

DECISION AND ORDER  
OF THE DEPARTMENT OF ENERGY

Application for Exception

Name of Petitioner: Sound Oil Company

Date of Filing: August 16, 1994

Case Number: LEE-0152

On August 16, 1994, Sound Oil Company (Sound) of Seattle Washington, filed an Application for Exception with the Office of Hearings and Appeals of the Department of Energy. In its Application, Sound requests that it be relieved of the requirement that it file the Energy Information Administration's (EIA) form entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report" (Form EIA-782B). As explained below, we have determined that the Application for Exception should be denied.

## A. Background

The EIA-782B reporting requirement grew out of the shortages of crude oil and petroleum products during the 1970s. In 1979, Congress found that the lack of reliable information concerning the supply, demand, and prices of petroleum products impeded the nation's ability to respond to the oil crisis. It therefore authorized the DOE to collect data on the supply and prices of petroleum products. The current form collects information concerning the volume and price of various grades and types of motor gasoline, No. 2 distillates, propane, and residual fuel oil, broken down by customer type.

Information obtained from the survey is used to analyze trends within petroleum markets. Summaries of the information and the analyses are published by the EIA in publications such as "Petroleum Marketing Monthly." This data is used by Congress and by more than 35 state governments to project trends and to formulate state and national energy policies. In addition, firms in the petroleum industry frequently base business decisions on the data published by EIA.

The DOE has attempted to ensure that this survey yields valuable information while minimizing the burden placed on the industry. Thus, in designing the form, the DOE consulted with potential survey respondents, various industry associations, users of the energy data, state governments, and other

federal agencies. Moreover, to minimize the reporting burden, the EIA periodically selects a relatively small sample of companies to file the report. In addition, to reduce the amount of time spent completing the forms, firms may rely upon reasonable estimates.<1>

EIA designates some companies as certainty firms. A company is designated as such because it either (a) sells five percent or more of a particular product sales category in a state in which it does business, or (b) does business in four or more states.<2> All certainty firms are included in the survey sample on a continuing basis because of their impact on the market. EIA examines the data that these companies submit more closely and considers it more instructive in gauging market trends than data submitted by smaller firms. The continuity of the surveys cannot be maintained by replacing a certainty firm with a similar company since all companies of this kind are already survey participants.

## B. Exceptions Criteria

Form EIA-782B is a mandatory report designed to collect monthly information on refined petroleum sales volumes and prices from a sample of resellers and retailers. 42 U.S.C. § 7135(b). This Office has authority to grant exception relief where the reporting requirement causes a "special hardship, inequity, or unfair distribution of burdens." 42 U.S.C. § 7194 (a); 10 C.F.R. § 205.55(b)(2). Exceptions are appropriate only in extreme cases. Because all reporting firms are burdened to some extent by reporting requirements, exception relief is appropriate only where a firm can demonstrate that it is adversely affected by the reporting requirement in a way that differs significantly from similar reporting firms. Thus, mere inconvenience does not constitute a sufficient hardship to warrant relief. Glenn W. Wagoner Oil Co., 16 DOE ¶ 81,024 (1987).

In considering a request for exception relief, we must weigh the firm's difficulty in complying with the reporting requirement against the nation's need for reliable energy data. Neither the fact that a firm is relatively small, nor the fact that it has filed the report for a number of years alone constitute grounds for exception relief. If firms of all sizes, both large and small, are not included, the estimates and projections generated by the EIA's statistical sample will be unreliable. Mulgrew Oil Co., 20 DOE ¶ 81,009 (1990).

The following examples illustrate the types of circumstances that may justify relief from the reporting requirement. Since each case is different, these examples are not intended to reflect all circumstances that justify exception relief:

- Financial difficulties underlie most approvals of exception relief. We have granted a number of exceptions where the applicant's financial condition is so precarious that the additional burden of meeting the DOE reporting requirements threatens its continued viability. Mico Oil Co., 23 DOE ¶ 81,015 (1994) (firm lost one million dollars over previous three years); Deaton Oil Co., 16 DOE ¶ 81,026 (1987) (firm in bankruptcy).
- Relief may be appropriate when the only person capable of preparing the report is ill and the firm cannot afford to hire outside help. S&S Oil & Propane Co., 21 DOE ¶ 81,006 (1991) (owner being treated for cancer); Midstream Fuel Serv., 24 DOE ¶ 81,023 (three month extension of time to file reports granted when two office employees simultaneously on maternity leave); Eastern Petroleum Corp., 14 DOE ¶ 81,011 (1986) (two months relief granted when computer operator broke wrist).
- A combination of factors may warrant exception relief. Exception relief for 10 months was granted where personnel shortages, financial difficulties, and administrative problems resulted from the long illness and death of a partner. Ward Oil Co., 24 DOE ¶ 81,002 (1994); see also Belcher Oil Co., 15 DOE ¶ 81,018 (1987) (extension of time granted where general manager abruptly left firm without notice).
- Extreme or unusual circumstances that disrupt a firm's activities may warrant relief. Little River Village Campground, Inc., 24 DOE ¶ 81,033 (1994) (five months relief because of flood); Utilities Bd. of Citronelle-Gas, 4 DOE ¶ 81,205 (1979) (hurricane); Meier Oil Serv., 14 DOE ¶ 81,004 (1986) (three months where disruptions caused by installation of a new computer system left firm's records inaccessible).

## C. Sound's Exception Application

Sound, located in Seattle, Washington, sells #2 fuel oil to both residential and non-residential customers. It requests an exception to its Form EIA-782B reporting requirement on the basis that it has been asked to file for an unusually long period of time. Classified by EIA as a "large company" and a "certainty firm," Sound has been filing Form EIA-782B for 10 years. Mr. Richard Franck, President of the company, filed the Application on behalf of Sound. Mr. Franck is concerned that his company has been required to fill out Form EIA-782B for a number of years, while none of his competitors have to fill out any such forms. Mr. Frank states that while it takes only a short period of time to complete the Forms, it bothers him that the Government is wasting money on these surveys. He believes the firm will never be relieved of this duty, and therefore asks to be excepted from it.

## D. Analysis

Our review of the record in this case indicates that Sound has not met the standards for exception relief set forth above. According to Mr. Franck, it takes him very little time to complete the Form. EIA estimates that it should take two to two and one-half hours per month. In the past, we have denied exception relief to firms which claimed they required a longer period of time to complete the Form than that estimated by EIA. Haynes Oil Co., 21 DOE ¶ 81,002 (1992) (one day); Franken, 20 DOE at 82,501; Delgado Oil Co., 17 DOE ¶ 81,005 (1988) (40 hours); Dell Oil Ltd., 13 DOE ¶ 81,009 (1985) (2 days).

Mr. Franck also argues that because Sound has participated in the survey for the past ten years it should be relieved of any further reporting requirement. We have repeatedly held that the length of time that a firm has been required to file an EIA form generally does not constitute grounds for exception relief. Schaal Oil Co., 14 DOE ¶ 81,018 (1986) (3 years): See Harbor Enters., 20 DOE ¶ 81,004 (1990) (had been filing various forms, including EIA forms for 20 years); Halron Oil Co., 16 DOE ¶ 81,001 (1987) (12 years). The basis for this conclusion is that the importance of the information collected by the EIA through the survey usually outweighs the inconvenience of providing the data. The fact that the firm has had to provide data to EIA for ten years does not alone constitute a gross inequity which would warrant exception relief.

On the other hand, the data collected from Form EIA-782B constitute the DOE's primary source of information on supplies, demand, and prices of petroleum products. Reliable data is vital to the nation's ability formulate energy policies and to respond effectively to any future supply disruptions. Unless firms such as Sound are part of the EIA's statistical sample, the DOE will be unable to formulate valid estimates from a cross-section of the industry. Consequently, there is no evidence that the burden on Sound of providing the requested data outweighs the benefits which the DOE and the nation receive from access to the information.

In view of the foregoing considerations, we find that the requirement that Sound file Form EIA-782B does not constitute a special hardship, inequity, or unfair distribution of burdens. Accordingly, the Application for Exception filed by Sound should be denied.

On January 19, 1995, a copy of the determination that appears above was provided to Sound Oil Company in the form of a Proposed Decision and Order. In accordance with the procedures that govern this matter, Sound was advised of its right to file a Notice of Objection with respect to any finding of fact or conclusion of law reached in the Proposed Decision and Order. See 10 C.F.R. §§ 205.58 and 205.62. Sound was further advised that it would be deemed to consent to the issuance of the Proposed Decision and Order in final form unless such a Notice was filed within the prescribed time period. The time period within which a Notice of Objection could be filed has now expired, and we have received no such document from Sound or any other potentially aggrieved party. Consequently, this Decision and Order is being issued in final form. Sound will accordingly be deemed to consent to the issuance of the present determination.

### **It Is Therefore Ordered That:**

(1) The Application for Exception filed by Sound Oil Company on August 16, 1994 is hereby denied.

George B. Breznay

Director

Office of Hearings and Appeals

Date:

<1>The firm must make a good faith effort to provide reasonably accurate information that is consistent with the accounting records maintained by the firm. The firm must alert the EIA if the estimates are later found to be materially different from actual data.

<2>A random sample of other firms is also selected. This random sample changes approximately every 12 months, but a firm may be reselected for a subsequent sample. A firm that has been included in three consecutive random samples will generally not be included in a fourth consecutive sample, but may be included in a later sample.

DECISION AND ORDER  
OF THE DEPARTMENT OF ENERGY

Application for Exception

Name of Petitioner: Martin Petroleum Corporation

Date of Filing: August 17, 1994

Case Number: LEE-0153

On August 17, 1994, Martin Petroleum Corporation (Martin) of Ft. Lauderdale, Florida, filed an Application for Exception with the Office of Hearings and Appeals of the Department of Energy. In its Application, Martin requests that it be relieved of the requirement that it file the Energy Information Administration's (EIA) form entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report" (Form EIA-782B). As explained below, we have determined that the Application for Exception should be denied.

## A. Background

The EIA-782B reporting requirement grew out of the shortages of crude oil and petroleum products during the 1970s. In 1979, Congress found that the lack of reliable information concerning the supply, demand, and prices of petroleum products impeded the nation's ability to respond to the oil crisis. It therefore authorized the DOE to collect data on the supply and prices of petroleum products. The current form collects information concerning the volume and price of various grades and types of motor gasoline, No. 2 distillates, propane, and residual fuel oil, broken down by customer type.

Information obtained from the survey is used to analyze trends within petroleum markets. Summaries of the information and the analyses are published by the EIA in publications such as "Petroleum Marketing Monthly." This data is used by Congress and by more than 35 state governments to project trends and to formulate state and national energy policies. In addition, firms in the petroleum industry frequently base business decisions on the data published by EIA.

The DOE has attempted to ensure that this survey yields valuable information while minimizing the burden placed on the industry. Thus, in designing the form, the DOE consulted with potential survey respondents, various industry associations, users of the energy data, state governments, and other federal agencies. Moreover, to minimize the reporting burden, the EIA periodically selects a relatively small sample of

companies to file the report. (1) In addition, to reduce the amount of time spent completing the forms, firms may rely upon reasonable estimates.

## B. Exceptions Criteria

Form EIA-782B is a mandatory report designed to collect monthly information on refined petroleum sales volumes and prices from a sample of resellers and retailers. 42 U.S.C. § 7135(b). This Office has authority to grant exception relief where the reporting requirement causes a "special hardship, inequity, or unfair distribution of burdens." 42 U.S.C. § 7194 (a); 10 C.F.R. § 205.55(b)(2). Exceptions are appropriate only in extreme cases. Because all reporting firms are burdened to some extent by reporting requirements, exception relief is appropriate only where a firm can demonstrate that it is adversely affected by the

reporting requirement in a way that differs significantly from similar reporting firms. Thus, mere inconvenience does not constitute a sufficient hardship to warrant relief. Glenn W. Wagoner Oil Co., 16 DOE ¶ 81,024 (1987).

In considering a request for exception relief, we must weigh the firm's difficulty in complying with the reporting requirement against the nation's need for reliable energy data. Neither the fact that a firm is relatively small, nor the fact that it has filed the report for a number of years alone constitute grounds for exception relief. If firms of all sizes, both large and small, are not included, the estimates and projections generated by the EIA's statistical sample will be unreliable. Mulgrew Oil Co., 20 DOE ¶ 81,009 (1990).

The following examples illustrate the types of circumstances that may justify relief from the reporting requirement. Since each case is different, these examples are not intended to reflect all circumstances that justify exception relief:

- Financial difficulties underlie most approvals of exception relief. We have granted a number of exceptions where the applicant's financial condition is so precarious that the additional burden of meeting the DOE reporting requirements threatens its continued viability. Mico Oil Co., 23 DOE ¶ 81,015 (1994) (firm lost one million dollars over previous three years); Deaton Oil Co., 16 DOE ¶ 81,026 (1987) (firm in bankruptcy).
- Relief may be appropriate when the only person capable of preparing the report is ill and the firm cannot afford to hire outside help. S&S Oil & Propane Co., 21 DOE ¶ 81,006 (1991) (owner being treated for cancer); Midstream Fuel Serv., 24 DOE ¶ 81,023 (three month extension of time to file reports granted when two office employees simultaneously on maternity leave); Eastern Petroleum Corp., 14 DOE ¶ 81,011 (1986) (two months relief granted when computer operator broke wrist).
- A combination of factors may warrant exception relief. Exception relief for 10 months was granted where personnel shortages, financial difficulties, and administrative problems resulted from the long illness and death of a partner. Ward Oil Co., 24 DOE ¶ 81,002 (1994); see also Belcher Oil Co., 15 DOE ¶ 81,018 (1987) (extension of time granted where general manager abruptly left firm without notice).
- Extreme or unusual circumstances that disrupt a firm's activities may warrant relief. Little River Village Campground, Inc., 24 DOE ¶ 81,033 (1994) (five months relief because of flood); Utilities Bd. of Citronelle-Gas, 4 DOE ¶ 81,205 (1979) (hurricane); Meier Oil Serv., 14 DOE ¶ 81,004 (1986) (three months where disruptions caused by installation of a new computer system left firm's records inaccessible).

## C. Martin's Exception Application

Martin, located in Ft. Lauderdale, Florida, sells #2 distillate, wholesale, and motor gasoline, both wholesale and retail. It requests an exception to its Form EIA-782B reporting requirement on the basis that it has a limited number of employees and the forms are a burden on the business. Classified by EIA as a "medium company," Martin has been filing Form EIA-782B for one year. Mr. Richard Wheeler, President of the company, filed the Application on behalf of Martin. Mr. Wheeler states that because each of his customers is unique, he must go through each of his invoices individually when filling out the form. He does this with the help of a computer. Mr. Wheeler states that there are only two other employees working in the office, neither of whom can fill out the forms. He is therefore forced to spend time on these forms that he could otherwise spend operating his business.

## D. Analysis

Our review of the record in this case indicates that Martin has not met the standards for exception relief set forth above. According to Mr. Wheeler, it takes him two hours to complete the Form. This amount of time is typical. EIA estimates that it should take two to two and one-half hours per month. In the past, we have denied exception relief to firms which claimed they required a longer period of time to complete the Form

than that estimated by EIA. Haynes Oil Co., 21 DOE ¶ 81,002 (1992) (one day); Franken, 20 DOE at 82,501; Delgado Oil Co., 17 DOE ¶ 81,005 (1988) (40 hours); Dell Oil Ltd., 13 DOE ¶ 81,009 (1985) (2 days).

Mr. Wheeler claims that because he must review each invoice individually, he is forced to spend a great deal of time on the survey.<sup>(2)</sup> Martin may submit estimates based on sales figures of motor gasolines and No. 2 distillate from the previous year for each corresponding month and adjust them to reflect its current level of sales volumes when filing Form EIA-782B. These estimates should account for any significant or extraordinary changes in business. Local Oil Co., Inc, 21 DOE ¶ 81.007 (1991); Halron Oil Co. Inc., 16 DOE ¶ 81,001 (1987) (Halron); Ed Flood Oil Co., Inc., 14 DOE ¶ 81,001 (1986). The fact that the firm spends considerable time reviewing individual customer invoices does not alone constitute a gross inequity which would warrant exception relief.

On the other hand, the data collected from Form EIA-782B constitute the DOE's primary source of information on supplies, demand, and prices of petroleum products. Reliable data is vital to the nation's ability to formulate energy policies and to respond effectively to any future supply disruptions. Unless firms such as Martin are part of the EIA's statistical sample, the DOE will be unable to formulate valid, current estimates from a cross-section of the industry. Consequently, there is no evidence that the burden on Martin of providing the requested data outweighs the benefits which the DOE and the nation receive from access to the information.

In view of the foregoing considerations, we find that the requirement that Martin file Form EIA-782B does not constitute a special hardship, inequity, or unfair distribution of burdens. Accordingly, the Application for Exception filed by Martin should be denied.

On July 5, 1995, a copy of the determination that appears above was provided to Martin Oil Corporation in the form of a Proposed Decision and Order. In accordance with the procedures that govern this matter, Martin was advised of its right to file a Notice of Objection with respect to any finding of fact or conclusion of law reached in the Proposed Decision and Order. See 10 C.F.R. §§ 205.58 and 205.62. Martin was further advised that it would be deemed to consent to the issuance of the Proposed Decision and Order in final form unless such a Notice was filed within the prescribed time period. The time period within which a Notice of Objection could be filed has now expired, and we have received no such document from Martin or any other potentially aggrieved party. Consequently, this Decision and Order is being issued in final form. Martin will accordingly be deemed to consent to the issuance of the present determination.

## **It Is Therefore Ordered That:**

(1) The Application for Exception filed by Martin Petroleum Corporation, on August 17, 1994, is hereby denied.

George B. Breznay

Director

Office of Hearings and Appeals

Date:

(1) Firms that do business in four or more states or which account for over five percent of the sales of any particular product in a state are always included in the sample of firms required to file the report. A random sample of other firms is also selected. This random sample changes approximately every 12 months, but a firm may be reselected for a subsequent sample. A firm that has been included in three consecutive random samples will generally not be included in a fourth consecutive sample, but may be

included in a later sample.

(2) Specifically, the instructions to the Form provide that if a firm does not have the actual sales volumes and unit prices by the customer categories specified on the Form, estimates may be supplied. However, the basis for the estimates must be consistent with the standard accounting records maintained by the firm. The firm must make a good faith effort to provide reasonably accurate information that will be subject to review. In addition, the firm must alert the EIA if the estimates are later found to be materially different from actual data. See General Instruction IV for Form EIA-782B, 2 Fed. Energy Guidelines ¶ 18,502, at 18,517.



DECISION AND ORDER  
OF THE DEPARTMENT OF ENERGY

Application for Exception

Name of Petitioner: Coker Oil, Inc.

Date of Filing: September 16, 1994

Case Number: LEE-0161

On September 16, 1994, Coker Oil, Inc. (Coker) of Lake City, South Carolina, filed an Application for Exception with the Office of Hearings and Appeals of the Department of Energy. In its Application, Coker requests that it be relieved of the requirement that it file the Energy Information Administration's (EIA) form entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report" (Form EIA-782B). As explained below, we have determined that the Application for Exception should be denied.

## A. Background

The EIA-782B reporting requirement grew out of the shortages of crude oil and petroleum products during the 1970s. In 1979, Congress found that the lack of reliable information concerning the supply, demand, and prices of petroleum products impeded the nation's ability to respond to the oil crisis. It therefore authorized the DOE to collect data on the supply and prices of petroleum products. The current form collects information concerning the volume and price of various grades and types of motor gasoline, No. 2 distillates, propane, and residual fuel oil, broken down by customer type.

Information obtained from the survey is used to analyze trends within petroleum markets. Summaries of the information and the analyses are published by the EIA in publications such as "Petroleum Marketing Monthly." This data is used by Congress and by more than 35 state governments to project trends and to formulate state and national energy policies. In addition, firms in the petroleum industry frequently base business decisions on the data published by EIA.

The DOE has attempted to ensure that this survey yields valuable information while minimizing the burden placed on the industry. Thus, in designing the form, the DOE consulted with potential survey respondents, various industry associations, users of the energy data, state governments, and other federal agencies. Moreover, to minimize the reporting burden, the EIA periodically selects a

relatively small sample of companies to file the report.<1> In addition, to reduce the amount of time spent completing the forms, firms may rely upon reasonable estimates.<2>

## B. Exceptions Criteria

Form EIA-782B is a mandatory report designed to collect monthly information on refined petroleum sales volumes and prices from a sample of resellers and retailers. 42 U.S.C. § 7135(b). This Office has authority to grant exception relief where the reporting requirement causes a "special hardship, inequity, or unfair distribution of burdens." 42 U.S.C. § 7194 (a); 10 C.F.R. § 205.55(b)(2). Exceptions are appropriate only in extreme cases. Because all reporting firms are burdened to some extent by reporting requirements, exception relief is appropriate only where a firm can demonstrate that it is adversely affected by the reporting requirement in a way that differs significantly from similar reporting firms. Thus, mere inconvenience does not constitute a sufficient hardship to warrant relief. Glenn W. Wagoner Oil Co., 16

DOE ¶ 81,024 (1987).

In considering a request for exception relief, we must weigh the firm's difficulty in complying with the reporting requirement against the nation's need for reliable energy data. Neither the fact that a firm is relatively small, nor the fact that it has filed the report for a number of years alone constitute grounds for exception relief. If firms of all sizes, both large and small, are not included, the estimates and projections generated by the EIA's statistical sample will be unreliable. *Mulgrew Oil Co.*, 20 DOE ¶ 81,009 (1990).

The following examples illustrate the types of circumstances that may justify relief from the reporting requirement. Since each case is different, these examples are not intended to reflect all circumstances that justify exception relief:

- Financial difficulties underlie most approvals of exception relief. We have granted a number of exceptions where the applicant's financial condition is so precarious that the additional burden of meeting the DOE reporting requirements threatens its continued viability. *Mico Oil Co.*, 23 DOE ¶ 81,015 (1994) (firm lost one million dollars over previous three years); *Deaton Oil Co.*, 16 DOE ¶ 81,026 (1987) (firm in bankruptcy).
- Relief may be appropriate when the only person capable of preparing the report is ill and the firm cannot afford to hire outside help. *S&S Oil & Propane Co.*, 21 DOE ¶ 81,006 (1991) (owner being treated for cancer); *Midstream Fuel Serv.*, 24 DOE ¶ 81,023 (three month extension of time to file reports granted when two office employees simultaneously on maternity leave); *Eastern Petroleum Corp.*, 14 DOE ¶ 81,011 (1986) (two months relief granted when computer operator broke wrist).
- A combination of factors may warrant exception relief. Exception relief for 10 months was granted where personnel shortages, financial difficulties, and administrative problems resulted from the long illness and death of a partner. *Ward Oil Co.*, 24 DOE ¶ 81,002 (1994); see also *Belcher Oil Co.*, 15 DOE ¶ 81,018 (1987) (extension of time granted where general manager abruptly left firm without notice).
- Extreme or unusual circumstances that disrupt a firm's activities may warrant relief. *Little River Village Campground, Inc.*, 24 DOE ¶ 81,033 (1994) (five months relief because of flood); *Utilities Bd. of Citronelle-Gas*, 4 DOE ¶ 81,205 (1979) (hurricane); *Meier Oil Serv.*, 14 DOE ¶ 81,004 (1986) (three months where disruptions caused by installation of a new computer system left firm's records inaccessible).

## C. Coker's Exception Application

Coker is a medium-sized firm that sells approximately 600,000 gallons per year of motor gasoline, diesel, fuel oil, and propane. This is the first time that Coker has been selected to participate in the EIA survey. In its exception application, Don Coker, the owner of the firm, states that neither he nor his secretary can find enough time to fill out the form. He further explained that besides himself, the firm employs two drivers, one serviceman, and one secretary. The firm does not claim to be experiencing financial difficulties.

## D. Analysis

Coker has not shown that it meets the standards for exception relief set forth above. While it will no doubt experience some inconvenience in filling out Form EIA-782B each month, this inconvenience does not appear to be greater than that experienced by other reporting firms. Nothing in the record indicates that Coker is financially strained, or that the reporting requirement burdens the firm in a unique or exceptional way. EIA estimates that it should take between two and two and one-half hours per month to complete Form EIA-782B. Mr. Coker has stated, however, that it took him only one hour (with telephone assistance from EIA) to complete the form. See Telephone Conversation between Don Coker, owner of Coker Oil, Inc., and Bryan MacPherson, Assistant Director, Office of Hearings and Appeals (November 9, 1994). This indicates that the reporting requirement may be less burdensome to the applicant than to other

reporting firms.

On the other hand, the data collected from Form EIA-782B constitute the DOE's primary source of information on supplies, demand, and prices of petroleum products. Reliable data is vital to the nation's ability formulate energy policies and to respond effectively to any future supply disruptions. Unless firms such as Coker are part of the EIA's statistical sample, the DOE will be unable to formulate valid estimates from a cross-section of the industry. Consequently, there is no evidence that the burden on Coker of providing the requested data outweighs the benefits which the DOE and the nation receive from access to the information.

In view of the foregoing considerations, we find that the requirement that Coker file Form EIA-782B does not constitute a special hardship, inequity, or unfair distribution of burdens. Accordingly, the Application for Exception filed by Coker should be denied.

On December 19, 1994, a copy of the determination that appears above was provided to Coker in the form of a Proposed Decision and Order. In accordance with the procedures that govern this matter, Coker was advised of its right to file a Notice of Objection with respect to any finding of fact or conclusion of law reached in the Proposed Decision. See 10 C.F.R. § 205.58. Coker was further advised that it would be deemed to consent to the issuance of the Proposed Decision in final form unless such a Notice was filed within the prescribed time period. The time period within which a Notice of Objection could be filed has not expired and no Notice of objection has been received from Coker or any other potentially aggrieved party. Consequently, Coker shall be deemed to consent to issuance of this Decision and Order as the final determination of the Department of Energy.

## **It Is Therefore Ordered That:**

The Application for Exception filed by Coker Oil, Inc., on September 16, 1994, is hereby denied.

George B. Breznay

Director

Office of Hearings and Appeals

Date:

<1>Firms that do business in four or more states or which account for over five percent of the sales of any particular product in a state are always included in the sample of firms required to file the report. A random sample of other firms is also selected. This random sample changes approximately every 12 months, but a firm may be reselected for subsequent sample. A firm that has been included in three consecutive random samples will generally not be included in a fourth consecutive sample, but may be included in a later sample.

<2>The firm must make a good faith effort to provide reasonably accurate information that is consistent with the accounting records maintained by the firm. The firm must alert the EIA if the estimates are later found to be materially different from actual data.

DECISION AND ORDER  
OF THE DEPARTMENT OF ENERGY

Application for Exception

Name of Petitioner:Pierce Oil Co., Inc.

Date of Filing:September 20, 1994

Case Number:LEE-0163

On September 20, 1994, Pierce Oil Co., Inc. (Pierce) of Price, Utah, filed an Application for Exception with the Office of Hearings and Appeals of the Department of Energy. In its Application, Pierce requests that it be relieved of the requirement that it file the Energy Information Administration's (EIA) form entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report" (Form EIA-782B). As explained below, we have determined that the Application for Exception should be denied.

## A. Background

The EIA-782B reporting requirement grew out of the shortages of crude oil and petroleum products during the 1970s. In 1979, Congress found that the lack of reliable information concerning the supply, demand, and prices of petroleum products impeded the nation's ability to respond to the oil crisis. It therefore authorized the DOE to collect data on the supply and prices of petroleum products. The current form collects information concerning the volume and price of various grades and types of motor gasoline, No. 2 distillates, propane, and residual fuel oil, broken down by customer type.

Information obtained from the survey is used to analyze trends within petroleum markets. Summaries of the information and the analyses are published by the EIA in publications such as "Petroleum Marketing Monthly." This data is used by Congress and by more than 35 state governments to project trends and to formulate state and national energy policies. In addition, firms in the petroleum industry frequently base business decisions on the data published by EIA.

The DOE has attempted to ensure that this survey yields valuable information while minimizing the burden placed on the industry. Thus, in designing the form, the DOE consulted with potential survey respondents, various industry associations, users of the energy data, state governments, and other federal agencies. Moreover, to minimize the reporting burden, the EIA periodically selects a

relatively small sample of companies to file the report.<1> In addition, to reduce the amount of time spent completing the forms, firms may rely upon reasonable estimates.<2>

## B. Exceptions Criteria

Form EIA-782B is a mandatory report designed to collect monthly information on refined petroleum sales volumes and prices from a sample of resellers and retailers. 42 U.S.C. § 7135(b). This Office has authority to grant exception relief where the reporting requirement causes a "special hardship, inequity, or unfair distribution of burdens." 42 U.S.C. § 7194 (a); 10 C.F.R. § 205.55(b)(2). Exceptions are appropriate only in extreme cases. Because all reporting firms are burdened to some extent by reporting requirements, exception relief is appropriate only where a firm can demonstrate that it is adversely affected by the reporting requirement in a way that differs significantly from similar reporting firms. Thus, mere inconvenience does not constitute a sufficient hardship to warrant relief. Glenn W. Wagoner Oil Co., 16

DOE ¶ 81,024 (1987).

In considering a request for exception relief, we must weigh the firm's difficulty in complying with the reporting requirement against the nation's need for reliable energy data. Neither the fact that a firm is relatively small, nor the fact that it has filed the report for a number of years alone constitute grounds for exception relief. If firms of all sizes, both large and small, are not included, the estimates and projections generated by the EIA's statistical sample will be unreliable. *Mulgrew Oil Co.*, 20 DOE ¶ 81,009 (1990).

The following examples illustrate the types of circumstances that may justify relief from the reporting requirement. Since each case is different, these examples are not intended to reflect all circumstances that justify exception relief:

- Financial difficulties underlie most approvals of exception relief. We have granted a number of exceptions where the applicant's financial condition is so precarious that the additional burden of meeting the DOE reporting requirements threatens its continued viability. *Mico Oil Co.*, 23 DOE ¶ 81,015 (1994) (firm lost one million dollars over previous three years); *Deaton Oil Co.*, 16 DOE ¶ 81,026 (1987) (firm in bankruptcy).
- Relief may be appropriate when the only person capable of preparing the report is ill and the firm cannot afford to hire outside help. *S&S Oil & Propane Co.*, 21 DOE ¶ 81,006 (1991) (owner being treated for cancer); *Midstream Fuel Serv.*, 24 DOE ¶ 81,023 (three month extension of time to file reports granted when two office employees simultaneously on maternity leave); *Eastern Petroleum Corp.*, 14 DOE ¶ 81,011 (1986) (two months relief granted when computer operator broke wrist).
- A combination of factors may warrant exception relief. Exception relief for 10 months was granted where personnel shortages, financial difficulties, and administrative problems resulted from the long illness and death of a partner. *Ward Oil Co.*, 24 DOE ¶ 81,002 (1994); see also *Belcher Oil Co.*, 15 DOE ¶ 81,018 (1987) (extension of time granted where general manager abruptly left firm without notice).
- Extreme or unusual circumstances that disrupt a firm's activities may warrant relief. *Little River Village Campground, Inc.*, 24 DOE ¶ 81,033 (1994) (five months relief because of flood); *Utilities Bd. of Citronelle-Gas*, 4 DOE ¶ 81,205 (1979) (hurricane); *Meier Oil Serv.*, 14 DOE ¶ 81,004 (1986) (three months where disruptions caused by installation of a new computer system left firm's records inaccessible).

## C. Pierce's Exception Application

Pierce is a medium-sized firm that has yearly gross sales of approximately fourteen million dollars of #2 distillate (residential and nonresidential), and motor gasoline (retail and wholesale). This is the first time that Pierce has been selected to participate in an EIA survey. In its exception application, Mr. Ellis Pierce, the president of the firm, states that the monthly filing and preparation of Form 782-B takes valuable time away from other office duties and record-keeping. Mr. Pierce further explained that besides himself, the firm employs twenty persons, including five office workers and clerical staff. According to the submission, Pierce's office and clerical staff numbered six before it was required to file the EIA Form. Finally, in support of its request the firm states that submitting the Form in the future will become more burdensome because Pierce expects to have to make back payments of state and federal taxes.

## D. Analysis

Pierce has not shown that it meets the standards for exception relief set forth above. While it will no doubt experience some inconvenience in filling out Form EIA-782B each month, this inconvenience does not appear to be significantly greater than that experienced by other reporting firms. Nothing in the record indicates that Pierce is financially strained, or that the reporting requirement burdens the firm in a unique or exceptional way. EIA estimates that it should take a filer between two and two and one-half hours per month to complete Form EIA-782B. Mr. Pierce states that it took him three and a half to four hours, using

a computer, but not estimating, to complete the Form. See Telephone Conversation between Ellis Pierce, president of Pierce Oil, Inc., and John Ney, Exceptions and Appeals Analyst, Office of Hearings and Appeals (October 28, 1994). This may indicate that the reporting requirement is slightly more burdensome to Pierce than other reporting firms, but not to an extent that would warrant an exception. See Haynes Oil Co., 21 DOE ¶ 81,002 (1992) (one day); Dell Oil Ltd., 13 DOE ¶ 81,009 (1985) (2 days). Nor does Pierce's recent reduction in office personnel from 6 to 5 persons present a basis for exception relief. Shearon, Inc., 22 DOE ¶ 81,006 (1992); Leemon Oil, 21 DOE ¶ 81,003 (1991); Range Oil Company, 19 DOE ¶ 81,004 (1989). Concerning the financial difficulties that the applicant may face including the payment of back taxes, we find these claims to be speculative and therefore not persuasive. In summary, Pierce has not demonstrated that the filing of Form EIA-782B would pose or contribute to any financial hardship. Quad States Distributing Corp, 22 DOE ¶ 81,001 (1992).

On the other hand, the data collected from Form EIA-782B constitute the DOE's primary source of information on supplies, demand, and prices of petroleum products. Reliable data is vital to the nation's ability formulate energy policies and to respond effectively to any future supply disruptions. Unless firms such as Pierce are part of the EIA's statistical sample, the DOE will be unable to formulate valid estimates from a cross-section of the industry. Consequently, there is no evidence that the burden on Pierce of providing the requested data outweighs the benefits which the DOE and the nation receive from access to the information.

In view of the foregoing considerations, we find that the requirement that Pierce file Form EIA-782B does not constitute a special hardship, inequity, or unfair distribution of burdens. Accordingly, the Application for Exception filed by Pierce should be denied.

On January 16, 1996, a copy of the determination that appears above was provided to Pierce in the form of a Proposed Decision and Order. In accordance with the procedures that govern this matter, Pierce was advised of its right to file a Notice of Objection with respect to any finding of fact or conclusion of law reached in the Proposed Decision. See 10 C.F.R. § 205.58. Pierce was further advised that it would be deemed to consent to the issuance of the Proposed Decision in its final form unless such a notice was filed within the prescribed time period. The time period within which a Notice of Objection could be filed has expired and no Notice of Objection has been received from Pierce or any other aggrieved party. Consequently, Pierce shall be deemed to consent to issuance of this Decision and Order as the final determination of the Department of Energy.

## **It Is Therefore Ordered That:**

- (1) The Application for Exception filed by Pierce Oil, Inc., on September 20, 1994, is hereby denied.
- (2) Administrative review of this Decision and Order may be sought by any person who is aggrieved or adversely affected by the denial of exception relief. Such review shall be commenced by the filing of a petition for review with the Federal Energy Regulatory Commission within 30 days of the date of this Decision and Order pursuant to 18 C.F.R. Part 385, Subpart J.

George B. Breznay

Director

Office of Hearings and Appeals

Date:

<1/> Firms that do business in four or more states or which account for over five percent of the sales of any particular product in a state are always included in the sample of firms required to file the report. A random sample of other firms is also selected. This random sample changes approximately every 12

months, but a firm may be reselected for subsequent sample. A firm that has been included in three consecutive random samples will generally not be included in a fourth consecutive sample, but may be included in a later sample.

<2>/ The firm must make a good faith effort to provide reasonably accurate information that is consistent with the accounting records maintained by the firm. The firm must alert the EIA if the estimates are later found to be materially different from actual data.

November 21, 2002  
DECISION AND ORDER  
OF THE DEPARTMENT OF ENERGY

Application for Exception

Name of Petitioner: Farmers Union Oil Company of Bowman

Date of Filing: October 2, 2002

Case Number: TEE-0002

On October 2, 2002, Farmers Union Oil Company of Bowman, North Dakota (Farmers), filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy. In its Application, Farmers requests that it be relieved of the requirement that it file the Energy Information Administration's (EIA) form entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report" (Form EIA-782B). As explained below, we have determined that the Application for Exception should be granted.

A. Background

The EIA-782B reporting requirement grew out of the shortages of crude oil and petroleum products during the 1970s. In 1979, Congress found that the lack of reliable information concerning the supply, demand, and prices of petroleum products impeded the nation's ability to respond to the oil crisis. It therefore authorized the DOE to collect data on the supply and prices of petroleum products. The current form collects information concerning the volume and price of various grades and types of motor gasoline, No. 2 distillates, propane, and residual fuel oil, broken down by customer type.

Information obtained from the survey is used to analyze trends within petroleum markets. Summaries of the information and the analyses are published by the EIA in publications such as "Petroleum Marketing Monthly." This data is used by Congress and by more than 35 state governments to project trends and to formulate state and national energy policies. In addition, firms in the petroleum industry frequently base business decisions on the data published by the EIA.

The DOE has attempted to ensure that this survey yields valuable information while minimizing the burden placed on the industry. Thus, in designing the form, the DOE consulted with potential survey respondents, various industry associations, users of the energy data, state governments, and other federal agencies. Moreover, to minimize the reporting burden, the EIA periodically selects a sample



of companies to file the report.<sup>1</sup> In addition, to reduce the amount of time spent completing the forms, firms may rely upon reasonable estimates.<sup>2</sup>

## B. Exceptions Criteria

Form EIA-782B is a mandatory report designed to collect monthly information on refined petroleum sales volumes and prices from a sample of resellers and retailers. 42 U.S.C. § 7135(b). This Office has authority to grant exception relief where the reporting requirement causes a "serious hardship, gross inequity or unfair distribution of burdens." 42 U.S.C. § 7194 (a); 10 C.F.R. §1003.25(b)(2). Because all reporting firms are burdened to some extent by reporting requirements, exception relief is appropriate only where a firm can demonstrate that it is adversely affected by the reporting requirement in a way that differs significantly from similar reporting firms. Thus, mere inconvenience does not constitute a sufficient hardship to warrant relief. Glenn W. Wagoner Oil Co., 16 DOE ¶ 81,024 (1987).

In considering a request for exception relief, we must weigh the firm's difficulty in complying with the reporting requirement against the nation's need for reliable energy data. See Champlain Oil Co., Inc., 14 DOE ¶ 81,022 (1986); Eastern Petroleum Corp., 14 DOE ¶ 81,011 (1986). This entails balancing any burden the firm may encounter in meeting its reporting requirement against the public interest in collecting reliable information concerning energy markets upon which public decisions may be based. Neither the fact that a firm is relatively small, nor the fact that it has filed the report for a number of years, alone constitute grounds for exception relief. If firms of all sizes, both large and small, are not included, the estimates and projections generated by the EIA's statistical sample will be unreliable. Mulgrew Oil Co., 20 DOE ¶ 81,009 (1990).

The following examples illustrate the types of circumstances that may justify relief from the reporting requirement. Since each case is different, these examples are not intended to reflect all circumstances that justify exception relief:

- Financial difficulties underlie most approvals of exception relief. We have granted a number of exceptions where the applicant's financial condition is so precarious that the additional burden of meeting the DOE reporting requirements threatens its continued viability. Mico Oil Co., 23 DOE ¶ 81,015 (1994) (firm lost one million dollars over previous three years); Deaton Oil Co., 16 DOE ¶ 81,026 (1987) (firm in bankruptcy).

---

<sup>1</sup> Firms that do business in four or more states or which account for over five percent of the sales of any particular product in a state are always included in the sample of firms required to file the report. A random sample of other firms is also selected. This random sample changes approximately every 12 months, but a firm may be reselected for a subsequent sample. A firm that has been included in three consecutive random samples will generally not be included in a fourth consecutive sample, but may be included in a later sample.

<sup>2</sup> Form EIA-782B stipulates that the firm must make a good faith effort to provide reasonably accurate information that is consistent with the accounting records maintained by the firm. The firm must alert the EIA if the estimates are later found to be materially different from actual data. Firms may contact EIA to establish a method of estimation satisfactory to both parties. Toll-free numbers are provided in the General Instructions of the EIA forms.

- Relief may be appropriate when the only person capable of preparing the report is ill and the firm cannot afford to hire outside help. S&S Oil & Propane Co., 21 DOE ¶ 81,006 (1991) (owner being treated for cancer); Midstream Fuel Serv., 24 DOE ¶ 81,023 (1994) (three month extension of time to file reports granted when two office employees simultaneously on maternity leave); Eastern Petroleum Corp., 14 DOE ¶ 81,011 (1986) (two months relief granted when computer operator broke wrist).
- A combination of factors may warrant exception relief. Exception relief for 10 months was granted where personnel shortages, financial difficulties, and administrative problems resulted from the long illness and death of a partner. Ward Oil Co., 24 DOE ¶ 81,002 (1994); see also Belcher Oil Co., 15 DOE ¶ 81,018 (1987) (extension of time granted where general manager abruptly left firm without notice).
- Extreme or unusual circumstances that disrupt a firm's activities may warrant relief. Little River Village Campground, Inc., 24 DOE ¶ 81,033 (1994) (five months relief because of flood); Utilities Bd. of Citronelle-Gas, 4 DOE ¶ 81,205 (1979) (hurricane); Meier Oil Serv., 14 DOE ¶ 81,004 (1986) (three months where disruptions caused by installation of a new computer system left firm's records inaccessible).

### C. Farmer's Exception Application

Farmers has filed Form EIA-782B since early 1999 as part of EIA Sample 13. Electronic mail from Tammy Heppner, Energy Information Administration, to Steve Goering, OHA (November 4, 2002). Because Farmers is not classified as a "certainty firm" by the EIA, it is possible, but not guaranteed, that the company will be rotated out of the reporting sample when EIA conducts the next random selection process for inclusion in EIA Sample 15. Id.

In the Application for Exception, the Office Manager of Farmers, Polly Carlson, requests relief from the EIA reporting requirement because they "do not at this time have the manpower to get everything done and have asked for extensions on most of our reports." Application at 1.

This survey has been done by our company for several years in a timely manner, up until we lost our manager in July [2002]. Not only have we lost our manager, we have also had a major reduction in office staff. It is not feasible for our company to keep up with the monthly federal and states reports plus do any additional reports. At this time we are behind in our daily work, because of the employment situation. There is no one who has time to learn how to complete this form or go back to the ones you have not received. This will only add to the hardship the company is now facing.

Id. In a telephone conversation with our office, Ms. Carlson informed us that she hoped that a new manager would be hired in December 2002. Memorandum of telephone conversation between Polly Carlson, Farmers, and Steven Goering, OHA (November 4, 2002).

#### D. Analysis

Our review of the information presented in the Application for Exception submitted by Farmers leads us to conclude that there is considerable merit to Farmers' contention that it is currently significantly more burdened by the reporting requirement than similarly situated respondents. In the past, we have granted exception relief when a firm has demonstrated that the reporting requirement imposes an unusual burden on the firm or could seriously impede the firm's business operations. For example, as noted above, in Midstream Fuel Serv., 24 DOE ¶ 81,023 (1994), we granted a three month extension of time to file Form EIA-782B when two of its office employees were simultaneously on maternity leave.

We conclude that the burden placed upon Farmers at this time, due to the temporary unavailability of personnel to complete the form, is greater than that encountered by other firms required to complete Form EIA-782B. Accordingly, Farmers should be granted temporary relief from its obligation to file Form EIA-782B. On the assumption that Farmers will have a new manager in place by the beginning of 2003, we will grant exception relief to the firm until February 1, 2003.

It Is Therefore Ordered That:

- (1) The Application for Exception filed by Farmers Union Oil Company of Bowman, Case No. TEE-0002, is hereby granted to the extent set forth in paragraph (2) below.
- (2) Notwithstanding the instructions to Form EIA-782B, Farmers Union Oil Company of Bowman shall not be required to file reports to the Energy Information Administration for a period of five months, beginning September 1, 2002 and extending to February 1, 2003.
- (3) This is a final Order of the Department of Energy.

George B. Breznay  
Director  
Office of Hearings and Appeals

Date: November 21, 2002

April 1, 2003  
**DECISION AND ORDER**  
**OFFICE OF HEARINGS AND APPEALS**

**Application for Exception**

Case Name: EMI Corporation

Date of Filing: January 23, 2003

Case Number: TEE-0006

This Decision and Order considers an Application for Exception filed by EMI Corporation (EMI) seeking relief from the provisions of 10 C.F.R. Part 430, Energy Efficiency Program for Consumer Products. In its exception request, EMI seeks relief that would allow it to produce and sell its MH series split ductless multiple zone non-defrosting heat pumps without conducting a low temperature test mandated by 10 C.F.R. Part 430. <sup>1/</sup> As set forth in this Decision and Order, we have concluded that EMI's Application for Exception should be granted.

**I. Background**

*A. Regulatory Standards*

The Energy Policy and Conservation Act, as amended, 42 U.S.C. §§ 6291-6317 (EPCA), set energy efficiency standards which heat pumps are required to meet and mandated that the Department of Energy (DOE) to establish test procedures by which manufacturers can certify that their heat pump products met the required energy efficiency standards. <sup>2/</sup> The DOE testing procedures for heat pumps are set out at 10 C.F.R. Part 430. Pertinent to the present case, heat pumps must be tested to determine their energy consumption using the methods set forth in 10 C.F.R. § 430.23.

Section 504 of the Department of Energy Organization Act authorizes the DOE Office of Hearings and Appeals (OHA) to make adjustments to any rule or order issued under the Energy Policy and Conservation Act, consistent with the other purposes of the Act, if necessary to prevent special hardship, inequity, or

---

<sup>1/</sup> A multiple zone split-system heat pump is used is used to provide heat and/or air-conditioning to buildings that do not possess a central duct system in which to circulate air throughout. The MH series heat pump system is referred to as multiple zone because it can cool air in four different areas of a building.

<sup>2/</sup> The EPCA requires that the Seasonal Energy Efficiency Ratio (SEER) for split system heat pumps not be less than 10.0 and that the Heating Seasonal Performance Factor (HSPF) be not less than 6.8 for split systems. 42 U.S.C. § 6295(d)(1)(A), (d)(2)(A).

unfair distribution of burdens. 42 U.S.C. § 7194(a). Accordingly, persons subject to the various product standards of Part 430 may apply to the OHA for exception relief. 10 C.F.R. Part 1003 Subpart C.

### *B. Application for Exception*

EMI is a manufacturer of ductless multiple zone split-system heat pumps, the MH series heat pumps. The MH series of heat pumps are produced in six models each with a different range of cooling capacity. <sup>3/</sup> EMI requests that it be permanently excepted from the Part 430 requirement that its MH series heat pumps be tested under low temperature test conditions. Part 430 specifies that, as part of the energy efficiency testing for heat pumps, a heat pump must be tested at 17 degrees to obtain data to be used to calculate the heat pump's HSPF. <sup>4/</sup> See 10 C.F.R. Part 430, Appendix M §§ 3.2.1.4 and 5.2. The MH series heat pumps are designed only to operate at temperatures of 35 degrees and above and thus cannot be tested using the Part 430 test procedures for low temperature test conditions. In further support of its application, EMI believes that it is the only manufacturer in the United States that produces ductless multiple zone heat pumps. EMI's sales of its MH series heat pumps constitute approximately 10 percent of its total sales.

## **II. Analysis**

We have carefully considered EMI's Application for Exception, and concluded that the firm's exception request should be approved in part. An official at the DOE's Office of Energy Efficiency and Renewable Energy confirmed that the MH series heat pumps cannot be tested using the methodology prescribed in 10 C.F.R. Part 430. At temperatures of 35 degrees and below a MH heat pump shuts down. Without the low temperature test a heat pump's HSPF cannot be calculated.

In addition, to require the MH heat pumps to comply with the low temperature testing procedures could limit the manufacture of ductless multiple zone heat pumps in the United States. EMI would be severely affected as would owners of homes and business without central ducts. We conclude that an undue burden would fall upon owners of homes and commercial buildings without central ducts or who otherwise need multiple zone ductless heating or cooling. Under the unique circumstances of this case, the inability of the MH series heat pumps to be tested at temperatures below 35 degrees and the burden that would be placed on a small class of purchasers of ductless cooling heat pumps, we have concluded that EMI should be granted an exception from complying with the low temperature test of Part 430. See *Viking Range Corp.*, 28 DOE ¶ 81,002 (2000).

---

<sup>3/</sup> In 1992, EMI applied for and was granted a waiver from "Central Air Conditioner Test Procedures" for its MH series heat pumps by the DOE's Office of Conservation and Renewable Energy. 57 Fed. Reg. 53735 (November 12, 1992). The Decision and Order granting the waiver also specified that EMI was required to state in all printed material related to the MH series heat pumps that no HSPF value has been measured for the heat pumps. 57 Fed. Reg. at 53736.

<sup>4/</sup> All temperatures referenced in this decision are measured using the Fahrenheit (F) scale.

EMI has requested an indefinite exception from the Part 430 low temperature testing procedures for its MH series heat pumps. We believe that a 5 year exception from the date of this decision is more appropriate. If EMI continues to manufacture the MH series heat pumps after this 5 year exception it may apply to the Office of Hearings and Appeals for another exception. As part of this exception from the Part 430 low temperature test requirement, we will require that EMI state in all printed material containing information concerning the MH series heat pumps, such as catalogues and advertisements, that no HSPF value can be measured for these heat pumps since they cannot be operated at temperatures below 35 degrees.

EMI shall therefore be granted relief from the low temperature testing requirement for its MH series ductless, multiple zone heat pumps under 10 C.F.R. Part 430 for a period of 5 years from the date of this decision.

It Is Therefore Ordered That:

(1) The Application for Exception filed by EMI Corporation on January 23, 2003, is hereby granted as set forth in Paragraph (2) below.

(2) Notwithstanding the requirements of 10 C.F.R. Part 430, EMI Corporation may sell its MH series of ductless multiple zone heat pumps without conducting the required Part 430 low temperature test for a period of 5 years from the date of this decision.

(3) EMI is required to state in all printed material containing information concerning the MH series heat pumps, such as catalogues and advertisements, that no HSPF value can be measured for these heat pumps since they cannot be operated at temperatures below 35 degrees Fahrenheit.

(4) This Exception is based upon the presumed validity of statements submitted by the applicant. This Exception may be revoked or modified at any time upon a determination that the factual basis underlying the Application for Exception is incorrect.

(5) Any person aggrieved by the approval of exception relief in this Decision and Order may file an appeal with the Office of Hearings and Appeals in accordance with 10 C.F.R. Part 1003, Subpart C.

George B. Breznay  
Director  
Office of Hearings and Appeals

Date: April 1, 2003



October 31, 2003  
DECISION AND ORDER  
OF THE DEPARTMENT OF ENERGY

*Application for Exception*

Name of Petitioner: Palisades Oil Company

Date of Filing: May 20, 2003

Case Number: TEE-0007

On May 20, 2003, Palisades Oil Company (Palisades) filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy. In its Application, Palisades requests that it be relieved of the requirement to prepare and file the Energy Information Administration's (EIA) form entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report" (Form EIA-782B). As explained below, we have determined that the Application for Exception should be granted.

**A. *Background***

The EIA-782B reporting requirement grew out of the shortages of crude oil and petroleum products during the 1970s. In 1979, Congress found that the lack of reliable information concerning the supply, demand, and prices of petroleum products impeded the nation's ability to respond to the oil crisis. It therefore authorized the DOE to collect data on the supply and prices of petroleum products. The current form collects information concerning the volume and price of various grades and types of motor gasoline, No. 2 distillates, propane, and residual fuel oil, broken down by customer type.

Information obtained from the survey is used to analyze trends within petroleum markets. Summaries of the information and the analyses are published by the EIA in publications such as "Petroleum Marketing Monthly." This data is used by Congress and by more than 35 state governments to project trends and to formulate state and national energy policies. In addition, firms in the petroleum industry frequently base business decisions on the data published by the EIA.

The EIA has attempted to ensure that its surveys yield valuable information while minimizing accompanying burdens. In designing the form, EIA consulted with potential survey respondents, various industry associations, users of the energy data, state governments, and other federal agencies in order to determine the least burdensome ways



in which to elicit data. To further minimize the reporting burden, the EIA does not require all industry businesses to report continuously. Instead, individual firms are periodically selected at random to file the report for limited periods.<sup>1/</sup> In addition, to reduce the amount of time spent completing the forms, firms may rely upon reasonable estimates.<sup>2/</sup>

## **B. *Exceptions Criteria***

Form EIA-782B is a mandatory report designed to collect monthly information on refined petroleum sales volumes and prices from a sample of resellers and retailers. 42 U.S.C. § 7135(b). This Office has authority to grant exception relief where the reporting requirement causes a "serious hardship, gross inequity or unfair distribution of burdens." 42 U.S.C. § 7194 (a); 10 C.F.R. § 1003.25(b)(2). Because all reporting firms are burdened to some extent by reporting requirements, exception relief is appropriate only where a firm can demonstrate that it is adversely affected by the reporting requirement in a way that differs significantly from similar reporting firms. Thus, mere inconvenience does not constitute a sufficient hardship to warrant relief. *Glenn W. Wagoner Oil Co.*, 16 DOE ¶ 81,024 (1987).

In considering a request for exception relief, we must weigh the firm's difficulty in complying with the reporting requirement against the nation's need for reliable energy data. See *Champlain Oil Co., Inc.*, 14 DOE ¶ 81,022 (1986); *Eastern Petroleum Corp.*, 14 DOE ¶ 81,011 (1986). This entails balancing any burden the firm may encounter in meeting its reporting requirement against the public interest in collecting reliable information concerning energy markets upon which public decisions may be based. Neither the fact that a firm is relatively small, nor the fact that it has filed the report for a number of years, alone constitute grounds for exception relief. If firms of all sizes, both large and small, are not included, the estimates and projections generated by the EIA's statistical sample will be unreliable. *Mulgrew Oil Co.*, 20 DOE ¶ 81,009 (1990).

---

<sup>1/</sup> Firms that do business in four or more states or which account for over five percent of the sales of any particular product in a state are always included in the sample of firms required to file the report. A random sample of other firms is also selected. This random sample changes approximately every 12 months, but a firm may be reselected for a subsequent sample. A firm that has been included in three consecutive random samples will generally not be included in a fourth consecutive sample, but may be included in a later sample.

<sup>2/</sup> Form EIA-782B stipulates that the firm must make a good faith effort to provide reasonably accurate information that is consistent with the accounting records maintained by the firm. The firm must alert the EIA if the estimates are later found to be materially different from actual data. Firms may contact EIA to establish a method of estimation satisfactory to both parties. Toll-free numbers are provided in the General Instructions of the EIA forms.

However, exceptions from the EIA form requirements have been granted in cases of compelling financial difficulties, the sudden unavailability of key personnel, unexpected business interruptions or combinations of these factors.<sup>3/</sup>

### *C. Palisades' Exception Application*

In its Application for Exception, Ms Kristy DeBoer of Palisades requests relief from the EIA reporting requirement because of "the downsizing of our company" and the consequently increased burdens on the remaining employee of the firm's ordinary business operations. Application at 1.

Palisades Oil has gone through many changes in the past year. What were once six full-time office positions, has now been cut down to three. We are not that big of a company, but the employees have plenty of work to keep themselves busy. We no longer have our office coordinator/financial advisor who would normally be the person to fill out the data for your report. One of the remaining employees has taken over his duties of closing out the end of every month, filing MN, SD, and IA gas taxes, and filing SD sales and use tax for both Oil and Propane. She is now also responsible for MN and IA sales tax, IFTA, and the 720 Federal Excise tax.

*Id.* In addition, we contacted Palisades by telephone and learned that the company has been going through a downsizing because of financial difficulties. Ms DeBoer does not anticipate this downsizing ending anytime in the immediate future. Memorandum of Telephone Conversation between Janet R. H. Fishman, Attorney-Examiner, OHA, and Kristy DeBoer, Palisades.

---

<sup>3/</sup>*Little River Village Campgrounds, Inc.*, 24 DOE ¶ 81,033 (1994) (five months relief because of flood); *Midstream Fuel Serv.*, 24 DOE ¶ 81,023 (1994) (three month extension of time to file report granted when two office employees simultaneously on maternity leave); *Ward Oil Co.*, 24 DOE ¶ 81,002 (1994); *Mico Oil Co.*, 23 DOE ¶ 81,015 (1994) (firm lost one million dollars over previous three years); *S & S Oil & Propane Co.*, 21 DOE ¶ 81,006 (1991) (owner being treated for cancer); *Deaton Oil Co.*, 16 DOE ¶ 81,026 (1987) ( firm in bankruptcy); *Belcher Oil Co.* 15 DOE ¶ 81,018 (1987) (extension of time granted where general manager abruptly left firm without notice); *Eastern Petroleum Corp.* 14 DOE ¶ 81,011 (1986) (two months relief granted when computer operator broke wrist); *Meier Oil Serv.*, 14 DOE ¶ 81,004 (1986) (three months where disruptions caused by instillation of a new computer system left firm's records inaccessible); *Utilities Bd. of Citronelle-Gas*, 4 DOE ¶ 81,205 (1979) (hurricane).

D. *Analysis*

Our review of the information presented in the Application for Exception submitted by Palisades leads us to conclude that there is considerable merit to Palisades' contention that it is currently significantly more burdened by the reporting requirement than similarly situated respondents. Clearly, after halving its staff, Palisades' remaining employees are barely sufficient to meet the firm's normal workday tasks. In the past, we have granted exception relief when a firm has demonstrated that the reporting requirement imposes an unusual burden on the firm or could seriously impede the firm's business operations. For example, as noted above, in *Midstream Fuel Serv.*, 24 DOE ¶ 81,023 (1994), we granted a three month extension of time to file Form EIA-782B when two of its office employees were simultaneously on maternity leave.

We conclude that the burden placed upon Palisades at this time, due to the unavailability of personnel to complete the form, is greater than that encountered by other firms required to complete Form EIA-782B. Accordingly, Palisades should be granted relief from its obligation to file Form EIA-782B for the remainder of the selection period.

It Is Therefore Ordered That:

- (1) The Application for Exception filed by Palisades Oil Company, Case No. TEE-0007, is hereby granted to the extent set forth in paragraph (2) below.
- (2) Notwithstanding the instructions to Form EIA-782B, Palisades Oil Company shall not be required to file reports to the Energy Information Administration for the remainder of the selection period.
- (3) This is a final Order of the Department of Energy.

George B. Breznay  
Director  
Office of Hearings and Appeals

Date: October 31, 2003



**December 18, 2003**

**DECISION AND ORDER  
OF THE DEPARTMENT OF ENERGY**

*Application for Exception*

Name of Petitioner: Occidental Power Marketing, L.P.

Dates of Filing: July 7, 2003

Case Number: TEE-0009

This Decision concerns the merits of an Application for Exception filed by Occidental Power Marketing, L.P. (OPM) with the Office of Hearings and Appeals (OHA) of the U.S. Department of Energy (DOE) under the provisions of 10 C.F.R. § 1003.20. The Application concerns the annual revenue and sales data that the DOE Energy Information Administration (EIA) collects through Form EIA-861, "Annual Electric Power Industry Report." Occidental provides this data and EIA publishes the material, by state, in firm-specific annualized form. The present exception request seeks to have the OPM data withheld from publication. According to OPM, if the material is released it will enable competitors of a related firm to which it resells electricity, the Occidental Chemical Corporation (OxyChem), to know the cost of OxyChem's production of chlor-alkaloi and thus place OxyChem at a competitive disadvantage.

**Background**

The EIA reporting requirements arise from domestic dislocations of crude oil and petroleum products that occurred during the 1970s. Specifically, in 1979 Congress found that the lack of reliable information concerning the supply, demand and prices of petroleum products impeded the nation's ability to respond to an energy crisis. Congress therefore authorized the DOE to collect data on petroleum product supply and price. Form EIA-861 collects annual information regarding the retail sales and associated revenue from the retail sales of electricity of individual firms identified as energy service providers. As an energy provider, OPM is required to submit Form EIA-861. Normally, due to the public interest in the material filed with EIA, with few exceptions, the material is released to the public. In the case of the Form EIA-861, release of the material by EIA occurs approximately one year following the period for which the data are furnished.

An Application for Exception may be granted where the reporting requirement causes a “special hardship, inequity, or unfair distribution of burdens.” 42 U.S.C. § 7194(a); 10 C.F.R. § 1003.25(b)(2). Because all reporting firms are burdened to some extent by the reporting requirements, exception relief is appropriate only where a firm can demonstrate that it is adversely affected by the reporting requirement in a way that differs significantly from the impact of the requirement on other reporting firms.

The standard for relief in this case is complicated by the fact that even if the requested exception is granted, the information might still be subject to mandatory release to the public under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as implemented by the DOE in 10 C.F.R. Part 1004. No interest would be served if the material were kept from publication through approval of an exception only to be disclosed under the FOIA. Therefore, in addition to addressing why it meets the standards for an exception, we asked OPM to address the question of whether the data would be withholdable from a requester under the FOIA.<sup>1</sup>

Material may be withheld from disclosure under the FOIA if there is evidence of the existence of competition and a likelihood of competitive harm.<sup>2</sup> The basis for the exception requested by OPM is that publication of the information will cause injury, i.e., competitive harm. To that extent, the criteria for an exception and for withholding under the FOIA are much the same.<sup>3</sup> Where the standards differ, exception relief requires a showing of uniqueness or disproportionate impact.

---

<sup>1</sup> A formal determination of releasability of the data under the FOIA is not possible without having an actual request for information under the FOIA.

<sup>2</sup>Exemption 4 exempts from mandatory public disclosure "trade secrets and commercial or financial information obtained from a person and privileged or confidential." 5 U.S.C. § 552(b)(4); 10 C.F.R. § 1004.10(b)(4). In order to qualify under Exemption 4, a document must contain either (a) trade secrets or (b) information that is (1) "commercial" or "financial," (2) "obtained from a person," and (3) "privileged or confidential." *National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974) (*National Parks*). In *National Parks*, the United States Court of Appeals for the District of Columbia Circuit found that commercial or financial information is "confidential" for purposes of Exemption 4 if disclosure of the information is likely either (i) to impair the government's ability to obtain necessary information in the future or (ii) to cause substantial harm to the competitive position of the person from whom the information was obtained. *Id.* at 770. This confidentiality test was specifically limited to information submitted to the federal government under non-voluntary conditions in *Critical Mass Energy Project v. NRC*, 975 F.2d 871, 879 (D.C. Cir. 1992), *cert. denied*, 113 S. Ct. 1579 (1993) (*Critical Mass*). By contrast, information that is provided to an agency *voluntarily* is considered "confidential" if "it is of a kind that the provider would not customarily make available to the public." *Critical Mass*, 975 F.2d at 879. Because Form EIA-861 is a mandatory filing under the Federal Energy Administration Act of 1974 (P.L. 93-275), we find that the withheld information was “involuntarily” submitted to EIA. *BP Exploration, Inc.*, 27 DOE ¶ 80,216 at 80,796 (1999); *see William E. Logan, Jr.*, 27 DOE ¶ 80,198 (1999). Thus, as we have held previously, for this information to be properly withheld under Exemption 4, the *National Parks* test must be met.

<sup>3</sup> The applicant points out that under the FOIA standard one need only show the likelihood of injury, rather than actual injury. In practice, this does not differ substantially from the exception standard.

## Application for Exception

OPM is a certified “Retail Electric Provider” (“REP”) under the regulations of the Public Utility Commission of Texas. As such, the firm makes no sales outside the state of Texas and, other than a small amount sold to DuPont de Nemours & Co. for backup purposes, all of OPM’s sales are to affiliated firms.<sup>4</sup> According to OPM all these affiliates are major consumers of electric energy engaged in either chemical manufacturing or the enhanced recovery of oil and gas. OPM states that disclosure of its average cost of purchased power contained in the Form EIA-861 would reveal sensitive commercial and financial information regarding the affiliates’ manufacturing and production operations and give their competitors an advantage. OPM’s main concern is for the operations of its OxyChem affiliate.

OxyChem purchases electricity from OPM for the manufacture of chlor-alkalai at two OxyChem facilities in Texas. According to the submission, OxyChem’s major chlor-alkalai competitors in Texas are Formosa Plastics and Dow Chemical. Also according to OPM, both Dow and Formosa self-generate electricity for manufacturing chlor-alkalai. Neither competitor, however, is required to file form EIA-861, which would reveal the cost of electricity used in its manufacturing processes, while publishing the OPM data will reveal the cost of electricity provided by OPM to OxyChem.<sup>5</sup>

The applicant has provided a brief description of the chlor-alkalai manufacturing process and the uses for the product:

OxyChem operates chlor-alkalai manufacturing facilities in Texas, located on the Houston Ship Channel and at Ingleside near Corpus Christi. Chlor Alkalai plants produce chlorine and a byproduct, caustic soda, through a process that involves applying electricity to salt brine, using diaphragm, membrane, or mercury cell technology. Chlorine is used in a variety of industrial applications, including the production of polyvinyl chloride . . . pharmaceuticals, crop protection chemicals, and other organic compounds, as well as in drinking water purification and wastewater disinfection. The largest users of caustic soda are the pulp and paper, detergent and chemical industries.

*Occidental Power Marketing submission, July 7, 2003*

---

<sup>4</sup> Occidental Chemical Corporation, Occidental Permian, Ltd., Occidental Tower Corporation, OXY USA WTP, L.P. Oxy Vinyls, L.P., and Ingleside Cogeneration, L.P. *Occidental Power Marketing submission, July 7, 2003*

<sup>5</sup> OPM has provided an official listing of Retail Electric Providers in the State of Texas which *does not* include Formosa Plastics or Dow chemical. *Appendix, Occidental Power Marketing submission, August 8, 2003*

Also according to the applicant:

The major variable cost for a chlor-alkalai plant is attributable to electricity utilized in the electrolysis process. Salt water and other raw materials used in the process are relatively inexpensive, thus the key to a plant's profitability is the cost of the electricity that it utilizes. The chlor-alkalai industry is highly competitive and margins are very low. Because of the importance of electricity to the manufacturing process, producers of caustic chlorine treat information related to the cost of electricity as highly proprietary. Competitors who have access to a chlor-alkalai producer's cost of electricity can make judgments as to the producer's overall costs of production and can use this information in pricing their own production.

*Occidental Power Marketing submission, August 8, 2003*

OPM states that the chlor-alkalai manufacturing process is well established, the cost of the components other than electricity (steam, salt, chemicals) is easily known by competitors, and electricity represents the manufacturer's greatest production cost, perhaps 80% of the cost of production. As a result, OPM argues that any competitor would only need to know OxyChem's cost of electricity to know with accuracy the cost of the chlor-alkalai it produces.

Finally, the Texas Public Utility Commission (PUC) no longer makes publicly available pricing data from REPs such as OPM. According to OPM, "as of January 1, 2002, sales of electricity in Texas (in areas subject to customer choice) are no longer made by traditional electric utilities, but are now made by non-utility competitive REPs. Information as to sales and revenues by REPs is considered confidential and is treated as such by the Texas PUC." *Id.* Accordingly, OPM argues that among its competitors it is the only chlor-alkalai manufacturer in Texas whose principal cost of manufacturing will be made public – and that the resulting competitive harm warrants an exception.

## **Analysis**

We have reviewed the OPM submissions and concluded that an exception is warranted. Information as to the manufacture of chlor-alkalai is generally available and confirms OPM's claims regarding the components, the well-known nature of the process for manufacturing the substance, and its uses (*See; <http://www.vul.com.vulchemicalsproducts>*) The uses for the product – e.g., water purification – and the large number of manufacturers tend to confirm the competitiveness of the industry. Copies of the OPM submissions were made available to the EIA and no comments were made concerning the claim that, among the chlor-alkalai competitors in Texas, OxyChem is the only manufacturer whose electricity costs would be divulged as a result of publication of EIA-861 data.



Several comments were made concerning the OPM submission:

- Because the majority of the electricity used by OxyChem is self-generated, data concerning the smaller amount of power obtained from OPM would not necessarily reveal OxyChem's pricing posture.
- OPM supplies electricity to more customers than just OxyChem so that OPM's average annual price to all customers would not provide a reliable estimate of its average price to OxyChem.
- Because an outsider would not know OxyChem's cost of self-generated electricity, the average annual prices charged to all customers by OPM is even more unimportant.

OPM responds that the Federal Energy Regulatory Commission receives and publishes all the information concerning the OxyChem self-generation facilities that – along with the price of natural gas over time – is necessary to determine OxyChem's cost of self-generated electricity. Thus the cost of the remainder of OxyChem's electricity needs, which are filled through purchases from OPM, remain the only confidential cost component of the OxyChem process. Moreover, the competitive nature of the chlor-alkalai market is such that “competition occurs at the margin, i.e., for incremental production . . . (and thus) . . . it is information concerning *incremental* cost, not average cost that will be of most value to a competitor.” *Occidental Power Marketing submission, October 14, 2003*

In *Public Service Electric and Gas Company (New Jersey), (Case No. VEE-0044) February 24, 1998*, we considered the claim that release by EIA of electrical generator heat-rate data of each electrical generator in each plant would cause competitive injury. According to the applicant, the heat-rate information along with ambient outdoor temperatures and the cost of fuel would allow the applicant's competitors to know its marginal cost of generating a KWH of electricity. The considerations in that case are the same in principle as those presented here.

Unlike the OPM case, however, the situation pointed up by the Public Service Electric and Gas request had widespread implications, and a rulemaking by the EIA ultimately produced the result sought by the utility in its exception request. Nonetheless, absent the rulemaking, the facts of the Public Service application would have warranted favorable consideration of its exception request, and those same factors apply to the OPM request. We agree with OPM that the marginal cost to OxyChem of electric power is sensitive, proprietary information that is typically withheld by competitors in the chlor-alkalai manufacturing industry, and that the release of the OPM data would cause OxyChem competitive harm. Given the disproportionate impact of the filing requirement on OPM and its OxyChem affiliate, under the circumstances of this case, exception relief is warranted.

We have also considered the whether the OPM data – if requested under the FOIA – would be released or withheld. *See Notes 1 and 2.* It is clear that the data is “information that is (1) ‘commercial’ or ‘financial,’ (2) ‘obtained from a person,’ and (3) ‘privileged or confidential.’” *National Parks at 770.* The pricing data is obviously “financial” information and, as a corporate entity, OPM is a “person.” In addition, submission of the data by OPM to EIA is mandatory; because of the likelihood of competitive harm, the material is “confidential.” *Ibid.* Therefore, it appears at this point that the data would be withheld from a requester under Exception 4 of the FOIA.

## **Exception Relief**

In considering whether exception relief was warranted for OPM, we consulted the EIA first, regarding their views on the validity of the underlying request, and then as to how relief might be implemented. To the extent appropriate, the EIA comments and concerns were communicated to OPM and its responses solicited. This process produced agreement as to the circumstances warranting exception relief and the form relief should take.

EIA’s main concern with respect to its treatment of data in filings is the public interest. Under legislation it is obliged to collect and release to the public the greatest amount of data possible concerning the nation’s power supplies. The EIA publishes aggregate annual data for all form EIA-861 reporting entities in each state, as well as aggregate annual data for each reporting entity in a state. As a result, simply deleting data for OPM would not protect the material because adding all the data released for individual entities in Texas and comparing that figure with the total data reported for Texas would reveal the withheld OPM data. Therefore, EIA initially thought that to protect the OPM data, information reported by at least one other entity would also have to be withheld. EIA kept in mind the public interest in having access to the maximum amount of information possible.

Ultimately EIA concluded that the public interest in having statistical information relating to the amounts of power generated in a state outweighed the public interest in knowing the name of every one of the individual firms that generated power and filed form EIA-861. To protect the OPM data, EIA concluded that it must withhold the identity of OPM and two other reporting entities from the detailed data for Texas.<sup>6</sup> This creative solution protects the OPM information while allowing all supply information for the State of Texas to be made available to the public. This is the form that exception relief in this case will take.

---

<sup>6</sup> If the identity of only one firm other than OPM were deleted, the second firm would know its own data thus revealing the OPM data.

**It Is Therefore Ordered That:**

1. The Application for Exception Filed by Occidental Power Marketing, L.P. on July 7, 2003, Case No. TEE-0009 is hereby granted as set forth below.
2. In publishing the detailed annual data for EIA-861 respondents in the State of Texas, the Energy Information Administration will delete identifiers for Occidental Power Marketing and two other EIA-861 filers.
3. This is a final order of the Department of Energy. Any person aggrieved or adversely affected by the denial of a request for exception relief filed pursuant to § 504 of the Department of Energy Organization Act (42 U.S.C. 7194) may appeal to the Federal Energy Regulatory Commission, in accordance with the Commission's regulations.

George B. Breznay  
Director  
Office of Hearings and Appeals

Date: December 18, 2003

July 20, 2005

DECISION AND ORDER  
OF THE DEPARTMENT OF ENERGY

*Application for Exception*

Name of Petitioner: Grace Energy Corporation

Date of Filing: October 20, 2004

Case Number: TEE-0014

On October 20, 2004, Grace Energy Corporation (Grace) filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy. In its Application, Grace requests that it be relieved of the requirement to prepare and file the Energy Information Administration's (EIA) form entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report" (Form EIA-782B). As explained below, we have determined that the Application for Exception should be granted.

**A. *Background***

The EIA-782B reporting requirement grew out of the shortages of crude oil and petroleum products during the 1970s. In 1979, Congress found that the lack of reliable information concerning the supply, demand, and prices of petroleum products impeded the nation's ability to respond to the oil crisis. It therefore authorized the DOE to collect data on the supply and prices of petroleum products. The current form collects information concerning the volume and price of various grades and types of motor gasoline, No. 2 distillates, propane, and residual fuel oil, broken down by customer type.

Information obtained from the survey is used to analyze trends within petroleum markets. Summaries of the information and the analyses are published by the EIA in publications such as "Petroleum Marketing Monthly." This data is used by Congress and by more than 35 state governments to project trends and to formulate state and national energy policies. In addition, firms in the petroleum industry frequently base business decisions on the data published by the EIA.

The EIA has attempted to ensure that its surveys yield valuable information while minimizing accompanying burdens. In designing the form, EIA consulted with potential survey respondents, various industry associations, users of the energy data, state governments, and other federal agencies in order to determine the least burdensome ways in which to elicit data. To further minimize the reporting burden, the EIA does not require

all industry businesses to report continuously. Instead, individual firms are periodically selected at random to file the report for limited periods.<sup>1/</sup> In addition, to reduce the amount of time spent completing the forms, firms may rely upon reasonable estimates.<sup>2/</sup>

### B. *Exceptions Criteria*

Form EIA-782B is a mandatory report designed to collect monthly information on refined petroleum sales volumes and prices from a sample of resellers and retailers. 42 U.S.C. § 7135(b). This Office has authority to grant exception relief where the reporting requirement causes a "serious hardship, gross inequity or unfair distribution of burdens." 42 U.S.C. § 7194 (a); 10 C.F.R. § 1003.25(b)(2). Because all reporting firms are burdened to some extent by reporting requirements, exception relief is appropriate only where a firm can demonstrate that it is adversely affected by the reporting requirement in a way that differs significantly from similar reporting firms. Thus, mere inconvenience does not constitute a sufficient hardship to warrant relief. *Glenn W. Wagoner Oil Co.*, 16 DOE ¶ 81,024 (1987).

In considering a request for exception relief, we must weigh the firm's difficulty in complying with the reporting requirement against the nation's need for reliable energy data. See *Champlain Oil Co., Inc.*, 14 DOE ¶ 81,022 (1986); *Eastern Petroleum Corp.*, 14 DOE ¶ 81,011 (1986). This entails balancing any burden the firm may encounter in meeting its reporting requirement against the public interest in collecting reliable information concerning energy markets upon which public decisions may be based. Neither the fact that a firm is relatively small, nor the fact that it has filed the report for a number of years, alone constitute grounds for exception relief. If firms of all sizes, both large and small, are not included, the estimates and projections generated by the EIA's statistical sample will be unreliable. *Mulgrew Oil Co.*, 20 DOE ¶ 81,009 (1990).

---

<sup>1/</sup> Firms that account for over five percent of the sales of any particular product in a state are always included in the sample of firms required to file the report. A random sample of other firms is also selected. This random sample changes approximately every 24-30 months, but a firm may be reselected for a subsequent sample. A firm that has been included in three consecutive random samples will generally not be included in a fourth consecutive sample, but may be included in a later sample.

<sup>2/</sup> Form EIA-782B stipulates that the firm must make a good faith effort to provide reasonably accurate information that is consistent with the accounting records maintained by the firm. The firm must alert the EIA if the estimates are later found to be materially different from actual data. Firms may contact EIA to establish a method of estimation satisfactory to both parties. Toll-free numbers are provided in the General Instructions of the EIA forms.

However, exceptions from the EIA form requirements have been granted in cases of compelling financial difficulties, the sudden unavailability of key personnel, unexpected business interruptions or combinations of these factors.<sup>3/</sup>

### C. *Grace's Exception Application*

In the Application for Exception, Brent H. Smith, Comptroller of Grace, requests relief from the EIA reporting requirement because of the illness of one office employee and the increased burdens on the remaining employees of the firm's ordinary business operations. Application at 1.

We are a small company and must cut overhead expenses in an extreme way to remain profitable in our highly competitive fuel market. As a result our office staff runs very lean. Since our computer reporting is limited when preparing the EIA-782B report, preparing the report takes a significant amount of time.

The form preparation time is very significant and burdensome under normal circumstances, but when other events out of our control come along, we simply have a very difficult time preparing this detailed information for the Department of Energy.

One such event has come along recently and challenged our ability to keep the office work completed. Specifically, an office employee of ours has developed lung cancer within the last 30 days. Though he wants to work (and does as much as he can), we must all pitch in and cover for any of his uncompleted work during his absences. This leaves no time for extra reporting.

*Id.*

---

<sup>3/</sup>*Little River Village Campgrounds, Inc.*, 24 DOE ¶ 81,033 (1994) (five months relief because of flood); *Midstream Fuel Serv.*, 24 DOE ¶ 81,023 (1994) (three month extension of time to file report granted when two office employees simultaneously on maternity leave); *Ward Oil Co.*, 24 DOE ¶ 81,002 (1994); *Mico Oil Co.*, 23 DOE ¶ 81,015 (1994) (firm lost one million dollars over previous three years.); *S & S Oil & Propane Co.*, 21 DOE ¶ 81,006 (1991) (owner being treated for cancer); *Deaton Oil Co.*, 16 DOE ¶ 81,026 (1987) (firm in bankruptcy); *Belcher Oil Co.* 15 DOE ¶ 81,018 (1987) (extension of time granted where general manager abruptly left firm without notice); *Eastern Petroleum Corp.* 14 DOE ¶ 81,011 (1986) (two months relief granted when computer operator broke wrist); *Meier Oil Serv.*, 14 DOE ¶ 81,004 (1986) (three months where disruptions caused by instillation of a new computer system left firm's records inaccessible); *Utilities Bd. of Citronelle-Gas*, 4 DOE ¶ 81,205 (1979) (hurricane).

#### D. *Analysis*

In the past, we have granted exception relief when a firm has demonstrated that the reporting requirement imposes an unusual burden on the firm or could seriously impede the firm's business operations. For example, as noted above, in *Midstream Fuel Serv.*, 24 DOE ¶ 81,023 (1994), we granted a three month extension of time to file Form EIA-782B when two of its office employees were simultaneously on maternity leave. Our review of the information presented in the Application for Exception submitted by Grace leads us to conclude that there is considerable merit to Grace's contention that it is currently significantly more burdened by the reporting requirement than similarly situated respondents. Clearly, with an ill employee, Grace's remaining employees are barely sufficient to meet the firm's normal workday tasks.

We conclude that the burden placed upon Grace at this time, due to the unavailability of personnel to complete the form, is greater than that encountered by other firms required to complete Form EIA-782B. Accordingly, Grace should be granted relief from its obligation to file Form EIA-782B for the remainder of the selection period.

It Is Therefore Ordered That:

- (1) The Application for Exception filed by Grace Energy Corporation, Case No. TEE-0014, is hereby granted to the extent set forth in paragraph (2) below.
- (2) Notwithstanding the instructions to Form EIA-782B, Grace Energy Corporation shall not be required to file reports to the Energy Information Administration for the remainder of the selection period.
- (3) This is a final Order of the Department of Energy.

George B. Breznay  
Director  
Office of Hearings and Appeals

Date: July 20, 2005

February 18, 2005

DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

Name of Case: North Side Coal & Oil Co.  
Date of Filing: February 16, 2005  
Case No.: TEE-0016

On February 16, 2005, North Side Coal & Oil Co. (the firm) filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). The firm requests that it be relieved of the requirement to prepare and file the Energy Information Administration (EIA) Form EIA-821, entitled "Annual Fuel Oil and Kerosene Sales Report," for the year 2004. As explained below, we have determined that the firm's request should be granted.

*I. Background*

The EIA is authorized to collect, analyze, and disseminate energy data and information. 15 U.S.C. § 772(b); 42 U.S.C. § 7135(b). Form EIA-821 collects information from fuel oil distributors in order to gauge the nation's annual demand for fuel oil and kerosene. Respondents must separate their sales of each product into several end-user categories. Survey results are published in the EIA-821 "Annual Fuel oil and Kerosene Sales Report" and in the "State Energy Data Report," which are available to the petroleum industry and the general public. The data are used by the DOE and other governmental agencies in determining current and projected fuel oil needs on a national, regional, and statewide basis. Access to this data is vital to the nation's ability to anticipate and respond to potential energy shortages. See H.R. Rep. No. 373, 96<sup>th</sup> Cong., 1<sup>st</sup> Sess., reprinted in 1979 U.S. Code Cong. & Admin. News 1764, 1781 (H.R. Report 373).

EIA designated the firm as a member of an annual sample required to prepare and file EIA-821 for the year 2004. The firm requests exception relief from that requirement.



The OHA has authority to grant exception relief where a reporting requirement causes a "special hardship, inequity, or unfair distribution of the burdens." 42 U.S.C. § 7194(a). See also 10 C.F.R. § 1003.25(b)(2). Because all reporting firms are burdened to some extent by the reporting requirements, exception relief is appropriate only where a firm can demonstrate that it is adversely affected to a significantly greater degree than other, similarly situated firms. Thus, mere inconvenience does not constitute a basis for relief. See *Glenn W. Wagoner Oil Co.*, 16 DOE ¶ 81,024 (1987).

In support of its request for exception relief, the firm provides the following information. Prior to November 2004, it had four full time employees -- the manager, a service technician, a truck driver, and a secretary. The service technician quit in November 2004 and the firm has been unable to find a replacement. In addition, the truck driver was struck by a car in December 2004 and has not yet been able to return to work, requiring the use of a leased driver. As a result of the foregoing, the manager is now performing the duties of the service technician and has shifted some office responsibilities to the secretary.

## II. Analysis

We have carefully weighed the firm's situation against the public policy interests served by the collection of the information in the EIA-821 report. We have concluded that exception relief, relieving the firm of filing the report for the year 2004, is appropriate. The firm is a small firm, which prior to November 2004 consisted of four employees, including its truck driver. The recent and unexpected departure of the service technician has resulted in two employees - the manager and secretary - performing three jobs. Given this unexpected and recent personnel shortage, the requirement to prepare and file an EIA-821 report for 2004 would place an unfair distribution of burdens on the firm. See *Belcher Oil Co.*, 15 DOE ¶ 81,018 (1987) (personnel shortage of small firm arising from abrupt departure warranted exception relief). We note, however, that this relief is limited to the requirement to file an EIA-821 report for 2004.

IT IS THEREFORE ORDERED THAT:

- (1) The Application for Exception filed by North Side Coal & Oil Co., Case No. TEE-0016, be, and hereby is, granted as set forth in Paragraph (2) below.
- (2) North Side Coal & Oil Co. is relieved of the requirement to file an EIA-821 report for the year 2004.
- (3) This is a final order of the Department of Energy.

George B. Breznay  
Director  
Office of Hearings and Appeals

Date: February 18, 2005

July 12, 2005

DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

Name of Case:           Ells Lass, Inc.  
Date of Filing:        February 23, 2005  
Case No.:              TEE-0017

On February 23, 2005, Ells Lass, Inc. (the firm), formerly Ellsworth and Lassow, Inc., filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). The firm requests that it be relieved of the requirement to prepare and file the Energy Information Administration (EIA) Form EIA-782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report," for the year 2005. As explained below, we have determined that the firm's request should be denied.

*I. Background*

The DOE's Energy Information Administration (EIA) is authorized to collect, analyze, and disseminate energy data and other information.<sup>1</sup> The EIA-782B reporting requirement grew out of the shortages of crude oil and petroleum products during the 1970s. In 1979, Congress found that the lack of reliable information concerning the supply, demand, and prices of petroleum products impeded the nation's ability to respond to the oil crisis. It therefore authorized the DOE to collect data on the supply and prices of petroleum products. This information is used to analyze trends within petroleum markets. Summaries of the information and the analyses are published by the EIA in publications such as "Petroleum Marketing Monthly." This information is used by Congress and state governments to project trends and to formulate national and state energy policies.

In order to minimize the reporting burden, the EIA periodically selects a relatively small sample of companies

---

<sup>1</sup> 15 U.S.C. § 772(b); 42 U.S.C. § 7135(b).

to file Form EIA-782B<sup>2</sup> and permits reporting firms to rely on reasonable estimates.<sup>3</sup>

## II. Exception Criteria

OHA has authority to grant exception relief where the reporting requirement causes a "special hardship, inequity, or unfair distribution of burdens."<sup>4</sup> Since all reporting firms are burdened to some extent by the reporting requirements, exception relief is appropriate only where a firm can demonstrate that it is adversely affected by the reporting requirement in a way that differs significantly from similar reporting firms.

The following examples illustrate some of circumstances that may justify relief from the reporting requirement. We have granted exceptions where: the applicant's financial condition is so precarious that the additional burden of meeting the DOE reporting requirements threatens its continued viability;<sup>5</sup> the only person capable of preparing the report is ill and the firm cannot afford to hire outside help;<sup>6</sup> extreme or unusual circumstances disrupt a firm's activities;<sup>7</sup> a combination of factors render

---

<sup>2</sup> Firms that account for over five percent of the sales of any particular product in a state are always included in the sample of firms required to file the form. A random sample of other firms is also selected. This random sample changes approximately every 24 to 30 months, but a firm may be reselected for subsequent samples. A firm that has been included in three consecutive random samples will generally not be included in a fourth consecutive sample, but may be included in a later sample.

<sup>3</sup> Form EIA-782B stipulates that the firm must make a good faith effort to provide reasonably accurate information that is consistent with the accounting records maintained by the firm. The firm must alert the EIA if the estimates are later found to be materially different from actual data.

<sup>4</sup> 42 U.S.C. § 7194(a); see 10 C.F.R. § 1003.25(b)(2).

<sup>5</sup> *Mico Oil Co.*, 23 DOE ¶ 81,015 (1994) (firm lost one million dollars over previous three years); *Deaton Oil Co.*, 16 DOE ¶ 81,026 (1987) (firm in bankruptcy).

<sup>6</sup> *S&S Oil & Propane Co.*, 21 DOE ¶ 81,006 (1991) (owner being treated for cancer); *Midstream Fuel Serv.*, 24 DOE ¶ 81,023 (three month extension of time to file reports granted when two office employees simultaneously on maternity leave); *Eastern Petroleum Corp.*, 14 DOE ¶ 81,011 (1986) (two months relief granted when computer operator broke wrist).

<sup>7</sup> *Little River Village Campground, Inc.*, 24 DOE ¶ 81,033 (1994) (five months relief because of flood); *Utilities Bd. of Citronelle-Gas*, 4 DOE ¶ 81,205 (1979) (hurricane); *Meier Oil Serv.*, 14 DOE ¶ 81,004 (1986) (three months where disruptions caused by installation of a new computer system left firm's records inaccessible).

the reporting requirement an undue burden.<sup>8</sup>

On the other hand, when considering a request for exception relief, we must weigh the firm's difficulty in complying with the reporting requirement against the nation's need for reliable energy data. We have determined that mere inconvenience does not constitute a sufficient hardship to warrant relief.<sup>9</sup> Moreover, the fact that a firm is relatively small or that it has filed reports for a number of years does not alone constitute grounds for exception relief. If firms of all sizes, both large and small, are not included, the estimates and projections generated by the EIA's statistical sample will be unreliable.<sup>10</sup>

## *II. The Application for Exception*

The firm, under the name Ellsworth and Lassow, Inc., was designated by EIA as a member of a sample group required to complete and submit Form EIA-782B on a monthly basis. In support of its application for exception relief, the firm provides the following information. A portion of the firm was sold on July 1, 2004. The remaining firm, now named Ells Lass, consists of one gas station. The owner of the firm states that the business is a "true one-man band" and that he is over-extended and working well beyond his physical capabilities. The owner states that he maintains a skeleton crew of part-time workers, but performs most of the day-to-day operations on his own, including staffing the register, cleaning the restrooms and sweeping the driveway. In addition, he states that he carries out all the business operations, which include completing Form EIA-782B. Finally, he states that the firm has continuously filed Form EIA-782B since 1985.

In response to a request from our office, the firm provided the following additional information: (i) it operated one location before and one after the sale, (ii) its sales revenue was roughly cut in half following the sale, (iii) it employed five full-time employees before the sale and two full-time employees after the sale, and (iv) it

---

<sup>8</sup> *Ward Oil Co.*, 24 DOE ¶ 81,002 (1994) (exception relief for 10 months was granted where personnel shortages, financial difficulties, and administrative problems resulted from the long illness and death of a partner).

<sup>9</sup> *Glenn W. Wagoner Oil Co.*, 16 DOE ¶ 81,024 (1987).

<sup>10</sup> *Mulgrew Oil Co.*, 20 DOE ¶ 81,009 (1990).

employed the same number of part-time employees before and after the sale.<sup>11</sup>

#### IV. Analysis

As an initial matter, we address the firm's claim that it has continuously filed the form since 1985. EIA informed us that its records show that the firm has been filing the form since 1999. In the absence of evidence from the firm to the contrary, we assume, for the purposes of this Decision and Order, that the reporting requirement began in 1999.

The firm's argument that the nature of the business has changed does not provide a basis for an exception. Although the firm's revenue and number of employees decreased following the sale of its assets, nothing in the record indicates that the firm is financially strained. The firm does not state how long it takes to complete the report and, therefore, we have no basis to conclude that it is excessive.<sup>12</sup> Form EIA-782B requires little more than the essential type of pricing, supply, and inventory data that is required to operate a business. The EIA estimates that it should normally take approximately two and one-half hours per month for a firm to fill out EIA-782B.<sup>13</sup> The fact that the owner of the firm is busy and performs manual labor as well as administrative tasks does not demonstrate that the time required to complete the form poses an undue burden. We note that the burden of this requirement on the firm's owner could be lessened by the use of estimates.<sup>14</sup>

Similarly, the firm's argument that it has filed the form EIA-782B in the past does not provide a basis for an exception.<sup>15</sup> As discussed above, in order to obtain accurate information about the supply and demand for

---

<sup>11</sup> Response letter, received April 27, 2005.

<sup>12</sup> See, e.g. *Haynes Oil Co.*, 21 DOE ¶ 81,002 (1992) (one day to complete form does not warrant exception); *Dell Oil Ltd.*, 13 DOE ¶ 81,009 (1985) (two days).

<sup>13</sup> See Section 10 of General Instructions to Form EIA- 782B.

<sup>14</sup> See Section 7 of the General Instructions to Form EIA-782B.

