

ARBITRON INC
Form 8-K
January 12, 2010

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 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):

January 11, 2010

Arbitron Inc.

(Exact name of registrant as specified in its charter)

Delaware

1-1969

52-0278528

(State or other jurisdiction
of incorporation)

(Commission
File Number)

(I.R.S. Employer
Identification No.)

9705 Patuxent Woods Drive, Columbia,
Maryland

21046

(Address of principal executive offices)

(Zip Code)

Registrant's telephone number, including area code:

410-312-8000

Not Applicable

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))

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Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

(e) On January 11, 2010 and in connection with Michael P. Skarzynski's resignation from Arbitron Inc. (the "Company"), the Company entered into a Settlement Agreement and General Release (the "Agreement") with Mr. Skarzynski. The material terms of the Agreement are as follows:

- The Company will pay Mr. Skarzynski a total of \$750,000 in cash less applicable taxes.
- If Mr. Skarzynski and/or his eligible dependents become eligible for COBRA coverage under the Company's group health plans, the Company will pay the cost of COBRA coverage until the earlier of: (i) December 31, 2010 or (ii) none of Mr. Skarzynski and/or his eligible dependents are eligible for COBRA coverage.
- The Company will not seek reimbursement from Mr. Skarzynski of approximately \$125,000 in relocation monies that would otherwise have been due to be repaid by Mr. Skarzynski pursuant to the terms of Mr. Skarzynski's Executive Employment Agreement.
- The Company will indemnify Mr. Skarzynski for reasonable attorney's fees and costs incurred through the effective date of the Agreement in connection with matters that culminated with his resignation in an amount not to exceed \$100,000.
- The Company will continue to cover Mr. Skarzynski under its Directors and Officers insurance policies for actions/inactions taken in his capacity as an officer and director of the Company during the term of his employment.

The non-competition, non-recruitment and non-disparagement provisions set forth in Mr. Skarzynski's Executive Employment Agreement will survive his resignation, and Mr. Skarzynski has agreed to continue to abide by those provisions.

The equity awards made to Mr. Skarzynski on January 13, 2009 pursuant to his Executive Employment Agreement will not vest as a result of Mr. Skarzynski's resignation.

The above description is qualified in its entirety by reference to the terms and conditions of the Agreement, which the Company intends to file as an exhibit to its Annual Report on Form 10-K for the fiscal year ended December 31, 2009.

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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 hereunto duly authorized.

Arbitron Inc.

January 12, 2010

By: *Timothy T. Smith*

*Name: Timothy T. Smith
Title: Executive Vice President and Chief Legal Officer,
Legal and Business Affairs & Secretary*

8221; for the purpose of Section 18 of the Securities Exchange Act of 1934 ("Act") or otherwise subject to the liabilities of that section of the Act but shall be subject to all other provisions of the Act (however, *see* the Notes).

SCHEDULE 13D

CUSIP No. 636180101

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1 NAME OF REPORTING PERSON
S.S. OR I.R.S. IDENTIFICATION NO. OF ABOVE PERSON

New Mountain Vantage GP, L.L.C.

2 CHECK THE APPROPRIATE BOX IF A MEMBER OF A
GROUP

(a)

(b)

3 **SEC USE ONLY**

4 SOURCE OF FUNDS

AF

5 CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED
PURSUANT TO ITEMS 2(d) or

2(e)

6 CITIZENSHIP OR PLACE OF ORGANIZATION

Delaware

NUMBER OF 7 SOLE VOTING POWER

SHARES **0**

BENEFICIALLY 8 SHARED VOTING POWER

OWNED BY **5,310,700**

EACH 9 SOLE DISPOSITIVE POWER

REPORTING **0**

PERSON 10 SHARED DISPOSITIVE POWER

WITH **5,310,700**

11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

5,310,700

12 CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES

13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

6.4%

14 TYPE OF REPORTING PERSON

00

SCHEDULE 13D

CUSIP No. 636180101

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1 NAME OF REPORTING PERSON
S.S. OR I.R.S. IDENTIFICATION NO. OF ABOVE PERSON

New Mountain Vantage, L.P.

