 if they rely upon, contribute to, or could contribute to a price index." (See, Order No. 704-A Ps. 59-63)

22. Are cash-out transactions priced at pipeline tariff rates reportable?

If cash-out transactions do not use an index, and cannot contribute to an index then the volumes are not to be reported in the Form No. 552.

23. Are daily Fixed Price physical natural gas transactions that are executed after 11:30 AM Central Prevailing Time reportable?

No, they are not reportable.

24. What is the meaning of "control" as that word is utilized in the definition of "Affiliate" in Form No. 552?

"Control" as used in this definition means the direct or indirect authority, whether acting alone or in conjunction with others, to direct or cause to direct the management policies of an entity. A voting interest of 10 percent or more creates a rebuttable presumption of control.

25. How should joint ventures report their volumes in Form No. 552?

The rule allows for companies to report all affiliates in aggregate or for each affiliate to report its own ownership interests. Either method is acceptable for reporting of joint venture-related volumes. In particular, when reporting volumes associated with joint ventures, companies should report volumes pursuant to their equity interest.

26. What effect does a planned merger have on the reporting requirement?

Transactions between non-affiliated companies prior to the consummation of a merger are reportable; once the merger is consummated the companies are affiliated and transactions between them are no longer reportable.

27. Are transactions involving unprocessed gas reportable in Form No. 552?

Unprocessed natural gas transactions that occur prior to receipt or at a processing plant are excluded from reporting, but other transactions involving unprocessed natural gas are reportable if they use, contribute to, or could contribute to an index. The Commission excluded unprocessed natural gas transactions from reporting in response to specific requests for rehearing involving transactions that occur upstream of processing. The exclusion was based upon the Commission's determination that, "transactions involving unprocessed natural gas are not relevant to wholesale price formation." Order No. 704-A, P. 77. The Commission's general requirement is that transactions be reported if they use, contribute to, or could contribute to an index. Some transactions involving unprocessed gas fit these criteria. Staff interprets Order No. 704-A as eliminating, in all instances, unprocessed natural gas transactions that occur upstream of processing but requiring reporting of downstream transactions if the transaction uses, contributes to, or could contribute to an index.

28. How does a company determine whether or not they are operating under a blanket market certificate?

Potential respondents should refer to 18 CFR § 284.402 or § 284.284 to determine blanket market certificate status.

Posting_3

29. In Order No. 704-A, P 87, it is unclear what is meant by the last line: "....the year in which the index is referenced." Does it mean the year in which the index is published, or the year the index is used?

The statement is intended to reference the date of contracted delivery. In Order No. 704, the Commission stated, "Unlike in the NOPR, Form No. 552 now requires reporting based on date of contracted delivery and not date of execution." (See Order No. 704, Paragraph 99 and FAQ Question 6.)

30. Pre-bid week transactions. Pursuant to Line No. 5 of the "Purchase and Sales Information" portion of Form No. 552 and the definition of "Next-Month Delivery," please confirm that quantities contracted for *prior* to the last five (5) business days of the month for uniform physical delivery the next month are *not* to be reported. Since many monthly index deals are prior to the five (5) business day period, this definition will exclude a number of transactions from reporting on Form No. 552.

Quantities contracted prior to the last five (5) business days of the month for uniform physical delivery the next month may or may not be reportable depending on whether the transaction uses an index price. If the transaction is a fixed price transaction it is not reportable. A fixed price monthly transaction can only contribute to a monthly index during bid week (i.e., the last five (5) business days of the month prior to the first day of delivery).

However, if the monthly transaction uses an index it is reportable.

31. Take or Release Contracts. Gas is sometimes purchased under long-term contracts that offer an option to take or release up to the contract maximum quantity on a monthly or daily basis. The contract price is mutually agreed upon at the time the monthly or daily option is exercised. Please confirm that only those purchases that are actually exercised during the reporting year are to be included on Form No. 552, and that supplies released back to the supplier are *not* reportable because the option was not exercised.

Under these circumstances, staff interprets Order No. 704 as requiring the reporting of only those volumes that actually flowed. While the order does not specifically address this circumstance, it does state that respondents should use "best efforts" in reporting. Accordingly, it is staff's opinion that reporting the actual flows in this circumstance meets the best efforts clause of the order. However, staff notes that its interpretation of the order is non-binding on the Commission and for a more definitive answer, respondents should file with the Commission for clarification.

32. Is NYMEX considered an "index" publisher for the purposes of Order No. 704?

No. However, any number of physical natural gas obligations reference NYMEX and are reportable (e.g., NYMEX Trigger, Physical Basis, NYMEX Plus). (See NYMEX related FAQs 16, 17, and18).

33. Please explain the fundamental difference between a physical basis transaction and a NYMEX Plus transaction.

A physical basis transaction always uses the final NYMEX settlement price which is a defined day. A NYMEX Plus transaction never uses the final NYMEX settlement price. For example, a NYMEX Plus transaction could use the settlement price on the day preceding the final NYMEX settlement price. (See also FAQs 16, 17, and 18).