<sup>15</sup> See *Mulgrew Oil Co.*, 20 DOE ¶ 81,009 (1990) (providing that if firms of all sizes, both large and small, are not included, the estimates and projections generated by the EIA's statistical sample will be unreliable); see also *Taylor Oil Co.*, 27 DOE ¶ 81,010 (2000) (relief denied where the firm argued that the requirements were unduly burdensome because it had participated in filing the reports for many years).

petroleum products, the EIA selects firms at random, may choose the same firm to participate in multiple EIA surveys, and requires data from firms of all sizes, not merely large firms. Firms are periodically rotated in and out of the EIA survey pool and those that are not chosen during one rotation may be selected to participate as part of a subsequent sample. Accordingly, the fact that the firm filed the form for the past five years does not establish the existence of an inequity or unfair distribution of burdens that could justify relief.

As the foregoing indicates, the firm has not demonstrated that the reporting requirement poses a "special hardship, inequity, or unfair distribution of burdens."<sup>16</sup> Accordingly, we have determined that the exception request should be denied.

IT IS THEREFORE ORDERED THAT:

- (1) The Application for Exception filed by Ellsworth and Lassow, Inc., Case No. TEE-0017, be, and hereby is denied.
- (2) Administrative review of this Decision and Order may be sought by any person who is aggrieved or adversely affected by the denial of exception relief. Such review shall be commenced by filing a petition for review with the Federal Energy Regulatory Commission within 30 days of the date of this Decision and Order pursuant to 18 C.F.R. Part 385, Subpart J.

George B. Breznay  
Director  
Office of Hearings and Appeals

Date: July 12, 2005

---

<sup>16</sup> 42 U.S.C. § 7194(a); see 10 C.F.R. § 1003.25(b)(2).

May 2, 2005

DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

Name of Case: Jefferson Landmark, Inc.

Date of Filing: March 8, 2005

Case No.: TEE-0018

On March 8, 2005, Jefferson Landmark, Inc. (Jefferson) filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). The firm requests that it be relieved of the requirement to prepare and file the Energy Information Administration (EIA) Form EIA-782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report," for the year 2005. As explained below, we have determined that Jefferson's request should be denied.

*I. Background*

The DOE's Energy Information Administration (EIA) is authorized to collect, analyze, and disseminate energy data and other information.<sup>1</sup> The EIA-782B reporting requirement grew out of the shortages of crude oil and petroleum products during the 1970s. In 1979, Congress found that the lack of reliable information concerning the supply, demand, and prices of petroleum products impeded the nation's ability to respond to the oil crisis. It therefore authorized the DOE to collect data on the supply and prices of petroleum products. This information is used to analyze trends within petroleum markets. Summaries of the information and the analyses are published by EIA in publications such as "Petroleum Marketing Monthly." This information is used by Congress and state governments to project trends and to formulate national and state energy policies.

In order to minimize the reporting burden, the EIA periodically selects a relatively small sample of companies to file Form

---

<sup>1</sup> 15 U.S.C. § 772(b); 42 U.S.C. § 7135(b).



EIA-782B<sup>2</sup> and permits reporting firms to rely on reasonable estimates.<sup>3</sup>

## II. Exception Criteria

OHA has authority to grant exception relief where the reporting requirement causes a "special hardship, inequity, or unfair distribution of burdens."<sup>4</sup> Since all reporting firms are burdened to some extent by reporting requirements, exception relief is appropriate only where a firm can demonstrate that it is adversely affected by the reporting requirement in a way that differs significantly from similar reporting firms.

The following examples illustrate some of circumstances that may justify relief from the reporting requirement. We have granted exceptions where: the applicant's financial condition is so precarious that the additional burden of meeting the DOE reporting requirements threatens its continued viability;<sup>5</sup> the only person capable of preparing the report is ill and the firm cannot afford to hire outside help;<sup>6</sup> extreme or unusual circumstances disrupt a firm's activities;<sup>7</sup> a combination of factors render the reporting requirement an undue burden.<sup>8</sup>

---

<sup>2</sup> Firms that account for over five percent of the sales of any particular product in a state are always included in the sample of firms required to file the form. A random sample of other firms is also selected. This random sample changes approximately every 24 to 30 months, but a firm may be reselected for subsequent samples. A firm that has been included in three consecutive random samples will generally not be included in a fourth consecutive sample, but may be included in a later sample.

<sup>3</sup> Form EIA-782B stipulates that the firm must make a good faith effort to provide reasonably accurate information that is consistent with the accounting records maintained by the firm. The firm must alert the EIA if the estimates are later found to be materially different from actual data.

<sup>4</sup> 42 U.S.C. § 7194(a); see 10 C.F.R. § 1003.25(b)(2).

<sup>5</sup> *Mico Oil Co.*, 23 DOE ¶ 81,015 (1994) (firm lost one million dollars over previous three years); *Deaton Oil Co.*, 16 DOE ¶ 81,026 (1987) (firm in bankruptcy).

<sup>6</sup> *S&S Oil & Propane Co.*, 21 DOE ¶ 81,006 (1991) (owner being treated for cancer); *Midstream Fuel Serv.*, 24 DOE ¶ 81,023 (three month extension of time to file reports granted when two office employees simultaneously on maternity leave); *Eastern Petroleum Corp.*, 14 DOE ¶ 81,011 (1986) (two months relief granted when computer operator broke wrist).

<sup>7</sup> *Little River Village Campground, Inc.*, 24 DOE ¶ 81,033 (1994) (five months relief because of flood); *Utilities Bd. of Citronelle-Gas*, 4 DOE ¶ 81,205 (1979) (hurricane); *Meier Oil Serv.*, 14 DOE ¶ 81,004 (1986) (three months where disruptions caused by installation of a new computer system left firm's records inaccessible).

<sup>8</sup> *Ward Oil Co.*, 24 DOE ¶ 81,002 (1994) (exception relief for 10 months was granted where personnel shortages, financial difficulties, and administrative problems resulted from the long illness and death of a partner).

On the other hand, when considering a request for exception relief, we must weigh the firm's difficulty in complying with the reporting requirement against the nation's need for reliable energy data. We have determined that mere inconvenience does not constitute a sufficient hardship to warrant relief.<sup>9</sup> Moreover, the fact that a firm is relatively small or that it has filed reports for a number of years does not alone constitute grounds for exception relief. If firms of all sizes, both large and small, are not included, the estimates and projections generated by the EIA's statistical sample will be unreliable.<sup>10</sup>

### *III. Jefferson's Application for Exception*

Jefferson is a cooperative located in Bloomingdale, Ohio and was designated by EIA as a member of a sample group required to file Form EIA-782B on a monthly basis, beginning in January 2002. The firm maintains that completing the Form EIA-782B presents an undue burden. Jefferson states that it is a small firm, is very busy, and prepares the form using a pen and calculator. The firm also asserts that it was previously selected by EIA to complete Form EIA-782B for a four year period, from 1989 to 1993, and that six larger firms located in the same county as Jefferson have never been required to file Form EIA-782B.

After our preliminary review of the Application for Exception, we contacted Jefferson to give the firm an opportunity to discuss the request.<sup>11</sup> Jefferson's manager indicated that he believes it is unfair that the firm has been selected a second time to complete surveys. He emphasized that he only wants Jefferson to be treated in a manner similar to other firms in the Bloomingdale area.<sup>12</sup>

### *IV. Analysis*

Jefferson has not demonstrated that the reporting requirements pose a "special hardship, inequity, or unfair distribution of burdens." Nothing in the record indicates that Jefferson is financially strained. Jefferson does not state how long it takes to complete the report and, therefore, we have no basis

---

<sup>9</sup> *Glenn W. Wagoner Oil Co.*, 16 DOE ¶ 81,024 (1987).

<sup>10</sup> *Mulgrew Oil Co.*, 20 DOE ¶ 81,009 (1990).

<sup>11</sup> Telephone Conversation between Caroline A. Smith, OHA, and Bob Sensibaugh, Jefferson Landmark, Inc. (March 30, 2005).

<sup>12</sup> *Id.*

to conclude that it is excessive.<sup>13</sup> The fact that Jefferson is busy and that its manager performs the relevant calculations by hand does not demonstrate that the time required to complete the form poses an undue burden. Form EIA-782B requires little more than the essential type of pricing, supply, and inventory data that is required to operate a business. The EIA estimates that it should normally take approximately two and one-half hours per month for a firm to fill out EIA-782B.<sup>14</sup> We note that the burden of this requirement on the firm's manager could be lessened by the use of estimates.<sup>15</sup>

Jefferson's principal argument -- that it has filed the form in the past and that other larger firms in the area have not -- does not provide the basis for an exception.<sup>16</sup> As discussed above, in order to obtain accurate information about the supply and demand for petroleum products, the EIA selects firms at random, may choose the same firm to participate in multiple EIA surveys, and requires data from firms of all sizes, not merely large firms. Firms are periodically rotated in and out of the EIA survey pool and those that are not chosen during one rotation may be selected to participate as part of a subsequent sample. Accordingly, the claim that Jefferson has filed the form in the past while others may not have, does not establish the existence of an inequity or unfair distribution of burdens that could justify relief.

As the foregoing indicates, the firm has not demonstrated that it meets the standards for exception request. Accordingly, we have determined that the exception request should be denied.

IT IS THEREFORE ORDERED THAT:

- (1) The Application for Exception filed by Jefferson Landmark, Inc., Case No. TEE-0118, be, and hereby is denied.

---

<sup>13</sup> See, e.g. *Haynes Oil Co.*, 21 DOE ¶ 81,002 (1992) (one day to complete form does not warrant exception); *Dell Oil Ltd.*, 13 DOE ¶ 81,009 (1985) (two days).

<sup>14</sup> See Section 10 of General Instructions to Form EIA- 782B.

<sup>15</sup> See Section 7 of the General Instructions to Form EIA-782B.

<sup>16</sup> See *Mulgrew Oil Co.*, 20 DOE ¶ 81,009 (1990) (providing that if firms of all sizes, both large and small, are not included, the estimates and projections generated by the EIA's statistical sample will be unreliable); see also *Taylor Oil Co.*, 27 DOE ¶ 81,010 (2000) (relief denied where the firm argued that the requirements were unduly burdensome because it had participated in filing the reports for many years).

(2) Administrative review of this Decision and Order may be sought by any person who is aggrieved or adversely affected by the denial of exception relief. Such review shall be commenced by filing a petition for review with the Federal Energy Regulatory Commission within 30 days of the date of this Decision and Order pursuant to 18 C.F.R. Part 385, Subpart J.

George B. Breznay  
Director  
Office of Hearings and Appeals

Date: May 2, 2005

August 09, 2005

DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

Name of Case: Wavaho Oil Co., Inc.

Date of Filing: March 28, 2005

Case No.: TEE-0019

On March 28, 2005, Wavaho Oil Co., Inc. (Wavaho) filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). The firm requests that it be relieved of the requirement to prepare and file the Energy Information Administration (EIA) Form EIA-782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report," for the year 2005. As explained below, we have determined that Wavaho's request should be denied.

*I. Background*

The DOE's Energy Information Administration (EIA) is authorized to collect, analyze, and disseminate energy data and other information.<sup>1</sup> This authority was created in response to the shortages of crude oil and petroleum products during the 1970s. In 1979, Congress found that the lack of reliable information concerning the supply, demand, and prices of petroleum products impeded the nation's ability to respond to the oil crisis. It therefore authorized the DOE to collect data on the supply and prices of petroleum products. This information is used to analyze trends within petroleum markets. Summaries of the information and the analyses are published by EIA in publications such as "Petroleum Marketing Monthly." This information is used by Congress and state governments to project trends and to formulate national and state energy policies.

Form EIA-782B requests information from resellers and retailers of motor gasoline, No. 2 distillates and propane, and residual

---

<sup>1</sup> 15 U.S.C. § 772(b); 42 U.S.C. § 7135(b).

fuel oil. The form requests volume and price information for retail and wholesale sales.

In order to minimize the reporting burden, the EIA periodically selects a relatively small sample of companies to file Form EIA-782B<sup>2</sup>. The form allows reporting volumes in thousands of gallons. Estimates can be used; however the basis must be consistent with the standard accounting records maintained by the firm.<sup>3</sup>

## II. Exception Criteria

OHA has authority to grant exception relief where the reporting requirement causes a "special hardship, inequity, or unfair distribution of burdens."<sup>4</sup> Since all reporting firms are burdened to some extent by reporting requirements, exception relief is appropriate only where a firm can demonstrate that it is adversely affected by the reporting requirement in a way that differs significantly from similar reporting firms.

The following examples illustrate some of the circumstances that may justify relief from the reporting requirement. We have granted exceptions where: the applicant's financial condition is so precarious that the additional burden of meeting the DOE reporting requirements threatens its continued viability;<sup>5</sup> the only person capable of preparing the report is ill and the firm cannot afford to hire outside help;<sup>6</sup> extreme or unusual

---

<sup>2</sup> Firms that account for over five percent of the sales of any particular product in a state are always included in the sample of firms required to file the form. A random sample of other firms is also selected. This random sample changes approximately every 24 to 30 months, but a firm may be reselected for subsequent samples. A firm that has been included in three consecutive random samples will generally not be included in a fourth consecutive sample, but may be included in a later sample.

<sup>3</sup> Form EIA-782B stipulates that the firm must make a good faith effort to provide reasonably accurate information that is consistent with the accounting records maintained by the firm. The firm must alert the EIA if the estimates are later found to be materially different from actual data.

<sup>4</sup> 42 U.S.C. § 7194(a); see 10 C.F.R. § 1003.25(b)(2).

<sup>5</sup> *Mico Oil Co.*, 23 DOE ¶ 81,015 (1994) (firm lost one million dollars over previous three years); *Deaton Oil Co.*, 16 DOE ¶ 81,026 (1987) (firm in bankruptcy).

<sup>6</sup> *S&S Oil & Propane Co.*, 21 DOE ¶ 81,006 (1991) (owner being treated for cancer); *Midstream Fuel Serv.*, 24 DOE ¶ 81,023 (three month extension of time to file reports granted when two office employees simultaneously on maternity leave); *Eastern Petroleum Corp.*, 14 DOE ¶ 81,011 (1986) (two months relief granted when computer operator broke wrist).

circumstances disrupt a firm's activities;<sup>7</sup> and a combination of factors render the reporting requirement an undue burden.<sup>8</sup>

On the other hand, when considering a request for exception relief, we must weigh the firm's difficulty in complying with the reporting requirement against the nation's need for reliable energy data. We have determined that mere inconvenience does not constitute a sufficient hardship to warrant relief.<sup>9</sup> Moreover, the fact that a firm is relatively small or that it has filed reports for a number of years does not alone constitute grounds for exception relief. If firms of all sizes, both large and small, are not included, the estimates and projections generated by the EIA's statistical sample will be unreliable.<sup>10</sup>

### *III. Wavaho's Application for Exception*

Wavaho is located in Lacey's Spring, Alabama and was designated by EIA as a member of a sample group required to file Form EIA-782B. In its application, the firm stated that it is a small company that is run by two brothers and sells gasoline only. The firm further stated that it cannot afford to hire help to complete the forms.

After our preliminary review of the Application for Exception, we contacted Wavaho to give the firm an opportunity to discuss the request.<sup>11</sup> Wavaho stated that the company sells retail gasoline at approximately twenty-five locations. Wavaho further stated it does not have computer software to collect the necessary information from the locations. As a result, the firm stated, it takes two to three days to complete the form.

We then wrote the firm a letter, advising it that we did not see the basis for an exception, and we offered the firm an opportunity to provide further information or argument. In a subsequent letter, Wavaho responded that the reporting

---

<sup>7</sup> *Little River Village Campground Inc.*, 24 DOE ¶ 81,033 (1994) (five months relief because of flood); *Utilities Bd. Of Citronelle-Gas*, 4 DOE ¶ 81,025 (1979) (hurricane); *Meier Oil Serv.*, 14 DOE ¶ 81,004 (1986) (three months where disruptions caused by installation of a new computer system left firm's records inaccessible).

<sup>8</sup> *Ward Oil Co.*, 24 DOE ¶ 81,002 (1994) (exception relief for 10 months was granted where personnel shortages, financial difficulties, and administrative problems resulted from the long illness and death of a partner).

<sup>9</sup> *Glenn W. Wagoner Oil Co.*, 16 DOE ¶ 81,024 (1987).

<sup>10</sup> *Mulgrew Oil Co.*, 20 DOE ¶ 81,009 (1990).

<sup>11</sup> Telephone Conversation between Ronald D. Hester, OHA, and Vann Hough, *Wavaho Oil Co., Inc.* (April 14, 2005).

requirement is disrupting its operations and impeding its ability to file other required forms.

#### *IV. Analysis*

During our preliminary review we contacted an EIA staff member to determine whether Wavaho had been required to prepare and file the EIA 782-B Monthly Petroleum Product Sales Report in the past. The EIA personnel stated that Wavaho was selected to report for the first time in the summer of 2004.<sup>12</sup>

Form EIA-782B requires little more than the essential type of pricing, supply, and inventory data that is required to operate a business. As indicated above, the form requires the reporting of volume and price information for sales of motor gasoline, No. 2 distillates and propane, and residual fuel oil. The EIA estimates that it should normally take approximately two and one-half hours per month for a firm to fill out EIA-782B.<sup>13</sup> We note that the burden of this requirement on the firm could be lessened by the use of estimates.<sup>14</sup>

Wavaho has not demonstrated that the reporting requirement poses a "special hardship, inequity, or unfair distribution of burdens." Multiple locations, combined with the lack of computer software does not warrant a conclusion that the reporting requirement adversely affects the firm in a way that differs from its impact on other firms.<sup>15</sup>

Similarly, the firm's argument that it is small does not provide a basis for exception relief. As discussed above, in order to obtain accurate information about the supply and demand for petroleum products, the EIA selects firms at random, may choose the same firm to participate in multiple EIA surveys, and requires data from firms of all sizes, not merely large firms. Firms are periodically rotated in and out of the EIA survey pool and those that are not chosen during one rotation may be selected to participate as part of a subsequent sample. Accordingly, a claim that a firm is small does not establish the existence of an inequity or unfair distribution of burdens.

---

<sup>12</sup> Conversation between Ronald D. Hester (OHA) and Tammy Heppner (EIA) on July 27, 2005.

<sup>13</sup> See Section 10 of General Instructions to Form EIA- 782B.

<sup>14</sup> See Section 7 of the General Instructions to Form EIA-782B.

<sup>15</sup> See Section 10 of General Instructions to Form EIA- 782B.



As the foregoing indicates, the firm has not demonstrated that it meets the standards for exception relief. Accordingly, we have determined that the exception request should be denied.

IT IS THEREFORE ORDERED THAT:

- (1) The Application for Exception filed by Wavaho Oil Co., Inc., Case No. TEE-0019, be, and hereby is, denied.
- (2) Administrative review of this Decision and Order may be sought by any person who is aggrieved or adversely affected by the denial of exception relief. Such review shall be commenced by filing a petition for review with the Federal Energy Regulatory Commission within 30 days of the date of this Decision and Order pursuant to 18 C.F.R. Part 385, Subpart J.

George B. Breznay  
Director  
Office of Hearings and Appeals

Date: August 09, 2005

November 29, 2005

DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

Name of Case:           Bowlin Travel Centers, Inc.

Date of Filing:        April 15, 2005

Case No.:              TEE-0020

On April 15, 2005, Bowlin Travel Centers Inc. (Bowlin) filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). The firm requests that it be relieved of the requirement to prepare and file the Energy Information Administration (EIA) Form EIA-782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report," for the year 2005. As explained below, we have determined that Bowlin's request should be denied.

*I. Background*

The DOE's Energy Information Administration (EIA) is authorized to collect, analyze, and disseminate energy data and other information.<sup>1</sup> The EIA-782B reporting requirement grew out of the shortages of crude oil and petroleum products during the 1970s. In 1979, Congress found that the lack of reliable information concerning the supply, demand, and prices of petroleum products impeded the nation's ability to respond to the oil crisis. It therefore authorized the DOE to collect data on the supply and prices of petroleum products. This information is used to analyze trends within petroleum markets. Summaries of the information and the analyses are reported by EIA in publications such as "Petroleum Marketing Monthly." This information is used by Congress and state governments to project trends and to formulate national and state energy policies.

In order to minimize the reporting burden, the EIA periodically selects a relatively small sample of companies to file Form

---

<sup>1</sup> 15 U.S.C. § 772(b); 42 U.S.C. § 7135(b).

EIA-782B<sup>2</sup> and permits reporting firms to rely on reasonable estimates.<sup>3</sup>

## II. Exception Criteria

OHA has authority to grant exception relief where the reporting requirement causes a "special hardship, inequity, or unfair distribution of burdens."<sup>4</sup> Since all reporting firms are burdened to some extent by reporting requirements, exception relief is appropriate only where a firm can demonstrate that it is adversely affected by the reporting requirement in a way that differs significantly from similar reporting firms.

The following examples illustrate some of circumstances that may justify relief from the reporting requirement. We have granted exceptions where: the applicant's financial condition is so precarious that the additional burden of meeting the DOE reporting requirements threatens its continued viability;<sup>5</sup> the only person capable of preparing the report is ill and the firm cannot afford to hire outside help;<sup>6</sup> extreme or unusual circumstances disrupt a firm's activities;<sup>7</sup> a combination of factors render the reporting requirement an undue burden.<sup>8</sup>

---

<sup>2</sup> Firms that account for over five percent of the sales of any particular product in a state are always included in the sample of firms required to file the form. A random sample of other firms is also selected. This random sample changes approximately every 24 to 30 months, but a firm may be reselected for subsequent samples. A firm that has been included in three consecutive random samples will generally not be included in a fourth consecutive sample, but may be included in a later sample.

<sup>3</sup> Form EIA-782B stipulates that the firm must make a good faith effort to provide reasonably accurate information that is consistent with the accounting records maintained by the firm. The firm must alert the EIA if the estimates are later found to be materially different from actual data.

<sup>4</sup> 42 U.S.C. § 7194(a); see 10 C.F.R. § 1003.25(b)(2).

<sup>5</sup> *Mico Oil Co.*, 23 DOE ¶ 81,015 (1994) (firm lost one million dollars over previous three years); *Deaton Oil Co.*, 16 DOE ¶ 81,026 (1987) (firm in bankruptcy).

<sup>6</sup> *S&S Oil & Propane Co.*, 21 DOE ¶ 81,006 (1991) (owner being treated for cancer); *Midstream Fuel Serv.*, 24 DOE ¶ 81,023 (three month extension of time to file reports granted when two office employees simultaneously on maternity leave); *Eastern Petroleum Corp.*, 14 DOE ¶ 81,011 (1986) (two months relief granted when computer operator broke wrist).

<sup>7</sup> *Little River Village Campground, Inc.*, 24 DOE ¶ 81,033 (1994) (five months relief because of flood); *Utilities Bd. of Citronelle-Gas*, 4 DOE ¶ 81,205 (1979) (hurricane); *Meier Oil Serv.*, 14 DOE ¶ 81,004 (1986) (three months where disruptions caused by installation of a new computer system left firm's records inaccessible).

<sup>8</sup> *Ward Oil Co.*, 24 DOE ¶ 81,002 (1994) (exception relief for 10 months was granted where personnel shortages, financial difficulties, and administrative problems resulted from the long illness and death of a partner).

On the other hand, when considering a request for exception relief, we must weigh the firm's difficulty in complying with the reporting requirement against the nation's need for reliable energy data. Inconvenience alone does not constitute a hardship to warranting relief.<sup>9</sup> Neither does the fact that a firm is relatively small or that it has filed reports for a number of years constitute grounds for exception relief. If firms of all sizes, both large and small, are not included, the estimates and projections generated by the EIA's statistical sample will be unreliable.<sup>10</sup>

### *III. Bowlin's Application for Exception*

Bowlin is a relatively small, publicly-owned motor gasoline retailer headquartered in Albuquerque, New Mexico. For the first time, beginning in February 1999, Bowlin was designated by EIA as a member of a sample group required to file Form EIA-782B each month for a period of three years.<sup>11</sup> Subsequently, the firm was then randomly selected to continue to report by filing the Form for another three year period beginning in February 2002. Then, Bowlin states, as a publicly-held entity, it came under the provisions of the Sarbanes-Oxley Act which require quarterly reports.<sup>12</sup> According to Bowlin, these reporting requirements together present an undue burden. Bowlin states that it is a small entity, there is only one person who must prepare both reports, and that responsibility may not be delegated.

Based upon a review of the Bowlin Application, we concluded that there was not sufficient information to permit us to act favorably on the request. Therefore, we contacted Bowlin to give the company an opportunity to discuss the request.<sup>13</sup> Bowlin's Chief Administrative Officer stated that she believes that the firm being selected to complete the EIA-782B reporting requirement along with Sarbanes-Oxley Reports presents an undue burden to the firm. She stated that it takes the firm approximately four hours per month to complete the EIA-782B reporting requirement. She stated that complying with both

---

<sup>9</sup> *Glenn W. Wagoner Oil Co.*, 16 DOE ¶ 81,024 (1987).

<sup>10</sup> *Mulgrew. Oil Co.*, 20 DOE ¶ 81,009 (1990).

<sup>11</sup> Bowlin's Application for Exception, submitted to OHA on April 15, 2005.

<sup>12</sup> 15 U.S.C. § 7211 et. seq.

<sup>13</sup> Telephone Conversation between Ronald D. Hester, OHA, and Kim D. Stake, *Bowlin Travel Centers, Inc.* (May 16, 2005).

government requirements is time consuming and is affecting other required job duties.<sup>14</sup>

#### IV. Analysis

Bowlin has not demonstrated that the reporting requirements together or separately -- pose a "special hardship, inequity, or unfair distribution of burdens." Form EIA-782B requires little more than the essential type of pricing, supply, and inventory data that is required to operate a business. The EIA estimates that it should normally take approximately two and one-half hours per month for a firm to fill out EIA-782B.<sup>15</sup> The burden of this requirement can be substantially reduced by the use of estimates.<sup>16</sup> In any case, the fact that Bowlin might require a little more time on average does not justify relief.

Bowlin's principal argument -- that the firm should not be required to complete Form EIA-782B and comply with the Sarbanes-Oxley Reports requirement -- does not provide the basis for an exception.<sup>17</sup> As discussed above, in order to obtain accurate information about the supply and demand for petroleum products, the EIA selects firms at random, may choose the same firm to participate in multiple EIA surveys, and requires data from firms of all sizes, not merely large firms. Firms are periodically rotated in and out of the EIA survey pool and those that are not chosen during one rotation may be selected to participate as part of a subsequent sample. The claim that Bowlin should not be required to comply with two different government reporting requirements does not establish the existence of an inequity or unfair distribution of burdens that could justify relief. Bowlin has not demonstrated it is uniquely affected; all firms are required to comply with a variety of regulations and statutes. The fact that Bowlin is subject to Sarbanes-Oxley reporting requirements does not in itself demonstrate that the reporting requirement of Form EIA-782B itself represents a special hardship.

---

<sup>14</sup> *Id.*

<sup>15</sup> See Section 10 of General Instructions to Form EIA- 782B.

<sup>16</sup> See Section 7 of the General Instructions to Form EIA-782B.

<sup>17</sup> See *Mulgrew Oil Co.*, 20 DOE ¶ 81,009 (1990) (providing that if firms of all sizes, both large and small, are not included, the estimates and projections generated by the EIA's statistical sample will be unreliable); see also *Taylor Oil Co.*, 27 DOE ¶ 81,010 (2000) (relief denied where the firm argued that the requirements were unduly burdensome because it had participated in filing the reports for many years).

As the foregoing indicates the firm has not demonstrated that it meets the standards for an exception request. Accordingly, we have determined that the exception request should be denied.

IT IS THEREFORE ORDERED THAT:

- (1) The Application for Exception filed by Bowlin Travel Centers Inc., Case No. TEE-0020, be, and hereby is denied.
- (2) Administrative review of this Decision and Order may be sought by any person who is aggrieved or adversely affected by the denial of exception relief. Such review shall be commenced by filing a petition for review with the Federal Energy Regulatory Commission within 30 days of the date of this Decision and Order pursuant to 18 C.F.R. Part 385, Subpart J.

George B. Breznay  
Director  
Office of Hearings and Appeals

Date: November 29, 2005

November 29, 2005

DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

Name of Case: Crystal View Enterprises, Inc.

Date of Filing: August 25, 2005

Case No.: TEE-0023

On August 25, 2005, Crystal View Enterprises, Inc.(Crystal) filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). The firm requests that it be relieved of the requirement to prepare and file the Energy Information Administration (EIA) Form EIA-782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report." As explained below, we have determined that Crystal's request should be granted.

*I. Background*

The DOE's Energy Information Administration (EIA) is authorized to collect, analyze, and disseminate energy data and other information.<sup>1</sup> This authority was created in response to the shortages of crude oil and petroleum products during the 1970s. In 1979, Congress found that the lack of reliable information concerning the supply, demand, and prices of petroleum products impeded the nation's ability to respond to the oil crisis. It therefore authorized the DOE to collect data on the supply and prices of petroleum products. This information is used to analyze trends within petroleum markets. Summaries of the information and the analyses are published by EIA in publications such as "Petroleum Marketing Monthly." This information is used by Congress and state governments to project trends and to formulate national and state energy policies.

Form EIA-782B requests information from resellers and retailers of motor gasoline, No. 2 distillates, propane, and residual fuel oil. The form requests volume and price information for retail and wholesale sales.

---

<sup>1</sup> 15 U.S.C. § 772(b); 42 U.S.C. § 7135(b).

In order to minimize the reporting burden, the EIA periodically selects a relatively small sample of companies to file Form EIA-782B<sup>2</sup>. The form allows reporting volumes in thousands of gallons. Estimates can be used; however the basis must be consistent with the standard accounting records maintained by the firm.<sup>3</sup>

## II. Exception Criteria

OHA has authority to grant exception relief where the reporting requirement causes a "special hardship, inequity, or unfair distribution of burdens."<sup>4</sup> Since all reporting firms are burdened to some extent by reporting requirements, exception relief is appropriate only where a firm can demonstrate that it is adversely affected by the reporting requirement in a way that differs significantly from similar reporting firms.

The following examples illustrate some of the circumstances that may justify relief from the reporting requirement. We have granted exceptions where: the applicant's financial condition is so precarious that the additional burden of meeting the DOE reporting requirements threatens its continued viability;<sup>5</sup> the only person capable of preparing the report is ill and the firm cannot afford to hire outside help;<sup>6</sup> extreme or unusual circumstances disrupt a

---

<sup>2</sup> Firms that account for over five percent of the sales of any particular product in a state are always included in the sample of firms required to file the form. A random sample of other firms is also selected. This random sample changes approximately every 24 to 30 months, but a firm may be reselected for subsequent samples. A firm that has been included in three consecutive random samples will generally not be included in a fourth consecutive sample, but may be included in a later sample.

<sup>3</sup> Form EIA-782B stipulates that the firm must make a good faith effort to provide reasonably accurate information that is consistent with the accounting records maintained by the firm. The firm must alert the EIA if the estimates are later found to be materially different from actual data.

<sup>4</sup> 42 U.S.C. § 7194(a); see 10 C.F.R. § 1003.25(b)(2).

<sup>5</sup> *Mico Oil Co.*, 23 DOE ¶ 81,015 (1994) (firm lost one million dollars over previous three years); *Deaton Oil Co.*, 16 DOE ¶ 81,026 (1987) (firm in bankruptcy).

<sup>6</sup> *S&S Oil & Propane Co.*, 21 DOE ¶ 81,006 (1991) (owner being treated for cancer); *Midstream Fuel Serv.*, 24 DOE ¶ 81,023 (three month extension of time to file reports granted when two office employees simultaneously on maternity leave); *Eastern Petroleum Corp.*, 14 DOE ¶ 81,011 (1986) (two months relief granted when computer operator broke wrist).



firm's activities;<sup>7</sup> and a combination of factors render the reporting requirement an undue burden.<sup>8</sup>

At the same time, when considering a request for exception relief, we must weigh the firm's difficulty in complying with the reporting requirement against the nation's need for reliable energy data. We have determined that mere inconvenience does not constitute a sufficient hardship to warrant relief.<sup>9</sup> Moreover, the fact that a firm is relatively small or that it has filed reports for a number of years does not alone constitute grounds for exception relief.<sup>10</sup> If firms of all sizes, both large and small, are not included, the estimates and projections generated by the EIA's statistical sample will be unreliable.<sup>11</sup>

### *III. Crystal's Application for Exception*

Crystal is a small retailer of motor gasoline located in Pollock Pines, CA and was selected by EIA as a member of a sample group required to file Form EIA-782B beginning in September 2004. According to its submission, Crystal came to be owned and operated by Mr. and Mrs. Agahi when, after protracted illness, Mrs. Agahi's father passed away in November 2004.<sup>12</sup> Since that time Mr. and Mrs. Agahi have struggled to revive and maintain Crystal's business operations.<sup>13</sup> For financial reasons, ten employees have had to be let go, including cashiers, support staff, office personnel and two managers. Mr. and Mrs. Agahi are each working 70 hours per week and cannot afford to hire additional staff and the resources to complete and file EIA-782B are simply not available.

In order to fully consider the Crystal request and solicit any pertinent additional information, we contacted the firm

---

<sup>7</sup> *Little River Village Campground Inc.*, 24 DOE ¶ 81,033 (1994) (five months relief because of flood); *Utilities Bd. Of Citronelle-Gas*, 4 DOE ¶ 81,025 (1979) (hurricane); *Meier Oil Serv.*, 14 DOE ¶ 81,004 (1986) (three months where disruptions caused by installation of a new computer system left firm's records inaccessible).

<sup>8</sup> *Ward Oil Co.*, 24 DOE ¶ 81,002 (1994) (exception relief for 10 months was granted where personnel shortages, financial difficulties, and administrative problems resulted from the long illness and death of a partner).

<sup>9</sup> *Glenn W. Wagoner Oil Co.*, 16 DOE ¶ 81,024 (1987).

<sup>10</sup> See Section 10 of General Instructions to Form EIA- 782B.

<sup>11</sup> *Mulgrew Oil Co.*, 20 DOE ¶ 81,009 (1990).

<sup>12</sup> Crystal's application for exception, submitted to OHA on August 25, 2005.

<sup>13</sup> *Id.*

by telephone. Mrs. Agahi asserted that the firm is overwhelmed by the workload and the limited personnel available to complete tasks.<sup>14</sup> Mrs. Agahi also stated that the firm was first required to start completing the EIA-782B form in September 2004. She estimates that the firm pumps about 1.4 million gallons of gasoline per year.<sup>15</sup>

#### IV. Analysis

We have carefully examined the Crystal Application for exception, including the written and oral evidence and argument provided by the firm summarized above, and have concluded that exception relief is warranted. The firm has experienced drastic changes in recent periods and is clearly struggling to survive under the stewardship of Mr. and Mrs. Agahi -- relative newcomers to the firm as well as to the motor gasoline retail business-- and the requirement to prepare and file EIA-782B would at this point be unduly onerous. We have also weighed, in opposition, the public interest in the information that may be filed by Crystal against the likelihood of serious hardship, and have nonetheless concluded that a temporary exception should be granted to relieve Crystal of the EIA filing requirement.

IT IS THEREFORE ORDERED THAT:

- (1) The Application for Exception filed by Crystal View Enterprises, Inc. Case No. TEE-0023, be, and hereby is, granted as set forth in paragraph two below.
- (2) Crystal View Enterprises, Inc. is relieved of the requirement to file an EIA-782B report for the period of September 2004 to November 2006.

George B. Breznay  
Director  
Office of Hearings and Appeals

Date: November 29, 2005

---

<sup>14</sup> Telephone conversation between Ronald D. Hester, OHA and Adorea C.M. Agahi, *Crystal View Enterprises, Inc. September 7, 2005.*

<sup>15</sup> *Id.*

January 23, 2006

DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

Application for Exception

Name of Case: Sapp Brothers Truck Stop  
Date of Filing: October 26, 2005  
Case No.: TEE-0027

On October 26, 2005, Sapp Bros Truck Stop (Sapp Brothers) filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). The firm requests that it be relieved of the requirement to prepare and file the Energy Information Administration (EIA) Form EIA-782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report," for the year 2005. As explained below, we have determined that the Sapp Brothers request should be denied.

*I. Background*

The DOE's Energy Information Administration (EIA) is authorized to collect, analyze, and disseminate energy data and other information.<sup>1</sup> The EIA-782B reporting requirement grew out of the shortages of crude oil and petroleum products during the 1970s. In 1979, Congress found that the lack of reliable information concerning the supply, demand, and prices of petroleum products impeded the nation's ability to respond to the oil crisis. It therefore authorized the DOE to collect data on the supply and prices of petroleum products. This information is used to analyze trends within petroleum markets. Summaries of the information and the analyses are reported by EIA in publications such as "Petroleum Marketing Monthly." This information is used by Congress and state governments to project trends and to formulate national and state energy policies.

---

<sup>1</sup> 15 U.S.C. § 772(b); 42 U.S.C. § 7135(b).

In order to minimize the reporting burden, the EIA periodically selects a relatively small sample of companies to file Form EIA-782B<sup>2</sup> and permits reporting firms to rely on reasonable estimates.<sup>3</sup>

## II. Exception Criteria

OHA has authority to grant exception relief where the reporting requirement causes a "special hardship, inequity, or unfair distribution of burdens."<sup>4</sup> Since all reporting firms are burdened to some extent by reporting requirements, exception relief is appropriate only where a firm can demonstrate that it is adversely affected by the reporting requirement in a way that differs significantly from similar reporting firms.

The following examples illustrate some of circumstances that may justify relief from the reporting requirement. We have granted exceptions where: the applicant's financial condition is so precarious that the additional burden of meeting the DOE reporting requirements threatens its continued viability;<sup>5</sup> the only person capable of preparing the report is ill and the firm cannot afford to hire outside help;<sup>6</sup> extreme or unusual circumstances disrupt a firm's activities;<sup>7</sup> a combination of factors render the reporting requirement an undue burden.<sup>8</sup>

---

<sup>2</sup> Firms that account for over five percent of the sales of any particular product in a state are always included in the sample of firms required to file the form. A random sample of other firms is also selected. This random sample changes approximately every 24 to 30 months, but a firm may be reselected for subsequent samples. A firm that has been included in three consecutive random samples will generally not be included in a fourth consecutive sample, but may be included in a later sample.

<sup>3</sup> Form EIA-782B stipulates that the firm must make a good faith effort to provide reasonably accurate information that is consistent with the accounting records maintained by the firm. The firm must alert the EIA if the estimates are later found to be materially different from actual data.

<sup>4</sup> 42 U.S.C. § 7194(a); see 10 C.F.R. § 1003.25(b)(2).

<sup>5</sup> *Mico Oil Co.*, 23 DOE ¶ 81,015 (1994) (firm lost one million dollars over previous three years); *Deaton Oil Co.*, 16 DOE ¶ 81,026 (1987) (firm in bankruptcy).

<sup>6</sup> *S&S Oil & Propane Co.*, 21 DOE ¶ 81,006 (1991) (owner being treated for cancer); *Midstream Fuel Serv.*, 24 DOE ¶ 81,023 (three month extension of time to file reports granted when two office employees simultaneously on maternity leave); *Eastern Petroleum Corp.*, 14 DOE ¶ 81,011 (1986) (two months relief granted when computer operator broke wrist).

<sup>7</sup> *Little River Village Campground, Inc.*, 24 DOE ¶ 81,033 (1994) (five months relief because of flood); *Utilities Bd. of Citronelle-Gas*, 4 DOE ¶ 81,205 (1979) (hurricane); *Meier Oil Serv.*, 14 DOE ¶ 81,004 (1986) (three months where disruptions caused by installation of a new computer system left firm's records inaccessible).

<sup>8</sup> *Ward Oil Co.*, 24 DOE ¶ 81,002 (1994) (exception relief for 10 months was granted where personnel shortages, financial difficulties, and administrative problems resulted from the long illness and death of a partner).

On the other hand, when considering a request for exception relief, we must weigh the firm's difficulty in complying with the reporting requirement against the nation's need for reliable energy data. Inconvenience alone does not constitute a hardship warranting relief.<sup>9</sup> Neither does the fact that a firm is relatively small or that it has filed reports for a number of years constitute grounds for exception relief. If firms of all sizes, both large and small, are not included, the estimates and projections generated by the EIA's statistical sample will be unreliable.<sup>10</sup>

### *III. The Sapp Brothers Application for Exception*

Sapp Brothers is a relatively small, publicly-owned motor gasoline retailer headquartered in Omaha, Nebraska. For the first time, beginning in February 1993, Sapp Brothers was designated by EIA as a member of a sample group required to file Form EIA-782B each month for a period of three years.<sup>11</sup> Subsequently, the firm was then selected to continue to report by filing the Form for another three year period beginning in August 1998 and was selected again in August 2004.<sup>12</sup> In its exception application, Sapp Brothers states the information needed to file Form EIA-782B is not centrally located and involves retail gasoline sales which are only a small part of its business operations.<sup>13</sup> The firm further states the information required to file Form EIA-782B is generally available from other public sources and it takes approximately six to ten hours to complete.<sup>14</sup>

Based upon a review of the Sapp Brothers Application, we concluded that there was not sufficient information to permit us to act favorably on the exception request. Therefore, we contacted Sapp Brothers to give the firm an opportunity to discuss the request.<sup>15</sup> Mr. Musil stated the firm has 15 different business

---

<sup>9</sup> *Glenn W. Wagoner Oil Co.*, 16 DOE ¶ 81,024 (1987).

<sup>10</sup> *Mulgrew. Oil Co.*, 20 DOE ¶ 81,009 (1990).

<sup>11</sup> Conversation between Ronald D. Hester, OHA and Tammy Heppner, EIA on November 22, 2005.

<sup>12</sup> Telephone Conversation between Ronald D. Hester, OHA, and Kevin Musil, Sapp Brothers Truck Stop on November 21, 2005.

<sup>13</sup> Sapp Brothers Application for Exception, submitted to OHA on October 26, 2005.

<sup>14</sup> *Id.*

<sup>15</sup> Telephone Conversation between Ronald D. Hester, OHA, and Kevin Musil, Sapp Brothers Truck Stop on November 21, 2005.

locations but only two employees per location. The firm further stated that it is a small entity; there is only one employee at each location available to complete the Form.<sup>16</sup> Furthermore, the firm asserted that it has had to pay overtime to the employees that were responsible for filing Form EIA 782B. In completing the form, the firm does not use estimates.<sup>17</sup>

In reviewing the Sapp Brothers request, we also contacted a representative from the Energy Information Administration (EIA). The EIA representative informed us that Sapp Brothers is a "certainty firm".<sup>18</sup> The representative further stated that certainty firms are of vital importance to the accuracy of the EIA data sample because of their size and extent of the operations.<sup>19</sup>

#### IV. Analysis

Sapp Brothers has not demonstrated that the reporting requirement poses a "special hardship, inequity, or unfair distribution of burdens." Form EIA-782B requires little more than the essential type of pricing, supply, and inventory data that is required to operate a business. The EIA estimates that it should normally take approximately two and one-half hours per month for a firm to fill out EIA-782B.<sup>20</sup> The burden of this requirement can be substantially reduced by the use of estimates.<sup>21</sup> In any case, the fact that Sapp Brothers might require a little more time on average does not justify relief.

Sapp Brother's principal argument -- that the firm should not be required to complete Form EIA-782B because the information required to file is generally available from other public sources -- does not provide the basis for an exception.<sup>22</sup> The information required by firms to complete the monthly reporting requirement is submitted confidentially -- this data is not available from any private, public, or government source.<sup>23</sup> As discussed above, in order to obtain accurate information about the supply and demand for petroleum products, the EIA selects firms at random, may choose the same firm to participate in

---

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> Conversation between Ronald D. Hester, OHA and Tammy Heppner, EIA on November 22, 2005.

<sup>19</sup> *Id.*

<sup>20</sup> See Section 10 of General Instructions to Form EIA- 782B.

<sup>21</sup> See Section 7 of the General Instructions to Form EIA-782B.

<sup>22</sup> Conversation between Ronald D. Hester, OHA and Tammy Heppner, EIA on January 5, 2006.

<sup>23</sup> *Id.*

multiple EIA surveys, and requires data from firms of all sizes. In general, a firm must show that it is adversely affected to a significantly greater degree than other firms of similar size. In the case of certainty firms, such as Sapp Brothers, the requirements to obtain an exception must be compelling.

As the foregoing indicates the firm has not demonstrated that it meets the standards for an exception request. Accordingly, we have determined that the exception request should be denied.

IT IS THEREFORE ORDERED THAT:

- (1) The Application for Exception filed by Sapp Brothers Truck Stop, Case No. TEE-0027, be, and hereby is denied.
- (2) Administrative review of this Decision and Order may be sought by any person who is aggrieved or adversely affected by the denial of exception relief. Such review shall be commenced by filing a petition for review with the Federal Energy Regulatory Commission within 30 days of the date of this Decision and Order pursuant to 18 C.F.R. Part 385, Subpart J.

George B. Breznay  
Director  
Office of Hearings and Appeals

Date: January 23, 2007

December 20, 2005

DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

Application for Exception

Name of Case: Bob Harris Oil Company

Date of Filing: December 5, 2005

Case No.: TEE-0028

On December 5, 2005 Bob Harris Oil Company (Harris) filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). The firm requests that it be relieved of the requirement to prepare and file the Energy Information Administration (EIA) Form EIA-782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report." As explained below, we have determined that the Harris request should be granted.

*I. Background*

The DOE's Energy Information Administration (EIA) is authorized to collect, analyze, and disseminate energy data and other information.<sup>1</sup> This authority was created in response to the shortages of crude oil and petroleum products during the 1970s. In 1979, Congress found that the lack of reliable information concerning the supply, demand, and prices of petroleum products impeded the nation's ability to respond to the oil crisis. It therefore authorized the DOE to collect data on the supply and prices of petroleum products. This information is used to analyze trends within petroleum markets. Summaries of the information and the analyses are published by EIA in publications such as "Petroleum Marketing Monthly." This information is used by Congress and state governments to project trends and to formulate national and state energy policies.

---

<sup>1</sup> 15 U.S.C. § 772(b); 42 U.S.C. § 7135(b).



Form EIA-782B requests information from resellers and retailers of motor gasoline, No. 2 distillates, propane, and residual fuel oil. The form requests volume and price information for retail and wholesale sales.

In order to minimize the reporting burden, the EIA periodically selects a relatively small sample of companies to file Form EIA-782B<sup>2</sup>. The form allows reporting volumes in thousands of gallons. Estimates can be used; however the basis must be consistent with the standard accounting records maintained by the firm.<sup>3</sup>

## II. Exception Criteria

OHA has authority to grant exception relief where the reporting requirement causes a "special hardship, inequity, or unfair distribution of burdens."<sup>4</sup> Since all reporting firms are burdened to some extent by reporting requirements, exception relief is appropriate only where a firm can demonstrate that it is adversely affected by the reporting requirement in a way that differs significantly from similar reporting firms.

The following examples illustrate some of the circumstances that may justify relief from the reporting requirement. We have granted exceptions where: the applicant's financial condition is so precarious that the additional burden of meeting the DOE reporting requirements threatens its continued viability;<sup>5</sup> the only person capable of preparing the report is ill and the firm cannot afford to hire

---

<sup>2</sup> Firms that account for over five percent of the sales of any particular product in a state are always included in the sample of firms required to file the form. A random sample of other firms is also selected. This random sample changes approximately every 24 to 30 months, but a firm may be reselected for subsequent samples. A firm that has been included in three consecutive random samples will generally not be included in a fourth consecutive sample, but may be included in a later sample.

<sup>3</sup> Form EIA-782B stipulates that the firm must make a good faith effort to provide reasonably accurate information that is consistent with the accounting records maintained by the firm. The firm must alert the EIA if the estimates are later found to be materially different from actual data.

<sup>4</sup> 42 U.S.C. § 7194(a); see 10 C.F.R. § 1003.25(b)(2).

<sup>5</sup> *Mico Oil Co.*, 23 DOE ¶ 81,015 (1994) (firm lost one million dollars over previous three years); *Deaton Oil Co.*, 16 DOE ¶ 81,026 (1987) (firm in bankruptcy).

outside help;<sup>6</sup> extreme or unusual circumstances disrupt a firm's activities;<sup>7</sup> and a combination of factors render the reporting requirement an undue burden.<sup>8</sup>

At the same time, when considering a request for exception relief, we must weigh the firm's difficulty in complying with the reporting requirement against the nation's need for reliable energy data. We have determined that mere inconvenience does not constitute a sufficient hardship to warrant relief.<sup>9</sup> Moreover, the fact that a firm is relatively small or that it has filed reports for a number of years does not alone constitute grounds for exception relief.<sup>10</sup> If firms of all sizes, both large and small, are not included, the estimates and projections generated by the EIA's statistical sample will be unreliable.<sup>11</sup>

### *III. The Harris Application for Exception*

Harris is a small retailer of motor gasoline located in Cleburne, Texas and was selected by EIA as a member of a sample group required to file Form EIA-782B beginning in August 2004. According to its submission, there are six employees located at the central office, but one of the employees suffers from a serious illness, and another is assisting with his care.<sup>12</sup> As a result, Harris has encountered difficulty in maintaining its business operations.

---

<sup>6</sup> *S&S Oil & Propane Co.*, 21 DOE ¶ 81,006 (1991) (owner being treated for cancer); *Midstream Fuel Serv.*, 24 DOE ¶ 81,023 (three-month extension of time to file reports granted when two office employees simultaneously on maternity leave); *Eastern Petroleum Corp.*, 14 DOE ¶ 81,011 (1986) (two months relief granted when computer operator broke wrist).

<sup>7</sup> *Little River Village Campground Inc.*, 24 DOE ¶ 81,033 (1994) (five months relief because of flood); *Utilities Bd. Of Citronelle-Gas*, 4 DOE ¶ 81,025 (1979) (hurricane); *Meier Oil Serv.*, 14 DOE ¶ 81,004 (1986) (three months where disruptions caused by installation of a new computer system left firm's records inaccessible).

<sup>8</sup> *Ward Oil Co.*, 24 DOE ¶ 81,002 (1994) (exception relief for 10 months was granted where personnel shortages, financial difficulties, and administrative problems resulted from the long illness and death of a partner).

<sup>9</sup> *Glenn W. Wagoner Oil Co.*, 16 DOE ¶ 81,024 (1987).

<sup>10</sup> See Section 10 of General Instructions to Form EIA-782B.

<sup>11</sup> *Mulgrew Oil Co.*, 20 DOE ¶ 81,009 (1990).

<sup>12</sup> *Bob Harris Oil Application for Exception*, submitted to OHA on December 5, 2005.

In order to fully consider the Harris request and solicit any pertinent additional information, we contacted the firm by telephone. We were advised that, as a result of the employee's illness, the firm is severely short-handed and overwhelmed by the workload.<sup>13</sup>

#### *IV. Analysis*

We have carefully examined the Harris Application for Exception and have concluded that exception relief is warranted. The firm has experienced drastic changes in recent periods and is struggling to maintain its business operations with limited personnel. Accordingly, the requirement to prepare and file Form EIA-782B at this point would be unduly burdensome. In making this determination, we have considered the public interest in the information in the firm's EIA-782B, but concluded that the firm's personnel shortage warrants a temporary exception until November 2006.

IT IS THEREFORE ORDERED THAT:

- (1) The Application for Exception filed by Bob Harris Oil Company, Case No. TEE-0028, be, and hereby is granted as set forth in Paragraph (2) below.
- (2) Bob Harris Oil Company is relieved of the requirement to file the EIA-782B report for the period of November 2005 to November 2006.

George B. Breznay  
Director  
Office of Hearings and Appeals

Date: December 20, 2005

---

<sup>13</sup> Telephone conversation between Ronald D. Hester, OHA, and Martha Harris, Bob Harris Oil Co., December 6, 2005.

March 29, 2006

DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

Application for Exception

Name of Case: Bell Fuels, Inc.

Date of Filing: January 3, 2006

Case No.: TEE-0029

On January 3, 2006, Bell Fuels, Inc. filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). In its application, the firm requests that it be relieved of the requirement to file Form EIA-782B, entitled "Resellers/Retailers' Monthly Petroleum Product Sales Report," and Form EIA-821, entitled "Annual Fuel Oil and Kerosene Report." As explained below, we have determined the Bell Fuels request should be denied.

*I. Background*

The DOE's Energy Information Administration (EIA) is authorized to collect, analyze, and disseminate energy data and other information.<sup>1</sup> The EIA-782B and EIA-821 reporting requirements grew out of the shortages of crude oil and petroleum products during the 1970s. In 1979, Congress found that the lack of reliable information concerning the supply, demand, and prices of petroleum products impeded the nation's ability to respond to the oil crisis. It therefore authorized the DOE to collect data on the supply and prices of petroleum products. This information is used to analyze trends within petroleum markets. Summaries of the information and the analyses are reported by EIA in publications such as "Petroleum Marketing Monthly." This information is used by Congress and state governments to project trends and to formulate national and state energy

---

<sup>1</sup> 15 U.S.C. § 772(b); 42 U.S.C. § 7135(b).

policies. Access to this data is vital to the nation's ability to anticipate and respond to potential energy shortages.<sup>2</sup>

Form EIA-782B is a monthly report, pursuant to which resellers and retailers report the volume and price of sales of motor gasoline, No. 2 distillates, and propane. In order to minimize the reporting burden, the EIA permits reporting firms to rely on reasonable estimates.<sup>3</sup>

Form EIA-821 is a yearly report, pursuant to which fuel oil distributors report sales volumes of fuel oil and kerosene. Survey results are published in the EIA "Fuel Oil and Kerosene Sales" report and in the "State Energy Data Report." These materials are available to the general public as well as to the petroleum industry. The data are also used by the DOE and other government agencies in determining current and projected fuel oil needs on a national, regional, and statewide basis. Again, in order to minimize the reporting burden, the EIA permits the reporting firms to rely on reasonable estimates.<sup>4</sup>

EIA designates some companies as "certainty" firms. A company is designated as such because it either (a) sells five percent or more of a particular product sales category in a state in which it does business, or (b) does business in four or more states. All certainty firms are included in the survey sample on a continuing basis because of their impact on the market. EIA examines the data that these companies submit more closely and considers the data more instructive in gauging market trends than data submitted by smaller firms. The continuity of the surveys cannot be maintained by replacing a certainty firm with a similar company since all companies of this kind are already survey participants.

## *II. Exception Criteria*

OHA has authority to grant exception relief where the reporting requirement causes a "special hardship, inequity, or unfair distribution of burdens."<sup>5</sup> Since all reporting firms are

---

<sup>2</sup> See H.R. Rep. NO. 373, 96th Cong., 1st Sess., *reprinted in* 1979 U.S. Code Cong. & Admin. News 1764, 1781 (H.R. Report 373).

<sup>3</sup> Form EIA-782B stipulates that the firm must make a good faith effort to provide reasonably accurate information that is consistent with the accounting records maintained by the firm. The firm must alert the EIA if the estimates are later found to be materially different from actual data.

<sup>4</sup> See Section 7 of the General Instructions to Form EIA-782B.

<sup>5</sup> 42 U.S.C. § 7194(a); see 10 C.F.R. § 1003.25(b)(2).

burdened to some extent by reporting requirements, exception relief is appropriate only where a firm can demonstrate that it is adversely affected by the reporting requirement in a way that differs significantly from similar reporting firms.

The following examples illustrate some of circumstances that may justify relief from the reporting requirement. We have granted exceptions where: the applicant's financial condition is so precarious that the additional burden of meeting the DOE reporting requirements threatens its continued viability;<sup>6</sup> the only person capable of preparing the report is ill and the firm cannot afford to hire outside help;<sup>7</sup> extreme or unusual circumstances disrupt a firm's activities;<sup>8</sup> a combination of factors render the reporting requirement an undue burden.<sup>9</sup>

On the other hand, when considering a request for exception relief, we must weigh the firm's difficulty in complying with the reporting requirement against the nation's need for reliable energy data. Inconvenience alone does not constitute a hardship warranting relief.<sup>10</sup> Neither does the fact that a firm is relatively small or that it has filed reports for a number of years constitute grounds for exception relief. If firms of all sizes, both large and small, are not included, the estimates and projections generated by the EIA's statistical sample will be unreliable.<sup>11</sup>

---

<sup>6</sup> *Mico Oil Co.*, 23 DOE ¶ 81,015 (1994) (firm lost one million dollars over previous three years); *Deaton Oil Co.*, 16 DOE ¶ 81,026 (1987) (firm in bankruptcy).

<sup>7</sup> *S&S Oil & Propane Co.*, 21 DOE ¶ 81,006 (1991) (owner being treated for cancer); *Midstream Fuel Serv.*, 24 DOE ¶ 81,023 (three month extension of time to file reports granted when two office employees simultaneously on maternity leave); *Eastern Petroleum Corp.*, 14 DOE ¶ 81,011 (1986) (two months relief granted when computer operator broke wrist).

<sup>8</sup> *Little River Village Campground, Inc.*, 24 DOE ¶ 81,033 (1994) (five months relief because of flood); *Utilities Bd. of Citronelle-Gas*, 4 DOE ¶ 81,205 (1979) (hurricane); *Meier Oil Serv.*, 14 DOE ¶ 81,004 (1986) (three months where disruptions caused by installation of a new computer system left firm's records inaccessible).

<sup>9</sup> *Ward Oil Co.*, 24 DOE ¶ 81,002 (1994) (exception relief for 10 months was granted where personnel shortages, financial difficulties, and administrative problems resulted from the long illness and death of a partner).

<sup>10</sup> *Glenn W. Wagoner Oil Co.*, 16 DOE ¶ 81,024 (1987).

<sup>11</sup> *Mulgrew. Oil Co.*, 20 DOE ¶ 81,009 (1990).

### *III. The Bell Fuels Application for Exception*

Bell Fuels is a publicly-owned seller of petroleum products headquartered in Chicago, Illinois. Bell Fuels has filed Form EIA-782B each month since 1993.<sup>12</sup> The firm has filed Form EIA-821 on an annual basis since 1986.<sup>13</sup> According to Bell Fuels, these reporting requirements together present an undue burden.<sup>14</sup> Bell Fuels stated it has recently relocated and lost employees.<sup>15</sup> Bell Fuels stated it is a small entity, and there is only one person available to prepare and file both reports.<sup>16</sup>

Based upon a review of the Bell Fuels application, we concluded that there was not sufficient information to permit us to act favorably on the request. Therefore, we contacted Bell Fuels to give the firm an opportunity to discuss the request. The firm stated that the credit manager and tax manager have recently left the firm.<sup>17</sup> Bell Fuels also stated that completing the forms is time-consuming and that the firm has completed the forms for a number of years.<sup>18</sup>

We also contacted representatives from the Energy Information Administration (EIA) and obtained the following information. Bell Fuels is a "certainty firm" -- a firm that (i) sells 5 percent or more of a particular product sales category in a state in which it does business or (ii) does business in four or more states.<sup>19</sup> Certainty firms are of great importance to the accuracy of the data samples because of the size and extent of their operations.<sup>20</sup> Accordingly, in order for a certainty firm to receive an exception, the firm must make a compelling showing that the filing requirement imposes a "serious hardship, inequity, or unfair distribution of burdens."

---

<sup>12</sup> Conversation between Ronald D. Hester, OHA and Tammy Heppner, EIA on January 13, 2006.

<sup>13</sup> Conversation between Ronald D. Hester, OHA and Daniel Walzer, EIA on January 13, 2006.

<sup>14</sup> Bell Fuels, Inc. Application for Exception, submitted to OHA on January 3, 2006.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> Conversation between Ronald D. Hester, OHA and Eugene L. Andres, Bell Fuels, Inc. on February 6, 2006.

<sup>18</sup> *Id.*

<sup>19</sup> Conversation between Ronald D. Hester, OHA and Tammy Heppner, EIA on January 13, 2006.

<sup>20</sup> *Id.*

#### IV. Analysis

Bell Fuels has not demonstrated that the reporting requirements -- together or separately -- pose a "special hardship, inequity, or unfair distribution of burdens." The forms require little more than the essential type of pricing, supply, and inventory data that is required to operate a business. The EIA estimates that it should normally take approximately 2.5 hours per month for a firm to fill out Form EIA-782B and 3.2 hours to fill out Form EIA-821.<sup>21</sup> The burden of these requirements can be substantially reduced by the use of estimates.<sup>22</sup> In any case, the fact that Bell Fuels might require a little more time on average does not justify relief.

Bell Fuels' principal argument -- that the firm has filed the forms for a number of years and has downsized - does not provide the basis for an exception.<sup>23</sup> As indicated above, all certainty firms are included in the survey sample on a continuing basis because of their impact on the market. The continuity of the survey cannot be maintained by replacing a certainty firm with a similar firm since all companies of this kind already participate. Accordingly, the fact that a firm has filed for a number of years and has limited staff does not indicate that the reporting requirements adversely affect the firm in a manner that is disproportionate to their impact on other reporting firms.<sup>24</sup>

As the foregoing indicates the firm has not demonstrated that it meets the standards for exception relief. Accordingly, we have determined that the exception request should be denied.

IT IS THEREFORE ORDERED THAT:

- (1) The Application for Exception filed by Bell Fuels, Inc., Case No. TEE-0029, be, and hereby is, denied.

---

<sup>21</sup> See Section 10 of General Instructions to Form EIA- 782B & Section 7 of General Instructions to Form EIA-821.

<sup>22</sup> See Section 7 of the General Instructions to Form EIA-782B.

<sup>23</sup> See *Mulgrew Oil Co.*, 20 DOE ¶ 81,009 (1990) (providing that if firms of all sizes, both large and small, are not included, the estimates and projections generated by the EIA's statistical sample will be unreliable); see also *Taylor Oil Co.*, 27 DOE ¶ 81,010 (2000) (relief denied where the firm had participated in filing the reports for many years).

<sup>24</sup> See *Patriot Petroleum Inc.*, 26 DOE ¶ 81,018 (1997); *Sound Oil Co.*, Case No. LEE-0152 (1994).



(2) Administrative review of this Decision and Order may be sought by any person who is aggrieved or adversely affected by the denial of exception relief. Such review shall be commenced by filing a petition for review with the Federal Energy Regulatory Commission within 30 days of the date of this Decision and Order pursuant to 18 C.F.R. Part 385, Subpart J.

George B. Breznay  
Director  
Office of Hearings and Appeals

Date: March 29, 2006

April 14, 2006

DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

Application for Exception

Name of Case: Lykins Oil Company

Date of Filing: January 12, 2006

Case No.: TEE-0030

On January 12, 2006, Lykins Oil Company (Lykins) filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). The firm requests that it be relieved of the requirement to prepare and file the Energy Information Administration (EIA) Form EIA-782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report," for the months August 2005 through September 2006. As explained below, we have determined that the Lykins request should be granted in part.

*I. Background*

The DOE's Energy Information Administration (EIA) is authorized to collect, analyze, and disseminate energy data and other information.<sup>1</sup> The EIA-782B reporting requirement grew out of the shortages of crude oil and petroleum products during the 1970s. In 1979, Congress found that the lack of reliable information concerning the supply, demand, and prices of petroleum products impeded the nation's ability to respond to the oil crisis. It therefore authorized the DOE to collect data on the supply and prices of petroleum products. This information is used to analyze trends within petroleum markets. Summaries of the information and the analyses are reported by EIA in publications such as "Petroleum Marketing Monthly." This information is used by Congress and state governments to project trends and to formulate national and state energy policies. Access to this data is vital to the nation's

---

<sup>1</sup> 15 U.S.C. § 772(b); 42 U.S.C. § 7135(b).

ability to anticipate and respond to potential energy shortages.<sup>2</sup>

Form EIA-782B is a monthly report, pursuant to which resellers and retailers report the volume and price of sales of motor gasoline, No. 2 distillates, and propane. In order to minimize the reporting burden, the EIA periodically selects a relatively small sample of companies to file Form EIA-782B<sup>3</sup> and permits reporting firms to rely on reasonable estimates.<sup>4</sup>

EIA designates some companies as "certainty" firms. A company is designated as such because it either (a) sells five percent or more of a particular product sales category in a state in which it does business, or (b) does business in four or more states. All certainty firms are included in the survey sample on a continuing basis because of their impact on the market. EIA examines the data that these companies submit more closely and considers the data more instructive in gauging market trends than data submitted by smaller firms. The continuity of the surveys cannot be maintained by replacing a certainty firm with a similar company since all companies of this kind are already survey participants.

## *II. Exception Criteria*

OHA has authority to grant exception relief where the reporting requirement causes a "special hardship, inequity, or unfair distribution of burdens."<sup>5</sup> Since all reporting firms are burdened to some extent by reporting requirements, exception relief is appropriate only where a firm can demonstrate that it is adversely affected by the

---

<sup>2</sup> See H.R. Rep. NO. 373, 96th Cong., 1st Sess., reprinted in 1979 U.S. Code Cong. & Admin. News 1764, 1781 (H.R. Report 373).

<sup>3</sup> Firms that account for over five percent of the sales of any particular product in a state are always included in the sample of firms required to file the form. A random sample of other firms is also selected. This random sample changes approximately every 24 to 30 months, but a firm may be reselected for subsequent samples. A firm that has been included in three consecutive random samples will generally not be included in a fourth consecutive sample, but may be included in a later sample.

<sup>4</sup> Form EIA-782B stipulates that the firm must make a good faith effort to provide reasonably accurate information that is consistent with the accounting records maintained by the firm. The firm must alert the EIA if the estimates are later found to be materially different from actual data.

<sup>5</sup> 42 U.S.C. § 7194(a); see 10 C.F.R. § 1003.25(b)(2).

reporting requirement in a way that differs significantly from similar reporting firms.

The following examples illustrate some of the circumstances that may justify relief from the reporting requirement. We have granted exceptions where: the applicant's financial condition is so precarious that the additional burden of meeting the DOE reporting requirements threatens its continued viability;<sup>6</sup> the only person capable of preparing the report is ill and the firm cannot afford to hire outside help;<sup>7</sup> extreme or unusual circumstances disrupt a firm's activities;<sup>8</sup> a combination of factors render the reporting requirement an undue burden.<sup>9</sup>

On the other hand, when considering a request for exception relief, we must weigh the firm's difficulty in complying with the reporting requirement against the nation's need for reliable energy data. Inconvenience alone does not constitute a hardship warranting relief.<sup>10</sup> Neither does the fact that a firm is relatively small or that it has filed reports for a number of years constitute grounds for exception relief. If firms of all sizes, both large and small, are not included, the estimates and projections generated by the EIA's statistical sample will be unreliable.<sup>11</sup>

---

<sup>6</sup> *Mico Oil Co.*, 23 DOE ¶ 81,015 (1994) (firm lost one million dollars over previous three years); *Deaton Oil Co.*, 16 DOE ¶ 81,026 (1987) (firm in bankruptcy).

<sup>7</sup> *S&S Oil & Propane Co.*, 21 DOE ¶ 81,006 (1991) (owner being treated for cancer); *Midstream Fuel Serv.*, 24 DOE ¶ 81,023 (three month extension of time to file reports granted when two office employees simultaneously on maternity leave); *Eastern Petroleum Corp.*, 14 DOE ¶ 81,011 (1986) (two months relief granted when computer operator broke wrist).

<sup>8</sup> *Little River Village Campground, Inc.*, 24 DOE ¶ 81,033 (1994) (five months relief because of flood); *Utilities Bd. of Citronelle-Gas*, 4 DOE ¶ 81,205 (1979) (hurricane); *Meier Oil Serv.*, 14 DOE ¶ 81,004 (1986) (three months where disruptions caused by installation of a new computer system left firm's records inaccessible).

<sup>9</sup> *Ward Oil Co.*, 24 DOE ¶ 81,002 (1994) (exception relief for 10 months was granted where personnel shortages, financial difficulties, and administrative problems resulted from the long illness and death of a partner).

<sup>10</sup> *Glenn W. Wagoner Oil Co.*, 16 DOE ¶ 81,024 (1987).

<sup>11</sup> *Mulgrew Oil Co.*, 20 DOE ¶ 81,009 (1990).

### *III. Lykins' Application for Exception*

Lykins filed its exception application in January 2006.<sup>12</sup> Based upon a review of the application, we concluded that there was not sufficient information to permit us to act favorably on the request. Therefore, we contacted Lykins to give the firm an opportunity to discuss the request.<sup>13</sup> In a February 28, 2006 letter, Lykins supplemented its application.<sup>14</sup>

Lykins is a seller of petroleum products headquartered in Milford, Ohio. Lykins has filed Form EIA-782B each month since 1999.<sup>15</sup> Lykins states that prior to August 2005, it had eight employees in its accounting department.<sup>16</sup> Lykins states that the two employees, who prepared Form EIA-782B, abruptly left the firm.<sup>17</sup> The firm further states that a third employee needed temporary leave from work to care for an ill family member.<sup>18</sup> The firm states that, as a result, it has not been able to file Form EIA-782B. Finally, the firm states that it is in the process of hiring additional employees, one of whom will be assigned responsibility for the reporting requirement.<sup>19</sup>

In the course of considering the Lykins application, we also contacted a representative from the Energy Information Administration (EIA) and obtained the following information. Lykins Oil Company is a "certainty firm" -- a firm that (i) sells 5 percent or more of a particular product sales category in a state in which it does business or (ii) does business in four or more states.<sup>20</sup> Certainty firms are of great importance to the accuracy of the data samples because of the size and extent of their

---

<sup>12</sup> Lykins Oil Company Application for Exception, submitted to OHA on January 12, 2006.

<sup>13</sup> Letter from Ronald D. Hester, OHA to Mr. Robert J. Manning, Lykins Oil Company, dated February 13, 2006.

<sup>14</sup> Letter from Julie Jump c/o Mr. Robert J. Manning to Ronald D. Hester, OHA, dated February 28, 2006.

<sup>15</sup> Conversation between Ronald D. Hester, OHA and Tammy Heppner, EIA on January 13, 2006.

<sup>16</sup> Letter from Julie Jump c/o Mr. Robert J. Manning to Ronald D. Hester, OHA, dated February 28, 2006.

<sup>17</sup> *Id.*

<sup>18</sup> Lykins Oil Company Application for Exception, submitted to OHA on January 12, 2006.

<sup>19</sup> *Id.*

<sup>20</sup> Conversation between Ronald D. Hester, OHA and Tammy Heppner, EIA on January 13, 2006.

operations.<sup>21</sup> Accordingly, in order for a certainty firm to receive an exception, the firm must make a compelling showing that the filing requirement imposes a "serious hardship, inequity, or unfair distribution of burdens."

#### IV. Analysis

We have carefully examined the Lykins Application for Exception and have concluded that exception relief is warranted. The firm has experienced an abrupt, significant loss of personnel and is attempting to correct that situation. Retroactive exception relief (i.e. for the months August 2005 through March 2006) is not, however, appropriate. We grant retroactive exception relief with respect to these filing requirements only when the burden and hardship are outside the realm of ordinary business conditions experienced by those firms required to complete Form EIA-782B. For example, we granted retroactive relief where a condemnation action greatly disrupted a firm's business activities and ultimately required the divestiture of most of its business.<sup>22</sup> In contrast, Lykins has experienced a temporary staffing shortage. Accordingly, relief will be limited to a temporary prospective exception for the months April 2006 through September 2006.

IT IS THEREFORE ORDERED THAT:

- (1) The Application for Exception filed by Lykins Oil Company, Case No. TEE-0030, be, and hereby is, granted in part as set forth in Paragraph (2) below.
- (2) Lykins Oil Company is relieved of the requirement to file the EIA-782B report for the months April 2006 through September 2006.
- (3) To the extent that the Application is denied, administrative review of this Decision and Order may be sought by any person who is aggrieved or adversely affected by the denial of exception relief. Such review shall be commenced by filing a petition for review with the Federal Energy Regulatory Commission within 30 days of the date

---

<sup>21</sup> *Id.*

<sup>22</sup> See, e.g., *W. Gordon Smith Company*, Case No. VEE-0037 (1997), <http://www.oha.doe.gov/cases/eia/vee0037.htm>

of this Decision and Order pursuant to 18 C.F.R.  
Part 385, Subpart J.

George B. Breznay  
Director  
Office of Hearings and Appeals

Date: April 14, 2006

April 24, 2006

DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

Application for Exception

Name of Case: American Energy  
Date of Filing: January 23, 2006  
Case No.: TEE-0031

On January 23, 2006, American Energy filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). The firm requests that it be relieved of the requirement to prepare and file the Energy Information Administration (EIA) Form EIA-782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report." As explained below, we have determined that the American Energy request should be denied.

*I. Background*

The DOE's Energy Information Administration (EIA) is authorized to collect, analyze, and disseminate energy data and other information.<sup>1</sup> The EIA-782B reporting requirement grew out of the shortages of crude oil and petroleum products during the 1970s. In 1979, Congress found that the lack of reliable information concerning the supply, demand, and prices of petroleum products impeded the nation's ability to respond to the oil crisis. It therefore authorized the DOE to collect data on the supply and prices of petroleum products. This information is used to analyze trends within petroleum markets. Summaries of the information and the analyses are reported by EIA in publications such as "Petroleum Marketing Monthly." This information is used by Congress and state governments to project trends and to formulate national and state energy policies. Access to this data is vital to the nation's

---

<sup>1</sup> 15 U.S.C. § 772(b); 42 U.S.C. § 7135(b).



ability to anticipate and respond to potential energy shortages.<sup>2</sup>

Form EIA-782B is a monthly report, pursuant to which resellers and retailers report the volume and price of sales of motor gasoline, No. 2 distillates, and propane. In order to minimize the reporting burden, the EIA periodically selects a relatively small sample of companies to file Form EIA-782B<sup>3</sup> and permits reporting firms to rely on reasonable estimates.<sup>4</sup>

## *II. Exception Criteria*

OHA has authority to grant exception relief where the reporting requirement causes a "special hardship, inequity, or unfair distribution of burdens."<sup>5</sup> Since all reporting firms are burdened to some extent by reporting requirements, exception relief is appropriate only where a firm can demonstrate that it is adversely affected by the reporting requirement in a way that differs significantly from similar reporting firms.

The following examples illustrate some of the circumstances that may justify relief from the reporting requirement. We have granted exceptions where: the applicant's financial condition is so precarious that the additional burden of meeting the DOE reporting requirements threatens its continued viability;<sup>6</sup> the only person capable of preparing the report is ill and the firm cannot afford to hire

---

<sup>2</sup> See H.R. Rep. NO. 373, 96th Cong., 1st Sess., reprinted in 1979 U.S. Code Cong. & Admin. News 1764, 1781 (H.R. Report 373).

<sup>3</sup> Firms that account for over five percent of the sales of any particular product in a state are always included in the sample of firms required to file the form. A random sample of other firms is also selected. This random sample changes approximately every 24 to 30 months, but a firm may be reselected for subsequent samples. A firm that has been included in three consecutive random samples will generally not be included in a fourth consecutive sample, but may be included in a later sample.

<sup>4</sup> Form EIA-782B stipulates that the firm must make a good faith effort to provide reasonably accurate information that is consistent with the accounting records maintained by the firm. The firm must alert the EIA if the estimates are later found to be materially different from actual data.

<sup>5</sup> 42 U.S.C. § 7194(a); see 10 C.F.R. § 1003.25(b)(2).

<sup>6</sup> *Mico Oil Co.*, 23 DOE ¶ 81,015 (1994) (firm lost one million dollars over previous three years); *Deaton Oil Co.*, 16 DOE ¶ 81,026 (1987) (firm in bankruptcy).

outside help;<sup>7</sup> extreme or unusual circumstances disrupt a firm's activities;<sup>8</sup> a combination of factors renders the reporting requirement an undue burden.<sup>9</sup>

On the other hand, when considering a request for exception relief, we must weigh the firm's difficulty in complying with the reporting requirement against the nation's need for reliable energy data. Inconvenience alone does not constitute a hardship warranting relief.<sup>10</sup> Neither does the fact that a firm is relatively small or that it has filed reports for a number of years constitute grounds for exception relief. If firms of all sizes, both large and small, are not included, the estimates and projections generated by the EIA's statistical sample will be unreliable.<sup>11</sup>

### *III. The American Energy Application for Exception*

American Energy filed its exception application in January 2006.<sup>12</sup> Based upon a review of the application, we concluded that there was not sufficient information to permit us to act favorably on the request. We offered American Energy the opportunity to submit additional information, but it did not do so.<sup>13</sup>

American Energy is a publicly-owned seller of petroleum products headquartered in Bend, Oregon. EIA has advised us that American Energy has filed Form EIA-782B each month

---

<sup>7</sup> *S&S Oil & Propane Co.*, 21 DOE ¶ 81,006 (1991) (owner being treated for cancer); *Midstream Fuel Serv.*, 24 DOE ¶ 81,023 (three month extension of time to file reports granted when two office employees simultaneously on maternity leave); *Eastern Petroleum Corp.*, 14 DOE ¶ 81,011 (1986) (two months relief granted when computer operator broke wrist).

<sup>8</sup> *Little River Village Campground, Inc.*, 24 DOE ¶ 81,033 (1994) (five months relief because of flood); *Utilities Bd. of Citronelle-Gas*, 4 DOE ¶ 81,205 (1979) (hurricane); *Meier Oil Serv.*, 14 DOE ¶ 81,004 (1986) (three months where disruptions caused by installation of a new computer system left firm's records inaccessible).

<sup>9</sup> *Ward Oil Co.*, 24 DOE ¶ 81,002 (1994) (exception relief for 10 months was granted where personnel shortages, financial difficulties, and administrative problems resulted from the long illness and death of a partner).

<sup>10</sup> *Glenn W. Wagoner Oil Co.*, 16 DOE ¶ 81,024 (1987).

<sup>11</sup> *Mulgrew Oil Co.*, 20 DOE ¶ 81,009 (1990).

<sup>12</sup> Conversation between Ronald D. Hester, OHA and Tammy Heppner, EIA on January 27, 2006.

<sup>13</sup> Letter from Ronald D. Hester, OHA to Mr. Greg Vernon, American Energy, dated February 16, 2006.

since 2004.<sup>14</sup> American Energy states that their accounting manager recently left the firm.<sup>15</sup> The firm further states that they have replaced two of their five clerical staff in the last six months.<sup>16</sup> Finally, the firm states that the new employees need to be trained on how to complete Form EIA-782B.<sup>17</sup>

#### *IV. Analysis*

The Form EIA-782B reporting burden is not onerous. Form EIA-782B requires little more than the essential type of pricing, supply, and inventory data that is required to operate a business. The EIA estimates that it should normally take approximately two and one-half hours per month for a firm to fill out EIA-782B.<sup>18</sup> The burden of this requirement can be substantially reduced by the use of estimates.<sup>19</sup>

American Energy's argument -- that the firm needs to train new employees -- does not indicate that the firm is experiencing a burden significantly greater than that experienced by other firms who are required to file.<sup>20</sup> The firm has not argued, let alone demonstrated, that it has experienced the type of abrupt, disruptive personnel changes that warrant relief. As discussed above, in order to obtain accurate information about the supply and demand for petroleum products, the EIA selects firms at random, may choose the same firm to participate in multiple EIA surveys, and requires data from firms of all sizes. Firms are periodically rotated in and out of the EIA survey pool and those that are not chosen during one rotation may be selected to participate as part of a subsequent sample.

---

<sup>14</sup> Conversation between Ronald D. Hester, OHA and Tammy Heppner, EIA on January 27, 2006.

<sup>15</sup> The American Energy Application for Exception, submitted to OHA on January 23, 2006.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> See Section 10 of General Instructions to Form EIA- 782B.

<sup>19</sup> See Section 7 of the General Instructions to Form EIA-782B.

<sup>20</sup> See *Mulgrew Oil Co.*, 20 DOE ¶ 81,009 (1990) (providing that if firms of all sizes, both large and small, are not included, the estimates and projections generated by the EIA's statistical sample will be unreliable); see also *Taylor Oil Co.*, 27 DOE ¶ 81,010 (2000) (relief denied where the firm had participated in filing the reports for many years).

As the foregoing indicates the firm has not demonstrated that it meets the standards for exception relief. Accordingly, we have determined that the exception request should be denied.

IT IS THEREFORE ORDERED THAT:

- (1) The Application for Exception filed by American Energy, Case No. TEE-0031, be, and hereby is, denied.
- (2) Administrative review of this Decision and Order may be sought by any person who is aggrieved or adversely affected by the denial of exception relief. Such review shall be commenced by filing a petition for review with the Federal Energy Regulatory Commission within 30 days of the date of this Decision and Order pursuant to 18 C.F.R. Part 385, Subpart J.

George B. Breznay  
Director  
Office of Hearings and Appeals

Date: April 24, 2006

April 27, 2006

DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

Application for Exception

Name of Case: Snider Petroleum

Date of Filing: January 27, 2006

Case No.: TEE-0032

On January 27, 2006, Snider Petroleum filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). The firm requests that it be relieved of the requirement to prepare and file the Energy Information Administration (EIA) Form EIA-782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report." As explained below, we have determined that the Snider Petroleum request should be denied.

*I. Background*

The DOE's Energy Information Administration (EIA) is authorized to collect, analyze, and disseminate energy data and other information.<sup>1</sup> The EIA-782B reporting requirement grew out of the shortages of crude oil and petroleum products during the 1970s. In 1979, Congress found that the lack of reliable information concerning the supply, demand, and prices of petroleum products impeded the nation's ability to respond to the oil crisis. It therefore authorized the DOE to collect data on the supply and prices of petroleum products. This information is used to analyze trends within petroleum markets. Summaries of the information and the analyses are reported by EIA in publications such as "Petroleum Marketing Monthly." This information is used by Congress and state governments to project trends and to formulate national and state energy policies. Access to this data is vital to the nation's

---

<sup>1</sup> 15 U.S.C. § 772(b); 42 U.S.C. § 7135(b).

ability to anticipate and respond to potential energy shortages.<sup>2</sup>

Form EIA-782B is a monthly report, pursuant to which resellers and retailers report the volume and price of sales of motor gasoline, No. 2 distillates, and propane. In order to minimize the reporting burden, the EIA periodically selects a relatively small sample of companies to file Form EIA-782B. Certainty firms -- firms that (i) do business in four or more states or (ii) account for over five percent of the sales of any particular product sales category in a state -- are always included in the sample. A stratified random sample of other, "non-certainty" firms is also included. This stratified random sample changes approximately every 24 to 30 months, but a firm may be reselected for subsequent samples. A firm that has been included in three consecutive random samples will generally not be included in a fourth consecutive sample, but may be included in a later sample. Estimates can be used; however the basis must be consistent with the standard accounting records maintained by the firm.<sup>3</sup>

## *II. Exception Criteria*

OHA has authority to grant exception relief where the reporting requirement causes a "special hardship, inequity, or unfair distribution of burdens."<sup>4</sup> Since all reporting firms are burdened to some extent by reporting requirements, exception relief is appropriate only where a firm can demonstrate that it is adversely affected by the reporting requirement in a way that differs significantly from similar reporting firms.

The following examples illustrate some of the circumstances that may justify relief from the reporting requirement. We have granted exceptions where: the applicant's financial condition is so precarious that the additional burden of meeting the DOE reporting requirements threatens its

---

<sup>2</sup> See H.R. Rep. NO. 373, 96th Cong., 1st Sess., reprinted in 1979 U.S. Code Cong. & Admin. News 1764, 1781 (H.R. Report 373).

<sup>3</sup> Form EIA-782B stipulates that the firm must make a good faith effort to provide reasonably accurate information that is consistent with the accounting records maintained by the firm. The firm must alert the EIA if the estimates are later found to be materially different from actual data.

<sup>4</sup> 42 U.S.C. § 7194(a); see 10 C.F.R. § 1003.25(b)(2).

continued viability;<sup>5</sup> the only person capable of preparing the report is ill and the firm cannot afford to hire outside help;<sup>6</sup> extreme or unusual circumstances disrupt a firm's activities;<sup>7</sup> a combination of factors renders the reporting requirement an undue burden.<sup>8</sup>

On the other hand, when considering a request for exception relief, we must weigh the firm's difficulty in complying with the reporting requirement against the nation's need for reliable energy data. Inconvenience alone does not constitute a hardship warranting relief.<sup>9</sup> Neither does the fact that a firm is relatively small or that it has filed reports for a number of years constitute grounds for exception relief. If firms of all sizes, both large and small, are not included, the estimates and projections generated by the EIA's statistical sample will be unreliable.<sup>10</sup>

### *III. The Snider Petroleum Application for Exception*

Snider Petroleum filed its exception application in January 2006.<sup>11</sup> Based upon a review of the application, we concluded that there was not sufficient information to permit us to act favorably on the request. Therefore, we contacted Snider Petroleum to give the firm an opportunity

---

<sup>5</sup> *Mico Oil Co.*, 23 DOE ¶ 81,015 (1994) (firm lost one million dollars over previous three years); *Deaton Oil Co.*, 16 DOE ¶ 81,026 (1987) (firm in bankruptcy).

<sup>6</sup> *S&S Oil & Propane Co.*, 21 DOE ¶ 81,006 (1991) (owner being treated for cancer); *Midstream Fuel Serv.*, 24 DOE ¶ 81,023 (three month extension of time to file reports granted when two office employees simultaneously on maternity leave); *Eastern Petroleum Corp.*, 14 DOE ¶ 81,011 (1986) (two months relief granted when computer operator broke wrist).

<sup>7</sup> *Little River Village Campground, Inc.*, 24 DOE ¶ 81,033 (1994) (five months relief because of flood); *Utilities Bd. of Citronelle-Gas*, 4 DOE ¶ 81,205 (1979) (hurricane); *Meier Oil Serv.*, 14 DOE ¶ 81,004 (1986) (three months where disruptions caused by installation of a new computer system left firm's records inaccessible).

<sup>8</sup> *Ward Oil Co.*, 24 DOE ¶ 81,002 (1994) (exception relief for 10 months was granted where personnel shortages, financial difficulties, and administrative problems resulted from the long illness and death of a partner).

<sup>9</sup> *Glenn W. Wagoner Oil Co.*, 16 DOE ¶ 81,024 (1987).

<sup>10</sup> *Mulgrew Oil Co.*, 20 DOE ¶ 81,009 (1990).

<sup>11</sup> Snider Petroleum Application for Exception, submitted to OHA on January 27, 2006.

to discuss the request.<sup>12</sup> In a March 10, 2006 letter, Snider Petroleum supplemented its application.<sup>13</sup>

Snider Petroleum is a privately-owned seller of petroleum products headquartered in Sumner, Washington. Snider Petroleum states that they are required to file more often than some other firms and their long term participation has caused an undue burden. Snider Petroleum states that the firm has completed the form for much of the past four years.<sup>14</sup>

In the course of considering the Snider Petroleum application, we also contacted a representative from the Energy Information Administration (EIA) and obtained the following information. As a non-certainty firm, Snider Petroleum was randomly selected to report on Sample 12, from October 1996 to February 1999; Sample 14, from January 2002 to July 2004; and Sample 15, from August 2004 to the present.<sup>15</sup> Snider was not included in Sample 13.<sup>16</sup>

#### *IV. Analysis*

The Form EIA-782B reporting burden is not onerous. Form EIA-782B requires little more than the essential type of pricing, supply, and inventory data that is required to operate a business. The EIA estimates that it should normally take approximately two and one-half hours per month for a firm to fill out EIA-782B.<sup>17</sup> The burden of this requirement can be substantially reduced by the use of estimates.<sup>18</sup>

Snider Petroleum's sole argument -- that EIA's sampling results in some non-certainty firms reporting more frequently than others -- does not demonstrate a serious hardship, gross inequity or unfair distribution of burdens.<sup>19</sup> The EIA employs stratified random sample

---

<sup>12</sup> Letter from Ronald Hester, OHA to Mr. Steve Snider, Snider Petroleum, dated February 27, 2006.

<sup>13</sup> Letter from Steve Snider, Snider Petroleum to Ronald Hester, OHA, dated March 10, 2006.

<sup>14</sup> *Id.*

<sup>15</sup> Conversation between Ronald Hester, OHA and Tammy Heppner, EIA on January 27, 2006.

<sup>16</sup> *Id.*

<sup>17</sup> See Section 10 of General Instructions to Form EIA- 782B.

<sup>18</sup> See Section 7 of the General Instructions to Form EIA-782B.

<sup>19</sup> See *Mulgrew Oil Co.*, 20 DOE ¶ 81,009 (1990) (providing that if firms of all sizes, both large and small, are not included, the estimates and



designs<sup>20</sup> in which larger non-certainty firms are more frequently sampled because of the importance of their data. Moreover, the EIA may require the same firm, regardless of size, to participate in multiple EIA surveys. Non-certainty firms -- regardless of size -- are generally not included in more than three consecutive samples. Accordingly, the fact that the firm is now reporting on its second consecutive sample does not mean that the firm is uniquely disadvantaged by the reporting requirement.

As the foregoing indicates the firm has not demonstrated that it meets the standards for exception relief. Accordingly, we have determined that the exception request should be denied.

IT IS THEREFORE ORDERED THAT:

- (1) The Application for Exception filed by Snider Petroleum, Case No. TEE-0032, be, and hereby is, denied.
- (2) Administrative review of this Decision and Order may be sought by any person who is aggrieved or adversely affected by the denial of exception relief. Such review shall be commenced by filing a petition for review with the Federal Energy Regulatory Commission within 30 days of the date of this Decision and Order pursuant to 18 C.F.R. Part 385, Subpart J.

George B. Breznay  
Director  
Office of Hearings and Appeals

Date: April 27, 2006

---

projections generated by the EIA's statistical sample will be unreliable); see also *Taylor Oil Co.*, 27 DOE ¶ 81,010 (2000) (relief denied where the firm had participated in filing the reports for many years).

<sup>20</sup> Letter from Tammy Heppner, EIA to Mr. Steve Snider, Snider Petroleum, dated January 12, 2006.

April 7, 2006

DECISION AND ORDER  
OFFICE OF HEARINGS AND APPEALS

Application for Exception

Case Name: The Kiesel Company  
Date of Filing: February 1, 2006  
Case Number: TEE-0033

On February 1, 2006, The Kiesel Company (Kiesel) of St. Louis, Missouri, filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). Kiesel requests that it be relieved of the requirement to prepare and file the Energy Information Administration (EIA) Form EIA-782B, entitled "Resellers/Retailers' Monthly Petroleum Product Sales Report" (Form EIA-782B). As explained below, we have determined that the Application for Exception should be denied.

**I. Background**

The DOE's Energy Information Administration (EIA) is authorized to collect, analyze, and disseminate energy data and other information.<sup>1</sup> The EIA-782B reporting requirement grew out of the shortages of crude oil and petroleum products during the 1970s. In 1979, Congress determined that the lack of reliable information concerning the supply, demand and prices of petroleum products impeded the nation's ability to respond to the oil crisis. It therefore authorized the DOE to collect data on the supply and prices of petroleum products. This information is used to analyze trends within petroleum markets. Summaries of the information and the analyses are reported by EIA in publications such as "Petroleum Marketing Monthly." This information is used by Congress and state governments to project trends and to formulate national and state energy policies.

EIA designates some companies as certainty firms. A company is designated as such because it either (a) sells five percent or more of a particular product sales category in a state in which it does business, or (b) does business in four or more states.<sup>2</sup> All certainty firms are included in the

---

<sup>1</sup> 15 U.S.C. § 772(b); 42 U.S.C. § 7135(b).