2 CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (a) (b)

3 **SEC USE ONLY**

4 SOURCE OF FUNDS

WC

5 CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) or 2(e)

6 CITIZENSHIP OR PLACE OF ORGANIZATION

Delaware

NUMBER OF 7 SOLE VOTING POWER

SHARES **0**

BENEFICIALLY 8 SHARED VOTING POWER

OWNED BY **904,800**

EACH 9 SOLE DISPOSITIVE POWER

REPORTING **0**

PERSON 10 SHARED DISPOSITIVE POWER

WITH **904,800**

11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

904,800

12 CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES

13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

1.1%

14 TYPE OF REPORTING PERSON

PN

SCHEDULE 13D

CUSIP No. 636180101

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1 NAME OF REPORTING PERSON
S.S. OR I.R.S. IDENTIFICATION NO. OF ABOVE PERSON

New Mountain Vantage (California), L.P.

2 CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP

(a)

(b)

3 **SEC USE ONLY**

4 SOURCE OF FUNDS

WC

5 CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) or

2(e)

6 CITIZENSHIP OR PLACE OF ORGANIZATION

Delaware

NUMBER OF 7 SOLE VOTING POWER

SHARES **0**

BENEFICIALLY 8 SHARED VOTING POWER

OWNED BY **909,100**

EACH 9 SOLE DISPOSITIVE POWER

REPORTING **0**

PERSON 10 SHARED DISPOSITIVE POWER

WITH **909,100**

11

AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

909,100

12 CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES

13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

1.1%

14 TYPE OF REPORTING PERSON

PN

SCHEDULE 13D

CUSIP No. 636180101

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1 NAME OF REPORTING PERSON
S.S. OR I.R.S. IDENTIFICATION NO. OF ABOVE PERSON

New Mountain Vantage (Texas), L.P.

2 CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP

(a)

(b)

3 **SEC USE ONLY**

4 SOURCE OF FUNDS

WC

5 CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) or

2(e)

6 CITIZENSHIP OR PLACE OF ORGANIZATION

Delaware

NUMBER OF 7 SOLE VOTING POWER

SHARES **0**

BENEFICIALLY 8 SHARED VOTING POWER

OWNED BY **819,800**

EACH 9 SOLE DISPOSITIVE POWER

REPORTING **0**

PERSON 10 SHARED DISPOSITIVE POWER

WITH **819,800**

AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

819,800

12 CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES

13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

1.0%

14 TYPE OF REPORTING PERSON

PN

SCHEDULE 13D

CUSIP No. 636180101

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1 NAME OF REPORTING PERSON
S.S. OR I.R.S. IDENTIFICATION NO. OF ABOVE PERSON

New Mountain Vantage Advisers, L.L.C.

2 CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP

(a)

(b)

3 **SEC USE ONLY**

4 SOURCE OF FUNDS

AF

5 CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) or

2(e)

6 CITIZENSHIP OR PLACE OF ORGANIZATION

Delaware

NUMBER OF 7 SOLE VOTING POWER

SHARES **0**

BENEFICIALLY 8 SHARED VOTING POWER

OWNED BY **4,828,100**

EACH 9 SOLE DISPOSITIVE POWER

REPORTING **0**

PERSON 10 SHARED DISPOSITIVE POWER

WITH **4,828,100**

AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

4,828,100

12 CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES

13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

5.8%

14 TYPE OF REPORTING PERSON

00

SCHEDULE 13D

CUSIP No. 636180101

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1 NAME OF REPORTING PERSON
S.S. OR I.R.S. IDENTIFICATION NO. OF ABOVE PERSON

New Mountain Vantage (Cayman) Ltd.

2 CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP

(a)

(b)

3 **SEC USE ONLY**

4 SOURCE OF FUNDS

WC

5 CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) or 2(e)

6 CITIZENSHIP OR PLACE OF ORGANIZATION

Cayman Islands

NUMBER OF 7 SOLE VOTING POWER

SHARES **0**

BENEFICIALLY 8 SHARED VOTING POWER

OWNED BY **2,194,400**

EACH 9 SOLE DISPOSITIVE POWER

REPORTING **0**

PERSON 10 SHARED DISPOSITIVE POWER

WITH **2,194,400**

11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

2,194,400

12 CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES 0

13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

2.6%

14 TYPE OF REPORTING PERSON

CO

SCHEDULE 13D

CUSIP No. 636180101

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1 NAME OF REPORTING PERSON
S.S. OR I.R.S. IDENTIFICATION NO. OF ABOVE PERSON

New Mountain Vantage HoldCo Ltd.

