RRI ENERGY INC
Form 8-K
August 03, 2009

**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): August 3, 2009**

**RRI ENERGY, INC.**
(Exact name of registrant as specified in its charter)

| | | |
|---|---|---|
| **Delaware** | **1-16455** | **76-0655566** |
| (State or other Jurisdiction of Incorporation) | (Commission File Number) | (IRS Employer Identification No.) |

| | |
|---|---|
| **1000 Main Street** | |
| **Houston, Texas** | **77002** |
| (Address of Principal Executive Offices) | (Zip Code) |

Registrant s telephone number, including area code: **(713) 497-3000**

(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:

o Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

o Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

o Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

o Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

In this Current Report on Form 8-K (Form 8-K) and in the exhibit included as part of this report, RRI Energy refers to RRI Energy, Inc., and we, us and our refer to RRI Energy and its subsidiaries.

**Item 2.02. Results of Operations and Financial Condition.**

On August 3, 2009, we issued a press release (earnings release) setting forth our results of operations for the six months ended June 30, 2009. A copy of the earnings release is furnished as Exhibit 99.1 to this Form 8-K. Copies of this Form 8-K and the earnings release are available at www.rrienergy.com in the investor relations section.

In analyzing and planning for our business, we supplement our use of financial measures that are calculated and presented in accordance with accounting principles generally accepted in the United States of America (GAAP) with a number of non-GAAP financial measures. We use these non-GAAP financial measures in communications with investors, analysts, rating agencies, banks and other parties. Non-GAAP financial measures are not standardized; therefore, it may not be possible to compare these financial measures with other companies non-GAAP financial measures having the same or similar names. These non-GAAP financial measures reflect an additional way of viewing aspects of our operations that, when viewed with our GAAP results, may provide a more complete understanding of factors and trends affecting our business. These non-GAAP financial measures should not be relied upon without considering the GAAP financial measures. Investors should review our consolidated financial statements and publicly filed reports in their entirety and not rely on any single financial measure.

In this Form 8-K, we discuss the non-GAAP financial measures included in or attached to the earnings release, including the reasons that we believe that these measures provide useful information and the additional purposes for which these measures are used. Reconciliations of non-GAAP financial measures to the most directly comparable GAAP financial measures are contained in the earnings release or its attachment. We note that, where non-GAAP financial measures are presented on a forward-looking basis, certain factors that could affect GAAP financial measures are not accessible or estimable on a forward-looking basis. These factors include future unrealized gains/losses on energy derivatives and could include other items that may be material, such as mothballs/retirements, legal and regulatory settlements and estimated gains or losses on asset sales.

**Non-GAAP Margin Measures.**

We believe that open wholesale gross margin, open energy gross margin and open wholesale contribution margin are meaningful to investors and others because our management uses these measures in addition to GAAP measures, in evaluating the performance and outlook of our business.

*Open Wholesale Gross Margin* and *Open Energy Gross Margin.* Open wholesale gross margin involves two components: open energy gross margin and other margin. Open energy gross margin is calculated using the power sales prices received by the plants less delivered spot fuel prices. This figure excludes the effects of other margin, our wholesale hedges and unrealized gains/losses on energy derivatives. Other margin represents power purchase agreements, capacity payments, ancillary services revenues and selective commercial hedge strategies. Open wholesale gross margin excludes the effect of the following:

Wholesale Hedges. We exclude the recurring effect of certain wholesale hedges that were entered into primarily to mitigate (a) certain operational and market risks at our generation assets and (b) some of the downside risk to our earnings and cash flow. These amounts primarily relate to settlements of power and fuel hedges, long-term natural gas transportation contracts and storage contracts. The wholesale hedges described above are derived based on methodology consistent with the calculation of open energy gross margin. We also exclude the recurring effect of certain historical wholesale hedges that were entered into in order to hedge the economics of a portion of our wholesale operations. These amounts primarily relate to settlements of forward power hedges, long-term tolling purchases, long-term natural gas transportation contracts not serving our generation assets and our legacy energy trading. We believe that it is useful to us, investors, analysts and others to show our results in the absence of hedges. The impact of these hedges on our financial results is not a function of the operating performance of our generation assets, and excluding the impact better reflects the potential operating performance of our generation assets based on prevailing market conditions.



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> Unrealized Gains/Losses on Energy Derivatives. We use derivative instruments to manage operational or market constraints and to increase the return on our generation assets. We are required to record in our consolidated statement of operations non-cash gains/losses related to future periods based on current changes in forward commodity prices for derivative instruments receiving mark-to-market accounting treatment. We refer to these gains and losses prior to settlement, as well as ineffectiveness on cash flow hedges, as unrealized gains/losses on energy derivatives. In some cases, the underlying transactions being hedged receive accrual accounting treatment, resulting in a mismatch of accounting treatments. Since the application of mark-to-market accounting has the effect of pulling forward into current periods non-cash gains/losses relating to and reversing in future delivery periods, analysis of results of operations from one period to another can be difficult. We believe that excluding these unrealized gains/losses on energy derivatives provides a more meaningful representation of our economic performance in the reporting period and is therefore useful to us, investors, analysts and others in facilitating the analysis of our results of operations from one period to another. These gains/losses are also not a function of the operating performance of our generation assets, and excluding their impact helps isolate the operating performance of our generation assets under prevailing market conditions.