<sup>2</sup> A random sample of other firms is also selected. This random sample changes approximately every 24 to 30 months, but a firm may be reselected for a subsequent sample. A firm that has been included in three consecutive random samples will generally not be included in a fourth consecutive sample, but may be included in a later sample.

survey sample on a continuing basis because of their impact on the market. Thus, the continuity of the surveys cannot be maintained by replacing a certainty firm with a similar company since all companies of this kind are already survey participants. EIA examines the data that these companies submit more closely and considers these data more instructive in gauging market trends than data submitted by smaller firms. In an effort to minimize the burden of preparing the form, EIA permits firms to rely on reasonable estimates.<sup>3</sup>

## II. Exception Criteria

OHA has the authority to grant exception relief where the reporting requirement causes a “serious hardship, gross inequity or unfair distribution of burdens.”<sup>4</sup> Since all reporting firms are burdened to some extent by reporting requirements, exception relief is appropriate only where a firm can demonstrate that it is adversely affected by the reporting requirement in a way that differs significantly from similar reporting firms.

When considering a request for exception relief, we must weigh the firm’s difficulty in complying with the reporting requirement against the nation’s need for reliable energy data. Thus, mere inconvenience does not constitute a hardship warranting relief.<sup>5</sup> Neither does the fact that a firm is relatively small or has filed reports for a number of years constitute a hardship warranting relief.<sup>6</sup> If firms of all sizes, both large and small, are not include in the survey, the estimates and projections generated by EIA’s statistical sample will be unreliable.<sup>7</sup>

OHA has granted relief from the reporting requirement under various circumstances. For example, we have granted relief where: the firm’s financial situation is so precarious that the additional burden of meeting the DOE reporting requirements threatens the firm’s continued viability;<sup>8</sup> the firm’s only employee capable of preparing the report is ill and the firm cannot afford to hire outside help;<sup>9</sup> extreme or unusual circumstances disrupt a firm’s activities;<sup>10</sup> or, a combination of factors resulting from unavoidable circumstances makes completing the form impracticable.<sup>11</sup>

---

<sup>3</sup> The firm must make a good faith effort to provide reasonably accurate information that is consistent with the accounting records maintained by the firm. The firm must alert the EIA if the estimates are later found to be materially different from the actual data.

<sup>4</sup> 42 U.S.C. § 7194; 10 C.F.R. § 1003.25(b)(2).

<sup>5</sup> *Glenn Wagoner Oil Co.*, 16 DOE ¶ 81,024 (1987).

<sup>6</sup> *Mulgrew Oil Co.*, 20 DOE ¶ 81,009 (1990).

<sup>7</sup> *Id.*

<sup>8</sup> *Mico Oil Co.*, 23 DOE ¶ 81,105 (1994) (firm lost one million dollars over previous three years); *Deaton Oil Co.*, 16 DOE 81,206 (1987) (firm in bankruptcy).

<sup>9</sup> *S&S Oil & Propane Co.*, 21 DOE ¶ 81,006 (1991) (owner being treated for cancer); *Midstream Fuel Serv.*, 24 DOE 81,203 (1994) (three month extension of time to file reports granted when two office employees simultaneously on maternity leave); *Eastern Petroleum Corp.*, 14 DOE ¶ 81,011 (1986) (two month extension granted when computer operator broke wrist).

<sup>10</sup> *Little River Village Campground, Inc.*, 24 DOE ¶ 81,033 (1994) (five months relief because of flood); *Utilities Bd. of Citronelle-Gas*, 4 DOE ¶ 81,025 (1979) (hurricane); *Meier Oil Serv.* 14 DOE ¶ 81,004 (1986) (three month extension granted where disruptions caused by installation of new computer system left the firm’s records inaccessible).

<sup>11</sup> *Ward Oil Co.*, 24 DOE ¶ 81,002 (1994) (ten month extension granted where long illness and death of a partner resulted in personnel shortages, financial difficulties and other administrative problems).

### III. The Application for Exception

Kiesel, located in St. Louis, Missouri, is a distributor of petroleum products. Designated as a certainty firm, Kiesel has filed Form EIA-782B since 1993. In its Application for Exception, Kiesel requests relief from the EIA reporting requirement on the grounds that the requirement is unduly burdensome to the company. Kiesel states that it has only one employee who completes Form EIA-782B and that employee has an extremely heavy work load.<sup>12</sup> Kiesel indicates that it takes this employee between one and two days to compile the necessary data and complete the report. According to Kiesel, this becomes expensive and interferes with the company's daily work schedule.<sup>13</sup> Kiesel also maintains that it has participated in filing the form for nearly twenty years and that another company should be required to complete the form in its place.<sup>14</sup>

### IV. Analysis

Exception relief is appropriate where a reporting requirement poses a serious hardship, inequity, or unfair distribution of burdens.<sup>15</sup> In other words, relief is appropriate where the reporting requirement adversely affects the firm to a significantly greater degree than it affects other firms. As stated above, in the case of a certainty firm, this showing must be compelling, because of the significance of the data collected.

In this case, the firm has not argued that it is experiencing serious financial difficulties. Instead, the firm cites the time required to prepare the form, the heavy workload of the individual who prepares the form, and the length of time that the firm has reported. As explained below, these arguments do not indicate that the firm is adversely affected to a significantly greater degree than other firms.

Form EIA-782B requires little more than the essential type of pricing, supply, and inventory data that is required to operate a business. EIA estimates that it should take approximately two and one-half hours per month for a firm to complete Form EIA-782B.<sup>16</sup> To shorten the time it takes to prepare the form, EIA allows the use of estimates.<sup>17</sup> Accordingly, it may be possible for the firm to reduce the time spent to complete the form. In any event, relief is not warranted simply because Kiesel may require more time on average to complete the form. Furthermore, we have consistently ruled that the length of time that a firm has been required to file an EIA form does not alone constitute grounds for exception relief.<sup>18</sup> This is particularly true in the case of a certainty firm. Because of the importance of their data to the nation, certainty firms are always included in the reporting sample. Accordingly, the fact that a certainty firm has reported for a

---

<sup>12</sup> See Memorandum of Telephone Conversation between Lorraine Kiesel and Diane DeMoura, OHA (March 6, 2006).

<sup>13</sup> See Application for Exception.

<sup>14</sup> *Id.*

<sup>15</sup> 42 U.S.C. § 7194; 10 C.F.R. § 1003.25(b)(2).

<sup>16</sup> See Section 10 of General Instructions for Form EIA-782B.

<sup>17</sup> EIA allows firms to use estimates as long as they are "consistent with standard accounting records maintained by the firm." 2 Federal Energy Guidelines ¶ 18,502 at 18,507; see also Section 7 of the General Instructions to Form EIA-782B.

<sup>18</sup> See *Sound Oil Co.*, 25 DOE ¶ 81,006 (1994) (company had filed for ten years); *Halron Oil Co.*, 16 DOE ¶ 81,001 (1987) (12 years).

significant length of time does not distinguish it from other similar firms. Kiesel, because of the size or scope of its operations, is a certainty firm, and therefore bears the same continuous reporting requirement as the other certainty firms.

As the foregoing discussion demonstrates, Kiesel has not shown that the requirement to complete Form EIA-782B is burdensome to the company in a manner that distinguishes it from other similarly affected firms. Accordingly, we find that exception relief is not warranted in this case and, therefore, Kiesel's Application for Exception should be denied.

It Is Therefore Ordered That:

- (1) The Application for Exception filed by The Kiesel Company, Case No. TEE-0033, be, and hereby is, denied.
- (2) Administrative review of this Decision and Order may be sought by any person who is aggrieved or adversely affected by the denied of exception relief. Such review shall be commenced by the filing of a petition for review with the Federal Energy Regulatory Commission within 30 days of the date of this Decision and Order pursuant to 18 C.F.R. Part 835, Subpart J.

George B. Breznay  
Director  
Office of Hearings and Appeals

Date: April 7, 2006

July 11, 2006

DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

Application for Exception

Name of Case: Heating Oil Partners, L.P.

Date of Filing: April 12, 2006

Case No.: TEE-0035

On April 12, 2006, Heating Oil Partners, L.P. (Heating Oil) filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). In its application, the firm requests that it be relieved of the requirement to file Form EIA-782B, entitled "Resellers/Retailers' Monthly Petroleum Product Sales Report," and Form EIA-821, entitled "Annual Fuel Oil and Kerosene Report." As explained below, we have determined the Heating Oil request should be denied.

*I. Background*

The DOE's Energy Information Administration (EIA) is authorized to collect, analyze, and disseminate energy data and other information.<sup>1</sup> The EIA-782B and EIA-821 reporting requirements grew out of the shortages of crude oil and petroleum products during the 1970s. In 1979, Congress found that the lack of reliable information concerning the supply, demand, and prices of petroleum products impeded the nation's ability to respond to the oil crisis. It therefore authorized the DOE to collect data on the supply and prices of petroleum products. This information is used to analyze trends within petroleum markets. Summaries of the information and the analyses are reported by EIA in publications such as "Petroleum Marketing Monthly." This information is used by Congress and state governments to project trends and to formulate national and state energy

---

<sup>1</sup> 15 U.S.C. § 772(b); 42 U.S.C. § 7135(b).

policies. Access to this data is vital to the nation's ability to anticipate and respond to potential energy shortages.<sup>2</sup>

Form EIA-782B is a monthly report, pursuant to which resellers and retailers report the volume and price of sales of motor gasoline, No. 2 distillates, and propane. In order to minimize the reporting burden, the EIA permits reporting firms to rely on reasonable estimates.<sup>3</sup>

Form EIA-821 is a yearly report, pursuant to which fuel oil distributors report sales volumes of fuel oil and kerosene. Survey results are published in the EIA "Fuel Oil and Kerosene Sales" report and in the "State Energy Data Report." These materials are available to the general public as well as to the petroleum industry. The data are also used by the DOE and other government agencies in determining current and projected fuel oil needs on a national, regional, and statewide basis. Again, in order to minimize the reporting burden, the EIA permits the reporting firms to rely on reasonable estimates.<sup>4</sup>

EIA designates some companies as "certainty" firms. A company is designated as such because it either (a) sells five percent or more of a particular product sales category in a state in which it does business, or (b) does business in four or more states.

All certainty firms are included in the survey sample on a continuing basis because of their impact on the market. EIA examines the data that these companies submit more closely and considers the data more instructive in gauging market trends than data submitted by smaller firms. The continuity of the surveys cannot be maintained by replacing a certainty firm with a similar company since all companies of this kind are already survey participants.

## *II. Exception Criteria*

OHA has authority to grant exception relief where the reporting requirement causes a "special hardship, inequity, or unfair

---

<sup>2</sup> See H.R. Rep. NO. 373, 96th Cong., 1st Sess., reprinted in 1979 U.S. Code Cong. & Admin. News 1764, 1781 (H.R. Report 373).

<sup>3</sup> Form EIA-782B stipulates that the firm must make a good faith effort to provide reasonably accurate information that is consistent with the accounting records maintained by the firm. The firm must alert the EIA if the estimates are later found to be materially different from actual data.

<sup>4</sup> See Section 7 of the General Instructions to Form EIA-782B.

distribution of burdens."<sup>5</sup> Since all reporting firms are burdened to some extent by reporting requirements, exception relief is appropriate only where a firm can demonstrate that it is adversely affected by the reporting requirement in a way that differs significantly from similar reporting firms.

The following examples illustrate some of circumstances that may justify relief from the reporting requirement. We have granted exceptions where: the applicant's financial condition is so precarious that the additional burden of meeting the DOE reporting requirements threatens its continued viability;<sup>6</sup> the only person capable of preparing the report is ill and the firm cannot afford to hire outside help;<sup>7</sup> extreme or unusual circumstances disrupt a firm's activities;<sup>8</sup> a combination of factors render the reporting requirement an undue burden.<sup>9</sup>

On the other hand, when considering a request for exception relief, we must weigh the firm's difficulty in complying with the reporting requirement against the nation's need for reliable energy data. Inconvenience alone does not constitute a hardship warranting relief.<sup>10</sup> Neither does the fact that a firm is relatively small or that it has filed reports for a number of years constitute grounds for exception relief. If firms of all sizes, both large and small, are not included, the estimates and projections generated by the EIA's statistical sample will be unreliable.<sup>11</sup>

Certainty firms are of great importance to the accuracy of the data samples because of the size and extent of their

<sup>5</sup> 42 U.S.C. § 7194(a); see also 10 C.F.R. § 1003.25(b)(2).

<sup>6</sup> *Mico Oil Co.*, 23 DOE ¶ 81,015 (1994) (firm lost one million dollars over previous three years); *Deaton Oil Co.*, 16 DOE ¶ 81,026 (1987) (firm in bankruptcy).

<sup>7</sup> *S&S Oil & Propane Co.*, 21 DOE ¶ 81,006 (1991) (owner being treated for cancer); *Midstream Fuel Serv.*, 24 DOE ¶ 81,023 (three month extension of time to file reports granted when two office employees simultaneously on maternity leave); *Eastern Petroleum Corp.*, 14 DOE ¶ 81,011 (1986) (two months relief granted when computer operator broke wrist).

<sup>8</sup> *Little River Village Campground, Inc.*, 24 DOE ¶ 81,033 (1994) (five months relief because of flood); *Utilities Bd. of Citronelle-Gas*, 4 DOE ¶ 81,205 (1979) (hurricane); *Meier Oil Serv.*, 14 DOE ¶ 81,004 (1986) (three months where disruptions caused by installation of a new computer system left firm's records inaccessible).

<sup>9</sup> *Ward Oil Co.*, 24 DOE ¶ 81,002 (1994) (exception relief for 10 months was granted where personnel shortages, financial difficulties, and administrative problems resulted from the long illness and death of a partner).

<sup>10</sup> *Glenn W. Wagoner Oil Co.*, 16 DOE ¶ 81,024 (1987).

<sup>11</sup> *Mulgrew. Oil Co.*, 20 DOE ¶ 81,009 (1990).



operations.<sup>12</sup> Accordingly, in order for a certainty firm to receive an exception, the firm must make a compelling showing that the filing requirement imposes a "special hardship, inequity, or unfair distribution of burdens."

### *III. The Heating Oil Application for Exception*

Heating Oil filed its exception application in April 2006.<sup>13</sup> Based upon a review of the Heating Oil application, we concluded that there was not sufficient information to permit us to act favorably on the request. Therefore, we contacted Heating Oil to give the firm an opportunity to discuss the request.<sup>14</sup> In a June 14, 2006 letter, Heating Oil supplemented its application.<sup>15</sup>

Heating Oil is a privately-owned seller of petroleum products headquartered in Darien, Connecticut. Heating Oil has filed Form EIA-782B each month since 1997.<sup>16</sup> The firm has also filed Form EIA-821 on an annual basis since 1995.<sup>17</sup> According to Heating Oil, these reporting requirements together present an undue burden.<sup>18</sup> Heating Oil states that the firm entered Chapter 11 reorganization in September 2005.<sup>19</sup> The firm states that its administrative staff has lost vital personnel due to the reorganization, and that in turn has doubled the workload for the remaining staff. The firm also states that since the reorganization, it has been audited by five states, and more audits are expected. These, too, tax its operations. Finally, the firm indicates that its volume of fuel oil sales is "very large" and that it does business in nine states.<sup>20</sup>

In the course of considering the Heating Oil Application, we also contacted a representative from the Energy Information Administration (EIA). EIA stated that Heating Oil is a

---

<sup>12</sup> Conversation between Ronald D. Hester, OHA and Tammy Heppner, EIA on April 24, 2006.

<sup>13</sup> *Id.*

<sup>14</sup> Letter from Ronald Hester, OHA to Neal Kelley, Heating Oil Partners, L.P., dated May 31, 2006.

<sup>15</sup> Letter from Neal Kelley, Heating Oil Partners, L.P., to Ronald Hester, OHA, dated June 14, 2006.

<sup>16</sup> Conversation between Ronald D. Hester, OHA and Tammy Heppner, EIA on April 24, 2006.

<sup>17</sup> Conversation between Ronald D. Hester, OHA and Daniel Walzer, EIA on April 24, 2006.

<sup>18</sup> Heating Oil Partners, L.P., Application for Exception, submitted to OHA on April 12, 2006.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

"certainty firm".<sup>21</sup> As explained above, certainty firms are of great importance because of the size and extent of their operations.

#### *IV. Analysis*

Our independent research indicates that, indeed, the firm's sales volume is so large that it is one of the largest residential heating oil distributors in the United States, employing approximately 1,000 people with operations in the New England and mid-Atlantic area. During its fiscal year ending June 30, 2005, the firm delivered 236 million gallons of heating oil and other refined petroleum products to its 137,000 residential, fleet, and commercial customers. The firm has stated that it will emerge a "healthy company with a strong platform for future growth" and will have "one of the strongest balance sheets in the industry."<sup>22</sup>

The Form EIA-782B reporting burden is not onerous. Form EIA-782B requires little more than the essential type of pricing, supply, and inventory data that is required to operate a business. The EIA estimates that it should normally take approximately two and one-half hours per month for a firm to fill out EIA-782B.<sup>23</sup> The burden of this requirement can be substantially reduced by the use of estimates.<sup>24</sup>

Given the firm's size and location, the firm's data is important to the EIA. The firm is one of the largest heating oil suppliers in the industry and operates in the Northeastern United States, an area that, historically, is heavily dependent upon heating oil. Thus there is a strong interest in EIA having the benefit of the company's data.

More importantly, the firm's argument -- that it is now in Chapter 11 reorganization and has lost vital personnel -- does not provide the basis for an exception at this time. A June 14, 2006 Heating Oil press release states that the firm expects to emerge from bankruptcy in July 2006 a "healthy company with a strong platform for future growth" with "one of the strongest balance sheets in the industry."<sup>25</sup> In view of the firm's size and optimistic current financial outlook, we cannot conclude

---

<sup>21</sup> Conversation between Ronald D. Hester, OHA and Tammy Heppner, EIA on April 24, 2006.

<sup>22</sup> Heating Oil Partners, L.P, Press Release dated June 14, 2006.

<sup>23</sup> See Section 10 of General Instructions to Form EIA- 782B.

<sup>24</sup> See Section 7 of the General Instructions to Form EIA-782B.

<sup>25</sup> See note 22 *supra*.

that the Form EIA-782B and Form EIA-821 reporting requirements cause a special hardship or impose a burden on the firm that is disproportionate to the burden that the reporting requirements impose upon similarly situated firms.

As the foregoing indicates the firm has not demonstrated that it meets the standards for exception relief. Accordingly, we have determined that the exception request should be denied.

IT IS THEREFORE ORDERED THAT:

- (1) The Application for Exception filed by Heating Oil Partners, L.P., Case No. TEE-0035, be, and hereby is, denied.
- (2) Administrative review of this Decision and Order may be sought by any person who is aggrieved or adversely affected by the denial of exception relief. Such review shall be commenced by filing a petition for review with the Federal Energy Regulatory Commission within 30 days of the date of this Decision and Order pursuant to 18 C.F.R. Part 385, Subpart J.

George B. Breznay  
Director  
Office of Hearings and Appeals

Date: July 11, 2006

October 4, 2006

DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

Application for Exception

Name of Case: Lands' End Marina, Inc.

Date of Filing: August 9, 2006

Case No.: TEE-0036

On August 9, 2006, Lands' End Marina, Inc. (Lands' End) filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). The firm requests that it be relieved of the requirement to prepare and file the Energy Information Administration (EIA) Form EIA-782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report." As explained below, we have determined that the request should be denied.

*I. Background*

The DOE's Energy Information Administration (EIA) is authorized to collect, analyze, and disseminate energy data and other information.<sup>1</sup> The EIA-782B reporting requirement grew out of the shortages of crude oil and petroleum products during the 1970s. In 1979, Congress found that the lack of reliable information concerning the supply, demand, and prices of petroleum products impeded the nation's ability to respond to the oil crisis. It therefore authorized the DOE to collect data on the supply and prices of petroleum products. This information is used to analyze trends within petroleum markets. Summaries of the information and the analyses are reported by EIA in publications such as "Petroleum Marketing Monthly." This information is used by Congress and state governments to project trends and to formulate national and state energy policies. Access to this data is vital to the nation's

---

<sup>1</sup> 15 U.S.C. § 772(b); 42 U.S.C. § 7135(b).

ability to anticipate and respond to potential energy shortages.<sup>2</sup>

Form EIA-782B is a monthly report, pursuant to which resellers and retailers report the volume and price of sales of motor gasoline, No. 2 distillates, and propane. In order to minimize the reporting burden, the EIA periodically selects a relatively small sample of companies to file Form EIA-782B<sup>3</sup> and permits reporting firms to rely on reasonable estimates.<sup>4</sup>

## II. Exception Criteria

OHA has authority to grant exception relief where the reporting requirement causes a "special hardship, inequity, or unfair distribution of burdens."<sup>5</sup> Since all reporting firms are burdened to some extent by reporting requirements, exception relief is appropriate only where a firm can demonstrate that it is adversely affected by the reporting requirement in a way that differs significantly from similar reporting firms.

The following examples illustrate some of the circumstances that may justify relief from the reporting requirement. We have granted exceptions where: the applicant's financial condition is so precarious that the additional burden of meeting the DOE reporting requirements threatens its continued viability;<sup>6</sup> the only person capable of preparing the report is ill and the firm cannot afford to hire

---

<sup>2</sup> See H.R. Rep. No. 373, 96th Cong., 1st Sess., reprinted in 1979 U.S. Code Cong. & Admin. News 1764, 1781 (H.R. Report 373).

<sup>3</sup> Firms that account for over five percent of the sales of any particular product in a state are always included in the sample of firms required to file the form. A random sample of other firms is also selected. This random sample changes approximately every 24 to 30 months, but a firm may be reselected for subsequent samples. A firm that has been included in three consecutive random samples will generally not be included in a fourth consecutive sample, but may be included in a later sample.

<sup>4</sup> Form EIA-782B stipulates that the firm must make a good faith effort to provide reasonably accurate information that is consistent with the accounting records maintained by the firm. The firm must alert the EIA if the estimates are later found to be materially different from actual data.

<sup>5</sup> 42 U.S.C. § 7194(a); see 10 C.F.R. § 1003.25(b)(2).

<sup>6</sup> *Mico Oil Co.*, 23 DOE ¶ 81,015 (1994) (firm lost one million dollars over previous three years); *Deaton Oil Co.*, 16 DOE ¶ 81,026 (1987) (firm in bankruptcy).

outside help;<sup>7</sup> extreme or unusual circumstances disrupt a firm's activities;<sup>8</sup> a combination of factors renders the reporting requirement an undue burden.<sup>9</sup>

On the other hand, when considering a request for exception relief, we must weigh the firm's difficulty in complying with the reporting requirement against the nation's need for reliable energy data. Inconvenience alone does not constitute a hardship warranting relief.<sup>10</sup> Similarly, the fact that a firm is relatively small or that it has filed reports for a number of years does not constitute a basis for exception relief. If firms of all sizes, both large and small, are not included, the estimates and projections generated by the EIA's statistical sample will be unreliable.<sup>11</sup>

### *III. The Lands' End Application for Exception*

Lands' End filed its exception application in August 2006.<sup>12</sup> Based upon a review of the application, we concluded that there was not sufficient information to permit us to act favorably on the request. We offered Lands' End the opportunity to submit additional information, but it did not do so.<sup>13</sup>

Lands' End is a marina located in Michigan. EIA has advised us that Lands' End has filed Form EIA-782B each month since

---

<sup>7</sup> *S&S Oil & Propane Co.*, 21 DOE ¶ 81,006 (1991) (owner being treated for cancer); *Midstream Fuel Serv.*, 24 DOE ¶ 81,023 (three month extension of time to file reports granted when two office employees simultaneously on maternity leave); *Eastern Petroleum Corp.*, 14 DOE ¶ 81,011 (1986) (two months relief granted when computer operator broke wrist).

<sup>8</sup> *Little River Village Campground, Inc.*, 24 DOE ¶ 81,033 (1994) (five months relief because of flood); *Utilities Bd. of Citronelle-Gas*, 4 DOE ¶ 81,205 (1979) (hurricane); *Meier Oil Serv.*, 14 DOE ¶ 81,004 (1986) (three months where disruptions caused by installation of a new computer system left firm's records inaccessible).

<sup>9</sup> *Ward Oil Co.*, 24 DOE ¶ 81,002 (1994) (exception relief for 10 months was granted where personnel shortages, financial difficulties, and administrative problems resulted from the long illness and death of a partner).

<sup>10</sup> *Glenn W. Wagoner Oil Co.*, 16 DOE ¶ 81,024 (1987).

<sup>11</sup> *Mulgrew Oil Co.*, 20 DOE ¶ 81,009 (1990).

<sup>12</sup> The Lands' End Application for Exception, submitted to OHA on August 9, 2006.

<sup>13</sup> Letter from Ronald D. Hester, OHA to Mr. Michael Lambert, Lands' End, dated August 31, 2006.

2004.<sup>14</sup> Lands' End states that the firm has encountered financial difficulties.<sup>15</sup> To support its assertion, the firm submitted its financial statements for the first six months of calendar years 2005 and 2006.<sup>16</sup> The firm states that as a result of its financial difficulties it had to reduce its bookkeeper's hours and its administrative staff from sixteen employees in 2005 to twelve employees this year.<sup>17</sup>

#### IV. Analysis

The Form EIA-782B reporting burden is not onerous. Form EIA-782B requires little more than the essential type of pricing, supply, and inventory data that is required to operate a business. The EIA estimates that it should normally take approximately two and one-half hours per month for a firm to fill out EIA-782B.<sup>18</sup> The burden of this requirement can be substantially reduced by the use of estimates.<sup>19</sup>

Lands' End's argument -- that the firm has experienced financial difficulties and had to reduce its staff -- does not indicate that the firm is experiencing a burden significantly greater than that experienced by other firms who are required to file.<sup>20</sup> Given the apparent seasonal nature of a marina located in Michigan, financial information for the first six months of calendar years 2005 and 2006 is not sufficient to establish financial hardship. Moreover, a reduction in administrative personnel by itself is not sufficient to conclude that the preparation of the Form poses a disproportionate burden on the firm. Firms are periodically rotated in and out of the EIA survey pool and those that are not chosen during one rotation may be selected to participate as part of a subsequent sample.

---

<sup>14</sup> Conversation between Ronald D. Hester, OHA and Tammy Heppner, EIA on August 18, 2006.

<sup>15</sup> The Lands' End Application for Exception, submitted to OHA on August 9, 2006.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> See Section 10 of General Instructions to Form EIA- 782B.

<sup>19</sup> See Section 7 of the General Instructions to Form EIA-782B.

<sup>20</sup> See *Mulgrew Oil Co.*, 20 DOE ¶ 81,009 (1990) (providing that if firms of all sizes, both large and small, are not included, the estimates and projections generated by the EIA's statistical sample will be unreliable); see also *Taylor Oil Co.*, 27 DOE ¶ 81,010 (2000) (relief denied where the firm had participated in filing the reports for many years).

As the foregoing indicates the firm has not demonstrated that it meets the standards for exception relief. Accordingly, we have determined that the exception request should be denied.

IT IS THEREFORE ORDERED THAT:

- (1) The Application for Exception filed by Lands' End Marina, Inc., Case No. TEE-0036, be, and hereby is, denied.
- (2) Administrative review of this Decision and Order may be sought by any person who is aggrieved or adversely affected by the denial of exception relief. Such review shall be commenced by filing a petition for review with the Federal Energy Regulatory Commission within 30 days of the date of this Decision and Order pursuant to 18 C.F.R. Part 385, Subpart J.

George B. Breznay  
Director  
Office of Hearings and Appeals

Date: October 4, 2006



November 8, 2006

DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

Application for Exception

Name of Case: Farmers Cooperative Oil Co.

Date of Filing: August 15, 2006

Case No.: TEE-0037

On August 15, 2006, the Farmers Cooperative Oil Co. (Farmers Co-op) filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). The firm requests that it be relieved of the requirement to prepare and file the Energy Information Administration (EIA) Form EIA-782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report." As explained below, we have determined that the request should be denied.

*I. Background*

The DOE's Energy Information Administration (EIA) is authorized to collect, analyze, and disseminate energy data and other information.<sup>1</sup> The EIA-782B reporting requirement grew out of the shortages of crude oil and petroleum products during the 1970s. In 1979, Congress found that the lack of reliable information concerning the supply, demand, and prices of petroleum products impeded the nation's ability to respond to the oil crisis. It therefore authorized the DOE to collect data on the supply and prices of petroleum products. This information is used to analyze trends within petroleum markets. Summaries of the information and the analyses are reported by EIA in publications such as "Petroleum Marketing Monthly." This information is used by Congress and state governments to project trends and to formulate national and state energy policies. Access to this data is vital to the nation's

---

<sup>1</sup> 15 U.S.C. § 772(b); 42 U.S.C. § 7135(b).

ability to anticipate and respond to potential energy shortages.<sup>2</sup>

Form EIA-782B is a monthly report, pursuant to which resellers and retailers report the volume and price of sales of motor gasoline, No. 2 distillates, and propane. In order to minimize the reporting burden, the EIA periodically selects a relatively small sample of companies to file Form EIA-782B<sup>3</sup> and permits reporting firms to rely on reasonable estimates.<sup>4</sup>

## II. Exception Criteria

OHA has authority to grant exception relief where the reporting requirement causes a "special hardship, inequity, or unfair distribution of burdens."<sup>5</sup> Since all reporting firms are burdened to some extent by reporting requirements, exception relief is appropriate only where a firm can demonstrate that it is adversely affected by the reporting requirement in a way that differs significantly from similar reporting firms.

The following examples illustrate some of the circumstances that may justify relief from the reporting requirement. We have granted exceptions where: the applicant's financial condition is so precarious that the additional burden of meeting the DOE reporting requirements threatens its continued viability;<sup>6</sup> the only person capable of preparing the report is ill and the firm cannot afford to hire

---

<sup>2</sup> See H.R. Rep. No. 373, 96th Cong., 1st Sess., reprinted in 1979 U.S. Code Cong. & Admin. News 1764, 1781 (H.R. Report 373).

<sup>3</sup> Firms that account for over five percent of the sales of any particular product in a state are always included in the sample of firms required to file the form. A random sample of other firms is also selected. This random sample changes approximately every 24 to 30 months, but a firm may be reselected for subsequent samples. A firm that has been included in three consecutive random samples will generally not be included in a fourth consecutive sample, but may be included in a later sample.

<sup>4</sup> Form EIA-782B stipulates that the firm must make a good faith effort to provide reasonably accurate information that is consistent with the accounting records maintained by the firm. The firm must alert the EIA if the estimates are later found to be materially different from actual data.

<sup>5</sup> 42 U.S.C. § 7194(a); see 10 C.F.R. § 1003.25(b)(2).

<sup>6</sup> *Mico Oil Co.*, 23 DOE ¶ 81,015 (1994) (firm lost one million dollars over previous three years); *Deaton Oil Co.*, 16 DOE ¶ 81,026 (1987) (firm in bankruptcy).

outside help;<sup>7</sup> extreme or unusual circumstances disrupt a firm's activities;<sup>8</sup> a combination of factors renders the reporting requirement an undue burden.<sup>9</sup>

On the other hand, when considering a request for exception relief, we must weigh the firm's difficulty in complying with the reporting requirement against the nation's need for reliable energy data. Inconvenience alone does not constitute a hardship warranting relief.<sup>10</sup> Similarly, the fact that a firm is relatively small or that it has filed reports for a number of years does not constitute a basis for exception relief. If firms of all sizes, both large and small, are not included, the estimates and projections generated by the EIA's statistical sample will be unreliable.<sup>11</sup>

### *III. The Farmers Co-op Application for Exception*

Farmers Co-op filed its exception application in August 2006.<sup>12</sup> Based upon a review of the application, we concluded that there was not sufficient information to permit us to act favorably on the request. We offered Farmers Co-op the opportunity to submit additional information, but it did not do so.<sup>13</sup>

Farmers Co-op -- an Iowa based cooperative -- states that the EIA reporting requirement presents an undue burden. To support its assertion, the firm states it is small and its profits are low. The firm also states that it has

---

<sup>7</sup> *S&S Oil & Propane Co.*, 21 DOE ¶ 81,006 (1991) (owner being treated for cancer); *Midstream Fuel Serv.*, 24 DOE ¶ 81,023 (three month extension of time to file reports granted when two office employees simultaneously on maternity leave); *Eastern Petroleum Corp.*, 14 DOE ¶ 81,011 (1986) (two months relief granted when computer operator broke wrist).

<sup>8</sup> *Little River Village Campground, Inc.*, 24 DOE ¶ 81,033 (1994) (five months relief because of flood); *Utilities Bd. of Citronelle-Gas*, 4 DOE ¶ 81,205 (1979) (hurricane); *Meier Oil Serv.*, 14 DOE ¶ 81,004 (1986) (three months where disruptions caused by installation of a new computer system left firm's records inaccessible).

<sup>9</sup> *Ward Oil Co.*, 24 DOE ¶ 81,002 (1994) (exception relief for 10 months was granted where personnel shortages, financial difficulties, and administrative problems resulted from the long illness and death of a partner).

<sup>10</sup> *Glenn W. Wagoner Oil Co.*, 16 DOE ¶ 81,024 (1987).

<sup>11</sup> *Mulgrew Oil Co.*, 20 DOE ¶ 81,009 (1990).

<sup>12</sup> Conversation between Ronald D. Hester, OHA and Tammy Heppner, EIA on August 18, 2006.

<sup>13</sup> Letter from Ronald Hester, OHA to Mr. Vern Pruin, Farmers Co-op dated October 10, 2006.

completed the Form for a number of years and that a larger firm could provide more relevant data.<sup>14</sup>

#### *IV. Analysis*

The Form EIA-782B reporting burden is not onerous. Form EIA-782B requires little more than the essential type of pricing, supply, and inventory data that is required to operate a business. The EIA estimates that it should normally take approximately two and one-half hours per month for a firm to fill out EIA-782B.<sup>15</sup> The burden of this requirement can be substantially reduced by the use of estimates.<sup>16</sup>

In the course of considering the Farmers Co-op application, we contacted a representative from the EIA and obtained the following information. As a non-certainty firm, Farmers Co-op was randomly selected to report on Sample 12 from (January 1997 to March 1999) and Samples 14/15 from (January 2002 to the present).<sup>17</sup> Farmers Co-op was not included in Sample 13.<sup>18</sup>

The Farmers Co-op main arguments -- that the firm has low profitability, is small, and has completed the Form for a number of years -- do not indicate that the firm is experiencing a burden significantly greater than that experienced by other filers.<sup>19</sup> Although the firm cites low profits, it does not claim a serious financial hardship. Moreover, the small size of the firm and its reporting history do not justify relief. As discussed above, in order to obtain accurate information about the supply and demand for petroleum products, the EIA selects firms at random, may choose the same firm to participate in multiple EIA surveys, and requires data from firms of all sizes. Firms are periodically rotated in and out of the EIA survey

---

<sup>14</sup> The Farmers Co-op Application for Exception, submitted to OHA on August 9, 2006.

<sup>15</sup> See Section 10 of General Instructions to Form EIA- 782B.

<sup>16</sup> See Section 7 of the General Instructions to Form EIA-782B.

<sup>17</sup> Conversation between Ronald Hester, OHA and Tammy Heppner, EIA on August 18, 2006.

<sup>18</sup> *Id.*

<sup>19</sup> See *Mulgrew Oil Co.*, 20 DOE ¶ 81,009 (1990) (providing that if firms of all sizes, both large and small, are not included, the estimates and projections generated by the EIA's statistical sample will be unreliable); see also *Taylor Oil Co.*, 27 DOE ¶ 81,010 (2000) (relief denied where the firm had participated in filing the reports for many years).

pool and those that are not chosen during one rotation may be selected to participate as part of a subsequent sample.

As the foregoing indicates the firm has not demonstrated that it meets the standards for exception relief. Accordingly, we have determined that the exception request should be denied.

IT IS THEREFORE ORDERED THAT:

- (1) The Application for Exception filed by Farmers Cooperative Oil Co., Case No. TEE-0037, be, and hereby is, denied.
- (2) Administrative review of this Decision and Order may be sought by any person who is aggrieved or adversely affected by the denial of exception relief. Such review shall be commenced by filing a petition for review with the Federal Energy Regulatory Commission within 30 days of the date of this Decision and Order pursuant to 18 C.F.R. Part 385, Subpart J.

George B. Breznay  
Director  
Office of Hearings and Appeals

Date: November 8, 2006

December 6, 2006

DECISION AND ORDER  
OFFICE OF HEARINGS AND APPEALS

Application for Exception

Case Name: All Star Gas Corporation

Date of Filing: September 26, 2006

Case Number: TEE-0038

On September 26, 2006, All Star Gas Corporation (All Star) of Dallas, Texas, filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). All Star requests that it be relieved of the requirement to prepare and file the Energy Information Administration (EIA) Form EIA-782B, entitled "Resellers/Retailers' Monthly Petroleum Product Sales Report" (Form EIA-782B). As explained below, we have determined that the Application for Exception should be denied.

**I. Background**

The DOE's Energy Information Administration (EIA) is authorized to collect, analyze, and disseminate energy data and other information.<sup>1</sup> The EIA-782B reporting requirement grew out of the shortages of crude oil and petroleum products during the 1970s. In 1979, Congress determined that the lack of reliable information concerning the supply, demand and prices of petroleum products impeded the nation's ability to respond to the oil crisis. It therefore authorized the DOE to collect data on the supply and prices of petroleum products. This information is used to analyze trends within petroleum markets. Summaries of the information and the analyses are reported by EIA in publications such as "Petroleum Marketing Monthly." This information is used by Congress and state governments to project trends and to formulate national and state energy policies.

EIA designates some companies as certainty firms. A company is designated as such because it either (a) sells five percent or more of a particular product sales category in a state in which it does business, or (b) does business in four or more states.<sup>2</sup> All certainty firms are included in the survey sample on a continuing basis because of their impact on the market. Thus, the continuity

---

<sup>1</sup> 15 U.S.C. § 772(b); 42 U.S.C. § 7135(b).

<sup>2</sup> A random sample of other firms is also selected. This random sample changes approximately every 24 to 30 months, but a firm may be reselected for a subsequent sample. A firm that has been included in three consecutive random samples will generally not be included in a fourth consecutive sample, but may be included in a later sample.

of the surveys cannot be maintained by replacing a certainty firm with a similar company since all companies of this kind are already survey participants. EIA examines the data that these companies submit more closely and considers these data more instructive in gauging market trends than data submitted by smaller firms. In an effort to minimize the burden of preparing the form, EIA permits firms to rely on reasonable estimates.<sup>3</sup>

## II. Exception Criteria

OHA has the authority to grant exception relief where the reporting requirement causes a “serious hardship, gross inequity or unfair distribution of burdens.”<sup>4</sup> Since all reporting firms are burdened to some extent by reporting requirements, exception relief is appropriate only where a firm can demonstrate that it is adversely affected by the reporting requirement in a way that differs significantly from similar reporting firms.

When considering a request for exception relief, we must weigh the firm’s difficulty in complying with the reporting requirement against the nation’s need for reliable energy data. Thus, mere inconvenience does not constitute a hardship warranting relief.<sup>5</sup> Neither does the fact that a firm is relatively small or has filed reports for a number of years constitute a hardship warranting relief.<sup>6</sup> If firms of all sizes, both large and small, are not included in the survey, the estimates and projections generated by EIA’s statistical sample will be unreliable.<sup>7</sup>

OHA has granted relief from the reporting requirement under various circumstances. For example, we have granted relief where: the firm’s financial situation is so precarious that the additional burden of meeting the DOE reporting requirements threatens the firm’s continued viability;<sup>8</sup> the firm’s only employee capable of preparing the report is ill and the firm cannot afford to hire outside help;<sup>9</sup> extreme or unusual circumstances disrupt a firm’s activities;<sup>10</sup> or, a combination of factors resulting from unavoidable circumstances makes completing the form impracticable.<sup>11</sup>

---

<sup>3</sup> The firm must make a good faith effort to provide reasonably accurate information that is consistent with the accounting records maintained by the firm. The firm must alert the EIA if the estimates are later found to be materially different from the actual data.

<sup>4</sup> 42 U.S.C. § 7194; 10 C.F.R. § 1003.25(b)(2).

<sup>5</sup> *Glenn Wagoner Oil Co.*, 16 DOE ¶ 81,024 (1987).

<sup>6</sup> *Mulgrew Oil Co.*, 20 DOE ¶ 81,009 (1990).

<sup>7</sup> *Id.*

<sup>8</sup> *Mico Oil Co.*, 23 DOE ¶ 81,105 (1994) (firm lost one million dollars over previous three years); *Deaton Oil Co.*, 16 DOE 81,206 (1987) (firm in bankruptcy).

<sup>9</sup> *S&S Oil & Propane Co.*, 21 DOE ¶ 81,006 (1991) (owner being treated for cancer); *Midstream Fuel Serv.*, 24 DOE 81,203 (1994) (three month extension of time to file reports granted when two office employees simultaneously on maternity leave); *Eastern Petroleum Corp.*, 14 DOE ¶ 81,011 (1986) (two month extension granted when computer operator broke wrist).

<sup>10</sup> *Little River Village Campground, Inc.*, 24 DOE ¶ 81,033 (1994) (five months relief because of flood); *Utilities Bd. of Citronelle-Gas*, 4 DOE ¶ 81,025 (1979) (hurricane); *Meier Oil Serv.* 14 DOE ¶ 81,004 (1986) (three month extension granted where disruptions caused by installation of new computer system left the firm’s records inaccessible).

<sup>11</sup> *Ward Oil Co.*, 24 DOE ¶ 81,002 (1994) (ten month extension granted where long illness and death of a partner resulted in personnel shortages, financial difficulties and other administrative problems).

### III. The Application for Exception

All Star filed its exception application in September 2006.<sup>12</sup> Based upon a review of the application, we concluded that there was insufficient information to allow us to act favorably on the request. We offered All Star the opportunity to submit additional information, and it did so.<sup>13</sup>

All Star, located in Dallas, Texas, is a distributor of propane. In its Application for Exception, All Star requests relief from the EIA reporting requirement on the grounds that the requirement is unduly burdensome to the company. All Star states that it is the successor company of Empire Gas Corporation, a large firm which had locations in 34 states and delivered in excess of 500 million gallons of propane annually. All Star states that the company filed for bankruptcy in July 2003 and, as a result, is a much smaller company with a significantly reduced workforce. All Star states that the company is now approximately one-sixth of the size of Empire Gas and that it maintains 50 offices in five states.<sup>14</sup> All Star argues that “with the reduced staff, it has become a burden on [the] organization to continue to collect the data necessary to complete [the] survey.”<sup>15</sup> All Star also argues that, because the company is now a fraction of its size when it was classified as a certainty firm, its contribution to the survey has been “greatly reduced from the original participation of Empire Gas.”<sup>16</sup>

### IV. Analysis

Exception relief is appropriate where a reporting requirement poses a serious hardship, inequity, or unfair distribution of burdens.<sup>17</sup> In other words, relief is appropriate where the reporting requirement adversely affects the firm to a significantly greater degree than it affects other firms. As stated above, in the case of a certainty firm, this showing must be compelling, because of the significance of the data collected.

In this case, the firm has not argued that it is experiencing serious financial difficulties. Instead, the firm cites the heavy workloads of the individuals who prepare the form and the reduced size of the firm. As explained below, these arguments do not indicate that the firm is adversely affected to a significantly greater degree than other firms.

Form EIA-782B requires little more than the essential type of pricing, supply, and inventory data that is required to operate a business. EIA estimates that it should take approximately two and one-half hours per month for a firm to complete Form EIA-782B.<sup>18</sup> The burden of this requirement can be substantially reduced by the use of estimates.<sup>19</sup> Accordingly, it may be

---

<sup>12</sup> Letter from Jeffrey S. Finstad, Chief Financial Officer, All Star, to OHA (September 18, 2006) (Application for Exception).

<sup>13</sup> Letter from Richard T. Tedrow, Deputy Director, OHA, to Jeffrey S. Finstad (October 3, 2006).

<sup>14</sup> Letter from Jeffrey Finstad to Diane DeMoura, OHA (October 18, 2006).

<sup>15</sup> See Application for Exception.

<sup>16</sup> *Id.*

<sup>17</sup> 42 U.S.C. § 7194; 10 C.F.R. § 1003.25(b)(2).

<sup>18</sup> See Section 10 of General Instructions for Form EIA-782B.

<sup>19</sup> EIA allows firms to use estimates as long as they are “consistent with standard accounting records maintained by the firm.” 2 Federal Energy Guidelines ¶ 18,502 at 18,507; see also Section 7 of the General Instructions to Form EIA-782B.



possible for the firm to reduce the time spent to complete the form. Furthermore, relief is not warranted simply because the firm is now a smaller entity than when it was originally classified as a certainty firm. All Star, because of the size or scope of its operations – namely, because it does business in five states, is a certainty firm. Therefore, it bears the same continuous reporting requirement as the other certainty firms.<sup>20</sup>

As the foregoing discussion demonstrates, All Star has not shown that the requirement to complete Form EIA-782B is burdensome to the company in a manner that distinguishes it from other similarly affected firms. Accordingly, we find that exception relief is not warranted in this case and, therefore, All Star's Application for Exception should be denied.

It Is Therefore Ordered That:

- (1) The Application for Exception filed by All Star Gas Corporation, Case No. TEE-0038, be, and hereby is, denied.
- (2) Administrative review of this Decision and Order may be sought by any person who is aggrieved or adversely affected by the denied of exception relief. Such review shall be commenced by the filing of a petition for review with the Federal Energy Regulatory Commission within 30 days of the date of this Decision and Order pursuant to 18 C.F.R. Part 835, Subpart J.

George B. Breznay  
Director  
Office of Hearings and Appeals

Date: December 6, 2006

---

<sup>20</sup> See *Mulgrew Oil Co.*, 20 DOE ¶ 81,009 (1990) (the fact that a firm is small does not constitute a hardship warranting relief).



January 23, 2007

DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

Application for Exception

Name of Case: Wheatland Cooperative Association

Date of Filing: November 22, 2006

Case No.: TEE-0039

On November 22, 2006, Wheatland Cooperative Association (Wheatland) filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). The firm requests that it be permanently relieved of the requirement to prepare and file the Energy Information Administration (EIA) Form EIA-782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report." As explained below, we have determined that Wheatland's request should be granted in part.

*I. Background*

The DOE's Energy Information Administration (EIA) is authorized to collect, analyze, and disseminate energy data and other information.<sup>1</sup> The EIA-782B reporting requirement grew out of the shortages of crude oil and petroleum products during the 1970s. In 1979, Congress determined that the lack of reliable information concerning the supply, demand and prices of petroleum products impeded the nation's ability to respond to the oil crisis. It therefore authorized the DOE to collect data on the supply and prices of petroleum products. This information is used to analyze trends within petroleum markets. Summaries of the information and the analyses are reported by EIA in publications such as "Petroleum Marketing Monthly." This information is used by Congress and state governments to project trends and to formulate national and state energy policies. Access to this data is vital to the nation's ability to anticipate and respond to potential energy shortages.<sup>2</sup>

Form EIA-782B is a monthly report, pursuant to which resellers and retailers report the volume and price of sales of motor gasoline, No. 2 distillates, propane, and residual fuel oil. In order to minimize

---

<sup>1</sup> 15 U.S.C. § 772(b); 42 U.S.C. § 7135(b).

<sup>2</sup> See H.R. Rep. NO. 373, 96<sup>th</sup> Con., 1st Sess., reprinted in 1979 U.S. Code Cong. & Admin. News 1764, 1781 (H.R. Report 373).

the reporting burden, the EIA periodically selects a relatively small sample of companies to file Form EIA-782B<sup>3</sup> and permits reporting firms to rely on reasonable estimates.<sup>4</sup>

## II. Exception Criteria

OHA has the authority to grant exception relief where the reporting requirement causes a "serious hardship, gross inequity or unfair distribution of burdens."<sup>5</sup> Since all reporting firms are burdened to some extent by reporting requirements, exception relief is appropriate only where a firm can demonstrate that it is adversely affected by the reporting requirement in a way that differs significantly from similar reporting firms.

When considering a request for exception relief, we must weigh the firm's difficulty in complying with the reporting requirement against the nation's need for reliable energy data. Thus, mere inconvenience does not constitute a hardship warranting relief.<sup>6</sup> Similarly, the fact that a firm is relatively small or has filed reports for a number of years does not constitute a hardship warranting relief.<sup>7</sup> If firms of all sizes, both large and small, are not included in the survey, the estimates and projections generated by EIA's statistical sample will be unreliable.<sup>8</sup>

OHA has granted relief from the reporting requirement under various circumstances. For example, we have granted relief where: the firm's financial situation is so precarious that the additional burden of meeting the DOE reporting requirements threatens the firm's continued viability;<sup>9</sup> the firm's only employee capable of preparing the report is ill and the firm cannot afford to hire outside help;<sup>10</sup> extreme or unusual circumstances disrupt a firm's activities;<sup>11</sup> or, a combination

---

<sup>3</sup> Firms that account for over five percent of the sales of any particular product in a state or do business in four or more states, designated as certainty firms, are always included in the sample of firms required to file the form. A random sample of other firms is also selected. This random sample changes approximately every 24 to 30 months, but a firm may be reselected for subsequent samples. A firm that has been included in three consecutive random samples will generally not be included in a fourth consecutive sample, but may be included in a later sample.

<sup>4</sup> Form EIA-782B requires that the firm make a good faith effort to provide reasonably accurate information that is consistent with the accounting records maintained by the firm. The firm must alert the EIA if the estimates are later found to be materially different from actual data.

<sup>5</sup> 42 U.S.C. § 7194; 10 C.F.R. § 1003.25(b)(2).

<sup>6</sup> *Glenn Wagoner Oil Co.*, 16 DOE ¶ 81,024 (1987).

<sup>7</sup> *Mulgrew Oil Co.*, 20 DOE ¶ 81,009 (1990).

<sup>8</sup> *Id.*

<sup>9</sup> *Mico Oil Co.*, 23 DOE ¶ 81,105 (1994) (firm lost one million dollars over previous three years); *Deaton Oil Co.*, 16 DOE ¶ 81,206 (1987) (firm in bankruptcy).

<sup>10</sup> *S&S Oil & Propane Co.*, 21 DOE ¶ 81,006 (1991) (owner being treated for cancer); *Midstream Fuel Serv.*, 24 DOE ¶ 81,203 (1994) (three month extension of time to file reports granted when two office employees simultaneously on maternity leave); *Eastern Petroleum Corp.*, 14 DOE ¶ 81,011 (1986) (two month extension granted when computer operator broke wrist).

<sup>11</sup> *Little River Village Campground, Inc.*, 24 DOE ¶ 81,033 (1994) (five months relief because of flood); *Utilities Bd. of Citronelle-Gas*, 4 DOE ¶ 81,025 (1979) (hurricane);

of factors resulting from unavoidable circumstances makes completing the form impracticable.<sup>12</sup>

### *III. The Application for Exception*

Wheatland is a seller of petroleum products headquartered in Wheatland, Wyoming. Wheatland has filed form EIA-782B since January 2002.<sup>13</sup> Wheatland states that it has undergone a significant changeover in personnel. According to Wheatland, the firm's office manager resigned and the firm currently has only three employees in its office, two of whom are recent hires.<sup>14</sup> Wheatland states that it is training its personnel, but that none of the three employees have ever completed form EIA-782B.<sup>15</sup> Wheatland also states that it has changed computer systems and has experienced significant problems with the new system.<sup>16</sup> According to Wheatland, due to glitches in the new computer system, the firm is currently unable to prepare any financial reports. Wheatland states that it is unable to compile the data for the form manually due to its staffing limitations. Wheatland anticipates that the problems with the new computer system will be resolved within "two to three months."<sup>17</sup> Finally, Wheatland states that it does not believe it can file an accurate form at this time due to its staffing limitations and problems with the computer system.<sup>18</sup> Wheatland requests that it be permanently relieved of the obligation to file form EIA-782B.

### *IV. Analysis*

Upon careful examination of Wheatland's Application for Exception, we have determined that temporary exception relief is warranted. The firm has experienced a significant change in personnel and problems with its new computer system, which it uses to compile financial reports and data used in completing form EIA-782B, and is attempting to train its new staff and correct its computer problems. Considering the public interest in the information obtained from Wheatland's EIA-782B form, however, we do not believe that the firm should be relieved of the obligation to file form EIA-782B indefinitely. Accordingly, we

---

*Meier Oil Serv.*, 14 DOE ¶ 81,004 (1986) (three month extension granted where disruptions caused by installation of new computer system left the firm's records inaccessible).

<sup>12</sup>*Ward Oil Co.*, 24 DOE ¶ 81,002 (1994) (ten month extension granted where long illness and death of a partner resulted in personnel shortages, financial difficulties and other administrative problems).

<sup>13</sup> See Electronic Mail Message from Tammy Heppner, EIA, to Diane DeMoura, OHA (December 4, 2006).

<sup>14</sup> See Application for Exception; see also Memorandum of Telephone Conversation between Therese Lahaye and Diane DeMoura (January 3, 2007).

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> See Memorandum of Telephone Conversation between Therese Lahaye and Diane DeMoura (January 3, 2007).

<sup>18</sup> See Application for Exception.

have determined that a temporary exception through June 2007 should be granted.<sup>19</sup>

It Is Therefore Ordered That:

- (1) The Application for Exception filed by Wheatland Cooperative Association, Case No., TEE-0039, be, and hereby is, granted as set forth in paragraph (2) below and denied in all other respects.
- (2) Wheatland Cooperative Association is relieved of the requirement to file form EIA-782B for the months January 2007 through June 2007.
- (3) To the extent that the Application is denied, administrative review of this Decision and Order may be sought by any persons aggrieved or adversely affected by the denial of exception relief. Such review shall be commenced by filing a petition for review with the Federal Energy Regulatory Commission within 30 days of the date of this Decision and Order pursuant to 18 C.F.R. Part 385, Subpart J.

Fred L. Brown  
Acting Director  
Office of Hearings and Appeals

Date: January 23, 2007

---

<sup>19</sup> See Meier Oil Serv., 14 DOE ¶ 81,004 (1986); Ward Oil Co., 24 DOE ¶ 81,002 (1994).

January 23, 2007

DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

Application for Exception

Name of Case: Citizens Fuel Company

Date of Filing: November 22, 2006

Case No.: TEE-0040

On November 22, 2006, Citizens Fuel Company (Citizens Fuel) filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). The firm requests that it be permanently relieved of the requirement to prepare and file the Energy Information Administration (EIA) Form EIA-782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report." As explained below, we have determined that Citizens Fuel's request should be granted in part.

*I. Background*

The DOE's Energy Information Administration (EIA) is authorized to collect, analyze, and disseminate energy data and other information.<sup>1</sup> The EIA-782B reporting requirement grew out of the shortages of crude oil and petroleum products during the 1970s. In 1979, Congress determined that the lack of reliable information concerning the supply, demand and prices of petroleum products impeded the nation's ability to respond to the oil crisis. It therefore authorized the DOE to collect data on the supply and prices of petroleum products. This information is used to analyze trends within petroleum markets. Summaries of the information and the analyses are reported by EIA in publications such as "Petroleum Marketing Monthly." This information is used by Congress and state governments to project trends and to formulate national and state energy policies. Access to this data is vital to the nation's ability to anticipate and respond to potential energy shortages.<sup>2</sup>

Form EIA-782B is a monthly report, pursuant to which resellers and retailers report the volume and price of sales of motor gasoline, No.

---

<sup>1</sup> 15 U.S.C. § 772(b); 42 U.S.C. § 7135(b).

<sup>2</sup> See H.R. Rep. NO. 373, 96<sup>th</sup> Con., 1st Sess., reprinted in 1979 U.S. Code Cong. & Admin. News 1764, 1781 (H.R. Report 373).

2 distillates, propane, and residual fuel oil. In order to minimize the reporting burden, the EIA periodically selects a relatively small sample of companies to file Form EIA-782B<sup>3</sup> and permits reporting firms to rely on reasonable estimates.<sup>4</sup>

## II. Exception Criteria

OHA has the authority to grant exception relief where the reporting requirement causes a "serious hardship, gross inequity or unfair distribution of burdens."<sup>5</sup> Since all reporting firms are burdened to some extent by reporting requirements, exception relief is appropriate only where a firm can demonstrate that it is adversely affected by the reporting requirement in a way that differs significantly from similar reporting firms.

When considering a request for exception relief, we must weigh the firm's difficulty in complying with the reporting requirement against the nation's need for reliable energy data. Thus, mere inconvenience does not constitute a hardship warranting relief.<sup>6</sup> Similarly, the fact that a firm is relatively small or has filed reports for a number of years does not constitute a hardship warranting relief.<sup>7</sup> If firms of all sizes, both large and small, are not included in the survey, the estimates and projections generated by EIA's statistical sample will be unreliable.<sup>8</sup>

OHA has granted relief from the reporting requirement under various circumstances. For example, we have granted relief where: the firm's financial situation is so precarious that the additional burden of meeting the DOE reporting requirements threatens the firm's continued viability;<sup>9</sup> the firm's only employee capable of preparing the report is ill and the firm cannot afford to hire outside help;<sup>10</sup> extreme or

---

<sup>3</sup> Firms that account for over five percent of the sales of any particular product in a state or do business in four or more states, designated as certainty firms, are always included in the sample of firms required to file the form. A random sample of other firms is also selected. This random sample changes approximately every 24 to 30 months, but a firm may be reselected for subsequent samples. A firm that has been included in three consecutive random samples will generally not be included in a fourth consecutive sample, but may be included in a later sample.

<sup>4</sup> Form EIA-782B requires that the firm make a good faith effort to provide reasonably accurate information that is consistent with the accounting records maintained by the firm. The firm must alert the EIA if the estimates are later found to be materially different from actual data.

<sup>5</sup> 42 U.S.C. § 7194; 10 C.F.R. § 1003.25(b)(2).

<sup>6</sup> Glenn Wagoner Oil Co., 16 DOE ¶ 81,024 (1987).

<sup>7</sup> Mulgrew Oil Co., 20 DOE ¶ 81,009 (1990).

<sup>8</sup> *Id.*

<sup>9</sup> Mico Oil Co., 23 DOE ¶ 81,105 (1994) (firm lost one million dollars over previous three years); Deaton Oil Co., 16 DOE ¶ 81,206 (1987) (firm in bankruptcy).

<sup>10</sup> S&S Oil & Propane Co., 21 DOE ¶ 81,006 (1991) (owner being treated for cancer); Midstream Fuel Serv., 24 DOE ¶ 81,203 (1994) (three month extension of time to file reports granted when two office employees simultaneously on maternity leave); Eastern Petroleum Corp., 14 DOE ¶ 81,011 (1986) (two month extension granted when computer operator broke wrist).



unusual circumstances disrupt a firm's activities;<sup>11</sup> or, a combination of factors resulting from unavoidable circumstances makes completing the form impracticable.<sup>12</sup>

### III. The Application for Exception

Citizens Fuel is a seller of petroleum products based in Asheville, North Carolina. In the past, Citizens Fuel filed form EIA-782B from February 1993 to February 1997.<sup>13</sup> More recently, the firm filed the form since January 2002.<sup>14</sup> Citizens Fuel states that it has reduced its staff as a result of difficulties in its retail market.<sup>15</sup> The firm also states that its Chief Financial Officer, who was responsible for completing form EIA-782B, resigned in October 2006 and his replacement is still being trained.<sup>16</sup> Citizens Fuel also states that it is in the process of changing computer systems and has experienced significant problems with the new system.<sup>17</sup> According to Citizens Fuel, due to glitches in the new computer system, it is currently very difficult for the firm to prepare the EIA-782B. Citizens Fuel states that it is difficult to compile the data for the form manually due to its staffing limitations. Citizens Fuel anticipates that the new computer system will be fully operational in "April or May."<sup>18</sup> Citizens Fuel requests that it be permanently relieved of the obligation to file form EIA-782B.

### IV. Analysis

Upon careful examination of Citizens Fuel's Application for Exception, we have determined that temporary exception relief is warranted. The firm has experienced a changeover in personnel and problems with its new computer system, which it uses to compile financial reports and data used in completing form EIA-782B, and is attempting to overcome its staffing limitations, train a new Chief Financial Officer, and correct its computer problems. Considering the public interest in the information obtained from Citizens Fuel's EIA-782B form, however, we do not believe that the firm should be relieved of the obligation to

---

<sup>11</sup> *Little River Village Campground, Inc.*, 24 DOE ¶ 81,033 (1994) (five months relief because of flood); *Utilities Bd. of Citronelle-Gas*, 4 DOE ¶ 81,025 (1979) (hurricane); *Meier Oil Serv.* 14 DOE ¶ 81,004 (1986) (three month extension granted where disruptions caused by installation of new computer system left the firm's records inaccessible).

<sup>12</sup> *Ward Oil Co.*, 24 DOE ¶ 81,002 (1994) (ten month extension granted where long illness and death of a partner resulted in personnel shortages, financial difficulties and other administrative problems).

<sup>13</sup> See Electronic Mail Message from Tammy Heppner, EIA, to Diane DeMoura, OHA (December 4, 2006).

<sup>14</sup> *Id.*

<sup>15</sup> See Application for Exception.

<sup>16</sup> *Id.*; Memorandum of Telephone Conversation between V.C. Shealy and Diane DeMoura (January 4, 2007).

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

file form EIA-782B indefinitely. Accordingly, we have determined that a temporary exception through June 2007 should be granted.<sup>19</sup>

It Is Therefore Ordered That:

- (1) The Application for Exception filed by Citizens Fuel Company, Case No., TEE-0040, be, and hereby is, granted as set forth in paragraph (2) below and denied in all other respects.
- (2) Citizens Fuel Company is relieved of the requirement to file form EIA-782B for the months January 2007 through June 2007.
- (3) To the extent that the Application is denied, administrative review of this Decision and Order may be sought by any persons aggrieved or adversely affected by the denial of exception relief. Such review shall be commenced by filing a petition for review with the Federal Energy Regulatory Commission within 30 days of the date of this Decision and Order pursuant to 18 C.F.R. Part 385, Subpart J.

Fred L. Brown  
Acting Director  
Office of Hearings and Appeals

Date: January 23, 2007

---

<sup>19</sup> See Meier Oil Serv., 14 DOE ¶ 81,004 (1986); Ward Oil Co., 24 DOE ¶ 81,002 (1994).

March 2, 2007

DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

Application for Exception

Name of Case: A & M Oil Company, L.L.C.

Date of Filing: January 23, 2007

Case No.: TEE-0041

On January 23, 2007, A & M Oil Company, L.L.C. (A & M) filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). The firm requests that it be permanently relieved of the requirement to prepare and file the Energy Information Administration (EIA) Form EIA-782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report." As explained below, we have determined that the firm's request should be denied.

*I. Background*

The DOE's Energy Information Administration (EIA) is authorized to collect, analyze, and disseminate energy data and other information.<sup>1</sup> The EIA-782B reporting requirement grew out of the shortages of crude oil and petroleum products during the 1970s. In 1979, Congress determined that the lack of reliable information concerning the supply, demand and prices of petroleum products impeded the nation's ability to respond to the oil crisis. It therefore authorized the DOE to collect data on the supply and prices of petroleum products. This information is used to analyze trends within petroleum markets. Summaries of the information and the analyses are reported by EIA in publications such as "Petroleum Marketing Monthly." This information is used by Congress and state governments to project trends and to formulate national and state energy policies. Access to this data is vital to the nation's ability to anticipate and respond to potential energy shortages.<sup>2</sup>

Form EIA-782B is a monthly report, pursuant to which resellers and retailers report the volume and price of sales of motor gasoline, No.

---

<sup>1</sup> 15 U.S.C. § 772(b); 42 U.S.C. § 7135(b).

<sup>2</sup> See H.R. Rep. NO. 373, 96<sup>th</sup> Con., 1st Sess., reprinted in 1979 U.S. Code Cong. & Admin. News 1764, 1781 (H.R. Report 373).

2 distillates, propane, and residual fuel oil. In order to minimize the reporting burden, the EIA periodically selects a relatively small sample of companies to file Form EIA-782B<sup>3</sup> and permits reporting firms to rely on reasonable estimates.<sup>4</sup>

## II. Exception Criteria

OHA has the authority to grant exception relief where the reporting requirement causes a "serious hardship, gross inequity or unfair distribution of burdens."<sup>5</sup> Since all reporting firms are burdened to some extent by reporting requirements, exception relief is appropriate only where a firm can demonstrate that it is adversely affected by the reporting requirement in a way that differs significantly from similar reporting firms.

When considering a request for exception relief, we must weigh the firm's difficulty in complying with the reporting requirement against the nation's need for reliable energy data. Thus, mere inconvenience does not constitute a hardship warranting relief.<sup>6</sup> Similarly, the fact that a firm is relatively small or has filed reports for a number of years does not constitute a hardship warranting relief.<sup>7</sup> If firms of all sizes, both large and small, are not included in the survey, the estimates and projections generated by EIA's statistical sample will be unreliable.<sup>8</sup>

OHA has granted relief from the reporting requirement under various circumstances. For example, we have granted relief where: the firm's financial situation is so precarious that the additional burden of meeting the DOE reporting requirements threatens the firm's continued viability;<sup>9</sup> the firm's only employee capable of preparing the report is ill and the firm cannot afford to hire outside help;<sup>10</sup> extreme or

---

<sup>3</sup> Firms that account for over five percent of the sales of any particular product in a state or do business in four or more states, designated as certainty firms, are always included in the sample of firms required to file the form. A random sample of other firms is also selected. This random sample changes approximately every 24 to 30 months, but a firm may be reselected for subsequent samples. A firm that has been included in three consecutive random samples will generally not be included in a fourth consecutive sample, but may be included in a later sample.

<sup>4</sup> Form EIA-782B requires that the firm make a good faith effort to provide reasonably accurate information that is consistent with the accounting records maintained by the firm. The firm must alert the EIA if the estimates are later found to be materially different from actual data.

<sup>5</sup> 42 U.S.C. § 7194; 10 C.F.R. § 1003.25(b)(2).

<sup>6</sup> *Glenn Wagoner Oil Co.*, 16 DOE ¶ 81,024 (1987).

<sup>7</sup> *Mulgrew Oil Co.*, 20 DOE ¶ 81,009 (1990).

<sup>8</sup> *Id.*

<sup>9</sup> *Mico Oil Co.*, 23 DOE ¶ 81,105 (1994) (firm lost one million dollars over previous three years); *Deaton Oil Co.*, 16 DOE ¶ 81,206 (1987) (firm in bankruptcy).

<sup>10</sup> *S&S Oil & Propane Co.*, 21 DOE ¶ 81,006 (1991) (owner being treated for cancer); *Midstream Fuel Serv.*, 24 DOE ¶ 81,203 (1994) (three month extension of time to file reports granted when two office employees simultaneously on maternity leave); *Eastern Petroleum Corp.*, 14 DOE ¶ 81,011 (1986) (two month extension granted when computer operator broke wrist).

unusual circumstances disrupt a firm's activities;<sup>11</sup> or, a combination of factors resulting from unavoidable circumstances makes completing the form impracticable.<sup>12</sup>

### III. The Application for Exception

A & M filed its Application for Exception in January 2007.<sup>13</sup> After reviewing the Application, we determined that there was insufficient information to permit us to act favorably upon the request. We contacted A & M in order to gather more information pertaining to the request.<sup>14</sup>

A & M is a seller of petroleum products based in Tuscaloosa, Alabama. The current reporting sample for filing Form EIA-782B began in August 2004.<sup>15</sup> That is the first sample in which A & M has been included.<sup>16</sup> A & M states that it has reduced its staff as a result of difficulties in its retail market.<sup>17</sup> According to A & M, the firm currently has two administrative workers, in addition to the firm's manager. A & M maintains that, currently, the manager completes the form manually and that it takes him approximately three to four hours.<sup>18</sup> A & M states that the requirement to complete and file the form has become burdensome to the firm. A & M requests that it be permanently relieved of the obligation to file form EIA-782B.

### IV. Analysis

The Form EIA-782B reporting requirement is not particularly burdensome. It requires little more than the essential type of pricing, supply, and inventory data that is required to operate a business. The EIA estimates that it should normally take a firm approximately two and one-half hours per month to complete the form.<sup>19</sup> As mentioned above, the burden of the requirement can be substantially reduced by the use of estimates.<sup>20</sup>

---

<sup>11</sup> *Little River Village Campground, Inc.*, 24 DOE ¶ 81,033 (1994) (five months relief because of flood); *Utilities Bd. of Citronelle-Gas*, 4 DOE ¶ 81,025 (1979) (hurricane); *Meier Oil Serv.* 14 DOE ¶ 81,004 (1986) (three month extension granted where disruptions caused by installation of new computer system left the firm's records inaccessible).

<sup>12</sup> *Ward Oil Co.*, 24 DOE ¶ 81,002 (1994) (ten month extension granted where long illness and death of a partner resulted in personnel shortages, financial difficulties and other administrative problems).

<sup>13</sup> See Letter from David W. Cusimano, A & M, to OHA (dated January 12, 2007) (Application for Exception).

<sup>14</sup> See Memorandum of Telephone Conversation between David W. Cusimano, A & M, and Diane DeMoura, OHA (February 5, 2007).

<sup>15</sup> Electronic Mail Message from Tammy Heppner, EIA, to Diane DeMoura, OHA (January 24, 2007).

<sup>16</sup> *Id.*

<sup>17</sup> See Application for Exception; Memorandum of Telephone Conversation between David W. Cusimano, A & M, and Diane DeMoura, OHA (February 5, 2007).

<sup>18</sup> *Id.*

<sup>19</sup> See Section 10 of General Instructions to Form EIA-782B.

<sup>20</sup> See Section 7 of the General Instructions for Form EIA-782B.

A & M's arguments - that the firm is small and has a limited staff, and that it takes the firm's manager three to four hours to manually complete the form - do not indicate that the firm is experiencing a burden significantly greater than that experienced by other reporting firms. The relatively small size of a firm and its staff does not justify relief.<sup>21</sup> Furthermore, despite A & M's contention that the form requires an inordinate amount of time each month to complete, the time the firm's manager takes to complete the form is not significantly greater than the general EIA estimate. In addition, it may be possible for the firm to reduce the time spent to complete the form through the use of estimates.

As the foregoing indicates, A & M has not demonstrated that it meets the standards for exception relief. Accordingly, we have determined that the exception request should be denied.

It Is Therefore Ordered That:

- (1) The Application for Exception filed by A & M Oil Company, L.L.C., Case No., TEE-0041, be, and hereby is, denied.
- (2) Administrative review of this Decision and Order may be sought by any persons aggrieved or adversely affected by the denial of exception relief. Such review shall be commenced by filing a petition for review with the Federal Energy Regulatory Commission within 30 days of the date of this Decision and Order pursuant to 18 C.F.R. Part 385, Subpart J.

Fred L. Brown  
Acting Director  
Office of Hearings and Appeals

Date: March 2, 2007

---

<sup>21</sup> See *Mulgrew Oil Co.*, 20 DOE ¶ 81,009 (1990) (providing that if firms of all sizes, both large and small, are not included in EIA's statistical sample, the estimates and projections generated by the sample will be unreliable).

July 18, 2007

DECISION AND ORDER  
OFFICE OF HEARINGS AND APPEALS

Application for Exception

Case Name: Muddy Creek Oil and Gas, Inc.

Date of Filing: March 28, 2007

Case Number: TEE-0042

On March 28, 2007, Muddy Creek Oil and Gas, Inc. (Muddy Creek) of Pine Ridge, South Dakota, filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). Muddy Creek requests that it be relieved of the requirement to prepare and file the Energy Information Administration (EIA) Form EIA-782B, entitled "Resellers/Retailers' Monthly Petroleum Product Sales Report" (Form EIA-782B). As explained below, we have determined that the Application for Exception should be granted in part.

**I. Background**

The DOE's Energy Information Administration (EIA) is authorized to collect, analyze, and disseminate energy data and other information.<sup>1</sup> The EIA-782B reporting requirement grew out of the shortages of crude oil and petroleum products during the 1970s. In 1979, Congress determined that the lack of reliable information concerning the supply, demand and prices of petroleum products impeded the nation's ability to respond to the oil crisis. It therefore authorized the DOE to collect data on the supply and prices of petroleum products. This information is used to analyze trends within petroleum markets. Summaries of the information and the analyses are reported by EIA in publications such as "Petroleum Marketing Monthly." This information is used by Congress and state governments to project trends and to formulate national and state energy policies.

EIA designates some companies as certainty firms. A company is designated as such because it either (a) sells five percent or more of a particular product sales category in a state in which it does business, or (b) does business in four or more states.<sup>2</sup> All certainty firms are included in the survey sample on a continuing basis because of their impact on the market. Thus, the continuity of the surveys cannot be maintained by replacing a certainty firm with a similar company since

---

<sup>1</sup> 15 U.S.C. § 772(b); 42 U.S.C. § 7135(b).

<sup>2</sup> A random sample of other firms is also selected. This random sample changes approximately every 24 to 30 months, but a firm may be reselected for a subsequent sample. A firm that has been included in three consecutive random samples will generally not be included in a fourth consecutive sample, but may be included in a later sample.

all companies of this kind are already survey participants. EIA examines the data that these companies submit more closely and considers these data more instructive in gauging market trends than data submitted by smaller firms. In an effort to minimize the burden of preparing the form, EIA permits firms to rely on reasonable estimates.<sup>3</sup>

## II. Exception Criteria

OHA has the authority to grant exception relief where the reporting requirement causes a “serious hardship, gross inequity or unfair distribution of burdens.”<sup>4</sup> Since all reporting firms are burdened to some extent by reporting requirements, exception relief is appropriate only where a firm can demonstrate that it is adversely affected by the reporting requirement in a way that differs significantly from similar reporting firms.

When considering a request for exception relief, we must weigh the firm’s difficulty in complying with the reporting requirement against the nation’s need for reliable energy data. Thus, mere inconvenience does not constitute a hardship warranting relief.<sup>5</sup> Neither does the fact that a firm is relatively small or has filed reports for a number of years constitute a hardship warranting relief.<sup>6</sup> If firms of all sizes, both large and small, are not included in the survey, the estimates and projections generated by EIA’s statistical sample will be unreliable.<sup>7</sup>

OHA has granted relief from the reporting requirement under various circumstances. For example, we have granted relief where: the firm’s financial situation is so precarious that the additional burden of meeting the DOE reporting requirements threatens the firm’s continued viability;<sup>8</sup> the firm’s only employee capable of preparing the report is ill and the firm cannot afford to hire outside help;<sup>9</sup> extreme or unusual circumstances disrupt a firm’s activities;<sup>10</sup> or a combination of factors resulting from unavoidable circumstances makes completing the form impracticable.<sup>11</sup>

---

<sup>3</sup> The firm must make a good faith effort to provide reasonably accurate information that is consistent with the accounting records maintained by the firm. The firm must alert the EIA if the estimates are later found to be materially different from the actual data.

<sup>4</sup> 42 U.S.C. § 7194; 10 C.F.R. § 1003.25(b)(2).

<sup>5</sup> *Glenn Wagoner Oil Co.*, 16 DOE ¶ 81,024 (1987).

<sup>6</sup> *Mulgrew Oil Co.*, 20 DOE ¶ 81,009 (1990).

<sup>7</sup> *Id.*

<sup>8</sup> *Mico Oil Co.*, 23 DOE ¶ 81,105 (1994) (firm lost one million dollars over previous three years); *Deaton Oil Co.*, 16 DOE 81,206 (1987) (firm in bankruptcy).

<sup>9</sup> *S&S Oil & Propane Co.*, 21 DOE ¶ 81,006 (1991) (owner being treated for cancer); *Midstream Fuel Serv.*, 24 DOE 81,203 (1994) (three month extension of time to file reports granted when two office employees simultaneously on maternity leave); *Eastern Petroleum Corp.*, 14 DOE ¶ 81,011 (1986) (two month extension granted when computer operator broke wrist).

<sup>10</sup> *Little River Village Campground, Inc.*, 24 DOE ¶ 81,033 (1994) (five months relief because of flood); *Utilities Bd. of Citronelle-Gas*, 4 DOE ¶ 81,025 (1979) (hurricane); *Meier Oil Serv.* 14 DOE ¶ 81,004 (1986) (three month extension granted where disruptions caused by installation of new computer system left the firm’s records inaccessible).

<sup>11</sup> *Ward Oil Co.*, 24 DOE ¶ 81,002 (1994) (ten month extension granted where long illness and death of a partner resulted in personnel shortages, financial difficulties and other administrative problems).



### III. The Application for Exception

Muddy Creek filed its Application for Exception in March 2007.<sup>12</sup> Based upon a review of the application, we concluded that there was insufficient information to allow us to act favorably on the request. Consequently, we contacted Muddy Creek in order to obtain more information regarding its Application.<sup>13</sup>

Muddy Creek, located in Pine Ridge, South Dakota, is a distributor of petroleum products. In its Application for Exception, Muddy Creek requests that it be relieved of the EIA reporting requirement for at least one year on the grounds that the requirement is burdensome to the company at this time.<sup>14</sup> Muddy Creek states that due to unforeseen circumstances, the company had to sell four of its six locations, reducing the company personnel from approximately 100 employees to about ten employees within one month. Muddy Creek adds that the four locations sold were the company's busiest and, as a result, the company's sales are a fraction of what they used to be.<sup>15</sup> Muddy Creek also states that its accountant, who was responsible for completing Form EIA-782B, abruptly left the company and only one of the ten remaining employees is qualified to assume the accountant's duties.<sup>16</sup> According to Muddy Creek, that individual is trying to learn how to complete Form EIA-782B and take over the company's bookkeeping and reporting functions but is unable to devote her full attention to it because she has been diagnosed with a medical condition for which she must undergo treatment.<sup>17</sup> Muddy Creek states that it is currently unknown how long this individual will be undergoing treatment for her medical condition and the company's financial situation does not allow it to hire another person to take over the accounting and reporting duties.<sup>18</sup>

### IV. Analysis

Exception relief is appropriate where a reporting requirement poses a serious hardship, inequity, or unfair distribution of burdens.<sup>19</sup> In other words, relief is appropriate where the reporting requirement adversely affects the firm to a significantly greater degree than it affects other firms. As stated above, in the case of a certainty firm, this showing must be compelling, because of the significance of the data collected.

Upon careful examination of Muddy Creek's Application for Exception, we have determined that temporary exception relief is warranted. The company has experienced an abrupt, significant loss of personnel due to the sale of four of its six locations. In addition, the person responsible for completing Form EIA-782B abruptly left the company, requiring the only remaining qualified employee, who is currently undergoing treatment for a medical condition, to

---

<sup>12</sup> Email from Patricia A. Pourier, Muddy Creek, to EIA (March 23, 2007; received by OHA March 28, 2007) (Application for Exception).

<sup>13</sup> See Memoranda of Telephone Conversation between Patricia A. Pourier, Muddy Creek, and Diane DeMoura, OHA (May 30, 2007).

<sup>14</sup> *Id.*; see also Application for Exception.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*, see also Application for Exception.

<sup>19</sup> 42 U.S.C. § 7194; 10 C.F.R. § 1003.25(b)(2).

assume the company's accounting duties. However, considering the public interest in the information obtained from Muddy Creek's EIA-782B form – particularly since it is designated as a certainty firm – we do not believe that the firm should be relieved of the obligation to file form EIA-782B indefinitely. Accordingly, we have determined that a temporary exception through January 2008 should be granted.<sup>20</sup>

It Is Therefore Ordered That:

- (1) The Application for Exception filed by Muddy Creek Oil and Gas, Inc., Case No. TEE-0042, be, and hereby is, granted as set forth in paragraph (2) below and denied in all other respects.
- (2) Muddy Creek Oil and Gas, Inc., is relieved of the requirement to file form EIA-782B for the months August 2007 through January 2008.
- (3) To the extent that the Application is denied, administrative review of this Decision and Order may be sought by any persons aggrieved or adversely affected by the denial of exception relief. Such review shall be commenced by filing a petition for review with the Federal Energy Regulatory Commission within 30 days of the date of this Decision and Order pursuant to 18 C.F.R. Part 385, Subpart J.

Fred L. Brown  
Acting Director  
Office of Hearings and Appeals

Date: July 18, 2007

---

<sup>20</sup> See Meier Oil Serv., 14 DOE ¶ 81,004 (1986); Ward Oil Co., 24 DOE ¶ 81,002 (1994).

April 24, 2007

DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

Application for Exception

Name of Case: Emerson Oil Co., Inc.

Date of Filing: March 30, 2007

Case No.: TEE-0043

On March 30, 2007, Emerson Oil Co., Inc. (Emerson) filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). The firm requests that it be permanently relieved of the requirement to prepare and file the Energy Information Administration (EIA) Form EIA-782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report." As explained below, we have determined that Emerson's request should be denied.

**I. Background**

The DOE's Energy Information Administration (EIA) is authorized to collect, analyze, and disseminate energy data and other information.<sup>1</sup> The EIA-782B reporting requirement grew out of the shortages of crude oil and petroleum products during the 1970s. In 1979, Congress determined that the lack of reliable information concerning the supply, demand and prices of petroleum products impeded the nation's ability to respond to the oil crisis. It therefore authorized the DOE to collect data on the supply and prices of petroleum products. This information is used to analyze trends within petroleum markets. Summaries of the information and the analyses are reported by EIA in publications such as "Petroleum Marketing Monthly." This information is used by Congress and state governments to project trends and to formulate national and state energy policies. Access to this data is vital to the nation's ability to anticipate and respond to potential energy shortages.<sup>2</sup>

Form EIA-782B is a monthly report, pursuant to which resellers and retailers report the volume and price of sales of motor gasoline, No. 2 distillates, propane, and residual fuel oil. In order to minimize the reporting burden, the EIA periodically selects a relatively small sample of

---

<sup>1</sup> 15 U.S.C. § 772(b); 42 U.S.C. § 7135(b).

<sup>2</sup> See H.R. Rep. No. 373, 96<sup>th</sup> Cong., 1st Sess., reprinted in 1979 U.S. Code Cong. & Admin. News 1764, 1781 (H.R. Report 373).

companies to file Form EIA-782B<sup>3</sup> and permits reporting firms to rely on reasonable estimates.<sup>4</sup>

## II. Exception Criteria

OHA has the authority to grant exception relief where the reporting requirement causes a “serious hardship, gross inequity or unfair distribution of burdens.”<sup>5</sup> Since all reporting firms are burdened to some extent by reporting requirements, exception relief is appropriate only where a firm can demonstrate that it is adversely affected by the reporting requirement in a way that differs significantly from similar reporting firms.

When considering a request for exception relief, we must weigh the firm’s difficulty in complying with the reporting requirement against the nation’s need for reliable energy data. Thus, mere inconvenience does not constitute a hardship warranting relief.<sup>6</sup> Similarly, the fact that a firm is relatively small or has filed reports for a number of years does not constitute a hardship warranting relief.<sup>7</sup> If firms of all sizes, both large and small, are not included in the survey, the estimates and projections generated by EIA’s statistical sample will be unreliable.<sup>8</sup>

OHA has granted relief from the reporting requirement under various circumstances. For example, we have granted relief where: the firm’s financial situation is so precarious that the additional burden of meeting the DOE reporting requirements threatens the firm’s continued viability;<sup>9</sup> the firm’s only employee capable of preparing the report is ill and the firm cannot afford to hire outside help;<sup>10</sup> extreme or unusual circumstances disrupt a firm’s activities;<sup>11</sup> or a combination of factors resulting from unavoidable circumstances makes completing the form impracticable.<sup>12</sup>

---

<sup>3</sup> Firms that account for over five percent of the sales of any particular product in a state or do business in four or more states, designated as certainty firms, are always included in the sample of firms required to file the form. A random sample of other firms is also selected. This random sample changes approximately every 24 to 30 months, but a firm may be reselected for subsequent samples. A firm that has been included in three consecutive random samples will generally not be included in a fourth consecutive sample, but may be included in a later sample.

<sup>4</sup> Form EIA-782B requires that the firm make a good faith effort to provide reasonably accurate information that is consistent with the accounting records maintained by the firm. The firm must alert the EIA if the estimates are later found to be materially different from actual data.

<sup>5</sup> 42 U.S.C. § 7194; 10 C.F.R. § 1003.25(b)(2).

<sup>6</sup> *Glenn Wagoner Oil Co.*, 16 DOE ¶ 81,024 (1987).

<sup>7</sup> *Mulgrew Oil Co.*, 20 DOE ¶ 81,009 (1990).

<sup>8</sup> *Id.*

<sup>9</sup> *Mico Oil Co.*, 23 DOE ¶ 81,105 (1994) (firm lost one million dollars over previous three years); *Deaton Oil Co.*, 16 DOE 81,206 (1987) (firm in bankruptcy).

<sup>10</sup> *S&S Oil & Propane Co.*, 21 DOE ¶ 81,006 (1991) (owner being treated for cancer); *Midstream Fuel Serv.*, 24 DOE 81,203 (1994) (three month extension of time to file reports granted when two office employees simultaneously on maternity leave); *Eastern Petroleum Corp.*, 14 DOE ¶ 81,011 (1986) (two month extension granted when computer operator broke wrist).

<sup>11</sup> *Little River Village Campground, Inc.*, 24 DOE ¶ 81,033 (1994) (five months relief because of flood); *Utilities Bd. of Citronelle-Gas*, 4 DOE ¶ 81,025 (1979) (hurricane); *Meier Oil Serv.* 14 DOE ¶ 81,004 (1986) (three month extension granted where disruptions caused by installation of new computer system left the firm’s records inaccessible).

<sup>12</sup> *Ward Oil Co.*, 24 DOE ¶ 81,002 (1994) (ten month extension granted where long illness and death of a partner resulted in personnel shortages, financial difficulties and other administrative problems).

### III. The Application for Exception

Emerson is a seller of petroleum products based in Homer, Louisiana. The firm has filed form EIA-782B from January 2002 to the present.<sup>13</sup> Emerson requests that it be permanently relieved of the obligation to file form EIA-782B. Emerson bases its request on the fact that the firm has filed the form for several years.<sup>14</sup> Emerson also maintains that it is a small firm and, therefore, the information it provides in Form EIA-782B is of little value.<sup>15</sup>

### IV. Analysis

Exception relief is appropriate where a reporting requirement poses a serious hardship, inequity, or unfair distribution of burdens.<sup>16</sup> In other words, relief is appropriate where the reporting requirement adversely affects the firm to a significantly greater degree than it affects other firms.

In this case, Emerson does not claim it is adversely affected by the reporting requirement.<sup>17</sup> Rather, it bases its request for relief almost exclusively on the grounds that it has filed Form EIA-782B for several years. We have consistently held that the length of time that a firm has been required to file an EIA form does not alone constitute grounds for exception relief.<sup>18</sup> Moreover, the small size of a firm does not justify relief. As mentioned above, EIA requires information from firms of all sizes in order to generate valid estimates and projections.

As the foregoing discussion demonstrates, Emerson has not shown that the requirement to complete Form EIA-782B is burdensome to the firm in a manner that distinguishes it from other similarly affected firms. Accordingly, we find that exception relief is not warranted in this case and, therefore, Emerson's Application for Exception should be denied.

It Is Therefore Ordered That:

- (1) The Application for Exception filed by Emerson Oil Co., Inc., Case No. TEE-0043, be, and hereby is, denied.
- (2) Administrative review of this Decision and Order may be sought by any person who is aggrieved or adversely affected by the denied of exception relief. Such review shall be commenced by the filing of a petition for review with the Federal Energy Regulatory

---

<sup>13</sup> See Electronic Mail Message from Tammy Heppner, EIA, to Diane DeMoura, OHA (April 5, 2007).

<sup>14</sup> See Application for Exception.

<sup>15</sup> See Memorandum of Telephone Conversation between Ann Burton, Emerson, and Diane DeMoura, OHA (April 18, 2007).

<sup>16</sup> 42 U.S.C. § 7194; 10 C.F.R. § 1003.25(b)(2).

<sup>17</sup> Emerson's office manager stated that it takes her approximately one hour to complete the form. See Memorandum of Telephone Conversation between Ann Burton, Emerson, and Diane DeMoura (April 18, 2007).

<sup>18</sup> See *Sound Oil Co.*, 25 DOE ¶ 81,006 (1994) (company had filed for ten years); *Halron Oil Co.*, 16 DOE ¶ 81,001 (1987) (12 years).

Commission within 30 days of the date of this Decision and Order pursuant to 18 C.F.R. Part 835, Subpart J.

Fred L. Brown  
Acting Director  
Office of Hearings and Appeals

Date: April 24, 2007

July 18, 2007

DECISION AND ORDER  
OFFICE OF HEARINGS AND APPEALS

Application for Exception

Case Name: Bemer Petroleum Corporation

Date of Filing: April 18, 2007

Case Number: TEE-0044

On April 18, 2007, Bemer Petroleum Corporation (Bemer) of Glastonbury, Connecticut, filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). Bemer requests that it be relieved of the requirement to prepare and file the Energy Information Administration (EIA) Form EIA-782B, entitled "Resellers/Retailers' Monthly Petroleum Product Sales Report" (Form EIA-782B). As explained below, we have determined that the Application for Exception should be denied.

**I. Background**

The DOE's Energy Information Administration (EIA) is authorized to collect, analyze, and disseminate energy data and other information.<sup>1</sup> The EIA-782B reporting requirement grew out of the shortages of crude oil and petroleum products during the 1970s. In 1979, Congress determined that the lack of reliable information concerning the supply, demand and prices of petroleum products impeded the nation's ability to respond to the oil crisis. It therefore authorized the DOE to collect data on the supply and prices of petroleum products. This information is used to analyze trends within petroleum markets. Summaries of the information and the analyses are reported by EIA in publications such as "Petroleum Marketing Monthly." This information is used by Congress and state governments to project trends and to formulate national and state energy policies.

EIA designates some companies as certainty firms. A company is designated as such because it either (a) sells five percent or more of a particular product sales category in a state in which it does business, or (b) does business in four or more states.<sup>2</sup> All certainty firms are included in the survey sample on a continuing basis because of their impact on the market. Thus, the continuity

---

<sup>1</sup> 15 U.S.C. § 772(b); 42 U.S.C. § 7135(b).

<sup>2</sup> A random sample of other firms is also selected. This random sample changes approximately every 24 to 30 months, but a firm may be reselected for a subsequent sample. A firm that has been included in three consecutive random samples will generally not be included in a fourth consecutive sample, but may be included in a later sample.

of the surveys cannot be maintained by replacing a certainty firm with a similar company since all companies of this kind are already survey participants. EIA examines the data that these companies submit more closely and considers these data more instructive in gauging market trends than data submitted by smaller firms. In an effort to minimize the burden of preparing the form, EIA permits firms to rely on reasonable estimates.<sup>3</sup>

## II. Exception Criteria

OHA has the authority to grant exception relief where the reporting requirement causes a “serious hardship, gross inequity or unfair distribution of burdens.”<sup>4</sup> Since all reporting firms are burdened to some extent by reporting requirements, exception relief is appropriate only where a firm can demonstrate that it is adversely affected by the reporting requirement in a way that differs significantly from similar reporting firms.

When considering a request for exception relief, we must weigh the firm’s difficulty in complying with the reporting requirement against the nation’s need for reliable energy data. Thus, mere inconvenience does not constitute a hardship warranting relief.<sup>5</sup> Neither does the fact that a firm is relatively small or has filed reports for a number of years constitute a hardship warranting relief.<sup>6</sup> If firms of all sizes, both large and small, are not included in the survey, the estimates and projections generated by EIA’s statistical sample will be unreliable.<sup>7</sup>

OHA has granted relief from the reporting requirement under various circumstances. For example, we have granted relief where: the firm’s financial situation is so precarious that the additional burden of meeting the DOE reporting requirements threatens the firm’s continued viability;<sup>8</sup> the firm’s only employee capable of preparing the report is ill and the firm cannot afford to hire outside help;<sup>9</sup> extreme or unusual circumstances disrupt a firm’s activities;<sup>10</sup> or a combination of factors resulting from unavoidable circumstances makes completing the form impracticable.<sup>11</sup>

---

<sup>3</sup> The firm must make a good faith effort to provide reasonably accurate information that is consistent with the accounting records maintained by the firm. The firm must alert the EIA if the estimates are later found to be materially different from the actual data.