2 CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP

(a)

(b)

3 **SEC USE ONLY**

4 SOURCE OF FUNDS

WC

5 CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) or 2(e)

6 CITIZENSHIP OR PLACE OF ORGANIZATION

Cayman Islands

NUMBER OF 7 SOLE VOTING POWER

SHARES **0**

BENEFICIALLY 8 SHARED VOTING POWER

OWNED BY **2,194,400**

EACH 9 SOLE DISPOSITIVE POWER

REPORTING **0**

PERSON 10 SHARED DISPOSITIVE POWER

WITH **2,194,400**

11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

2,194,400

12 CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES 0

13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

2.6%

14 TYPE OF REPORTING PERSON

CO

SCHEDULE 13D

CUSIP No. 636180101

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1 NAME OF REPORTING PERSON
S.S. OR I.R.S. IDENTIFICATION NO. OF ABOVE PERSON

Steven B. Klinsky

2 CHECK THE APPROPRIATE BOX IF A MEMBER OF A
GROUP

(a)

(b)

3 **SEC USE ONLY**

4 SOURCE OF FUNDS

AF, PF

5 CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED
PURSUANT TO ITEMS 2(d) or
2(e)

6 CITIZENSHIP OR PLACE OF ORGANIZATION

United States of America

NUMBER OF 7 SOLE VOTING POWER

SHARES **0**

BENEFICIALLY 8 SHARED VOTING POWER

OWNED BY **7,505,100**

EACH 9 SOLE DISPOSITIVE POWER

REPORTING **0**

PERSON 10 SHARED DISPOSITIVE POWER

WITH **7,505,100**

11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING
PERSON

7,505,100

12 CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES

13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

9.0%

14 TYPE OF REPORTING PERSON

IN

SCHEDULE 13D

CUSIP No. 636180101

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1 NAME OF REPORTING PERSON
S.S. OR I.R.S. IDENTIFICATION NO. OF ABOVE PERSON

NMV Special Holdings, LLC

2 CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP

(a)

(b)

3 **SEC USE ONLY**

4 SOURCE OF FUNDS

WC

5 CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) or

2(e)

6 CITIZENSHIP OR PLACE OF ORGANIZATION

Delaware

NUMBER OF 7 SOLE VOTING POWER

SHARES **0**

BENEFICIALLY 8 SHARED VOTING POWER

OWNED BY **2,677,000**

EACH 9 SOLE DISPOSITIVE POWER

REPORTING **0**

PERSON 10 SHARED DISPOSITIVE POWER

WITH **2,677,000**

AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

2,677,000

12 CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES

13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

3.2%

14 TYPE OF REPORTING PERSON

OO

SCHEDULE 13D

CUSIP No. 636180101

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1 NAME OF REPORTING PERSON
S.S. OR I.R.S. IDENTIFICATION NO. OF ABOVE PERSON

California Public Employees' Retirement System

2 CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP

(a)

(b)

3 **SEC USE ONLY**

4 SOURCE OF FUNDS

WC

5 CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) or

2(e)

6 CITIZENSHIP OR PLACE OF ORGANIZATION

United States of America

NUMBER OF 7 SOLE VOTING POWER

SHARES **601,246**

BENEFICIALLY 8 SHARED VOTING POWER

OWNED BY **2,677,000**

EACH 9 SOLE DISPOSITIVE POWER

REPORTING **601,246**

PERSON 10 SHARED DISPOSITIVE POWER

WITH **2,677,000**

AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

3,278,246

12 CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES

13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

3.9%

14 TYPE OF REPORTING PERSON

EP

This Amendment No. 3, filed by New Mountain Vantage GP, L.L.C., a Delaware limited liability company (“Vantage GP”), New Mountain Vantage, L.P., a Delaware limited partnership (“NMV”), New Mountain Vantage (California), L.P., a Delaware limited partnership (“NMVC”), New Mountain Vantage (Texas), L.P., a Delaware limited partnership (“NMVT”), New Mountain Vantage Advisers, L.L.C., a Delaware limited liability company (“NMV Advisers”), New Mountain Vantage (Cayman) Ltd., a Cayman Islands exempt limited company (“NMV Offshore”), New Mountain Vantage HoldCo Ltd., a Cayman Islands exempt limited company (“NMV Offshore HoldCo”), Mr. Steven B. Klinsky (collectively, the “NMV Entities”), NMV Special Holdings, LLC, a Delaware limited liability company (“NMVSH”), and the California Public Employees’ Retirement System, a unit of the California State and Consumer Services Agency charged with oversight of the Public Employees’ Retirement Fund (“CalPERS”), (NMV Entities, NMVSH and CalPERS, collectively, the “Reporting Persons”), amends and supplements the Schedule 13D (the “Schedule 13D”) filed by the Reporting Persons with the Securities and Exchange Commission (the “SEC”) on October 30, 2006, as amended, relating to the common stock, par value \$1 per share (“Common Stock”), of National Fuel Gas Company, a New Jersey corporation (the “Issuer”). NMV, NMVC, NMVT, NMV Offshore HoldCo, NMVSH and CalPERS are referred to together as the “Purchasers.”