The most directly comparable GAAP measure is contribution margin, including wholesale hedges and unrealized gains/losses on energy derivatives (our segment measure).

*Open Wholesale Contribution Margin.* We define open wholesale contribution margin as revenues less cost of sales and operation and maintenance, excluding severance, adjusted to exclude the impact of wholesale hedges and unrealized gains/losses on energy derivatives, as described above under Open Wholesale Gross Margin and Open Energy Gross Margin. The reason we exclude severance from operation and maintenance is described below under EBITDA and Adjusted EBITDA. The most directly comparable GAAP financial measure is contribution margin, including wholesale hedges and unrealized gains/losses on energy derivatives (our segment measure).

**Non-GAAP EBITDA Measures**

*EBITDA* and *Adjusted EBITDA.* We believe that the Non-GAAP measures, earnings (loss) before interest, taxes, depreciation and amortization (EBITDA) and adjusted EBITDA provide meaningful representations of our consolidated operating performance. We consider EBITDA and adjusted EBITDA as performance measures rather than liquidity measures. In addition, many analysts and investors use EBITDA to evaluate financial performance. Adjusted EBITDA includes the following adjustments:

> Unrealized Gains/Losses on Energy Derivatives. We use derivative instruments to manage operational or market constraints and to increase the return on our generation assets. We are required to record in our consolidated statement of operations non-cash gains/losses related to future periods based on current changes in forward commodity prices for derivative instruments receiving mark-to-market accounting treatment. We refer to these gains and losses prior to settlement, as well as ineffectiveness on cash flow hedges, as unrealized gains/losses on energy derivatives. In some cases, the underlying transactions being hedged receive accrual accounting treatment, resulting in a mismatch of accounting treatments. Since the application of mark-to-market accounting has the effect of pulling forward into current periods non-cash gains/losses relating to and reversing in future delivery periods, analysis of results of operations from one period to another can be difficult. We believe that excluding these unrealized gains/losses on energy derivatives provides a more meaningful representation of our economic performance in the reporting period and is therefore useful to us, investors, analysts and others in facilitating the analysis of our results of operations from one period to another. These gains/losses are also not a function of the operating performance of our generation assets, and excluding their impact helps isolate the operating performance of our generation assets under prevailing market conditions.

Western States Litigation and Similar Settlements. We exclude charges related to settlement of civil and criminal actions in our legacy western states and similar litigation. Because these charges are not representative of our ongoing business operations, our management believes that excluding them provides a more meaningful representation of our results of operations.  For additional information, see note 14 to our consolidated financial statements in our most recent Form 10-K.



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Wholesale Energy Goodwill Impairment. During 2008, we recorded a goodwill impairment charge of $305 million related to our wholesale energy segment. We exclude this charge because it is not representative of our ongoing business operations. For additional information, see note 4 to our consolidated financial statements in our Form 10-K.

Debt Extinguishments Gains/Losses. We exclude charges incurred in connection with the refinance or purchase of debt, including the accelerated amortization of deferred financing costs. These charges result from our efforts to increase our financial flexibility and are not a function of our operating performance. Accordingly, our management believes that excluding them provides a more meaningful representation of our results of operations. For additional information, see note 6(c) to our consolidated financial statements in our most recent Form 10-K.

Severance. We exclude severance charges incurred in connection with repositioning the company in connection with the sale of our retail business. Because the level of these costs is not representative of our ongoing business operations, our management believes that excluding these costs is useful in that it provides a more meaningful representation of our results of operations on an ongoing basis.

The most directly comparable GAAP financial measure to EBITDA and adjusted EBITDA is income (loss) from continuing operations before income taxes.

*Open EBITDA*. Open EBITDA includes the adjustments described above under EBITDA and Adjusted EBITDA as well as the following adjustments, which we believe help to provide a meaningful representation of our consolidated operating performance:

Wholesale Hedges. Described above under Open Wholesale Gross Margin and Open Energy Gross Margin.

Gains on Sales of Emission and Exchange Allowances. As part of our effort to operate our business efficiently, we periodically sell emission and exchange allowances inventory in excess of our forward power sales commitments if the price is above our view of their value. We believe that excluding the gains from such sales is useful because these gains are not directly tied to the operating performance of our generation assets, and excluding them helps to isolate the operating performance of our generation assets under prevailing market conditions.

Gains or Losses on Sales of Assets. We exclude gains or losses on asset sales because we believe that these gains or losses are not directly tied to the operating performance of our generation assets, and excluding them helps to isolate the operating performance of our generation assets under prevailing market conditions.

The most directly comparable GAAP financial measure to open EBITDA is income (loss) from continuing operations before income taxes.