<sup>4</sup> 42 U.S.C. § 7194; 10 C.F.R. § 1003.25(b)(2).

<sup>5</sup> *Glenn Wagoner Oil Co.*, 16 DOE ¶ 81,024 (1987).

<sup>6</sup> *Mulgrew Oil Co.*, 20 DOE ¶ 81,009 (1990).

<sup>7</sup> *Id.*

<sup>8</sup> *Mico Oil Co.*, 23 DOE ¶ 81,105 (1994) (firm lost one million dollars over previous three years); *Deaton Oil Co.*, 16 DOE 81,206 (1987) (firm in bankruptcy).

<sup>9</sup> *S&S Oil & Propane Co.*, 21 DOE ¶ 81,006 (1991) (owner being treated for cancer); *Midstream Fuel Serv.*, 24 DOE 81,203 (1994) (three month extension of time to file reports granted when two office employees simultaneously on maternity leave); *Eastern Petroleum Corp.*, 14 DOE ¶ 81,011 (1986) (two month extension granted when computer operator broke wrist).

<sup>10</sup> *Little River Village Campground, Inc.*, 24 DOE ¶ 81,033 (1994) (five months relief because of flood); *Utilities Bd. of Citronelle-Gas*, 4 DOE ¶ 81,025 (1979) (hurricane); *Meier Oil Serv.* 14 DOE ¶ 81,004 (1986) (three month extension granted where disruptions caused by installation of new computer system left the firm’s records inaccessible).

<sup>11</sup> *Ward Oil Co.*, 24 DOE ¶ 81,002 (1994) (ten month extension granted where long illness and death of a partner resulted in personnel shortages, financial difficulties and other administrative problems).



### III. The Application for Exception

Bemer filed its Application for Exception in April 2007.<sup>12</sup> Based upon a review of the application, we concluded that there was insufficient information to allow us to act favorably on the request. Consequently, we contacted Bemer to provide the firm an opportunity to submit more information regarding its Application.<sup>13</sup>

Bemer, located in Glastonbury, Connecticut, is a distributor of propane. In its Application for Exception, Bemer requests temporary relief from the EIA reporting requirement on the grounds that the requirement is burdensome to the company at this time.<sup>14</sup> Bemer states that it has recently been involved in a legal dispute with its former office manager whose employment was terminated. According to Bemer, the office manager was the person responsible for completing Form EIA-782B, but she failed to carry out her duties and, as a result, the company is significantly behind in the processing of the form and other documents pertaining to the company's accounts.<sup>15</sup> Bemer states that it is currently working to sort through the backlog and is working with a computer technician to develop a program that will break down its sales data but that, at present, it is unable to generate accurate reports. For example, Bemer maintains that it is unable to distinguish its residential sales from its commercial sales for reporting purposes.<sup>16</sup>

### IV. Analysis

Exception relief is appropriate where a reporting requirement poses a serious hardship, inequity, or unfair distribution of burdens.<sup>17</sup> In other words, relief is appropriate where the reporting requirement adversely affects the firm to a significantly greater degree than it affects other firms. As stated above, in the case of a certainty firm, this showing must be compelling, because of the significance of the data collected.

In this case, Bemer has not made the showing necessary to warrant exception relief. Bemer's argument essentially is that the firm does not have the time to complete the form because of various issues related to the dismissal of its office manager. As explained below, a disruption in business operations resulting from the departure of an employee is not by itself sufficient to indicate that the firm is adversely affected to a significantly greater degree than other firms.

Form EIA-782B requires little more than the essential type of pricing, supply, and inventory data that is required to operate a business. Bemer has not given a compelling explanation for why it does not have accurate volume and pricing data. As a functioning business, Bemer is surely aware of its propane output and pricing. Furthermore, Bemer's argument that it is unable to accurately break down its data for the form, including distinguishing between residential and commercial sales, is unpersuasive. Even if Bemer is not able to produce a precise breakdown of

---

<sup>12</sup> Letter from David D. DeTuccio, Jr., Bemer, to Jennifer Smith, EIA (March 15, 2007; received by OHA April 18, 2007) (Application for Exception).

<sup>13</sup> See Memoranda of Telephone Conversations between David D. DeTuccio, Jr., Bemer, and Diane DeMoura, OHA (May 11, 2007 and June 20, 2007).

<sup>14</sup> *Id.*; see also Application for Exception.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> 42 U.S.C. § 7194; 10 C.F.R. § 1003.25(b)(2).

its sales, Bemer has not provided any reason that it cannot make reasonable estimates in completing Form EIA-782B.<sup>18</sup>

As stated above, the EIA relies heavily on the market data collected from certainty firms such as Bemer. While we can appreciate that Bemer is currently experiencing some difficulties, the reliability of the reporting sample would be compromised if we were to grant an exception to all firms – particularly certainty firms – experiencing heavy workloads or other issues associated with maintaining a business.

As the foregoing discussion demonstrates, Bemer has not shown that the requirement to complete Form EIA-782B is burdensome to the company in a manner that distinguishes it from other similarly affected firms. Accordingly, we find that exception relief is not warranted in this case and, therefore, Bemer's Application for Exception should be denied.

It Is Therefore Ordered That:

(1) The Application for Exception filed by Bemer Petroleum Corporation, Case No. TEE-0044, be, and hereby is, denied.

(2) Administrative review of this Decision and Order may be sought by any person who is aggrieved or adversely affected by the denied of exception relief. Such review shall be commenced by the filing of a petition for review with the Federal Energy Regulatory Commission within 30 days of the date of this Decision and Order pursuant to 18 C.F.R. Part 835, Subpart J.

Fred L. Brown  
Acting Director  
Office of Hearings and Appeals

Date: July 18, 2007

---

<sup>18</sup> EIA allows firms to use estimates as long as they are “consistent with standard accounting records maintained by the firm.” 2 Federal Energy Guidelines ¶ 18,502 at 18,507; *see also* Section 7 of the General Instructions to Form EIA-782B.

May 22, 2007

**DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS**

**Application for Exception**

Name of Case: United Oil and Gas, Inc.

Date of Filing: April 23, 2007

Case No.: TEE-0045

On April 23, 2007, United Oil and Gas, Inc. (United Oil) filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). The firm requests that it be permanently relieved of the requirement to prepare and file the Energy Information Administration (EIA) Form EIA-782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report." As explained below, we have determined that United's request should be granted in part.

**I. Background**

The DOE's Energy Information Administration (EIA) is authorized to collect, analyze, and disseminate energy data and other information.<sup>1</sup> The EIA-782B reporting requirement grew out of the shortages of crude oil and petroleum products during the 1970s. In 1979, Congress determined that the lack of reliable information concerning the supply, demand and prices of petroleum products impeded the nation's ability to respond to the oil crisis. It therefore authorized the DOE to collect data on the supply and prices of petroleum products. This information is used to analyze trends within petroleum markets. Summaries of the information and the analyses are reported by EIA in publications such as "Petroleum Marketing Monthly." This information is used by Congress and state governments to project trends and to formulate national and state energy policies. Access to this data is vital to the nation's ability to anticipate and respond to potential energy shortages.<sup>2</sup>

Form EIA-782B is a monthly report, pursuant to which resellers and retailers report the volume and price of sales of motor gasoline, No. 2 distillates, propane, and residual fuel oil. In order to

---

<sup>1</sup> 15 U.S.C. § 772(b); 42 U.S.C. § 7135(b).

<sup>2</sup> See H.R. Rep. NO. 373, 96<sup>th</sup> Con., 1st Sess., reprinted in 1979 U.S. Code Cong. & Admin. News 1764, 1781 (H.R. Report 373).

minimize the reporting burden, the EIA periodically selects a relatively small sample of companies to file Form EIA-782B<sup>3</sup> and permits reporting firms to rely on reasonable estimates.<sup>4</sup>

## II. Exception Criteria

OHA has the authority to grant exception relief where the reporting requirement causes a “serious hardship, gross inequity or unfair distribution of burdens.”<sup>5</sup> Since all reporting firms are burdened to some extent by reporting requirements, exception relief is appropriate only where a firm can demonstrate that it is adversely affected by the reporting requirement in a way that differs significantly from similar reporting firms.

When considering a request for exception relief, we must weigh the firm’s difficulty in complying with the reporting requirement against the nation’s need for reliable energy data. Thus, mere inconvenience does not constitute a hardship warranting relief.<sup>6</sup> Similarly, the fact that a firm is relatively small or has filed reports for a number of years does not constitute a hardship warranting relief.<sup>7</sup> If firms of all sizes, both large and small, are not included in the survey, the estimates and projections generated by EIA’s statistical sample will be unreliable.<sup>8</sup>

OHA has granted relief from the reporting requirement under various circumstances. For example, we have granted relief where: the firm’s financial situation is so precarious that the additional burden of meeting the DOE reporting requirements threatens the firm’s continued viability;<sup>9</sup> the firm’s only employee capable of preparing the report is ill and the firm cannot afford to hire outside help;<sup>10</sup> extreme or unusual circumstances disrupt a firm’s activities;<sup>11</sup> or, a combination of factors resulting from unavoidable circumstances makes completing the form impracticable.<sup>12</sup>

---

<sup>3</sup> Firms that account for over five percent of the sales of any particular product in a state or do business in four or more states, designated as certainty firms, are always included in the sample of firms required to file the form. A random sample of other firms is also selected. This random sample changes approximately every 24 to 30 months, but a firm may be reselected for subsequent samples. A firm that has been included in three consecutive random samples will generally not be included in a fourth consecutive sample, but may be included in a later sample.

<sup>4</sup> Form EIA-782B requires that the firm make a good faith effort to provide reasonably accurate information that is consistent with the accounting records maintained by the firm. The firm must alert the EIA if the estimates are later found to be materially different from actual data.

<sup>5</sup> 42 U.S.C. § 7194; 10 C.F.R. § 1003.25(b) (2).

<sup>6</sup> *Glenn Wagoner Oil Co.*, 16 DOE ¶ 81,024 (1987).

<sup>7</sup> *Mulgrew Oil Co.*, 20 DOE ¶ 81,009 (1990).

<sup>8</sup> *Id.*

<sup>9</sup> *Mico Oil Co.*, 23 DOE ¶ 81,105 (1994) (firm lost one million dollars over previous three years); *Deaton Oil Co.*, 16 DOE 81,206 (1987) (firm in bankruptcy).

<sup>10</sup> *S&S Oil & Propane Co.*, 21 DOE ¶ 81,006 (1991) (owner being treated for cancer); *Midstream Fuel Serv.*, 24 DOE 81,203 (1994) (three month extension of time to file reports granted when two office employees simultaneously on maternity leave); *Eastern Petroleum Corp.*, 14 DOE ¶ 81,011 (1986) (two month extension granted when computer operator broke wrist).

<sup>11</sup> *Little River Village Campground, Inc.*, 24 DOE ¶ 81,033 (1994) (five months relief because of flood); *Utilities Bd. of Citronelle-Gas*, 4 DOE ¶ 81,025 (1979) (hurricane); *Meier Oil Serv.* 14 DOE ¶ 81,004 (1986) (three month extension granted where disruptions caused by installation of new computer system left the firm’s records inaccessible).

<sup>12</sup> *Ward Oil Co.*, 24 DOE ¶ 81,002 (1994) (ten month extension granted where long illness and death of a partner resulted in personnel shortages, financial difficulties and other administrative problems).

### III. The Application for Exception

United is a seller of petroleum products based in Bottineau, North Dakota. United is a “noncertainty” firm and has filed form EIA-782B since August 2004.<sup>13</sup> In April 2007, United suffered a massive fire at its bulk petroleum facility. The company’s insurance agent submitted a statement describing the incident as a “catastrophe” and the extent of the damage as “severe.”<sup>14</sup> According to the agent, the firm is “saddled with extra jobs, hours, and expenses . . . .”<sup>15</sup> United further informed us that the facility must be totally rebuilt, and that the one employee who previously worked in the office and completed the report must now work outside for several hours a day on rebuilding the bulk petroleum facility.<sup>16</sup> United hired a new employee to do clerical work, but she is still learning the basics of her job and is unable to devote time to learning how to prepare the form EIA-782B.<sup>17</sup> The company has only three employees, and all of their time is devoted to rebuilding the facility and restoring their operations.<sup>18</sup> The extent of the damage was so severe that United is not sure when the facility will be totally repaired, but says it will take months.<sup>19</sup> Therefore, United requests that it be permanently relieved of the obligation to file form EIA-782B.

### IV. Analysis

Upon careful examination of United’s Application for Exception, we have determined that temporary exception relief is warranted. The firm has experienced a massive fire that destroyed its operations. As a small company, the personnel have now turned all of their attention to repairing the facility. Nonetheless, considering the public interest in the information obtained from United’s EIA-782B form, we do not believe that the firm should be relieved of the obligation to file form EIA-782B indefinitely. Accordingly, we have determined that a temporary exception for six months should be granted.<sup>20</sup> Due to the severity of the fire, at the end of that time we will re-visit this matter if United requests an extension of relief and determine if the circumstances warrant an extension.

It Is Therefore Ordered That:

- (1) The Application for Exception filed by United Oil and Gas, Inc. Case No., TEE-0045, be, and hereby is, granted as set forth in paragraph (2) below and denied in all other respects.

---

<sup>13</sup> See Electronic Mail Message from Tammy Heppner, EIA, to Valerie Vance Adeyeye, OHA (May 2, 2007).

<sup>14</sup> Letter from State Bank of Bottineau Insurance Agency, Inc. to DOE (April 22, 2007).

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*; Memorandum of Telephone Conversation between Deb Werner, United Oil, and Valerie Vance Adeyeye (May 10, 2007).

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> See Meier Oil Serv., 14 DOE ¶ 81,004 (1986); Ward Oil Co., 24 DOE ¶ 81,002 (1994).

- (2) United Oil and Gas, Inc. is relieved of the requirement to file form EIA-782B for the months May 2007 through November 2007. At the end of that period, the firm may re-apply for exception relief. Relief will be extended if circumstances warrant.
- (3) To the extent that the Application is denied, administrative review of this Decision and Order may be sought by any persons aggrieved or adversely affected by the denial of exception relief. Such review shall be commenced by filing a petition for review with the Federal Energy Regulatory Commission within 30 days of the date of this Decision and Order pursuant to 18 C.F.R. Part 385, Subpart J.

Fred L. Brown  
Acting Director  
Office of Hearings and Appeals

Date: May 22, 2007

May 22, 2007

DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

Application for Exception

Name of Case: Pelgas, Inc.  
Date of Filing: April 24, 2007  
Case No.: TEE-0046

On April 24, 2007, Pelgas, Inc. (Pelgas) filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). The firm requests that it be permanently relieved of the requirement to prepare and file the Energy Information Administration (EIA) Form EIA-782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report." As explained below, we have determined that the request should be denied.

**I. Background**

The DOE's Energy Information Administration (EIA) is authorized to collect, analyze, and disseminate energy data and other information.<sup>1</sup> The EIA-782B reporting requirement grew out of the shortages of crude oil and petroleum products during the 1970s. In 1979, Congress determined that the lack of reliable information concerning the supply, demand and prices of petroleum products impeded the nation's ability to respond to the oil crisis. It therefore authorized the DOE to collect data on the supply and prices of petroleum products. This information is used to analyze trends within petroleum markets. Summaries of the information and the analyses are reported by EIA in publications such as "Petroleum Marketing Monthly." This information is used by Congress and state governments to project trends and to formulate national and state energy policies. Access to this data is vital to the nation's ability to anticipate and respond to potential energy shortages.<sup>2</sup>

Form EIA-782B is a monthly report, pursuant to which resellers and retailers report the volume and price of sales of motor gasoline, No. 2 distillates, propane, and residual fuel oil. In order to minimize the reporting burden, the EIA periodically selects a relatively small sample of companies to file Form EIA-782B. Firms that account for over five percent of the sales of any particular product in a state or do business in four or more states, designated as certainty firms, are always included in the sample of firms required to file the form. A random sample of other firms, designated as non-certainty firms, is also selected. This random sample changes

---

<sup>1</sup> 15 U.S.C. § 772(b); 42 U.S.C. § 7135(b).

<sup>2</sup> See H.R. Rep. No. 373, 96<sup>th</sup> Cong., 1st Sess., reprinted in 1979 U.S. Code Cong. & Admin. News 1764, 1781 (H.R. Report 373).

approximately every 24 to 30 months, but a firm may be reselected for subsequent samples. A firm that has been included in three consecutive random samples will generally not be included in a fourth consecutive sample, but may be included in a later sample. In order to reduce the burden on reporting firms, EIA also permits the firms to rely on reasonable estimates.<sup>3</sup>

## II. Exception Criteria

OHA has the authority to grant exception relief where the reporting requirement causes a “serious hardship, gross inequity or unfair distribution of burdens.”<sup>4</sup> Since all reporting firms are burdened to some extent by reporting requirements, exception relief is appropriate only where a firm can demonstrate that it is adversely affected by the reporting requirement in a way that differs significantly from similar reporting firms.

When considering a request for exception relief, we must weigh the firm’s difficulty in complying with the reporting requirement against the nation’s need for reliable energy data. Thus, mere inconvenience does not constitute a hardship warranting relief.<sup>5</sup> Similarly, the fact that a firm is relatively small or has filed reports for a number of years does not constitute a hardship warranting relief.<sup>6</sup> If firms of all sizes, both large and small, are not included in the survey, the estimates and projections generated by EIA’s statistical sample will be unreliable.<sup>7</sup>

OHA has granted relief from the reporting requirement under various circumstances. For example, we have granted relief where: the firm’s financial situation is so precarious that the additional burden of meeting the DOE reporting requirements threatens the firm’s continued viability;<sup>8</sup> the firm’s only employee capable of preparing the report is ill and the firm cannot afford to hire outside help;<sup>9</sup> extreme or unusual circumstances disrupt a firm’s activities;<sup>10</sup> or a combination of factors resulting from unavoidable circumstances makes completing the form impracticable.<sup>11</sup>

---

<sup>3</sup> Form EIA-782B requires that the firm make a good faith effort to provide reasonably accurate information that is consistent with the accounting records maintained by the firm. The firm must alert the EIA if the estimates are later found to be materially different from actual data.

<sup>4</sup> 42 U.S.C. § 7194; 10 C.F.R. § 1003.25(b)(2).

<sup>5</sup> *Glenn Wagoner Oil Co.*, 16 DOE ¶ 81,024 (1987).

<sup>6</sup> *Mulgrew Oil Co.*, 20 DOE ¶ 81,009 (1990).

<sup>7</sup> *Id.*

<sup>8</sup> *Mico Oil Co.*, 23 DOE ¶ 81,105 (1994) (firm lost one million dollars over previous three years); *Deaton Oil Co.*, 16 DOE 81,206 (1987) (firm in bankruptcy).

<sup>9</sup> *S&S Oil & Propane Co.*, 21 DOE ¶ 81,006 (1991) (owner being treated for cancer); *Midstream Fuel Serv.*, 24 DOE 81,203 (1994) (three month extension of time to file reports granted when two office employees simultaneously on maternity leave); *Eastern Petroleum Corp.*, 14 DOE ¶ 81,011 (1986) (two month extension granted when computer operator broke wrist).

<sup>10</sup> *Little River Village Campground, Inc.*, 24 DOE ¶ 81,033 (1994) (five months relief because of flood); *Utilities Bd. of Citronelle-Gas*, 4 DOE ¶ 81,025 (1979) (hurricane); *Meier Oil Serv.* 14 DOE ¶ 81,004 (1986) (three month extension granted where disruptions caused by installation of new computer system left the firm’s records inaccessible).

<sup>11</sup> *Ward Oil Co.*, 24 DOE ¶ 81,002 (1994) (ten month extension granted where long illness and death of a partner resulted in personnel shortages, financial difficulties and other administrative problems).



### III. The Application for Exception

Pelgas is a seller of petroleum products based in Atlantic, Iowa. Pelgas is designated as a non-certainty firm by the EIA.<sup>12</sup> The firm, reporting in its first sample, has filed form EIA-782B from August 2004 to the present.<sup>13</sup> In its Application, Pelgas requests that it be permanently relieved of the obligation to file Form EIA-782B.<sup>14</sup> Based upon a review of the Application, we concluded that there was not sufficient information to permit us to act favorably on the request. Therefore, we contacted Pelgas to give the company an opportunity to discuss its request for relief.<sup>15</sup> Pelgas maintains that the firm has reported long enough and that another firm should be selected to report in its place.<sup>16</sup> Pelgas also maintains that the firm was told that its obligation to file Form EIA-782B would last 24 months and that Pelgas has been filing longer than 24 months.<sup>17</sup>

### IV. Analysis

The Form EIA-782B reporting requirement requires common information on pricing and inventory changes for various refined petroleum products. The EIA estimates that it should normally take a firm approximately two and one-half hours per month to complete the form.<sup>18</sup> As mentioned above, the burden of the requirement can be substantially reduced by the use of estimates.<sup>19</sup>

Every reporting firm is burdened to a certain extent by the reporting requirement. Exception relief is appropriate only where the reporting requirement poses a serious hardship, inequity, or unfair distribution of burdens.<sup>20</sup> In other words, relief is appropriate where the reporting requirement adversely affects the firm to a significantly greater degree than it affects other firms.

In this case, Pelgas does not claim it is adversely affected by the reporting requirement to a greater degree than other similar firms. To the contrary, the company's president stated that it takes him approximately one hour each month to complete the form, significantly less than EIA's estimated time.<sup>21</sup> Pelgas bases its request for relief on the grounds that it has filed Form EIA-782B since August 2004, contending that it is unfair that Pelgas should be required to file beyond 24 months. We have consistently held that the length of time that a firm has been required to file an EIA form does not alone constitute grounds for exception relief.<sup>22</sup> Pelgas'

---

<sup>12</sup> See Memorandum of Telephone Conversation between Tammy Heppner, EIA, and Diane DeMoura, OHA (April 18, 2007).

<sup>13</sup> *Id.*

<sup>14</sup> See Application for Exception.

<sup>15</sup> See Memorandum of Telephone Conversation between Todd Pellett, Pelgas, and Diane DeMoura, OHA (May 8, 2007).

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> See Section 10 of General Instructions to Form EIA-782B.

<sup>19</sup> See Section 7 of the General Instructions for Form EIA-782B.

<sup>20</sup> 42 U.S.C. § 7194; 10 C.F.R. § 1003.25(b)(2).

<sup>21</sup> See Memorandum of Telephone Conversation between Todd Pellett and Diane DeMoura (May 8, 2007).

<sup>22</sup> See *Sound Oil Co.*, 25 DOE ¶ 81,006 (1994) (company had filed for ten years); *Halron Oil Co.*, 16 DOE ¶ 81,001 (1987) (12 years).

assertion that it is unfair that it should continue to be required to file Form EIA-782B, absent any showing of serious hardship, inequity, or unfair distribution of burdens, is insufficient to warrant relief.

As the foregoing indicates, Pelgas has not shown that the requirement to complete Form EIA-782B is burdensome to the firm in a manner that distinguishes it from other similarly affected firms. Accordingly, we find that exception relief is not warranted in this case and, therefore, the Application for Exception should be denied.

It Is Therefore Ordered That:

- (1) The Application for Exception filed by Pelgas, Inc., Case No. TEE-0046, be, and hereby is, denied.
- (2) Administrative review of this Decision and Order may be sought by any person who is aggrieved or adversely affected by the denied of exception relief. Such review shall be commenced by the filing of a petition for review with the Federal Energy Regulatory Commission within 30 days of the date of this Decision and Order pursuant to 18 C.F.R. Part 835, Subpart J.

Fred L. Brown  
Acting Director  
Office of Hearings and Appeals

Date: May 22, 2007

September 18, 2007

DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

**Application for Exception**

Name of Case: Mark's Appliance & Heating

Date of Filing: August 16, 2007

Case No.: TEE-0048

On August 16, 2007, Mark's Appliance & Heating filed an Application for Exception with the Office of Hearings and Appeals ("OHA") of the Department of Energy ("DOE"). The firm requests permanent relief from its requirement to prepare and file the Energy Information Administration ("EIA") Form EIA-782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report." As explained below, we have determined that the firm's request should be denied.

*I. Background*

The DOE's Energy Information Administration (EIA) is authorized to collect, analyze, and disseminate energy data and other information.<sup>1</sup> The EIA-782B reporting requirement grew out of the shortages of crude oil and petroleum products during the 1970s. In 1979, Congress determined that the lack of reliable information concerning the supply, demand and prices of petroleum products impeded the nation's ability to respond to the oil crisis. It therefore authorized the DOE to collect data on the supply and prices of petroleum products. This information is used to analyze trends within petroleum markets. Summaries of the information and the analyses are reported by EIA in publications such as "Petroleum Marketing Monthly." This information is used by Congress and state governments to project trends and to formulate national and state energy policies. Access to this data is vital to the nation's ability to anticipate and respond to potential energy shortages.<sup>2</sup>

Form EIA-782B is a monthly report, pursuant to which resellers and retailers report the volume and price of sales of motor gasoline, No. 2 distillates, propane, and residual fuel oil. In order to

---

<sup>1</sup> 15 U.S.C. § 772(b); 42 U.S.C. § 7135(b).

<sup>2</sup> See H.R. Rep. NO. 373, 96<sup>th</sup> Con., 1st Sess., reprinted in 1979 U.S. Code Cong. & Admin. News 1764, 1781 (H.R. Report 373).

minimize the reporting burden, the EIA periodically selects a relatively small sample of companies to file Form EIA-782B<sup>3</sup> and permits reporting firms to rely on reasonable estimates.<sup>4</sup>

## II. Exception Criteria

OHA has the authority to grant exception relief where the reporting requirement causes a “serious hardship, gross inequity or unfair distribution of burdens.”<sup>5</sup> Since all reporting firms are burdened by reporting requirements, exception relief is appropriate only where a firm can demonstrate that it is adversely affected by the reporting requirement in a way that differs significantly from similar reporting firms.

When considering a request for exception relief, we must weigh the firm’s difficulty in complying with the reporting requirement against the nation’s need for reliable energy data. Thus, mere inconvenience does not constitute a hardship warranting relief.<sup>6</sup> Similarly, the fact that a firm is relatively small or has filed reports for a number of years does not constitute a hardship warranting relief.<sup>7</sup> If firms of all sizes, both large and small, are not included in the survey, the reporting sample’s estimates and projections will be unreliable.<sup>8</sup>

OHA has granted relief from the reporting requirement under various circumstances. For example, we have granted relief where the firm’s financial situation is so precarious that the additional burden of meeting the DOE reporting requirements threatens the firm’s continued viability;<sup>9</sup> the firm’s only employee capable of preparing the report is ill and the firm cannot afford to hire outside help;<sup>10</sup> extreme or unusual circumstances disrupt a firm’s activities;<sup>11</sup> or, a

---

<sup>3</sup> Firms that account for over five percent of the sales of any particular product in a state or do business in four or more states, designated as certainty firms, are always included in the sample of firms required to file the form. A random sample of other firms is also selected. This random sample changes approximately every 24 to 30 months, but a firm may be reselected for subsequent samples. A firm that has been included in three consecutive random samples will generally not be included in a fourth consecutive sample, but may be included in a later sample.

<sup>4</sup> Form EIA-782B requires that the firm make a good faith effort to provide reasonably accurate information that is consistent with the accounting records maintained by the firm. The firm must alert the EIA if the estimates are later found to be materially different from actual data.

<sup>5</sup> 42 U.S.C. § 7194; 10 C.F.R. § 1003.25(b)(2).

<sup>6</sup> *Glenn Wagoner Oil Co.*, 16 DOE ¶ 81,024 (1987).

<sup>7</sup> *Mulgrew Oil Co.*, 20 DOE ¶ 81,009 (1990), *see also Rice Oil Co., Inc.*, 26 DOE ¶ 81,010 (1997) (stating, “We have consistently ruled that the length of time that a firm has been required to file an EIA form does not alone constitute grounds for exception relief”).

<sup>8</sup> *Mulgrew Oil Co.*, 20 DOE ¶ 81,009 (1990).

<sup>9</sup> *Mico Oil Co.*, 23 DOE ¶ 81,105 (1994) (firm lost one million dollars over previous three years); *Deaton Oil Co.*, 16 DOE ¶ 81,206 (1987) (firm in bankruptcy).

<sup>10</sup> *S&S Oil & Propane Co.*, 21 DOE ¶ 81,006 (1991) (owner being treated for cancer); *Midstream Fuel Serv.*, 24 DOE ¶ 81,203 (1994) (three month extension of time to file reports granted when two office employees simultaneously on maternity leave); *Eastern Petroleum Corp.*, 14 DOE ¶ 81,011 (1986) (two month extension granted when computer operator broke wrist).

<sup>11</sup> *Little River Village Campground, Inc.*, 24 DOE ¶ 81,033 (1994) (five months relief because of flood); *Utilities Bd. of Citronelle-Gas*, 4 DOE ¶ 81,025 (1979) (hurricane); *Meier Oil Serv.*, 14 DOE ¶ 81,004 (1986) (three month extension granted where disruptions caused by installation of new computer system left the firm’s records inaccessible).

combination of factors resulting from unavoidable circumstances makes completing the form impracticable.<sup>12</sup>

### *III. Mark's Appliance & Heating's Application for Exception*

Mark's Appliance & Heating filed its Application for Exception on August 16, 2007.<sup>13</sup> After reviewing the Application, we determined that we had insufficient information to evaluate the request. We contacted Mark's Appliance & Heating in order to gather more information.<sup>14</sup>

Mark's Appliance & Heating, based in Warren, Maine, is a heating oil and liquid propane vendor. The firm is currently participating in its first sample, which began in August, 2004.<sup>15</sup> Mark's Appliance & Heating states that completing the monthly reporting form has become burdensome. The firm states that the "report is a major inconvenience for our small family owned business."<sup>16</sup> The company consists of three employees<sup>17</sup> and bills customers "by hand."<sup>18</sup> In turn, the firm must manually cull reporting information from at least three sources, which is "very time consuming."<sup>19</sup> Without a computer system's aid, this process requires between four hours in the summer to a day and a half during the winter.<sup>20</sup> For these reasons, Mark's Appliance & Heating requests permanent relief from its obligation to file Form EIA-782B.

### *IV. Analysis*

Mark's Appliance & Heating's arguments – that the firm consists of three employees, lacks a computer data system, and spends between four hours and a day and a half culling information from several sources – do not indicate that the firm is experiencing a burden significantly greater than the burden other reporting firms experience. Indeed, we have routinely denied exception applications in precisely these circumstances.<sup>21</sup>

---

<sup>12</sup> *Ward Oil Co.*, 24 DOE ¶ 81,002 (1994) (ten month extension granted where long illness and death of a partner resulted in personnel shortages, financial difficulties and other administrative problems).

<sup>13</sup> Letter from Mark's Appliance & Heating to OHA, received August 16, 2007.

<sup>14</sup> See Memoranda of Telephone Conversations between Nancy Anderson of Mark's Appliance & Heating and David M. Petrush, OHA, dated August 27, 2007 and August 28, 2007.

<sup>15</sup> Memorandum of Telephone Conversation between Tammy Hepner, Project Manager, Petroleum Division, EIA, and David M. Petrush, OHA, dated August 23, 2007 and Memorandum of Telephone Conversation between Nancy Anderson of Mark's Appliance & Heating and David M. Petrush, OHA, dated August 27, 2007.

<sup>16</sup> Letter from Mark's Appliance & Heating to OHA, received August 16, 2007 (emphasis in original).

<sup>17</sup> Memorandum of Telephone Conversation between Nancy Anderson of Mark's Appliance & Heating and David M. Petrush, OHA, dated August 27, 2007.

<sup>18</sup> Letter from Mark's Appliance & Heating to OHA, received August 16, 2007.

<sup>19</sup> *Id.* (emphasis in original).

<sup>20</sup> Memorandum of Telephone Conversation between Nancy Anderson of Mark's Appliance & Heating and David M. Petrush, OHA, dated August 27, 2007.

<sup>21</sup> See *The Kiesel Co.*, 29 DOE ¶ 81,019 (2006) (denying a firm relief where it had only one employee, reporting took between one and two days to complete, and reporting interfered with their business); see also *Wavaho Oil Co., Inc.*, 29 DOE ¶ 81,008 (2005) (denying relief where reporting took between two and three days, the firm lacked a computer system to compile data, and could not afford extra help to complete the process), *Hampton Gas Co., Inc.*, 26 DOE ¶ 81,015 (1997) (denying relief where the firm had only a two-person staff and did not maintain the reporting information as a monthly record), *Jefferson Landmark, Inc.*, 29 DOE ¶ 81,005 (2005) (denying a small, busy firm relief where they "prepare[d] the form using a pen and calculator").

The fact that Mark's Appliance & Heating is a small firm with only a limited staff is not grounds for relief.<sup>22</sup> Additionally, the Form EIA-782B reporting requirement is not particularly burdensome. It requires little more than the essential pricing, supply, and inventory data required in operating a business. The EIA estimates that it should normally take a firm approximately two and a half hours per month to complete the form.<sup>23</sup> Furthermore, Mark's Appliance & Heating may reduce its reporting burden by employing reasonable estimates.<sup>24</sup>

For the above-stated reasons, Mark's Appliance & Heating has not demonstrated that it meets the standards for exception relief.

It is Therefore Ordered That:

- (1) Mark's Appliance & Heating's Application for Exception, Case No. TEE-0048, is hereby denied.
- (2) Administrative review of this Decision and Order may be sought by any persons aggrieved or adversely affected by the denial of exception relief. Such review shall be commenced by filing a petition for review with the Federal Energy Regulatory Commission within 30 days of the date of this Decision and Order pursuant to 18 C.F.R. Part 385, Subpart J.

Poli A. Marmolejos  
Acting Director  
Office of Hearings and Appeals

Date: September 18, 2007

---

<sup>22</sup> *Mulgrew Oil Co.*, 20 DOE ¶ 81,009 (1990).

<sup>23</sup> Section 10 of the General Instructions to Form EIA-782B.

<sup>24</sup> See Section 7 of the General Instructions to Form EIA-782B.

December 3, 2007

DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

**Application for Exception**

Name of Case: BarMac, Inc. d/b/a Highway Express and Highway Express 2  
Date of Filing: November 13, 2007  
Case No.: TEE-0051

On November 13, 2007, BarMac, Inc. d/b/a Highway Express and Highway Express 2 (collectively "Highway Express"), filed an Application for Exception with the Department of Energy ("DOE") Office of Hearings and Appeals ("OHA"). The firm requests temporary relief from its requirement to prepare and file the Energy Information Administration ("EIA") Form EIA-782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report." As explained below, we have determined that Highway Express' request should be granted.

*I. Background*

The DOE's Energy Information Administration (EIA) is authorized to collect, analyze, and disseminate energy data and other information.<sup>1</sup> The EIA-782B reporting requirement grew out of the shortages of crude oil and petroleum products during the 1970s. In 1979, Congress determined that the lack of reliable information concerning the supply, demand and prices of petroleum products impeded the nation's ability to respond to the oil crisis. It therefore authorized the DOE to collect data on the supply and prices of petroleum products. This information is used to analyze trends within petroleum markets. Summaries of the information and the analyses are reported by EIA in publications such as "Petroleum Marketing Monthly." This information is used by Congress and state governments to project trends and to formulate national and state energy policies. Access to this data is vital to the nation's ability to anticipate and respond to potential energy shortages.<sup>2</sup>

Form EIA-782B is a monthly report, pursuant to which resellers and retailers report the volume and price of sales of motor gasoline, No. 2 distillates, propane, and residual fuel oil. In order to minimize the reporting burden, the EIA periodically selects a relatively small sample of companies to file Form EIA-782B<sup>3</sup> and permits reporting firms to rely on reasonable estimates.<sup>4</sup>

---

<sup>1</sup> 15 U.S.C. § 772(b); 42 U.S.C. § 7135(b).

<sup>2</sup> See H.R. Rep. NO. 373, 96<sup>th</sup> Con., 1st Sess., reprinted in 1979 U.S. Code Cong. & Admin. News 1764, 1781 (H.R. Report 373).

<sup>3</sup> Firms that account for over five percent of the sales of any particular product in a state or do business in four or more states, designated as certainty firms, are always included in the sample of firms required to file the form. A random sample of other firms is also selected. This random sample changes approximately every 24 to 30 months, but a firm may be reselected for subsequent samples. A firm that has been included in three consecutive random samples will generally not be included in a fourth consecutive sample, but may be included in a later sample.

## II. Exception Criteria

OHA has the authority to grant exception relief where the reporting requirement causes a “serious hardship, gross inequity or unfair distribution of burdens.”<sup>5</sup> Since all reporting firms are burdened by reporting requirements, exception relief is appropriate only where a firm can demonstrate that it is adversely affected by the reporting requirement in a way that differs significantly from similar reporting firms.

When considering a request for exception relief, we must weigh the firm’s difficulty in complying with the reporting requirement against the nation’s need for reliable energy data. Thus, mere inconvenience does not constitute a hardship warranting relief.<sup>6</sup> Similarly, the fact that a firm is relatively small or has filed reports for a number of years does not constitute a hardship warranting relief.<sup>7</sup> If firms of all sizes, both large and small, are not included in the survey, the reporting sample’s estimates and projections will be unreliable.<sup>8</sup>

OHA has granted relief from the reporting requirement under various circumstances. For example, we have granted relief where the firm’s financial situation is so precarious that the additional burden of meeting the DOE reporting requirements threatens the firm’s continued viability;<sup>9</sup> the firm’s only employee capable of preparing the report is ill and the firm cannot afford to hire outside help;<sup>10</sup> extreme or unusual circumstances disrupt a firm’s activities;<sup>11</sup> or, a combination of factors resulting from unavoidable circumstances makes completing the form impracticable.<sup>12</sup>

---

<sup>4</sup> Form EIA-782B requires that the firm make a good faith effort to provide reasonably accurate information that is consistent with the accounting records maintained by the firm. The firm must alert the EIA if the estimates are later found to be materially different from actual data.

<sup>5</sup> 42 U.S.C. § 7194; 10 C.F.R. § 1003.25(b)(2).

<sup>6</sup> *Glenn Wagoner Oil Co.*, 16 DOE ¶ 81,024 (1987).

<sup>7</sup> *Mulgrew Oil Co.*, 20 DOE ¶ 81,009 (1990), *see also Rice Oil Co., Inc.*, 26 DOE ¶ 81,010 (1997) (stating, “We have consistently ruled that the length of time that a firm has been required to file an EIA form does not alone constitute grounds for exception relief”).

<sup>8</sup> *Mulgrew Oil Co.*, 20 DOE ¶ 81,009 (1990).

<sup>9</sup> *Mico Oil Co.*, 23 DOE ¶ 81,105 (1994) (firm lost one million dollars over previous three years); *Deaton Oil Co.*, 16 DOE ¶ 81,206 (1987) (firm in bankruptcy).

<sup>10</sup> *S&S Oil & Propane Co.*, 21 DOE ¶ 81,006 (1991) (owner being treated for cancer); *Midstream Fuel Serv.*, 24 DOE ¶ 81,203 (1994) (three month extension of time to file reports granted when two office employees simultaneously on maternity leave); *Eastern Petroleum Corp.*, 14 DOE ¶ 81,011 (1986) (two month extension granted when computer operator broke wrist).

<sup>11</sup> *Little River Village Campground, Inc.*, 24 DOE ¶ 81,033 (1994) (five months relief because of flood); *Utilities Bd. of Citronelle-Gas*, 4 DOE ¶ 81,025 (1979) (hurricane); *Meier Oil Serv.*, 14 DOE ¶ 81,004 (1986) (three month extension granted where disruptions caused by installation of new computer system left the firm’s records inaccessible).

<sup>12</sup> *Ward Oil Co.*, 24 DOE ¶ 81,002 (1994) (ten month extension granted where long illness and death of a partner resulted in personnel shortages, financial difficulties and other administrative problems).



### *III. Highway Express' Application for Exception*

Highway Express and Highway Express 2 are small, “mom-and-pop” gas stations and convenience stores based in Chadron, Nebraska.<sup>13</sup> Highway Express is currently participating in its first reporting sample, which began in August, 2004.<sup>14</sup> Sandy Ledgerwood of Highway Express contacted EIA to request that it be relieved of its requirement to file Form EIA-782B.<sup>15</sup> EIA forwarded the request to OHA for consideration.<sup>16</sup> After reviewing the electronic mail message from EIA, we determined that we had insufficient information to evaluate the request. We then contacted Ms. Ledgerwood in order to gather more information.<sup>17</sup>

Ms. Ledgerwood informed OHA that completing the monthly reporting form has become burdensome and constitutes an extreme hardship because the employee solely responsible for administrative functions at Highway Express is battling cancer and is currently hospitalized.<sup>18</sup> She also related that the only other employees in the company are four to five part-time cashiers at each of the convenience stores.<sup>19</sup> According to Ms. Ledgerwood, there is no other assistance with performing administrative functions, except on occasion from her one daughter, who lives 300 miles away from Highway Express.<sup>20</sup> Further, the responsible employee will continue to undergo cancer treatment and will be unable to work in the near future, all of which has made completing the Form impracticable.<sup>21</sup> For these reasons, Highway Express requests temporary relief from its obligation to file Form EIA-782B, while the employee obtains treatment for their illness.<sup>22</sup>

### *IV. Analysis*

Although we have previously stated that a firm’s small size is by itself an insufficient basis for granting relief, Highway Express’ situation is dramatically different from that of other small reporting firms. The employee’s illness and lack of office help cause Highway Express to be burdened by the filing requirement to a far greater extent than are other small resellers.

In *S&S Oil and Propane Co. (S&S)*,<sup>23</sup> we granted relief to an applicant whose situation was similar to that faced by the employee at Highway Express. In that case, the applicant, who was the only office worker, had to work nights and weekends to keep her business in operation.<sup>24</sup> Further, she was afflicted with cancer, had recently undergone two surgeries and chemotherapy

---

<sup>13</sup> See Memorandum of Telephone Conversation between Sandy Ledgerwood, Highway Express, and Diane DeMoura, OHA, dated November 13, 2007.

<sup>14</sup> See Electronic Mail Message from Tammy Heppner, EIA, to Diane DeMoura, OHA, dated October 29, 2007.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> See Letter to Sandy Ledgerwood, Highway Express, from Diane DeMoura, OHA, dated November 2, 2007.

<sup>18</sup> See Memorandum of Telephone Conversation between Sandy Ledgerwood, Highway Express, and Diane DeMoura, OHA, dated November 13, 2007.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *S&S Oil & Propane Co.*, 21 DOE ¶ 81,006 (1991).

<sup>24</sup> *Id.*

and was under a doctor's care for her life-threatening condition.<sup>25</sup> In granting the application, we stated that the debilitating physical and emotional effects of the applicant's illness, coupled with the severe workload caused by her lack of office employees, was sufficient cause to grant S&S relief from its obligation to file Form EIA-782B.<sup>26</sup>

In view of our holding in S&S, we find that the employee's current medical condition and workload is sufficient cause to grant Highway Express temporary relief from its obligation to file Form EIA-782B. Accordingly, we have determined that a temporary exception through December 2008 should be granted.

It is Therefore Ordered That:

- (1) The Application for Exception filed by BarMac, Inc. d/b/a Highway Express and Highway Express 2, Case No. TEE-0051, be and hereby is granted as set forth in paragraph (2) below.
- (2) Notwithstanding the instructions pertaining to Form EIA-782B, BarMac, Inc. d/b/a Highway Express and Highway Express 2, is hereby relieved of the requirement to file Form EIA-782B for the year December 2007 through December 2008.
- (3) This is the final order of the Department of Energy.

Poli A. Marmolejos  
Acting Director  
Office of Hearings and Appeals

Date: December 3, 2007

---

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

January 8, 2008

DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

**Application for Exception**

Name of Case: Ullman Oil Company

Date of Filing: December 5, 2007

Case No.: TEE-0052

On December 5, 2007, Ullman Oil Company (Ullman) filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). The firm requests permanent relief from its requirement to prepare and file the Energy Information Administration Form EIA-782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report." As explained below, we have determined that the firm's request should be denied.

*I. Background*

The DOE's Energy Information Administration (EIA) is authorized to collect, analyze, and disseminate energy data and other information.<sup>1</sup> The EIA-782B reporting requirement grew out of the shortages of crude oil and petroleum products during the 1970s. In 1979, Congress determined that the lack of reliable information concerning the supply, demand and prices of petroleum products impeded the nation's ability to respond to the oil crisis. It therefore authorized the DOE to collect data on the supply and prices of petroleum products. This information is used to analyze trends within petroleum markets. Summaries of the information and the analyses are reported by EIA in publications such as "Petroleum Marketing Monthly." This information is used by Congress and state governments to project trends and to formulate national and state energy policies. Access to this data is vital to the nation's ability to anticipate and respond to potential energy shortages.<sup>2</sup>

Form EIA-782B is a monthly report, pursuant to which resellers and retailers report the volume and price of sales of motor gasoline, No. 2 distillates, propane, and residual fuel oil. In order to minimize the reporting burden, the EIA periodically selects a relatively small sample of companies to file Form EIA-782B<sup>3</sup> and permits reporting firms to rely on reasonable estimates.<sup>4</sup>

---

<sup>1</sup> 15 U.S.C. § 772(b); 42 U.S.C. § 7135(b).

<sup>2</sup> See H.R. Rep. NO. 373, 96<sup>th</sup> Con., 1st Sess., reprinted in 1979 U.S. Code Cong. & Admin. News 1764, 1781 (H.R. Report 373).

<sup>3</sup> Firms that account for over five percent of the sales of any particular product in a state or do business in four or more states, designated as "certainty firms", are always included in the sample of firms required to file the form. A random sample of other firms is also selected. This random sample changes approximately every 24 to 30 months, but a firm may be re-selected for subsequent samples. A firm that has been included in three consecutive random samples will generally not be included in a fourth consecutive sample, but may be included in a later sample.

<sup>4</sup> Form EIA-782B requires that the firm make a good faith effort to provide reasonably accurate information that is consistent with the accounting records maintained by the firm. The firm must alert the EIA if the estimates are later found to be materially different from actual data.

## II. Exception Criteria

OHA has the authority to grant exception relief where the reporting requirement causes a “serious hardship, gross inequity or unfair distribution of burdens.”<sup>5</sup> Since all reporting firms are burdened by reporting requirements, exception relief is appropriate only where a firm can demonstrate that it is adversely affected by the reporting requirement in a way that differs significantly from similar reporting firms.

When considering a request for exception relief, OHA must weigh the firm’s difficulty in complying with the reporting requirement against the nation’s need for reliable energy data. Thus, mere inconvenience does not constitute a hardship warranting relief.<sup>6</sup> Similarly, the fact that a firm is relatively small or has filed reports for a number of years does not constitute a hardship warranting relief.<sup>7</sup> If firms of all sizes, both large and small, are not included in the survey, the reporting sample’s estimates and projections will be unreliable.<sup>8</sup>

OHA has granted relief from the reporting requirement under various circumstances. For example, we have granted relief where the firm’s financial situation is so precarious that the additional burden of meeting the DOE reporting requirements threatens the firm’s continued viability;<sup>9</sup> the firm’s only employee capable of preparing the report is ill and the firm cannot afford to hire outside help;<sup>10</sup> extreme or unusual circumstances disrupt a firm’s activities;<sup>11</sup> or, a combination of factors resulting from unavoidable circumstances makes completing the form impracticable.<sup>12</sup>

---

<sup>5</sup> 42 U.S.C. § 7194; 10 C.F.R. § 1003.25(b)(2).

<sup>6</sup> *Glenn Wagoner Oil Co.*, 16 DOE ¶ 81,024 (1987).

<sup>7</sup> *Mulgrew Oil Co.*, 20 DOE ¶ 81,009 (1990), *see also Rice Oil Co., Inc.*, 26 DOE ¶ 81,010 (1997) (stating, “We have consistently ruled that the length of time that a firm has been required to file an EIA form does not alone constitute grounds for exception relief”).

<sup>8</sup> *Mulgrew Oil Co.*, 20 DOE ¶ 81,009 (1990).

<sup>9</sup> *Mico Oil Co.*, 23 DOE ¶ 81,105 (1994) (firm lost one million dollars over previous three years); *Deaton Oil Co.*, 16 DOE ¶ 81,206 (1987) (firm in bankruptcy).

<sup>10</sup> *BarMac, Inc. d/b/a Highway Express and Highway Express 2*, 29 DOE ¶ \_\_\_\_ (TEE-0051) (December 3, 2007) (one year extension of time granted where the sole employee responsible for the firm’s filings suffered from a severe medical condition); *Midstream Fuel Serv.*, 24 DOE ¶ 81,203 (1994) (three month extension of time granted when two office employees were simultaneously on maternity leave); *Eastern Petroleum Corp.*, 14 DOE ¶ 81,011 (1986) (two month extension of time granted when the firm’s computer operator broke a wrist).

<sup>11</sup> *Little River Village Campground, Inc.*, 24 DOE ¶ 81,033 (1994) (five months relief because of flood); *Utilities Bd. of Citronelle-Gas*, 4 DOE ¶ 81,025 (1979) (hurricane); *Meier Oil Serv.*, 14 DOE ¶ 81,004 (1986) (three month extension granted where disruptions caused by installation of new computer system left the firm’s records inaccessible).

<sup>12</sup> *Ward Oil Co.*, 24 DOE ¶ 81,002 (1994) (ten month extension granted where long illness and death of a partner resulted in personnel shortages, financial difficulties and other administrative problems).

### III. Ullman Oil Company's Application for Exception

Ullman filed its Application for Exception on December 5, 2007.<sup>13</sup> After reviewing the Application, we determined that we had insufficient information to evaluate the request, so we contacted Ullman to gather more information.<sup>14</sup>

Ullman, based in Chagrin Falls, Ohio, is a "mid-sized," family-owned heating oil vendor.<sup>15</sup> The firm is currently participating in its fourth reporting sample, which began in August 2004.<sup>16</sup> Ullman requests permanent relief from the EIA reporting requirement on the grounds that completing the monthly reporting form is burdensome.<sup>17</sup>

In its Application, Ullman made several arguments to support its request for exception relief. Ullman recently lost both its controller and assistant controller.<sup>18</sup> The firm has looked for months for qualified people to replace them, but has been unable to fill the positions.<sup>19</sup> According to Ullman, continuing to file Form EIA-782B will cost the company money and cause the day-to-day operations to suffer.<sup>20</sup> "[Ullman] is already months behind in [amassing our] financial data"<sup>21</sup> and it would be a burden to spend four to five hours to compile the information needed to report to DOE.<sup>22</sup> Ullman further believes that the firm is entitled to exception relief because it has reported in four samples.<sup>23</sup> Ullman states that other competitors should be required to "pick up the slack" and that the firm has performed its "civic duty" by completing the forms throughout the years.<sup>24</sup>

### IV. Analysis

Exception relief is appropriate where a reporting requirement poses a serious hardship, inequity, or unfair distribution of burdens. Thus, relief is appropriate where the reporting requirement adversely affects the firm to a significantly greater degree than it affects other firms.

None of the arguments advanced by Ullman in support of its exception request are availing. Indeed, we have routinely denied exception applications in precisely these circumstances.<sup>25</sup>

---

<sup>13</sup> Letter from Ullman Oil Company to OHA, received December 5, 2007 (Application for Exception).

<sup>14</sup> See Memorandum of Telephone Conversation between Kim Ullman, Ullman Oil Company, and Avery R. Webster, OHA, dated December 6, 2007 (Ullman Telephone Memo).

<sup>15</sup> *Id.*

<sup>16</sup> See Memorandum of Telephone Conversation between Tammy Heppner, EIA, and Avery R. Webster, OHA, dated December 6, 2007 (Heppner Telephone Memo).

<sup>17</sup> See Ullman Telephone Memo.

<sup>18</sup> See Application for Exception.

<sup>19</sup> *Id.*

<sup>20</sup> See Ullman Telephone Memo.

<sup>21</sup> See Ullman Telephone Memo; See also Heppner Telephone Memo (Ullman Oil Company is currently five months delinquent in its reporting).

<sup>22</sup> *Id.*

<sup>23</sup> See Application for Exception.

<sup>24</sup> See Ullman Telephone Memo.

<sup>25</sup> See *The Kiesel Co.*, 29 DOE ¶ 81,019 (2006) (denying a firm relief where it had only one employee, reporting took between one and two days to complete, and reporting interfered with their business); see also *Wavaho Oil Co., Inc.*, 29 DOE ¶ 81,008 (2005) (denying relief where reporting took between two and three days, the firm lacked a computer system to compile data, and could not afford extra help to complete the process), *Hampton Gas Co., Inc.*, 26 DOE ¶ 81,015 (1997) (denying relief where the firm had only a two-person staff and did not maintain the

Regarding Ullman's first argument that the firm does not have the time to complete the form because it lost its key personnel and consists of limited administrative staff, we have previously held that a disruption in business operations resulting from the departure of an employee is not by itself sufficient to indicate that the firm is adversely affected to a significantly greater degree than other firms.<sup>26</sup>

Similarly, Ullman's argument that the reporting requirement will interfere with daily operations is without merit. The Form EIA-782B reporting requirement is not particularly burdensome. It requires little more than the essential pricing, supply, and inventory data required in operating a business. The EIA estimates that it should normally take a firm approximately two and a half hours per month to complete the form.<sup>27</sup> Furthermore, Ullman may reduce its reporting burden by employing reasonable estimates.<sup>28</sup>

Finally, Ullman's argument that it has filed the form for many years does not warrant relief. We have consistently held that the length of time a firm has been required to file an EIA form does not justify relief.<sup>29</sup> In sum, Ullman has not demonstrated that the reporting requirement poses a burden significantly greater than that experienced by other firms.

Based on the foregoing, we find that Ullman has not demonstrated that the requirement to file Form EIA-782B is burdensome in a manner that distinguishes it from other similarly affected firms. Accordingly, Ullman's application for exception should be denied.

It is Therefore Ordered That:

- (1) The Application for Exception filed by Ullman Oil Company, Case No. TEE-0052, be and hereby is denied.
- (2) Administrative review of this Decision and Order may be sought by any persons aggrieved or adversely affected by the denial of exception relief. Such review shall be commenced by filing a petition for review with the Federal Energy Regulatory Commission within 30 days of the date of this Decision and Order pursuant to 18 C.F.R. Part 385, Subpart J.

Poli A. Marmolejos  
Acting Director  
Office of Hearings and Appeals

Date: January 8, 2008

---

reporting information as a monthly record), *Jefferson Landmark, Inc.*, 29 DOE ¶ 81,005 (2005) (denying a small, busy firm relief where they "prepare[d] the form using a pen and calculator").

<sup>26</sup> *Bemer Petroleum Corp.*, 29 DOE ¶ \_\_\_\_ (TEE-0044) (July 18, 2007).

<sup>27</sup> Section 10 of the General Instructions to Form EIA-782B.

<sup>28</sup> See Section 7 of the General Instructions to Form EIA-782B.

<sup>29</sup> *Emerson Oil Co.*, 29 DOE ¶ \_\_\_\_ (TEE-0043) (April 24, 2007).

DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

**Application for Exception**

Name of Case: American Energy

Date of Filing: February 13, 2008

Case No.: TEE-0053

On February 13, 2008, American Energy filed an Application for Exception with the Department of Energy's (DOE) Office of Hearings and Appeals (OHA). The firm requests permanent relief from its requirement to prepare and file the Energy Information Administration (EIA) Form EIA-782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report." As explained below, we have determined that American Energy's Application should be denied.

*I. Background*

The DOE's EIA is authorized to collect, analyze, and disseminate energy data and other information.<sup>1</sup> The EIA-782B reporting requirement grew out of the shortages of crude oil and petroleum products during the 1970s. In 1979, Congress determined that the lack of reliable information concerning the supply, demand and prices of petroleum products impeded the nation's ability to respond to the oil crisis. It therefore authorized the DOE to collect data on the supply and prices of petroleum products. This information is used to analyze trends within petroleum markets. Summaries of the information and the analyses are reported by EIA in publications such as *Petroleum Marketing Monthly*. This information is used by Congress and state governments to project trends and to formulate national and state energy policies. Access to this data is vital to the nation's ability to anticipate and respond to potential energy shortages.<sup>2</sup>

Form EIA-782B is a monthly report, pursuant to which resellers and retailers report the volume and price of sales of motor gasoline, No. 2 distillates, propane, and residual fuel oil. In order to minimize the reporting burden, the EIA periodically selects a relatively small sample of companies to file Form EIA-782B<sup>3</sup> and permits reporting firms to rely on reasonable estimates.<sup>4</sup>

---

<sup>1</sup> 15 U.S.C. § 772(a); 42 U.S.C. §§ 7135(a)-(m).

<sup>2</sup> See H.R. REP. NO. 96-373, at 15, 17 (1979).

<sup>3</sup> Firms that account for over five percent of the sales of any particular product in a state or do business in four or more states, designated as certainty firms, are always included in the sample of firms required to file the form. A random sample of other firms is also selected. This random sample changes approximately every 24 to 30 months, but a firm may be reselected for subsequent samples. A firm that has been included in three consecutive random samples will generally not be included in a fourth consecutive sample, but may be included in a later sample.

<sup>4</sup> Form EIA-782B requires that the firm make a good faith effort to provide reasonably accurate information that is consistent with the accounting records maintained by the firm. The firm must alert the EIA if the estimates are later found to be materially different from actual data.

## II. Exception Criteria

Congress requires OHA to grant exception relief where filing Form EIA-782B causes a “special hardship, inequity, or unfair distribution of burdens.”<sup>5</sup> Since the Form EIA-782B reporting requirements burden all reporting firms, exception relief is appropriate only where a firm can demonstrate that a reporting requirement adversely affects it in a way that differs significantly from similar reporting firms.

When considering a request for exception relief, we must weigh the firm’s difficulty in complying with the reporting requirement against the nation’s need for reliable energy data. Thus, mere inconvenience<sup>6</sup> or the length of time a firm has reported<sup>7</sup> does not constitute a hardship warranting relief. Similarly, the fact that a firm is relatively small does not constitute a hardship warranting relief. If firms of all sizes, both large and small, are not included in the survey, the reporting sample’s estimates and projections will be unreliable.<sup>8</sup>

OHA has granted exception relief from the reporting requirement under various circumstances. For example, we have granted relief where the firm’s financial situation was so precarious that the additional burden of meeting the reporting requirements threatened the firm’s continued viability;<sup>9</sup> the firm experienced personnel deaths, illnesses or absences;<sup>10</sup> and where extreme or unusual circumstances disrupted the firm’s activities.<sup>11</sup>

---

<sup>5</sup> 42 U.S.C. § 7194(a); *see also* 10 C.F.R. § 1003.25(b)(2) (allowing OHA to grant exception “to alleviate or prevent serious hardship, gross inequity or unfair distribution of burdens”).

<sup>6</sup> *Glenn E. Wagoner Oil Co.*, 16 DOE ¶ 81,024 (Oct. 8, 1987) (Case No. KEE-0143).

<sup>7</sup> *Rice Oil Co., Inc.*, 26 DOE ¶ 81,010 (Mar. 21, 1997) (Case No. VEE-0035) (citations omitted).

<sup>8</sup> *Mulgrew Oil Co., Inc.*, 20 DOE ¶ 81,009 (May 9, 1990) (Case No. LEE-0012) (citations omitted).

<sup>9</sup> *Mico Oil Co., Inc.*, 23 DOE ¶ 81,015 (Mar. 4, 1994) (Case No. LEE-0075) (granting exception relief where a firm lost one million dollars over the previous three years and prepared to liquidate its assets and file for bankruptcy); *Deaton Oil Co.*, 16 DOE ¶ 81,026 (Oct. 15, 1987) (Case No. KEE-0152) (granting exception relief where a firm entered Chapter 11 reorganization and made court-mandated layoffs).

<sup>10</sup> *Midstream Fuel Serv., Inc.*, 24 DOE ¶ 81,023 (May 31, 1994) (Case No. LEE-0083) (granting three months’ exception relief where a small firm experienced personnel shortages due to two employees on maternity leave, an uptick in paperwork due to the tax season, and an inability to hire additional personnel); *Ward Oil Co.*, 24 DOE

¶ 81,002 (Mar. 29, 1994) (Case No. LEE-0088) (granting ten months’ exception relief where a firm’s owner and office manager suffered a long illness and death, resulting in personnel shortages and administrative challenges that caused the firm to fall sixty days behind in its paperwork); *S&S Oil & Propane Co., Inc.*, 21 DOE ¶ 81,006 (Sept. 23, 1991) (Case No. LEE-0023) (granting exception relief where a firm’s owner worked nights and weekends amid a life-threatening illness); *E. Petroleum Corp.*, 14 DOE ¶ 81,011 (Apr. 25, 1986) (Case No. KEE-0016) (granting two months’ exception relief where a computer operator’s injury rendered the firm unable to complete the form).

<sup>11</sup> *Little River Vill. Campground, Inc.*, 24 DOE ¶ 81,033 (July 19, 1994) (Case No. LEE-0127) (granting several months’ exception relief where a firm’s office was flooded); *Utilities Bd. of Citronelle-Gas*, 4 DOE ¶ 81,205 (Nov. 28, 1979) (Case No. BEE-0293) (granting exception relief where a hurricane heavily damaged a firm’s office and the firm concentrated its efforts on restoring service to its customers).



### *III. American Energy's Application for Exception*

American Energy is a retailer and wholesaler of gasoline, diesel fuel, motor oil, groceries and car washes in Bend, Oregon.<sup>12</sup> American Energy filed its Application for Exception on February 13, 2008.<sup>13</sup> American Energy stated that it requests permanent relief from its obligation to file Form EIA-782B because it has filed the form monthly as a non-certainty firm<sup>14</sup> since August 2004.<sup>15</sup>

We contacted American Energy to gather more information. American Energy stated that it employs eleven administrative office personnel and seventy-five station and store personnel.<sup>16</sup> American Energy estimated that it sometimes has “a person and a half” dedicated solely to meeting the Form EIA-782B and other federal and state-mandated paperwork requirements.<sup>17</sup> The firm’s employee spends approximately sixty minutes completing Form EIA-782B. The firm uses a computer system to compile the “base data” for the form.<sup>18</sup>

### *IV. Analysis*

Under the exception criteria stated above, the fact that filing Form EIA-782B is inconvenient for American Energy and that American Energy has filed the form for a number of years, does not establish that American Energy is experiencing a hardship significantly greater than the burden that other reporting firms experience. Indeed, we have denied exception relief to firms that spend longer filling out the form and that have far fewer employees and technological resources than American Energy.<sup>19</sup>

Additionally, the Form EIA-782B reporting requirement is not particularly burdensome. It requires little more than the essential pricing, supply, and inventory data required in operating a business. The EIA estimates that it should normally take a firm approximately two and a half

---

<sup>12</sup> E-mail from Greg Vernon, Executive Vice President, American Energy, to David M. Petrush, Attorney-Examiner, OHA, March 13, 2008.

<sup>13</sup> Letter from Greg Vernon, Executive Vice President, American Energy to OHA, received February 13, 2008.

<sup>14</sup> E-mail from Tammy G. Heppner, Survey Statistician, EIA, to David M. Petrush, Attorney-Examiner, OHA, March 12, 2008.

<sup>15</sup> E-mail from Greg Vernon, Executive Vice President, American Energy, to David M. Petrush, Attorney-Examiner, OHA, March 13, 2008. The EIA allowed sample respondents August and September 2004 as “test months” so that they could become acquainted with the form. The EIA began using the sample respondents’ data in October 2004. E-mail from Tammy G. Heppner, Survey Statistician, EIA, to David M. Petrush, Attorney-Examiner, OHA, March 17, 2008.

<sup>16</sup> Memorandum of telephone conversation between Greg Vernon, Executive Vice President, American Energy, and David M. Petrush, Attorney-Examiner, OHA, March 11, 2008.

<sup>17</sup> *Id.*

<sup>18</sup> E-mail from Greg Vernon, Executive Vice President, American Energy, to David M. Petrush, Attorney-Examiner, OHA, March 13, 2008.

<sup>19</sup> See, e.g., *Wavaho Oil Co., Inc.*, 29 DOE ¶ 81,008 (Aug. 9, 2005) (Case No. TEE-0019) (denying exception relief where reporting took between two and three days, the firm lacked a computer system to compile data and could not afford extra help to complete the process); *Jefferson Landmark, Inc.*, 29 DOE ¶ 81,005 (May 2, 2005) (Case No. TEE-0018) (denying a small, busy firm exception relief where they “prepare[d] the form using a pen and calculator”); *Hampton Gas Co., Inc.*, 26 DOE ¶ 81,015 (May 22, 1997) (Case No. VEE-0041) (denying exception relief where the firm had only a two-person staff and did not maintain the reporting information as a monthly record).

hours per month to complete the form.<sup>20</sup> In this case, American Energy stated that it requires sixty minutes to complete Form EIA-782B – significantly less time than the EIA estimate. Furthermore, American Energy may reduce its reporting burden by employing reasonable estimates.<sup>21</sup>

For the above-stated reasons, American Energy has not demonstrated that it meets the standards for exception relief.

It Is Therefore Ordered That:

- (1) American Energy’s Application for Exception, Case No. TEE-0053, is hereby denied.
- (2) Any persons aggrieved or adversely affected by this denial of exception relief may seek administrative review of this Decision and Order by filing a Petition for Review with the Federal Energy Regulatory Commission within 30 days of the date of this Decision and Order, pursuant to 18 C.F.R. Part 385, Subpart J.

Poli A. Marmolejos  
Director  
Office of Hearings and Appeals

Date:

---

<sup>20</sup> Section 10 of the General Instructions to Form EIA-782B.

<sup>21</sup> See Section 7 of the General Instructions to Form EIA-782B.

May 1, 2008

DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

**Application for Exception**

Name of Case: Jefferson Landmark, Inc.

Date of Filing: February 27, 2008

Case No.: TEE-0054

On February 27, 2008, Jefferson Landmark, Inc. (Jefferson) filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). The firm requests temporary relief from its requirement to prepare and file the Energy Information Administration (EIA) Form EIA-782B, entitled “Resellers’/Retailers’ Monthly Petroleum Product Sales Report.” As explained below, we have determined that the firm’s request should be denied.

*I. Background*

The DOE’s EIA is authorized to collect, analyze, and disseminate energy data and other information.<sup>1</sup> The EIA-782B reporting requirement grew out of the shortages of crude oil and petroleum products during the 1970s. In 1979, Congress determined that the lack of reliable information concerning the supply, demand and prices of petroleum products impeded the nation’s ability to respond to the oil crisis. It therefore authorized the DOE to collect data on the supply and prices of petroleum products. This information is used to analyze trends within petroleum markets. Summaries of the information and the analyses are reported by EIA in publications such as “Petroleum Marketing Monthly.” This information is used by Congress and state governments to project trends and to formulate national and state energy policies. Access to this data is vital to the nation’s ability to anticipate and respond to potential energy shortages.<sup>2</sup>

Form EIA-782B is a monthly report, pursuant to which resellers and retailers report the volume and price of sales of motor gasoline, No. 2 distillates, propane, and residual fuel oil. In order to minimize the reporting burden, the EIA periodically selects a relatively small sample of companies to file Form EIA-782B<sup>3</sup> and permits reporting firms to rely on reasonable estimates.<sup>4</sup>

---

<sup>1</sup> 15 U.S.C. § 772(a); 42 U.S.C. § 7135(a)-(m).

<sup>2</sup> See H.R. REP. NO. 373, 96-373, at 15, 17 (1979).

<sup>3</sup> Firms that account for over five percent of the sales of any particular product in a state or do business in four or more states, designated as “certainty firms”, are always included in the sample of firms required to file the form. A random sample of other firms is also selected. This random sample changes approximately every 24 to 30 months, but a firm may be re-selected for subsequent samples. A firm that has been included in three consecutive random samples will generally not be included in a fourth consecutive sample, but may be included in a later sample.

<sup>4</sup> Form EIA-782B requires that the firm make a good faith effort to provide reasonably accurate information that is consistent with the accounting records maintained by the firm. The firm must alert the EIA if the estimates are later found to be materially different from actual data.

## II. Exception Criteria

OHA has the authority to grant exception relief where the reporting requirement causes a “serious hardship, inequity or unfair distribution of burdens.”<sup>5</sup> Since all reporting firms are burdened by reporting requirements, exception relief is appropriate only where a firm can demonstrate that it is adversely affected by the reporting requirement in a way that differs significantly from similar reporting firms.

When considering a request for exception relief, OHA must weigh the firm’s difficulty in complying with the reporting requirement against the nation’s need for reliable energy data. Thus, mere inconvenience does not constitute a hardship warranting relief.<sup>6</sup> Similarly, the fact that a firm has filed reports for a number of years does not constitute a hardship warranting relief.<sup>7</sup> If firms of all sizes, both large and small, are not included in the survey, the reporting sample’s estimates and projections will be unreliable.<sup>8</sup>

OHA has granted relief from the reporting requirement under various circumstances. For example, we have granted relief where the firm’s financial situation is so precarious that the additional burden of meeting the DOE reporting requirements threatens the firm’s continued viability;<sup>9</sup> the firm’s only employee capable of preparing the report is ill and the firm cannot afford to hire outside help;<sup>10</sup> extreme or unusual circumstances disrupt a firm’s activities;<sup>11</sup> or, a combination of factors resulting from unavoidable circumstances makes completing the form impracticable.<sup>12</sup>

## III. Jefferson Landmark, Inc.’s Application for Exception

Jefferson filed its Application for Exception on February 27, 2008.<sup>13</sup> After reviewing the Application, we determined that we had insufficient information to evaluate the request, so we contacted Jefferson to gather more information.<sup>14</sup>

---

<sup>5</sup> 42 U.S.C. § 7194 (a); 10 C.F.R. § 1003.25(b)(2).

<sup>6</sup> *Glenn Wagoner Oil Co.*, 16 DOE ¶ 81,024 (Oct. 8, 1987) (Case No. KEE-0143).

<sup>7</sup> *Rice Oil Co., Inc.*, 26 DOE ¶ 81,010 (Mar. 21, 1997) (Case No. VEE-0035).

<sup>8</sup> *Mulgrew Oil Co.*, 20 DOE ¶ 81,009 (May 9, 1990) (Case No. LEE-0012).

<sup>9</sup> *Mico Oil Co.*, 23 DOE ¶ 81,105 (Mar. 4, 1994) (Case No. LEE-0075) (granting exception relief where a firm lost one million dollars over the previous three years); *Deaton Oil Co.*, 16 DOE ¶ 81,206 (Oct. 15, 1987) (Case No. KEE-0152) (granting exception relief where a firm filed bankruptcy).

<sup>10</sup> *BarMac, Inc. d/b/a Highway Express and Highway Express 2*, 29 DOE ¶ 81,040 (Dec. 3, 2007) (TEE-0051) (granting one year exception relief where the sole employee responsible for the firm’s filings suffered from a severe medical condition); *Midstream Fuel Serv.*, 24 DOE ¶ 81,203 (May 31, 1994) (Case No. LEE-0083) (granting three months exception relief when two office employees were simultaneously on maternity leave); *Eastern Petroleum Corp.*, 14 DOE ¶ 81,011 (Apr. 25, 1986) (Case No. KEE-0016) (granting two months exception relief where the firm’s computer operator broke a wrist).

<sup>11</sup> *Little River Village Campground, Inc.*, 24 DOE ¶ 81,033 (July 19, 1994) (Case No. LEE-0127) (granting five months exception relief where a firm’s office flooded); *Utilities Bd. of Citronelle-Gas*, 4 DOE ¶ 81,025 (Nov. 28, 1979) (Case No. BEE-0293) (granting exception relief where a hurricane heavily damaged a firm’s office); *Meier Oil Serv.*, 14 DOE ¶ 81,004 (Mar. 5, 1986) (Case No. KEE-0014) (granting three months exception relief where disruptions caused by installation of new computer system left the firm’s records inaccessible).

<sup>12</sup> *Ward Oil Co.*, 24 DOE ¶ 81,002 (Mar. 29, 1994) (LEE-0088) (granting ten months exception relief where long illness and death of a partner resulted in personnel shortages, financial difficulties and other administrative problems).

<sup>13</sup> Letter from Jefferson Landmark, Inc. to OHA, received February 27, 2008 (Application for Exception).

Jefferson, based in Bloomingdale, Ohio, is a small heating oil vendor.<sup>15</sup> The firm is currently participating in its second reporting sample, which began in August 2004.<sup>16</sup> Jefferson requests temporary relief from the EIA reporting requirement on the grounds that completing the monthly reporting form is burdensome.<sup>17</sup>

In its Application, Jefferson made several arguments to support its request for exception relief. Jefferson argues that completing the form is “time-consuming.”<sup>18</sup> Jefferson believes that it has spent a disproportionate amount of time completing the form over the years.<sup>19</sup> Jefferson also asserts that while it has spent valuable time completing the form, it has lost its competitive edge.<sup>20</sup> According to Jefferson, continuing to file Form EIA-782B will cost the company money and interfere with its daily operations because it is “burdensome to complete the form and fill 100 orders a day.”<sup>21</sup>

Jefferson further believes that the firm is entitled to exception relief because it has reported in three samples.<sup>22</sup> Jefferson maintains that completing the form is “not right” for a company its size because it is “very small” and only employs about two dozen people.<sup>23</sup> Jefferson states that it is time for competitors to “pick up the slack” and “share the burden” of completing the form.<sup>24</sup>

#### *IV. Analysis*

Exception relief is appropriate where a reporting requirement poses a serious hardship, inequity, or unfair distribution of burdens. Thus, relief is appropriate where the reporting requirement adversely affects the firm to a significantly greater degree than it affects other firms.

None of the arguments advanced by Jefferson in support of its exception request are availing. Indeed, we have routinely denied exception applications in precisely these circumstances.<sup>25</sup>

---

<sup>14</sup> See Memorandum of Telephone Conversation between Joe Rozsa, General Manager, Jefferson Landmark, Inc., and Avery R. Webster, Attorney-Examiner, OHA, dated March 31, 2008 (Rozsa Telephone Memo).

<sup>15</sup> *Id.*

<sup>16</sup> See Memorandum of Telephone Conversation between Tammy G. Heppner, Survey Statistician, EIA, and Avery R. Webster, Attorney-Examiner, OHA, dated March 31, 2008.

<sup>17</sup> See Rozsa Telephone Memo.

<sup>18</sup> *Id.*

<sup>19</sup> See Memorandum of Telephone Conversation between Bob Sensibaugh, Petroleum Manager, Jefferson Landmark, Inc., and Avery R. Webster, Attorney-Examiner, OHA, dated April 2, 2008 (Sensibaugh 2<sup>nd</sup> Telephone Memo).

<sup>20</sup> *Id.*

<sup>21</sup> See Rozsa Telephone Memo.

<sup>22</sup> See Application for Exception. Jefferson asserts that it was selected to participate in the four year reporting sample from 1989 until 1993.

<sup>23</sup> See Memorandum of Telephone Conversation between Bob Sensibaugh, Petroleum Manager, Jefferson Landmark, Inc., and Avery R. Webster, Attorney-Examiner, OHA, dated April 1, 2008 (Sensibaugh 1<sup>st</sup> Telephone Memo).

<sup>24</sup> See Rozsa Telephone Memo; see also Application for Exception.

<sup>25</sup> See *The Kiesel Co.*, 29 DOE ¶ 81,019 (Apr. 7, 2006) (Case No. TEE-0033) (denying a firm exception relief where it had only one employee, reporting took between one and two days to complete, and reporting interfered with their business); see also *Wavaho Oil Co., Inc.*, 29 DOE ¶ 81,008 (Aug. 9, 2005) (Case No. TEE-0019) (denying exception relief where reporting took between two and three days, the firm lacked a computer system to compile data, and could not afford extra help to complete the process); *Hampton Gas Co., Inc.*, 26 DOE ¶ 81,015 (May 22, 1997)

Regarding Jefferson's argument that completing the form is time-consuming, we have previously held that the Form EIA-782B reporting requirement is not particularly burdensome.<sup>26</sup> It requires little more than the essential pricing, supply, and inventory data required in operating a business. The EIA estimates that it should normally take a firm approximately two and one half hours per month to complete the form.<sup>27</sup> We note that Jefferson spends one to one and one half hours per month completing the form, which is well below the EIA estimate.<sup>28</sup> Furthermore, Jefferson may reduce its reporting burden by employing reasonable estimates.<sup>29</sup>

In addition, Jefferson's argument that it has filed the form for many years does not warrant relief. We have consistently held that the length of time a firm has been required to file an EIA form does not justify relief.<sup>30</sup> In sum, Jefferson has not demonstrated that the reporting requirement poses a burden significantly greater than that experienced by other firms.

Based on the foregoing, we find that Jefferson has not demonstrated that the requirement to file Form EIA-782B is burdensome in a manner that distinguishes it from other similarly affected firms. Accordingly, Jefferson's application for exception should be denied.

It is Therefore Ordered That:

- (1) The Application for Exception filed by Jefferson Landmark, Inc., Case No. TEE-0054, be and hereby is denied.
- (2) Administrative review of this Decision and Order may be sought by any persons aggrieved or adversely affected by the denial of exception relief. Such review shall be commenced by filing a petition for review with the Federal Energy Regulatory Commission within 30 days of the date of this Decision and Order pursuant to 18 C.F.R. Part 385, Subpart J.

Poli A. Marmolejos  
Director  
Office of Hearings and Appeals

Date: May 1, 2008

---

(Case No. VEE-0041) (denying exception relief where the firm had only a two-person staff and did not maintain the reporting information as a monthly record).

<sup>26</sup> See American Energy, 30 DOE ¶ 81,002 (Feb. 13, 2008) (Case No. TEE-0053); *Ullman Oil Company*, 30 DOE ¶ 81,001 (Jan. 8, 2008) (TEE-0052); *Mark's Appliance & Heating*, 29 DOE ¶ 81,039 (Sept. 18, 2007) (TEE-0048).

<sup>27</sup> Section 10 of the General Instructions to Form EIA-782B.

<sup>28</sup> See Sensibaugh 1<sup>st</sup> Telephone Memo.

<sup>29</sup> See Section 7 of the General Instructions to Form EIA-782B.

<sup>30</sup> *Emerson Oil Co.*, 29 DOE ¶ 81,033 (Apr. 24, 2007) (TEE-0043).

October 22, 2008

**DECISION AND ORDER  
OFFICE OF HEARINGS AND APPEALS**

**Application for Exception**

Name of Case: Van Hoy Oil Co., Inc.

Date of Filing: September 23, 2008

Case No.: TEE-0055

On September 23, 2008, Van Hoy Oil Co., Inc. (Van Hoy) filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). The firm requests that it be permanently relieved of the requirement to prepare and file the Energy Information Administration (EIA) Form EIA-782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report." As explained below, we have determined that Van Hoy's request should be granted in part.

*I. Background*

The DOE's Energy Information Administration (EIA) is authorized to collect, analyze, and disseminate energy data and other information.<sup>1</sup> The EIA-782B reporting requirement grew out of the shortages of crude oil and petroleum products during the 1970s. In 1979, Congress determined that the lack of reliable information concerning the supply, demand and prices of petroleum products impeded the nation's ability to respond to the oil crisis. It therefore authorized the DOE to collect data on the supply and prices of petroleum products. This information is used to analyze trends within petroleum markets. Summaries of the information and the analyses are reported by EIA in publications such as "Petroleum Marketing Monthly." This information is used by Congress and state governments to project trends and to formulate national and state energy policies. Access to this data is vital to the nation's ability to anticipate and respond to potential energy shortages.<sup>2</sup>

Form EIA-782B is a monthly report, pursuant to which resellers and retailers report the volume and price of sales of motor gasoline, No. 2 distillates, propane, and residual fuel oil. In order to

---

<sup>1</sup> 15 U.S.C. § 772(b); 42 U.S.C. § 7135(b).

<sup>2</sup> See H.R. Rep. NO. 373, 96<sup>th</sup> Con., 1st Sess., reprinted in 1979 U.S. Code Cong. & Admin. News 1764, 1781 (H.R. Report 373).

minimize the reporting burden, the EIA periodically selects a relatively small sample of companies to file Form EIA-782B<sup>3</sup> and permits reporting firms to rely on reasonable estimates.<sup>4</sup>

## II. Exception Criteria

OHA has the authority to grant exception relief where the reporting requirement causes a “serious hardship, gross inequity or unfair distribution of burdens.”<sup>5</sup> Since all reporting firms are burdened to some extent by reporting requirements, exception relief is appropriate only where a firm can demonstrate that it is adversely affected by the reporting requirement in a way that differs significantly from similar reporting firms.

When considering a request for exception relief, we must weigh the firm’s difficulty in complying with the reporting requirement against the nation’s need for reliable energy data. Thus, mere inconvenience does not constitute a hardship warranting relief.<sup>6</sup> Similarly, the fact that a firm is relatively small or has filed reports for a number of years does not constitute a hardship warranting relief.<sup>7</sup> If firms of all sizes, both large and small, are not included in the survey, the estimates and projections generated by EIA’s statistical sample will be unreliable.<sup>8</sup>

OHA has granted relief from the reporting requirement under various circumstances. For example, we have granted relief where: the firm’s financial situation is so precarious that the additional burden of meeting the DOE reporting requirements threatens the firm’s continued viability;<sup>9</sup> the firm’s only employee capable of preparing the report is ill and the firm cannot afford to hire outside help;<sup>10</sup> extreme or unusual circumstances disrupt a firm’s activities;<sup>11</sup> or, a combination of factors resulting from unavoidable circumstances makes completing the form impracticable.<sup>12</sup>

---

<sup>3</sup> Firms that account for over five percent of the sales of any particular product in a state or do business in four or more states, designated as certainty firms, are always included in the sample of firms required to file the form. A random sample of other firms is also selected. This random sample changes approximately every 24 to 30 months, but a firm may be reselected for subsequent samples. A firm that has been included in three consecutive random samples will generally not be included in a fourth consecutive sample, but may be included in a later sample.

<sup>4</sup> Form EIA-782B requires that the firm make a good faith effort to provide reasonably accurate information that is consistent with the accounting records maintained by the firm. The firm must alert the EIA if the estimates are later found to be materially different from actual data.

<sup>5</sup> 42 U.S.C. § 7194; 10 C.F.R. § 1003.25(b) (2).

<sup>6</sup> *Glenn Wagoner Oil Co.*, 16 DOE ¶ 81,024 (1987).

<sup>7</sup> *Mulgrew Oil Co.*, 20 DOE ¶ 81,009 (1990).

<sup>8</sup> *Id.*

<sup>9</sup> *Mico Oil Co.*, 23 DOE ¶ 81,105 (1994) (firm lost one million dollars over previous three years); *Deaton Oil Co.*, 16 DOE 81,206 (1987) (firm in bankruptcy).

<sup>10</sup> *S&S Oil & Propane Co.*, 21 DOE ¶ 81,006 (1991) (owner being treated for cancer); *Midstream Fuel Serv.*, 24 DOE 81,203 (1994) (three month extension of time to file reports granted when two office employees simultaneously on maternity leave); *Eastern Petroleum Corp.*, 14 DOE ¶ 81,011 (1986) (two month extension granted when computer operator broke wrist).

<sup>11</sup> *Little River Village Campground, Inc.*, 24 DOE ¶ 81,033 (1994) (five months relief because of flood); *Utilities Bd. of Citronelle-Gas*, 4 DOE ¶ 81,025 (1979) (hurricane); *Meier Oil Serv.* 14 DOE ¶ 81,004 (1986) (three month extension granted where disruptions caused by installation of new computer system left the firm’s records inaccessible).

<sup>12</sup> *Ward Oil Co.*, 24 DOE ¶ 81,002 (1994) (ten month extension granted where long illness and death of a partner resulted in personnel shortages, financial difficulties and other administrative problems).



### *III. The Application for Exception*

Van Hoy is a retailer of petroleum products based in Knightstown, Indiana. Van Hoy is a noncertainty firm that has consistently reported since January 2002, and has been selected for the last two samples.<sup>13</sup> The firm states that it has reduced its staff as a result of declining sales in its retail market.<sup>14</sup> Van Hoy has been forced to eliminate the position of the accountant who was responsible for completing form EIA-782B. Due to the economic situation, the firm's scope of work has changed and the owner is trying to refocus the business to make it more efficient. They have completed the form once a month for seven years, but now must use very limited personnel resources to remain viable despite the loss of customers.<sup>15</sup> Van Hoy maintains that it is difficult to compile the data for the form due to its staffing limitations and requests that it be permanently relieved of the obligation to file form EIA-782B.

### *IV. Analysis*

Upon careful examination of Van Hoy's Application for Exception, we have determined that temporary exception relief is warranted. The firm has experienced a major decrease in sales and personnel, and a shift in the focus and operations of its business. Considering the public interest in the information obtained from Van Hoy Oil's EIA-782B form, however, we do not believe that the firm should be relieved of the obligation to file form EIA-782B indefinitely. Accordingly, we have determined that a temporary exception through April 2009 should be granted.<sup>16</sup>

It Is Therefore Ordered That:

- (1) The Application for Exception filed by Van Hoy Oil co., Inc., Case No., TEE-0055, be, and hereby is, granted as set forth in paragraph (2) below and denied in all other respects.
- (2) Van Hoy Oil Co., Inc. is relieved of the requirement to file form EIA-782B for the months November 2008 through April 2009.
- (3) To the extent that the Application is denied, administrative review of this Decision and Order may be sought by any persons aggrieved or adversely affected by the denial of exception relief. Such review shall be commenced by filing a petition for

---

<sup>13</sup> See Electronic Mail Message from Tammy Heppner, EIA, to Valerie Vance Adeyeye, OHA (September 25, 2008).

<sup>14</sup> See Memorandum of Telephone Conversation between Jeff Van Hoy, Van Hoy Oil Co., and Valerie Vance Adeyeye, OHA (October 8, 2008).

<sup>15</sup> *Id.*

<sup>16</sup> See *Meier Oil Serv.*, 14 DOE ¶ 81,004 (1986); *Ward Oil Co.*, 24 DOE ¶ 81,002 (1994).

review with the Federal Energy Regulatory Commission within 30 days of the date of this Decision and Order pursuant to 18 C.F.R. Part 385, Subpart J.

Poli A. Marmolejos  
Director  
Office of Hearings and Appeals

Date: October 22, 2008

December 1, 2008

DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

*Application for Exception*

Name of Case: Electrolux Home Products, Inc.

Date of Filing: November 3, 2008

Case Number: TEE-0056

This Decision and Order considers an Application for Exception filed by Electrolux Home Products, Inc., (Electrolux) seeking relief from the provisions of 10 C.F.R. Part 430, Energy Conservation Program for Consumer Products: Energy Conservation Standards for Refrigerators, Refrigerator-Freezers and Freezers (Refrigerator Efficiency Standards). In its exception request, Electrolux asserts that the firm will suffer an undue hardship and inequity if required to adhere to the Refrigerator Efficiency Standards, codified at 10 C.F.R. § 430.32. If Electrolux's Application for Exception is granted, the firm will receive exception relief from the energy efficiency standard applicable to a new automatic defrost refrigerator-freezer, with bottom-mounted freezer and through-the-door ice service. Electrolux proposes to introduce this appliance into the nationwide marketplace. As set forth in this Decision and Order, we have concluded that Electrolux's Application for Exception should be granted.

I. Background

A. Refrigerator Efficiency Standards

The Refrigerator Efficiency Standards, 10 C.F.R. Part 430, were published as a final rule by the Department of Energy (DOE) on April 28, 1997, 62 Fed. Reg. 23102, as mandated by Congress in Part B of Title III of the Energy Policy and Conservation Act, as amended, 42 U.S.C. §§ 6291-6309 (EPCA). In the EPCA, Congress directed that DOE review and revise energy conservation standards for major appliances,

including refrigerator-freezer products. These regulations were promulgated by the agency in 1989, 54 Fed. Reg. 47916 (November 17, 1989). EPCA § 325(b)(3)(B), 42 U.S.C. § 6295(b)(3)(B). Appliance manufacturers are prohibited from introducing into commerce any covered product that is not in compliance with the applicable energy efficiency standards established under the EPCA. 42 U.S.C. § 6302(a)(5). The Refrigerator Efficiency Standards were designed to reduce energy use in classes of refrigerator products by up to 30 percent below the prior standards, and thereby reduce consumer costs as well as emission of air pollutants associated with electricity production.<sup>1</sup> The Refrigerator Efficiency Standards became effective July 1, 2001.

#### B. Application for Exception

Electrolux is a Delaware Corporation with corporate headquarters in Augusta, Georgia. Its products include refrigerators, freezers, ranges, dishwashers, dryers, and air-conditioners sold under a variety of brand names. The firm indicates that it has developed a bottom-mount freezer with through-the door ice service. Electrolux states in its Application for Exception that in the absence of exception relief, the firm will be unable to market its automatic defrost refrigerator-freezer with bottom-mounted freezer with through-the-door ice service. Since through-the-door ice service was not offered with bottom-mounted freezers at the time the Refrigerator Efficiency Standards were promulgated, there was no energy efficiency standard established for this product within the eighteen classes of product established. At the same time, Electrolux's product clearly fits within the regulatory definition of "electric refrigerator-freezer," 10 C.F.R. § 430.2, and it will be unable to meet the Class 5 energy standard applicable to refrigerator-freezers with bottom-mounted freezer without through-the-door ice server due to the energy loss inherent in adding the through-the-door ice service feature. Therefore, Electrolux seeks relief from the existing energy efficiency standards that will permit

---

<sup>1</sup> For each of eighteen classes of refrigerator products, the Refrigerator Efficiency Standards establish energy efficiency equations which limit energy usage. These equations are expressed in kilowatt-hours per year (kWh/yr). For example, the consumption equation for the product Class 4, "Refrigerator-Freezers - automatic defrost with side-mounted freezer without through-the-door ice service" is a maximum of "4.91AV+507.5," where AV is the "total adjusted volume" of the particular unit expressed in cubic feet.

it to market this product in the U.S. It requests that we allow it to apply an energy efficiency standard for its new automatic defrost refrigerator-freezer with bottom-mounted freezer with through-the-door ice service, based upon the incremental increase in allowable energy consumption properly attributable to this feature. We received one interested party comment on Electrolux's Application for Exception. Whirlpool Corp. stated that "any grant of exception relief" should "include a clear statement that the DOE's energy test procedures must be properly followed."

## II. Analysis

The present case is virtually indistinguishable from one in which we granted exception relief from the Refrigerator Efficiency Standards to Maytag Corporation, which sought to market the same type of refrigerator: a bottom-mounted freezer with through-the-door ice service. *Maytag Corp.*, 29 DOE ¶ 81,009 (2005) (*Maytag*). Accordingly, we will provide Electrolux the same type of relief that we granted to Maytag.

In *Maytag*, we determined that an appropriate standard for maximum energy use can be established for the firm's automatic defrost refrigerator-freezer, with bottom-mounted freezer with through-the-door ice service, by adding  $0.40AV+80.0$  to the energy efficiency equation,  $4.60AV+459.0$ , established for "Refrigerator-Freezers - automatic defrost with bottom-mounted freezer without through-the-door ice service" (Class 5). The combination of these values yields an energy consumption standard of  $5.0AV+539.0$ .

Accordingly, Electrolux will be granted exception relief establishing the energy standard equation for maximum energy use (kWh/yr) for Electrolux's automatic defrost refrigerator-freezer, with bottom-mounted freezer with through-the-door ice service, of  $5.0AV+539.0$ . Electrolux must label its new product in accordance with regulations of the Federal Trade Commission, 16 C.F.R. Part 305,<sup>2</sup> and

---

<sup>2</sup> This labeling instruction is in accordance with Federal Trade Commission regulations set forth at 16 C.F.R. § 305.10(b), which states:

- (b) When the estimated annual energy consumption or energy efficiency rating of a given model of a covered product falls

state the expected energy consumption based upon appropriate testing under DOE test protocol. See 10 C.F.R. § 430.23(b). The exception relief granted in this decision will remain in effect until such time as the DOE promulgates an energy efficiency standard for "Refrigerator-Freezers-automatic defrost with bottom-mounted freezer with through-the-door ice service" or the DOE modifies the existing standard for "Refrigerator-Freezers-automatic defrost with bottom-mounted freezer without through-the-door ice service" (Class 5).