1 Neither the present filing nor anything contained herein shall be construed as an admission that any Reporting Person constitutes a “person” for any purposes other than Section 13(d) of the Securities Exchange Act of 1934, as amended.

ITEM 3. SOURCE AND AMOUNT OF FUNDS OR OTHER CONSIDERATION

Item 3 is hereby amended and restated in its entirety as follows:

The aggregate purchase price of the 8,106,346 shares of Common Stock owned by the Purchasers is \$290,741,916.97, including brokerage commissions. The shares of Common Stock owned by the Purchasers were acquired with working capital.

ITEM 4. PURPOSE OF TRANSACTION

Item 4 is hereby amended by adding the following paragraphs to the end thereof:

On September 7, 2007, representatives of the Reporting Persons discussed various recommendations of the Reporting Persons relating to the Issuer’s Appalachian oil and gas assets, its strategic focus and governance issues with Philip C. Ackerman, Chairman of the Board of Directors and Chief Executive Officer of the Issuer, David F. Smith, President and Chief Operating Officer of the Issuer, and Ronald J. Tanski, Treasurer of the Issuer. Following that discussion, the Reporting Persons sent a letter, a copy of which is attached as Exhibit 99.4, to the Board of Directors of the Issuer reviewing those recommendations and urging swift action on the recommendations.

The Reporting Persons intend to continue to have discussions with the Issuer’s management, Board of Directors, stockholders and others relating to the recommendations the Reporting Persons have made and any other recommendations or proposals they may make in the future.

ITEM 5. INTEREST IN SECURITIES OF THE ISSUER

Item 5 is hereby amended and restated in its entirety as follows:

(a). The aggregate percentage of shares of Common Stock reported owned by each person named herein is based upon 83,549,949 shares of Common Stock outstanding, which is the total number of shares of Common Stock outstanding as of July 31, 2007 as reported in the Issuer’s Quarterly Report on Form 10-Q for the quarter ended June 30, 2007, as filed with the Securities and Exchange Commission on August 3, 2007.

As of the close of business on September 11, 2007, as described below, the Reporting Persons may be deemed to beneficially own an aggregate of 8,106,346 shares of Common Stock representing, in the aggregate, approximately 9.7% of the issued and outstanding shares of Common Stock.

As of the close of business on September 11, 2007, Mr. Klinsky may be deemed to beneficially own an aggregate of 7,505,100 shares of Common Stock that may be deemed to be beneficially owned by NMV, NMVC, NMVT, NMV Offshore and NMVSH representing, in the aggregate, approximately 9.0% of the issued and outstanding shares of Common Stock. Mr. Klinsky disclaims beneficial ownership of the shares of Common Stock beneficially owned by NMV, NMVC, NMVT, NMV Offshore and NMVSH, to the extent that partnership interests or limited liability company interests in NMV, NMVC, NMVT, NMV Offshore and NMVSH are held by persons other than Mr. Klinsky.

As of the close of business on September 11, 2007, NMV Advisers may be deemed to beneficially own an aggregate of 4,828,100 shares of Common Stock that may be deemed to be beneficially owned by NMV, NMVC, NMVT and NMV Offshore representing, in the aggregate, approximately 5.8% of the issued and outstanding shares of Common Stock. NMV Advisers disclaims beneficial ownership of the shares of Common Stock beneficially owned by NMV, NMVC, NMVT and NMV Offshore, to the extent that partnership interests in NMV, NMVC, NMVT and NMV Offshore are held by persons other than NMV Advisers.