**Non-GAAP Free Cash Flow Measures**

Our non-GAAP cash flow measures may not be representative of the amount of residual cash flow that is available to us for discretionary expenditures, since they may not include deductions for all non-discretionary expenditures. We believe, however, that our non-GAAP cash flow measures are useful because they provide a representation of our cash level available to service debt on a normalized basis, both before and after capital expenditures and emission and exchange allowances activity.

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*Adjusted Cash Flow Provided By (Used In) Continuing Operations.* We define adjusted cash flow provided by (used in) continuing operations as operating cash flow from continuing operations (which is the most directly comparable GAAP financial measure) excluding:

> Change in Margin Deposits, net. We post collateral to support a portion of our commodity sales and purchase transactions. The collateral provides assurance to counterparties that contractual obligations will be fulfilled. As the obligations are fulfilled, the collateral is returned. We commonly use both cash and letters of credit as collateral. The use of cash as collateral appears as an asset on the balance sheet and as a use of cash in operating cash flow. When cash collateral is returned, the asset is eliminated from the balance sheet and it appears as a source of cash in operating cash flow. We believe that it is useful to exclude changes in margin deposits, since changes in margin deposits reflect the net inflows and outflows of cash collateral and are driven by hedging levels and changes in commodity prices, not by the cash flow generated by the business related to sales and purchases in the reporting period.
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> Western States Litigation and Similar Settlements Payments. We exclude the cash outflows related to settlement of civil and criminal actions in our legacy western states and similar litigation. Because these charges are not representative of our ongoing business operations, our management believes that excluding these outflows provides a more meaningful representation of our cash flow on an ongoing basis. For additional information, see note 14 to our consolidated financial statements in our most recent Form 10-K.

*Free Cash Flow Provided By (Used In) Continuing Operations.* Free cash flow provided by (used in) continuing operations is the same as adjusted cash flow provided by (used in) continuing operations but is further adjusted for capital expenditures, including maintenance and environmental capital expenditures and capitalized interest, and the following item:

> Net Sales (Purchases) of Emission and Exchange Allowances. The cash flows from sales and purchases of emission and exchange allowances are classified as investing cash flows for GAAP purposes; however, we purchase and sell emission and exchange allowances in connection with the operation of our generating assets. As part of our effort to operate our business efficiently, we periodically sell emission and exchange allowances inventory in excess of our forward power sales commitments if the price is above our view of their value. Consistent with subtracting capital expenditures (which is a GAAP investing cash flow activity) in calculating free cash flow, we add sales and subtract purchases of emission and exchange allowances. The most directly comparable GAAP financial measure to free cash flow provided by (used in) continuing operations is operating cash flow from continuing operations.

The most directly comparable GAAP financial measure to free cash flow provided by (used in) continuing operations is operating cash flow from continuing operations.

**Other Non-GAAP Measures**

*Gross debt.* Gross debt is total GAAP debt and certain off balance sheet debt less purchase accounting adjustments. We believe that gross debt is a useful measure of our financial obligations.

**Item 9.01. Financial Statements and Exhibits.**

(d) We furnish the following exhibit:

99.1 Press Release dated August 3, 2009

**CAUTIONARY STATEMENTS REGARDING FORWARD-LOOKING INFORMATION**

The report contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. Forward-looking statements are statements that contain projections, assumptions or estimates about our revenues, margins, capital structure and other financial items, our plans and objectives for future operations or about our future economic performance, economic and market conditions, possible transactions and dispositions, financings or offerings. In many cases you can identify forward-looking statements by terminology such as anticipate, estimate, believe, continue, could, intend, ma potential, predict, should, will, expect, objective, projection, forecast, goal, guidance, outlook, similar words. However, the absence of these words does not mean that the statements are not forward-looking.

Actual results may differ materially from those expressed or implied by forward-looking statements as a result of many factors or events, including, but not limited to, legislative, regulatory and/or market developments, the outcome of pending lawsuits, governmental proceedings and investigations, the effects of competition, financial and economic market conditions, access to capital, the timing and extent of changes in commodity prices and interest rates, weather conditions and other factors we discuss or refer to in the Risk Factors section of our most recent Annual Report on Form 10-K filed with the Securities and Exchange Commission. Our filings and other important information are also available on the Investor Relations page of our website at www.rrienergy.com.

Each forward-looking statement speaks only as of the date of the particular statement and we undertake no obligation to update or revise any forward-looking statement, whether as a result of new information, future events or otherwise.

**INFORMATION FURNISHED**

The information in Item 2.02 and Exhibit 99.1 of this Form 8-K is being furnished, not filed. Accordingly, the information will not be incorporated by reference into any registration statement filed by RRI Energy under the Securities Act of 1933, as amended, unless specifically identified as being incorporated by reference therein.



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## SIGNATURE

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.

**RRI ENERGY, INC.**
(Registrant)

Date: August 3, 2009

By: /s/ Thomas C. Livengood
Thomas C. Livengood
*Senior Vice President and Controller*



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**EXHIBIT INDEX**

| Exhibit Number | Exhibit Description |
|---|---|
| 99.1 | Press Release dated August 3, 2009 |