It Is Therefore Ordered That:

(1) The Application for Exception filed by Electrolux Home Products, Inc. (Electrolux) on November 3, 2008, is hereby granted as set forth in paragraphs (2) and (3) below.

(2) Notwithstanding the requirements of 10 C.F.R. Part 430(a), the energy standard equation for maximum energy use (kWh/yr) is established as  $5.0AV+539.0$  for the "automatic defrost refrigerator-freezer, with bottom-mounted freezer with through-the-door ice service," produced by Electrolux, as described in this decision. The exception relief granted in this decision will remain in effect until the DOE promulgates an energy efficiency standard for "Refrigerator-Freezers-automatic defrost with bottom-mounted freezer with through-the-door ice service" or the DOE modifies the existing standard for "Refrigerator-Freezers automatic defrost with bottom-mounted freezer without through-the-door ice service" (Class 5).

(3) In marketing the refrigerator-freezer described in this decision, Electrolux shall label its product in accordance with regulations of the Federal Trade Commission, 16 C.F.R. Part 305, and state the expected

---

outside the limits of the current range for that product, which could result from the introduction of a new or changed model, the manufacturer shall

- (1) Omit placement of such product on the scale, and
- (2) Add one of the two sentences below, as appropriate, in the space just below the scale, as follows:

The estimated annual energy consumption of this model was not available at the time the range was published.

The energy efficiency rating of this model was not available at the time the range was published.

energy consumption based upon appropriate testing under DOE test protocol. See 10 C.F.R. § 430.23(a).

(4) Any person aggrieved by the approval of exception relief in this Decision and Order may file an appeal with the Office of Hearings and Appeals in accordance with 10 C.F.R. Part 1003, Subpart C.

Poli A. Marmolejos  
Director  
Office of Hearings and Appeals

Date: December 1, 2008

January 29, 2009

DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

**Application for Exception**

Name of Case: Collins Oil Service

Date of Filing: January 13, 2009

Case No.: TEE-0057

Collins Oil Service filed an Application for Exception with the Department of Energy's (DOE) Office of Hearings and Appeals (OHA). The firm requests permanent relief from its requirement to prepare and file the Energy Information Administration (EIA) Form EIA-782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report." As explained below, we have determined that Collins Oil Service's Application should be granted.

*I. Background*

In the 1970's, Congress's lack of information about petroleum products impeded our nation's response to the oil crises.<sup>1</sup> Congress therefore directed the EIA to collect data on the supply, demand, and pricing of petroleum products.<sup>2</sup> The EIA administers Form EIA-782B, which is a monthly report whereby resellers and retailers report their sales volume and price of motor gasoline, No. 2 distillates, propane, and residual fuel oil.<sup>3</sup> In order to minimize firms' reporting burden, the EIA periodically selects a relatively small sample of companies<sup>4</sup> to file the form and permits firms to rely on reasonable estimates.<sup>5</sup>

The EIA summarizes the collected data in publications such as *Petroleum Marketing Monthly*. Congress and most state governments use the information to project trends and formulate energy

---

<sup>1</sup> See H.R. REP. NO. 96-373, at 15, 17 (1979).

<sup>2</sup> 15 U.S.C. § 772(a).

<sup>3</sup> 42 U.S.C. §§ 7135(a)-(m).

<sup>4</sup> The EIA requires "certainty firms"—firms that account for over five percent of the sales of any particular product in a state or do business in four or more states—to always file Form EIA-782B. The EIA also selects a random sampling of all other, or "non-certainty" firms, to file Form EIA-782B. The sample of "non-certainty" firms changes approximately every twenty-four to thirty months. A firm that has been included in three consecutive random samples will generally not be included in a fourth consecutive sample, but may be included in a later sample.

<sup>5</sup> Form EIA-782B requires firms to make a good-faith effort to provide reasonably accurate information that is consistent with their accounting methods. A firm must alert the EIA if it finds that its estimates are materially different from actual data.



policies. Collecting this data is vital to our nation's ability to anticipate and respond to energy shortages.

## II. Exception Criteria

Congress requires OHA to grant exception relief from filing Form EIA-782B to prevent "special hardship, inequity, or unfair distribution of burdens. . . ."<sup>6</sup> Since the Form EIA-782B reporting requirements burden all reporting firms, exception relief is appropriate only where a firm can demonstrate that a reporting requirement adversely affects it in a way that differs significantly from similar reporting firms.

When considering a request for exception relief, we must weigh the firm's difficulty in complying with the reporting requirement against the nation's need for reliable energy data. Thus, mere inconvenience<sup>7</sup> or the length of time a firm has reported<sup>8</sup> does not constitute a hardship warranting relief. Similarly, the fact that a firm is relatively small does not constitute a hardship warranting relief. If firms of all sizes, both large and small, are not included in the survey, the reporting sample's estimates and projections will be unreliable.<sup>9</sup>

OHA has granted exception relief from the reporting requirement under various circumstances. For example, we have granted relief where the firm's financial situation was so precarious that the additional burden of meeting the reporting requirements threatened the firm's continued viability;<sup>10</sup> the firm experienced personnel deaths, illnesses or absences;<sup>11</sup> and where extreme or unusual circumstances disrupted the firm's activities.<sup>12</sup>

---

<sup>6</sup> 42 U.S.C. § 7194(a); *see also* 10 C.F.R. § 1003.25(b)(2) (allowing OHA to grant exception "to alleviate or prevent serious hardship, gross inequity or unfair distribution of burdens").

<sup>7</sup> *Glenn E. Wagoner Oil Co.*, 16 DOE ¶ 81,024 (Oct. 8, 1987) (Case No. KEE-0143). OHA decisions regarding Form EIA-782B issued after February 2, 1995, may be accessed at <http://www.oha.doe.gov/reportc.asp>.

<sup>8</sup> *Rice Oil Co., Inc.*, 26 DOE ¶ 81,010 (Mar. 21, 1997) (Case No. VEE-0035) (citations omitted).

<sup>9</sup> *Mulgrew Oil Co., Inc.*, 20 DOE ¶ 81,009 (May 9, 1990) (Case No. LEE-0012) (citations omitted).

<sup>10</sup> *Mico Oil Co., Inc.*, 23 DOE ¶ 81,015 (Mar. 4, 1994) (Case No. LEE-0075) (granting exception relief where a firm lost one million dollars over the previous three years and prepared to liquidate its assets and file for bankruptcy); *Deaton Oil Co.*, 16 DOE ¶ 81,026 (Oct. 15, 1987) (Case No. KEE-0152) (granting exception relief where a firm entered Chapter 11 reorganization and made court-mandated layoffs).

<sup>11</sup> *Midstream Fuel Serv., Inc.*, 24 DOE ¶ 81,023 (May 31, 1994) (Case No. LEE-0083) (granting three months' exception relief where a small firm experienced personnel shortages due to two employees on maternity leave, an uptick in paperwork due to the tax season, and an inability to hire additional personnel); *Ward Oil Co.*, 24 DOE ¶ 81,002 (Mar. 29, 1994) (Case No. LEE-0088) (granting ten months' exception relief where a firm's owner and office manager suffered a long illness and death, resulting in personnel shortages and administrative challenges that caused the firm to fall sixty days behind in its paperwork); *S&S Oil & Propane Co., Inc.*, 21 DOE ¶ 81,006 (Sept. 23, 1991) (Case No. LEE-0023) (granting exception relief where a firm's owner worked nights and weekends amid a life-threatening illness); *E. Petroleum Corp.*, 14 DOE ¶ 81,011 (Apr. 25, 1986) (Case No. KEE-0016) (granting two months' exception relief where a computer operator's injury rendered the firm unable to complete the form).

<sup>12</sup> *Little River Vill. Campground, Inc.*, 24 DOE ¶ 81,033 (July 19, 1994) (Case No. LEE-0127) (granting several months exception relief where a firm's office was flooded); *Utilities Bd. of Citronelle-Gas*, 4 DOE ¶ 81,205 (Nov.

### *III. Collins Oil Service's Application for Exception*

Collins Oil Service is a non-certainty firm located in Arthur, Illinois. The firm sells No. 1 and No. 2 diesel, kerosene, and two types of gasoline. Collins Oil Service stated that it requests permanent relief from its obligation to file Form EIA-782B because its 72-year-old owner-manager William Collins recently suffered a stroke.<sup>13</sup>

We contacted Collins Oil Service to gather more information. Collins Oil Service employs three mechanics, one secretary, and one part-time worker. Mr. Collins stated that he used to fill out Form EIA-782B on behalf of his firm. Since his stroke, he has had difficulty writing, talking, and concentrating.<sup>14</sup> Because he now has difficulty completing 50-75% of his office duties,<sup>15</sup> completing the form has become “a handicap.” Additionally, he fears that his responses are no longer accurate. Collins Oil Service does not have another employee who can fill out the form, nor can it afford to hire an employee just to do so.<sup>16</sup> September 2008 was the last month that Collins Oil Service completed the form.<sup>17</sup>

### *IV. Analysis*

Under the exception criteria stated above, the fact that Mr. Collins suffered a stroke that causes him difficulty completing the majority of his office duties, combined with Collins Oil Service's inability to hire extra help, establishes that Collins Oil Service is experiencing a hardship significantly greater than the burden that other reporting firms experience. Therefore, Collins Oil Service has demonstrated that it meets the standards for exception relief.

We will grant exception relief for a period of fifteen months from October 2008, the first month after Mr. Collins's stroke that Collins Oil Service could not file Form EIA-782B. This period will allow Collins Oil Service time to address the difficulties it is experiencing as a result of Mr. Collins's stroke. Collins Oil Service may request an extension of exception relief at the end of this period, to the extent the circumstances warranting the approval of relief continue to exist.

---

28, 1979) (Case No. BEE-0293) (granting exception relief where a hurricane heavily damaged a firm's office and the firm concentrated its efforts on restoring service to its customers).

<sup>13</sup> Memorandum of Telephone Conversation between William Collins, Owner-Manager, Collins Oil Serv., and David M. Petrush, Attorney-Examiner, OHA, Jan. 21, 2009.

<sup>14</sup> *Id.*

<sup>15</sup> Memorandum of Telephone Conversation between William Collins, Owner-Manager, Collins Oil Serv., and David M. Petrush, Attorney-Examiner, OHA, Jan. 23, 2009.

<sup>16</sup> Memorandum of Telephone Conversation between William Collins, Owner-Manager, Collins Oil Serv., and David M. Petrush, Attorney-Examiner, OHA, Jan. 21, 2009.

<sup>17</sup> E-mail from Tammy G. Heppner, Survey Statistician, EIA, to David M. Petrush, Attorney-Examiner, OHA, Jan. 23, 2009.

It Is Therefore Ordered That:

- (1) Collins Oil Service's Application for Exception, Case No. TEE-0057, is hereby granted as set forth in paragraph (2) below and denied in all other respects.
- (2) Collins Oil Service is relieved of the requirement to file form EIA-782B for the months October 2008 through December 2009.
- (3) To the extent that the Application is denied, administrative review of this Decision and Order may be sought by any persons aggrieved or adversely affected by the denial of exception relief. Such review shall be commenced by filing a petition for review with the Federal Energy Regulatory Commission within 30 days of the date of this Decision and Order pursuant to 18 C.F.R. Part 385, Subpart J.

Poli A. Marmolejos  
Director  
Office of Hearings and Appeals

Date: January 29, 2009

DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

Application for Exception

Name of Case: Dobrauc Oil Co., Inc.

Date of Filing: March 10, 2009

Case No.: TEE-0058

On March 10, 2009, Dobrauc Oil Co., Inc. (Dobrauc), filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). The firm requests that it be permanently relieved of the requirement to prepare and file the Energy Information Administration (EIA) Form EIA-782B, entitled “Resellers’/Retailers’ Monthly Petroleum Product Sales Report.” As explained below, we have determined that Dobrauc’s Application should be denied.

## **I. Background**

The DOE’s Energy Information Administration (EIA) is authorized to collect, analyze, and disseminate energy data and other information.<sup>1</sup> The EIA-782B reporting requirement grew out of the shortages of crude oil and petroleum products during the 1970s. In 1979, Congress determined that the lack of reliable information concerning the supply, demand and prices of petroleum products impeded the nation’s ability to respond to the oil crisis. It therefore authorized the DOE to collect data on the supply and prices of petroleum products. This information is used to analyze trends within petroleum markets. Summaries of the information and the analyses are reported by EIA in publications such as “Petroleum Marketing Monthly.” This information is used by Congress and state governments to project trends and to formulate national and state energy policies. Access to this data is vital to the nation’s ability to anticipate and respond to potential energy shortages.<sup>2</sup>

Form EIA-782B is a monthly report of the volumes and prices of motor gasoline, No. 2 distillates, propane, and residual fuel oil sold by resellers and retailers. In order to minimize the reporting

---

1. 15 U.S.C. § 772(b); 42 U.S.C. § 7135(b).

2. See H.R. Rep. No. 373, 96th Cong., 1st Sess., reprinted in 1979 U.S. Code Cong. & Admin. News 1764, 1781 (H.R. Report 373).

burden, the EIA periodically selects a relatively small sample of companies to file Form EIA-782B and permits reporting firms to rely on reasonable estimates.<sup>3</sup>

## II. Exception Criteria

The OHA has the authority to grant exception relief where the reporting requirement causes a “serious hardship, gross inequity or unfair distribution of burdens.” 42 U.S.C. § 7194; 10 C.F.R. § 1003.25(b)(2). Since all reporting firms are burdened to some extent by reporting requirements, exception relief is appropriate only where a firm can demonstrate that it is adversely affected by the reporting requirement in a way that differs significantly from similar reporting firms.

When considering a request for exception relief, we must weigh the firm’s difficulty in complying with the reporting requirement against the nation’s need for reliable energy data. Thus, mere inconvenience does not constitute a hardship warranting relief. *Glenn Wagoner Oil Co.*, 16 DOE ¶ 81,024 (1987). Similarly, the fact that a firm is relatively small or has filed reports for a number of years does not constitute a hardship warranting relief. *Mulgrew Oil Co.*, 20 DOE ¶ 81,009 (1990). If firms of all sizes, both large and small, are not included in the survey, the estimates and projections generated by EIA’s statistical sample will be unreliable. *Id.*

OHA has granted relief from the reporting requirement under various circumstances. For example, we have granted relief where: the firm’s financial situation is so precarious that the additional burden of meeting the DOE reporting requirements threatens the firm’s continued viability, *see, e.g., Mico Oil Co.*, 23 DOE ¶ 81,105 (1994) (firm lost one million dollars over previous three years); *Deaton Oil Co.*, 16 DOE ¶ 81,206 (1987) (firm in bankruptcy); the firm’s only employee capable of preparing the report is ill and the firm cannot afford to hire outside help, *see, e.g., S&S Oil & Propane Co.*, 21 DOE ¶ 81,006 (1991) (owner being treated for cancer); *Eastern Petroleum Corp.*, 14 DOE ¶ 81,011 (1986) (two month extension granted when computer operator broke wrist); extreme or unusual circumstances disrupt a firm’s activities, *see, e.g., Little River Village Campground, Inc.*, 24 DOE ¶ 81,033 (1994) (five months relief because of flood); *Utilities Bd. of Citronelle-Gas*, 4 DOE ¶ 81,025 (1979) (hurricane); or a combination of factors resulting from unavoidable circumstances makes completing the form impracticable, *see, e.g., Ward Oil Co.*, 24 DOE ¶ 81,002 (1994) (ten month extension granted where long illness and death of a partner resulted in personnel shortages, financial difficulties and other administrative problems).

## III. Analysis

Dobrauc’s reasons for seeking exception relief are not as compelling as those for which we have previously granted relief. The firm argues that it should be relieved of its duty to file Form EIA-782B because it has filed the form for approximately 10 years, and because the owner, who completes the Form, works “12 to 13 hours a day, six or seven days a week” operating his business. Application for Exception at 1.

---

3. Form EIA-782B requires that the firm make a good faith effort to provide reasonably accurate information that is consistent with the accounting records maintained by the firm. The firm must alert the EIA if the estimates are later found to be materially different from actual data.

Dobrauc has not demonstrated that the reporting requirement imposes a serious hardship, inequity, or unfair distribution of burdens. As previously mentioned, we have consistently held that the length of time that a firm has been required to file an EIA form does not alone constitute grounds for exception relief. Moreover, Dobrauc's owner has informed us that he spends approximately 30 minutes per month filling out the form. *See* Memorandum of March 11, 2009 telephone conversation between William Dobrauc, President, Dobrauc Oil Co., Inc. and Robert Palmer, Senior Staff Attorney, Office of Hearings and Appeals. This is significantly less than the two and one-half hours that the EIA estimates as being needed to complete Form EIA-782B. *See* Section 10 of the General Instructions to Form EIA-782B. Despite Mr. Dobrauc's lengthy work-days, it therefore appears that his firm is not burdened to a significantly greater extent than other companies by the filing requirement. Accordingly, we find that exception relief is not warranted in this case. Dobrauc's Application for Exception should therefore be denied.

It Is Therefore Ordered That:

- (1) The Application for Exception filed by Dobrauc Oil Co., Inc., Case No. TEE-0058, is hereby denied.
- (2) Administrative review of this Decision and Order may be sought by any person who is aggrieved or adversely affected by the denial of exception relief. Such review shall be commenced by the filing of a petition for review with the Federal Energy Regulatory Commission within 30 days of the date of this Decision and Order pursuant to 18 C.F.R. Part 385, Subpart J.

Poli A. Marmolejos  
Director  
Office of Hearings and Appeals

Date:

May 15, 2009

DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

Application for Exception

Name of Case: Sauder Fuel Inc.

Date of Filing: April 28, 2009

Case No.: TEE-0059

On April 28, 2009, Sauder Fuel Inc. (Sauder), filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). The firm requests that it be relieved of the requirement to prepare and file the Energy Information Administration (EIA) Form EIA-782B, entitled “Resellers’/Retailers’ Monthly Petroleum Product Sales Report.” As explained below, we have determined that Sauder’s Application should be denied.

**I. Background**

The DOE’s Energy Information Administration (EIA) is authorized to collect, analyze, and disseminate energy data and other information.<sup>1</sup> The EIA-782B reporting requirement grew out of the shortages of crude oil and petroleum products during the 1970s. In 1979, Congress determined that the lack of reliable information concerning the supply, demand and prices of petroleum products impeded the nation’s ability to respond to the oil crisis. It therefore authorized the DOE to collect data on the supply and prices of petroleum products. This information is used to analyze trends within petroleum markets. Summaries of the information and the analyses are reported by EIA in publications such as “Petroleum Marketing Monthly.” This information is used by Congress and state governments to project trends and to formulate national and state energy policies. Access to this data is vital to the nation’s ability to anticipate and respond to potential energy shortages.<sup>2</sup>

Form EIA-782B is a monthly report of the volumes and prices of motor gasoline, No. 2 distillates, propane, and residual fuel oil sold by resellers and retailers. In order to minimize the reporting

---

<sup>1</sup> 15 U.S.C. § 772(b); 42 U.S.C. § 7135(b).

<sup>2</sup> See H.R. Rep. No. 373, 96th Cong., 1st Sess., reprinted in 1979 U.S. Code Cong. & Admin. News 1764, 1781 (H.R. Report 373).

burden, the EIA periodically selects a relatively small sample of companies to file Form EIA-782B and permits reporting firms to rely on reasonable estimates.<sup>3</sup>

## II. Exception Criteria

The OHA has the authority to grant exception relief where the reporting requirement causes a “serious hardship, gross inequity or unfair distribution of burdens.” 42 U.S.C. § 7194; 10 C.F.R. § 1003.25(b)(2). Since all reporting firms are burdened to some extent by reporting requirements, exception relief is appropriate only where a firm can demonstrate that it is adversely affected by the reporting requirement in a way that differs significantly from similar reporting firms.

When considering a request for exception relief, we must weigh the firm’s difficulty in complying with the reporting requirement against the nation’s need for reliable energy data. Thus, mere inconvenience does not constitute a hardship warranting relief. *Glenn Wagoner Oil Co.*, 16 DOE ¶ 81,024 (1987). Similarly, the fact that a firm is relatively small or has filed reports for a number of years does not constitute a hardship warranting relief. *Mulgrew Oil Co.*, 20 DOE ¶ 81,009 (1990). If firms of all sizes, both large and small, are not included in the survey, the estimates and projections generated by EIA’s statistical sample will be unreliable. *Id.*

OHA has granted relief from the reporting requirement under various circumstances. For example, we have granted relief where: the firm’s financial situation is so precarious that the additional burden of meeting the DOE reporting requirements threatens the firm’s continued viability, *see, e.g., Mico Oil Co.*, 23 DOE ¶ 81,105 (1994) (firm lost one million dollars over previous three years); *Deaton Oil Co.*, 16 DOE ¶ 81,206 (1987) (firm in bankruptcy); the firm’s only employee capable of preparing the report is ill and the firm cannot afford to hire outside help, *see, e.g., S&S Oil & Propane Co.*, 21 DOE ¶ 81,006 (1991) (owner being treated for cancer); *Eastern Petroleum Corp.*, 14 DOE ¶ 81,011 (1986) (two month extension granted when computer operator broke wrist); extreme or unusual circumstances disrupt a firm’s activities, *see, e.g., Little River Village Campground, Inc.*, 24 DOE ¶ 81,033 (1994) (five months relief because of flood); *Utilities Bd. of Citronelle-Gas*, 4 DOE ¶ 81,025 (1979) (hurricane); or a combination of factors resulting from unavoidable circumstances makes completing the form impracticable, *see, e.g., Ward Oil Co.*, 24 DOE ¶ 81,002 (1994) (ten month extension granted where long illness and death of a partner resulted in personnel shortages, financial difficulties and other administrative problems).

## III. Analysis

Sauder’s reasons for seeking exception relief are not as compelling as those for which we have previously granted relief. The firm argues that it should be relieved of its duty to file Form EIA-782B because its owner and employees “haven’t the time nor access to the necessary information to complete the forms.” Application at 1. The company further argues that his company is unable to accurately complete the form because its “record system does not differentiate between ULSD and

---

<sup>3</sup> Form EIA-782B requires that the firm make a good faith effort to provide reasonably accurate information that is consistent with the accounting records maintained by the firm. The firm must alert the EIA if the estimates are later found to be materially different from actual data.



500 ppm diesel. We handle off road diesel which is labeled LSD NRLM. There does not seem to be a category for this product. Nor do we differentiate between commercial, industrial, etc. which the for asks us to do." *Id.*

Sauder has not demonstrated that the reporting requirement imposes a serious hardship, inequity, or unfair distribution of burdens.<sup>4</sup> As previously mentioned, we have consistently held that the length of time that a firm has been required to file an EIA form does not alone constitute grounds for exception relief. As for the categorization of sales as reported on Form EIA-782B, we have been informed that Sauder has been in contact with EIA analysts, who have attempted to provide him guidance in this regard. E-mail from Tammy Heppner, EIA, to Steven Goering, OHA (May 14, 2009). We also note that the instructions provided for this form allow for estimates of "sales volumes and unit prices by the customer categories specified on the form." *See* Section 7 of the General Instructions to Form EIA-782B; *see also supra* note 3. Accordingly, we find that exception relief is not warranted in this case. Sauder's Application for Exception should therefore be denied.

It Is Therefore Ordered That:

(1) The Application for Exception filed by Sauder Fuel Inc., Case No. TEE-0059, is hereby denied.

(2) Administrative review of this Decision and Order may be sought by any person who is aggrieved or adversely affected by the denial of exception relief. Such review shall be commenced by the filing of a petition for review with the Federal Energy Regulatory Commission within 30 days of the date of this Decision and Order pursuant to 18 C.F.R. Part 385, Subpart J.

Poli A. Marmolejos  
Director  
Office of Hearings and Appeals

Date: May 15, 2009

---

<sup>4</sup>In its application, Sauder also questions the relevance and necessity of the information required on the form, neither of which is relevant to whether the reporting requirement, as applied to Sauder, causes a serious hardship, gross inequity or unfair distribution of burdens.

June 30, 2009

DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

Application for Exception

Name of Case: 7 Oil Co., Inc.

Date of Filing: June 11, 2009

Case No.: TEE-0060

On June 11, 2009, 7 Oil Co., Inc. (7 Oil) filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). The firm requests that it be permanently relieved of the requirement to prepare and file the Energy Information Administration (EIA) Form EIA-782B, entitled “Resellers’/Retailers’ Monthly Petroleum Product Sales Report.” As explained below, we have determined that the request should be denied.<sup>1</sup>

**I. Background**

The DOE’s Energy Information Administration (EIA) is authorized to collect, analyze, and disseminate energy data and other information. 15 U.S.C. § 772(b); 42 U.S.C. § 7135(b). The EIA-782B reporting requirement grew out of the shortages of crude oil and petroleum products during the 1970s. In 1979, Congress determined that the lack of reliable information concerning the supply, demand and prices of petroleum products impeded the nation’s ability to respond to the oil crisis. It therefore authorized the DOE to collect data on the supply and prices of petroleum products. This information is used to analyze trends within petroleum markets. Summaries of the information and the analyses are reported by EIA in publications such as “Petroleum Marketing Monthly.” This information is used by Congress and state governments to project trends and to formulate national and state energy policies. Access to this data is vital to the nation’s ability to anticipate and respond to potential energy shortages. *See* H.R. Rep. No. 373, 96<sup>th</sup> Cong., 1st Sess., reprinted in 1979 U.S. Code Cong. & Admin. News 1764, 1781 (H.R. Report 373).

Form EIA-782B is a monthly report of the volume and prices of motor gasoline, No. 2 distillates, propane, and residual fuel oil sold by resellers and retailers. In order to minimize the reporting burden, the EIA periodically selects a relatively small sample of companies to file Form EIA-782B. Firms that account for over five percent of the sales of any particular product in a state or

---

<sup>1</sup>OHA Exception Decisions issued since July 5, 1995, are available on the OHA website located at <http://www.oha.doe.gov>. The text of a cited decision may be accessed by entering the case number of the decision in the search engine located at <http://www.oha.doe.gov/search.htm>.

do business in four or more states, designated as certainty firms, are always included in the sample of firms required to file the form. A random sample of other firms, designated as non-certainty firms, is also selected. This random sample changes periodically, but a firm may be reselected for subsequent samples. A firm that has been included in three consecutive random samples will generally not be included in a fourth consecutive sample, but may be included in a later sample. In order to reduce the burden on reporting firms, EIA also permits the firms to rely on reasonable estimates.<sup>2</sup>

## II. Exception Criteria

OHA has the authority to grant exception relief where the reporting requirement causes a “serious hardship, gross inequity or unfair distribution of burdens.” 42 U.S.C. § 7194; 10 C.F.R. § 1003.25(b)(2). Since all reporting firms are burdened to some extent by reporting requirements, exception relief is appropriate only where a firm can demonstrate that it is adversely affected by the reporting requirement in a way that differs significantly from similar reporting firms.

When considering a request for exception relief, we must weigh the firm’s difficulty in complying with the reporting requirement against the nation’s need for reliable energy data. Thus, mere inconvenience does not constitute a hardship warranting relief. *Glenn Wagoner Oil Co.*, 16 DOE ¶ 81,024 (1987). Similarly, the fact that a firm is relatively small or has filed reports for a number of years does not constitute a hardship warranting relief. *Mulgrew Oil Co.*, 20 DOE ¶ 81,009 (1990). If firms of all sizes, both large and small, are not included in the survey, the estimates and projections generated by EIA’s statistical sample will be unreliable. *Id.*

OHA has granted relief from the reporting requirement under various circumstances. For example, we have granted relief where: the firm’s financial situation is so precarious that the additional burden of meeting the DOE reporting requirements threatens the firm’s continued viability, *see e.g., Mico Oil Co.*, 23 DOE ¶ 81,105 (1994) (firm lost one million dollars over previous three years); *Deaton Oil Co.*, 16 DOE 81,206 (1987) (firm in bankruptcy); the firm’s only employee capable of preparing the report is ill and the firm cannot afford to hire outside help, *see e.g., S&S Oil & Propane Co.*, 21 DOE ¶ 81,006 (1991) (owner being treated for cancer); *Eastern Petroleum Corp.*, 14 DOE ¶ 81,011 (1986) (two month extension granted when computer operator broke wrist); extreme or unusual circumstances disrupt a firm’s activities, *see e.g., Little River Village Campground, Inc.*, 24 DOE ¶ 81,033 (1994) (five months relief because of flood); *Utilities Bd. of Citronelle-Gas*, 4 DOE ¶ 81,025 (1979) (hurricane); or a combination of factors resulting from unavoidable circumstances makes completing the form impracticable, *see e.g., Ward Oil Co.*, 24 DOE ¶ 81,002 (1994) (ten month extension granted where long illness and death of a partner resulted in personnel shortages, financial difficulties and other administrative problems).

---

<sup>2</sup> Form EIA-782B requires that the firm make a good faith effort to provide reasonably accurate information that is consistent with the accounting records maintained by the firm. The firm must alert the EIA if the estimates are later found to be materially different from actual data.

### III. The Application for Exception

7 Oil is a seller of petroleum products based in Cinnaminson, New Jersey. The firm is designated as a non-certainty firm by the EIA. *See* E-mail from Tammy Heppner, EIA, to Diane DeMoura, OHA, June 12, 2009. The firm, reporting in its second sample, has filed form EIA-782B from March 2002 to the present. *Id.*

In its Application, 7 Oil requests that it be permanently relieved of the obligation to file Form EIA-782B. *See* Letter from Mike Longo, 7 Oil, to OHA, June 3, 2009 (Application for Exception). 7 Oil maintains that completing the form has become burdensome in light of the difficult economic times. *Id.* The firm states that it is currently “running on a skeleton crew” and, therefore, has “found it to be very difficult to assign a staff member” the responsibility of completing the form. *Id.*

Based upon a review of the Application, we concluded that there was not sufficient information to permit us to act favorably on the request. Therefore, we contacted 7 Oil to give the company an opportunity to discuss its request for relief. *See* Memorandum of Telephone Conversation between Lauri McArthur, 7 Oil, and Diane DeMoura, OHA, June 22, 2009. 7 Oil states that the owner of the company is the person responsible for completing Form EIA-782B and he prefers not to delegate the responsibility of completing the form to other employees. *Id.* The company owner has become very busy with other projects and has found the task of continuing to complete the form burdensome. *Id.* It takes 7 Oil’s owner approximately 30 minutes to compile the necessary information to complete Form EIA-782B. *Id.*

### IV. Analysis

The Form EIA-782B reporting requirement requires common information on pricing and inventory changes for various refined petroleum products. The EIA estimates that it should normally take a firm approximately two and one-half hours per month to complete the form. *See* Section 10 of General Instructions to Form EIA-782B. As mentioned above, the burden of the requirement can be substantially reduced by the use of estimates. *See* Section 7 of the General Instructions for Form EIA-782B. Every reporting firm is burdened to a certain extent by the reporting requirement. Exception relief is appropriate only where the reporting requirement poses a serious hardship, inequity, or unfair distribution of burdens. 42 U.S.C. § 7194; 10 C.F.R. § 1003.25(b)(2). In other words, relief is appropriate where the reporting requirement adversely affects the firm to a significantly greater degree than it affects other firms.

In this case, 7 Oil does not claim it is adversely affected by the reporting requirement to a greater degree than other similar firms. To the contrary, it takes the company’s owner approximately 30 minutes each month to compile the necessary data for the form, significantly less than EIA’s estimated time. *See* Memorandum of Telephone Conversation between Lauri McArthur, 7 Oil, and Diane DeMoura, OHA, June 22, 2009. 7 Oil bases its request solely on the unsupported assertion that compiling the data for the form has become burdensome. In fact, we find that 30 minutes is a short amount of time to complete the form. 7 Oil’s contention that the company owner is too busy to complete Form EIA-782B, absent any showing of serious hardship, inequity, or unfair distribution of burdens, is insufficient to warrant relief.

As the foregoing indicates, 7 Oil has not shown that the requirement to complete Form EIA-782B is burdensome to the firm in a manner that distinguishes it from other similarly affected firms. Accordingly, we find that exception relief is not warranted in this case and, therefore, the Application for Exception should be denied.

It Is Therefore Ordered That:

(1) The Application for Exception filed by 7 Oil Co., Inc., Case No. TEE-0060, be, and hereby is, denied.

(2) Administrative review of this Decision and Order may be sought by any person who is aggrieved or adversely affected by the denied of exception relief. Such review shall be commenced by the filing of a petition for review with the Federal Energy Regulatory Commission within 30 days of the date of this Decision and Order pursuant to 18 C.F.R. Part 835, Subpart J.

Poli A. Marmolejos  
Director  
Office of Hearings and Appeals

Date: June 30, 2009

August 4, 2009

DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

Application for Exception

Name of Case: Kirby Oil Company, Inc.

Date of Filing: June 16, 2009

Case No.: TEE-0061

On June 16, 2009, Kirby Oil Company, Inc. (Kirby Oil) filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). The firm requests that it be permanently relieved of the requirement to prepare and file the Energy Information Administration (EIA) Form EIA-782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report." As explained below, we have determined that the request should be denied.<sup>1</sup>

**I. Background**

The DOE's Energy Information Administration (EIA) is authorized to collect, analyze, and disseminate energy data and other information. 15 U.S.C. § 772(b); 42 U.S.C. § 7135(b). The EIA-782B reporting requirement grew out of the shortages of crude oil and petroleum products during the 1970s. In 1979, Congress determined that the lack of reliable information concerning the supply, demand and prices of petroleum products impeded the nation's ability to respond to the oil crisis. It therefore authorized the DOE to collect data on the supply and prices of petroleum products. This information is used to analyze trends within petroleum markets. Summaries of the information and the analyses are reported by EIA in publications such as "Petroleum Marketing Monthly." This information is used by Congress and state governments to project trends and to formulate national and state energy policies. Access to this data is vital to the nation's ability to anticipate and respond to potential energy shortages. *See* H.R. Rep. No. 373, 96<sup>th</sup> Cong., 1st Sess., reprinted in 1979 U.S. Code Cong. & Admin. News 1764, 1781 (H.R. Report 373).

Form EIA-782B is a monthly report of the volume and prices of motor gasoline, No. 2 distillates, propane, and residual fuel oil sold by resellers and retailers. In order to minimize the reporting burden, the EIA periodically selects a relatively small sample of companies to file Form EIA-782B. Firms that account for over five percent of the sales of any particular product in a state or do business in four or more states, designated as certainty firms, are always included in the sample of firms required to file the form. A random sample of other firms, designated as non-certainty firms, is also selected. This random sample changes periodically, but a firm may be

---

<sup>1</sup> OHA Exception Decisions issued since July 5, 1995, are available on the OHA website located at <http://www.oha.doe.gov>. The text of a cited decision may be assessed by entering the case number of the decision in the search engine located at <http://www.oha.doe.gov/search.htm>.

reselected for subsequent samples. A firm that has been included in three consecutive random samples will generally not be included in a fourth consecutive sample, but may be included in a later sample. In order to reduce the burden on reporting firms, EIA also permits the firms to rely on reasonable estimates.<sup>2</sup>

## II. Exception Criteria

OHA has the authority to grant exception relief where the reporting requirement causes a “serious hardship, gross inequity or unfair distribution of burdens.” 42 U.S.C. § 7194; 10 C.F.R. § 1003.25(b)(2). Since all reporting firms are burdened to some extent by reporting requirements, exception relief is appropriate only where a firm can demonstrate that it is adversely affected by the reporting requirement in a way that differs significantly from similar reporting firms.

When considering a request for exception relief, we must weigh the firm’s difficulty in complying with the reporting requirement against the nation’s need for reliable energy data. Thus, mere inconvenience does not constitute a hardship warranting relief. *Glenn Wagoner Oil Co.*, 16 DOE ¶ 81,024 (1987). Similarly, the fact that a firm is relatively small or has filed reports for a number of years does not constitute a hardship warranting relief. *Mulgrew Oil Co.*, 20 DOE ¶ 81,009 (1990). If firms of all sizes, both large and small, are not included in the survey, the estimates and projections generated by EIA’s statistical sample will be unreliable. *Id.*

OHA has granted relief from the reporting requirement under various circumstances. For example, we have granted relief where: the firm’s financial situation is so precarious that the additional burden of meeting the DOE reporting requirements threatens the firm’s continued viability, *see e.g., Mico Oil Co.*, 23 DOE ¶ 81,105 (1994) (firm lost one million dollars over previous three years); *Deaton Oil Co.*, 16 DOE ¶ 81,206 (1987) (firm in bankruptcy); the firm’s only employee capable of preparing the report is ill and the firm cannot afford to hire outside help, *see e.g., S&S Oil & Propane Co.*, 21 DOE ¶ 81,006 (1991) (owner being treated for cancer); *Eastern Petroleum Corp.*, 14 DOE ¶ 81,011 (1986) (two-month extension granted when computer operator broke wrist); extreme or unusual circumstances disrupt a firm’s activities, *see e.g., Little River Village Campground, Inc.*, 24 DOE ¶ 81,033 (1994) (five months relief because of flood); *Utilities Bd. of Citronelle-Gas*, 4 DOE ¶ 81,025 (1979) (hurricane); or a combination of factors resulting from unavoidable circumstances makes completing the form impracticable, *see e.g., Ward Oil Co.*, 24 DOE ¶ 81,002 (1994) (ten month extension granted where long illness and death of a partner resulted in personnel shortages, financial difficulties and other administrative problems).

## III. The Application for Exception

Kirby Oil is a seller of petroleum products based in Lake City, Florida. The firm is designated as a non-certainty firm by the EIA. *See* E-mail from Tammy Heppner, EIA, to Kimberly

---

<sup>2</sup> Form EIA-782B requires that the firm make a good faith effort to provide reasonably accurate information that is consistent with the accounting records maintained by the firm. The firm must alert the EIA if the estimates are later found to be materially different from actual data.

Jenkins-Chapman, OHA, July 29, 2009. The firm, reporting in its third sample, has filed Form EIA-782B since approximately February 1999.

In its Application, Kirby Oil requests that it be permanently relieved of the obligation to file Form EIA-782B. *See* Letter from Garland Kirby, Kirby Oil, to OHA, June 16, 2009 (Application for Exception). Kirby Oil maintains that completing the form has become burdensome in light of the difficult economic times. *Id.* The firm states that the clerk who completes the report “only works two days per week” and, therefore, “it is a burden for our office to continue participating [in filing the form].” *Id.*

Based upon a review of the Application, we concluded that there was not sufficient information to permit us to act favorably on the request. Therefore, we contacted Kirby Oil to give the company an opportunity to discuss its request for relief. *See* Memorandum of Telephone Conversation between Garland Kirby, Kirby Oil, and Kimberly Jenkins-Chapman, OHA, July 29, 2009. Kirby Oil states that the company has 11 employees, two of which perform administrative tasks. *Id.* The company president states that his administrative staff employees are responsible for completing Form EIA-782B and that they may retire in the near future. *Id.* He further states that when his administrative employees retire he will be left with the task of completing the form which is burdensome. *Id.* It takes Kirby Oil administrative staff employees approximately one hour to compile the necessary information to complete Form EIA-782B. *Id.*

#### IV. Analysis

The Form EIA-782B reporting requirement requires common information on pricing and inventory changes for various refined petroleum products. The EIA estimates that it should normally take a firm approximately two and one-half hours per month to complete the form. *See* Section 10 of General Instructions to Form EIA-782B. As mentioned above, the burden of the requirement can be substantially reduced by the use of estimates. *See* Section 7 of the General Instructions for Form EIA-782B. Every reporting firm is burdened to a certain extent by the reporting requirement. Exception relief is appropriate only where the reporting requirement poses a serious hardship, inequity, or unfair distribution of burdens. 42 U.S.C. § 7194; 10 C.F.R. § 1003.25(b)(2). In other words, relief is appropriate where the reporting requirement adversely affects the firm to a significantly greater degree than it affects other firms.

In this case, Kirby Oil does not claim that it is adversely affected by the reporting requirement to a greater degree than other similar firms. To the contrary, it takes an administrative staff employee approximately one hour each month to compile the necessary data for the form, significantly less than EIA’s estimated time. *See* Memorandum of Telephone Conversation between Garland Kirby, Kirby Oil, and Kimberly Jenkins-Chapman, OHA, July 29, 2009. Kirby Oil bases its request solely on the unsupported assertion that compiling the data for the form has become burdensome. In fact, we find that one hour is a short amount of time to complete the form. Kirby Oil’s contention that the company’s administrative employees might be retiring in the near future and the task of completing Form EIA-782B would be left to the company president, absent any showing of serious hardship, inequity, or unfair distribution of burdens, is insufficient to warrant relief.



As the foregoing indicates, Kirby Oil has not shown that the requirement to complete Form EIA-782B is burdensome to the firm in a manner that distinguishes it from other similarly affected firms. Accordingly, we find that exception relief is not warranted in this case and, therefore, the Application for Exception should be denied.

It Is Therefore Ordered That:

(1) The Application for Exception filed by Kirby Oil Co., Inc., Case No. TEE-0061, be, and hereby is, denied.

(2) Administrative review of this Decision and Order may be sought by any person who is aggrieved or adversely affected by the denied of exception relief. Such review shall be commenced by the filing of a petition for review with the Federal Energy Regulatory Commission within 30 days of the date of this Decision and Order pursuant to 18 C.F.R. Part 835, Subpart J.

Poli A. Marmolejos  
Director  
Office of Hearings and Appeals

Date: August 4, 2009

April 2, 2010

DECISION AND ORDER

OFFICE OF HEARINGS AND APPEALS

Application for Exception

Case Name: United CoolAir Corp.

Date of Filing: September 23, 2009

Case Number: TEE-0062

This Decision and Order considers an Application for Exception filed by United CoolAir Corporation (United CoolAir) seeking exception relief from the provisions of 10 C.F.R. Part 431, Subpart F, Energy Conservation Program for Certain Commercial and Industrial Equipment: Commercial Air Conditioners and Heat Pumps Energy Conservation Standards (Commercial Air Conditioner Standards).<sup>1</sup> In its Application, United CoolAir asserts that the firm would suffer serious hardship, inequity, or unfair distribution of burdens if required to comply with the 13 SEER energy efficiency standard effective January 1, 2010, 10 C.F.R. § 431.97(b). If United CoolAir's Application for Exception were granted, the firm would receive exception relief from the energy efficiency standard for one type of products it manufactures: indoor horizontal ceiling-grid mounted units, in either self-contained or split-systems.<sup>2</sup> As set forth in this Decision and Order, we have concluded that United CoolAir's Application for Exception should be dismissed in part and denied in part.

**I. BACKGROUND**

**A. Applicable Standards**

The Commercial Air Conditioner Standards, set forth at 10 C.F.R. Part 431, were published as a final rule by the Department of Energy (DOE) on October 21, 2004, pursuant to Part C of Title III of the Energy Policy and Conservation Act (EPCA), as amended, 42 U.S.C. 6311-6317. 69 Fed. Reg. 61969, as amended at 70 Fed. Reg. 60415 (Oct. 18, 2005). The EPCA directed the DOE to review and revise energy conservation standards for major consumer and commercial appliances, including air conditioners and heat pumps. The Energy Policy Act of 1992 (EPACT) amended the EPCA with respect to certain commercial equipment, setting forth, *inter alia*, test procedures, labeling provisions, and energy conservation standards. 69 Fed. Reg. 61963, Oct. 21, 2004. For ease of reference by manufacturers and the general public, the DOE included in

---

<sup>1</sup> Decisions issued by the Office of Hearings and Appeals (OHA) in Energy Efficiency cases after February 19, 1999, are available on the OHA website located at <http://www.oha.doe.gov>. The text of a cited decision may be accessed by entering the case number in the search engine located at <http://www.oha.doe.gov/search.htm>.

<sup>2</sup> United CoolAir markets these products as its "C Series" or "Coolspot" products. See Application for Exception at 1.

Part 431 the energy conservation standards Congress has prescribed pertaining to various commercial and industrial equipment, including commercial air-conditioning and heating equipment. 70 Fed. Reg. 60407, Oct. 18, 2005.

Energy efficiency levels in the cooling performance of commercial air conditioners are measured either in terms of a Seasonal Energy Efficiency Ratio (SEER) or an Energy Efficiency Ratio (EER).<sup>3</sup> Of specific relevance to the present case, the current Commercial Air Conditioner Standards set the following efficiency levels for commercial package air conditioning equipment manufactured on or after January 1, 2010 (except for air-cooled, three-phase small commercial package air-conditioning equipment with a cooling capacity of less than 65,000 Btu/h, for which the effective date is June 16, 2008):

<b>PRODUCT</b>	<b>COOLING CAPACITY (Btu/h)</b>	<b>EFFICIENCY LEVEL</b>
Small commercial package air conditioning and heating equipment (air-cooled, three-phase)	< 65,000	SEER = 13.0
Small commercial package air-conditioning and heating equipment (air-cooled)	≥ 65,000 and < 135,000	EER = 11.2
Large commercial package air-conditioning and heating equipment	≥ 135,000 and <240,000	EER = 11.0

10 C.F.R. § 431.97(b); *see also* 69 Fed. Reg. 61969, Oct.21, 2004, as amended at 74 Fed. Reg. 12073, Mar. 23, 2009. The Commercial Air Conditioner Standards do not address air-cooled single-package commercial air-conditioning and heating equipment with cooling capacities of less than 65,000 Btu/h. *Id.*

## **B. United CoolAir’s Application for Exception**

United CoolAir, based in York, Pennsylvania, is a manufacturer of commercial air conditioning systems. In its Application for Exception, filed on September 23, 2009, United CoolAir seeks an exception from the applicable 13 SEER energy efficiency standard for its indoor horizontal ceiling-grid mounted units, in either self-contained or split-systems. These products fall into three categories: (1) units with cooling capacities of less than 65,000 Btu/h, in both single-package and three-phase; (2) units with cooling capacities above 65,000 Btu/h, but less than 135,000 Btu/h, in three-phase only; and (3) units with cooling capacities above 135,000 Btu/h, but less than 240,000 Btu/h, in three-phase only.

---

<sup>3</sup> SEER is “the total cooling output of a central air conditioner or central air-conditioning heat pump, expressed in Btu’s, during its normal annual usage period for cooling and divided by the total electric power input, expressed in watt-hours, during the same period.” 10 C.F.R. § 431.92. EER is “the ratio of the produced cooling effect of an air conditioner or heat pump to its net work input, expressed in Btu/watt-hour.” *Id.*

In its Application for Exception, United CoolAir states that the units in question are “typically installed above dropped ceilings ... with very limited free height available to accommodate installation.” Application for Exception at 1. Therefore, the company maintains that, given the limited space, the units cannot be redesigned to achieve the prescribed energy efficiency levels. United CoolAir maintains that “in order to meet the published standard, both the unit foot print and height would have to grow beyond the available space. The 13 SEER equivalents of [the current units] would more than double in physical displacement.” *Id.* The company requests that these products be required to meet the same energy efficiency levels as air-cooled single-package vertical air conditioners and heat pumps.<sup>4</sup>

United CoolAir’s September 23, 2009, filing did not comply with the notice requirement set forth at 10 C.F.R. § 1003.23, which allows any potentially aggrieved parties ten days to file comments. We notified United CoolAir of the defect in its filing and requested that they comply with the notice requirement as soon as possible. Letter from Diane DeMoura, OHA, to Jeffrey Koser, United CoolAir, September 25, 2009. On October 22, 2009, United CoolAir notified OHA that the company notified its principal competitors of the Application for Exception, correcting the defect in its September 23, 2009, filing and provided OHA a copy of its service list. Letter from Jeffrey Koser, United CoolAir, to Diane DeMoura, OHA, dated October 15, 2009. OHA subsequently received a request for an extension of time in which to file comments from the Air-Conditioning, Heating, and Refrigeration Institute (AHRI), a national trade association of manufacturers of air-conditioning and heating equipment, on behalf of its member organizations. *See* Letter from Joseph Mattingly, AHRI, to OHA, October 22, 2009. OHA granted AHRI’s request and extended the period for filing comments until November 13, 2009. E-mail from Diane DeMoura, OHA, to Joseph Mattingly, AHRI, October 29, 2009.

OHA received one comment from Carrier Corporation (Carrier), a member of AHRI, regarding United CoolAir’s Application. Carrier opposed United CoolAir’s Application for Exception on the grounds that other manufacturers faced similar difficulty in attaining the 13 SEER energy efficiency level and “made significant investments to upgrade all product categories to comply with the [DOE’s] requirements.” *See* Letter from Stephen Bullock, Carrier, to OHA, November 3, 2009. In addition, Carrier noted that United CoolAir has not demonstrated that it cannot comply with the 13 SEER standard through the use of alternate technology. *Id.* Carrier further notes that granting United CoolAir an exception from the 13 SEER standard raises the risk that less efficient products will “bleed into other non-United CoolAir applications and thereby undermine the spirit and intent of the 13 SEER standard.” *Id.*

## II. Analysis

---

<sup>4</sup> In the Energy Independence and Security Act (EISA) of 2007 (Pub. L. 110-140), enacted on December 19, 2007, Congress amended sections 340 and 342(a) of the Energy Policy and Conservation Act (EPCA) to add definitions of new classes of commercial package equipment and to establish energy conservation standards for commercial package air-conditioning and heating equipment. In addition, Section 314 of the EISA sets forth the minimum energy efficiency standards for “single package vertical air conditioners and single package vertical heat pumps manufactured on or after January 2, 2010.” *See* 74 Fed. Reg. at 12061.

Persons subject to various product efficiency standards may apply to the DOE Office of Hearings and Appeals (OHA) for exception relief. *See generally* 10 C.F.R. Part 1003, Subpart B (OHA Procedural Regulations); *see also Amana Appliances*, Case No. VEE-0054 (1999); *Diversified Refrigeration, Inc.*, Case No. VEE-0079 (2001). In this regard, the OHA Procedural Regulations set forth “procedures for applying for an exception or exemption, as provided for in section 504 (42 U.S.C. 7194) of the Department of Energy Organization Act (42 U.S.C. 7101 et seq.), from a rule, regulation or DOE action having the effect of a rule as defined by 5 U.S.C. 551(4),....” 10 C.F.R. § 1003.20(a).

The energy efficiency standards set in the EPCA, EPACT, and EISA are not rules or regulations of the DOE, but rather are congressionally mandated standards. The insertion of those standards into Part 431 was not “a DOE action having the effect of a rule as defined by 5 U.S.C. 551(4),” which, in pertinent part, defined “rule” as an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy ....” In fact, in its October 2005 technical amendment of Part 431, the DOE specifically stated that it was placing the statutory standards into Part 431 “for the benefit of the public,” and that it was not “exercising any of the discretionary authority that Congress has provided in EPACT 2005 for the Secretary of Energy to revise, by rule, several of the product or equipment definitions and energy conservation standards.” 70 Fed. Reg. at 60407.

Based on the foregoing, OHA does not have jurisdiction to consider the portions of United CoolAir’s Application for Exception pertaining to the following products: units with cooling capacities of less than 65,000 Btu/h, three-phase; units with cooling capacities above 65,000 Btu/h, but less than 135,000 Btu/h, three-phase; and, units with cooling capacities above 135,000 Btu/h, but less than 240,000 Btu/h, three-phase. Therefore, we will dismiss the portions of United CoolAir’s Application pertaining to those products. The energy efficiency standard for the remaining products in question - units with cooling capacities of less than 65,000 Btu/h, single-package – is not set forth by statute and, therefore, OHA has jurisdiction to consider an Application for Exception for those products.

Part 431 is silent regarding the energy efficiency standard for single-package small commercial air-conditioning and heating equipment with cooling capacities of less than 65,000 Btu/hr. The only discussion of small single-package products is located in 10 C.F.R. Part 430, Energy Conservation Program for Consumer Products. Part 430 sets a 13 SEER energy efficiency level for both split-system and single-package central air-conditioning equipment. Although United CoolAir’s product is a commercial product, given the size of the product, and its lack of recognition under Part 431, it is properly considered under Part 430.

We note initially that the DOE’s adoption of a 13 SEER standard is fully consistent with the policy objectives of the EPCA. The 13 SEER revised standard provides consumers with the benefits of improved, more efficient technology. In doing so, the revised standard will not only save money for consumers, but will also conserve significant amounts of energy for the nation as a whole. “DOE estimates that the standards will save approximately 4.2 quads of energy over 25 years (2006 through 2030). This is equivalent to all the energy consumed by nearly 26 million American households in a single year.” 66 Fed. Reg. at 7171. In view of the nation’s increasing energy needs, the benefits of energy conservation cannot be overstated. In addition, the higher

efficiency standard will have substantial environmental benefits by contributing to the overall reduction of greenhouse gas emissions and air pollution. *Id.*

Consequently, an exception to the revised efficiency standard is warranted only in those limited circumstances where relief is necessary to prevent a special hardship, inequity, or unfair distribution of burdens. 10 C.F.R. § 1003.20; 42 U.S.C. § 7194(a); *see also* 62 Fed. Reg. at 23108-23109. Upon careful consideration of United CoolAir's submission, we find for the reasons stated below that the Application for Exception, with regard to single-package units with cooling capacities of less than 65,000 Btu/h, should be denied.

United CoolAir's primary argument is that the units in question are "space constrained" products because they are ceiling-mounted and have restricted space in which to accommodate larger, more efficient technology. United CoolAir maintains that it is not possible to produce an indoor, ceiling-mounted horizontal that complies with the 13 SEER standard. However, United CoolAir has demonstrated its ability to do exactly that with the company's "High Efficiency C Series" units. According to the company's website, the "High Efficiency C Series" units are indoor horizontal units which meet the 13 SEER standard and are "designed for ceiling or slab mounting," just as the standard "C Series" products. Therefore, we reject United CoolAir's arguments that it is not possible to produce a compliant unit. It is more likely that United CoolAir seeks to continue producing products with a less than 13 SEER rating because the less efficient products are less expensive and, therefore, more desirable to United CoolAir's customers. This consideration does not outweigh the importance of energy conservation, particularly in light of the nation's growing energy needs.

It is well-settled in prior OHA decisions that a firm may not receive exception relief to alleviate a burden attributable to a discretionary business decision rather than the impact of the DOE regulations. *See, e.g., Refricenter International*, Case No. TEE-0024 (2005); *Big Muddy Oil Processors, Inc.*, 12 DOE ¶ 81,006 at 82,521 (1984). In cases involving unique mitigating circumstances, a firm may be granted exception relief where the business decision was the most viable among more precarious options. *See, e.g., Viking Range Corp.*, Case No. VEE-0075 (2000). United CoolAir, however, has made no such showing.

Significantly, United CoolAir has not demonstrated that the application of the 13 SEER standard to the units in question will result in hardship, gross inequity or an unfair distribution of burdens. The standard affects all air conditioner manufacturers equally, not just United CoolAir. Beyond its allegations that it is not possible to attain a 13 SEER efficiency rating for the type of product at issue here, despite the fact that the company already produces and markets such a product, United CoolAir has not demonstrated that it is more adversely impacted by the 13 SEER standard than any other manufacturer of similar systems.

United CoolAir has also not addressed the "leakage" issue, i.e. the possibility that, were we to grant an exception in this case, less efficient products covered by the requested exception could make their way into other non-United CoolAir applications. *See Nordyne, Inc.*, Case No. TEE-0013, *rev'd by York Int'l Corp., et. al.*, Case No. TEE-0021, *et. al.* (2005). This result would be incompatible with the goal of energy conservation behind the 13 SEER standard.

We acknowledge that applying the 13 SEER standard may result in some inconvenience or additional costs to both United CoolAir and its customers. However, every firm affected by the revised standards has customers who are potentially unsatisfied or unhappy about changes to their product. Furthermore, the fact that a firm may be disinclined to comply with the revised standards for whatever reason is not sufficient to warrant an exception. *See ECR International*, Case No. TEE-0034 (2006); *Refricenter International*, Case No. TEE-0024 (2005). A firm has the burden of showing that the application of the 13 SEER standard to its product will result in a special hardship, inequity, or unfair distribution of burdens. United CoolAir has failed to make that showing in this case.

It Is Therefore Ordered That:

- (1) The Application for Exception filed by United CoolAir Corp. on September 23, 2009, Case No. TEE-0062, is hereby dismissed in part and denied in part, as set forth in paragraphs (2) and (3) below.
- (2) The portions of United CoolAir's Application for Exception pertaining to units with cooling capacities of less than 65,000 Btu/h, three-phase; units with cooling capacities above 65,000 Btu/h, but less than 135,000 Btu/h, three-phase; and, units with cooling capacities above 135,000 Btu/h, but less than 240,000 Btu/h, three-phase, are hereby dismissed.
- (3) The portion of United CoolAir's Application for Exception pertaining to units with cooling capacities of less than 65,000 Btu/h, single-package, is hereby denied.
- (4) Any person aggrieved or adversely affected by the denial of a request for exception relief filed pursuant to § 504 of the Department of Energy Organization Act, 42 U.S.C. 7194, may appeal to the Federal Energy Regulatory Commission, in accordance with the Commission's regulations.

Poli A. Marmolejos  
Director  
Office of Hearings and Appeals

Date: April 2, 2010

**November 10, 2010**

**DEPARTMENT OF ENERGY**

**OFFICE OF HEARINGS AND APPEALS**

**Application For Exception**

Name of Case: National Comfort Products

Dates of Filing: November 3, 2009

Case Number: TEE-0065

This Decision and Order considers an Application for Exception filed by National Comfort Products (NCP). In its Application, NCP seeks exception relief from the provisions of 10 C.F.R. Part 430, Energy Conservation Program for Consumer Products: Central Air Conditioners and Heat Pumps.<sup>1</sup> In its Application, NCP asserts that the firm would suffer serious hardship, inequity, or unfair distribution of burdens if required to comply with the mandatory energy efficiency standard that applies to space constrained heat pumps manufactured after January 23, 2010.<sup>2</sup> 10 C.F.R. § 430.32(c)(2). If NCP's Application for Exception was granted, the firm would receive exception relief from the energy efficiency standard for one type of product that it manufactures: through-the-wall (TTW) split system heat pumps.<sup>3</sup> As set forth in this Decision and Order, we have concluded that NCP's Application should be denied.

---

1/ Decisions issued by the Office of Hearings and Appeals (OHA) in Energy Efficiency cases after February 19, 1999, are available on the OHA website located at <http://www.oha.doe.gov>. The text of a cited decision may be accessed by entering the case number in the search engine located at <http://www.oha.doe.gov/search.htm>.

2/ A "space constrained" heat pump is one that (i) has a rated cooling capacity of no greater than 30,000 BTU/hr, (ii) has an outdoor or indoor unit with at least two exterior dimensions or an overall displacement that is substantially smaller than those of other units of similar capacity that are currently usually installed in site-built single family homes, (iii) if increased in size, would certainly result in a considerable increase in the usual cost of installation or would result in a significant loss in the utility of the product to the consumer, and (iv) is of a type that was available for purchase in the United States as of December 1, 2000. 10 C.F.R. § 430.2.

3/ The typical TTW split system heat pump consists of a condensing unit that is mounted through a wall and an air handler that is located in a utility closet.



## **I. BACKGROUND**

### **A. Applicable Standards**

The Energy and Water Conservation Standards, set forth at 10 C.F.R. Part 430, Subpart C, were published as a final rule by the Department of Energy (DOE) on February 7, 1989, pursuant to Part B of Title III of the Energy Policy and Conservation Act (EPCA), as amended, 42 U.S.C. 6201, *et seq.* The EPCA directed the DOE to review and revise energy conservation standards for major consumer and commercial appliances, including air conditioners and heat pumps. Energy efficiency levels in the cooling performance of central air conditioning heat pumps are measured in terms of a Seasonal Energy Efficiency Ratio (SEER).<sup>4</sup> Of specific relevance to the present case, under the current standards, space constrained TTW split system heat pumps manufactured after January 23, 2010, must achieve a 12 SEER. 10 C.F.R. § 430.32(c)(2).

### **B. NCP's Application for Exception**

NCP, based in Bensalem, Pennsylvania, is a manufacturer of heating and air conditioning products for multi-family dwellings. In its Application for Exception, NCP seeks an exception from the applicable 12 SEER energy efficiency standard for its TTW split system heat pumps. In support of its Application, NCP states that since a large part of its market for this equipment is for replacements, its cabinets have to maintain the same dimensions so that the equipment will fit into existing openings in the walls. According to the company, building owners and managers have told them that they cannot enlarge the openings due to local ordinances, asbestos insulation considerations, and other factors. The alternative, NCP claims, is to repair these systems, most of which are operating at a 4 or 5 SEER. The company concludes that this would not be energy efficient. NCP argues that the need to keep the present cabinet dimensions is a design constraint that affects its ability to manufacture TTW split system equipment that would meet the 12 SEER requirement. According to the company, meeting this standard would require the use of larger or deeper coils, larger compressors, or larger fans, which would result in an increase in size of the TTW condensers of 45 percent. It claims that other conventional types of split systems do not have this constraint.

Interestingly, NCP does not specify in its Application the SEER that it can achieve with the units. However, the firm does suggest that we impose certain limitations on any relief granted in order to prevent the circumvention of the 12 SEER standard in applications that can be handled by conventional equipment or that can accommodate the larger TTW condenser that would be needed.

---

<sup>4</sup>/ SEER is “the total cooling output of a central air conditioner or central air-conditioning heat pump, expressed in Btu’s, during its normal annual usage period for cooling and divided by the total electric power input, expressed in watt-hours, during the same period.” 10 C.F.R. § 431.92.

Specifically, NCP proposes limiting the granting of relief to replacement TTW heat pump systems where the opening in the wall cannot be enlarged without hardship to the building owners. The firm also proposes limiting the relief to equipment that (i) has a total cooling capacity not to exceed 30,000 BTU/hr at 95 degrees Fahrenheit; (ii) is designed for interior mounting through the exterior wall of a residential structure where the majority of the unit is inside the structure; (iii) is arranged for direct intake and discharge of condenser air on the same exterior surface of the outside wall; (iv) has a measurement of the same-surface air intake and discharge opening that does not exceed 800 square inches; (v) is designed for normal field service and component replacement to be accomplished totally from inside the building without removing the unit from the wall; (vi) can only be operated on 208/230 volts, single-phase power, and (vii) meets certain specified cabinet size requirements.

### **C. Comments**

The DOE regulations permit any potentially aggrieved party to file comments regarding an Application for Exception. *See* 10 C.F.R. § 1003.23. We received comments from two such parties, First Company (First), a manufacturer of residential and commercial heating and air conditioning products located in Dallas, Texas, and Aerosys, a manufacturer of similar equipment located in Hagerstown, Maryland.

First opposes NCP's Application, stating that there is no way that the DOE can guarantee that the smaller, less efficient heat pumps would only be used for replacements. Because of their smaller size and lower cost components, the company continues, the lower-efficiency units would be considerably less expensive than 12 SEER-compliant units. This price advantage would encourage contractors to use the less efficient products in new construction. First also contends that granting NCP's Application would encourage other manufacturers to seek similar waivers for other heating and cooling equipment that is designed specifically for niche markets, and that the DOE should continue to enforce the minimum efficiency requirements by controlling the manufacture of these products. Finally, First contends that there are other replacement options for current owners of TTW split system heat pumps. The firm argues that such owners could replace their older, low SEER heat pumps with new 12 SEER condensing units that would fit in existing openings. Aerosys commented that meeting the 12 SEER standard for these space-constrained units would be expensive, but achievable.

## **II. ANALYSIS**

Persons subject to various product efficiency standards may apply to the DOE Office of Hearings and Appeals (OHA) for exception relief. *See generally* 10 C.F.R. Part 1003, Subpart B (OHA Procedural Regulations); *see also Amana Appliances*, Case No. VEE-0054 (1999); *Diversified Refrigeration, Inc.*, Case No. VEE-0079 (2001). In this regard, the OHA Procedural Regulations set forth "procedures for applying for an exception or exemption, as provided for in section 504 (42 U.S.C. 7194) of the Department of Energy Organization Act (42 U.S.C. 7101 et seq.), from a rule, regulation or DOE action having the effect of a rule as defined by 5 U.S.C. 551(4)...." 10 C.F.R. § 1003.20(a).

We note initially that the DOE's adoption of a 12 SEER standard is fully consistent with the policy objectives of the EPCA. The 12 SEER revised standard provides consumers with the benefits of improved, more efficient technology. In doing so, the revised standard will not only save money for consumers, but will also conserve significant amounts of energy for the nation as a whole. "DOE estimates that the standards will save approximately 4.2 quads of energy over 25 years (2006 through 2030). This is equivalent to all the energy consumed by nearly 26 million American households in a single year." 66 Fed. Reg. at 7171. In view of the nation's increasing energy needs, the benefits of energy conservation cannot be overstated. In addition, the higher efficiency standard will have substantial environmental benefits by contributing to the overall reduction of greenhouse gas emissions and air pollution. *Id.*

Consequently, an exception to the revised efficiency standards is warranted only in those limited circumstances where relief is necessary to prevent a special hardship, inequity, or unfair distribution of burdens. 10 C.F.R. § 1003.20; 42 U.S.C. § 7194(a); *see also* 62 Fed. Reg. at 23108-09. For the reasons set forth below, we conclude that exception relief is not warranted in this case.

As an initial matter, we do not believe that NCP has shown that it will be subjected to a special hardship or inequity in the absence of the requested relief. The major consideration cited by NCP in its Application, *i.e.*, that it cannot meet the 12 SEER standard without building larger units, and that it cannot build larger units because they will not fit into the allotted spaces, is one that is shared by all manufacturers of space constrained heating and cooling equipment. Although NCP has sought to carefully limit the applicability of its exception request, the primary reason for that request is the same one that could be cited in future Applications for Exception relief by other manufacturers of space constrained equipment. The 12 SEER standard for space constrained heat pumps and air conditioners was adopted after a full notice-and-comment rule making during which the effects of the standard on manufacturers, consumers, and the nation as a whole were carefully considered. 67 Fed. Reg. 36368, 36386-90 (May 23, 2002). Granting NCP's Application would, in effect, undo a substantial portion of that work. This we decline to do.

Furthermore, the relief requested by NCP is not limited in duration. Therefore, owners of lower-efficiency equipment could continually replace that equipment with new less-than-12-SEER equipment into the foreseeable future, thereby never achieving the energy savings that would result from the use of 12 SEER heat pumps. This would be inconsistent with the policy objectives of the EPCA.

In addition, even if we were to accept NCP's claim that it cannot build 12 SEER units and maintain its current cabinet dimensions, we are not convinced that the consumers' burden of enlarging the holes in building walls would be so great as to warrant exception relief. In adapting the 12 SEER standard, the DOE clearly contemplated the possibility of increased manufacturing and installation costs, yet it concluded that additional costs were justified in achieving the desired energy savings. We also note First's comment that it makes 12 SEER condensing units that would fit the openings

described in NCP's Application. Therefore, if building owners are truly unable to enlarge the openings in question, alternatives are available.

Finally, we agree with First that, if we were to grant the relief requested by NCP, there would be no way to enforce the limitations that NCP suggests, and no way to ensure that the cheaper, lower efficiency heat pumps would not be used in new construction. This would further undermine the energy efficiency goals of the EPCA.

We acknowledge that the 12 SEER standard may result in some additional costs to NCP's customers. However, every firm affected by the revised standards has customers who are potentially unsatisfied or unhappy about changes to their product. An exceptions applicant has the burden of showing that it will suffer a special hardship, inequity, or unfair distribution of burdens in the absence of relief. NCP has failed to do this. Therefore, its Application for Exception will be denied.

It Is Therefore Ordered That:

(1) The Application for Exception filed by National Comfort Products, Case No. TEE-0065, is hereby denied.

(2) Any person aggrieved or adversely affected by the denial of a request for exception relief filed pursuant to § 504 of the Department of Energy Organization Act, 42 U.S.C. 7194, may appeal to the Federal Energy Regulatory Commission, in accordance with the Commission's regulations.

Poli A. Marmolejos  
Director  
Office of Hearings and Appeals

Date: November 10, 2010

December 17, 2009

DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

Application for Exception

Name of Case: North Side Coal & Oil Co., Inc.

Date of Filing: December 2, 2009

Case No.: TEE-0067

On December 2, 2009, North Side Coal & Oil Co., Inc. (North Side) filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). The firm requests that it be permanently relieved of the requirement to prepare and file the Energy Information Administration (EIA) Form EIA-782B, entitled “Resellers’/Retailers’ Monthly Petroleum Product Sales Report.” As explained below, we have determined that the request should be denied.<sup>1</sup>

**I. Background**

The DOE’s Energy Information Administration (EIA) is authorized to collect, analyze, and disseminate energy data and other information. 15 U.S.C. § 772(b); 42 U.S.C. § 7135(b). The EIA-782B reporting requirement grew out of the shortages of crude oil and petroleum products during the 1970s. In 1979, Congress determined that the lack of reliable information concerning the supply, demand and prices of petroleum products impeded the nation’s ability to respond to the oil crisis. It therefore authorized the DOE to collect data on the supply and prices of petroleum products. This information is used to analyze trends within petroleum markets. Summaries of the information and the analyses are reported by EIA in publications such as “Petroleum Marketing Monthly.” This information is used by Congress and state governments to project trends and to formulate national and state energy policies. Access to this data is vital to the nation’s ability to anticipate and respond to potential energy shortages. *See* H.R. Rep. No. 373, 96<sup>th</sup> Cong., 1st Sess., reprinted in 1979 U.S. Code Cong. & Admin. News 1764, 1781 (H.R. Report 373).

Form EIA-782B is a monthly report of the volume and prices of motor gasoline, No. 2 distillates, propane, and residual fuel oil sold by resellers and retailers. In order to minimize the reporting burden, the EIA periodically selects a relatively small sample of companies to file Form EIA-782B. Firms that account for over five percent of the sales of any particular product in a state or

---

<sup>1</sup>OHA Exception Decisions issued since July 5, 1995, are available on the OHA website located at <http://www.oha.doe.gov>. The text of a cited decision may be accessed by entering the case number of the decision in the search engine located at <http://www.oha.doe.gov/search.htm>.

do business in four or more states are designated as certainty firms, and are always included in the sample of firms required to file the form. A random sample of other firms, designated as non-certainty firms, is also selected. This random sample changes periodically, but a firm may be reselected for subsequent samples. A firm that has been included in three consecutive random samples will generally not be included in a fourth consecutive sample, but may be included in a later sample. In order to reduce the burden on reporting firms, EIA also permits the firms to rely on reasonable estimates.<sup>2</sup>

## II. Exception Criteria

OHA has the authority to grant exception relief where the reporting requirement causes a “serious hardship, gross inequity or unfair distribution of burdens.” 42 U.S.C. § 7194; 10 C.F.R. § 1003.25(b)(2). Since all reporting firms are burdened to some extent by reporting requirements, exception relief is appropriate only where a firm can demonstrate that it is adversely affected by the reporting requirement in a way that differs significantly from similar reporting firms.

When considering a request for exception relief, we must weigh the firm’s difficulty in complying with the reporting requirement against the nation’s need for reliable energy data. Thus, mere inconvenience does not constitute a hardship warranting relief. *Glenn Wagoner Oil Co.*, 16 DOE ¶ 81,024 (1987). Similarly, the fact that a firm is relatively small or has filed reports for a number of years does not constitute a hardship warranting relief. *Mulgrew Oil Co.*, 20 DOE ¶ 81,009 (1990). If firms of all sizes, both large and small, are not included in the survey, the estimates and projections generated by EIA’s statistical sample will be unreliable. *Id.*

OHA has granted relief from the reporting requirement under various circumstances. For example, we have granted relief where: the firm’s financial situation is so precarious that the additional burden of meeting the DOE reporting requirements threatens the firm’s continued viability, *see e.g., Mico Oil Co.*, 23 DOE ¶ 81,105 (1994) (firm lost one million dollars over previous three years); *Deaton Oil Co.*, 16 DOE 81,206 (1987) (firm in bankruptcy); the firm’s only employee capable of preparing the report is ill and the firm cannot afford to hire outside help, *see e.g., S&S Oil & Propane Co.*, 21 DOE ¶ 81,006 (1991) (owner being treated for cancer); *Eastern Petroleum Corp.*, 14 DOE ¶ 81,011 (1986) (two month extension granted when computer operator broke wrist); extreme or unusual circumstances disrupt a firm’s activities, *see e.g., Little River Village Campground, Inc.*, 24 DOE ¶ 81,033 (1994) (five months relief because of flood); *Utilities Bd. of Citronelle-Gas*, 4 DOE ¶ 81,025 (1979) (hurricane); or a combination of factors resulting from unavoidable circumstances makes completing the form impracticable, *see e.g., Ward Oil Co.*, 24 DOE ¶ 81,002 (1994) (ten month extension granted where long illness and death of a partner resulted in personnel shortages, financial difficulties and other administrative problems).

---

<sup>2</sup> Form EIA-782B requires that the firm make a good faith effort to provide reasonably accurate information that is consistent with the accounting records maintained by the firm. The firm must alert the EIA if the estimates are later found to be materially different from actual data.

### III. The Application for Exception

North Side is a seller of petroleum products based in Milwaukee, Wisconsin. The company sells gasoline, on- and off-road diesel, and heating oil. *See* Memorandum of Telephone Conversation between Steve Pitel, North Side, and Diane DeMoura, OHA, December 10, 2009. The company is currently designated as a certainty firm by the EIA and is reporting in its second consecutive sample. *See* E-mail from Tammy Heppner, EIA, to Diane DeMoura, OHA, December 9, 2009.

In its Application, North Side requests that it be permanently relieved of the obligation to file Form EIA-782B. *See* E-Mail from Steve Pitel, North Side, to OHA, December 2, 2009 (Application for Exception). North Side maintains that completing the form has become burdensome because the company has limited staff and finds it difficult to find time to complete the form. *Id.* Specifically, the firm states that it currently has only four full-time employees, each of whom carries a heavy workload. *Id.*

Based upon a review of the Application, we concluded that there was not sufficient information to permit us to act favorably on the request. Therefore, we contacted North Side to give the company an opportunity to discuss its request for relief. *See* Memorandum of Telephone Conversation between Steve Pitel, North Side, and Diane DeMoura, OHA, December 10, 2009. The task of completing the Form EIA-782B is assigned to North Side's general manager. The general manager spends about one and one-half hours each month completing Form EIA-782B. *Id.* The general manager also functions as the company's service manager and installer. He is currently also training a new service technician. *Id.* He stated that the winter months are a particularly busy time for the company. *Id.* He noted that the company has been selected in EIA's reporting samples in the past, but has not submitted information since 2005, because the firm was "able to obtain a waiver" from the requirement with the help of his district's congressman.<sup>3</sup>

### IV. Analysis

The Form EIA-782B reporting requirement requires common information on pricing and inventory changes for various refined petroleum products. The EIA estimates that it should normally take a firm approximately two and one-half hours per month to complete the form. *See* Section 10 of General Instructions to Form EIA-782B. As mentioned above, the burden of the requirement can be substantially reduced by the use of estimates. *See* Section 7 of the General Instructions for Form EIA-782B. Every reporting firm is burdened to a certain extent by the reporting requirement. Exception relief is appropriate only where the reporting requirement poses a serious hardship, inequity, or unfair distribution of burdens. 42 U.S.C. § 7194; 10 C.F.R. § 1003.25(b)(2). In other words, relief is appropriate where the reporting requirement adversely affects the firm to a significantly greater degree than it affects other firms.

In this case, although North Side claims that completing the form is burdensome, it has not established that it is adversely affected by the reporting requirement to a greater degree than other similar firms. To the contrary, it takes the company's general manager approximately one

---

<sup>3</sup> In addition, North Side previously applied for, and was granted, temporary exception relief in February 2002. *See North Side Coal & Oil Co., Inc.*, Case No. VEE-0081 (2002).

and one-half hours each month to compile the necessary data for the form, less than EIA's estimated time for completion of the form. *See* Memorandum of Telephone Conversation between Steve Pitel, North Side, and Diane DeMoura, OHA, December 10, 2009.

As stated above, the EIA relies heavily on the market data collected from certainty firms such as North Side. While we can appreciate that North Side has a limited staff and a heavy workload, the reliability of the reporting sample would be compromised if we were to grant an exception to all firms – particularly certainty firms – experiencing heavy workloads or other issues associated with maintaining a business.

As the foregoing indicates, North Side has not shown that the requirement to complete Form EIA-782B is burdensome to the firm in a manner that distinguishes it from other similarly affected firms. Accordingly, we find that exception relief is not warranted in this case and, therefore, the Application for Exception should be denied.

It Is Therefore Ordered That:

(1) The Application for Exception filed by North Side Coal & Oil Co., Inc., Case No. TEE-0067, be, and hereby is, denied.

(2) Administrative review of this Decision and Order may be sought by any person who is aggrieved or adversely affected by the denied of exception relief. Such review shall be commenced by the filing of a petition for review with the Federal Energy Regulatory Commission within 30 days of the date of this Decision and Order pursuant to 18 C.F.R. Part 835, Subpart J.

Poli A. Marmolejos  
Director  
Office of Hearings and Appeals

Date: December 17, 2009



March 24, 2010

DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

**Application for Exception**

Case Name: Bowlin Travel Centers, Inc.

Filing Date: March 10, 2010

Case No.: TEE-0068

Bowlin Travel Centers, Inc., filed an Application for Exception with the Department of Energy's (DOE) Office of Hearings and Appeals (OHA). The firm requests permanent relief from its requirement to prepare and file the Energy Information Administration (EIA) Form EIA-782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report." As explained below, we have determined that the Application should be denied.

**I. Background**

In the 1970's, Congress's lack of information about petroleum products impeded our nation's response to the oil crises.<sup>1</sup> Congress therefore directed the EIA to collect data on the supply, demand, and pricing of petroleum products.<sup>2</sup> The EIA administers Form EIA-782B, which is a monthly report whereby resellers and retailers report their sales volume and price of motor gasoline, No. 2 distillates, propane, and residual fuel oil.<sup>3</sup> In order to minimize firms' reporting burden, the EIA periodically selects a relatively small sample of companies<sup>4</sup> to file the form and permits firms to rely on reasonable estimates.<sup>5</sup>

The EIA summarizes the collected data in publications such as *Petroleum Marketing Monthly*. Congress and most state governments use the information to project trends and formulate energy policies. Collecting this data is vital to our nation's ability to anticipate and respond to energy shortages.

---

<sup>1</sup> See H.R. REP. NO. 96-373, at 15, 17 (1979).

<sup>2</sup> 15 U.S.C. § 772(a).

<sup>3</sup> 42 U.S.C. §§ 7135(a)-(m).

<sup>4</sup> The EIA requires "certainty firms"—firms that account for over five percent of the sales of any particular product in a state or do business in four or more states—to always file Form EIA-782B. The EIA also selects a random sampling of all other, or "non-certainty" firms, to file Form EIA-782B. The sample of "non-certainty" firms changes approximately every twenty-four to thirty months. A firm that has been included in three consecutive random samples will generally not be included in a fourth consecutive sample, but may be included in a later sample.

<sup>5</sup> Form EIA-782B requires firms to make a good-faith effort to provide reasonably accurate information that is consistent with their accounting methods. A firm must alert the EIA if it finds that its estimates are materially different from actual data.

## II. Exception Criteria

Congress requires OHA to grant exception relief from filing Form EIA-782B to prevent “special hardship, inequity, or unfair distribution of burdens. . . .”<sup>6</sup> Since the Form EIA-782B reporting requirements burden all reporting firms, exception relief is appropriate only where a firm can demonstrate that a reporting requirement adversely affects it in a way that differs significantly from similar reporting firms.

When considering a request for exception relief, we must weigh the firm’s difficulty in complying with the reporting requirement against the nation’s need for reliable energy data. Thus, mere inconvenience<sup>7</sup> or the length of time a firm has reported<sup>8</sup> does not constitute a hardship warranting relief. Similarly, the fact that a firm is relatively small does not constitute a hardship warranting relief. If firms of all sizes, both large and small, are not included in the survey, the reporting sample’s estimates and projections would be unreliable.<sup>9</sup>

OHA has granted exception relief from the reporting requirement under various circumstances. For example, we have granted relief where the firm’s financial situation was so precarious that the additional burden of meeting the reporting requirements threatened the firm’s continued viability;<sup>10</sup> the firm experienced personnel deaths, illnesses or absences;<sup>11</sup> and where extreme or unusual circumstances disrupted the firm’s activities.<sup>12</sup>

## III. Bowlin Travel Center, Inc.’s Application for Exception

---

<sup>6</sup> 42 U.S.C. § 7194(a); *see also* 10 C.F.R. § 1003.25(b)(2) (allowing OHA to grant exception “to alleviate or prevent serious hardship, gross inequity or unfair distribution of burdens”).

<sup>7</sup> *Glenn E. Wagoner Oil Co.*, Case No. KEE-0143 (1987). OHA decisions regarding Form EIA-782B issued after February 2, 1995, may be accessed at <http://www.oha.doe.gov/reportc.asp>.

<sup>8</sup> *Rice Oil Co., Inc.*, Case No. VEE-0035 (1997) (citations omitted).

<sup>9</sup> *Mulgrew Oil Co., Inc.*, Case No. LEE-0012 (1990) (citations omitted).

<sup>10</sup> *Mico Oil Co., Inc.*, Case No. LEE-0075 (1994) (granting exception relief where a firm lost one million dollars over the previous three years and prepared to liquidate its assets and file for bankruptcy); *Deaton Oil Co.*, Case No. KEE-0152 (1987) (granting exception relief where a firm entered Chapter 11 reorganization and made court-mandated layoffs).

<sup>11</sup> *Midstream Fuel Serv., Inc.*, Case No. LEE-0083 (1994) (granting three months’ exception relief where a small firm experienced personnel shortages due to two employees on maternity leave, an uptick in paperwork due to the tax season, and an inability to hire additional personnel); *Ward Oil Co.*, Case No. LEE-0088 (1994) (granting ten months’ exception relief where a firm’s owner and office manager suffered a long illness and death, resulting in personnel shortages and administrative challenges that caused the firm to fall sixty days behind in its paperwork); *S&S Oil & Propane Co., Inc.*, Case No. LEE-0023 (1991) (granting exception relief where a firm’s owner worked nights and weekends amid a life-threatening illness); *E. Petroleum Corp.*, Case No. KEE-0016 (1986) (granting two months’ exception relief where a computer operator’s injury rendered the firm unable to complete the form).

<sup>12</sup> *Little River Vill. Campground, Inc.*, Case No. LEE-0127 (1994) (granting several months exception relief where a firm’s office was flooded); *Utilities Bd. of Citronelle-Gas*, Case No. BEE-0293 (1979) (granting exception relief where a hurricane heavily damaged a firm’s office and the firm concentrated its efforts on restoring service to its customers).

Bowlin Travel Center, Inc., is a non-certainty firm<sup>13</sup> located in Albuquerque, New Mexico. The firm has reported in three samples, dating back to February 1999.<sup>14</sup> It requests permanent relief from its obligation to file Form EIA-782B because “it believes [that] ten years of reporting is a satisfactory time span for one company to report.”<sup>15</sup>

We contacted Bowlin Travel Center, Inc., to gather more information to determine whether it is facing a hardship. It stated that it based its Application on the length of time that it has reported. It is not adding new employees, but nor has it had layoffs.<sup>16</sup>

#### IV. Analysis

Bowlin Travel Centers, Inc., has not stated a sufficient basis for exception relief. As we explained above, we have held that the length of time that a company has reported does not constitute a hardship warranting relief.

Further, Bowlin Travel Centers, Inc., has not shown that it is experiencing any hardship, much less the level of distress that has caused us to grant exception relief, such as extreme personnel shortages, bankruptcy, or natural disaster.

It Is Therefore Ordered That:

- (1) Bowlin Travel Center, Inc.’s Application for Exception, Case No. TEE-0068, is hereby denied.
- (2) Administrative review of this Decision and Order may be sought by any persons aggrieved or adversely affected by the denial of exception relief. Such review shall be commenced by filing a petition for review with the Federal Energy Regulatory Commission within 30 days of the date of this Decision and Order pursuant to 18 C.F.R. Part 385, Subpart J.

Poli A. Marmolejos  
Director  
Office of Hearings and Appeals

Date: March 24, 2010

---

<sup>13</sup> E-mail from Tammy G. Heppner, Survey Statistician, EIA, to David M. Petrush, Attorney-Examiner, OHA, Mar. 19, 2010.

<sup>14</sup> *Id.*

<sup>15</sup> Letter from Kim D. Stake, Chief Admin. Officer, Bowlin Travel Centers, Inc., to OHA, Mar. 3, 2010.

<sup>16</sup> Memorandum of Telephone Conversation between Kim D. Stake, Chief Admin. Officer, Bowlin Travel Centers, Inc., and David M. Petrush, Attorney-Examiner, OHA, Mar. 22, 2010.

April 5, 2010

DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

Application for Exception

Name of Case: Severson Oil & LP Co., Inc.

Date of Filing: March 23, 2010

Case No.: TEE-0069

On March 23, 2010, Severson Oil & LP Co., Inc. (Severson) filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). The firm requests that it be relieved of the requirement to prepare and file the Energy Information Administration (EIA) Form EIA-782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report." As explained below, we have determined that the request should be denied.

**I. Background**

The DOE's Energy Information Administration (EIA) is authorized to collect, analyze, and disseminate energy data and other information. 15 U.S.C. § 772(b); 42 U.S.C. § 7135(b). The EIA-782B reporting requirement grew out of the shortages of crude oil and petroleum products during the 1970s. In 1979, Congress determined that the lack of reliable information concerning the supply, demand and prices of petroleum products impeded the nation's ability to respond to the oil crisis. It therefore authorized the DOE to collect data on the supply and prices of petroleum products. This information is used to analyze trends within petroleum markets. Summaries of the information and the analyses are reported by EIA in publications such as "Petroleum Marketing Monthly." This information is used by Congress and state governments to project trends and to formulate national and state energy policies. Access to this data is vital to the nation's ability to anticipate and respond to potential energy shortages. *See* H.R. Rep. No. 373, 96<sup>th</sup> Cong., 1st Sess., reprinted in 1979 U.S. Code Cong. & Admin. News 1764, 1781 (H.R. Report 373).

Form EIA-782B is a monthly report, pursuant to which resellers and retailers report the volume and price of sales of motor gasoline, No. 2 distillates, propane, and residual fuel oil. In order to minimize the reporting burden, the EIA periodically selects a relatively small sample of companies to file Form EIA-782B. Firms that account for over five percent of the sales of any particular product in a state or do business in four or more states, designated as certainty firms, are always included in the sample of firms required to file the form. A random sample of other firms, designated as non-certainty firms, is also selected. This random sample changes approximately every 24 to 30 months, but a firm may be reselected for subsequent samples. A

firm that has been included in three consecutive random samples will generally not be included in a fourth consecutive sample, but may be included in a later sample. In order to reduce the burden on reporting firms, EIA also permits the firms to rely on reasonable estimates.<sup>1</sup>

## II. Exception Criteria

OHA has the authority to grant exception relief where the reporting requirement causes a “serious hardship, gross inequity or unfair distribution of burdens.” 42 U.S.C. § 7194; 10 C.F.R. § 1003.25(b)(2). Since all reporting firms are burdened to some extent by reporting requirements, exception relief is appropriate only where a firm can demonstrate that it is adversely affected by the reporting requirement in a way that differs significantly from similar reporting firms.

When considering a request for exception relief, we must weigh the firm’s difficulty in complying with the reporting requirement against the nation’s need for reliable energy data. Thus, mere inconvenience does not constitute a hardship warranting relief. *Glenn Wagoner Oil Co.*, 16 DOE ¶ 81,024 (1987). Similarly, the fact that a firm is relatively small or has filed reports for a number of years does not constitute a hardship warranting relief. *Mulgrew Oil Co.*, 20 DOE ¶ 81,009 (1990). If firms of all sizes, both large and small, are not included in the survey, the estimates and projections generated by EIA’s statistical sample will be unreliable. *Id.*

OHA has granted relief from the reporting requirement under various circumstances. For example, we have granted relief where: the firm’s financial situation is so precarious that the additional burden of meeting the DOE reporting requirements threatens the firm’s continued viability, *see e.g., Mico Oil Co.*, 23 DOE ¶ 81,105 (1994) (firm lost one million dollars over previous three years); *Deaton Oil Co.*, 16 DOE 81,206 (1987) (firm in bankruptcy); the firm’s only employee capable of preparing the report is ill and the firm cannot afford to hire outside help, *see e.g., S&S Oil & Propane Co.*, 21 DOE ¶ 81,006 (1991) (owner being treated for cancer); *Eastern Petroleum Corp.*, 14 DOE ¶ 81,011 (1986) (two month extension granted when computer operator broke wrist); extreme or unusual circumstances disrupt a firm’s activities, *see e.g., Little River Village Campground, Inc.*, 24 DOE ¶ 81,033 (1994) (five months relief because of flood); *Utilities Bd. of Citronelle-Gas*, 4 DOE ¶ 81,025 (1979) (hurricane); or a combination of factors resulting from unavoidable circumstances makes completing the form impracticable, *see e.g., Ward Oil Co.*, 24 DOE ¶ 81,002 (1994) (ten-month extension granted where long illness and death of a partner resulted in personnel shortages, financial difficulties and other administrative problems).

## III. The Application for Exception

Severson is a family-owned seller of petroleum products based in Platte, South Dakota. Application for Exception at 1. Severson is designated as a non-certainty firm by the EIA. Memorandum of Telephone Conversation between Tammy Heppner, EIA, and Richard A.

---

<sup>1</sup> Form EIA-782B requires that the firm make a good faith effort to provide reasonably accurate information that is consistent with the accounting records maintained by the firm. The firm must alert the EIA if the estimates are later found to be materially different from actual data.

Cronin, Jr., OHA (March 29, 2010). The firm was first required to file Form EIA-782B beginning in January 2002. *Id.* Severson is now reporting in its third consecutive sample. *Id.*

In its Application, Severson requests that it be relieved of the obligation to file Form EIA-782B. *See* Application for Exception. When we contacted Severson to gather further information concerning its Application, Severson informed us that it has been required to complete Form EIA-782B since January 2001.<sup>2</sup> Given this, Severson questions the fundamental fairness of requiring it to complete Form EIA-782B for such an extended period of time. This is especially so since Severson has recently been notified that it will have to continue completing the form for another three years. Severson asserts that it and its distributor are unaware of any other firm in its geographic area which has been required to submit Form EIA-782B. *See* Memorandum of Telephone Conversation between Char Severson, Severson, and Richard A. Cronin, Jr., OHA (March 30, 2010).

#### IV. Analysis

The Form EIA-782B reporting requirement requires common information on pricing and inventory changes for various refined petroleum products. The EIA estimates that it should normally take a firm approximately two and one-half hours per month to complete the form. *See* Section 10 of General Instructions to Form EIA-782B. As mentioned above, the burden of the requirement can be substantially reduced by the use of estimates. *See* Section 7 of the General Instructions for Form EIA-782B. Every reporting firm is burdened to a certain extent by the reporting requirement. Exception relief is appropriate only where the reporting requirement poses a serious hardship, inequity, or unfair distribution of burdens. 42 U.S.C. § 7194; 10 C.F.R. § 1003.25(b)(2). In other words, relief is appropriate where the reporting requirement adversely affects the firm to a significantly greater degree than it affects other firms.