As of the close of business on September 11, 2007, Vantage GP may be deemed to beneficially own an aggregate of 5,310,700 shares of Common Stock that may be deemed to be beneficially owned by NMV, NMVC, NMVT and NMVSH representing, in the aggregate, approximately 6.4% of the issued and outstanding shares of Common Stock. Vantage GP disclaims beneficial ownership of the shares of Common Stock beneficially owned by NMV, NMVC, NMVT and NMVSH to the extent that partnership interests or limited liability company interests in NMV, NMVC, NMVT and NMVSH are held by persons other than Vantage GP.

As of the close of business on September 11, 2007, NMV Offshore may be deemed to beneficially own an aggregate of 2,194,400 shares of Common Stock that may be deemed to be beneficially owned by NMV Offshore HoldCo, representing approximately 2.6% of the issued and outstanding shares of Common Stock.

As of the close of business on September 11, 2007, (i) NMV may be deemed to beneficially own an aggregate of 904,800 shares of Common Stock, representing approximately 1.1% of the issued and outstanding shares of Common Stock, (ii) NMVC may be deemed to beneficially own an aggregate of 909,100 shares of Common Stock, representing approximately 1.1% of the issued and outstanding shares of Common Stock, (iii) NMVT may be deemed to beneficially own an aggregate of 819,800 shares of Common Stock, representing approximately 1.0% of the issued and outstanding shares of Common Stock and (iv) NMV Offshore HoldCo may be deemed to beneficially own an aggregate of 2,194,400 shares of Common Stock, representing approximately 2.6% of the issued and outstanding shares of Common Stock.

As of the close of business on September 11, 2007, NMVSH may be deemed to beneficially own an aggregate of 2,677,000 shares of Common Stock, representing approximately 3.2% of the issued and outstanding shares of Common Stock.

As of the close of business on September 11, 2007, CalPERS may be deemed to beneficially own an aggregate of 3,278,246 shares of Common Stock that may be deemed to be beneficially owned by NMVSH and by CalPERS, representing approximately 3.9% of the issued and outstanding shares of Common Stock. CalPERS disclaims beneficial ownership of the shares of Common Stock beneficially owned by NMVSH to the extent that membership interests in NMVSH are held by persons other than CalPERS.

In addition to the foregoing, Mr. F. Fox Benton III, who has entered into a consulting agreement with New Mountain as discussed in Item 6, is the President, director and a shareholder of Moreno Energy, Inc., a Texas Corporation ("Moreno Energy"). Mr. Benton has advised the Reporting Persons that Moreno Energy may be deemed to beneficially own, as of June 29, 2007, an aggregate of 10,000 shares of Common Stock, representing less than .01% of the issued and outstanding shares of Common Stock and that Mr. Benton may be deemed to beneficially own all of the shares of Common Stock that may be deemed to be beneficially owned by Moreno Energy. Moreno Energy is an energy investment company engaged principally in the business of owning direct interests in oil and gas properties and both private and public securities of energy companies. The principal business address of Moreno Energy is 8818 Stable Crest Blvd., Houston, TX 77024. No agreement or understanding exists between Mr. Benton or Moreno Energy, on the one hand, and any of the Reporting Persons, on the other hand, with respect to the disposition or the power to vote any of the shares of Common Stock that may be deemed to be beneficially owned by Moreno Energy or Mr. Benton or with respect to the acquisition by Mr. Benton or Moreno Energy of any additional shares of Common Stock.

(b). Except as set forth below, each Reporting Person may be deemed to share the power to vote or direct the vote and to dispose or to direct the disposition of the shares of Common Stock that the Reporting Person may be deemed to beneficially own as described above. CalPERS may be deemed to have the sole power to vote or direct the vote and to dispose or to direct the disposition of the 601,246 shares of Common Stock that CalPERS owns directly.

(c). Schedule A annexed hereto lists all transactions in the shares of Common Stock during the past sixty days by the Reporting Persons.

(d). No person is known by any Reporting Person to have the right to receive or the power to direct the receipt of dividends from, or the proceeds from the sale of, any shares of Common Stock that may be deemed to be beneficially owned by any Reporting Person.

(e). Not applicable.

ITEM 7. MATERIAL TO BE FILED AS EXHIBITS

99.4 Letter from the Reporting Persons to the Board of the Directors of the Issuer, dated as of September 11, 2007

SIGNATURE

After reasonable inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

Date: September 12, 2007

NEW MOUNTAIN VANTAGE GP, L.L.C.

By: /s/ Steven B. Klinsky
Steven B. Klinsky
Managing Member

NEW MOUNTAIN VANTAGE, L.P.