In this case, Severson does not claim it is adversely affected by the reporting requirement to a greater degree than other similar firms. To the contrary, Severson reports that, during the first six years it filed Form EIA-782B, it took approximately only one and one-half hours to complete the report. Recently, it has started to use estimates to complete the form. Using estimates, it takes Severson approximately one hour to complete the form. *See* Memorandum of Telephone Conversation between Char Severson and Richard A. Cronin, Jr. (April 30, 2010). Severson's experience in completing Form EIA-782B is significantly less than EIA's estimate as to the time needed to complete the form. Severson instead bases its request for relief on the grounds that it has filed Form EIA-782B since January 2002. Severson thus contends that it is unfair that Severson should be required to file for eight years plus another three years in the future.

As referenced above, we have consistently held that the length of time that a firm has been required to file an EIA form does not alone constitute grounds for exception relief. *See Sound Oil Co.*, 25 DOE ¶ 81,006 (1994) (company had filed for ten years); *Halron Oil Co.*, 16 DOE ¶

---

<sup>2</sup> As indicated above, according to EIA records, Severson has been filing Form EIA-782B only since January 2002. Memorandum of Telephone Conversation between Tammy Heppner, EIA, and Richard A. Cronin, Jr., OHA (March 29, 2010).

81,001 (1987) (12 years). Severson's assertion that it is unfair that it should continue to be required to file Form EIA-782B, absent any showing of serious hardship, inequity, or unfair distribution of burdens, is insufficient to warrant relief.

We appreciate the burden that completing Form EIA-782B places on firms. However, this burden is greatly overshadowed by the fact that the information provided by firms such as Severson is used by Congress and state governments to formulate strategic policies to respond to potential energy shortages. Such energy shortages, like that of the 1970s, present a potential threat to nation's security.

As the foregoing indicates, Severson has not shown that the requirement to complete Form EIA-782B is burdensome to the firm in a manner that distinguishes it from other similarly affected firms. Accordingly, we find that exception relief is not warranted in this case and, therefore, the Application for Exception should be denied.

It Is Therefore Ordered That:

- (1) The Application for Exception filed by Severson Oil & LP Co., Inc., Case No. TEE-0069, is denied.
- (2) Administrative review of this Decision and Order may be sought by any person who is aggrieved or adversely affected by the denied of exception relief. Such review shall be commenced by the filing of a petition for review with the Federal Energy Regulatory Commission within 30 days of the date of this Decision and Order pursuant to 18 C.F.R. Part 835, Subpart J.

Poli A. Marmolejos  
Director  
Office of Hearings and Appeals

Date: April 5, 2010





April 23, 2010

DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

**Application for Exception**

Name of Case: BSH Home Appliances Corporation

Date of Filing: March 30, 2010

Case No.: TEE-0070

On March 30, 2010, BSH Home Appliances Corporation (BSH) filed an Application for Exception (Application) with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). The firm requests temporary relief from the provisions of 10 C.F.R. Part 430, Energy Conservation Program for Consumer Products: Energy Conservation Standards for Refrigerators, Refrigerator-Freezers and Freezers (Refrigerator Efficiency Standards). In its exception request, BSH asserts that the firm will suffer an undue hardship and inequity if required to adhere to the Refrigerator Efficiency Standards, codified at 10 C.F.R. § 430.32. If BSH's Application for Exception is granted, the firm will receive exception relief from the energy efficiency standard applicable to a new automatic defrost refrigerator-freezer with bottom-mounted freezer and through-the-door ice service. BSH proposes to manufacture and market this appliance. As set forth in the Decision and Order, we have determined that BSH's Application for Exception should be granted.

***I. Background***

**A. Refrigerator Efficiency Standards**

The Refrigerator Efficiency Standards, 10 C.F.R. Part 430, were published as a final rule by the Department of Energy (DOE) on April 28, 1997, 62 Fed. Reg. 23102, as mandated by Congress in Part B of Title III of the Energy Policy and Conservation Act, as amended, 42 U.S.C. §§6291-6309 (EPCA). In the EPCA, Congress directed that DOE review and revise energy conservation standards for major appliances, including refrigerator/freezer products, promulgated by the agency in 1989, 54 Fed. Reg. 47916 (November 17, 1989). EPCA § 325 (b) (3) (B), 42 U.S.C. § 6295 (b) (3) (B). Appliance manufacturers are prohibited from introducing into commerce any covered product that is not in compliance with the applicable energy efficiency standards established under the EPCA. 42 U.S.C. § 6302 (a) (5). The Refrigerator Efficiency Standards were designed to reduce energy use in classes of refrigerator products by up to 30 percent below the prior standards, and thereby reduce consumer costs as well as emission of air pollutants associated with electricity production.<sup>1</sup> The Refrigerator Efficiency Standards became effective July 1, 2001.

---

<sup>1</sup> For each of the eighteen classes of refrigerator products, the Refrigerator Efficiency Standards establish energy efficiency equations which limit energy usage. These equations are expressed in kilowatt-hours per year (kWh/yr). For example, the consumption equation for the product Class 4, "Refrigerator-Freezers—automatic defrost with side-mounted freezer without through-the-door ice service" is a maximum of "4.91AV+507.5," where AV is the "total adjusted volume" of the particular unit expressed in cubic feet.

## B. Application for Exception

BSH, headquartered in Huntington Beach, California, is the manufacturer of home appliances such as refrigerators, refrigerator-freezers, dishwashers, clothes washers and dryers, cooking ranges and ovens, and range hoods.<sup>2</sup> Application at 1. BSH's principal brands are Bosch®, Siemens®, Gaggenau® and Thermador®. *Id.* The firm indicates that it has developed a refrigerator-freezer with bottom-mounted freezer with through-the-door ice service. *Id.* In this refrigerator-freezer, ice is produced in an insulated compartment in the fresh food compartment and dispensed from the fresh food door. *Id.* The ice storage temperature is maintained by air supplied from the freezer. *Id.* BSH intends to produce and market this appliance. *Id.*

BSH states in its Application that in the absence of exception relief, the firm will be unable to market its refrigerator-freezer with bottom-mounted freezer with through-the-door ice service. *Id.* BSH argues that “since through-the-door ice service was not offered with bottom-mounted freezers at the time [the Refrigerator Efficiency Standards] were promulgated, there was no energy efficiency standards established for this product within the eighteen classes of product categories established.” *Id.* At the same time, BSH's product clearly fits within the regulatory definition of “electric refrigerator-freezer,”<sup>3</sup> and it will be unable to meet the Class 5 energy standard applicable to refrigerator-freezers with bottom-mounted freezer without through-the-door ice service due to the energy loss inherent in adding the through-the-door ice service feature. *Id.* Consequently, BSH argues,

Without the requested relief, BSH stands to lose a substantial portion of its return on this investment, plus the loss of anticipated sales revenue of approximately XXXXXX. These figures do not take into account significant losses in goodwill and brand acceptance ... [Furthermore, granting exception to BSH in this case] would also help enhance economic development and employment, including not only BSH USA operations in North Carolina, Tennessee, and California, but also at major national retailers and regional dealers that carry BSH products.

Application at 1-2.

In further support of its claim, BSH cites one of our decisions in a similar case, *Maytag Corp.*, Case No. TEE-0022 (2005) (*Maytag*). In *Maytag*, the corporation also filed for exception relief from the refrigerator Efficiency Standards for a refrigerator-freezer with bottom-mounted freezer with through-the-door ice service. BSH requests that we grant it the same relief as we granted to *Maytag* for its comparable product, in that we allow it to apply an energy efficiency standard for its new automatic defrost refrigerator-freezer with bottom-mounted freezer with through-the-door ice service, based upon the incremental increase in allowable energy consumption properly

---

<sup>2</sup> BSH (USA) manufacturing facilities exist in New Bern, North Carolina and La Follette, Tennessee. Application at 1.

<sup>3</sup> See 10 C.F.R. § 430.2

attributable to this feature. *Id.* at 2. As of the issuance of this decision, we have received no interested party comments on BSH's Application.<sup>4</sup>

### C. Standard for Exception Relief

In promulgating the final rule of the Part 430 regulations, DOE stated as follows with regard to Applications for Exception relief:

Section 504 of the Department of Energy Organization Act authorizes DOE to make adjustments of any rule or order issued under the [EPCA], consistent with the other purposes of the Act, if necessary to prevent special hardship, inequity, or unfair distribution of burdens. 42 U.S.C. § 7194(a).

...

In exercising its authority under section 504, DOE may grant an exception from an efficiency standard for a limited time, and may place other conditions on the grant of an exception.

DOE will require an application for exception to provide specific facts and information relevant to the claim that compliance would cause special hardship, inequity or an unfair distribution of burdens.

62 Fed. Reg. at 23108-09. Prior decisions of this office as well as federal courts clearly place the burden upon the applicant to establish the basis for its claim for exception relief from DOE regulatory provisions. *See, e.g., Diversified Refrigeration, Inc.*, Case No. VEE-0079 (2001); *Amana Appliances*, Case No. VEE-0054 (1999); *Whirlpool Corp.*, Case Nos. KEL-0002 and KEL-0037 (1986); *White Consolidated, Inc.*, Case No. KEL-0001 (1985); *Exxon Corp. v. Department of Energy*, 802 F.2d 1400, 1407-08 (Temp. Emer. Ct. App. 1986) ("great deference" accorded to agency in applying standards for exception relief); *City of Long Beach v. Department of Energy*, 754 F.2d 379, 386 (Temp. Emer. Ct. App. 1985).

## II. Analysis

We carefully reviewed BSH's Application for Exception and determined that exception relief should be approved. As with the product in *Maytag*, we find that BSH's model – a "refrigerator-freezer with bottom-mounted freezer with through-the-door ice service" – will be unable to meet the Class 5 energy efficiency standard established for "Refrigerator-Freezers – automatic defrost with bottom-mounted freezer without through-the-door ice service" due to the energy loss inherent in adding the through-the-door ice service feature. Consequently, if exception relief were denied, BSH would be effectively precluded from marketing its product under the generally applicable energy efficiency standard, an unintended consequence of the existing regulations. In establishing the Refrigerator Efficiency Standards, the DOE did not intend to stifle innovation and the development and introduction into the marketplace of new technology. Also, as BSH stated in its Application, the firm would lose a significant portion of its return on its investment

---

<sup>4</sup> Pursuant to 10 C.F.R. Part 1003.23, BSH provided notice to interested parties of its Application for Exception from the provisions of 10 C.F.R. § 430.32. *See* Statement of Compliance from Manfred Staebler dated March 19, 2010. With its notice, BSH provided copies of its Application and information regarding the opportunity to comment to DOE. *See* Letter from Manfred Staebler dated March 19, 2010.

in designing this product and would face possible losses in brand acceptance and consumer confidence. Application at 1-2. Furthermore, if exception relief were denied, consumers would unfairly be deprived of the opportunity to choose among different brands for the desired model. See *LG Electronics, Inc.*, Case No. TEE-0025 (2005) (*LG Electronics*) at 4.

The present case is virtually indistinguishable from cases in which we have previously granted exception relief from the Refrigerator Efficiency Standards to firms which sought to market the same type of refrigerator: a bottom-mounted refrigerator-freezer with through-the-door ice service. See *Maytag*; see also *LG Electronics*; *Samsung Electronics America*, Case No. TEE-0047 (2007) (*Samsung*). In those cases, we determined that DOE would have established a separate product class for automatic defrost refrigerator-freezers, with bottom-mounted freezers and through-the-door ice service, had those products existed in the marketplace at the time of the promulgation of the Refrigerator Efficiency Standards. “The through-the-door ice service feature is clearly distinguished by the agency in establishing separate classes of product in other models, e.g., the ‘top-mounted freezer’ and ‘side-mounted freezer’ variations of automatic defrost refrigerator-freezers.”<sup>5</sup> *Maytag* at 2-3; *LG Electronics* at 2. The facts surrounding BSH’s Application for Exception are virtually identical to those in *Maytag*, *LG Electronics* and *Samsung*. Therefore, we have determined that BSH is entitled to the same exception relief we granted in those cases.

In *Maytag*, we determined that an appropriate standard for maximum energy use can be established for the firm’s automatic defrost refrigerator-freezer, with bottom-mounted freezer with through-the-door ice service, by adding  $0.40AV+80.0$  to the energy efficiency equation,  $4.60AV+459.0$ , established for “Refrigerator-Freezers – automatic defrost with bottom-mounted freezer without through-the-door ice service” (Class 5). See also *LG Electronics* and *Samsung*. The combination of these values yields an energy consumption standard of  $5.0AV+539.0$ .<sup>6</sup>

Accordingly, BSH will be granted exception relief establishing the energy standard equation for maximum energy use (kWh/yr) for BSH’s automatic defrost refrigerator-freezer, with bottom-mounted freezer with through-the-door ice service, of  $5.0AV+539.0$ . BSH must label its new product in accordance with regulations of the Federal Trade Commission, 16 C.F.R. Part 305,<sup>7</sup>

---

<sup>5</sup> For example, the regulations set forth the following classes: Class 3 (with top-mounted freezer without through-the-door ice service); Class 4 (with side-mounted freezer without through-the-door ice service); Class 5 (with bottom-mounted freezer without through-the-door ice service); Class 6 (with top-mounted freezer with through-the-door ice service); and Class 7 (with side-mounted freezer with through-the-door ice service). 10 C.F.R. § 430.32(a).

<sup>6</sup> The Refrigerator Efficiency Standards establish a maximum energy consumption of  $9.80AV+276.0$  for automatic defrost refrigerator-freezers “with top-mounted freezer without through-the-door ice service” (Class 3) and a maximum energy consumption of  $10.20AV+356.0$  for automatic defrost refrigerator-freezers “with top-mounted freezer with through-the-door ice service” (Class 6). Thus, the additional energy consumption allowed to account for through-the-door ice service is  $0.40AV+80.0$  ( $10.20AV+356.0$  minus  $9.80AV+276.0$ ). On this basis, we have determined that an appropriate standard for maximum energy use for automatic defrost refrigerator freezers with bottom-mounted freezers with through-the-door ice service can be established by adding this increment ( $0.40AV+80.0$ ) to the energy efficiency equation,  $4.60AV+459.0$ , established for “Refrigerator-Freezers – automatic defrost with bottom-mounted freezer without through-the-door ice service” (Class 5). The combination of these values yields an energy consumption standard of  $5.0AV+539.0$ .

<sup>7</sup> This labeling instruction is in accordance with Federal Trade Commission regulations set forth at 16 C.F.R. § 305.10 (b), which states:

and state the expected energy consumption based upon appropriate testing under DOE test protocol. See 10 C.F.R. § 430.23(b). The exception relief granted in this decision will remain in effect until such time as the DOE promulgates an energy efficiency standard for “Refrigerator-Freezers – automatic defrost with bottom-mounted freezer with through-the-door ice service” or the DOE modifies the existing standard for “Refrigerator-Freezers – automatic defrost with bottom-mounted freezer without through-the-door ice service” (Class 5).

It is Therefore Ordered That:

- (1) The Application for Exception filed by BSH Home Appliances Corporation (BSH) on March 30, 2010, is hereby granted as set forth in paragraphs (2) and (3) below.
- (2) Notwithstanding the requirements of 10 C.F.R. Part 430 (a), the energy standard equation for maximum energy use (kWh/yr) is established as  $5.0AV+539.0$  for the “automatic defrost refrigerator-freezer, with bottom-mounted freezer and though-the-door ice service,” produced by BSH, as described in this decision. The exception relief granted in this decision will remain in effect until DOE promulgates and energy efficiency standard for “Refrigerator-Freezers – automatic defrost with bottom-mounted freezer with through-the-door ice service” or the DOE modifies the existing standard for “Refrigerator-Freezers-automatic defrost with bottom-mounted freezer without through-the-door ice service” (Class 5).
- (3) In marketing the refrigerator-freezer described in this decision, BSH shall label its product in accordance with regulations of the Federal Trade Commission, 16 C.F.R. Part 305, and state the expected energy consumption based on appropriate testing under DOE test protocol. See 10 C.F.R. § 430.23(b).
- (4) Any person aggrieved by the approval of exception relief in this Decision and Order may file an appeal with the Office of Hearings and Appeals in accordance with 10 C.F.R. Part 1003, Subpart C.

Poli A. Marmolejos  
Director  
Office of Hearings and Appeals

Date: April 23, 2010

---

When the estimated annual energy consumption or energy efficiency rating of a given model of a covered product falls outside the limits of the current range for that product, which could result from the introduction of a new or changed model, the manufacturer shall

- (1) Omit placement of such product on the scale, and
- (2) Add on of the two sentences below, as appropriate in the space just below the scale, as follows:
  - The estimated annual energy consumption of this model was not available at the time the range was published.
  - The energy efficiency rating of this model was not available at the time the range was published.

June 11, 2010

DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

**Application for Exception**

Name of Case: Monroe Oil Company

Date of Filing: May 26, 2010

Case Number: TEE-0071

On May 26, 2010, Monroe Oil Company (Monroe) filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). The firm requests that it be permanently relieved of the requirement to prepare and file the Energy Information Administration (EIA) Form EIA-782B, entitled “Resellers’/Retailers’ Monthly Petroleum Product Sales Report.” As explained below, we have determined that the request should be denied.<sup>1</sup>

**I. Background**

The DOE’s Energy Information Administration (EIA) is authorized to collect, analyze, and disseminate energy data and other information. 15 U.S.C. § 772(b); 42 U.S.C. § 7135(b). The EIA-782B reporting requirement grew out of the shortages of crude oil and petroleum products during the 1970s. In 1979, Congress determined that the lack of reliable information concerning the supply, demand and prices of petroleum products impeded the nation’s ability to respond to the oil crisis. It therefore authorized the DOE to collect data on the supply and prices of petroleum products. This information is used to analyze trends within petroleum markets. Summaries of the information and the analyses are reported by EIA in publications such as “Petroleum Marketing Monthly.” This information is used by Congress and state governments to project trends and to formulate national and state energy policies. Access to this data is vital to the nation’s ability to anticipate and respond to potential energy shortages. *See* H.R. Rep. No. 373, 96th Cong., 1st Sess., reprinted in 1979 U.S. Code Cong. & Admin. News 1764, 1781 (H.R. Report 373).

---

<sup>1</sup> OHA Exception Decisions issued since July 5, 1995, are available on the OHA website located at <http://www.oha.doe.gov>. The text of a cited decision may be accessed by entering the case number of the decision in the search engine located at <http://www.oha.doe.gov/search.htm>.

Form EIA-782B is a monthly report of the volume and prices of motor gasoline, No. 2 distillates, propane, and residual fuel oil sold by resellers and retailers. In order to minimize the reporting burden, the EIA periodically selects a relatively small sample of companies to file Form EIA-782B. Firms that account for over five percent of the sales of any particular product in a state or do business in four or more states are designated as certainty firms, and are always included in the sample of firms required to file the form. A random sample of other firms, designated as non-certainty firms, is also selected. This random sample changes periodically, but a firm may be reselected for subsequent samples. A firm that has been included in three consecutive random samples will generally not be included in a fourth consecutive sample, but may be included in a later sample. In order to reduce the burden on reporting firms, EIA also permits the firms to rely on reasonable estimates.

## II. Exception Criteria

OHA has the authority to grant exception relief where the reporting requirement causes a “serious hardship, gross inequity or unfair distribution of burdens.” 42 U.S.C. § 7194; 10 C.F.R. § 1003.25(b)(2). Since all reporting firms are burdened to some extent by reporting requirements, exception relief is appropriate only where a firm can demonstrate that it is adversely affected by the reporting requirement in a way that differs significantly from similar reporting firms.

When considering a request for exception relief, we must weigh the firm’s difficulty in complying with the reporting requirement against the nation’s need for reliable energy data. Thus, mere inconvenience does not constitute a hardship warranting relief. *Glenn Wagoner Oil Co.*, 16 DOE ¶ 81,024 (1987). Similarly, the fact that a firm is relatively small or has filed reports for a number of years does not constitute a hardship warranting relief. *Mulgrew Oil Co.*, 20 DOE ¶ 81,009 (1990). If firms of all sizes, both large and small, are not included in the survey, the estimates and projections generated by EIA’s statistical sample will be unreliable. *Id.*

OHA has granted relief from the reporting requirement under various circumstances. For example, we have granted relief where: the firm’s financial situation is so precarious that the additional burden of meeting the DOE reporting requirements threatens the firm’s continued viability, *see e.g., Mico Oil Co.*, 23 DOE ¶ 81,105 (1994) (firm lost one million dollars over previous three years); *Deaton Oil Co.*, 16 DOE 81,206 (1987) (firm in bankruptcy); the firm’s only employee capable of preparing the report is ill and the firm cannot afford to hire outside help, *see e.g., S&S Oil & Propane Co.*, 21 DOE ¶ 81,006 (1991) (owner being treated for cancer); *Eastern Petroleum Corp.*, 14 DOE ¶ 81,011 (1986) (two month extension granted when computer operator broke wrist); extreme or unusual circumstances disrupt a firm’s activities, *see e.g., Little River Village Campground, Inc.*, 24 DOE ¶ 81,033 (1994) (five months relief because of flood); *Utilities Bd. of Citronelle-Gas*, 4 DOE ¶ 81,025 (1979) (hurricane); or a combination of factors resulting from unavoidable circumstances makes completing the form impracticable, *see e.g., Ward Oil Co.*, 24 DOE ¶ 81,002 (1994) (ten month extension granted where long illness and death of a partner resulted in personnel shortages, financial difficulties and other administrative problems).

## III. The Application for Exception

Monroe is a retail and wholesale seller of gasoline and other petroleum products based in Monroe, North Carolina. The company, a non-certainty firm, was selected by the EIA to submit the monthly Form EIA-782B in Sample 10 (beginning in February 1993 and continuing about sixteen months), Sample 15 (beginning in October 2004 and continuing about five years) and Sample 16 (beginning in November 2009 and currently ongoing). *See* Memorandum of Telephone Conversation between Tammy Heppner, Survey Statistician, EIA and Kent Woods, Attorney-Examiner, OHA, May 28, 2010.

In its Application, Monroe requests that it be permanently relieved of the obligation to file Form EIA-782B. Monroe maintains that it has been required to file the monthly Form EIA-782B almost continuously since the early 1990's, and that it is unfair to subject Monroe to this administrative burden for such a lengthy period of time when there are other, similarly situated petroleum retailers in Monroe's marketing area who have never been required to submit the form. *See* Memorandum of Telephone Conversation between Mr. Olin Furr, President and owner of Monroe, and Kent Woods, OHA, June 8, 2010. Monroe also contends that preparing Form EIA-782B has recently become more burdensome because the employee charged with preparing the form is on six weeks of maternity leave from late May 2010 until early July 2010. If no exception relief is provided, Mr. Furr states that he will be required to ask this employee to return to the office and show him how to retrieve the data needed to prepare the form, and that he will be required to complete the form at home after working hours. He estimated that it will take him approximately two and a half hours to retrieve the data and prepare the form. *Id.*

#### **IV. Analysis**

The Form EIA-782B reporting requirement requires common information on pricing and inventory changes for various refined petroleum products. As we stated above, the EIA relies heavily on the market data collected from firms such as Monroe. While we can appreciate that Monroe has a limited staff and a heavy workload, the reliability of the reporting sample would be compromised if we were to grant an exception to all firms experiencing heavy workloads or other issues associated with maintaining a business. Every reporting firm is burdened to a certain extent by the reporting requirement. Exception relief is appropriate only where the reporting requirement poses a serious hardship, inequity, or unfair distribution of burdens. 42 U.S.C. § 7194; 10 C.F.R. § 1003.25(b)(2). In other words, relief is appropriate where the reporting requirement adversely affects the firm to a significantly greater degree than it affects other firms.

Monroe's assertion that it is unfair to require it to file Form EIA-782B for many years does not state a sufficient basis for exception relief. As we explained above, we have held that the length of time that a company has reported does not constitute a hardship warranting relief.

Further, although Monroe claims that completing the form is burdensome due to the temporary absence of the employee charged with this task, it has not established that it is experiencing the level of distress that has caused us to grant exception relief, such as extreme personnel shortages, bankruptcy, or natural disaster. As noted above, the company's president and owner estimates that in the absence of this employee, it will take him approximately two and one-half hours to compile the necessary data and to complete the form, which is identical to the EIA's estimated time for



completion of the form. *See* Section 10 of General Instructions to Form EIA-782B. As mentioned above, the burden of the requirement can be substantially reduced by the use of estimates. *See* Section 7 of the General Instructions for Form EIA-782B.

As the foregoing indicates, Monroe has not shown that the requirement to complete Form EIA-782B is burdensome to the firm in a manner that distinguishes it from other similarly affected firms. Accordingly, we find that exception relief is not warranted in this case and, therefore, the Application for Exception should be denied.

It Is Therefore Ordered That:

(1) The Application for Exception filed by Monroe Oil Company, Case No. TEE-0071, be, and hereby is, denied.

(2) Administrative review of this Decision and Order may be sought by any person who is aggrieved or adversely affected by the denied of exception relief. Such review shall be commenced by the filing of a petition for review with the Federal Energy Regulatory Commission within 30 days of the date of this Decision and Order pursuant to 18 C.F.R. Part 835, Subpart J.

Poli A. Marmolejos  
Director  
Office of Hearings and Appeals

Date: June 11, 2010

November 15, 2010

DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

Application for Exception

Name of Case: B&B Marine, Inc.

Date of Filing: October 15, 2010

Case No.: TEE-0072

On October 15, 2010, B&B Marine, Inc. (B&B) filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). The firm requests that it be permanently relieved of the requirement to prepare and file the Energy Information Administration (EIA) Form EIA-782B, entitled “Resellers’/Retailers’ Monthly Petroleum Product Sales Report.” As explained below, we have determined that the request should be denied.<sup>1</sup>

**I. Background**

The DOE’s Energy Information Administration (EIA) is authorized to collect, analyze, and disseminate energy data and other information. 15 U.S.C. § 772(b); 42 U.S.C. § 7135(b). The EIA-782B reporting requirement grew out of the shortages of crude oil and petroleum products during the 1970s. In 1979, Congress determined that the lack of reliable information concerning the supply, demand and prices of petroleum products impeded the nation’s ability to respond to the oil crisis. It therefore authorized the DOE to collect data on the supply and prices of petroleum products. This information is used to analyze trends within petroleum markets. Summaries of the information and the analyses are reported by EIA in publications such as “Petroleum Marketing Monthly.” This information is used by Congress and state governments to project trends and to formulate national and state energy policies. Access to this data is vital to the nation’s ability to anticipate and respond to potential energy shortages. *See* H.R. Rep. No. 373, 96<sup>th</sup> Cong., 1st Sess., reprinted in 1979 U.S. Code Cong. & Admin. News 1764, 1781 (H.R. Report 373).

Form EIA-782B is a monthly report of the volume and prices of motor gasoline, No. 2 distillates, propane, and residual fuel oil sold by resellers and retailers. In order to minimize the reporting burden, the EIA periodically selects a relatively small sample of companies to file Form EIA-782B. Firms that account for over five percent of the sales of any particular product in a state or do business in four or more states, designated as certainty firms, are always included in the sample of firms required to file the form. A random sample of other firms, designated as non-certainty firms, is also selected. This random sample changes periodically, but a firm may be reselected for subsequent samples. A firm that has been included in three consecutive random

---

<sup>1</sup> OHA Exception Decisions issued since July 5, 1995, are available on the OHA website located at <http://www.oha.doe.gov>. The text of a cited decision may be assessed by entering the case number of the decision in the search engine located at <http://www.oha.doe.gov/search.htm>.

samples will generally not be included in a fourth consecutive sample, but may be included in a later sample. In order to reduce the burden on reporting firms, EIA also permits the firms to rely on reasonable estimates.<sup>2</sup>

## II. Exception Criteria

OHA has the authority to grant exception relief where the reporting requirement causes a “serious hardship, gross inequity or unfair distribution of burdens.” 42 U.S.C. § 7194; 10 C.F.R. § 1003.25(b)(2). Since all reporting firms are burdened to some extent by reporting requirements, exception relief is appropriate only where a firm can demonstrate that it is adversely affected by the reporting requirement in a way that differs significantly from similar reporting firms.

When considering a request for exception relief, we must weigh the firm’s difficulty in complying with the reporting requirement against the nation’s need for reliable energy data. Thus, mere inconvenience does not constitute a hardship warranting relief. *Glenn Wagoner Oil Co.*, 16 DOE ¶ 81,024 (1987). Similarly, the fact that a firm is relatively small or has filed reports for a number of years does not constitute a hardship warranting relief. *Mulgrew Oil Co.*, 20 DOE ¶ 81,009 (1990). If firms of all sizes, both large and small, are not included in the survey, the estimates and projections generated by EIA’s statistical sample will be unreliable. *Id.*

OHA has granted relief from the reporting requirement under various circumstances. For example, we have granted relief where: the firm’s financial situation is so precarious that the additional burden of meeting the DOE reporting requirements threatens the firm’s continued viability, *see e.g.*, *Mico Oil Co.*, 23 DOE ¶ 81,105 (1994) (firm lost one million dollars over previous three years); *Deaton Oil Co.*, 16 DOE 81,206 (1987) (firm in bankruptcy); the firm’s only employee capable of preparing the report is ill and the firm cannot afford to hire outside help, *see e.g.*, *S&S Oil & Propane Co.*, 21 DOE ¶ 81,006 (1991) (owner being treated for cancer); *Eastern Petroleum Corp.*, 14 DOE ¶ 81,011 (1986) (two-month extension granted when computer operator broke wrist); extreme or unusual circumstances disrupt a firm’s activities, *see e.g.*, *Little River Village Campground, Inc.*, 24 DOE ¶ 81,033 (1994) (five months relief because of flood); *Utilities Bd. of Citronelle-Gas*, 4 DOE ¶ 81,025 (1979) (hurricane); or a combination of factors resulting from unavoidable circumstances makes completing the form impracticable, *see e.g.*, *Ward Oil Co.*, 24 DOE ¶ 81,002 (1994) (ten-month extension granted where long illness and death of a partner resulted in personnel shortages, financial difficulties and other administrative problems).

## III. The Application for Exception

B&B is a seller of petroleum products based in Newport, Rhode Island. The firm is designated as a non-certainty firm by the EIA. *See* E-mail from Tammy Heppner, EIA, to Kimberly

---

<sup>2</sup> Form EIA-782B requires that the firm make a good faith effort to provide reasonably accurate information that is consistent with the accounting records maintained by the firm. The firm must alert the EIA if the estimates are later found to be materially different from actual data.

Jenkins-Chapman, OHA, October 22, 2010. The firm was selected for the first time during the last sample rotation beginning with the February 2010 reference period.

In its Application, B&B requests that it be relieved of the obligation to file Form EIA-782B. *See* Letter from Robert Jankuska, B&B, to OHA, October 15, 2010 (Application for Exception). B&B maintains that it is a small company with limited resources. *Id.* The firm states that it is difficult “to keep up with all the paperwork needed to keep in business” and that completing the form is burdensome. *Id.* The firm further states that it does not have a problem completing the form once a year, but states that “it is unfair that every company dealing in these products does not have to fill this form out every month.” *Id.* The firm states that it “would like to be a company that does not have to fill these forms every month.” *Id.*

Based upon a review of the Application, we concluded that there was not sufficient information to permit us to act favorably on the request. Therefore, we contacted B&B to give the company an opportunity to discuss its request for relief. *See* Memorandum of Telephone Conversation between Robert Jankuska, B&B, and Kimberly Jenkins-Chapman, OHA, November 8, 2010. B&B states that its five employees drive trucks during the day and that it must hire an accountant to complete its paper work, including the completion of Form EIA-782B. *Id.* According to B&B, the cost of hiring an accountant every month has become a financial burden to the company. *Id.* B&B states that its accountant usually charges the company for three hours at a rate of \$100 per hour. However, the company owner states that once it has compiled the information for the accountant, it probably takes the accountant about 10 minutes to complete the form. *Id.* The company owner reiterated that it is a small company and that the requirement to file Form EIA-782B is a “hassle” and is costly. *Id.* He stated that he would be willing to file the form on a quarterly basis, but that the monthly requirement is burdensome. *Id.*

#### IV. Analysis

The Form EIA-782B reporting requirement requires common information on pricing and inventory changes for various refined petroleum products. The EIA estimates that it should normally take a firm approximately two and one-half hours per month to complete the form. *See* Section 10 of General Instructions to Form EIA-782B. As mentioned above, the burden of the requirement can be substantially reduced by the use of estimates. *See* Section 7 of the General Instructions for Form EIA-782B. Every reporting firm is burdened to a certain extent by the reporting requirement. Exception relief is appropriate only where the reporting requirement poses a serious hardship, inequity, or unfair distribution of burdens. 42 U.S.C. § 7194; 10 C.F.R. § 1003.25(b)(2). In other words, relief is appropriate where the reporting requirement adversely affects the firm to a significantly greater degree than it affects other firms.

In this case, B&B claims that it is adversely affected by the reporting requirement to a greater degree than other similar firms. It bases its request solely on the unsubstantiated assertion that compiling the data for the form has become a cost burden due to the expense of hiring an accountant to complete the form. However, B&B acknowledges that its accountant completes all of the company paperwork, not only Form EIA-782B. *See* Memorandum of Telephone Conversation between Robert Jankuska, B&B, and Kimberly Jenkins-Chapman, OHA, November 1, 2010. Although B&B asserts that its five employees drive trucks during the day, we find that it has not explored other alternatives to meet the requirement to file Form EIA-

782B, *i.e.*, completing paperwork at night. B&B's contention that the requirement to file Form EIA-782B is a hassle and cost burden, absent any showing of serious hardship, inequity, or unfair distribution of burdens, is insufficient to warrant relief.

As the foregoing indicates, B&B has not shown that the requirement to complete Form EIA-782B is burdensome to the firm in a manner that distinguishes it from other similarly affected firms. Accordingly, we find that exception relief is not warranted in this case and, therefore, the Application for Exception should be denied.

It Is Therefore Ordered That:

- (1) The Application for Exception filed by B&B Marine, Inc., Case No. TEE-0072 be and hereby is denied.
- (2) Administrative review of this Decision and Order may be sought by any person who is aggrieved or adversely affected by the denied of exception relief. Such review shall be commenced by the filing of a petition for review with the Federal Energy Regulatory Commission within 30 days of the date of this Decision and Order pursuant to 18 C.F.R. Part 835, Subpart J.

Poli A. Marmolejos  
Director  
Office of Hearings and Appeals

Date: November 15, 2010

February 14, 2011

**DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS**

**Application for Exception**

Name of Case: Cole Distributing, Inc.

Date of Filing: December 13, 2010

Case No.: TEE-0073

On December 13, 2010, Cole Distributing, Inc. (Cole) filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). The firm requests that it be permanently relieved of the requirement to prepare and file the Energy Information Administration (EIA) Form EIA-782B, entitled “Resellers’/Retailers’ Monthly Petroleum Product Sales Report.” As explained below, we have determined that Cole’s request should be denied.<sup>1</sup>

**I. Background**

The DOE’s Energy Information Administration (EIA) is authorized to collect, analyze, and disseminate energy data and other information.<sup>2</sup> The EIA-782B reporting requirement grew out of the shortages of crude oil and petroleum products during the 1970s. In 1979, Congress determined that the lack of reliable information concerning the supply, demand and prices of petroleum products impeded the nation’s ability to respond to the oil crisis. It therefore authorized the DOE to collect data on the supply and prices of petroleum products. This information is used to analyze trends within petroleum markets. Summaries of the information and the analyses are reported by EIA in publications such as “Petroleum Marketing Monthly.” This information is used by Congress and state governments to project trends and to formulate national and state energy policies. Access to this data is vital to the nation’s ability to anticipate and respond to potential energy shortages.<sup>3</sup>

Form EIA-782B is a monthly report, pursuant to which resellers and retailers report the volume and price of sales of motor gasoline, No. 2 distillates, propane, and residual fuel oil. In order to

---

<sup>1</sup> OHA Exception Decisions issued since July 5, 1995, are available on the OHA website located at <http://www.oha.doe.gov>. The text of a cited decision may be accessed by entering the case number of the decision in the search engine located at <http://www.oha.doe.gov/search.htm>.

<sup>2</sup> 15 U.S.C. § 772(b); 42 U.S.C. § 7135(b).

<sup>3</sup> See H.R. Rep. NO. 373, 96<sup>th</sup> Con., 1st Sess., reprinted in 1979 U.S. Code Cong. & Admin. News 1764, 1781 (H.R. Report 373).

minimize the reporting burden, the EIA periodically selects a relatively small sample of companies to file Form EIA-782B<sup>4</sup> and permits reporting firms to rely on reasonable estimates.<sup>5</sup>

## II. Exception Criteria

OHA has the authority to grant exception relief where the reporting requirement causes a “serious hardship, gross inequity or unfair distribution of burdens.”<sup>6</sup> Since all reporting firms are burdened to some extent by reporting requirements, exception relief is appropriate only where a firm can demonstrate that it is adversely affected by the reporting requirement in a way that differs significantly from similar reporting firms.

When considering a request for exception relief, we must weigh the firm’s difficulty in complying with the reporting requirement against the nation’s need for reliable energy data. Thus, mere inconvenience does not constitute a hardship warranting relief.<sup>7</sup> Similarly, the fact that a firm is relatively small or has filed reports for a number of years does not constitute a hardship warranting relief.<sup>8</sup> If firms of all sizes, both large and small, are not included in the survey, the estimates and projections generated by EIA’s statistical sample will be unreliable.<sup>9</sup>

OHA has granted relief from the reporting requirement under various circumstances. For example, we have granted relief where: the firm’s financial situation is so precarious that the additional burden of meeting the DOE reporting requirements threatens the firm’s continued viability;<sup>10</sup> the firm’s only employee capable of preparing the report is ill and the firm cannot afford to hire outside help;<sup>11</sup> extreme or unusual circumstances disrupt a firm’s activities;<sup>12</sup> or, a combination of factors resulting from unavoidable circumstances makes completing the form impracticable.<sup>13</sup>

---

<sup>4</sup> Firms that account for over five percent of the sales of any particular product in a state or do business in four or more states, designated as certainty firms, are always included in the sample of firms required to file the form. A random sample of other firms is also selected. This random sample changes approximately every 24 to 30 months, but a firm may be reselected for subsequent samples. A firm that has been included in three consecutive random samples will generally not be included in a fourth consecutive sample, but may be included in a later sample.

<sup>5</sup> Form EIA-782B requires that the firm make a good faith effort to provide reasonably accurate information that is consistent with the accounting records maintained by the firm. The firm must alert the EIA if the estimates are later found to be materially different from actual data.

<sup>6</sup> 42 U.S.C. § 7194; 10 C.F.R. § 1003.25(b) (2).

<sup>7</sup> *Glenn Wagoner Oil Co.*, 16 DOE ¶ 81,024 (1987).

<sup>8</sup> *Mulgrew Oil Co.*, 20 DOE ¶ 81,009 (1990).

<sup>9</sup> *Id.*

<sup>10</sup> *Mico Oil Co.*, 23 DOE ¶ 81,105 (1994) (firm lost one million dollars over previous three years); *Deaton Oil Co.*, 16 DOE 81,206 (1987) (firm in bankruptcy).

<sup>11</sup> *S&S Oil & Propane Co.*, 21 DOE ¶ 81,006 (1991) (owner being treated for cancer); *Midstream Fuel Serv.*, 24 DOE 81,203 (1994) (three month extension of time to file reports granted when two office employees simultaneously on maternity leave); *Eastern Petroleum Corp.*, 14 DOE ¶ 81,011 (1986) (two month extension granted when computer operator broke wrist).

<sup>12</sup> *Little River Village Campground, Inc.*, 24 DOE ¶ 81,033 (1994) (five months relief because of flood); *Utilities Bd. of Citronelle-Gas*, 4 DOE ¶ 81,025 (1979) (hurricane); *Meier Oil Serv.* 14 DOE ¶ 81,004 (1986) (three month extension granted where disruptions caused by installation of new computer system left the firm’s records inaccessible).

<sup>13</sup> *Ward Oil Co.*, 24 DOE ¶ 81,002 (1994) (ten month extension granted where long illness and death of a partner resulted in personnel shortages, financial difficulties and other administrative problems).

### III. The Application for Exception

Cole is a seller of petroleum products based in Shelby, Ohio. Cole is a “noncertainty” firm and has filed form EIA-782B since November 2009. *See* Electronic Mail Message from Maureen Klein, EIA, to Valerie Vance Adeyeye, OHA (January 14, 2011). In its application, Cole requests that it be relieved of the obligation to file Form EIA-782B. *See* Letter from Rodney Cole, Cole Distributing, to OHA (December 13, 2010) (Application for Exception). Cole maintains that the company has submitted surveys for the 12 months prior to December 2010 and requests relief from completing the survey.

Based upon a review of the Application, we concluded that there was not sufficient information to permit us to act favorably on the request. Therefore, we contacted Cole to give the company an opportunity to discuss its request for relief. *See* Memorandum of Telephone Conversation between Rodney Cole, Cole Distributing, Inc., and Valerie Vance Adeyeye, OHA, (January 14, 2011). According to Cole, the company has recently lost two key employees from its five-person full time office staff. One full-time employee retired, and one part-time employee only works six hours per week. The owner is in the field all day, and cannot devote time to completing this report. Further, under current business conditions, he cannot afford to replace the employee who has retired. *Id.* Therefore, Cole requests that it be permanently relieved of the obligation to file form EIA-782B.

### IV. Analysis

Upon careful examination of Cole’s Application for Exception, we have determined that exception relief is not warranted. Every reporting firm is burdened to a certain extent by the reporting requirement. Exception relief is appropriate where the reporting requirement adversely affects the applicant firm to a significantly greater degree than it affects other firms. *See* 42 U.S.C. § 7194; 10 C.F.R. §1003.25(b) (2). *See also B & B Marine, Inc.*, OHA Case No. TEE-0072 (November 15, 2010).

Cole has recently experienced a reduction in its full-time clerical staff that cannot be remedied under current business conditions. While we can appreciate that Cole has a limited staff and heavy workload, the reliability of the reporting sample would be compromised if we were to grant an exception to all firms experiencing heavy workloads or other issues associated with maintaining a business. *See Monroe Oil Co.*, Case No. TEE-0071 (June 11, 2010). Cole has not established that it is experiencing the level of distress that has justified our previous grants of exception relief, such as extreme personnel shortages, bankruptcy, or natural disaster. Accordingly, we find that exception relief is not warranted in this case and, therefore, the Application for Exception should be denied.

It Is Therefore Ordered That:

- (1) The Application for Exception filed by Cole Distributing, Inc., OHA Case No. TEE-0073, be, and hereby is, denied.



- (2) Administrative review of this Decision and Order may be sought by any persons aggrieved or adversely affected by the denial of exception relief. Such review shall be commenced by filing a petition for review with the Federal Energy Regulatory Commission within 30 days of the date of this Decision and Order pursuant to 18 C.F.R. Part 385, Subpart J.

Poli A. Marmolejos  
Director  
Office of Hearings and Appeals

Date: February 14, 2011

March 1, 2011

DECISION AND ORDER  
OF THE DEPARTMENT OF ENERGY

*Application for Exception*

Name of Petitioner: GE Appliances & Lighting

Date of Filing: February 4, 2011

Case Number: TEE-0074

This Decision and Order considers an Application for Exception filed by GE Appliances & Lighting (GE) seeking exception relief from the provision of 10 C.F.R. Part 430, Energy Conservation Program for Consumer Products: Energy Conservation Standards for Refrigerators, Refrigerator-Freezers and Freezers (Refrigerator Efficiency Standards). In its exception request, GE asserts that the firm would suffer a gross inequity if required to adhere to the Refrigerator Efficiency Standards codified at 10 C.F.R. § 430.32. If GE's Application for Exception were granted, GE would receive exception relief from the energy efficiency standard applicable to a new automatic defrost refrigerator-freezer, with bottom-mounted freezer and through-the-door ice service. GE proposes to manufacture and market this appliance. As set forth in this Decision and Order, we have concluded that GE's Application for Exception should be granted.

*I. Background*

**A. Refrigerator Efficiency Standards**

The Refrigerator Efficiency Standards, 10 C.F.R. Part 430, were published as a final rule by the Department of Energy (DOE) on April 28, 1997, 62 Fed. Reg. 23102, pursuant to Part B of Title III of the Energy Policy and Conservation Act, as amended, 42 U.S.C. §§ 6291-6309 (EPCA). The EPCA directed DOE to review and revise energy conservation standards for major appliances, including refrigerator-freezer products, promulgated by the agency in 1989, 54 Fed. Reg. 47916 (November 17, 1989). EPCA, § 325(b)(3)(B), 42 U.S.C. § 6295(b)(3)(B). Appliance manufacturers may not introduce into commerce any covered product that is not in compliance with the applicable energy efficiency standards established under the EPCA. 42 U.S.C. § 6302(a)(5). The Refrigerator Efficiency Standards were designed to reduce energy use in classes of refrigerator products by up to 30 percent below the prior standards, and thereby reduce consumer costs as well as emissions of air

pollutants associated with electricity production.<sup>1/</sup> The Refrigerator Efficiency Standards became effective July 1, 2001.

## **B. Application for Exception**

GE, an operating division of General Electric Co., is a leading manufacturer and marketer of refrigeration products, including refrigerator-freezers. GE has immediate plans to introduce automatic defrost refrigerator-freezers, with bottom-mounted freezer and through-the-door ice service.

In its Application for Exception, GE asserts that by requiring the firm to comply with existing efficiency standards GE would “suffer serious hardship, inequity and an unfair distribution of burdens should its [Application] not be granted, as its competitive position with other similar products would be impaired, and it will be unable to compete on a level playing field with other manufacturers in regard to these products.” GE Application at 4. GE also asserts that the automatic defrost refrigerator-freezers, with bottom-mounted freezer and through-the-door ice service is specifically covered by DOE’s September 27, 2010 Notice of Proposed Rulemaking for Refrigerators, Refrigerator-Freezers, and Freezers (Proposed Rule),<sup>2/</sup> which should be issued in final in the near term. *Id.* at 2. Further, GE argues that the product class of the automatic defrost refrigerator-freezers, with bottom-mounted freezer and through-the-door ice service is not new to the industry. *Id.* In similar requests for exception relief for similar products from Maytag, LG, and Samsung, OHA acknowledged that the “product’s design possessed inherent characteristics that would not allow its energy consumption to be suitably defined by the requirements for bottom-mount freezers without through-the-door ice service.” *Id.* at 3. Finally, GE argues that the formula used in granting the previous exception relief applications from other manufacturers, as well as the Proposed Rule, should be used in this Application as well. *Id.*

In support of its claim, GE cites our decisions in three similar cases. *Samsung Electronics America*, Case No. TEE-0047, (2007); *LG Electronics, Inc.*, Case No. TEE-0025 (2005); *Maytag*

---

<sup>1/</sup>For each of eighteen classes of refrigerator products, the Refrigerator Efficiency Standards established energy efficiency equations which limit energy usage. These equations are expressed in kilowatt-hours per year (kWh/yr). For example, the consumption equation for the product Class 4, “Refrigerator-Freezers – automatic defrost with side-mounted freezer without through-the-door ice service,” is a maximum of “4.91AV+507.5,” where AV is the “total adjusted volume” of the particular unit expressed in cubic feet.

<sup>2/</sup>Energy Conservation Program: Energy Conservation Standards for Residential Refrigerators, Refrigerator-Freezers, and Freezers; Proposed Rule, 75 Fed. Reg. 59470 (proposed September 27, 2010) (to be codified at 10 C.F.R. Part 430.32).

*Corp.*, TEE-0022 (2005).<sup>3/</sup> In these three cases, the applicants also filed for exception relief from the Refrigerator Efficiency Standards for automatic defrost refrigerator-freezers, with bottom-mounted freezer and through-the-door ice service. GE requests that we grant it the same exception relief as we granted to Maytag, LG, and Samsung for its comparable product. GE Application at 4. This Office received no comments in response to GE's Application.

### C. Standard for Exception Relief

In promulgating the final rule of the Part 430 regulations, DOE stated as follows with regard to Applications for Exception relief:

Section 504 of the [DOE] Organization Act authorizes DOE to make adjustments of any rule or order issued under the [EPCA], consistent with the other purposes of the Act, if necessary to prevent special hardship, inequity, or unfair distribution of burdens. 42 U.S.C. § 7194(a).

....

In exercising its authority under section 504, DOE may grant an exception from an efficiency standard for a limited time, and may place other conditions on the grant of an exception.

... DOE will require an application for exception to provide specific facts and information relevant to the claim that compliance would cause special hardship, inequity or an unfair distribution of burdens.

62 Fed. Reg. at 23108-09. Prior decisions of this Office and the Federal courts clearly place the burden upon the applicant to establish the basis for its claim for exception relief from DOE regulatory provisions. *See, e.g., Exxon Corp. v. Dep't of Energy*, 802 F.2d 1400, 1407-08 (Temp. Emer. Ct. App. 1986) ("great deference" accorded to agency in applying standards for exception relief); *City of Long Beach v. Dep't of Energy*, 754 F.2d 379, 386 (Temp. Emer. Ct. App. 1985); *Diversified Refrigeration, Inc.*, Case No. VEE-0079 (2001); *Amana Appliances*, Case No. VEE-0054 (1999); *Whirlpool Corp.*, 14 DOE ¶ 81,023 (1986); *White Consolidated, Inc.*, 13 DOE ¶ 81,045 (1985).

## II. Analysis

We have carefully reviewed GE's Application for Exception and determined that exception relief should be approved. As with the product in *Maytag*, *LG*, and *Samsung*, we find that GE's model - automatic defrost refrigerator-freezers, with bottom-mounted freezer and

---

<sup>3/</sup>OHA decisions issued after November 19, 1996, may be accessed at <http://www.oha.doe.gov/eecases.asp>.

through-the-door ice service – will be unable to meet the Class 5 energy efficiency standard established for “Refrigerator-Freezers – automatic defrost with bottom-mounted freezer without through-the-door ice service” due to the energy loss inherent in adding the through-the-door ice service feature. Consequently, if exception relief were denied, GE would be effectively precluded from marketing its product by the generally applicable energy efficiency standard, an unintended consequence of the existing regulations. In establishing the Refrigerator Efficiency Standards, the DOE did not intend to stifle innovation and the development and introduction into the marketplace of new technology. Also, as GE stated in its Application, the firm would lose a significant portion of its return on its investment in designing this product and would “remove GE’s ability to compete on a level playing field with other manufacturers for the same product configuration.” GE Application at 4. Furthermore, if exception relief were denied, consumers would unfairly be deprived of the opportunity to choose among many different brands for the desired model.

The present case is indistinguishable from the *Maytag* decision. In that case and in the *LG* and *Samsung* cases, we determined that the DOE would have established a separate product class for automatic defrost refrigerator-freezers, with bottom-mounted freezer and through-the-door ice service, had those products existed in the marketplace at the time of the promulgation of the Refrigerator Efficiency Standards. “The through-the-door ice service feature is clearly distinguished by the agency in establishing separate classes of product in other models, e.g. the ‘top-mounted freezer’ and ‘side-mounted freezer’ variations of automatic defrost refrigerator-freezers.” *Maytag* at 5-6. (internal citation omitted). The facts surrounding GE’s Application for Exception are virtually identical to those in *Maytag*, *LG*, and *Samsung*. Further, the Proposed Rule recognizes that automatic defrost refrigerator-freezers, with bottom-mounted freezer and through-the-door ice service is a separate product class. Therefore, we have determined that GE is entitled to the same exception relief we granted in those decision.

Accordingly, GE will be granted exception relief establishing the energy standard equation for maximum energy use (kWh/yr) for GE’s automatic defrost refrigerator-freezers, with bottom-mounted freezer and through-the-door ice service, of  $5.0AV+539.0$ .<sup>4/</sup> GE must label

---

<sup>4/</sup>The Refrigerator Efficiency Standards establish a maximum energy consumption of  $9.80AV+276.0$  for automatic defrost refrigerator-freezers “with top-mounted freezer without through-the-door ice service” (Class 3) and a maximum energy consumption of  $10.20AV+356.0$  for automatic defrost refrigerator-freezers “with top-mounted freezer with through-the-door ice service” (Class 6). Thus, the additional energy consumption allowed to account for through-the-door ice service is  $0.40AV+80.0$  ( $10.20AV+356.0$  minus  $9.80AV+276.0$ ). On this basis, we have determined that an appropriate standard for maximum energy use for automatic defrost refrigerator freezers with bottom-mounted freezers with through-the-door ice service can be  
(continued...)

its product in accordance with regulations of the Federal Trade Commission, 16 C.F.R. Part 305, and state the expected energy consumption based upon appropriate testing under DOE test protocol. *See* 10 C.F.R. § 430.23(b). The exception relief granted in this Decision will remain in effect until the DOE promulgates the final version of the Proposed Rule regarding the automatic defrost refrigerator-freezers, with bottom-mounted freezer and through-the-door ice service.

It Is Therefore Ordered That:

(1) The Application for Exception filed by GE Appliances and Lighting on February 4, 2011, is hereby granted as set forth in paragraphs (2) and (3) below.

(2) Notwithstanding the requirements of 10 C.F.R. Part 430.32(a), the energy standard equation for maximum energy use (kWh/yr) is established as  $5.0AV+539.0$  for the “automatic defrost refrigerator freezer, with bottom-mounted freezer with through-the-door ice service,” produced and marketed by GE Appliances and Lighting as described in this Decision. The exception relief granted in this Decision will remain in effect until such time as the DOE promulgates an energy efficiency standard for “Refrigerator-Freezers – automatic defrost with bottom-mounted freezer with through-the-door ice service.”

(3) In marketing the refrigerator-freezer described in this Decision, GE Appliances and Lighting shall label its product in accordance with regulations of the Federal Trade Commission, 16 C.F.R. Part 305, and state the expected energy consumption based upon appropriate testing under DOE test protocol. *See* 10 C.F.R. § 430.23(b).

(4) Any person aggrieved by the approval of exception relief in this Decision and Order may file an appeal with the Office of Hearings and Appeals in accordance with 10 C.F.R. Part 1003, Subpart C.

Poli A. Marmolejos  
Director  
Office of Hearings and Appeals

Date: March 1, 2011

---

<sup>4/</sup>(...continued)  
established by adding this increment ( $0.40AV+80.0$ ) to the energy efficiency equation,  $4.60AV+459.0$ , established for “Refrigerator-Freezers – automatic defrost with bottom-mounted freezer without through-the-door ice service” (Class 5). The combination of these values yields an energy consumption standard of  $5.0AV+539.0$ .

April 27, 2011

DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

**Application for Exception**

Name of Case: Brodeur's Oil Service, Inc.

Date of Filing: February 18, 2011

Case No.: TEE-0076

On February 18, 2011, Brodeur's Oil Service, Inc. (Brodeur's) filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). The firm requests temporary relief from its requirement to prepare and file the Energy Information Administration (EIA) Form EIA-782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report." As explained below, we have determined that the firm's request should be denied.<sup>1</sup>

***I. Background***

The DOE's EIA is authorized to collect, analyze, and disseminate energy data and other information.<sup>2</sup> The EIA-782B reporting requirement grew out of the shortages of crude oil and petroleum products during the 1970s. In 1979, Congress determined that the lack of reliable information concerning the supply, demand and prices of petroleum products impeded the nation's ability to respond to the oil crisis. It therefore authorized the DOE to collect data on the supply and prices of petroleum products. This information is used to analyze trends within petroleum markets. Summaries of the information and the analyses are reported by EIA in publications such as "Petroleum Marketing Monthly." This information is used by Congress and state governments to project trends and to formulate national and state energy policies. Access to this data is vital to the nation's ability to anticipate and respond to potential energy shortages.<sup>3</sup>

Form EIA-782B is a monthly report, pursuant to which resellers and retailers report the volume and price of sales of motor gasoline, No. 2 distillates, propane, and residual fuel oil. In order to minimize the reporting burden, the EIA periodically selects a relatively small sample of companies to file Form EIA-782B<sup>4</sup> and permits reporting firms to rely on reasonable estimates.<sup>5</sup>

---

<sup>1</sup> OHA Exception Decisions issued since July 5, 1995, are available on the OHA website located at <http://www.oha.doe.gov>. The text of a cited decision may be accessed by entering the case number of the decision in the search engine located at <http://www.oha.doe.gov/search.htm>.

<sup>2</sup> 15 U.S.C. § 772(a); 42 U.S.C. § 7135(a)-(m).

<sup>3</sup> See H.R. REP. NO. 373, 96-373, at 15, 17 (1979).

<sup>4</sup> Firms that account for over five percent of the sales of any particular product in a state or do business in four or more states, designated as "certainty firms," are always included in the sample of firms required to file the form. A random sample of other firms is also selected. This random sample changes approximately every 24 to 30 months,

## II. Exception Criteria

OHA has the authority to grant exception relief where the reporting requirement causes a “serious hardship, inequity or unfair distribution of burdens.”<sup>6</sup> Since all reporting firms are burdened by reporting requirements, exception relief is appropriate only where a firm can demonstrate that it is adversely affected by the reporting requirement in a way that differs significantly from similar reporting firms.

When considering a request for exception relief, OHA must weigh the firm’s difficulty in complying with the reporting requirement against the nation’s need for reliable energy data. Thus, mere inconvenience does not constitute a hardship warranting relief.<sup>7</sup> Similarly, the fact that a firm has filed reports for a number of years does not constitute a hardship warranting relief.<sup>8</sup> If firms of all sizes, both large and small, are not included in the survey, the reporting sample’s estimates and projections will be unreliable.<sup>9</sup>

OHA has granted relief from the reporting requirement under various circumstances. For example, we have granted relief where the firm’s financial situation is so precarious that the additional burden of meeting the DOE reporting requirements threatens the firm’s continued viability;<sup>10</sup> the firm’s only employee capable of preparing the report is ill and the firm cannot afford to hire outside help;<sup>11</sup> extreme or unusual circumstances disrupt a firm’s activities;<sup>12</sup> or, a combination of factors resulting from unavoidable circumstances makes completing the form impracticable.<sup>13</sup>

---

but a firm may be re-selected for subsequent samples. A firm that has been included in three consecutive random samples will generally not be included in a fourth consecutive sample, but may be included in a later sample.

<sup>5</sup> Form EIA-782B requires that the firm make a good faith effort to provide reasonably accurate information that is consistent with the accounting records maintained by the firm. The firm must alert the EIA if the estimates are later found to be materially different from actual data.

<sup>6</sup> 42 U.S.C. § 7194 (a); 10 C.F.R. § 1003.25(b)(2).

<sup>7</sup> *Glenn Wagoner Oil Co.*, 16 DOE ¶ 81,024 (1987).

<sup>8</sup> *Rice Oil Co., Inc.*, Case No. VEE-0035 (1997) (stating, “We have consistently ruled that the length of time that a firm has been required to file an EIA form does not alone constitute grounds for exception relief”).

<sup>9</sup> *Mulgrew Oil Co.*, 20 DOE ¶ 81,009 (1990).

<sup>10</sup> *Mico Oil Co.*, 23 DOE ¶ 81,105 (1994) (granting exception relief where a firm lost one million dollars over the previous three years); *Deaton Oil Co.*, 16 DOE ¶ 81,206 (1987) (granting exception relief where a firm filed bankruptcy).

<sup>11</sup> *BarMac, Inc. d/b/a Highway Express and Highway Express 2*, Case No. TEE-0051 (2007) (granting one year exception relief where the sole employee responsible for the firm’s filings suffered from a severe medical condition); *Midstream Fuel Serv.*, 24 DOE ¶ 81,203 (1994) (granting three months exception relief when two office employees were simultaneously on maternity leave); *Eastern Petroleum Corp.*, 14 DOE ¶ 81,011 (1986) (granting two months exception relief where the firm’s computer operator broke a wrist).

<sup>12</sup> *Little River Village Campground, Inc.*, 24 DOE ¶ 81,033 (1994) (granting five months exception relief where a firm’s office flooded); *Utilities Bd. of Citronelle-Gas*, 4 DOE ¶ 81,025 (1979) (granting exception relief where a hurricane heavily damaged a firm’s office); *Meier Oil Serv.*, 14 DOE ¶ 81,004 (1986) (granting three months exception relief where disruptions caused by installation of new computer system left the firm’s records inaccessible).

<sup>13</sup> *Ward Oil Co.*, 24 DOE ¶ 81,002 (1994) (granting ten months exception relief where long illness and death of a partner resulted in personnel shortages, financial difficulties and other administrative problems).



### *III. Brodeur's Oil Service, Inc.'s Application for Exception*

Brodeur's filed its Application for Exception on February 18, 2011.<sup>14</sup> After reviewing the Application, we determined that we had insufficient information to evaluate the request, so we contacted Brodeur's to gather more information.<sup>15</sup>

Brodeur's is a small heating oil vendor based in Moosup, Connecticut.<sup>16</sup> The firm is currently participating in its first reporting sample, which began in February 2010.<sup>17</sup> Brodeur's requests temporary relief from the EIA reporting requirement on the grounds that completing the monthly reporting form is burdensome.<sup>18</sup>

In its Application, Brodeur's made several arguments to support its request for exception relief. Brodeur's argues that completing the form is a "time-consuming" responsibility.<sup>19</sup> Brodeur's explained that it is a small company with limited office staff, and it takes one person a "couple of hours" to complete the survey.<sup>20</sup> Brodeur's further believes that the firm is entitled to exception relief because it has reported for "several" years.<sup>21</sup> Brodeur's maintains that completing the form has become an "onerous responsibility" and believes that it is "somewhat of a discrimination" that some of its competitors have not been charged with this task.<sup>22</sup>

### *IV. Analysis*

Exception relief is appropriate where a reporting requirement poses a serious hardship, inequity, or unfair distribution of burdens. Thus, relief is appropriate where the reporting requirement adversely affects the firm to a significantly greater degree than it affects other firms.

None of the arguments advanced by Brodeur's in support of its exception request are availing. Indeed, we have routinely denied exception applications in precisely these circumstances.<sup>23</sup>

Regarding Brodeur's argument that completing the form is time-consuming, we have previously held that the Form EIA-782B reporting requirement is not particularly burdensome.<sup>24</sup> It requires

---

<sup>14</sup> Letter from Brodeur's Oil Service, Inc. to OHA, received February 18, 2011 (Application for Exception).

<sup>15</sup> See Memorandum of Telephone Conversation between Steven P. Lombardi, President and Owner, Brodeur's Oil Service, Inc., and Avery R. Webster, Attorney-Examiner, OHA, dated March 2, 2011 (Lombardi Telephone Memo).

<sup>16</sup> *Id.*

<sup>17</sup> See Memorandum of Telephone Conversation between Tammy G. Heppner, Survey Statistician, EIA, and Avery R. Webster, Attorney-Examiner, OHA, dated February 28, 2011 (Heppner Telephone Memo).

<sup>18</sup> See Application for Exception.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*; See also Lombardi Telephone Memo.

<sup>21</sup> See Application for Exception.

<sup>22</sup> *Id.*

<sup>23</sup> See *Cole Distributing, Inc.*, Case No. TEE-0073 (2011) (denying exception relief where firm experienced heavy workload due to reduction in office staff); *Monroe Oil Co.*, Case No. TEE-0071 (2010) (denying exception relief where firm had limited staff and a heavy workload); see also *The Kiesel Co.*, Case No. TEE-0033 (2006) (denying a firm exception relief where it had only one employee, reporting took between one and two days to complete, and reporting interfered with their business).

<sup>24</sup> See *American Energy*, Case No. TEE-0053 (2008); *Ullman Oil Company*, Case No. TEE-0052 (2008); *Mark's Appliance & Heating*, Case No. TEE-0048 (2007).

little more than the essential pricing, supply, and inventory data required in operating a business. The EIA estimates that it should normally take a firm approximately two and one half hours per month to complete the form.<sup>25</sup> We note that according to its own estimate, Brodeur's spends a "couple of hours" per month completing the form, which is on target with the EIA estimate.<sup>26</sup> Furthermore, Brodeur's may reduce its reporting burden by employing reasonable estimates.<sup>27</sup>

In addition, Brodeur's argument that it has filed the form for several years does not warrant relief. We have consistently held that the length of time a firm has been required to file an EIA form does not justify relief.<sup>28</sup> Furthermore, EIA informed us that Brodeur's is participating in its first reporting cycle, which began a little over one year ago. In sum, Brodeur's has not demonstrated that the reporting requirement poses a burden significantly greater than that experienced by other firms.

Based on the foregoing, we find that Brodeur's has not demonstrated that the requirement to file Form EIA-782B is burdensome in a manner that distinguishes it from other similarly affected firms. Accordingly, Brodeur's application for exception should be denied.

It is Therefore Ordered That:

- (1) The Application for Exception filed by Brodeur's Oil Service, Inc., Case No. TEE-0076, be and hereby is denied.
- (2) Administrative review of this Decision and Order may be sought by any persons aggrieved or adversely affected by the denial of exception relief. Such review shall be commenced by filing a petition for review with the Federal Energy Regulatory Commission within 30 days of the date of this Decision and Order pursuant to 18 C.F.R. Part 385, Subpart J.

Poli A. Marmolejos  
Director  
Office of Hearings and Appeals

Date: April 27, 2011

---

<sup>25</sup> Section 10 of the General Instructions to Form EIA-782B.

<sup>26</sup> See Lombardi Telephone Memo.

<sup>27</sup> See Section 7 of the General Instructions to Form EIA-782B.

<sup>28</sup> *Emerson Oil Co.*, Case No. TEE-0043 (2007).



**Department of Energy**  
Washington, DC 20585

The original of this document contains information which is arguably confidential under 18 U.S.C 1905. Such material has been deleted from this copy and replaced with XXXXX's.

AUG 11 2011

DECISION AND ORDER  
OF THE DEPARTMENT OF ENERGY

Application for Exception

Name of Petitioner: GE Appliances & Lighting  
Date of Filing: March 2, 2011  
Case Number: TEE-0077

This Decision and Order considers an Application for Exception filed by GE Appliances & Lighting (GE) seeking exception relief from, or, in the alternative, the establishment of a new product class under, the provisions of 10 C.F.R. Part 430, specifically those related to Energy Conservation Program: Energy Conservation Standards and Test Procedures for General Service Fluorescent Lamps and Incandescent Reflector Lamps (Lighting Efficiency Standards). In its exception request, GE asserts that the firm will face a special and serious hardship, gross inequity, and an unfair distribution of burdens if required to adhere to the Lighting Efficiency Standards codified at 10 C.F.R. § 430.32. If GE's Application for Exception were granted, GE would receive exception relief from the energy conservation standards applicable to general service fluorescent lamps, which become effective on July 14, 2012, for a "modified-spectrum linear fluorescent lamp" which GE introduced to the market in June 2010. As set forth in this Decision and Order, we have concluded that GE's Application for Exception should be denied.

**I. Background**

**A. Lighting Efficiency Standards**

The Lighting Efficiency Standards, located within 10 C.F.R. Part 430, were published as a final rule by the Department of Energy (DOE) on July 14, 2009, 74 Fed. Reg. 34080 (2009 Final Rule), pursuant to Part A of Title III of the Energy Policy and Conservation Act, as amended, 42 U.S.C. §§ 6291-6309 (EPCA). EPCA sets forth the Energy Conservation Program for Consumer Products Other Than Automobiles and covers consumer products and certain commercial products, including General Service Fluorescent Lamps (GSFLs).

EPCA provides for minimum standards for energy efficiency for, *inter alia*, GSFLs and Incandescent Reflector Lamps (IRLs) and directs DOE to conduct two cycles of rulemakings to



determine whether to amend these standards. 42 U.S.C. § 6295(i). DOE concluded the first cycle of rulemaking with the issuance of the 2009 Final Rule on July 14, 2009. 74 Fed. Reg. 34080. EPCA provides that any new or amended energy conservation standard that DOE prescribes be designed to “achieve the maximum improvement in energy efficiency ... which the Secretary determines is technologically feasible and economically justified.” 42 U.S.C. § 6295(o)(2)(A).

The product for which GE seeks exception relief is a 4-foot medium bipin GSFL. The current Lighting Efficiency Standards require this product to have a minimum average lamp efficiency of 75 lumens-per-watt (lm/W). However, under the revised Lighting Efficiency Standards effective as of July 14, 2012, such a 4-foot medium bipin GSFL will need to satisfy a minimum energy conservation standard of 89 lm/W for correlated color temperature less than or equal to 4500, or 88 lm/W for correlated color temperature greater than 4500 and less than or equal to 7000. *See* 74 Fed. Reg. at 34082.

## **B. Standards for Exception Relief**

Section 504 of the DOE Organization Act authorizes DOE to make adjustments to any rule, regulation or order issued under EPCA, consistent with the purposes of the Act, as may be necessary to prevent special hardship, inequity, or unfair distribution of burdens. 42 U.S.C. § 7194(a). *See also* 74 Fed. Reg. at 34099. This authority has been delegated by the Secretary to the DOE Office of Hearings and Appeals (OHA). *See* 10 C.F.R. Part 100, Subpart B.

## **C. Application for Exception**

GE Appliances & Lighting, an operating division of General Electric Co., is a leading manufacturer and marketer of lighting products, including GSFLs.

During the rulemaking which resulted in the 2009 Final Rule, GE commented that it was researching and developing a 4-foot medium bipin GSFL that imitates the color quality of a modified-spectrum incandescent lamp using a different technological approach. Expecting that these lamps would not be able to meet the minimum efficiency requirements as amended by the rulemaking, GE recommended that DOE either set separate efficiency standards for “modified-spectrum fluorescent lamps” at 67 lm/W (*i.e.*, below the standards set forth in EPCA) or exempt such lamps from the Lighting Efficiency Standards. DOE did not accept either recommendation.

In June 2010, subsequent to the issuance of 2009 Final Rule, GE introduced into the market a GSFL which it describes as a “modified-spectrum linear fluorescent lamp” (the GE MSLFL). This product is marketed under the brand name Reveal, and is sold by XXXXXX major retailers. The GE MSLFL is able to achieve a 75 lm/W level, thereby meeting the current energy efficiency standard but falling significantly below the 89 lm/W standard which becomes effective for such GSFLs on July 14, 2012.

In its Application, GE seeks an exception from the Lighting Efficiency Standards for the GE MSLFL or, in the alternative, the establishment of a distinct product class for modified-spectrum

GSFLs. GE argues that, absent such relief: (1) a distinct consumer utility provided by the GE MSLFL will be eliminated from the market, and (2) GE will face special hardship, inequity, and an unfair distribution of burdens.

GE asserts that modifying the light spectrum of a GSFL to reduce the yellow portion of the spectrum, where the red and green eye receptors cross, results in better color discrimination but lower lumens. Such modification results in great improvement of color vision tasks, better comfort sensation and, for those with red-green color deficiency, improvement of their color vision, according to a study commissioned by GE. GE states that DOE recognized the unique consumer utility of modified-spectrum lamps by the establishment in the 2009 Final Rule of a separate product class for Modified Spectrum Incandescent Reflector Lamps.

Unlike modified-spectrum incandescent lamps that use subtractive measures to filter out unwanted wavelengths, the GE MSLFLs directly emit light only at wavelengths needed to achieve the desired color differentiation. According to GE, the physical consequence of this technology is a decrease in lumens due to a portion of the emitted light moving from a more eye-sensitive color region to color regions with lower photopic sensitivity (with lowered measured lumens) to achieve the visual effect. This decrease in lumens reduces the measured lm/W by approximately 20%.

GE states that it has invested XXXXXXXXXXXXXXXXXXXX in the development of the GE MSLFL and will be required to remove the product from the market in less than two years if DOE does not grant the relief requested by its Application. The nature of “modified-spectrum linear fluorescent lamps,” according to GE, precludes such products from meeting the relevant DOE efficiency standards effective July 14, 2012.

GE argues that approval of exception relief will not negatively impact energy savings. Even though GE MSLFLs produce fewer lumens, GE states that, because the lamps are perceived as just as bright as a standard fluorescent lamp of the same wattage, they do not involve the use of additional energy. GE argues in its Application that to penalize modified-spectrum GSFL products without a corresponding benefit to national energy savings creates an inequity for these products and their potential manufacturers.

Finally, GE argues that in the absence of exception relief for the GE MSLFL, a separate product class should be created for “modified-spectrum fluorescent lamps”: (1) such a product class is appropriate as the 2009 Final Rule recognized the value and distinction of modified-spectrum lamps in the context of incandescent lamps, and (2) such products could be labeled and marketed for “residential use only” and sold in packages of only two bulbs in order to reduce the market size and associated efficiency impact of such products.

#### **D. Comments**

We received five sets of comments on GE’s Application, all in opposition to the approval of exception relief, from the following organizations: (1) Northwest Energy Efficiency Alliance, transmitted March 31, 2011 (NWEAA Comments); (2) Osram Sylvania Inc. (OSI), dated April 1,

2011 (OSI Comments); (3) Appliance Standards Awareness Project, American Council for an Energy-Efficient Economy and Natural Resources Defense Council, dated April 1, 2011, with supplemental comments by the American Council for an Energy-Efficient Economy, dated June 24, 2011 (collectively, ASAP/ACEEE/NRDC Comments); (4) Earthjustice, dated April 1, 2011 (Earthjustice Comments); and (5) Pacific Gas and Electric Company, Southern California Gas Company, San Diego Gas and Electric, and Southern California Edison (collectively, the California Investor Owned Utilities or CA IOUs), dated April 8, 2011 (CA IOU Comments).

The primary concerns raised by those commenting on GE's Application are as follows:

(1) Failure to Meet Requirements for Exception: It was noted that OHA's authority to grant exception relief is limited to situations that are consistent with the purposes of EPCA and are necessary to prevent special hardship, inequity, or unfair distribution of burdens and that OHA precedent has established that the burden is on a petitioner to establish the requisite conditions for an exception. Exception relief is inappropriate when sales of the subject product account for an insignificant share of the applicant's annual revenues. GE's Application failed to provide the requisite economic data (e.g., sales and market share information) that would support a finding that the removal of GE MSLFLs would result in special hardship, inequity, or unfair distribution of burdens. Any loss of investment in developing the GE MSLFL would not qualify as a serious hardship for a company with GE's resources. GE cites no gross inequities if it is precluded from marketing the GE MSLFL or competitive disadvantage from the application of the Lighting Efficiency Standards to the GE MSLFL.

Further, GE's Application did not demonstrate that its product could not be designed (or redesigned) to meet the Lighting Efficiency Standards effective July 14, 2012, while still maintaining the lighting output that GE believes is unique to the GE MSLFL. OSI, also a manufacturer of GSFLs, commented that the GE MSLFL design is "not the only means by which fluorescent lamps can achieve modified-spectrum properties satisfying consumer preferences for different color effects." OSI Comments at 2. Incandescent lamps produce light through the heating of filaments and can achieve modified-spectral qualities only through additions to the bulb that filter out yellow light. In contrast, fluorescent lamps produce light when mercury in the bulb emits ultraviolet radiation which strikes the phosphors in the bulb, and the spectral qualities of a fluorescent lamp is a product of the mixture of phosphors contained in the bulb. By enhancing red light (rather than reducing yellow light as the GE MSLFL), OSI states that it has "developed and marketed a modified-spectrum lamp that satisfies [the Lighting Efficiency Standards]...while providing comparable consumer utility to [the GE MSLFL]..." OSI Comments at 3. Nothing inherent in the designing of GSFLs precludes providing consumer utility while meeting the Lighting Efficiency Standards.

(See Earthjustice Comments, OSI Comments, and CA IOU Comments.)

(2) Discretionary Business Decision: It was noted that the GE MSLFL was not being produced or marketed at the time of the issuance of the 2009 Final Rule. With full knowledge that the product that it was developing did not meet the Lighting Efficiency Standards, GE made a discretionary business decision to continue the development of the product and introduced the

GE MSLFL approximately 11 months after the issuance of the 2009 Final Rule. OHA exception relief is available to eliminate the impact of DOE regulations as opposed to a burden attributable to a discretionary business decision of a petitioner.

(See Earthjustice Comments and OSI Comments.)

(3) Exception Relief or Establishment of a Separate Product Class is Impermissible, Violates the “Anti-Backsliding” Provision and Creates a Loophole: The concern was expressed that, whether through the granting of the exception requested or the establishment of a separate product class, OHA would violate the mandate of EPCA and the regulatory intent of the 2009 Final Rule. It was argued that EPCA prohibits DOE from amending a standard in such a way as to decrease the minimum energy efficiency of a product and granting of GE’s Application would violate such “anti-backsliding” prohibitions of EPCA. Further, granting the Application would create a loophole through which any manufacturer could produce similar products without compliance with the Lighting Efficiency Standards and such products, through lower pricing or otherwise, could displace the market for those GSFLs which were in compliance with the Lighting Efficiency Standards. As a result of such a loophole, the energy efficiencies anticipated by the adoption of the 2009 Final Rule would be dissipated.

Others commenting on GE’s request for the establishment of a separate product class raised objections to GE’s proposed definition of “modified-spectrum linear fluorescent lamps” as anti-competitive – GE’s definition would codify the definition of the product class in such a way as to favor the technology used in the GE MSLFL to the exclusion of other potential methods or technologies.

(See NWEAA Comments, OSI Comments, ASAP/ACEEE/NRDC Comments, Earthjustice Comments, and CA IOU Comments.)

(4) Proposed Marketing Restrictions Would Be Ineffective: In its Application, GE proposed certain marketing and labeling requirements to reduce the market share and associated efficiency impact of any new product class of “modified-spectrum linear fluorescent lamps.” Comments indicated that labeling bulbs for “residential use only” and limiting packages to two bulbs each would be insufficient to prevent broader use of such bulbs in commercial applications.

(See NWEAA Comments, ASAP/ACEEE/NRDC Comments, and Earthjustice Comments.)

(5) Significant Loss of National Energy Savings: GE’s contention that there would be no loss of energy savings because the GE MSLFLs use the same wattage as traditional T8 or T12 lamps was challenged. According to those commenting, (a) the GE MSLFLs would in fact substitute for lower wattage lamps that comply with the 2012 standards; (b) granting exception relief would result in a significant loss of national energy savings; and (c) granting the exception would allow many consumers to continue to use higher-wattage, less-efficient lamps even after the new DOE fluorescent lamp standards take effect in July 2012.<sup>1</sup>

---

<sup>1</sup> Specifically, the CA IOUs stated: “Lower lumen 32 watt MSLFLs could be purchased as replacement lamps for low wattage T8s, such as 25W, 28W or 30W products, resulting in an increase of 2-4 watts per lamp.” While

(See ASAP/NRDC/ACEE Comments and CA IOU Comments.)

### E. GE's Supplemental Comments

In response to the comments received by OHA on GE's Application, GE filed supplemental comments dated June 10, 2011 (GE Supplemental Comments).

GE argues in its Supplemental Comments that DOE recognized in the 2009 Final Rule the appropriateness of GE seeking exception relief for the GE MSLFL: "[a]lthough DOE did not have enough information in the [2009] Final Rule to make a determination, it specifically noted that if GE successfully developed its MSLFL it should seek exception relief from DOE's Office of Hearing and Appeals...." GE Supplemental Comments at 1, *citing* 2009 Final Rule, 74 Fed. Reg. at 34099.

Noting that every business decision is, in one sense, discretionary, GE states that OHA has recognized that a decision characterized as "discretionary" does not preclude the grant of exception relief. Unlike cases where petitioners did not take reasonable account of their regulatory obligations, GE states it "was vigilant in its regulatory obligations, raised this very issue in the rulemaking and acted pursuant to DOE's instructions." GE Supplemental Comments at 1.

GE cites *Maytag Corporation*, OHA Case No. TEE-0022 (2005) (*Maytag*),<sup>2</sup> as support for exception relief being provided for products introduced after the effective date of applicable efficiency standards and unable to meet those standards: "similar to the products at issue in *Maytag* where DOE had recognized a separate product class for other product configurations (e.g., the 'top-mounted freezer' and 'side-mounted freezer' variations), DOE has also established separate product classes for other modified-spectrum products (e.g., incandescent lamps). As DOE specifically suggested that GE pursue OHA relief should these products be introduced, it must have determined that post-promulgation creation of a separate product class for this product was a possible solution." GE Supplemental Comments at 2. GE argues that to require the GE MSLFL to comply with the Lighting Efficiency Standards would be a gross inequity in that it would require the product to comply with rules that do not properly apply to it, would compare them to products that are not comparable, and would cripple GE's efforts to market the product. Denying relief would be a disincentive to product innovation and frustrate consumer demand.

---

ACEEE stated: "Today (2011), many consumers use 40 W fluorescent tubes. But once the 2012 standards go into effect, few if any 40 W lamps will meet the new standards. Instead, most complying lamps will be 28 or 32 W, using a thinner diameter tube than today's 40 W lamps. If exception relief is granted, many residential applications will be able to use 40 W tubes, thereby using 8-12 W more power than if exception relief is not granted."

<sup>2</sup> Decisions issued by the Office of Hearings and Appeals (OHA) are available on the OHA website located at <http://www.oha.doe.gov>. The text of the cited decision may be accessed by entering the case number of the decision in the search engine located at <http://www.oha.doe.gov/search.htm>.



In response to OSI's comments that OSI has a product that provides the same utility as the GE MSLFL and meets the Lighting Efficiency Standards, GE states that it has been unable to locate such a product and suggests that OSI is confusing compact fluorescent bulb lamps with linear fluorescents tube lamps, which are the subject of its Application. GE states that the GE MSLFL is different from the types of lamps discussed by OSI in that the GE MSLFL is attempting to mimic GE's Reveal incandescent lamp, which is dramatically different from the standard triphosphor lamps and standard incandescent lamps. GE maintains that, based on DOE's recognition of the efficiency differential between modified-spectrum products and traditional lamps and the unique consumer utility of modified-spectrum products in incandescent lamps, the GE MSLFL should be granted an exception from the Lighting Efficiency Standards.

GE believes that studies submitted with its Application and Supplemental Comments support the unique consumer utility of the GE MSLFL and its potential benefit for individuals with red-green color deficiency. GE notes that OSI has provided no studies to support similar benefits of the lamps it is advocating. Since OSI would be able to manufacture its lamps after July 14, 2012, only GE would be materially damaged if a product class is not created for "modified-spectrum linear fluorescent lamps." GE Supplemental Comments at 3.

Finally, GE defends its alternative proposal of the creation of a new product class for "modified-spectrum linear fluorescent lamps." GE states that the new "modified-spectrum linear fluorescent lamps" product class that it is proposing at 75 lm/W represents only a 15.7% reduction from the Lighting Efficiency Standard of 89 lm/w, which is less than the 25% reduction provided for modified-spectrum incandescent lamps." GE Supplemental Comments at 5-6. Further, since GE believes that the GE MSLFL will use the same wattage as existing higher lumen lamps used by consumers, GE believes there will be no loss of energy savings.

## II. Analysis

### A. Establishment of a Distinct Product Class

We initially address GE's alternative request for relief, *i.e.*, that OHA establish a new product class under Lighting Efficiency Standards for GSFL products with modified-spectrum light, such as the GE MSLFL. This request goes beyond the scope of OHA's exception authority. Persons subject to the various product efficiency standards of Part 430 may apply to OHA for exception relief. *See Diversified Refrigeration, Inc.*, OHA Case No. VEE-0073 (2001); *Midtown Development, L.L.C.*, OHA Case No. VEE-0073 (2000); *Amana Appliances*, OHA Case No. VEE-0054 (1999). In this regard, Section 504 of the Department of Energy Organization Act authorizes OHA to make adjustments of any rule or order issued under EPCA, consistent with the other purposes of the Act, if necessary to prevent special hardship, inequity, or unfair distribution of burdens. 42 U.S.C. § 7194(a). *See generally* 10 C.F.R. Part 1003, Subpart B (OHA Procedural Regulations).

Thus, OHA's exception authority is limited to providing relief to a specific manufacturer with respect to a specific product or products regulated by DOE. OHA cannot exercise its exception authority to create a new product class under a regulation which would be applicable to all

persons covered by a DOE regulatory standard. The establishment of a product class is appropriately done as part of a rulemaking proceeding. As such, it has been OHA's practice when granting exception relief to an applicant for a particular product to grant such relief only until DOE elects to establish a new product class for such product in a subsequent rulemaking. *See, e.g., Spacepak/Unico, Inc.*, OHA Case Nos. TEE-0010, TEE-0011 (2004).

Therefore, since we lack the authority, we will not consider arguments advanced by GE in its Application that OHA establish a distinct product class for "modified-spectrum linear fluorescent lamps."

#### **B. Clarification on Language in 2009 Final Rule on the GE MSLFL**

In GE's Application and Supplemental Comments, GE suggests in various places that its Application has special merit as it is being filed at the specific suggestion of DOE in the 2009 Final Rule. GE's strongest assertion is set forth in its Supplemental Comments: "At the outset, GE would like to note that it was DOE itself that recognized in the [2009] Final Rule the appropriateness of seeking the exception relief requested herein. Although DOE did not have enough information in the [2009] Final Rule to make a determination, it specifically noted that if GE successfully developed its MSLFL it *should* seek exception relief from DOE's Office of Hearings and Appeals...." GE Supplemental Comments at 1 (emphasis added).

We do not believe this is a fair characterization of DOE's comments in the 2009 Final Rule and believe it is appropriate to clarify the DOE comments cited by GE. As explained below, the language appearing in the 2009 Final Rule is standard language used by DOE to note the availability of exception relief.

In response to the DOE's Notice of Proposed Rulemaking issued in April 2009 (74 Fed. Reg. 16920 (April 13, 2009)), GE submitted comments dated June 12, 2009, which were also attached to its Application for Exception. Those comments discussed, *inter alia*, that GE was then researching and developing a 4-foot medium bipin modified-spectrum fluorescent lamp which was expected to be commercially released prior to the effective date of the efficiency standards to be established by 2009 Final Rule. GE did not expect that its lamps would be able to meet the minimum standards expected to be set in the 2009 Final Rule and requested that DOE either set separate lower efficiency standards for "modified-spectrum fluorescent lamps" or exempt such lamps from the standards. 74 Fed. Reg. 34080 at 34099. GE's suggestion was for an efficiency standard level for such lamps of 67 lm/W. GE Application, Attachment A at 5.

In response, DOE noted that the modified-spectrum product described by GE would fall within the statutory definition of "general service fluorescent lamp" and, therefore, would be subject to the statutory minimum efficiency requirements for GSFLs. 74 Fed. Reg. 34080 at 34099. EPCA set the minimum efficiency standards for such GSFLs at 75 lm/W. 42 U.S.C. 6295(i)(1). Granting GE's request would have constituted backsliding from the statutory requirements, which is impermissible under EPCA. 74 Fed. Reg. 34080 at 34099.

Because the subject lamps were still under development at the time of DOE's rulemaking, DOE had insufficient data to evaluate this type of lamp. Even if such "modified-spectrum" lamps

were capable of meeting the statutory minimum efficiency requirements, DOE had no evidence that such lamps would offer a distinct utility to consumers or be required in the general service fluorescent market and, therefore, could not establish a separate product class. With respect to GE's request, the 2009 Final Rule concluded: "...DOE notes that if the company successfully develops its modified-spectrum fluorescent lamp and *believes that it warrants exemption* from DOE's amended standards, it *may be possible* for GE to seek exemption relief from...[OHA] pursuant to 10 CFR Part 1003." 74 Fed. Reg. 34080 at 34099 (emphasis added).

We do not read the language in the 2009 Final Rule to be a directive to GE or to be an assessment by DOE of the product GE had under development. Virtually identical language appears elsewhere in the 2009 Final Rule with respect to similar requests (see, for example, 74 Fed. Reg. 34080 at 34101) and merely recites existing procedures with respect to DOE regulations issued under EPCA.

### C. Exception Relief Resulting from Special Hardship, Inequity, or Unfair Distribution of Burdens

In considering GE's Application for Exception, we first observe that the agency's adoption of the revised Lighting Efficiency Standards is fully consistent with the policy objectives of EPCA. The higher lm/W standard adopted for GSFLs by DOE was designed "to achieve the maximum improvement in energy efficiency . . . which the Secretary determine[d] is technologically feasible and economically feasible and economically justified" and will "result in significant conservation of energy." 74 Fed. Reg. at 34082, *quoting* EPCA, 42 U.S.C. §§ 6295(o)(2)(A), 6295(o)(3)(B). In promulgating the new standard, the agency estimated, with regard to GSFLs, that as a result of the new efficiency gains, consumers will save up to \$67.06, on average, over the lifetime of the typical GSFL product. 74 Fed. Reg. at 34083. In addition, DOE estimated that the new GSFL standards will save approximately 3.83 to 9.94 quadrillion British thermal units (Btu) of energy over 30 years (2012-2042). In view of the nation's increasing energy needs, the benefits of energy conservation cannot be overstated. In addition, the higher efficiency standard will have substantial environmental benefits by contributing to the overall reduction of greenhouse gas emissions and air pollution. *Id.*

Consequently, an exception to the revised efficiency standard is warranted only in those limited circumstances where relief is necessary to prevent a special hardship, inequity, or unfair distribution of burdens. 10 C.F.R. § 1003.20; 42 U.S.C. § 7194(a). Prior decisions of this office as well as the courts clearly place the burden upon the applicant to establish the basis for its claim for exception relief from DOE regulatory provisions. *See, e.g., Sauder Fuel, Inc.*, OHA Case No. TEE-0059 (2009); *Diversified Refrigeration, Inc.*, OHA Case No. VEE-0079 (2001); *Amana Appliances*, OHA Case No. VEE-0054 (1999); *Exxon Corp. v. Department of Energy*, 802 F.2d 1400, 1407-08 (Temp. Emer. Ct. App. 1986) ("great deference" accorded to agency in applying standards for exception relief); *City of Long Beach v. Department of Energy*, 754 F.2d 379, 386 (Temp. Emer. Ct. App. 1985). We have carefully considered GE's Application for Exception. For the reasons below, we have determined that GE has failed to justify the approval of exception relief for the GE MSLFL product.

We find initially that GE has failed to show that the firm will suffer a special hardship if it fails to receive exception relief. While OHA does not utilize a rigid definition of “special hardship,” a petitioner alleging “special hardship” must demonstrate that application of a DOE regulation to the petitioner would have such a negative impact upon it as to jeopardize its financial health or viability. See *Sauder Fuel, Inc.*, OHA Case No. TEE-0059 (2009); cf. *Stacey Oil Co.*, OHA Case No. VEE-0056 (1999) (extraordinary impact of reporting on a company operating at a considerable loss). GE’s Application states that it will face serious hardship as it has invested XXXXXXXXXXXXXXXXXXXXXXXX in the development of the GE MSLFL and will be required to remove the product from the market in less than two years if DOE does not grant the exception relief requested by its Application. However, GE provides no financial information with respect to its income from the GE MSLFL or with respect to the percentage of its total income represented by sales of the GE MSLFL. Even had such information been provided, we find it unlikely that it would have demonstrated that the potential removal from the market of the GE MSLFL would jeopardize the financial viability of GE.

GE also advances the following arguments in support of its claim for exception relief: (1) the lower efficiency standards established under the 2009 Final Rule for modified-spectrum *incandescent* lamps justifies lower efficiency standards for its modified-spectrum linear *fluorescent* lamps; (2) GE will suffer an inequity and an unfair distribution of burdens in the absence of exception relief since it is the only lighting manufacturer that produces a modified-spectrum linear fluorescent lamp, which cannot meet the efficiency standards established by the 2009 Final Rule; (3) our decision in *Maytag* indicates that requiring the GE MSLFL to comply with the Lighting Efficiency Standards would be a gross inequity since it would require its GE MSLFL product to meet an efficiency standard applicable to products that are not comparable, and would effectively prevent GE from marketing the product.<sup>3</sup> For the reasons below, we find each of these arguments unpersuasive.

We do not agree that GE has suffered an inequity or is entitled to exception relief for its modified-spectrum GSFL because the Lighting Efficiency Standards establish a different class of product, and lower minimum efficiency, for incandescent lamps with the modified-spectrum feature. Congressionally-mandated product classes for incandescent lamps do not imply that parallel product classes must be developed for categories of fluorescent lamps with similar sounding names.

As explained by the agency in the preamble to the 2009 Final Rule, the modified-spectrum product class for incandescent lamps was compelled by EPCA since the modified-spectrum

---

<sup>3</sup> In connection with this argument, GE contends that while the GE MSLFL has lower lm/W, it is perceived as just as bright, if not brighter, than a standard fluorescent of the same wattage and, therefore, such product is penalized without any corresponding benefits to national energy savings. GE essentially argues that, due to the higher perceived brightness of modified-spectrum GSFLs, “lumens-per-watt” is an inappropriate measure of efficiency with regard to its new GE MSLFL product. However, the “lumens-per-watt” measure of efficiency adopted by the agency is specifically prescribed by the EPCA. See 42 U.S.C. § 6295(i)(1)(B). Thus, to consider an alternative measure of efficiency, e.g. one based upon brightness relative to wattage, is beyond our exception authority. Moreover, GE was fully aware of the required “lumens-per-watt” measure of efficiency at the time it elected to move forward with the development of the GE MSLFL. Thus, any alleged inequity incurred by GE can be attributed to its own discretionary business decision, as discussed below.

feature for incandescent lamps existed prior to DOE's promulgation of the revised standards. EPCA prevents DOE from establishing an efficiency standard that is "likely to result in the unavailability in the United States in any covered product type (or class) of performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially *the same as those generally available in the United States at the time of the Secretary's finding*" (i.e., at the time of the issuance of new efficiency standards). 42 U.S.C. § 6295(o)(4) (emphasis added); 74 Fed. Reg. at 34100. The agency therefore established a separate product class and minimum efficiency modified-spectrum incandescent lighting, noting that "if DOE were to regulate modified-spectrum lamps within the same product class as standard-spectrum lamps, this could result in an energy conservation standard that would eliminate the modified-spectrum utility from the IRL market." *Id.* Thus, the distinction prescribed by statute and recognized in the Lighting Efficiency Standards for modified-spectrum lamps is limited to incandescent lamps.

Unlike modified-spectrum incandescent lamps, the modified-spectrum utility for GSFLs was not recognized in the statute and did not exist at the time of either the enactment of the statute or the present rulemaking. GE acknowledged that the GE MSLFL had not been introduced to the market until eleven months following the issuance of the 2009 Final Rule. Moreover, GE and all those commenting on its Application for Exception agreed that the technology between incandescent and fluorescent lamps is different. Therefore, no inequity exists that would warrant the approval of exception relief for GE's modified-spectrum GSFL based upon the DOE establishing a separate class of product, and product efficiency, for modified-spectrum incandescent lamps.

Instead, we find that to the extent that any inequity exists, it results from GE's discretionary business decision to continue development of a product and, then, introduce it to market knowing that it would not meet published efficiency standards that were scheduled to take effect two years later. It is well-settled in prior decisions of this office that a firm may not receive exception relief to alleviate a burden attributable to a discretionary business decision rather than the impact of DOE regulations. *See, e.g., Big Muddy Oil Processors, Inc.*, 12 DOE ¶ 81,006 at 82,521 (1984); *341 Tract Unit of the Citronelle Field: Exxon Co., USA, et al.*, 10 DOE ¶ 81,027 at 82,649-50 (1983). We agree with GE that, to some extent, every decision can be viewed as a discretionary decision.<sup>4</sup> In unique mitigating circumstances, a firm might be granted exception relief where the business decision was the most viable among more precarious options. *See, e.g., Viking Range Corp.*, OHA Case No. VEE-0075 (2000). However, GE has made no such showing in this case.

In the present situation, GE undertook the development of a product knowing that the product was subject to statutory efficiency standards that were scheduled to be enhanced by the terms of the statute itself. GE had notice of the statutory requirements as early as 1992 and was still unable to meet the statutory efficiency standard for GSFLs when it filed comments with DOE in

---

<sup>4</sup> Every research and development project faces many challenges, such as whether the technology to support the product is feasible, whether the market desires the product, and whether the cost of development and manufacturing of the product can be supported by the market. Another challenge for any new product is whether it can meet standards established by the industry or the government.

2009. GE apparently was able to achieve the threshold efficiency required by EPCA (75 lm/W) the following year when it introduced the GE MSLFL to the market; however, at that time, in accordance with the regulatory scheme required by EPCA, the efficiency standards were scheduled to be enhanced. GE had knowledge of those enhanced efficiency standards and had participated in the rulemaking establishing them. Any inequity which exists in the present situation arises from GE's decision to invest in the development of a product which the firm knew did not meet the anticipated regulatory standards.

Finally, GE has misplaced reliance on our decision in *Maytag*. According to GE, *Maytag* is precedent in the present case for OHA granting exception relief for a product unable to meet the applicable efficiency standards when the product was developed after the effective date of such standards. In its Supplemental Comments, GE writes:

In *Maytag*, OHA was persuaded that DOE would have established a separate product class for automatic defrost refrigerator-freezers with bottom-mounted and through the door ice if such products had existed when the Refrigerator Efficiency standards were promulgated. Similar to the products at issue in *Maytag* where DOE recognized a separate product class for other product configurations (e.g., the "top-mounted freezer" and "side-mounted freezers" variations), DOE has also established separate product classes for other modified spectrum products (e.g., incandescent lamps)... Similar to *Maytag's* arguments in its successful petition, to require GE's new product to comply with the 2012 standards would be a gross inequity in that it would require the product to comply with rules that do not properly apply to it, would compare them to products that are not comparable, and would exclude GE's new product from the DOE standards program and cripple our efforts to market the product.

GE Supplemental Comments at 2. However, the circumstances in *Maytag* are markedly different from the present case.

We acknowledge that in *Maytag*, we granted exception relief from the provisions of 10 C.F.R. Part 430, specifically related to Energy Conservation Program for Consumer Products: Energy Conservation Standards for Refrigerators, Refrigerator-Freezers and Freezers (Refrigerator Efficiency Standards), for a new product that had been developed by Maytag, an automatic defrost refrigerator-freezer, with bottom mounted freezer and through-the-door ice service. The Refrigerator Efficiency Standards establish energy efficiency equations which limit energy usage for eighteen classes of refrigerator products. In establishing these standards, DOE recognized through-the-door ice service as an important feature in establishing separate classes of automatic defrost refrigerator-freezers with and without this addition, e.g. Class 3 (with top-mounted freezer without through-the-door ice service) and Class 6 (with top-mounted freezer with through-the-door ice service). 10 C.F.R. § 430.32(a).<sup>5</sup> However, since through-the-door ice

---

<sup>5</sup> In addition, the agency had established a separate class of product (Class 5) for "Refrigerator-Freezers – automatic defrost with bottom-mounted freezer without through-the-door ice service," as well as separate classes of automatic defrost refrigerator-freezer for "side-mounted freezer without through-the-door ice service" (Class 4) and "side-mounted freezer without through-the-door ice service" (Class 7).

service was not offered with bottom-mounted freezers at the time the Refrigerator Efficiency Standards were promulgated, there was no energy efficiency standard established for Maytag's new product within the eighteen classes of product established. At the same time, Maytag's new product clearly fit within the regulatory definition of "electric refrigerator-freezer," 10 C.F.R. § 430.2, and it would be unable to meet the Class 5 energy standard due to the energy loss inherent in adding through-the-door ice service. We therefore granted exception relief for Maytag's new product, setting an efficiency standard allowing for the incremental energy use attributable to the through-the-door ice service feature, which was a feature generally available on the covered product in question (refrigerators) at the time of the Secretary's finding during the rulemaking.

The circumstances that existed in *Maytag* are not present in this case. Unlike the through-the-door ice service feature in *Maytag*, the modified-spectrum feature for GSFLs did not exist at the time the 2009 Final Rule was promulgated, nor was it even recognized as a feature that is wanted or necessary even if developed.<sup>6</sup> In describing modified-spectrum GSFLs, the agency stated in the preamble that "[w]hile these lamps may in the future provide a distinct utility to consumers . . . , at this time, DOE has no evidence that this utility in fact exists or is even required of the general service fluorescent market, because there is no such product yet developed." 74 Fed. Reg. at 34099.<sup>7</sup>

#### D. Conclusion

As explained above, OHA does not have the authority to establish product classes and, further, GE has not carried its burden in establishing that application of the Lighting Efficiency Standards to the GE MSLFL would result in GE sustaining special hardship, inequity, or unfair distribution of burdens. Having weighed all of the relevant considerations in this case, we conclude that GE has failed to justify the approval of the exception relief it seeks.

---

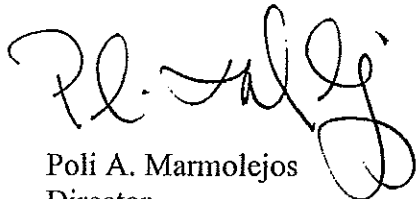
<sup>6</sup> We further note that, in addition to the agency's prior recognition of the through-the-door ice service as a desirable utility, Maytag submitted evidence of a market research study showing that a predominant share of its customers surveyed were favorable to the through-the-door ice service feature of its new refrigerator with bottom-mounted freezer. *See Maytag* at 2. GE has not made this showing in this case. While GE has submitted evidence indicating that modified-spectrum lighting does create a distinct utility in GSFLs (*see* GE Supplemental Comments at 2-3, Attachment B), there is no clear evidence that this utility is necessary or in demand.

<sup>7</sup> As an added equitable consideration, we note that the exception relief granted in *Maytag* fell well within the parameters of the revised Refrigerator Efficiency Standards, and thus was consistent with the energy conservation objections of EPCA and the agency. In the present case, however, GE seeks exception relief that would set a 75 lm/W efficiency standard for its new product, which is no higher than the present standard and significantly below the 89 lm/W minimum average lamp efficiency standard for 4-foot medium bipin GSFLs established by the Lighting Efficiency Standards, effective July 14, 2012. The requested exception relief, therefore, contravenes Congressional and DOE energy conservation goals.

It Is Therefore Ordered That:

(1) The Application for Exception filed by GE Appliances & Lighting on March 2, 2011, is hereby denied.

(2) Any person aggrieved or adversely affected by the denial of a request for exception relief filed pursuant to § 504 of the Department of Energy Organization Act (42 U.S.C. 7194) may appeal to the Federal Energy Regulatory Commission, in accordance with the Commission's regulations.



Poli A. Marmolejos  
Director  
Office of Hearings and Appeals

Date:

AUG 11 2011



# Case No. VEE-0001

July 5, 1995

DECISION AND ORDER

OF THE DEPARTMENT OF ENERGY

Application for Exception

Name of Petitioner: Central American Petroleum Company

Date of Filing: October 4, 1994

Case Number: VEE-0001

On October 4, 1994, Central American Petroleum Company (Central) of Cameron, Missouri, filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). In its Application, Central requests that it be relieved of the requirement that it file the Energy Information Administration's (EIA) form entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report" (Form EIA-782B). As explained below, we have determined that the Application for Exception should be denied.

## A. Background

The EIA-782B reporting requirement grew out of the shortages of crude oil and petroleum products during the 1970s. In 1979, Congress found that the lack of reliable information concerning the supply, demand, and prices of petroleum products impeded the nation's ability to respond to the oil crisis. It therefore authorized the DOE to collect data on the supply and prices of petroleum products. The current form collects information concerning the volume and price of various grades and types of motor gasoline, No. 2 distillates, propane, and residual fuel oil, broken down by customer type.

Information obtained from the survey is used to analyze trends within petroleum markets. Summaries of the information and the analyses are published by the EIA in publications such as "Petroleum Marketing Monthly." This data is used by Congress and by more than 35 state governments to project trends and to formulate state and national energy policies. In addition, firms in the petroleum industry frequently base business decisions on the data published by EIA.

The DOE has attempted to ensure that this survey yields valuable information while minimizing the burden placed on the industry. Thus, in designing the form, the DOE consulted with potential survey respondents, various industry associations, users of the energy data, state governments, and other federal agencies. Moreover, to minimize the reporting burden, the EIA periodically selects a

relatively small sample of companies to file the report.(1) In addition, to reduce the amount of time spent completing the forms, firms may rely upon reasonable estimates.(2)

## B. Exception Criteria

Form EIA-782B is a mandatory report designed to collect monthly information on refined petroleum sales volumes and prices from a sample of resellers and retailers. 42 U.S.C. § 7135(b). This Office has authority

to grant exception relief where the reporting requirement causes a “special hardship, inequity, or unfair distribution of burdens.” 42 U.S.C. § 7194 (a); 10 C.F.R. § 205.55(b)(2). Exceptions are appropriate only in extreme cases. Because all reporting firms are burdened to some extent by reporting requirements, exception relief is appropriate only where a firm can demonstrate that it is adversely affected by the reporting requirement in a way that differs significantly from similar reporting firms. Thus, mere inconvenience does not constitute a sufficient hardship to warrant relief. Glenn W. Wagoner Oil Co., 16 DOE ¶ 81,024 (1987).

In considering a request for exception relief, we must weigh the firm's difficulty in complying with the reporting requirement against the nation's need for reliable energy data. Neither the fact that a firm is relatively small, nor the fact that it has filed the report for a number of years alone constitute grounds for exception relief. If firms of all sizes, both large and small, are not included, the estimates and projections generated by the EIA's statistical sample will be unreliable. Mulgrew Oil Co., 20 DOE ¶ 81,009 (1990).

The following examples illustrate the types of circumstances that may justify relief from the reporting requirement. Since each case is different, these examples are not intended to reflect all circumstances that justify exception relief:

- Financial difficulties underlie most approvals of exception relief. We have granted a number of exceptions where the applicant's financial condition is so precarious that the additional burden of meeting the DOE reporting requirements threatens its continued viability. Mico Oil Co., 23 DOE ¶ 81,015 (1994) (firm lost one million dollars over previous three years); Deaton Oil Co., 16 DOE ¶ 81,026 (1987) (firm in bankruptcy).
- Relief may be appropriate when the only person capable of preparing the report is ill and the firm cannot afford to hire outside help. S&S Oil & Propane Co., 21 DOE ¶ 81,006 (1991) (owner being treated for cancer); Midstream Fuel Serv., 24 DOE ¶ 81,023 (three month extension of time to file reports granted when two office employees simultaneously on maternity leave); Eastern Petroleum Corp., 14 DOE ¶ 81,011 (1986) (two months relief granted when computer operator broke wrist).
- A combination of factors may warrant exception relief. Exception relief for 10 months was granted where personnel shortages, financial difficulties, and administrative problems resulted from the long illness and death of a partner. Ward Oil Co., 24 DOE ¶ 81,002 (1994); see also Belcher Oil Co., 15 DOE ¶ 81,018 (1987) (extension of time granted where general manager abruptly left firm without notice).
- Extreme or unusual circumstances that disrupt a firm's activities may warrant relief. Little River Village Campground, Inc., 24 DOE ¶ 81,033 (1994) (five months relief because of flood); Utilities Bd. of Citronelle-Gas, 4 DOE ¶ 81,205 (1979) (hurricane); Meier Oil Serv., 14 DOE ¶ 81,004 (1986) (three months where disruptions caused by installation of a new computer system left firm's records inaccessible).

## C. Central's Exception Application

Central, a reseller and retailer of propane, requests an exception to its reporting requirement on the basis that it anticipates filing will be too time consuming and onerous. In its Application, Central states that it has annual sales of approximately 800,000 gallons, and besides its owner, employs two truck drivers and a bookkeeper who also handles secretarial duties and truck dispatch. Central contends that the small size of its operations and the absence of automation will make timely and accurate filing impossible. Central estimates that completion of the survey would require three or four hours a time constraint that it claims would be especially burdensome for the firm during its very busy winter months.<sup>(3)</sup> Furthermore, Central argues that estimating its sales data for the Form would contaminate the entire sample because it would not be substantially accurate. Central therefore has requested an exception from the requirement that it file Form EIA-782B.

## D. Analysis

Central has not shown that it is suffering a financial hardship, medical problems, or any other serious impediment to its operations. Central anticipates that filing the Form may take as long as three or four hours each month, which is slightly longer than the 2.5 hours which EIA estimates the form should require. However, Central has never attempted to file EIA Form-782B. Its request for exception is based upon its expectation that filing will be arduous and time intensive, rather than a firsthand experience of difficulty. Submission of the form may take less time than it anticipates. Moreover, even if its estimate of the time necessary to prepare the form should prove accurate, this would not in itself qualify the firm for exception relief. In the past, we have denied exception requests where firms spent considerably more time preparing Form EIA-782B but failed to show that they were otherwise burdened. See People's Oil and Gas Co., 13 DOE ¶ 81,021 (1985) (one and one half to two working days); St. Joe Petroleum Co., 13 DOE ¶ 81,040 (1985) (eight to ten hours).

If Central wishes to reduce the amount of time it spends preparing the Form, it may rely on estimates. See General Instruction IV for Form EIA-782B, 2 Fed. Energy Guidelines ¶ 18,502, at 18,517. Estimates are authorized in order to alleviate the inconvenience of filing the Form without compromising EIA's comprehensive survey of its markets. Of course, some care must be taken in preparing estimates. Contrary to Central's concern, there is no reason to believe that any estimates it might provide would not be sufficiently accurate. For example, Central could submit a report for a single month in a season based upon actual sales figures of propane. It could then estimate figures for the other months in that season by adjusting the first month's figures to reflect differences in the other months' sales volumes and revenues.<sup>(4)</sup> We believe Central could significantly reduce the amount of time required to complete the survey if it utilized a sound method of estimation.

In summary, Central has not demonstrated that its burden of providing the requested data outweighs the benefits which the DOE and the nation receive from access to the information. The data collected from Form EIA-782B constitute the DOE's primary source of information on supplies, demand, and prices of petroleum products. Reliable data is vital to the nation's ability to anticipate and respond quickly and effectively to any future supply disruptions. Unless firms such as Central are part of the EIA's statistical sample, the DOE will be unable to formulate valid estimates from a cross-section of the industry. Strong public policy considerations such as these lead us to conclude that Central's request for exception relief from the mandatory reporting requirements is unwarranted.

In accordance with the above discussion, we find that exception relief is not warranted in this case, because Central is not experiencing a special hardship, inequity, or unfair distribution of burdens from the requirement that it file Form EIA-782B. Consequently, the Department of Energy has determined that the Application for Exception filed by Central should be denied.

On January 12, 1995 a copy of the determination that appears above was provided to Central American Petroleum Company in the form of a Proposed Decision and Order. In accordance with the procedures that govern this matter, Central was advised of its right to file a Notice of Objection with respect to any finding of fact or conclusion of law reached in the Proposed Decision and Order. See 10 C.F.R. §§ 205.58 and 205.62. Central was further advised that it would be deemed to consent to the issuance of the Proposed Decision and Order in final form unless such a Notice was filed within the prescribed time period. The time period within which a Notice of Objection could be filed has now expired, and we have received no such document from Central or any other potentially aggrieved party. Consequently, this Decision and Order is being issued in final form. Central will accordingly be deemed to consent to the issuance of the present determination.

It Is Therefore Ordered That:

(1) The Application for Exception filed by Central American Petroleum Company on October 4, 1994, is hereby denied.

George B. Breznay

Director

Office of Hearings and Appeals

Date: July 5, 1995

(1)1/ Firms that do business in four or more states or which account for over five percent of the sales of any particular product in a state are always included in the sample of firms required to file the report. A random sample of other firms is also selected. This random sample changes approximately every 12 months, but a firm may be reselected for subsequent sample. A firm that has been included in three consecutive random samples will generally not be included in a fourth consecutive sample, but may be included in a later sample.

(2)2/ The firm must make a good faith effort to provide reasonably accurate information that is consistent with the accounting records maintained by the firm. The firm must alert the EIA if the estimates are later found to be materially different from actual data.

(3)3/ See Memorandum of Telephone Conversation between Mr. Michael Tomlin, President of Central, and Ms. Allison Varzally, OHA staff analyst (October 25, 1994).

(4)4/ Specifically, Central could calculate its total sales revenue (in dollars) and total volume of propane sold in the current month. On the basis of the percentage sales volume to each type of customer as reported by Central for a single month, Central could estimate the sales volumes for subsequent months. Central could then divide estimated revenues for each class of customer to obtain the unit sales prices.

# Case No. VEE-0003

June 28, 1995

DECISION AND ORDER

OF THE DEPARTMENT OF ENERGY

Application for Exception

Name of Petitioner: Kyle's Friendly Service, Inc.

Date of Filing: November 21, 1994

Case Number: VEE-0003

On November 21, 1994, Kyle's Friendly Service, Inc. (Kyle's) of Greensboro, North Carolina, filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). In its Application, Kyle's requests that it be relieved of the requirement that it file the Energy Information Administration (EIA) form entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report" (Form EIA-782B). As explained below, we have determined that exception relief should be granted on a temporary basis.

## A. Background

Form EIA-782B is a mandatory report designed to collect monthly information on refined petroleum sales volumes and prices from a sample of resellers and retailers. The EIA-782B reporting requirement grew out of the shortages of crude oil and petroleum products during the 1970's. In 1979, Congress found that the lack of reliable information concerning the supply, demand, and prices of petroleum products impeded the nation's ability to respond effectively to the oil crisis. It therefore authorized the DOE to collect data on the supply and prices of petroleum products. The current form collects information concerning the volume and price of various grades and types of motor gasoline, No. 2 distillates, propane, and residual fuel oil, broken down by customer type.

Information obtained from the survey is used to analyze trends within petroleum markets. Summaries of the information and the analyses are published by the EIA. These data are used by Congress and more than 35 state governments to project trends and to formulate state and national energy policies.

The DOE has attempted to ensure that this survey yields valuable information while minimizing the burden placed on the petroleum industry and on various businesses. Thus, in designing the form, the DOE consulted with potential survey respondents, various industry associations, users of the energy data, state governments, and other federal agencies. The DOE realizes that the reporting requirement is burdensome to all selected firms. Therefore, to minimize the reporting burden, the EIA periodically selects a relatively small sample of companies to file the report.(1) In addition, to reduce the amount of time spent on completion of the forms, firms may rely upon reasonable estimates.(2)

## B. Exceptions Criteria

This Office has the authority to grant exception relief to alleviate or prevent serious hardship or gross

inequity. 10 C.F.R. § 205.55(b)(2).(3) See also 6 Fed. Energy Guidelines ¶ 80,003 (Exceptions and Appeals Guidelines). In previous cases involving requests for exception relief, we have recognized that mandatory reporting requirements cause some inconvenience to all respondents. Since all reporting firms are burdened by the requirement, we have held that exception relief is appropriate only when a firm can demonstrate that it is adversely affected by the reporting requirement in a way that differs significantly from similar reporting firms.

In addition, when evaluating an applicant's request for exception relief, we consider whether the difficulty in complying with the reporting requirement is outweighed by the benefits to the nation in obtaining the required data. See *Lockheed Air Terminal*, 15 DOE ¶ 81,010 (1986); *Champlain Oil Co.*, 14 DOE ¶ 81,022 (1986); *Three L Inc.*, 12 DOE ¶ 81,014 (1984); *Pure Oil Co.*, 8 DOE ¶ 81,019 (1981). In implementing its petroleum product reporting program, the DOE has attempted to minimize the reporting burden on individual dealers by periodically selecting a relatively small random sample of companies. To obtain a proper representation of the industry, however, it is important that all types of firms, both large and small, participate. See *Napakiak Corp.*, 14 DOE ¶ 81,014 (1986); *Michek Oil Co.*, 9 DOE ¶ 81,010 (1981).

In considering a request for exception relief, we must weigh the firm's difficulty in complying with the reporting requirement against the nation's need for reliable energy data. Neither the fact that a firm is relatively small nor that it has filed the report for a number of years alone constitutes grounds for exception relief. If firms of all sizes, both large and small, are not included, the estimates and projections generated by the EIA's statistical sample will be incomplete and unreliable. See *Mulgrew Oil Co.*, 20 DOE ¶ 81,009 (1990).

The following examples illustrate the types of circumstances of serious hardship and gross inequity that may justify relief from the reporting requirement. Since each case is different, these examples are not intended to reflect all circumstances that justify exception relief:

- Financial difficulties underlie most approvals of exception relief. We have granted a number of exceptions where the applicant's financial condition is so precarious that the additional burden of meeting the DOE reporting requirements threatens its continued viability. See, e.g., *Mico Oil Co.*, 23 DOE ¶ 81,015 (1994) (firm lost one million dollars over previous three years); *Deaton Oil Co.*, 16 DOE ¶ 81,026 (1987) (firm in bankruptcy).
- Relief may be appropriate when the only person capable of preparing the report is ill and the firm cannot afford to hire outside help. E.g., *S&S Oil & Propane Co.*, 21 DOE ¶ 81,006 (1991) (owner being treated for cancer); *Midstream Fuel Serv.*, 24 DOE ¶ 81,023 (1994) (three month extension of time to file reports granted when two office employees simultaneously went on maternity leave); *Eastern Petroleum Corp.*, 14 DOE ¶ 81,011 (1986) (two months relief granted when computer operator broke wrist).
- A combination of factors may warrant exception relief. Exception relief for 10 months was granted where personnel shortages, financial difficulties, and administrative problems resulted from the long illness and death of a partner. *Ward Oil Co.*, 24 DOE ¶ 81,002 (1994); see also *Belcher Oil Co.*, 15 DOE ¶ 81,018 (1987) (extension of time granted where general manager abruptly left firm without notice).
- Extreme or unusual circumstances that disrupt a firm's activities may warrant relief. E.g., *Little River Village Campground, Inc.*, 24 DOE ¶ 81,033 (1994) (five months relief because of flood); *Utilities Bd. of Citronelle-Gas*, 4 DOE ¶ 81,205 (1979) (hurricane); *Meier Oil Serv.*, 14 DOE ¶ 81,004 (1986) (three months relief granted when disruptions caused by the installation of a new computer system left the firm's records inaccessible).

## C. Kyle's Exception Application

Kyle's, an Amoco Products Jobber, is a medium-size distributor of petroleum products located in

Greensboro, North Carolina. The company sells #2 heating oil, residential and wholesale, and motor gasoline, retail and wholesale. Kyle's operates solely in North Carolina. The company was selected to participate in both the previous EIA sample, which began in February 1993, and the current sample, which began in June 1994. In its application, the company requests that it be relieved of the requirement to file Form EIA-782B due to a combination of personnel, technical and business complications recently affecting the company. In a letter dated March 6, 1995, Craig Durham, the company's accountant, details the company's reasons for requesting relief. Mr. Durham has informed this Office that completion of the form by Kyle's generally requires 8 to 10 hours a month. Mr. Durham described the filing requirement as "research intense," as the company's clerks must manually compile and review 200 to 400 tickets to calculate the number of gallons sold by Kyle's and to determine average prices. Mr. Durham has also informed us that of the four people, including himself, who normally work on assembling the necessary information, and completing the form, one has gone on maternity leave and one has resigned. Mr. Durham contends that this reduction is an impediment to the timely completion of Form EIA-782B, as well as contributing to a general strain on the office staff. In addition, the company's computer system failed in October 1994 and the company is in the process of installing a new system. However, this new system, according to Mr. Durham, is not capable of providing the information necessary for the completion of the form, because the firm's database does not include the detailed information which must be included in Form EIA-782B. Finally, Mr. Durham has informed this office that Kyle's is currently in the middle of a significant expansion of business. Due to the sale by Amoco of some of its local dealerships, Kyle's expects to take on enough new business to double its work load.

## D. Analysis

We must determine whether the burden Kyle's describes outweighs the nation's interest in obtaining data about the sales and demand for petroleum products. Considered as independent and individual concerns, the reasons elaborated upon in Kyle's application do not constitute, in and of themselves, sufficient grounds for relief. For example, Mr. Durham's contention that he and his office staff must allocate 8 to 10 hours a month each month to complete Form EIA-782B does not constitute a serious hardship or gross inequity. In past cases we have granted exception relief only upon a firm's showing that the time required to file the Form imposes an unusual financial burden on the firm or would seriously impede the firm's business operations. See C.R. Mullis Oil & Heating Co. 10 DOE ¶ 81,005 (1982) (exception relief granted based on finding that the firm would have to spend 40 person-hours per month manually completing the form). The fact that Kyle's spends more time filling out the form than EIA estimates an average firm should require is not a sufficient basis upon which to grant relief. Similarly, Kyle's recent reduction in office staff is not, of itself, a persuasive reason to grant exception relief. Many firms with limited office staffs are survey participants. We have consistently held that a firm's limited clerical assistance does not, in itself, constitute grounds for relief. See Harvin Petroleum Co., Inc. 17 DOE ¶ 81,001 (1988); Coble Oil Co. 16 DOE ¶ 81,025 (1987).

However, after reviewing the record described above, we have decided to grant temporary relief. While none of the reasons detailed above alone constitute an undue burden on the company, taken together the recent developments represent a serious hardship for Kyle's. The filing of Form EIA-782B has become an undue burden for the company, as it taxes personnel and computer systems which are already under strain and disrupts daily business activities. Therefore we find that interim relief is appropriate. However, since most of the difficulties complicating business for Kyle's are temporary, we will extend relief only for six months. As the company's business expands, it is safe to assume that it will have in the future the resources to update its computer system, as well as to enlarge its office staff, thereby enabling it to complete the Form in an efficient and timely manner. (4)

In addition, we have determined that exception relief should be made effective immediately through the issuance of a Final Decision and Order pursuant to 10 C.F.R. § 205.69C, rather than the issuance of a Proposed Decision and Order. In this case, we find that the evidence already submitted by Kyle's establishes a convincing basis for exception relief and that the issuance of a Proposed Decision and Order

would likely be of little value. See 10 C.F.R. § 205.69C (a)(2). Exception relief will therefore be granted, effective immediately.

It Is Therefore Ordered That:

(1) The Application filed by Kyle's Friendly Service, Inc., on November 21, 1994 is hereby granted as set forth in Paragraph 2.

(2) Kyle's Friendly Service, Inc. shall be removed from the list of firms required to submit data on Form EIA-782B to the Energy Information Administration of the Department of Energy from June 1995 through November 1995.

(3) This is a Final Order of the Department of Energy.

George B. Breznay

Director

Office of Hearings and Appeals

Date: June 28, 1995

(1)Firms that do business in four or more states or which account for over five percent of the sales of any particular product in a state are always included in the sample of firms required to file the report. A random sample of other firms is also selected. This random sample changes approximately every 12 months, but a firm may be reselected for a subsequent sample. A firm that has been included in three consecutive random samples will generally not be included in a fourth consecutive sample, but may be included in a later sample.

(2)The firm must make a good faith effort to provide reasonably accurate information that is consistent with the accounting records maintained by the firm. The firm must alert the EIA if the estimates are later found to be materially different from actual data.

(3)Effective April 20, 1995, the regulations governing exceptions to the EIA reporting requirements are set forth at 10 C.F.R. Part 1003, Subpart B. See 60 Fed. Reg. 15004 (March 21, 1995). However, exception applications filed prior to that date are still governed by the DOE regulations at 10 C.F.R. Part 205, Subpart D.

(4)At the time Kyle's resumes its reporting obligation, it may use estimates to reduce the time it spends on this form without compromising EIA's comprehensive survey of the market for the listed products. We recommend that Kyle's contact EIA in order to establish a method of estimation satisfactory to both parties. The toll-free number for questions regarding the completion of Form EIA-782B is (800) 638-8812.



DECISION AND ORDER  
OF THE DEPARTMENT OF ENERGY

Application for Exception

Name of Petitioner: Pitcher Sales Inc.

Date of Filing: January 24, 1995

Case Number: VEE-0004

On January 24, 1995, Pitcher Sales Inc. (Pitcher) of Lewiston, Utah, filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). In its Application, Pitcher requests that it be relieved of the requirement that it file the Energy Information Administration's (EIA) forms entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report" (Form EIA-782B) and "Petroleum Product Sales Identification Survey" (Form EIA-863). As explained below, we have determined that the Application for Exception should be denied.

## A. Background

Form EIA-782B and Form EIA-863 are both mandatory reporting requirements which grew out of the shortages of crude oil and petroleum products during the 1970s. In 1979, Congress found that the lack of reliable information concerning the supply, demand, and prices of petroleum products impeded the nation's ability to respond to the oil crisis. It therefore authorized the DOE to collect data on the supply and prices of petroleum products. While Form EIA-782B is designed to collect monthly information on refined petroleum sales volumes and prices from a sample of resellers and retailers, Form EIA-863 is a triannual survey that collects information on the annual sales volumes, type and geographic location of firms which deal in petroleum products. 42 U.S.C. § 7135(b).

Information obtained from Form EIA-782B is used to analyze trends within petroleum markets. Summaries of the information and the analyses are published by the EIA in publications such as "Petroleum Marketing Monthly." This data is used by Congress and by more than 35 state governments to project trends and to formulate state and national energy policies. In addition, firms in the petroleum industry frequently base business decisions on the data published by EIA.

The DOE has attempted to ensure that the surveys yield valuable information while minimizing the burden placed on the industry. Thus, in designing the forms, the DOE consulted with potential survey respondents, various industry associations, users of the energy data, state governments, and other federal agencies. Moreover, to minimize the reporting burden, the EIA periodically selects a relatively small

sample of companies to file Form EIA-782B.<1> In addition, to reduce the amount of time spent completing the forms, firms may rely upon reasonable estimates.<2>

## B. Exception Criteria

This Office has authority to grant exception relief where the reporting requirement causes a "special hardship, inequity, or unfair distribution of burdens." 42 U.S.C. § 7194(a); 10 C.F.R. § 205.55(b)(2). Exceptions are appropriate only in extreme cases. Because all reporting firms are burdened to some extent by reporting requirements, exception relief is appropriate only where a firm can demonstrate that it is adversely affected by the reporting requirement in a way that differs significantly from similar reporting

firms. Thus, mere inconvenience does not constitute a sufficient hardship to warrant relief. Glenn W. Wagoner Oil Co., 16 DOE ¶ 81,024 (1987).

In considering a request for exception relief, we must weigh the firm's difficulty in complying with the reporting requirement against the nation's need for reliable energy data. Neither the fact that a firm is relatively small, nor the fact that it has filed the reports for a number of years alone constitute grounds for exception relief. If firms of all sizes, both large and small, are not included, the estimates and projections generated by the EIA's statistical sample will be unreliable. Mulgrew Oil Co., 20 DOE ¶ 81,009 (1990).

The following examples illustrate the types of circumstances that may justify relief from the reporting requirement. Since each case is different, these examples are not intended to reflect all circumstances that justify exception relief:

- Financial difficulties underlie most approvals of exception relief. We have granted a number of exceptions where the applicant's financial condition is so precarious that the additional burden of meeting the DOE reporting requirements threatens its continued viability. Mico Oil Co., 23 DOE ¶ 81,015 (1994) (firm lost one million dollars over previous three years); Deaton Oil Co., 16 DOE ¶ 81,026 (1987) (firm in bankruptcy).
- Relief may be appropriate when the only person capable of preparing the report is ill and the firm cannot afford to hire outside help. S&S Oil & Propane Co., 21 DOE ¶ 81,006 (1991) (owner being treated for cancer); Midstream Fuel Serv., 24 DOE ¶ 81,023 (three month extension of time to file reports granted when two office employees simultaneously on maternity leave); Eastern Petroleum Corp., 14 DOE ¶ 81,011 (1986) (two months relief granted when computer operator broke wrist).
- A combination of factors may warrant exception relief. Exception relief for 10 months was granted where personnel shortages, financial difficulties, and administrative problems resulted from the long illness and death of a partner. Ward Oil Co., 24 DOE ¶ 81,002 (1994); see also Belcher Oil Co., 15 DOE ¶ 81,018 (1987) (extension of time granted where general manager abruptly left firm without notice).
- Extreme or unusual circumstances that disrupt a firm's activities may warrant relief. Little River Village Campground, Inc., 24 DOE ¶ 81,033 (1994) (five months relief because of flood); Utilities Bd. of Citronelle-Gas, 4 DOE ¶ 81,205 (1979) (hurricane); Meier Oil Serv., 14 DOE ¶ 81,004 (1986) (three months where disruptions caused by installation of a new computer system left firm's records inaccessible).

## C. Pitcher's Exception Application

Pitcher, a reseller and retailer of propane, requests an exception to Form EIA-782B and Form EIA-863 reporting on the basis that filing these surveys is too time consuming and onerous. In its Application, Pitcher states that it has annual propane sales of approximately 250,000 gallons, and employs a total of four full-time employees. Pitcher contends that the small size of its operations and the absence of automation makes timely and accurate filing very difficult. The firm also claims that the process of extracting propane figures from company invoices is arduous because it sells such a diverse range of products. Pitcher estimates that completion of the monthly survey requires three and one half hours. Furthermore, Pitcher argues that estimation is not a viable option for the firm because its propane sales shift so dramatically each month and extend between two states. Pitcher therefore has requested an exception from the requirement that it file Form EIA-782B and Form EIA-863.

## D. Analysis

Pitcher has not shown that it is suffering a financial hardship, medical problems, or any other serious impediment to its operations. Pitcher states that completing Form EIA-782B takes approximately three and one half hours, which is slightly longer than the 2.5 hours which EIA estimates the form should require. However, the amount of time invested in filing is not in itself a sufficient criteria to warrant

exception. In the past, we have denied exception requests where firms spent considerably more time preparing Form EIA-782B but failed to show that they were otherwise burdened. See People's Oil and Gas Co., 13 DOE ¶ 81,021 (1985) (one and one half to two working days); St. Joe Petroleum Co., 13 DOE ¶ 81,040 (1985) (eight to ten hours).

In summary, Pitcher has not demonstrated that its burden of providing the requested data is excessive compared to other firms or that it outweighs the benefits which the DOE and the nation receive from access to the information. The data collected from Form EIA-782B and Form EIA-863 constitute the DOE's primary source of information on supplies, demand, and prices of petroleum products. Reliable data is vital to the nation's ability to anticipate and respond quickly and effectively to any future supply disruptions. Unless firms such as Pitcher are part of the EIA's statistical sample, the DOE will be unable to formulate valid estimates from a cross-section of the industry. Strong public policy considerations such as these lead us to conclude that Pitcher's request for exception relief from the mandatory reporting requirements is unwarranted.

In accordance with the above discussion, we find that exception relief is not warranted in this case, because Pitcher is not experiencing a special hardship, inequity, or unfair distribution of burdens from the requirement that it file Form EIA-782B and Form EIA-863. Consequently, the Department of Energy has determined that the Application for Exception filed by Pitcher should be denied.

On August 5, 1995, a copy of the determination that appears above was provided to Pitcher Sales Inc. in the form of a Proposed Decision and Order. In accordance with the procedures that govern this matter, Pitcher was advised of its right to file a Notice of Objection with respect to any finding of fact or conclusion of law reached in the Proposed Decision and Order. See 10 C.F.R. §§ 205.58 and 205.62. Pitcher was further advised that it would be deemed to consent to the issuance of the Proposed Decision and Order in final form unless such a Notice was filed within the prescribed time period. The time period within which a Notice of Objection could be filed has now expired, and we have received no such document from Pitcher or any other potentially aggrieved party. Consequently, this Decision and Order is being issued in final form. Pitcher will accordingly be deemed to consent to the issuance of the present determination

## **It Is Therefore Ordered That:**

(1) The Application for Exception filed by Pitcher Sales Inc. on January 24, 1995, is hereby denied.

George B. Breznay

Director

Office of Hearings and Appeals

Date:

<1>1/ In Form EIA-782B, firms that do business in four or more states or which account for over five percent of the sales of any particular product in a state are always included in the sample of firms required to file the report. A random sample of other firms is also selected. This random sample changes approximately every 12 months, but a firm may be reselected for subsequent samples. A firm that has been included in three consecutive random samples will generally not be included in a fourth consecutive sample, but may be included in a later sample.

<2>2/ Form EIA-782B stipulates that the firm must make a good faith effort to provide reasonably accurate information that is consistent with the accounting records maintained by the firm. The firm must alert the EIA if the estimates are later found to be materially different from actual data.

<3>3/ See Memorandum of Telephone Conversation between Ms. Kaylane Pitcher, co-owner of Pitcher, and Ms. Allison Varzally, OHA staff analyst (February 13, 1995).

<4>4/ Form EIA-782B requires applicants to break down sales according to the state in which its petroleum products are sold which may lengthen the preparation time for the Form.

<5>5/ We believe Pitcher could alleviate the inconvenience of filing the Form without compromising EIA's comprehensive survey of its markets if it adopted a system of estimation. For example, Pitcher could use monthly propane purchases to represent propane sales. In addition the firm could estimate the distribution of total propane sales between states rather than computing an exact breakdown.

# Case No. VEE-0005

July 19, 1995

DECISION AND ORDER

OF THE DEPARTMENT OF ENERGY

Application for Exception

Name of Petitioner: Big Little Stores, Inc.

Date of Filing: February 15, 1995

Case Number: VEE-0005

On February 15, 1995, Big Little Stores, Inc. (Big Little) of Enterprise, Alabama filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). In its Application, Big Little requests that it be relieved of the requirement to file Form EIA-782B, entitled "Resellers/Retailers' Monthly Petroleum Product Sales Report."

## I. Background

In response to the 1979 oil crisis, Congress enacted the Emergency Energy Conservation Act of 1979 (EECA), Pub. L. No. 96-102, 42 U.S.C. § 8501 et seq. In legislating the EECA, Congress found that "up-to-date and reliable information concerning the supply and demand of gasoline, diesel fuel, and other related data is not available to the President, the Congress, or the public." EECA § 201. This lack of information impeded Congress's ability to respond to the oil crisis. Congress therefore directed the DOE to establish a Middle Distillate Monitoring Program. EECA § 242. Under this program, the DOE established a data collection program to monitor the supply and demand of middle distillates. EECA § 242 (a)(1). The responsibility for the Middle Distillate Monitoring Program was assumed by the Energy Information Administration (EIA) of the DOE. Under the provisions of Section 205 of the Department of Energy Organization Act, 42 U.S.C. § 7135, the EIA is authorized not only to collect and analyze energy information necessary for the proper functioning of the DOE but also to require that any energy supplier or major consumer of energy provide such information to the DOE.

When the oil crisis subsided, the DOE thoroughly reviewed its Monitoring Program to determine the least costly method of gathering the information that Congress required. The DOE consulted with state governments, petroleum dealers, and other federal agencies and held a public hearing. Subsequent to these consultations, the EIA adopted Form EIA-782B, "Monthly No.2 Distillate Sales

Report." In November 1983, the EIA revised this Form to include information concerning sales of finished motor gasoline and residual fuel oil, and renamed the Form "Resellers/Retailers' Monthly Petroleum Product Sales Report." In October 1993, the EIA further revised Form EIA-782B in response to the Clean Air Act Amendments of 1990, Pub. L. 101-549. These latest revisions were (i) an expansion of finished motor gasoline reporting categories to include reformulated and oxygenated gasoline, (ii) separation of No. 2 diesel fuel into low and high sulphur content categories, and (iii) the addition of propane to the survey as a reporting product. See Form EIA-782B (10-93).

Under Section 13 (b) of the Federal Energy Administration Act of 1974, 15 U.S.C. § 772 (b), Form EIA-

782B is a mandatory report designed to collect monthly data on sales volumes and unit prices of refined petroleum products from a random sample of resellers and retailers. Data obtained from the respondents constitute DOE's primary source of information about petroleum products at the reseller/retailer level. DOE uses the information to perform analyses and make projections related to energy supplies, demand, and prices. These data are vital to the nation's ability to anticipate and respond to any future energy shortages. See H.R. Rep. No. 373, 96th Cong., 1st Sess., reprinted in 1979 U.S. Code Cong. & Admin. News 1764, 1781. The applicant in this proceeding was designated by the EIA as a member of the sample group required to complete Form EIA-782B on a monthly basis.

Thus, in considering a request for exception relief, we must compare the inconvenience experienced by the firm seeking such relief with the nation's interest in obtaining reliable energy information.

## II. Big Little's Application for Exception

Big Little Stores, Inc., a reseller of motor gasoline and diesel fuel in the States of Alabama and Florida, was first required to file Form EIA-782B in July of 1991. Curtis Edwards, Office Manager, filed this Application for Exception. The firm has a total of six full-time employees. Mr. Edwards states that Big Little stores has filed Form EIA-782B for over three years, and it is a hardship for his office to accumulate the required information. He states that varying local taxes make it difficult to report prices accurately, and the three hours it takes to complete the form are excessive when coupled with the burden of filing forms for several other state, local, and federal agencies.

## III. Analysis

The OHA has the authority to grant exception relief to alleviate or prevent serious hardship or gross inequity. 10 C.F.R. § 205.55(b)(2). See also 6 Fed. Energy Guidelines ¶ 80,003. In previous cases involving requests for exception relief, we have recognized that mandatory reporting requirements cause some inconvenience to respondents. Since all reporting firms are burdened by the requirement to some extent, we have held that exception relief is appropriate to alleviate serious hardship or gross inequity only when a firm can demonstrate that it is adversely affected by the reporting requirement in a way that differs significantly from similar reporting firms.

In addition, when evaluating an applicant's request for exception relief, we consider whether the difficulty in complying with the reporting requirement is outweighed by the benefits to the nation in obtaining the required data. See *Lockheed Air Terminal*, 15 DOE ¶ 81,010 (1986); *Champlain Oil Co.*, 14 DOE ¶ 81,022 (1986); *Three L Inc.*, 12 DOE ¶ 81,014 (1984); *Pure Oil Co.*, 8 DOE ¶ 81,019 (1981). In implementing its petroleum product reporting program, the DOE has attempted to minimize the reporting burden on individual dealers by periodically selecting a relatively small random sample of companies. To obtain a proper representation of the industry, however, it is important that all types of firms, both large and small, participate. *Napakiak Corp.*, 14 DOE ¶ 81,014 (1986); *Michek Oil Co.*, 9 DOE ¶ 81,010 (1981).

Based on our review of the record, Big Little has not met the standards for exception relief set forth above. The requirement to file Form EIA-782B may be an inconvenience to the company, but Big Little has not shown that it bears an unusual burden compared with similar reporting firms. The company is financially stable and does not claim to be understaffed. Having to file a number of regulatory forms does not constitute sufficient reason to receive exception from filing EIA-782B since other firms are faced with a similar burden.

Mr. Edwards said that it takes him three hours to complete Form EIA-782B, which is half an hour longer than EIA estimates that it should take to complete the form. It should be noted, however, that the EIA generally attempt to replace 50 percent of the Form EIA-782B sample each year. This is the third sample in which Big Little has been selected for EIA's survey. Therefore, Big Little Stores, Inc. will be rotated out of the survey sample at the end of this sampling period.

Although the time Mr. Edwards claims that it takes to complete Form EIA-782-B is not significantly longer than the time EIA estimates that it should take, Mr. Edwards may use estimates, to reduce the time it takes to complete Form EIA-782B for the remaining months of the sample period. EIA allows the use of estimates as long as the basis for such estimates is "consistent with standard accounting records maintained by the firm." 2 Federal Energy Guidelines ¶ 18,502 at 18,517. We recommend that Mr. Edwards contact EIA to establish a method of estimation satisfactory to both parties. Toll-free numbers are provided in the General Instructions of the EIA form.(1)

Based on the considerations set forth above, we conclude that Big Little has not demonstrated that it is experiencing serious hardship or gross inequity from the requirement that it complete Form EIA-782B. Consequently, the Department of Energy has determined that the Application for Exception filed by Big-Little Stores, Inc., on February 15, 1995, should be denied.

On June 1, 1995, a copy of the determination that appears above was provided to Big Little in the form of a Proposed Decision and Order. In accordance with the procedures that govern this matter, Big Little was advised of its right to file a Notice and Statement of Objections with respect to any finding of fact or conclusion of law reached in the Proposed Decision and Order. See 10 C.F.R. §§ 205.58 and 205.62. Big Little was further advised that it would be deemed to consent to the issuance of the Proposed Decision and Order in final form unless such a Notice was filed within the prescribed time period. The time period within which a Notice of Objection could be filed has now expired, and we have received no such document from Big Little or any other potentially aggrieved party. Consequently, this Decision and Order is being issued in final form. Big Little will accordingly be deemed to consent to the issuance of the present determination.

It Is Therefore Ordered That:

(1) The Application for Exception filed by Big Little Stores, Inc., on February 15, 1995, is hereby denied.

George B. Breznay

Director

Office of Hearings and Appeals

Date: July 19, 1995

(1)\* The toll-free number for questions regarding EIA-782B is (800) 638-8812.

DECISION AND ORDER  
OF THE DEPARTMENT OF ENERGY

Application for Exception

Name of Petitioner: Boyd Jolley Company

Date of Filing: March 28, 1995

Case Number: VEE-0006

On March 28, 1995, the Boyd Jolley Company (Boyd Jolley) of Shelley, Idaho, filed an Application for Exception with the Office of Hearings and Appeals of the Department of Energy. In its Application, the Company requests that it be relieved of the requirement that it file the Energy Information Administration's (EIA) form entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report" (Form EIA-782B). As explained below, we have determined that the Application for Exception should be denied.

## A. Background

The EIA-782B reporting requirement grew out of the shortages of crude oil and petroleum products during the 1970s. In 1979, Congress found that the lack of reliable information concerning the supply, demand, and prices of petroleum products impeded the nation's ability to respond to the oil crisis. It therefore authorized the DOE to collect data on the supply and prices of petroleum products. The current form collects information concerning the volume and price of various grades and types of motor gasoline, No. 2 distillates, propane, and residual fuel oil, broken down by customer type.

Information obtained from the survey is used to analyze trends within petroleum markets. Summaries of the information and the analyses are published by the EIA in publications such as "Petroleum Marketing Monthly." This data is used by Congress and by more than 35 state governments to project trends and to formulate state and national energy policies. In addition, firms in the petroleum industry frequently base business decisions on the data published by EIA.

The DOE has attempted to ensure that this survey yields valuable information while minimizing the burden placed on the industry. Thus, in designing the form, the DOE consulted with potential survey respondents, various industry associations, users of the energy data, state governments, and other federal agencies. Moreover, to minimize the

reporting burden, the EIA periodically selects a relatively small sample of companies to file the report. In addition, to reduce the amount of time spent completing the forms, firms may rely upon reasonable estimates.<1>

## B. Exceptions Criteria

Form EIA-782B is a mandatory report designed to collect monthly information on refined petroleum sales volumes and prices from a sample of resellers and retailers. 42 U.S.C. § 7135(b). This Office has authority to grant exception relief where the reporting requirement causes a "special hardship, inequity, or unfair distribution of burdens." 42 U.S.C. § 7194 (a); 10 C.F.R. § 205.55(b)(2). Exceptions are appropriate only in extreme cases. Because all reporting firms are burdened to some extent by reporting requirements, exception relief is appropriate only where a firm can demonstrate that it is adversely affected by the



reporting requirement in a way that differs significantly from similar reporting firms. Thus, mere inconvenience does not constitute a sufficient hardship to warrant relief. Glenn W. Wagoner Oil Co., 16 DOE ¶ 81,024 (1987).

In considering a request for exception relief, we must weigh a firm's difficulty in complying with the reporting requirement against the nation's need for reliable energy data. Neither the fact that a firm is relatively small, nor the fact that it has filed the report for a number of years are grounds for exception relief. If firms of all sizes, both large and small, are not included, the estimates and projections generated by the EIA's statistical sample will be unreliable. Mulgrew Oil Co., 20 DOE ¶ 81,009 (1990).

The following examples illustrate the types of circumstances that may justify relief from the reporting requirement. Since each case is different, these examples are not intended to reflect all circumstances that justify exception relief:

- Financial difficulties underlie most approvals of exception relief. We have granted a number of exceptions where the applicant's financial condition is so precarious that the additional burden of meeting the DOE reporting requirements threatens its continued viability. Mico Oil Co., 23 DOE ¶ 81,015 (1994) (firm lost one million dollars over previous three years); Deaton Oil Co., 16 DOE ¶ 81,026 (1987) (firm in bankruptcy).
- Relief may be appropriate when the only person capable of preparing the report is ill and the firm cannot afford to hire outside help. S&S Oil & Propane Co., 21 DOE ¶ 81,006 (1991) (owner being treated for cancer); Midstream Fuel Serv., 24 DOE ¶ 81,023 (three month extension of time to file reports granted when two office employees simultaneously on maternity leave); Eastern Petroleum Corp., 14 DOE ¶ 81,011 (1986) (two months relief granted when computer operator broke wrist).
- A combination of factors may warrant exception relief. Exception relief for 10 months was granted where personnel shortages, financial difficulties, and administrative problems resulted from the long illness and death of a partner. Ward Oil Co., 24 DOE ¶ 81,002 (1994); see also Belcher Oil Co., 15 DOE ¶ 81,018 (1987) (extension of time granted where general manager abruptly left firm without notice).
- Extreme or unusual circumstances that disrupt a firm's activities may warrant relief. Little River Village Campground, Inc., 24 DOE ¶ 81,033 (1994) (five months relief because of flood); Utilities Bd. of Citronelle-Gas, 4 DOE ¶ 81,205 (1979) (hurricane); Meier Oil Serv., 14 DOE ¶ 81,004 (1986) (three months where disruptions caused by installation of a new computer system left firm's records inaccessible).

## C. Boyd Jolley's Application for Exception

Boyd Jolley is a medium-sized firm that sells motor gasoline, No. 2 diesel, and No. 2 fuel oil. The firm has been participating in the EIA survey since February of 1993. Mr. Boyd Jolley, the owner of the firm, argues in his Exception Application that his firm should be excused from filing the EIA-782B because it has prepared and filed this form longer than other firms.<2> Moreover, Mr. Jolley contends that his firm is burdened by additional DOE reporting requirements. Mr. Jolley specifically stated that "During 1994, I filed Form EIA-782B each month. But then I started to receive phone calls from another department of the D.O.E., demanding that I call each Monday morning and report prices and gallons sold and to whom. And then at the end of 1994, I received another form . . . requesting the same information for the total year that had already been sent on Form EIA-782B forms."<3>

During a telephone conversation, Mr. Jolley explained that only two people perform administrative tasks for the firm and that they do not have sufficient time to complete the forms. See Memorandum of Telephone Conversation between Linda Lazarus, Staff Attorney, Office of Hearings and Appeals, and Boyd Jolley (April 11, 1995). The firm does not, however, claim to be experiencing financial difficulties.

## D. Analysis

Boyd Jolley has not shown that it meets the standards for exception relief set forth above. While the firm will no doubt experience some inconvenience in filling out Form EIA-782B each month, this inconvenience does not appear to be greater than that experienced by other reporting firms. Nothing in the record indicates that Boyd Jolley is financially stressed or that the reporting requirement burdens the firm in a unique or exceptional way. The fact that the firm has been required to complete a form for more than two years does not alone justify an exception .

Contrary to the firm's assertion, there is no evidence that it has been singled out to participate in the monthly EIA-782B survey in an unfair manner. The survey is conducted by selecting a random sample of firms. A firm that has been included in three consecutive random samples (which normally last from twelve to eighteen months each) will generally not be included in a fourth consecutive sample, but may be included in a later sample. However, firms that do business in four or more states or which account for over five percent of the sales of any particular product in a state are always included in the sample of firms required to file the report. Although Boyd Jolley states that it has been reporting for "about five years," DOE records indicate that it has only been reporting since February of 1993. These standards for selecting firms to participate in the survey are reasonable and appear to have been followed in this case. Consequently, Boyd Jolley has submitted no evidence to indicate that its selection to participate in this survey is unfair.

Boyd Jolley's claim that it is unduly burdened by its obligation to report on other EIA surveys is similarly without merit. Indeed, the record indicates that Boyd Jolley is not currently responding to any other EIA surveys. Mr. Jolley has admitted that he refuses to answer any questions on the weekly telephone survey. See Memorandum of Telephone Conversation between Linda Lazarus, Staff Attorney, Office of Hearings and Appeals and Boyd Jolley (April 11, 1995). Further, Boyd Jolley was excused from filing the annual Form EIA-863 after Mr. Jolley complained to EIA that he was already filing Form EIA-782B.<4> We emphasize, however, that even if Boyd Jolley were reporting on other surveys, it would not follow that exception relief is warranted.

On the other hand, the data collected from Form EIA-782B constitute the DOE's primary source of information on supplies, demand, and prices of petroleum products. Reliable data is vital to the nation's ability to formulate energy policies and respond effectively to any future supply disruptions. Unless firms such as Boyd Jolley are part of the EIA's statistical sample, the DOE will be unable to formulate valid estimates from a cross-section of the industry. Consequently, there is no evidence that the burden on Boyd Jolley of providing the requested data outweighs the benefits which the DOE and the nation receive from access to the information.

In view of the foregoing considerations, we find that the requirement that Boyd Jolley file Form EIA-782B does not constitute a special hardship, inequity, or unfair distribution of burdens. Accordingly, the Application for Exception filed by Boyd Jolley should be denied.

On April 4, 1996, a copy of the determination that appears above was provided to Boyd Jolley in the form of a Proposed Decision and Order. In accordance with the procedures that govern this matter, Boyd Jolley was advised of its right to file a Notice of Objection with respect to any finding of fact or conclusion of law reached in the Proposed Decision. See 10 C.F.R. § 205.58. Boyd Jolley was further advised that it would be deemed to consent to the issuance of the Proposed Decision in final form unless such a Notice was filed within the prescribed time period. The time period within which a Notice of Objection could be filed has now expired and no Notice of Objection has been received from Boyd Jolley or any other potentially aggrieved party. Consequently, Boyd Jolley shall be deemed to consent to issuance of this Decision and Order as the final determination of the Department of Energy.

## **It Is Therefore Ordered That:**

The Application for Exception filed by Boyd Jolley Company on March 28, 1995, is hereby denied.

George B. Breznay

Director

Office of Hearings and Appeals

Date:

<1>The firm must make a good faith effort to provide reasonably accurate information that is consistent with the accounting records maintained by the firm. The firm must alert the EIA if the estimates are later found to be materially different from actual data.

<2> Mr. Jolley also alleged that he was threatened when he requested to be relieved from his obligation to complete the survey. This is contrary to DOE policy and there is no record of such a threat. Indeed, as detailed below, rather than being threatened, DOE records indicate that Mr. Jolley was accommodated when he indicated that he lacked sufficient resources to complete Form EIA-863.

<3>It appears that Mr. Jolley is referring to Form EIA-863, entitled "Petroleum Products Sales Identification Survey".

<4>As an accommodation, EIA annualized the information contained in Form EIA-782B to recreate the data required by Form EIA-863.

# Case No. VEE-0008

November 3, 1995

DECISION AND ORDER

OF THE DEPARTMENT OF ENERGY

Application for Exception

Name of Petitioner:C&B Warehouse Distributing, Inc.

Date of Filing:July 10, 1995

Case Number: VEE-0008

On July 10, 1995, C&B Warehouse Distributing, Inc. (C&B Warehouse) of Virginia, Minnesota, filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). In its Application, C&B Warehouse requests that it be relieved of the requirement that it file the Energy Information Administration's (EIA) form entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report" (Form EIA-782B). As explained below, we have determined that the Application for Exception should be denied.

## A. Background

Form EIA-782B is a mandatory reporting requirement which grew out of the shortages of crude oil and petroleum products during the 1970s. In 1979, Congress found that the lack of reliable information concerning the supply, demand, and prices of petroleum products impeded the nation's ability to respond to the oil crisis. It therefore authorized the DOE to collect data on the supply and prices of petroleum products. Form EIA-782B is designed to collect monthly information on refined petroleum sales volumes and prices from a sample of resellers and retailers. 42 U.S.C. § 7135(b).

Information obtained from Form EIA-782B is used to analyze trends within petroleum markets. Summaries of the information and the analyses are published by the EIA in publications such as "Petroleum Marketing Monthly." This data is used by Congress and by more than 35 state governments to project trends and to formulate state and national energy policies. In addition, firms in the petroleum industry frequently base business decisions on the data published by EIA.

The DOE has attempted to ensure that the surveys yield valuable information while minimizing the burden placed on the industry. Thus, in designing the form, the DOE consulted with potential survey respondents, various industry associations, users of the energy data, state governments, and other federal agencies.

Moreover, to minimize the reporting burden, the EIA periodically selects a relatively small sample of companies to file Form EIA-782B. In addition, to reduce the amount of time spent completing the forms, firms may rely upon reasonable estimates.(1)

## B. Exception Criteria

This Office has authority to grant exception relief where the reporting requirement causes a "special hardship, inequity, or unfair distribution of burdens." 42 U.S.C. § 7194(a); 10 C.F.R. § 1003.25(b)(2).

Exceptions are appropriate only in extreme cases. Because all reporting firms are burdened to some extent by reporting requirements, exception relief is appropriate only where a firm can demonstrate that it is adversely affected by the reporting requirement in a way that differs significantly from similar reporting firms. Thus, mere inconvenience does not constitute a sufficient hardship to warrant relief. Glenn W. Wagoner Oil Co., 16 DOE ¶ 81,024 (1987).

In considering a request for exception relief, we must weigh the firm's difficulty in complying with the reporting requirement against the nation's need for reliable energy data. Neither the fact that a firm is relatively small, nor the fact that it has filed the reports for a number of years alone constitute grounds for exception relief. If firms of all sizes, both large and small, are not included, the estimates and projections generated by the EIA's statistical sample will be unreliable. Mulgrew Oil Co., 20 DOE ¶ 81,009 (1990).

The following examples illustrate the types of circumstances that may justify relief from the reporting requirement. Since each case is different, these examples are not intended to reflect all circumstances that justify exception relief:

· Financial difficulties underlie most approvals of exception relief. We have granted a number of exceptions where the applicant's financial condition is so precarious that the

additional burden of meeting the DOE reporting requirements threatens its continued viability. Mico Oil Co., 23 DOE ¶ 81,015 (1994) (firm lost one million dollars over previous three years); Deaton Oil Co., 16 DOE ¶ 81,026 (1987) (firm in bankruptcy).

- Relief may be appropriate when the only person capable of preparing the report is ill and the firm cannot afford to hire outside help. S&S Oil & Propane Co., 21 DOE ¶ 81,006 (1991) (owner being treated for cancer); Midstream Fuel Serv., 24 DOE ¶ 81,023 (three month extension of time to file reports granted when two office employees simultaneously on maternity leave); Eastern Petroleum Corp., 14 DOE ¶ 81,011 (1986) (two months relief granted when computer operator broke wrist).
- A combination of factors may warrant exception relief. Exception relief for 10 months was granted where personnel shortages, financial difficulties, and administrative problems resulted from the long illness and death of a partner. Ward Oil Co., 24 DOE ¶ 81,002 (1994); see also Belcher Oil Co., 15 DOE ¶ 81,018 (1987) (extension of time granted where general manager abruptly left firm without notice).
- Extreme or unusual circumstances that disrupt a firm's activities may warrant relief. Little River Village Campground, Inc., 24 DOE ¶ 81,033 (1994) (five months relief because of flood); Utilities Bd. of Citronelle-Gas, 4 DOE ¶ 81,205 (1979) (hurricane); Meier Oil Serv., 14 DOE ¶ 81,004 (1986) (three months where disruptions caused by installation of a new computer system left firm's records inaccessible).

## **C. C&B Warehouse's Exception Application**

C&B Warehouse, located in Virginia, Minnesota, sells No. 2 distillate fuel to retail, wholesale, and non-residential customers, and motor gasoline to retail and wholesale customers. Classified by EIA as a "large to medium size firm," C&B Warehouse has been filing Form EIA-782B continuously since February 1993, with the exception of a four month lapse in 1994. According to Phil Troutwine, President of C&B Warehouse, it takes him between one hour and one and one-half hours to complete the Form. Mr. Troutwine estimates certain sections of the Form by either using data from the previous month or data from the corresponding month of the previous year. Mr. Troutwine states that he is frustrated with Form EIA-782B because it intensifies C&B Warehouse's already heavy load of filing requirements. Troutwine also claims that the firm has filed the Form for over two consecutive years, and contends that he has therefore fulfilled its commitment to EIA. In support of this contention, the firm cites a letter from EIA dated June 27, 1995. According to the letter, "Companies are generally required to report for approximately twenty-four months before receiving relief" (emphasis added).

## D. Analysis

C&B Warehouse's principal argument is that EIA should remove the firm from the sample because it has filed the form for two years. The June 27, 1995, letter does not mean that C&B Warehouse must be relieved from the requirement that it file this form. While it is true that the EIA generally attempts to replace 50% of Form EIA-782B's sample each sample period (average sample period is approximately one year), a firm may be selected for a third sample period. A firm that has reported for three consecutive samples will generally not, however, be included in a fourth consecutive sample, but may be included in a later sample.(2)According to EIA, C&B Warehouse has been filing Form EIA-782B since the 1993 sample.(3)

Nothing in the record in this case indicates that C&B Warehouse, meets the standards for exception relief set forth above. A firm must show that it is particularly adversely affected by the filing requirement, and C&B Warehouse has not made such a showing. Nor has the firm shown that it experiences a degree of inconvenience in filing form EIA-782B that differs significantly from other, similar reporting firms. We have repeatedly held that the length of time that a firm has been required to file the EIA forms generally does not, in itself, constitute grounds for exception relief. *Harbor Enters., Inc.*, 20 DOE ¶ 81,004 (1990) (20 years); *Halron*, 16 DOE at 82,501 (12 years). Although C&B Warehouse argues that completing the Form is a burden because of the number of other forms that the company is required to file, the one to one and one-half hours the firm allegedly spends each month preparing the form is substantially less than the 2.3 hours per month EIA estimates as the length of time that it should take. Furthermore, in the past, we have denied exception relief to firms which claimed they required even greater amounts of time to complete Form EIA-782B than that estimated by EIA. *Haynes Oil Co.*, 22 DOE ¶ 81,002 (1992) (one day); *Franken Oil & Distribut. Co., Inc.*, 20 DOE at 81,001 (1990) (16 to 20 hours); *Delgado Oil Co.*, 17 DOE ¶ 81,005 (1988) (40 hours); *Dell Oil Ltd.*, 13 DOE ¶ 81,009 (1985) (2 days).

Moreover, in implementing Form EIA-782B, the DOE has attempted to minimize the reporting burden placed on the public by periodically selecting a relatively small random sample of companies. The EIA states, however, that changing the entire sample each year would adversely affect the quality of the survey's results because of the initial difficulties some firms experience as they become accustomed to preparing the Form. *E.H. Moorhouse, Inc.*, 14 DOE ¶ 81,012, at 82,540 (1986); *People's Oil & Gas Co.*, 13 DOE ¶ 81,021, at 82,573 (1985).

In summary, C&B Warehouse has not demonstrated that its burden of providing the requested data is excessive compared to other firms or that it outweighs the benefits which the DOE and the nation receive from access to the information. The data collected from Form EIA-782B constitute the DOE's primary source of information on supplies, demand, and prices of petroleum products. Reliable data is vital to the nation's ability to anticipate and respond quickly and effectively to any future supply disruptions. Unless firms such as C&B Warehouse are part of the EIA's statistical sample, the DOE will be unable to formulate valid estimates from a cross-section of the industry. Strong public policy considerations such as these lead us to conclude that C&B Warehouse's request for exception relief from the mandatory reporting requirements is unwarranted.

## E. Conclusion

In accordance with the above discussion, we find that exception relief is not warranted in this case, because C&B Warehouse is not experiencing a special hardship, inequity, or unfair distribution of burdens from the requirement that it file Form EIA-782B. Consequently, the Department of Energy has determined that the Application for Exception filed by C&B Warehouse should be denied.

It Is Therefore Ordered That:

(1) The Application for Exception filed by C&B Warehouse Distributing, Inc., on July 10, 1995, is hereby

denied.

(2) Administrative review of this Decision and Order may be sought by any person who is aggrieved or adversely affected by the denial of exception relief. Such review shall be commenced by the filing of a petition for review with the Federal Energy Regulatory Commission within 30 days of the date of this Decision and Order pursuant to 18 C.F.R. Part 385, Subpart J.

George B. Breznay

Director

Office of Hearings and Appeals

Date:

(1)/ Form EIA-782B stipulates that the firm must make a good faith effort to provide reasonably accurate information that is consistent with the accounting records maintained by the firm. The firm must alert the EIA if the estimates are later found to be materially different from actual data.

(2)/ For Form EIA-782B, firms that do business in four or more states or which account for over five percent of the sales of any particular product in a state are always included in the sample of firms required to file the report. A random sample of other firms is also selected.

(3)/ See Record of Telephone Conversation between Kimberly Smith, OHA Staff Analyst, and Sherry Beri, EIA (July 31, 1995). See also, Record of Telephone Conversation between Kimberly Smith, OHA Staff Analyst, and Mr. Troutwine, C&B Warehouse (July 20, 1995).

# Case No. VEE-0009

November 1, 1995

FINAL

DECISION AND ORDER

OF THE DEPARTMENT OF ENERGY

Application for Exception

Name of Petitioner: Dixie Gas & Oil Corporation

Date of Filing: August 10, 1995

Case Number: VEE-0009

On August 10, 1995, Dixie Gas & Oil Corporation (Dixie) of Verona, Virginia, filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). In its Application, Dixie requests that it be temporarily relieved of the requirement that it file the Energy Information Administration (EIA) form entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report" (Form EIA-782B). As explained below, we have determined that exception relief should be granted on a temporary basis.

## I. Background

In response to the 1979 oil crisis, Congress enacted the Emergency Energy Conservation Act of 1979 (EECA), Pub. L. No. 96-102, 42 U.S.C. § 8501 et seq. In legislating the EECA, Congress found that "up-to-date and reliable information concerning the supply and demand of gasoline, diesel fuel, and other related data is not available to the President, the Congress, or the public." EECA § 201, 42 U.S.C. § 8501. This lack of information impeded Congress's ability to respond to the oil crisis. Congress, therefore, directed the DOE to establish a Middle Distillate Monitoring Program to monitor the supply and demand of middle distillates in each state at the refining, wholesale and retail levels. EECA § 242, 42 U.S.C. § 8532.

The responsibility for the Middle Distillate Monitoring Program was assumed by the Energy Information Administration (EIA) of the DOE. Under the provisions of Section 205 of the Department of Energy Organization Act, 42 U.S.C. § 7135, the EIA is authorized not only to collect and analyze energy information necessary for the proper functioning of the DOE, but also to require that any energy supplier or major consumer of energy provide such information to the DOE.

When the oil crisis subsided, the DOE thoroughly reviewed its Monitoring Program to determine the least costly method of gathering the information that Congress required. The DOE consulted with state governments, petroleum dealers, and other federal agencies, and held a public hearing. Subsequent to these consultations, the EIA adopted Form EIA-782B, "Monthly No. 2 Distillate Sales Report." In November 1983, the EIA revised this Form to include information concerning sales of finished motor gasoline and residual fuel oil, and renamed the Form "Resellers'/Retailers' Monthly

Petroleum Product Sales Report." In October 1993, the EIA further revised Form EIA-782B in response to



the Clean Air Act Amendments of 1990, Pub. L. 101-549. These latest revisions to Form EIA-782B included (i) an expansion of finished motor gasoline reporting categories to include reformulated and oxygenated gasoline, (ii) separation of No. 2 diesel fuel into low and high sulphur content categories, and (iii) the addition of propane to the survey as a reporting product. See Form EIA-782B (10-93).

Form EIA-782B is a mandatory report designed to collect monthly data on sales volumes and unit prices of refined petroleum products from a random sample of resellers and retailers. Information obtained from the respondents constitutes the DOE's primary source of information about petroleum products at the reseller/retailer level. The DOE uses this information to make projections related to energy supplies, demand, and prices. Access to this data is vital to the nation's ability to anticipate and respond to any future energy shortages. See H.R. Rep. No. 93-373, 96th Cong., 1st Sess., reprinted in 1979 U.S. Code Cong. & Admin. News 1764, 1781.

The applicant in this proceeding was selected by the EIA to complete and submit Form EIA-782B to the EIA on a monthly basis beginning with the firm's propane sales in October 1993. The firm is a "certainty" firm which has been completing the form since that date.(1) Firms that operate in more than four states or firms that sell 5 percent or more of a product sales category in any state are considered "certainty" companies. Such companies are not rotated out of the sample of respondents because of their strong impact on the data series and the lack of any suitable replacements.

## II. Dixie's Exception Application

Dixie, located in Verona, Virginia, sells motor gasoline, diesel fuel and residential and non-residential propane in Virginia and residential and non-residential propane in West Virginia. Daniel Alexander, Executive Vice President of Dixie, files form EIA-782B for the firm. One staff member is responsible for preparing the form. Mr. Alexander estimates that it takes approximately three hours for the staff member to complete the form each month with the help of the firm's computer program.(2) Mr. Alexander claims that Dixie should be temporarily relieved of the reporting requirement because the firm is undergoing an extensive computer upgrade and complications arising from the upgrade have left the firm with no database with which to operate. As a result, Dixie cannot generate the reports needed to file the form. Mr. Alexander states that it would be impossible for one individual to compile the information without the assistance of the computer program and, even if it were possible, he could not afford to dedicate one staff member to manually compile the information needed to file the form. He expects the upgrade to be completed by January 1996. Accordingly, Dixie asks that it be temporarily relieved of the filing requirement for Form EIA-782B until February 1996.

## III. Analysis

The OHA has the authority to grant exception relief to alleviate or prevent serious hardship or gross inequity. 10 C.F.R. § 1003.20. See also Exceptions and Appeals Guidelines, 6 Fed. Energy Guidelines ¶ 80,003. In previous cases involving requests for exception relief, we have recognized that mandatory reporting requirements cause some inconvenience to respondents. Since all reporting firms are burdened by the requirement, we have held that exception relief is appropriate only when a firm can demonstrate that it is adversely affected by the reporting requirement in a way that differs significantly from similar reporting firms.

After considering Dixie's application, we have determined that temporary exception relief is warranted. Dixie has persuaded us that, given the firm's current circumstances, its capability of efficiently acquiring the data necessary for completing Form EIA-782B has been severely impeded. For Dixie to prepare the form without the aid of its computer system would excessively burden the one employee responsible for filing the form. In past cases, we have granted temporary relief to firms experiencing similar circumstances that disrupt daily activities. See e.g., Meier Oil Serv., 14 DOE ¶ 81,004 (1986) (three months relief granted when disruptions caused by the installation of a new computer system left the firm's records inaccessible).

In addition, when evaluating an applicant's request for exception relief, we consider whether the difficulty in complying with the reporting requirement is outweighed by the benefits to the nation in obtaining the required data. See Lockheed Air Terminal, 15 DOE ¶ 81,010 (1986); Champlain Oil Co., 14 DOE ¶ 81,022 (1986); Three L Inc., 12 DOE ¶ 81,014 (1984). Exception relief from reporting requirements has been approved in the past only upon a showing that, because of unusual circumstances, the reporting requirements impose an inordinate burden on the applicant or impede the applicant's operations to such an extent that a serious financial hardship or gross inequity exists. See, e.g., Eastern Petroleum Corp., 14 DOE ¶ 81,011 (1986); Welsch Oil Co., 12 DOE ¶ 81,011 (1984); Pure Oil Co., 8 DOE ¶ 81,019 (1981).

Previously, we have balanced these competing interests almost exclusively in cases dealing with small companies which could be rotated out of the survey sample group. In such cases, the balancing of interests took into account that the data provided by the firm requesting exception relief was not irreplaceable; that data from other firms could be used to maintain the validity of the survey's statistics. However, the balance of interests changes when the firm requesting exception relief is a "certainty" company, such as Dixie. Such a firm is vital to the sample group; should its figures not be included in the overall survey results, those results might not accurately reflect the market. We recognize that Dixie is suffering a serious hardship at this time. We will therefore approve exception relief for four months. The temporary exception period will allow Dixie to complete its computer upgrade.

This Decision is being issued under the new OHA procedural regulations that became effective April 20, 1995. 10 C.F.R. Part 1003, 60 Fed. Reg. 15004 (March 21, 1995). Accordingly, this is a final Decision and Order, see 10 C.F.R. § 1003.26, and exception relief is effective immediately.

It Is Therefore Ordered That:

- (1) The Application for Exception filed by Dixie Gas & Oil Corporation on August 10, 1995 is hereby granted as set forth in Paragraph 2.
- (2) Dixie Gas & Oil Corporation shall be removed from the list of firms required to submit data on Form EIA-782B to the Energy Information Administration of the Department of Energy from October 1995 through January 1996.
- (3) This is a Final Order of the Department of Energy.

George B. Breznay

Director

Office of Hearings and Appeals

Date: November 1, 1995

(1)/See Memorandum of August 23, 1995 voice mail message from Sherry Beri of EIA to OHA Staff Analyst Amani L. Roland.

(2)2/ See Memorandum of September 22, 1995 telephone conversation between Daniel Alexander, Executive Vice President of Dixie, and OHA Staff Analyst Amani L. Roland

# Case No. VEE-0010

December 13, 1995

DECISION AND ORDER

OF THE DEPARTMENT OF ENERGY

Application for Exception

Name of Petitioner: F.L. Baker Dist., Inc.

Date of Filing: August 15, 1995

Case Number: VEE-0010

On August 15, 1995, F.L. Baker Dist., Inc. (Baker) of Carlyle, Illinois, filed an Application for Exception with the Office of Hearings and Appeals of the Department of Energy. In its Application, Baker requests that it be relieved of the requirement that it file the Energy Information Administration's (EIA) form entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report" (Form EIA-782B). As explained below, we have determined that the Application for Exception should be denied.

## A. Background

The EIA-782B reporting requirement grew out of the shortages of crude oil and petroleum products during the 1970s. In 1979, Congress found that the lack of reliable information concerning the supply, demand, and prices of petroleum products impeded the nation's ability to respond to the oil crisis. It therefore authorized the DOE to collect data on the supply and prices of petroleum products. The current form collects information concerning the volume and price of various grades and types of motor gasoline, No. 2 distillates, propane, and residual fuel oil, broken down by customer type.

Information obtained from the survey is used to analyze trends within petroleum markets. Summaries of the information and the analyses are published by the EIA in publications such as "Petroleum Marketing Monthly." This data is used by Congress and by more than 35 state governments to project trends and to formulate state and national energy policies. In addition, firms in the petroleum industry frequently base business decisions on the data published by EIA.

The DOE has attempted to ensure that this survey yields valuable information while minimizing the burden placed on the industry. Thus, in designing the form, the DOE consulted with potential survey respondents, various industry associations, users of the energy data, state governments, and other federal agencies. Moreover, to minimize the reporting burden, the EIA periodically selects a relatively small sample of companies to file the report.(1) In addition, to reduce the amount of time spent completing the forms, firms

may rely upon reasonable estimates.(2)

## B. Exceptions Criteria

Form EIA-782B is a mandatory report designed to collect monthly information on refined petroleum sales volumes and prices from a sample of resellers and retailers. 42 U.S.C. § 7135(b). This Office has authority

to grant exception relief where the reporting requirement causes a “serious hardship, gross inequity or unfair distribution of burdens.” 42 U.S.C. § 7194 (a); 10 C.F.R. §1003.25(b)(2). Exceptions are appropriate only in extreme cases. Because all reporting firms are burdened to some extent by reporting requirements, exception relief is appropriate only where a firm can demonstrate that it is adversely affected by the reporting requirement in a way that differs significantly from similar reporting firms. Thus, mere inconvenience does not constitute a sufficient hardship to warrant relief. Glenn W. Wagoner Oil Co., 16 DOE ¶ 81,024 (1987).

In considering a request for exception relief, we must weigh the firm's difficulty in complying with the reporting requirement against the nation's need for reliable energy data. Neither the fact that a firm is relatively small, nor the fact that it has filed the report for a number of years alone constitute grounds for exception relief. If firms of all sizes, both large and small, are not included the estimates and projections generated by the EIA's statistical sample will be unreliable. Mulgrew Oil Co., 20 DOE ¶ 81,009 (1990).

The following examples illustrate the types of circumstances that may justify relief from the reporting requirement. Since each case is different, these examples are not intended to reflect all circumstances that justify exception relief:

- Financial difficulties underlie most approvals of exception relief. We have granted a number of exceptions where the applicant's financial condition is so precarious that the additional burden of meeting the DOE reporting requirements threatens its continued viability. Mico Oil Co., 23 DOE ¶ 81,015 (1994) (firm lost one million dollars over previous three years); Deaton Oil Co., 16 DOE ¶ 81,026 (1987) (firm in bankruptcy).
- Relief may be appropriate when the only person capable of preparing the report is ill and the firm cannot afford to hire outside help. S&S Oil & Propane Co., 21 DOE ¶ 81,006 (1991) (owner being treated for cancer); Midstream Fuel Serv., 24 DOE ¶ 81,023 (three month extension of time to file reports granted when two office employees simultaneously on maternity leave); Eastern Petroleum Corp., 14 DOE ¶ 81,011 (1986) (two months relief granted when computer operator broke wrist).
- A combination of factors may warrant exception relief. Exception relief for 10 months was granted where personnel shortages, financial difficulties, and administrative problems resulted from the long illness and death of a partner. Ward Oil Co., 24 DOE ¶ 81,002 (1994); see also Belcher Oil Co., 15 DOE ¶ 81,018 (1987) (extension of time granted where general manager abruptly left firm without notice).
- Extreme or unusual circumstances that disrupt a firm's activities may warrant relief. Little River Village Campground, Inc., 24 DOE ¶ 81,033 (1994) (five months relief because of flood); Utilities Bd. of Citronelle-Gas, 4 DOE ¶ 81,205 (1979) (hurricane); Meier Oil Serv., 14 DOE ¶ 81,004 (1986) (three months where disruptions caused by installation of a new computer system left firm's records inaccessible).

## C. Baker's Exception Application

Baker is a small- to medium-sized firm that sells No. 2 residential, non-residential, and wholesale fuel oil as well as retail and wholesale motor gasoline. This is the first time that Baker has been selected to participate in the EIA survey. In its Application for Exception, Stephen Baker, president of the firm, states that the operations manager responsible for filing the form in the past is no longer employed by the company and is not being replaced. He also stated that he does not have the time to complete the form. Finally, he said that his company's sales have sagged this past year as a result of reduced petroleum purchases by regional farmers due to a wet season.

## D. Analysis

Baker has not shown that it meets the standards for exception relief set forth above. While it will no doubt experience some inconvenience in filling out Form EIA-782B each month, this inconvenience does not

appear to be greater than that experienced by other reporting firms. Baker's sales have dipped slightly in the past year, but the decline is not large enough to endanger the company's financial health. The greatest obstacle to Baker's filing of the form appears to be the learning curve involved in having a staff member familiarize themselves with the form. However, once this small, initial investment is made, completing the form should not be a significant problem for the firm. Furthermore, the EIA provides a toll-free hotline to assist respondents with any questions that they may have.(3) The EIA estimates that it should take between two and two and one-half hours per month to complete the form, and Mr. Baker responded that, while he was uncertain as to the precise amount of time required for his operations manager to complete the form, EIA's estimate sounded reasonable. Additionally, although Mr. Baker is uncertain as to whether the operations manager used estimates in the completion of the form, it may be possible for Baker to reduce the amount of time required to complete the form through the use of an EIA-approved estimation technique.

Finally, Mr. Baker states that, because his firm is relatively small, Baker should be exempt from filing the form. However, the data collected from Form EIA-782B constitutes the DOE's primary source of information on supplies, demand, and prices of petroleum products. Reliable data is vital to the nation's ability to formulate energy policies and to respond effectively to any future supply disruptions. Unless firms such as Baker are part of the EIA's statistical sample, the DOE will be unable to formulate valid estimates from a cross-section of the industry. Consequently, there is no evidence that the burden on Baker of providing the requested data outweighs the benefits which the DOE and the nation receive from access to the information.

In view of the foregoing considerations, we find that the requirement that Baker file Form EIA-782B does not constitute a special hardship, inequity, or unfair distribution of burdens. Accordingly, the Application for Exception filed by Baker should be denied.

It Is Therefore Ordered That:

- (1) The Application for Exception filed by F.L. Baker Dist., Inc., on August 15, 1995, is hereby denied.
- (2) This is a final Order of the Department of Energy.

George B. Breznay

Director

Office of Hearings and Appeals

Date: December 13, 1995

(1)Firms that do business in four or more states or which account for over five percent of the sales of any particular product in a state are always included in the sample of firms required to file the report. A random sample of other firms is also selected. This random sample changes approximately every 12 months, but a firm may be reselected for a subsequent sample. A firm that has been included in three consecutive random samples will generally not be included in a fourth consecutive sample, but may be included in a later sample.

(2)The firm must make a good faith effort to provide reasonably accurate information that is consistent with the accounting records maintained by the firm. The firm must also alert the EIA if the estimates are later found to be materially different from actual data.

(3)The toll-free number for questions regarding EIA-782B is (800) 638-8812.

DECISION AND ORDER  
OF THE DEPARTMENT OF ENERGY

Application for Exception

Name of Petitioner: O'Brian Oil Company

Dates of Filing: July 18, 1994, November 22, 1995

Case Numbers: LEE-0138, VEE-0013

On July 18, 1994 and November 22, 1995, O'Brian Oil Company (O'Brian) of Shellsburg, Iowa, filed Applications for Exception with the Office of Hearings and Appeals of the Department of Energy. In its Applications, O'Brian requests that it be relieved of the requirement that it file the Energy Information Administration's (EIA) form entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report" (Form EIA-782B). As explained below, we have determined that the Applications for Exception should be denied.

## A. Background

The EIA-782B reporting requirement grew out of the shortages of crude oil and petroleum products during the 1970s. In 1979, Congress found that the lack of reliable information concerning the supply, demand, and prices of petroleum products impeded the nation's ability to respond to the oil crisis. It therefore authorized the DOE to collect data on the supply and prices of petroleum products. The current form collects information concerning the volume and price of various grades and types of motor gasoline, No. 2 distillates, propane, and residual fuel oil, broken down by customer type.

Information obtained from the survey is used to analyze trends within petroleum markets. Summaries of the information and the analyses are published by the EIA in publications such as "Petroleum Marketing Monthly." This data is used by Congress and by more than 35 state governments to project trends and to formulate state and national energy policies. In addition, firms in the petroleum industry frequently base business decisions on the data published by EIA.

The DOE has attempted to ensure that this survey yields valuable information while minimizing the burden placed on the industry. Thus, in designing the form, the DOE consulted with potential survey respondents, various industry associations, users of the energy data, state governments, and other federal agencies. Moreover, to minimize the reporting burden, the EIA periodically selects a

relatively small sample of companies to file the report.(1) In addition, to reduce the amount of time spent completing the forms, firms may rely upon reasonable estimates.(2)

## B. Exceptions Criteria

Form EIA-782B is a mandatory report designed to collect monthly information on refined petroleum sales volumes and prices from a sample of resellers and retailers. 42 U.S.C. § 7135(b). This Office has authority to grant exception relief where the reporting requirement causes a "special hardship, inequity, or unfair distribution of burdens." 42 U.S.C. § 7194 (a); 10 C.F.R. § 205.55(b)(2). Exceptions are appropriate only in extreme cases. Because all reporting firms are burdened to some extent by reporting requirements, exception relief is appropriate only where a firm can demonstrate that it is adversely affected by the reporting requirement in a way that differs significantly from similar reporting firms. Thus, mere

inconvenience does not constitute a sufficient hardship to warrant relief. Glenn W. Wagoner Oil Co., 16 DOE ¶ 81,024 (1987).

In considering a request for exception relief, we must weigh the firm's difficulty in complying with the reporting requirement against the nation's need for reliable energy data. Neither the fact that a firm is relatively small, nor the fact that it has filed the report for a number of years alone constitute grounds for exception relief. If firms of all sizes, both large and small, are not included, the estimates and projections generated by the EIA's statistical sample will be unreliable. Mulgrew Oil Co., 20 DOE ¶ 81,009 (1990).

The following examples illustrate the types of circumstances that may justify relief from the reporting requirement. Since each case is different, these examples are not intended to reflect all circumstances that justify exception relief:

- Financial difficulties underlie most approvals of exception relief. We have granted a number of exceptions where the applicant's financial condition is so precarious that the additional burden of meeting the DOE reporting requirements threatens its continued viability. Mico Oil Co., 23 DOE ¶ 81,015 (1994) (firm lost one million dollars over previous three years); Deaton Oil Co., 16 DOE ¶ 81,026 (1987) (firm in bankruptcy).
- Relief may be appropriate when the only person capable of preparing the report is ill and the firm cannot afford to hire outside help. S&S Oil & Propane Co., 21 DOE ¶ 81,006 (1991) (owner being treated for cancer); Midstream Fuel Serv., 24 DOE ¶ 81,023 (three month extension of time to file reports granted when two office employees simultaneously on maternity leave); Eastern Petroleum Corp., 14 DOE ¶ 81,011 (1986) (two months relief granted when computer operator broke wrist).
- A combination of factors may warrant exception relief. Exception relief for 10 months was granted where personnel shortages, financial difficulties, and administrative problems resulted from the long illness and death of a partner. Ward Oil Co., 24 DOE ¶ 81,002 (1994); see also Belcher Oil Co., 15 DOE ¶ 81,018 (1987) (extension of time granted where general manager abruptly left firm without notice).
- Extreme or unusual circumstances that disrupt a firm's activities may warrant relief. Little River Village Campground, Inc., 24 DOE ¶ 81,033 (1994) (five months relief because of flood); Utilities Bd. of Citronelle-Gas, 4 DOE ¶ 81,205 (1979) (hurricane); Meier Oil Serv., 14 DOE ¶ 81,004 (1986) (three months where disruptions caused by installation of a new computer system left firm's records inaccessible).

## C. O'Brian's Exception Applications

O'Brian is a small firm that has yearly gross sales of approximately two million dollars of #2 distillate (residential and nonresidential), and motor gasoline (retail and wholesale). This is the first time that O'Brian has been selected to participate in an EIA survey. In its exception applications, Mrs. Darlene O'Brian, the firm's bookkeeper, states that the monthly filing and preparation of the Form takes valuable time away from other office duties and record-keeping. Mrs. O'Brian states that she holds down a full-time job in addition to her bookkeeping duties at the oil company owned by her husband and son. She further explained that besides herself, the firm employs three part-time workers, one of whom assists her in the preparation of the EIA Form.

## D. Analysis

O'Brian has not shown that it meets the standards for exception relief set forth above. While it will no doubt experience some inconvenience in filling out Form EIA-782B each month, this inconvenience does not appear to be significantly greater than that experienced by other reporting firms. Nothing in the record indicates that O'Brian is financially strained, or that the reporting requirement burdens the firm in a unique or exceptional way. EIA estimates that it should take a filer between two and two and one-half hours per month to complete Form EIA-782B. Mrs. O'Brian states that it took her one hour, using estimates, but not

a computer, to complete the Form. See Telephone Conversation between Darlene O'Brian, O'Brian Oil Company, and Jennet Kirkpatrick, Exceptions and Appeals Analyst, Office of Hearings and Appeals (August 1, 1994). Since this is less than the 2.5 hours which EIA estimates the Form should require, the time Mrs. O'Brian spends preparing Form 782-B is not burdensome to the extent that would warrant an exception. See, e.g. Haynes Oil Co., 21 DOE ¶ 81,002 (1992) (one day to complete form does not warrant exception); Dell Oil Ltd., 13 DOE ¶ 81,009 (1985) (2 days). Nor does O'Brian's limited office personnel present a basis for exception relief. Shearon, Inc., 22 DOE ¶ 81,006 (1992); Leemon Oil, 21 DOE ¶ 81,003 (1991); Range Oil Co., 19 DOE ¶ 81,004 (1989).

On the other hand, the data collected from Form EIA-782B constitute the DOE's primary source of information on supplies, demand, and prices of petroleum products. Reliable data is vital to the nation's ability to formulate energy policies and to respond effectively to any future supply disruptions. Unless firms such as O'Brian are part of the EIA's statistical sample, the DOE will be unable to formulate valid estimates from a cross-section of the industry. Consequently, there is no evidence that the burden on O'Brian of providing the requested data outweighs the benefits which the DOE and the nation receive from access to the information.