By: New Mountain Vantage GP, L.L.C.,
its general partner

By: /s/ Steven B. Klinsky
Steven B. Klinsky
Managing Member

NEW MOUNTAIN VANTAGE
(CALIFORNIA), L.P.

By: New Mountain Vantage GP, L.L.C.,
its general partner

By: /s/ Steven B. Klinsky
Steven B. Klinsky
Managing Member

NEW MOUNTAIN VANTAGE (TEXAS), L.P.

By: New Mountain Vantage GP, L.L.C.,
its general partner

By: /s/ Steven B. Klinsky
Steven B. Klinsky
Managing Member

NEW MOUNTAIN VANTAGE ADVISERS, L.L.C.

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By: /s/ Steven B. Klinsky
Steven B. Klinsky
Managing Member

NEW MOUNTAIN VANTAGE (CAYMAN) LTD.

By: /s/ Steven B. Klinsky
Steven B. Klinsky
Director

NEW MOUNTAIN VANTAGE HOLDCO LTD.

By: /s/ Steven B. Klinsky
Steven B. Klinsky
Director

/s/ Steven B. Klinsky
Steven B. Klinsky

NMV SPECIAL HOLDINGS, L.L.C.

By: New Mountain Vantage GP, L.L.C.,
its managing member

By: /s/ Steven B. Klinsky
Steven B. Klinsky
Managing Member

California Public Employees' Retirement System

/s/ Christianna Wood
By: Christianna Wood
Title: Senior Investment Officer

SCHEDULE A
TRANSACTIONS IN THE PAST SIXTY DAYS BY THE PURCHASERS

NMV

| Date | Shares of Common Stock Purchased | Approximate Price per Share (inclusive of commissions) |
|-----------|-------------------------------------|---|
| 8/6/2007 | 7,800 | 42.96 |
| 8/7/2007 | 7,600 | 43.54 |
| 8/9/2007 | 2,600 | 44.03 |
| 8/10/2007 | 10,300 | 43.82 |
| 8/13/2007 | 2,500 | 43.67 |
| 8/14/2007 | 4,900 | 43.67 |

NMVC

| Date | Shares of Common Stock Purchased | Approximate Price per Share (inclusive of commissions) |
|-----------|-------------------------------------|---|
| 8/6/2007 | 9,300 | 42.96 |
| 8/7/2007 | 9,100 | 43.54 |
| 8/9/2007 | 3,000 | 44.03 |
| 8/10/2007 | 12,300 | 43.82 |
| 8/13/2007 | 2,900 | 43.67 |
| 8/14/2007 | 5,800 | 43.67 |

NMVT

| Date | Shares of Common Stock Purchased | Approximate Price per Share (inclusive of commissions) |
|-----------|-------------------------------------|---|
| 8/2/2007 | 4,600 | 43.93 |
| 8/3/2007 | 2,100 | 43.99 |
| 8/6/2007 | 17,400 | 42.96 |
| 8/7/2007 | 17,000 | 43.54 |
| 8/9/2007 | 5,700 | 44.03 |
| 8/10/2007 | 23,000 | 43.82 |
| 8/13/2007 | 5,500 | 43.67 |
| 8/14/2007 | 10,800 | 43.67 |

NMV Offshore Holdco

| Date | Shares of Common Stock Purchased | Approximate Price per Share (inclusive of commissions) |
|----------|-------------------------------------|--|
| 8/2/2007 | 75,600 | 43.93 |

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| | | |
|-----------|--------|-------|
| 8/3/2007 | 34,700 | 43.99 |
| 8/6/2007 | 48,200 | 42.96 |
| 8/7/2007 | 46,900 | 43.54 |
| 8/9/2007 | 15,700 | 44.03 |
| 8/10/2007 | 63,600 | 43.82 |
| 8/13/2007 | 15,200 | 43.67 |
| 8/14/2007 | 29,900 | 43.67 |

CalPERS

| Date | Shares of Common Stock Purchased/Sold | Approximate Price per Share (inclusive of commissions) |
|-----------|--|---|
| 8/14/2007 | (1,600) | 43.42 |
| 8/15/2007 | (2,300) | 42.94 |
| 8/17/2007 | (1,900) | 43.09 |
| 8/20/2007 | (1,880) | 42.85 |
| 8/29/2007 | (200) | 44.34 |
| 8/30/2007 | (300) | 44.15 |
| 8/31/2007 | (300) | 44.33 |