In view of the foregoing considerations, we find that the requirement that O'Brian file Form EIA-782B does not constitute a special hardship, inequity, or unfair distribution of burdens. Accordingly, the Applications for Exception filed by O'Brian should be denied.

On January 16, 1996, a copy of the determination that appears above was provided to O'Brian in the form of a Proposed Decision and Order. In accordance with the procedures that govern this matter, O'Brian was advised of its right to file a Notice of Objection with respect to any finding of fact or conclusion of law reached in the Proposed Decision. See 10 C.F.R. § 205.58. O'Brian was further advised that it would be deemed to consent to the issuance of the Proposed Decision in its final form unless such a notice was filed within the prescribed time period. The time period within which a Notice of Objection could be filed has expired and no Notice of Objection has been received from O'Brian or any other aggrieved party. Consequently, O'Brian shall be deemed to consent to issuance of this Decision and Order as the final determination of the Department of Energy.

## **It Is Therefore Ordered That:**

The Applications for Exception filed by O'Brian Oil Company, on July 18, 1994 and November 22, 1995, are hereby denied.

George B. Breznay

Director

Office of Hearings and Appeals

Date:

(1)/ Firms that do business in four or more states or which account for over five percent of the sales of any particular product in a state are always included in the sample of firms required to file the report. A random sample of other firms is also selected. This random sample changes approximately every 12 months, but a firm may be reselected for subsequent sample. A firm that has been included in three consecutive random samples will generally not be included in a fourth consecutive sample, but may be included in a later sample.

(2)/ The firm must make a good faith effort to provide reasonably accurate information that is consistent with the accounting records maintained by the firm. The firm must alert the EIA if the estimates are later found to be materially different from actual data.





DECISION AND ORDER  
OF THE DEPARTMENT OF ENERGY

Application for Exception

Name of Petitioner: Heller & Sons Distributing, Inc.

Date of Filing: February 14, 1996

Case Number: VEE-0016

On February 14, 1996, Heller & Sons Distributing, Inc. (Heller) of Hermiston, Oregon, filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). In its application, Heller requests that it be relieved of the requirement to file Form EIA-782B entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report."

## I. Background

In response to the 1979 oil crisis, Congress enacted the Emergency Energy Conservation Act of 1979 (EECA), Pub. L. No. 96-102, 42 U.S.C. § 8501 et seq. In legislating the EECA, Congress found that "up-to-date and reliable information concerning the supply and demand of gasoline, diesel fuel, and other related data is not available to the President, the Congress, or the public." EECA § 201, 42 U.S.C. § 8501. This lack of information impeded Congress's ability to respond to the oil crisis. Congress therefore directed the DOE to establish a Middle Distillate Monitoring Program to monitor the supply and demand of middle distillates in each state at the refining, wholesale and retail levels. EECA § 242, 42 U.S.C. § 8532.

The responsibility for the Middle Distillate Monitoring Program was assumed by the Energy Information Administration (EIA) of the DOE. Under the provisions of Section 205 of the Department of Energy Organization Act, 42 U.S.C. § 7135, the EIA is authorized not only to collect and analyze energy information necessary for the proper functioning of the DOE, but also to require that any energy supplier or major consumer of energy provide such information to the DOE.

When the oil crisis subsided, the DOE thoroughly reviewed its Monitoring Program to determine the least costly method of gathering the information that Congress required. The DOE consulted with state governments, petroleum dealers, and other federal agencies and held a public hearing. Subsequent to these consultations, the EIA adopted Form EIA-782B, "Monthly No. 2 Distillate Sales Report." In November 1983, the EIA revised this Form to include information concerning sales of finished motor gasoline and residual fuel oil, and renamed the Form "Resellers'/Retailers' Monthly Petroleum Product Sales Report." In October 1993, the EIA further revised Form EIA-782B in response to the Clean Air Act Amendments of 1990, Pub. L. 101-549. These latest revisions to Form EIA-782B were (i) an expansion of finished motor gasoline reporting categories to include reformulated and oxygenated gasoline, (ii) separation of No. 2 diesel fuel into low and high sulphur content categories, and (iii) the addition of propane to the survey as a reporting product. See Form EIA-782B (10-93).

Form EIA-782B is a mandatory report designed to collect monthly data on sales volumes and unit prices of refined petroleum products from a random sample of resellers and retailers. Information obtained from the respondents constitutes the DOE's primary source of information about petroleum products at the reseller/retailer level. The DOE uses the information obtained from the respondents to perform state-by-state analyses and make projections related to energy supplies, demand, and prices. These data are vital to the nation's ability to anticipate and respond to any future energy shortages. See H.R. Rep. No. 373, 96th

Cong., 1st Sess., reprinted in 1979 U.S. Code Cong. & Admin. News 1764, 1781.

The applicant in this proceeding has been designated by the EIA as a member of a sample group required to complete and submit Form EIA-782B on a monthly basis, since February 1993.

## II. Heller's Application for Exception

Heller is a petroleum product wholesaler-retailer located in Hermiston, Oregon. Heller sells diesel fuel, heating oil and motor gasoline. In its application, the firm requests an exception from the Form EIA-782B reporting requirement on the basis that it has complied with the monthly reporting requirement for three years. Mike Heller, Vice President for Heller, states that in addition to having to complete Form EIA-782B, he has had to replace his whole office staff and is still training the new staff. Mr. Heller claims that completing the form requires a lot of time that the company could better spend on other business. He feels that Heller has done more than its share of providing information to the EIA.

## III. Analysis

The OHA has the authority to grant exception relief to alleviate or prevent serious hardship or gross inequity. 10 C.F.R. § 1003.20. See also Exceptions and Appeals Guidelines, 6 Fed. Energy Guidelines ¶ 80,003. In previous cases involving requests for exception relief, we have recognized that mandatory reporting requirements impose costs on the respondents. Since all reporting firms are burdened by the requirement, we have held that exception relief is appropriate only when a firm can demonstrate that it is adversely affected by the reporting requirement in a way that differs significantly from similar reporting firms. When evaluating an applicant's request for exception relief, we consider whether the difficulty in complying with the reporting requirement is outweighed by the benefits to the nation in obtaining the required data. See Lockheed Air Terminal, 15 DOE ¶ 81,010 (1986); Champlain Oil Co., 14 DOE ¶ 81,022 (1986); Three L Inc., 12 DOE ¶ 81,014 (1984); Pure Oil Co., 8 DOE ¶ 81,019 (1981).

We have granted full or partial relief from EIA reporting requirements in cases where applicants have shown that those requirements placed a burden upon them that was significantly different from the inconvenience generally associated with the requirement to submit EIA forms. For example, relief has been granted when firms have had severe financial difficulties or when the only persons capable of preparing a form have had serious medical problems. See Eastern Petroleum Corp., 14 DOE ¶ 81,011 (1986); LBM Distributors, Inc., 13 DOE ¶ 81,043 (1985); Ed Joyce Fuel and Feeds, 13 DOE ¶ 81,024 (1985).

We are unconvinced that the reporting requirement has adversely affected Heller in a way that differs significantly from similar reporting firms. Although Heller has participated in the survey since 1993, we do not consider Heller's length of participation to be excessive. The OHA has previously held that the length of time that a firm must file Form EIA-782B does not in itself mandate exception relief. See Exxon Junction Service, 14 DOE ¶ 81,020 (1986); Piedmont Petroleum Co., 11 DOE ¶ 81,006 (1983).

We also reject Heller's contention that it should receive exception relief because it must spend an inordinate amount of time completing the form. According to Mr. Heller, he must assist the bookkeeper in completing the forms, and it takes approximately 2 to 4 hours to complete the form each month. EIA estimates that it should take 2.5 hours per month for a firm to fill out EIA-782B. See Form EIA-782B, Schedule 1. This is approximately the length of time that Mr. Heller estimates that it takes him and the bookkeeper each month to complete the form. While we recognize that the firm's need to train new staff is time-consuming, it is a temporary problem which should require less time in the future and does not convince us of the need for exception relief.

Heller has indicated that it already uses estimates in order to perform the task more quickly. By doing so, it alleviates somewhat the inconvenience of filing Form EIA-782B.

Moreover, Heller has not demonstrated that its burden of providing the requested data outweighs the benefits which the DOE and the nation receive from access to the information. It is important to note that the data collected from Form EIA-782B provides the DOE with information on the supply, demand, and price of petroleum products. Reliable data is vital to the nation's ability to formulate energy policies and to respond effectively to any future supply disruptions. Unless firms such as Heller are part of the EIA's statistical sample, the DOE will be unable to formulate valid estimates from a cross-section of the industry.

In view of the foregoing considerations, we find that the requirement that Heller file Form EIA-782B does not constitute a special hardship, inequity, or unfair distribution of burdens. Accordingly, the Application for Exception filed by Heller should be denied.

## **Is Therefore Ordered That:**

(1) The Application for Exception filed by Heller & Sons Distributing, Inc. on February 14, 1996, is hereby denied.

(2) Administrative review of this Decision and Order may be sought by any person who is aggrieved or adversely affected by the denial of exception relief. Such review shall be commenced by the filing of a petition for review with the Federal Energy Regulatory Commission within 30 days of the date of this Decision and Order pursuant to 18 C.F.R. Part 385, Subpart J.

George B. Breznay

Director

Office of Hearings and Appeals

Date:

<1>1/ The OHA, moreover, has determined that even if a firm claims to spend a greater amount of time complying with reporting requirements than the average firm, that does not alone constitute sufficient grounds for exception relief. See, e.g., People's Oil & Gas Co., 13 DOE ¶ 81,021 (1985) (relief denied despite claims of 1.5 to 2 days to complete Form EIA-782B).

<2>2/ The use of estimates to complete the EIA form is a straightforward procedure: "The basis for the estimates must be consistent with the standard accounting records maintained by the firm. The estimating procedure and data supporting the estimates should result in a reasonably accurate estimate which will be subject to review." Form EIA-782B, General Instructions ¶ VI.

DECISION AND ORDER  
OF THE DEPARTMENT OF ENERGY

Application for Exception

Name of Petitioner: Visa Petroleum, Inc.

Date of Filing: February 26, 1996

Case Number: VEE-0017

On March 15, 1995, the Office of Hearings and Appeals of the Department of Energy granted Visa Petroleum, Inc. (Visa), exception relief through December 1995, from the requirement that it file the Energy Information Administration's (EIA) form entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report" (Form EIA-782B). Visa Petroleum, Inc., 24 DOE ¶ 81,073 (1995). On February 26, 1996, Visa filed an Application for extension of that exception relief. As explained below, we have determined that the exception relief should be extended.

## **A. The Reporting Requirement**

Form EIA-782B collects information monthly concerning the volume and price of various petroleum products. Information obtained from the survey is used to analyze trends within petroleum markets. Summaries of the information and the analyses are published by the EIA in publications such as "Petroleum Marketing Monthly." This data is used by Congress and by more than 35 state governments to project trends and to formulate state and national energy policies. In addition, firms in the petroleum industry frequently base business decisions on the data published by EIA.

The DOE has attempted to ensure that this survey yields valuable information while minimizing the burden placed on the industry. Thus, in designing the form, the DOE consulted with potential survey respondents, various industry associations, users of the energy data, state governments, and other federal agencies. Moreover, to minimize the reporting burden, the EIA periodically selects a relatively small sample of companies to file the report. In addition, to reduce the amount of time spent completing the forms, firms may rely upon reasonable estimates.

## **B. Exception Criteria**

Form EIA-782B is a mandatory report designed to collect monthly information on refined petroleum sales volumes and prices from a sample of resellers and retailers. 42 U.S.C. § 7135(b). This Office has authority to grant exception relief where the reporting requirement causes a "special hardship, inequity, or unfair distribution of burdens." 42 U.S.C. § 7194 (a); 10 C.F.R. § 1003.25(b)(2). Exceptions are appropriate only in extreme cases. Because all reporting firms are burdened to some extent by reporting requirements, exception relief is appropriate only where a firm can demonstrate that it is adversely affected by the reporting requirement in a way that differs significantly from similar reporting firms. Thus, mere inconvenience does not constitute a sufficient hardship to warrant relief. Glenn W. Wagoner Oil Co., 16 DOE ¶ 81,024 (1987).

In considering a request for exception relief, we must weigh the firm's difficulty in complying with the reporting requirement against the nation's need for reliable energy data. Neither the fact that a firm is relatively small, nor the fact that it has filed the report for a number of years alone constitute grounds for exception relief. If firms of all sizes, both large and small, are not included, the estimates and projections

generated by the EIA's statistical sample will be unreliable. Mulgrew Oil Co., 20 DOE ¶ 81,009 (1990).

## **C. Visa's Prior Exception Application**

Visa, a medium size firm, sells motor gasoline and non-residential distillates in Fresno, California. Visa was selected to file Form EIA-728B with Sample No. 10, which began in February 1993. Visa filed its original Application for Exception on March 3, 1994. According to Mr. Robert Goeringer, Visa's owner, the firm has nine full time employees and one part time employee, including four full time office employees. Mr. Goeringer stated that his wife, Marie Goeringer, required about five hours to complete the form. Mr. Goeringer also stated that Visa is experiencing financial difficulties. The firm had negative taxable income for 1992 and 1993 of \$6,269 and \$13,401, respectively. In neither year did Visa pay a salary to Mr. Goeringer, who is actively involved in running the business. In addition, Mrs. Goeringer, the person who has been completing the form, has been diagnosed with cancer.

Based upon our review of Visa's situation, we concluded that Visa was not only experiencing financial difficulties, but the individual who has been completing Form EIA-782B had been diagnosed with cancer. We, therefore, found that in view of combination of financial difficulties and employee illness, filing the form imposed a serious hardship on the firm. We concluded that completion of Form EIA-782B would exacerbate Visa's problems, and that the burden on the applicant of completing the Form outweighed the benefit to the nation of having access to the data which the firm could provide.

In accordance with the precedents established in prior cases, we determined that a serious hardship existed that warranted granting Visa temporary exception relief. Visa, 24 DOE at 82,738—39. See also Mico Oil Co., 23 DOE ¶ 81,015 (1994) (firm suffering significant losses); Little River Village Campground, Inc., 24 DOE ¶ 81,033 (1994) (individual completing form had acute bronchitis and a very low energy level); Ward Oil Co., 24 DOE ¶ 81,002 (1994) (firm can not afford to hire additional employees). However, because the problems facing the firm could be temporary, we granted exception relief to Visa only through December 1995.

## **D. Visa's Application for Extension of Exception Relief**

In Visa's present Application, Mr. Goeringer states that Visa's financial condition has further declined, and it would be a burden for the company to complete Form EIA-782B. In support of Visa's Application he states that his wife is still in ill health, and he has submitted a financial report for the fiscal year ending October 31, 1995, showing that the firm lost \$24,524 during that fiscal year and that no salary was paid to Mr. Goeringer.

It is evident that the circumstances previously found to warrant exception relief continue to exist. Visa has had steadily mounting losses over the last several years. No salary has been paid to Visa's owner, and his wife, who formerly completed the reports, is in ill health. Under these circumstances, we find that special circumstances exist and filing the form would pose unusually severe problems for Visa. Accordingly, the exception relief should be extended. It also does not appear that a rapid turn around in Visa's financial condition can be expected. Consequently, relief from the filing requirement shall be granted through May 1998.

## **It Is Therefore Ordered That:**

- (1) The Application for Exception filed by Visa Petroleum, Inc., on February 26, 1996, is hereby granted to the extent set forth in paragraph (2) below.
- (2) Visa Petroleum, Inc., shall be removed from the list of firms required to submit data on Form EIA-782B to the Energy Information Administration of the Department of Energy through May 1998.

(3) This is a final Order of the Department of Energy.

George B. Breznay

Director

Office of Hearings and Appeals

Date:

DECISION AND ORDER  
OF THE DEPARTMENT OF ENERGY

Application for Exception

Name of Petitioner: Lakes Gas Company

Date of Filing: March 12, 1996

Case Number: VEE-0018

On March 12, 1996, the Lakes Gas Company (Lakes) of Forest Lake, Minnesota, filed an Application for Exception with the Office of Hearings and Appeals of the Department of Energy. In its Application, Lakes requests that it be relieved of the requirement that it file the Energy Information Administration's (EIA) form entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report" (Form EIA-782B). As explained below, we have determined that the Application for Exception should be denied.

## A. Background

The EIA-782B reporting requirement grew out of the shortages of crude oil and petroleum products during the 1970s. In 1979, Congress found that the lack of reliable information concerning the supply, demand, and prices of petroleum products impeded the nation's ability to respond to the oil crisis. It therefore authorized the DOE to collect data on the supply and prices of petroleum products. The current form collects information concerning the volume and price of various grades and types of motor gasoline, No. 2 distillates, propane, and residual fuel oil, broken down by customer type.

Information obtained from the survey is used to analyze trends within petroleum markets. Summaries of the information and the analyses are published by the EIA in publications such as "Petroleum Marketing Monthly." This data is used by Congress and by more than 35 state governments to project trends and to formulate state and national energy policies. In addition, firms in the petroleum industry frequently base business decisions on the data published by EIA.

The DOE has attempted to ensure that this survey yields valuable information while minimizing the burden placed on the industry. Thus, in designing the form, the DOE consulted with potential survey respondents, various industry associations, users of the energy data, state governments, and other federal agencies. Moreover, to minimize the reporting burden, the EIA periodically selects a relatively small sample of companies to file the report.<1> In addition, to reduce the amount of time spent completing the forms, firms may rely upon reasonable estimates.<2>

## B. Exceptions Criteria

Form EIA-782B is a mandatory report designed to collect monthly information on refined petroleum sales volumes and prices from a sample of resellers and retailers. 42 U.S.C. § 7135(b). This Office has authority to grant exception relief where the reporting requirement causes a "serious hardship, gross inequity or unfair distribution of burdens." 42 U.S.C. § 7194 (a); 10 C.F.R. §1003.25(b)(2). Exceptions are appropriate only in extreme cases. Because all reporting firms are burdened to some extent by reporting requirements, exception relief is appropriate only where a firm can demonstrate that it is adversely affected by the reporting requirement in a way that differs significantly from similar reporting firms. Thus, mere inconvenience does not constitute a sufficient hardship to warrant relief. Glenn W. Wagoner Oil Co., 16 DOE ¶ 81,024 (1987).



In considering a request for exception relief, we must weigh the firm's difficulty in complying with the reporting requirement against the nation's need for reliable energy data. Neither the fact that a firm is relatively small, nor the fact that it has filed the report for a number of years alone constitute grounds for exception relief. If firms of all sizes, both large and small, are not included the estimates and projections generated by the EIA's statistical sample will be unreliable. *Mulgrew Oil Co.*, 20 DOE ¶ 81,009 (1990).

The following examples illustrate the types of circumstances that may justify relief from the reporting requirement. Since each case is different, these examples are not intended to reflect all circumstances that justify exception relief:

- Financial difficulties underlie most approvals of exception relief. We have granted a number of exceptions where the applicant's financial condition is so precarious that the additional burden of meeting the DOE reporting requirements threatens its continued viability. *Mico Oil Co.*, 23 DOE ¶ 81,015 (1994) (firm lost one million dollars over previous three years); *Deaton Oil Co.*, 16 DOE ¶ 81,026 (1987) (firm in bankruptcy).
- Relief may be appropriate when the only person capable of preparing the report is ill and the firm cannot afford to hire outside help. *S&S Oil & Propane Co.*, 21 DOE ¶ 81,006 (1991) (owner being treated for cancer); *Midstream Fuel Serv.*, 24 DOE ¶ 81,023 (three month extension of time to file reports granted when two office employees simultaneously on maternity leave); *Eastern Petroleum Corp.*, 14 DOE ¶ 81,011 (1986) (two months relief granted when computer operator broke wrist).
- A combination of factors may warrant exception relief. Exception relief for 10 months was granted where personnel shortages, financial difficulties, and administrative problems resulted from the long illness and death of a partner. *Ward Oil Co.*, 24 DOE ¶ 81,002 (1994); see also *Belcher Oil Co.*, 15 DOE ¶ 81,018 (1987) (extension of time granted where general manager abruptly left firm without notice).
- Extreme or unusual circumstances that disrupt a firm's activities may warrant relief. *Little River Village Campground, Inc.*, 24 DOE ¶ 81,033 (1994) (five months relief because of flood); *Utilities Bd. of Citronelle-Gas*, 4 DOE ¶ 81,205 (1979) (hurricane); *Meier Oil Serv.*, 14 DOE ¶ 81,004 (1986) (three months where disruptions caused by installation of a new computer system left firm's records inaccessible).

## C. Lakes' Exception Application

Lakes, located in Forest Lake, Minnesota, sells #2 fuel oil, diesel fuel, motor gasoline and propane. Classified by EIA as a "large company" and a "certainty firm," the company has filed form EIA-782B for three years. In its Application for Exception, Lakes' Marketing Manager Thomas R. Jilek requests that Lakes be excepted from the filing requirement because he believes the form takes too long to complete. According to the Application, compiling an accurate record of Lakes' sales takes Mr. Jilek almost three hours.

## D. Analysis

Lakes has not shown that it meets the standards for exception relief set forth above. While it will no doubt experience some inconvenience in filling out Form EIA-782B each month, this inconvenience does not appear to be greater than that experienced by other reporting firms. Nothing in the record indicates that Lakes is financially strained, or that the reporting requirement burdens the firm in a unique or exceptional way. EIA estimates that it should take between two and two and one-half hours per month to complete form EIA-782B. Mr. Jilek stated in his Application that it took him approximately three hours to complete the form, which does not imply that Lakes suffers unusual difficulties in preparing the form in a timely manner. Additionally, although Mr. Jilek is hesitant to provide estimates rather than actual figures when

submitting the form, it may be possible for Lakes to reduce the amount of time required to complete the form through the use of an EIA-approved estimation technique.<4> The EIA provides a toll-free hotline to assist respondents with any questions they may have, which should help Lakes in refining its estimation techniques to reduce the time necessary to complete the form.<5>

The data collected from Form EIA-782B constitutes the DOE's primary source of information on supplies, demand, and prices of petroleum products. Reliable data is vital to the nation's ability to formulate energy policies and to respond effectively to any future supply disruptions. Unless firms such as Lakes are part of the EIA's statistical sample, the DOE will be unable to formulate valid estimates from a cross-section of the industry. Consequently, there is no evidence that the burden on Lakes of providing the requested data outweighs the benefits which the DOE and the nation receive from access to the information.

In view of the foregoing considerations, we find that the requirement that Lakes file Form EIA-782B does not constitute a special hardship, inequity, or unfair distribution of burdens. Accordingly, the Application for Exception filed by Lakes should be denied.

## **It Is Therefore Ordered That:**

(1) The Application for Exception filed by Lakes Gas Company on March 12, 1996 is hereby denied.

(2) Administrative review of this Decision and Order may be sought by any person who is aggrieved or adversely affected by the denial of exception relief. Such review shall be commenced by the filing of a petition for review with the Federal Energy Regulatory Commission within 30 days of the date of this Decision and Order pursuant to 18 C.F.R. Part 385, Subpart J.

George B. Breznay

Director

Office of Hearings and Appeals

Date:

<1>Firms that do business in four or more states or which account for over five percent of the sales of any particular product in a state are always included in the sample of firms required to file the report. A random sample of other firms is also selected. This random sample changes approximately every 12 months, but a firm may be reselected for a subsequent sample. A firm that has been included in three consecutive random samples will generally not be included in a fourth consecutive sample, but may be included in a later sample.

<2>The firm must make a good faith effort to provide reasonably accurate information that is consistent with the accounting records maintained by the firm. The firm must also alert the EIA if the estimates are later found to be materially different from actual data.

<3>See Record of Telephone Conversation between Sherry Beri, EIA, and Darcy Goddard, Staff Analyst, Office of Hearings and Appeals (March 26, 1996).

<4>Mr. Jilek is hesitant to use estimates because he submitted the form with estimates in December 1995, and was called by someone at EIA and told that the figures submitted were insufficient due to some significant price changes that were not accounted for in his estimation procedures.

<5>The toll-free number for questions regarding EIA-782B is (800) 638-8812.

DECISION AND ORDER  
OF THE DEPARTMENT OF ENERGY

Application for Exception

Name of Petitioner: Mercury Fuel Service, Inc.

Date of Filing: April 9, 1996

Case Number: VEE-0020

On April 9, 1996, Mercury Fuel Service, Inc. (Mercury) of Waterbury, Connecticut, filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). In its application, Mercury requests that it be relieved of the requirement to file Form EIA-782B entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report."

## I. Background

In response to the 1979 oil crisis, Congress enacted the Emergency Energy Conservation Act of 1979 (EECA), Pub. L. No. 96-102, 42 U.S.C. § 8501 et seq. In legislating the EECA, Congress found that "up-to-date and reliable information concerning the supply and demand of gasoline, diesel fuel, and other related data is not available to the President, the Congress, or the public." EECA § 201, 42 U.S.C. § 8501. This lack of information impeded Congress's ability to respond to the oil crisis. Congress therefore directed the DOE to establish a Middle Distillate Monitoring Program to monitor the supply and demand of middle distillates in each state at the refining, wholesale and retail levels. EECA § 242, 42 U.S.C. § 8532.

The responsibility for the Middle Distillate Monitoring Program was assumed by the Energy Information Administration (EIA) of the DOE. Under the provisions of Section 205 of the Department of Energy Organization Act, 42 U.S.C. § 7135, the EIA is authorized not only to collect and analyze energy information necessary for the proper functioning of the DOE, but also to require that any energy supplier or major consumer of energy provide such information to the DOE.

When the oil crisis subsided, the DOE thoroughly reviewed its Monitoring Program to determine the least costly method of gathering the information that Congress required. The DOE consulted with state governments, petroleum dealers, and other federal agencies and held a public hearing. Subsequent to these consultations, the EIA adopted Form EIA-782B, "Monthly No. 2 Distillate Sales Report." In November 1983, the EIA revised this Form to include information concerning sales of finished motor gasoline and residual fuel oil, and renamed the Form "Resellers'/Retailers' Monthly Petroleum Product Sales Report." In October 1993, the EIA further revised Form EIA-782B in response to the Clean Air Act Amendments of 1990, Pub. L. 101-549. These latest revisions to Form EIA-782B were (i) an expansion of finished motor gasoline reporting categories to include reformulated and oxygenated gasoline, (ii) separation of No. 2 diesel fuel into low and high sulphur content categories, and (iii) the addition of propane to the survey as a reporting product. See Form EIA-782B (10-93).

Form EIA-782B is a mandatory report designed to collect monthly data on sales volumes and unit prices of refined petroleum products from a random sample of resellers and retailers. Information obtained from the respondents constitutes the DOE's primary source of information about petroleum products at the reseller/retailer level. The DOE uses the information obtained from the respondents to perform state-by-state analyses and make projections related to energy supplies, demand, and prices. These data are vital to the nation's ability to anticipate and respond to any future energy shortages. See H.R. Rep. No. 373, 96th

Cong., 1st Sess., reprinted in 1979 U.S. Code Cong. & Admin. News 1764, 1781.

The applicant in this proceeding was designated by the EIA as a member of a sample group required to complete and submit Form EIA-782B on a monthly basis, beginning in February 1993.

## II. Mercury's Application for Exception

Mercury is a petroleum product wholesaler-retailer located in Waterbury, Connecticut. Mercury sells No. 2 diesel fuel, heating oil and motor gasoline. In its application, the firm requests an exception from the Form EIA-782B reporting requirement on the basis that it lacks sufficient personnel to complete the form. According to Mr. Robert C. Bonneau, the Gasoline Division Manager of Mercury, Mercury is understaffed because of numerous very serious illnesses. Mr. Bonneau states that the owner of the business and his wife, who is also the Secretary of the Corporation and the key administrative/clerical employee, have been unavailable to oversee the firm for the last five months because the owner is ill with cancer. In addition, the individual who actually compiles the necessary information to complete Form EIA-782B, has also been fighting cancer for the past 18 months, and has not returned to work since December 1995. Moreover, another key clerical/administrative staffer was also recently diagnosed with cancer, and has not returned to work since the beginning of February 1996. Mr. Bonneau also alleges that although the firm does have a computer system, it is not programmed or capable of being programmed to provide the necessary information for completion of the form in a concise manner. Finally, Mr. Bonneau states that due to the firm's personnel shortage and administrative problems, the remaining staff has found it a burden to maintain day to day operations.<1>

## III. Analysis

The OHA has the authority to grant exception relief to alleviate or prevent serious hardship or gross inequity. 10 C.F.R. § 1003.20. See also Exceptions and Appeals Guidelines, 6 Fed. Energy Guidelines ¶ 80,003. In previous cases involving requests for exception relief, we have recognized that mandatory reporting requirements impose costs on the respondents. Since all reporting firms are burdened by the requirement, we have held that exception relief is appropriate only when a firm can demonstrate that it is adversely affected by the reporting requirement in a way that differs significantly from similar reporting firms. When evaluating an applicant's request for exception relief, we consider whether the difficulty in complying with the reporting requirement is outweighed by the benefits to the nation in obtaining the required data. See Lockheed Air Terminal, 15 DOE ¶ 81,010 (1986); Champlain Oil Co., 14 DOE ¶ 81,022 (1986); Three L Inc., 12 DOE ¶ 81,014 (1984); Pure Oil Co., 8 DOE ¶ 81,019 (1981).

In the past, we have granted full or partial relief from EIA reporting requirements in cases where applicants have shown that those requirements placed a burden upon them that was significantly different from the inconvenience generally associated with the requirement to submit EIA forms. For example, relief has been granted when firms have had severe financial difficulties or when the only persons capable of preparing a form have had serious medical problems. See Valley City Oil Co., 15 DOE ¶ 81,028 (1987). In that case, the reporting firm's sole employee was burdened with an increased workload due to major surgery. In granting exception relief, we concluded that the surgery and the period of time necessary to recuperate resulted in a lack of sufficient personnel to complete Form EIA-782B.

Mercury has clearly shown that in light of the serious illnesses that have stricken its key personnel, it bears an unusually great burden in filing the Form. Because of the illnesses, the firm is barely able to maintain its day to day operations, and lacks the expertise needed to complete the form. For these reasons, we have concluded that a serious hardship exists and that an exception is warranted in this proceeding. We will therefore grant Mercury exception relief from the requirement to file Form EIA-782B; beginning with the month of November 1995. We note, however, that Mercury's situation may improve in time. We therefore do not find that permanent exception relief is appropriate, and shall extend exception relief to Mercury from November 1995 through September 1997. If the firm is selected for the EIA-782B reporting

sample after that date and still faces personnel shortages due to illness, it may reapply for exception relief at that time.

## **It Is Therefore Ordered That:**

(1) The Application for Exception filed by Mercury Fuel Service, Inc. on April 9, 1996, is hereby granted as set forth below.

(2) Mercury Fuel Service, Inc. shall be removed from the list of firms required to submit data on Form EIA-782B to the Energy Information Administration of the Department of Energy from November 1995 through September 1997.

(3) This exception is based upon the presumed validity of statements, allegations, and documentary material submitted by the applicant. This exception may be revoked or modified at any time upon a determination that the factual bases or other circumstances underlying the application are incorrect.

(4) This is a final Order of the Department of Energy.

George B. Breznay

Director

Office of Hearings and Appeals

Date:

<1>\*/ The OHA has been informed by EIA that Mercury has failed to complete Form EIA-782B since October 1995.

DECISION AND ORDER  
OF THE DEPARTMENT OF ENERGY

Application for Exception

Name of Petitioner: Jacobs Oil Company

Date of Filing: April 16, 1996

Case Number: VEE-0021

On August 16, 1996 Jacobs Oil Company (Jacobs) of Dysart, Pennsylvania filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). In its Application, Jacobs requests that it be relieved of the requirement that it file the Energy Information Administration's (EIA) form entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report" (Form EIA-782B). As explained below, we have determined that the Application for Exception should be denied.

## **A. Background**

Form EIA-782B is a mandatory reporting requirement which grew out of the shortages of crude oil and petroleum products during the 1970s. In 1979, Congress found that the lack of reliable information concerning the supply, demand, and prices of petroleum products impeded the nation's ability to respond to the oil crisis. It therefore authorized the DOE to collect data on the supply and prices of petroleum products. Form EIA-782B is designed to collect monthly information on refined petroleum sales volumes and prices from a sample of resellers and retailers. 42 U.S.C. § 7135(b).

Information obtained from Form EIA-782B is used to analyze trends within petroleum markets. Summaries of the information and the analyses are published by the EIA in publications such as "Petroleum Marketing Monthly." This data is used by Congress and by more than 35 state governments to project trends and to formulate state and national energy policies. In addition, firms in the petroleum industry frequently base business decisions on the data published by EIA.

The DOE has attempted to ensure that the surveys yield valuable information while minimizing the burden placed on the industry. Thus, in designing the form, the DOE consulted with potential survey respondents, various industry associations, users of the energy data, state governments, and other federal agencies. Moreover, to minimize the reporting burden, the EIA periodically selects a relatively small sample of companies to file Form EIA-782B. In addition, to reduce the amount of time spent completing the forms, firms may rely upon reasonable estimates.<1>

## **B. Exception Criteria**

This Office has authority to grant exception relief where the reporting requirement causes a "special hardship, inequity, or unfair distribution of burdens." 42 U.S.C. § 7194(a); 10 C.F.R. § 1003.25(b)(2). Exceptions are appropriate only in extreme cases. Because all reporting firms are burdened to some extent by reporting requirements, exception relief is appropriate only where a firm can demonstrate that it is adversely affected by the reporting requirement in a way that differs significantly from similar reporting firms. Thus, mere inconvenience does not constitute a sufficient hardship to warrant relief. Glenn W. Wagoner Oil Co., 16 DOE ¶ 81,024 (1987).

In considering a request for exception relief, we must weigh the firm's difficulty in complying with the reporting requirement against the nation's need for reliable energy data. Neither the fact that a firm is relatively small, nor the fact that it has filed the reports for a number of years alone constitute grounds for exception relief. If firms of all sizes, both large and small, are not included, the estimates and projections generated by the EIA's statistical sample will be unreliable. Mulgrew Oil Co., 20 DOE ¶ 81,009 (1990).

The following examples illustrate the types of circumstances that may justify relief from the reporting requirement. Since each case is different, these examples are not intended to reflect all circumstances that justify exception relief:

- Financial difficulties underlie most approvals of exception relief. We have granted a number of exceptions where the applicant's financial condition is so precarious that the additional burden of meeting the DOE reporting requirements threatens its continued viability. Mico Oil Co., 23 DOE ¶ 81,015 (1994) (firm lost one million dollars over previous three years); Deaton Oil Co., 16 DOE ¶ 81,026 (1987) (firm in bankruptcy).
- Relief may be appropriate when the only person capable of preparing the report is ill and the firm cannot afford to hire outside help. S&S Oil & Propane Co., 21 DOE ¶ 81,006 (1991) (owner being treated for cancer); Midstream Fuel Serv., 24 DOE ¶ 81,023 (three month extension of time to file reports granted when two office employees simultaneously on maternity leave); Eastern Petroleum Corp., 14 DOE ¶ 81,011 (1986) (two months relief granted when computer operator broke wrist).
- A combination of factors may warrant exception relief. Exception relief for 10 months was granted where personnel shortages, financial difficulties, and administrative problems resulted from the long illness and death of a partner. Ward Oil Co., 24 DOE ¶ 81,002 (1994); see also Belcher Oil Co., 15 DOE ¶ 81,018 (1987) (extension of time granted where general manager abruptly left firm without notice).
- Extreme or unusual circumstances that disrupt a firm's activities may warrant relief. Little River Village Campground, Inc., 24 DOE ¶ 81,033 (1994) (five months relief because of flood); Utilities Bd. of Citronelle-Gas, 4 DOE ¶ 81,205 (1979) (hurricane); Meier Oil Serv., 14 DOE ¶ 81,004 (1986) (three months where disruptions caused by installation of a new computer system left firm's records inaccessible).

## C. Jacobs' Exception Application

Jacobs sells No. 2 diesel fuel and No. 2 fuel oil to commercial, residential and wholesale customers and motor gasoline to retail and wholesale customers. Classified by EIA as a "large to medium size firm," Jacobs has been filing Form EIA-782B continuously since May 1994. Prior to this time, Jacobs had never participated in the survey.<2> According to James Jacobs, President, the company employs 10 workers and sells approximately 8 million gallons of petroleum annually. Mr. Jacobs estimates that it takes his firm between two hours and two and one half-hours to complete Form EIA-782B. According to Mr. Jacobs, the time spent preparing the form is burdensome because it takes employees away from more important tasks and because the DOE does not compensate Jacobs for this effort. Mr. Jacobs states that DOE first informed him that the reporting requirement would go on for only one year. However, at this point, the firm has prepared the survey for two years without relief. Mr. Jacobs believes the firm has fulfilled its commitment to EIA and that the reporting burden should be shifted to one of the many other oil companies in Pennsylvania.<3>

## D. Analysis

Our review of the record in this case indicates that Jacobs has not met the standards for an exception to the EIA reporting requirement that are set forth above. For example, the 2.5 hours each month (at maximum) that Jacobs states it takes the firm to complete the survey is the exact amount of time EIA estimates the form should require. Therefore, Jacobs is not unduly or disproportionately affected by the reporting requirement and the time involved in filing cannot therefore lead to an exception. We have consistently

withheld exception relief where firms spent considerably more time preparing Form EIA-782B but failed to show that they were otherwise burdened. See People's Oil and Gas Co., 13 DOE ¶ 81,021 (1985) (one and one half to two working days); St. Joe Petroleum Co., 13 DOE ¶ 81,040 (1985) (eight to ten hours).

Jacobs also asserts that it has filed the survey much longer than it was told would be necessary and believes therefore that the reporting responsibility should be eliminated or transferred to another firm. We believe that Jacobs was perhaps misinformed as to the possible duration of the reporting requirement or that it misunderstood whatever it was told. It is the practice of the EIA to select a random sample of firms to participate in its survey.<4> The EIA attempts to replace about 50% of Form EIA-782B's random sample participants after each sample period (one to two years).<5> Therefore, a firm could reasonably expect to participate for at least two years. A firm that has reported for three consecutive sample periods will generally not be included in a fourth consecutive sample, but may be selected again in a later sample. Therefore, like the time it takes to prepare the report, Jacobs' two year period of participation does not distinguish it from other firms as unduly or onerously affected. In this regard, we have also consistently ruled that the length of time that a firm has been required to file an EIA form does not alone constitute grounds for exception relief. Schaal Oil Co., 14 DOE ¶ 81,018 (1986) (3 years). See Harbor Enters., 20 DOE ¶ 81,004 (1990) (had been filing various forms, including EIA forms for 20 years); Halron Oil Co., 16 DOE ¶ 81,001 (1987) (12 years). The basis for this conclusion is that the importance of the information collected by the EIA through the survey usually outweighs the inconvenience of providing the data.

In summary, Jacobs has not shown that providing EIA the data is excessively onerous to it as compared to other firms similarly affected. The applicant has also failed to show that the effort involved in providing the data outweighs the benefits which the DOE and the nation receive from access to the information. The data collected from Form EIA-782B constitute our primary source of information on supplies, demand, and prices of petroleum products. Reliable data is vital to the nation's ability to anticipate and respond quickly and effectively to any future supply disruptions and thereby protect the public interest. Indeed, this is why the Congress mandated the collection of this type of data. Unless firms such as Jacobs are part of the EIA's statistical sample, the DOE will be unable to formulate valid estimates from a cross-section of the industry. Strong public policy considerations such as these lead us to conclude that Jacob's request for exception relief from the mandatory reporting requirements is unwarranted.

In accordance with the above discussion, we find that exception relief is not warranted in this case, because Jacobs is not experiencing a special hardship, inequity, or unfair distribution of burdens from the requirement that it file Form EIA-782B. Consequently, the Department of Energy has determined that the Application for Exception filed by Jacobs should be denied

## **It Is Therefore Ordered That:**

(1) The Application for Exception filed by Jacobs Oil Company on April 16, 1996, is hereby denied.

(2) Administrative review of this Decision and Order may be sought by any person who is aggrieved or adversely affected by the denial of exception relief. Such review shall be commenced by the filing of a petition for review with the Federal Energy Regulatory Commission within 30 days of the date of this Decision and Order pursuant to 18 C.F.R. Part 385, Subpart J.

George B. Breznay

Director

Office of Hearings and Appeals

Date:

<1>Form EIA-782B stipulates that the firm must make a good faith effort to provide reasonably accurate



information that is consistent with the accounting records maintained by the firm. The firm must alert the EIA if the estimates are later found to be materially different from actual data.

<2>2/ See Conversation between Ms. Allison Varzally, OHA staff analyst, and Ms. Sheri Berry, Energy Information Agency (April 23, 1996).

<3>3/ See Conversation between Mr. James Jacobs, president Jacobs Oil company, and Ms. Allison Varzally (April 26, 1996), and Letter to the Office of Hearings and Appeals from James Jacobs (April 10, 1996).

<4>4/ For Form EIA-782B, firms that do business in four or more states or which account for over five percent of the sales of any particular product in a state are always included in the sample of firms required to file the report.

<5>5/ According to EIA, changing the entire sample each year would adversely affect the quality of the survey's results because of the initial difficulties some firms experience as they become accustomed to preparing the Form. E.H. Moorhouse, Inc., 14 DOE ¶ 81,012, at 82,540 (1986); People's Oil & Gas Co., 13 DOE ¶ 81,021, at 82,573 (1985).

DECISION AND ORDER  
OF THE DEPARTMENT OF ENERGY

Application for Exception

Name of Petitioner: Oil Products, Inc.

Date of Filing: May 13, 1996

Case Number: VEE-0023

On May 13, 1996, Oil Products, Inc. (Oil Products) filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). In its application, Oil Products requests that it be relieved of the requirement to file Form EIA-782B entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report."

## **I. Background**

In response to the 1979 oil crisis, Congress enacted the Emergency Energy Conservation Act of 1979 (EECA), Pub. L. No. 96-102, 42 U.S.C. § 8501 et seq. In legislating the EECA, Congress found that "up-to-date and reliable information concerning the supply and demand of gasoline, diesel fuel, and other related data is not available to the President, the Congress, or the public." EECA § 201, 42 U.S.C. § 8501. This lack of information impeded Congress's ability to respond to the oil crisis. Congress therefore directed that the DOE establish a Middle Distillate Monitoring Program to monitor the supply and demand of middle distillates in each state at the refining, wholesale and retail levels. EECA § 242, 42 U.S.C. § 8532.

The responsibility for the Middle Distillate Monitoring Program was assumed by the Energy Information Administration (EIA) of the DOE. Under the provisions of Section 205 of the Department of Energy Organization Act, 42 U.S.C. § 7135, the EIA is authorized not only to collect and analyze energy information necessary for the proper functioning of the DOE, but also to require that any energy supplier or major consumer of energy provide such information to the DOE.

When the oil crisis subsided, the DOE thoroughly reviewed its Monitoring Program to determine the least costly method of gathering the information that Congress required. The DOE consulted with state governments, petroleum dealers, and other federal agencies and held a public hearing. Subsequent to these consultations, the EIA adopted Form EIA-782B, "Monthly No. 2 Distillate Sales Report." In November 1983, the EIA revised this Form to include information concerning sales of finished motor gasoline and residual fuel oil, and renamed the Form "Resellers'/Retailers' Monthly Petroleum Product Sales Report." In October 1993, the EIA further revised Form EIA-782B in response to the Clean Air Act Amendments of 1990, Pub. L. 101-549. These latest revisions to Form EIA-782B were (i) an expansion of finished motor gasoline reporting categories to include reformulated and oxygenated gasoline, (ii) separation of No. 2 diesel fuel into low and high sulphur content categories, and (iii) the addition of propane to the survey as a reporting product. See Form EIA-782B (10-93).

Form EIA-782B is a mandatory report designed to collect monthly data on sales volumes and unit prices of refined petroleum products from a random sample of resellers and retailers. Information obtained from the respondents constitutes the DOE's primary source of information about petroleum products at the reseller/retailer level. The DOE uses the information obtained from the respondents to perform state-by-state analyses and make projections related to energy supplies, demand, and prices. These data are vital to

the nation's ability to anticipate and respond to any future energy shortages. See H.R. Rep. No. 373, 96th Cong., 1st Sess., reprinted in 1979 U.S. Code Cong. & Admin. News 1764, 1781.

The applicant in this proceeding was designated by the EIA as a member of a sample group required to complete and submit Form EIA-782B on a monthly basis, beginning in June 1994.

## II. Oil Products' Application for Exception

Oil Products is a petroleum product wholesaler-retailer located in Mt. Angel, Oregon. Oil Products sells No. 2 diesel fuel, heating oil, distillates and motor gasoline. In its application, the firm requests an exception to the Form EIA-782B reporting requirement on the bases that the firm has been completing the form on a regular monthly basis for the past 18 months and lacks sufficient personnel to complete the form. Robert Rash, Vice President for Oil Products, claims that it is a very small company, and has had employee changes that prevent the firm from furnishing this report. According to Mr. Rash, the person who originally prepared the report has left the company without notice; therefore, no one else was trained to complete the form. He also claims that Oil Products is in the midst of upgrading its computer programs, and has not been able to cross-train anyone to do the form. Furthermore, Mr. Rash asserts that another employee has retired, and having yet another employee complete the form would mean paying overtime pay for 4-6 hours per month (the amount of time that he claims it takes to complete the form). Mr. Rash also argues that the reduction in staff and the financial hardship of compiling the information cause a significant burden on the company.

## III. Analysis

The OHA has the authority to grant exception relief to alleviate or prevent serious hardship or gross inequity. 10 C.F.R. § 1003.20. See also 6 Fed. Energy Guidelines ¶ 80,003 (Exceptions and Appeals Guidelines). In previous cases involving requests for exception relief, we have recognized that mandatory reporting requirements impose costs on the respondents. Since all reporting firms are burdened by the requirement, we have held that exception relief is appropriate only when a firm can demonstrate that it is adversely affected by the reporting requirement in a way that differs significantly from similar reporting firms. When evaluating an applicant's request for exception relief, we consider whether the difficulty in complying with the reporting requirement is outweighed by the benefits to the nation in obtaining the required data. See Lockheed Air Terminal, 15 DOE ¶ 81,010 (1986); Champlain Oil Co., 14 DOE ¶ 81,022 (1986); Three L Inc., 12 DOE ¶ 81,014 (1984); Pure Oil Co., 8 DOE ¶ 81,019 (1981).

In the past, we have granted full or partial relief from EIA reporting requirements in cases where applicants have shown that those requirements placed a burden upon them that was significantly different from the inconvenience generally associated with the requirement to submit EIA forms. For example, relief has been granted when firms have had severe financial difficulties or when the only persons capable of preparing a form have had serious medical problems. See Eastern Petroleum Corp., 14 DOE ¶ 81,011 (1986); LBM Distributors, Inc., 13 DOE ¶ 81,043 (1985); Ed Joyce Fuel and Feeds, 13 DOE ¶ 81,024 (1985).

We are unconvinced that the reporting requirement has adversely affected Oil Products in a way that differs significantly from similar reporting firms. Although Oil Products has participated in the survey since June 1994, we do not consider Oil Products' length of participation to be excessive. The OHA has previously held that the length of time that a firm must file Form EIA-782B does not in itself mandate exception relief. See Exxon Junction Service, 14 DOE ¶ 81,020 (1986); Piedmont Petroleum Co., 11 DOE ¶ 81,006 (1983).

We also reject Oil Products' contention that it should receive exception relief because it must spend an inordinate amount of time completing the form. According to Mr. Rash, it took approximately 4-6 hours to complete the form each month. EIA estimates that it should take 2.5 hours per month for a firm to fill out

EIA-782B. See Form EIA-782B, Schedule 1. The OHA, moreover, has determined that even if a firm claims to spend a greater amount of time complying with reporting requirements than the average firm, that does not alone constitute sufficient grounds for exception relief. See, e.g., People's Oil & Gas Co., 13 DOE ¶ 81,021 (1985) (relief denied despite claims of 1.5 to 2 days to complete Form EIA-782B). While we recognize that the firm's need to train new staff is time-consuming, it is a temporary problem which should require less time in the future and does not convince us of the need for exception relief. We are also not convinced that any additional cost which the firm must incur in paying for a few hours of overtime worked is sufficient to constitute a financial hardship to the company.

Furthermore, Oil Products may use estimates to alleviate the inconvenience of filing Form EIA-782B without compromising EIA's comprehensive survey of motor gasoline and middle distillate markets. The use of estimates to complete the EIA form is a straightforward procedure: "The basis for the estimates must be consistent with the standard accounting records maintained by the firm. The estimating procedure and data supporting the estimates should result in a reasonably accurate estimate which will be subject to review." Form EIA-782B, General Instructions ¶ VI.(1)

Oil Products has not demonstrated that its burden of providing the requested data outweighs the benefits which the DOE and the nation receive from access to the information. It is important to note that the data collected from Form EIA-782B provides the DOE with information on the supply, demand, and price of petroleum products. The federal and state governments, as well as private firms, use this information to perform analyses and make projections. Timely and reliable access to the data is vital to the nation's ability to anticipate and respond quickly and effectively to any future supply disruptions. See H.R. Rep. No. 373, 96th Cong., 1st Sess., reprinted in 1979 U.S. Code Cong. and Ad. News 1764, 1781. The DOE has attempted to minimize the burden placed on the public in gathering this information, while insuring that the reporting requirements are administered in a consistent and equitable manner. After balancing these strong public policy considerations against Oil Products' claim, we have concluded that the Oil Products Application for Exception should be denied.

## **It Is Therefore Ordered That:**

- (1) The Application for Exception filed by Oil Products, Inc. on May 13, 1996, is hereby denied.
- (2) Administrative review of this Decision and Order may be sought by any person who is aggrieved or adversely affected by the denial of exception relief. Such review shall be commenced by the filing of a petition for review with the Federal Energy Regulatory Commission within 30 days of the date of this Decision and Order pursuant to 18 C.F.R. Part 385, Subpart J.

George B. Breznay

Director

Office of Hearings and Appeals

Date:

(1)The Energy Information Administration has informed us that it is willing to assist Oil Products in reducing the amount of hours that it takes the firm to complete Form EIA-782B. The firm may contact Charles Riner of EIA, at telephone number (202) 586-6610.

DECISION AND ORDER  
OF THE DEPARTMENT OF ENERGY

Application for Exception

Name of Petitioner: Middleton Oil Company, Inc.

Date of Filing: May 31, 1996

Case Number: VEE-0025

On May 31, 1996, Middleton Oil Company, Inc. (Middleton), located in Greenville, Alabama, filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy. In its Application, Middleton requests that it be relieved of the requirement that it file the Energy Information Administration's (EIA) form entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report" (Form EIA-782B). As explained below, we have determined that the Application for Exception should be granted.

## A. Background

The EIA-782B reporting requirement grew out of the shortages of crude oil and petroleum products during the 1970s. In 1979, Congress found that the lack of reliable information concerning the supply, demand, and prices of petroleum products impeded the nation's ability to respond to the oil crisis. It therefore authorized the DOE to collect data on the supply and prices of petroleum products. The current form collects information concerning the volume and price of various grades and types of motor gasoline, No. 2 distillates, propane, and residual fuel oil, broken down by customer type.

Information obtained from the survey is used to analyze trends within petroleum markets. Summaries of the information and the analyses are published by the EIA in publications such as "Petroleum Marketing Monthly." This data is used by Congress and by more than 35 state governments to project trends and to formulate state and national energy policies. In addition, firms in the petroleum industry frequently base business decisions on the data published by the EIA.

The DOE has attempted to ensure that this survey yields valuable information while minimizing the burden placed on the industry. Thus, in designing the form, the DOE consulted with potential survey respondents, various industry associations, users of the energy data, state governments, and other federal agencies. Moreover, to minimize the reporting burden, the EIA periodically selects a sample of companies to file the report.<1> In addition, to reduce the amount of time spent completing the forms, firms may rely upon reasonable estimates.<2>

## B. Exceptions Criteria

Form EIA-782B is a mandatory report designed to collect monthly information on refined petroleum sales volumes and prices from a sample of resellers and retailers. 42 U.S.C. § 7135(b). This Office has authority to grant exception relief where the reporting requirement causes a "serious hardship, gross inequity or unfair distribution of burdens." 42 U.S.C. § 7194 (a); 10 C.F.R. §1003.25(b)(2). Exceptions are appropriate only in extreme cases. Because all reporting firms are burdened to some extent by reporting requirements, exception relief is appropriate only where a firm can demonstrate that it is adversely affected by the reporting requirement in a way that differs significantly from similar reporting firms. Thus, mere inconvenience does not constitute a sufficient hardship to warrant relief. Glenn W. Wagoner Oil Co.,

16 DOE ¶ 81,024 (1987).

In considering a request for exception relief, we must weigh the firm's difficulty in complying with the reporting requirement against the nation's need for reliable energy data. See Champlain Oil Co., Inc., 14 DOE §81,022 (1986); Eastern Petroleum Corp., 14 DOE § 81,011 (1986). This entails balancing any burden the firm may encounter in meeting its reporting requirement against the public interest in collecting reliable information concerning energy markets upon which public decisions may be based. Neither the fact that a firm is relatively small, nor the fact that it has filed the report for a number of years alone constitute grounds for exception relief. If firms of all sizes, both large and small, are not included the estimates and projections generated by the EIA's statistical sample will be unreliable. Mulgrew Oil Co., 20 DOE ¶ 81,009 (1990).

The following examples illustrate the types of circumstances that may justify relief from the reporting requirement. Since each case is different, these examples are not intended to reflect all circumstances that justify exception relief:

- Financial difficulties underlie most approvals of exception relief. We have granted a number of exceptions where the applicant's financial condition is so precarious that the additional burden of meeting the DOE reporting requirements threatens its continued viability. Mico Oil Co., 23 DOE ¶ 81,015 (1994) (firm lost one million dollars over previous three years); Deaton Oil Co., 16 DOE ¶ 81,026 (1987) (firm in bankruptcy).
- Relief may be appropriate when the only person capable of preparing the report is ill and the firm cannot afford to hire outside help. S&S Oil & Propane Co., 21 DOE ¶ 81,006 (1991) (owner being treated for cancer); Midstream Fuel Serv., 24 DOE ¶ 81,023 (1994)(three month extension of time to file reports granted when two office employees simultaneously on maternity leave); Eastern Petroleum Corp., 14 DOE ¶ 81,011 (1986) (two months relief granted when computer operator broke wrist).
- A combination of factors may warrant exception relief. Exception relief for 10 months was granted where personnel shortages, financial difficulties, and administrative problems resulted from the long illness and death of a partner. Ward Oil Co., 24 DOE ¶ 81,002 (1994); see also Belcher Oil Co., 15 DOE ¶ 81,018 (1987) (extension of time granted where general manager abruptly left firm without notice).
- Extreme or unusual circumstances that disrupt a firm's activities may warrant relief. Little River Village Campground, Inc., 24 DOE ¶ 81,033 (1994) (five months relief because of flood); Utilities Bd. of Citronelle-Gas, 4 DOE ¶ 81,205 (1979) (hurricane); Meier Oil Serv., 14 DOE ¶ 81,004 (1986) (three months where disruptions caused by instillation of a new computer system left firm's records inaccessible).

## **C. Middleton's Exception Application**

Middleton, located in Greenville, Alabama, sells #2 residential fuel oil, non-residential heating fuel oil, and wholesale and retail motor gasoline. Classified by the EIA as a "medium sized company," Middleton has filed Form EIA-782B throughout EIA Sample 11, which began in April 1994.<3>Because Middleton is not classified as a "certainty firm" by the EIA, it is possible, but not guaranteed, that the company will be rotated out of the reporting sample when EIA conducts the next random selection process for inclusion in EIA Sample 12.

In the Application for Exception, the bookkeeper for Middleton, Ms. Betty Hobbie, requests relief from the EIA reporting requirement because she believes the requirement is currently unduly burdensome to the company. Ms. Hobbie writes: "Mr. W.Z. Middleton (Owner) of Middleton Oil Co., Inc. passed away... May 20, 1996 and at this time I just about have more than I am able to take care of. He had been sick for several months and had heart surgery on May 15, 1996." In a telephone conversation on June 20, 1996, Ms. Hobbie stated that Mr. Middleton had been extremely ill since the beginning of 1996.<4> As a result,

Ms. Hobbie helped complete some of the tasks for which he was responsible (e.g. monitoring accounts payable and receivable, issuing checks, etc.) for several months in addition to her regular duties as company bookkeeper. After his death on May 20, 1996, she became solely responsible for all of these tasks. The office staff consists of Ms. Hobbie, a receptionist and one other employee who performs basic office functions as the need arises. Ms. Hobbie states that neither of these employees could take over the responsibility of completing Form EIA-782B each month, and that the four hours it takes her to complete the form each month is excessively burdensome given the current office situation.

## **D. Analysis**

Our review of the information presented in the Application for Exception submitted by Middleton leads us to conclude that there is considerable merit to Middleton's contention that it is currently significantly more burdened by the reporting requirement than similarly situated respondents. In the past, we have granted exception relief when a firm has demonstrated that the reporting requirement imposes an unusual burden on the firm or could seriously impede the firm's business operations. For example, in Lumberport-Shinnston Gas Co., 5 DOE § 81,328 (1980), we relieved the applicant of its reporting obligation because the firm lacked the personnel needed to complete the form and was unable to hire an outside consultant.

We believe such circumstances exist in the present case and that granting exception relief to Middleton is appropriate. In the Application, Ms. Hobbie states that, due to Mr. Middleton's long-term illness and death, she is now responsible for fulfilling all of his former tasks in addition to her own full-time responsibilities. She claims she is the only member of the office staff able to complete Form EIA-782B each month. And, even if Ms. Hobbie believed another employee could relieve her of this duty, it is highly unlikely that another employee could be easily trained to complete the form given the extremely small size of the staff.

We conclude that the burden placed upon Middleton at this time, due to the circumstances of Mr. Middleton's illness and recent death, coupled with the unavailability of personnel other than Ms. Hobbie to complete the form, is greater than that encountered by other firms required to complete Form EIA-782B. Accordingly, Middleton should be granted temporary relief from its obligation to file Form EIA-782B. We will therefore grant exception relief to Middleton for a one-year period, which should give the firm sufficient time to rectify its current employment difficulties.

## **It Is Therefore Ordered That:**

- (1) The Application for Exception filed by Middleton Oil Co., Inc., Case No. VEE-0025, is hereby granted to the extent set forth in paragraph (2) below.
- (2) Notwithstanding the instructions to Form EIA-782B, Middleton Oil Co., Inc. shall not be required to file reports to the Energy Information Administration for a one-year period, beginning July 1, 1996 and extending to July 1, 1997.
- (3) Administrative review of this Decision and Order may be sought by any person who is aggrieved or adversely affected by the denial of exception relief. Such review shall be commenced by the filing of a petition for review with the Federal Energy Regulatory Commission within 30 days of the date of this Decision and Order pursuant to 18 C.F.R. Part 385, Subpart J.

George B. Breznay

Director

Office of Hearings and Appeals

Date:

<1>Firms that do business in four or more states or which account for over five percent of the sales of any particular product in a state are always included in the sample of firms required to file the report. A random sample of other firms is also selected. This random sample changes approximately every 12 months, but a firm may be reselected for a subsequent sample. A firm that has been included in three consecutive random samples will generally not be included in a fourth consecutive sample, but may be included in a later sample.

<2>The firm must make a good faith effort to provide reasonably accurate information that is consistent with the accounting records maintained by the firm. The firm must also alert the EIA if the estimates are later found to be materially different from actual data.

<3>See Record of Telephone Conversation between Sherry Beri, EIA, and Darcy Goddard, OHA Staff Analyst (June 18, 1996).

<4>See Record of Telephone Conversation between Betty Hobbie, Middleton Oil Company, Inc., and Darcy Goddard, OHA Staff Analyst (June 20, 1996).



DECISION AND ORDER  
OF THE DEPARTMENT OF ENERGY

Application for Exception

Name of Petitioner: R.W. Hays Co.

Date of Filing: June 11, 1996

Case Number: VEE-0026

On June 11, 1996 R. W. Hays Co. (Hays) of Medford, Oregon filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). In its Application, Hays requests that it be relieved of the requirement that it file the Energy Information Administration's (EIA) form entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report" (Form EIA-782B). As explained below, we have determined that the Application for Exception should be denied.

## A. Background

Form EIA-782B is a mandatory reporting requirement which grew out of the shortages of crude oil and petroleum products during the 1970s. In 1979, Congress found that the lack of reliable information concerning the supply, demand, and prices of petroleum products impeded the nation's ability to respond to the oil crisis. It therefore authorized the DOE to collect data on the supply and prices of petroleum products. Form EIA-782B is designed to collect monthly information on refined petroleum sales volumes and prices from a sample of resellers and retailers. 42 U.S.C. § 7135(b).

Information obtained from Form EIA-782B is used to analyze trends within petroleum markets. Summaries of the information and the analyses are published by the EIA in publications such as "Petroleum Marketing Monthly." This data is used by Congress and by more than 35 state governments to project trends and to formulate state and national energy policies. In addition, firms in the petroleum industry frequently base business decisions on the data published by EIA.

The DOE has attempted to ensure that the surveys yield valuable information while minimizing the burden placed on the industry. Thus, in designing the form, the DOE consulted with potential survey respondents, various industry associations, users of the energy data, state governments, and other federal agencies. Moreover, to minimize the reporting burden, the EIA periodically selects a relatively small sample of companies to file Form EIA-782B. In addition, to reduce the amount of time spent completing the forms, firms may rely upon reasonable estimates.(1)

## B. Exception Criteria

This Office has authority to grant exception relief where the reporting requirement causes a "special hardship, inequity, or unfair distribution of burdens." 42 U.S.C. § 7194(a); 10 C.F.R. § 1003.25(b)(2). Exceptions are appropriate only in extreme cases. Because all reporting firms are burdened to some extent by reporting requirements, exception relief is appropriate only where a firm can demonstrate that it is adversely affected by the reporting requirement in a way that differs significantly from similar reporting firms. Thus, mere inconvenience does not constitute a sufficient hardship to warrant relief. Glenn W. Wagoner Oil Co., 16 DOE ¶ 81,024 (1987).

In considering a request for exception relief, we must weigh the firm's difficulty in complying with the

reporting requirement against the nation's need for reliable energy data. Neither the fact that a firm is relatively small, nor the fact that it has filed the reports for a number of years alone constitute grounds for exception relief. If firms of all sizes, both large and small, are not included, the estimates and projections generated by the EIA's statistical sample will be unreliable. Mulgrew Oil Co., 20 DOE ¶ 81,009 (1990).

The following examples illustrate the types of circumstances that may justify relief from the reporting requirement. Since each case is different, these examples are not intended to reflect all circumstances that justify exception relief:

- Financial difficulties underlie most approvals of exception relief. We have granted a number of exceptions where the applicant's financial condition is so precarious that the additional burden of meeting the DOE reporting requirements threatens its continued viability. Mico Oil Co., 23 DOE ¶ 81,015 (1994) (firm lost one million dollars over previous three years); Deaton Oil Co., 16 DOE ¶ 81,026 (1987) (firm in bankruptcy).
- Relief may be appropriate when the only person capable of preparing the report is ill and the firm cannot afford to hire outside help. S&S Oil & Propane Co., 21 DOE ¶ 81,006 (1991) (owner being treated for cancer); Midstream Fuel Serv., 24 DOE ¶ 81,023 (three month extension of time to file reports granted when two office employees simultaneously on maternity leave); Eastern Petroleum Corp., 14 DOE ¶ 81,011 (1986) (two months relief granted when computer operator broke wrist).
- A combination of factors may warrant exception relief. Exception relief for 10 months was granted where personnel shortages, financial difficulties, and administrative problems resulted from the long illness and death of a partner. Ward Oil Co., 24 DOE ¶ 81,002 (1994); see also Belcher Oil Co., 15 DOE ¶ 81,018 (1987) (extension of time granted where general manager abruptly left firm without notice).
- Extreme or unusual circumstances that disrupt a firm's activities may warrant relief. Little River Village Campground, Inc., 24 DOE ¶ 81,033 (1994) (five months relief because of flood); Utilities Bd. of Citronelle-Gas, 4 DOE ¶ 81,205 (1979) (hurricane); Meier Oil Serv., 14 DOE ¶ 81,004 (1986) (three months where disruptions caused by installation of a new computer system left firm's records inaccessible).

## C. Hays' Exception Application

Hays sells No. 2 distillate fuel, residential and nonresidential fuel, retail and wholesale fuel as well as retail and wholesale motor gasoline. Classified by EIA as a "medium size firm," Hays has been filing Form EIA-782B continuously since June 1994. Prior to this time, Hays had never participated in the survey.<sup>(2)</sup> According to Steven Hays, President, the company employs 28 workers and sells approximately 30 million gallons of petroleum annually. Mr. Hays estimates that it takes him approximately two hours to complete Form EIA-782B. According to Mr. Hays, the time spent preparing the form is burdensome because it takes him away from more important tasks, and he "is sick of completing the survey." Hays believes the firm has fulfilled its commitment to EIA and that the reporting burden should be shifted to one of the other oil companies in the region. He also questions the authority of the DOE to require firms to file Form EIA-782B.<sup>(3)</sup>

## D. Analysis

Our review of the record in this case indicates that Hays has not met the standards for an exception to the EIA reporting requirement that are set forth above. The approximately 2 hours each month that Hays states it takes the firm to complete the survey is slightly less than the amount of time EIA estimates the form should require (2.5 hours). Therefore, Hays is not unduly or disproportionately affected by the reporting requirement and the time involved in filing cannot therefore lead to an exception. We have consistently withheld exception relief where firms spent considerably more time preparing Form EIA-782B but failed to show that they were otherwise burdened. See People's Oil and Gas Co., 13 DOE ¶ 81,021 (1985) (one

and one half to two working days); St. Joe Petroleum Co., 13 DOE ¶ 81,040 (1985) (eight to ten hours).

Hays also asserts that it has filed the survey much longer than is normally required by EIA. Hays is incorrect. We believe that Hays must have misunderstood the possible duration of the reporting requirement. It is the practice of the EIA to select a random sample of firms to participate in its survey.(4) The EIA attempts to replace about 50% of Form EIA-782B's random sample participants after each sample period (one to two years).(5) Therefore, a firm could reasonably expect to participate for at least two years. A firm that has reported for three consecutive sample periods will generally not be included in a fourth consecutive sample, but may be selected again in a later sample. Therefore, like the time it takes to prepare the report, Hays' two year period of participation does not distinguish it from other firms as unduly or onerously affected. In this regard, we have also consistently ruled that the length of time that a firm has been required to file an EIA form does not alone constitute grounds for exception relief. Schaal Oil Co., 14 DOE ¶ 81,018 (1986) (3 years). See Harbor Enters., 20 DOE ¶ 81,004 (1990) (had been filing various forms, including EIA forms for 20 years); Halron Oil Co., 16 DOE ¶ 81,001 (1987) (12 years). The basis for this conclusion is that the importance of the information collected by the EIA through the survey usually outweighs the inconvenience of providing the data.

Finally, Hays challenges the statutory authority of the DOE to administer Form EIA-782B. As the instructions on EIA-782B explain, the submission of EIA-782B by selected companies is mandatory under Section 13 (b) of the Federal Energy Administration Act of 1974 (FEAA) (Public Law 93-275), as amended. If a company fails to fulfill its responsibility, a civil penalty of not more than \$2,500 for each violation, or a fine of not more than \$5,000 for each willful violation may result.

In summary, Hays has not shown that providing EIA the data is excessively onerous to it as compared to other firms similarly affected. The applicant has also failed to show that the effort involved in providing the data outweighs the benefits which the DOE and the nation receive from access to the information. The data collected from Form EIA-782B constitute our primary source of information on supplies, demand, and prices of petroleum products. Reliable data is vital to the nation's ability to anticipate and respond quickly and effectively to any future supply disruptions and thereby protect the public interest. Indeed, this is why the Congress mandated the collection of this type of data. Unless firms such as Hays are part of the EIA's statistical sample, the DOE will be unable to formulate valid estimates from a cross-section of the industry. Strong public policy considerations such as these lead us to conclude that Hays' request for exception relief from the mandatory reporting requirements is unwarranted.

In accordance with the above discussion, we find that exception relief is not warranted in this case, because Hays is not experiencing a special hardship, inequity, or unfair distribution of burdens from the requirement that it file Form EIA-782B. Consequently, the Department of Energy has determined that the Application for Exception filed by Hays should be denied

## **It Is Therefore Ordered That:**

(1) The Application for Exception filed by R.W. Hays Co. on June 11, 1996, is hereby denied.

(2) Administrative review of this Decision and Order may be sought by any person who is aggrieved or adversely affected by the denial of exception relief. Such review shall be commenced by the filing of a petition for review with the Federal Energy Regulatory Commission within 30 days of the date of this Decision and Order pursuant to 18 C.F.R. Part 385, Subpart J.

George B. Breznay

Director

Office of Hearings and Appeals

Date:

(1)Form EIA-782B stipulates that the firm must make a good faith effort to provide reasonably accurate information that is consistent with the accounting records maintained by the firm. The firm must alert the EIA if the estimates are later found to be materially different from actual data.

(2) See Conversation between Ms. Allison Varzally, OHA staff analyst, and Ms. Sheri Berry, Energy Information Agency (June 19, 1996).

(3)See Conversation between Ms. Varzally and Mr. Steven Hays, President (June 19, 1996) and Letter to the Office of Hearings and Appeals from Mr. Hays (June 11, 1996).

(4) For Form EIA-782B, firms that do business in four or more states or which account for over five percent of the sales of any particular product in a state are always included in the sample of firms required to file the report.

(5)According to EIA, changing the entire sample each year would adversely affect the quality of the survey's results because of the initial difficulties some firms experience as they become accustomed to preparing the Form. E.H. Moorhouse, Inc., 14 DOE ¶ 81,012, at 82,540 (1986); People's Oil & Gas Co., 13 DOE ¶ 81,021, at 82,573 (1985). The current EIA Sample in which Hays is included has lasted more than the usual two year maximum due to the temporary shut down of the federal government in fiscal year 1996.

DECISION AND ORDER  
OF THE DEPARTMENT OF ENERGY

Application for Exception

Name of Petitioner: J. Enterprises, Inc.

Date of Filing: April 16, 1996

Case Number: VEE-0027

On June 11, 1996, J. Enterprises, Inc. (Enterprises) of Swansea, Massachusetts, filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). In its Application, Enterprises requests that it be relieved of the requirement that it file the Energy Information Administration's (EIA) form entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report" (Form EIA-782B). As explained below, we have determined that the Application for Exception should be denied.

## A. Background

Form EIA-782B is a mandatory reporting requirement which grew out of the shortages of crude oil and petroleum products during the 1970s. In 1979, Congress found that the lack of reliable information concerning the supply, demand, and prices of petroleum products impeded the nation's ability to respond to the oil crisis. It therefore authorized the DOE to collect data on the supply and prices of petroleum products. Form EIA-782B is designed to collect monthly information on refined petroleum sales volumes and prices from a sample of resellers and retailers. 42 U.S.C. § 7135(b). Information obtained from Form EIA-782B is used to analyze trends within petroleum markets. Summaries of the information and the analyses are published by the EIA in publications such as "Petroleum Marketing Monthly." This data is used by Congress and by more than 35 state governments to project trends and to formulate state and national energy policies. In addition, firms in the petroleum industry frequently base business decisions on the data published by EIA.

The DOE has attempted to ensure that the surveys yield valuable information while minimizing the burden placed on the industry. Thus, in designing the form, the DOE consulted with potential survey respondents, various industry associations, users of the energy data, state governments, and other federal agencies. Moreover, to minimize the reporting burden, the EIA periodically selects a relatively small sample of companies to file

Form EIA-782B In addition, to reduce the amount of time spent completing the forms, firms may rely upon reasonable estimates.(1)

## B. Exception Criteria

This Office has authority to grant exception relief where the reporting requirement causes a "special hardship, inequity, or unfair distribution of burdens." 42 U.S.C. § 7194(a); 10 C.F.R. § 1003.25(b)(2). Exceptions are appropriate only in extreme cases. Because all reporting firms are burdened to some extent by reporting requirements, exception relief is appropriate only where a firm can demonstrate that it is adversely affected by the reporting requirement in a way that differs significantly from similar reporting firms. Thus, mere inconvenience does not constitute a sufficient hardship to warrant relief. Glenn W.

Wagoner Oil Co., 16 DOE ¶ 81,024 (1987).

In considering a request for exception relief, we must weigh the firm's difficulty in complying with the reporting requirement against the nation's need for reliable energy data. Neither the fact that a firm is relatively small, nor the fact that it has filed the reports for a number of years alone constitute grounds for exception relief. If firms of all sizes, both large and small, are not included, the estimates and projections generated by the EIA's statistical sample will be unreliable. Mulgrew Oil Co., 20 DOE ¶ 81,009 (1990).

The following examples illustrate the types of circumstances that may justify relief from the reporting requirement. Since each case is different, these examples are not intended to reflect all circumstances that justify exception relief:

- Financial difficulties underlie most approvals of exception relief. We have granted a number of exceptions where the applicant's financial condition is so precarious that the additional burden of meeting the DOE reporting requirements threatens its continued viability. Mico Oil Co., 23 DOE ¶ 81,015 (1994) (firm lost one million dollars over previous three years); Deaton Oil Co., 16 DOE ¶ 81,026 (1987) (firm in bankruptcy).
- Relief may be appropriate when the only person capable of preparing the report is ill and the firm cannot afford to hire outside help. S&S Oil & Propane Co., 21 DOE ¶ 81,006 (1991) (owner being treated for cancer); Midstream Fuel Serv., 24 DOE ¶ 81,023 (three month extension of time to file reports granted when two office employees simultaneously on maternity leave); Eastern Petroleum Corp., 14 DOE ¶ 81,011 (1986) (two months relief granted when computer operator broke wrist).
- A combination of factors may warrant exception relief. Exception relief for 10 months was granted where personnel shortages, financial difficulties, and administrative problems resulted from the long illness and death of a partner. Ward Oil Co., 24 DOE ¶ 81,002 (1994); see also Belcher Oil Co., 15 DOE ¶ 81,018 (1987) (extension of time granted where general manager abruptly left firm without notice).
- Extreme or unusual circumstances that disrupt a firm's activities may warrant relief. Little River Village Campground, Inc., 24 DOE ¶ 81,033 (1994) (five months relief because of flood); Utilities Bd. of Citronelle-Gas, 4 DOE ¶ 81,205 (1979) (hurricane); Meier Oil Serv., 14 DOE ¶ 81,004 (1986) (three months where disruptions caused by installation of a new computer system left firm's records inaccessible).

## C. Enterprises' Exception Application

Enterprises sells motor gasoline to retail customers in Massachusetts and Rhode Island. Classified by EIA as a "large size firm," Enterprises has been filing Form EIA-782B continuously since February 1993. The firm's accountant, Mark's Accounting Service (Mark's), handles the preparation of the Form.(2) Debbie Greco, Office Manager for Mark's, estimates that it takes her firm approximately 15 minutes to complete the Form. Ms. Greco argues that the length of time that Marks' has had to file the Form for Enterprises is burdensome and the firm should therefore be taken off the list of sample participants.

## D. Analysis

Our review of the record in this case indicates that Enterprises has not met the standards for an exception to the EIA reporting requirement that are set forth above. For example, the 15 minutes each month that Mark's states it takes the firm to complete the survey is substantially less than the amount of time EIA estimates the form should require (2.5 hours). Therefore, Enterprises is not unduly or disproportionately affected by the time involved in filing the report. We note that we have consistently withheld exception relief where firms spent considerably more time preparing Form EIA-782B but failed to show that they were otherwise burdened. See People's Oil and Gas Co., 13 DOE ¶ 81,021 (1985) (one and one half to two working days); St. Joe Petroleum Co., 13 DOE ¶ 81,040 (1985) (eight to ten hours).

Nor does the length of time that it has filed the survey indicate that the reporting responsibility should be eliminated or transferred to another firm. Enterprises' sales of motor gasoline constitute over five percent of the total sales of gasoline in Rhode Island, and consequently, it is classified by EIA as a "certainty unit." (3) Certainty units are always included in the sample of firms required to file the report. (4) We have consistently ruled that the length of time that a firm has been required to file an EIA form does not alone constitute grounds for exception relief. Schaal Oil Co., 14 DOE ¶ 81,018 (1986) (3 years). See Harbor Enters., 20 DOE ¶ 81,004 (1990) (had been filing various forms, including EIA forms for 20 years); Halron Oil Co., 16 DOE ¶ 81,001 (1987) (12 years). The basis for this conclusion is that the importance of the information collected by the EIA through the survey usually outweighs the inconvenience of providing the data.

In summary, Enterprises has not shown that providing EIA the requested data is excessively onerous to it as compared to other firms similarly affected. The applicant has also failed to show that the effort involved in providing the data outweighs the benefits which the DOE and the nation receive from access to the information. The data collected from Form EIA-782B constitute our primary source of information on supplies, demand, and prices of petroleum products. Reliable data is vital to the nation's ability to anticipate and respond quickly and effectively to any future supply disruptions and thereby protect the public interest. Indeed, this is why the Congress mandated the collection of this type of data. Unless firms such as Enterprises are part of the EIA's statistical sample, the DOE will be unable to formulate valid estimates from a cross-section of the industry. Strong public policy considerations such as these lead us to conclude that Enterprises' request for exception relief from the mandatory reporting requirements is unwarranted.

In accordance with the above discussion, we find that exception relief is not warranted in this case, because Enterprises is not experiencing a special hardship, inequity, or unfair distribution of burdens from the requirement that it file Form EIA-782B. Consequently, the Department of Energy has determined that the Application for Exception filed by Enterprises should be denied.

## **It Is Therefore Ordered That:**

(1) The Application for Exception filed by J. Enterprises, Inc., on June 11, 1996, is hereby denied.

(2) Administrative review of this Decision and Order may be sought by any person who is aggrieved or adversely affected by the denial of exception relief. Such review shall be commenced by the filing of a petition for review with the Federal Energy Regulatory Commission within 30 days of the date of this Decision and Order pursuant to 18 C.F.R. Part 385, Subpart J.

George B. Breznay

Director

Office of Hearings and Appeals

Date:

(1)/ Form EIA-782B stipulates that the firm must make a good faith effort to provide

reasonably accurate information that is consistent with the accounting records maintained by the firm. The firm must alert the EIA if the estimates are later found to be materially different from actual data.

(2)2/ See Letter to the Office of Hearings and Appeals from Paul Sroczyński, President of Enterprises (June 11, 1996).

(3)3/ See Conversation between Sherri Beri, EIA, and Ms. Kimberly Smith, OHA Staff Analyst (July 1,

1996).

(4)4/ For Form EIA-782B, certainty units consist of firms that do business in four or more states or which account for over five percent of sales of any particular product in a state. The EIA also selects a random sample of non-certainty firms to participate in the survey.



# Case No. VEE-0028

April 4, 1997

DECISION AND ORDER

OF THE DEPARTMENT OF ENERGY

Application for Exception

Name of Petitioner: Laney Oil Company, Inc.

Date of Filing: June 18, 1996

Case Number: VEE-0028

On June 18, 1996, the Laney Oil Company, Inc., (Laney Oil) of Monroe, North Carolina, filed an Application for Exception with the Office of Hearings and Appeals of the Department of Energy. In its Application, Laney Oil requests relief from the obligation to file the Energy Information Administration's (EIA) form entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report" (Form EIA-782B). As explained below, we have decided that the Application for Exception should be granted in part.

## A. Background

Form EIA-782B is a mandatory report designed to collect monthly information on refined petroleum sales volumes and prices from a sample of resellers and retailers. 42 U.S.C. § 7135(b). The EIA-782B reporting requirement grew out of the shortages of crude oil and petroleum products during the 1970s. In 1979, Congress found that the lack of reliable information concerning the supply, demand, and prices of petroleum products impeded the nation's ability to respond to the oil crisis. It therefore authorized the DOE to collect data on the supply and prices of petroleum products. The current form collects information concerning the volume and price of various grades and types of motor gasoline, No. 2 distillates, propane, and residual fuel oil, broken down by customer type.

Information obtained from the survey is used to analyze trends within petroleum markets. Summaries of the information and the analyses are published by the EIA in publications such as "Petroleum Marketing Monthly." This data is used by Congress and by more than 35 state governments to project trends and to formulate state and national energy policies. In addition, firms in the petroleum industry frequently base business decisions on the data published by EIA.

The DOE has attempted to ensure that this survey yields valuable information while reducing the burden placed on the industry. Thus, in designing the form, the DOE consulted with potential survey respondents, various industry associations, users of the energy data, state governments, and other federal agencies. Moreover, to reduce the reporting burden, the EIA periodically selects a relatively small sample of companies to file the report. In addition, to reduce time spent completing the forms, firms may rely upon reasonable estimates.

## B. Exceptions Criteria

This Office has authority to grant exception relief where the reporting requirement causes a "special

hardship, inequity, or unfair distribution of burdens.” 42 U.S.C. § 7194 (a); 10 C.F.R. § 1003.25 (b)(2). Exceptions are appropriate only in extreme cases. Because all reporting firms are burdened to some extent by reporting requirements, exception relief is appropriate only where a firm can show that it is adversely affected by the reporting requirement in a way that differs significantly from similar reporting firms. Thus, mere inconvenience does not constitute a sufficient hardship to warrant relief. Glenn W. Wagoner Oil Co., 16 DOE ¶ 81,024 (1987).

In considering a request for exception relief, we must weigh a firm's difficulty in complying with the reporting requirement against the nation's need for reliable energy data. Neither the fact that a firm is relatively small, nor the fact that it has filed the report for many years is grounds for exception relief. If firms of all sizes, both large and small, are not included, the estimates and projections generated by the EIA's statistical sample will be unreliable. Mulgrew Oil Co., 20 DOE ¶ 81,009 (1990).

We have granted full or partial relief from EIA reporting requirements in cases where applicants have shown that the requirements placed a burden upon them that were significantly different from the inconvenience generally associated with the requirement to submit EIA forms. In the past, relief has been granted due to personnel shortages, financial difficulties, administrative problems and extreme circumstances. See S&S Oil & Propane Co., 21 DOE ¶ 81,006 (1991) (owner being treated for cancer); Midstream Fuel Serv., 24 DOE ¶ 81,023 (three month extension of time to file reports granted when two office employees simultaneously on maternity leave); Eastern Petroleum Corp., 14 DOE ¶ 81,011 (1986) (two months relief granted when a computer operator broke wrist); Belcher Oil Co., 15 DOE ¶ 81,018 (1987) (extension of time granted where general manager abruptly left firm without notice); Little River Village Campground, Inc., 24 DOE ¶ 81,033 (1994) (five month relief because of a flood); Utilities Bd. of Citronelle-Gas, 4 DOE ¶ 81,205 (1979) (hurricane); and Meier Oil Serv., 14 DOE ¶ 81,004 (1986) (three months where disruptions caused by installation of a new computer system left firm's records inaccessible).

## **C. Laney Oil's Application for Exception**

Laney Oil is a medium-sized firm that sells No. 2 diesel and motor gasoline to wholesale and retail customers in North Carolina and South Carolina. The firm has been participating continuously in the EIA-782B survey since April of 1994.

The firm requests that it be excused from filing Form EIA-782B because in May 1996 it had to replace its Financial Controller, a longtime employee who compiled the information submitted on the Form. According to the firm, at that time no other employee was able to perform this function. The firm also stated that, because of the time necessary to become familiar with its financial operations, the new Controller would not be able to complete the Form EIA-782B in an efficient manner until January of 1997. See Memorandum of Telephone Conversation between Linda Lazarus, Staff Attorney, Office of Hearings and Appeals, and Ronnie Thomas, Operations Comptroller of Laney Oil (June 25, 1996).

## **D. Analysis**

We see no reason to excuse Laney Oil from filing Form EIA-782B completely. While the firm will no doubt experience some inconvenience in filing the Forms, this inconvenience is not greater than that experienced by other reporting firms. Nothing in the record shows that Laney Oil is financially distressed or that, after its Financial Controller becomes familiar with operations, the reporting requirement will burden the firm in a unique or exceptional way.

At the same time, the data collected from Form EIA-782B is the DOE's primary source of information on supplies, demand, and prices of petroleum products. Reliable data is vital to the nation's ability to formulate energy policies and respond effectively to any future supply disruptions. Unless firms such as Laney Oil are part of the EIA's statistical sample, the DOE will be unable to formulate valid estimates

from a cross-section of the industry. Consequently, there is no evidence that the burden on Laney Oil of providing the requested data after January 1997 outweighs the benefits that the DOE and the nation receive from access to the information.

However, there will be some unusual difficulty in filing the past due forms. Under these circumstances, we find that a limited form of relief is warranted. *Belcher Oil Co.*, 15 DOE ¶ 81,018 (1987). The firm has said that the Financial Controller was able to complete the Form without undue difficulty after January 1, 1997. In order to balance Laney Oil's temporary difficulties against the importance of providing the Form data, we will allow the firm an extension of time until ninety days after the date of the issuance of this Decision and Order to submit to the EIA the Forms EIA-782B for the months of April of 1996 through December of 1996. Accordingly, the Application for Exception filed by Laney Oil will be granted in part.

It Is Therefore Ordered That:

(1) The Application for Exception filed by Laney Oil Company, Inc., on June 18, 1996, is hereby granted to the extent set forth in paragraph (2) below.

(2) Laney Oil Company, Inc., will be granted an extension of time until ninety days after the issuance of this Decision and Order to submit the data that it was required to file with the Energy Information Administration of the Department of Energy on Form EIA-782B during the period between April and December of 1996.

(3) Any person who is aggrieved or adversely affected by the denial of exception relief may seek administrative review of this Decision and Order. Such review shall be commenced by the filing of a petition for review with the Federal Energy Regulatory Commission within 30 days of the date of this Decision and Order pursuant to 18 C.F.R. Part 385, Subpart J.

George B. Breznay

Director

Office of Hearings and Appeals

Date: April 4, 1997

DECISION AND ORDER  
OF THE DEPARTMENT OF ENERGY

Application for Exception

Name of Petitioner: Lee Oil Company

Date of Filing: July 19, 1996

Case Number: VEE-0030

On July 19, 1996, Lee Oil Company (Lee), located in Greensboro, North Carolina, filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy. In its Application, Lee requests that it be relieved of the requirement that it file the Energy Information Administration's (EIA) form entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report" (Form EIA-782B). As explained below, we have determined that the Application for Exception should be granted.

## A. Background

The EIA-782B reporting requirement grew out of the shortages of crude oil and petroleum products during the 1970s. In 1979, Congress found that the lack of reliable information concerning the supply, demand, and prices of petroleum products impeded the nation's ability to respond to the oil crisis. It therefore authorized the DOE to collect data on the supply and prices of petroleum products. The current form collects information concerning the volume and price of various grades and types of motor gasoline, No. 2 distillates, propane, and residual fuel oil, broken down by customer type.

Information obtained from the survey is used to analyze trends within petroleum markets. Summaries of the information and the analyses are published by the EIA in publications such as "Petroleum Marketing Monthly." This data is used by Congress and by more than 35 state governments to project trends and to formulate state and national energy policies. In addition, firms in the petroleum industry frequently base business decisions on the data published by the EIA.

The DOE has attempted to ensure that this survey yields valuable information while minimizing the burden placed on the industry. Thus, in designing the form, the DOE consulted with potential survey respondents, various industry associations, users of the energy data, state governments, and other federal agencies. Moreover, to minimize the reporting burden, the EIA periodically selects a sample of companies to file the report.<1> In addition, to reduce the amount of time spent completing the forms, firms may rely upon reasonable estimates.

## B. Exceptions Criteria

Form EIA-782B is a mandatory report designed to collect monthly information on refined petroleum sales volumes and prices from a sample of resellers and retailers. 42 U.S.C. § 7135(b). This Office has authority to grant exception relief where the reporting requirement causes a "serious hardship, gross inequity or unfair distribution of burdens." 42 U.S.C. § 7194 (a); 10 C.F.R. § 1003.25(b)(2). Because all reporting firms are burdened to some extent by reporting requirements, exception relief is appropriate only where a firm can demonstrate that it is adversely affected by the reporting requirement in a way that differs significantly from similar reporting firms. Thus, mere inconvenience does not constitute a sufficient hardship to warrant relief. Glenn W. Wagoner Oil Co., 16 DOE ¶ 81,024 (1987).

In considering a request for exception relief, we must weigh the firm's difficulty in complying with the reporting requirement against the nation's need for reliable energy data. See Champlain Oil Co., Inc., 14 DOE ¶ 81,022 (1986); Eastern Petroleum Corp., 14 DOE ¶ 81,011 (1986). This entails balancing any burden the firm may encounter in meeting its reporting requirement against the public interest in collecting reliable information concerning energy markets upon which public decisions may be based. Neither the fact that a firm is relatively small, nor the fact that it has filed the report for a number of years alone constitute grounds for exception relief. If firms of all sizes, both large and small, are not included, the estimates and projections generated by the EIA's statistical sample will be unreliable. Mulgrew Oil Co., 20 DOE ¶ 81,009 (1990).

The following examples illustrate the types of circumstances that may justify relief from the reporting requirement. Since each case is different, these examples are not intended to reflect all circumstances that justify exception relief:

- Financial difficulties underlie most approvals of exception relief. We have granted a number of exceptions where the applicant's financial condition is so precarious that the additional burden of meeting the DOE reporting requirements threatens its continued viability. Mico Oil Co., 23 DOE ¶ 81,015 (1994) (firm lost one million dollars over previous three years); Deaton Oil Co., 16 DOE ¶ 81,026 (1987) (firm in bankruptcy).
- Relief may be appropriate when the only person capable of preparing the report is ill and the firm cannot afford to hire outside help. S&S Oil & Propane Co., 21 DOE ¶ 81,006 (1991) (owner being treated for cancer); Midstream Fuel Serv., 24 DOE ¶ 81,023 (1994) (three month extension of time to file reports granted when two office employees simultaneously on maternity leave); Eastern Petroleum Corp., 14 DOE ¶ 81,011 (1986) (two months relief granted when computer operator broke wrist).
- A combination of factors may warrant exception relief. Exception relief for 10 months was granted where personnel shortages, financial difficulties, and administrative problems resulted from the long illness and death of a partner. Ward Oil Co., 24 DOE ¶ 81,002 (1994); see also Belcher Oil Co., 15 DOE ¶ 81,018 (1987) (extension of time granted where general manager abruptly left firm without notice).
- Extreme or unusual circumstances that disrupt a firm's activities may warrant relief. Little River Village Campground, Inc., 24 DOE ¶ 81,033 (1994) (five months relief because of flood); Utilities Bd. of Citronelle-Gas, 4 DOE ¶ 81,205 (1979) (hurricane); Meier Oil Serv., 14 DOE ¶ 81,004 (1986) (three months where disruptions caused by installation of a new computer system left firm's records inaccessible).

## C. Lee's Exception Application

Lee, located in Greensboro, North Carolina, sells gasoline, #2 diesel fuel and #2 fuel oil. Classified by the EIA as a "medium sized company," Lee has filed Form EIA-782B since February 1993 as part of EIA Samples 10 and 11. Because Lee is not classified as a "certainty firm" by the EIA, it is possible, but not guaranteed, that the company will be rotated out of the reporting sample when EIA conducts the next random selection process for inclusion in EIA Sample 12.

In the Application for Exception, the Secretary/Treasurer of Lee, Leonard Watts, requests relief from the EIA reporting requirement because he believes the requirement is currently unduly burdensome to the company. Mr. Watts writes that Lee employs 3 people in its office. One of those employees, who had completed the form for the firm through February 1996, is currently on disability leave. Another employee took on this responsibility, but will be going on maternity leave this month. In a June 25, 1996 telephone conversation with Mr. Watts, he stated that his one remaining employee has been so overburdened by the additional workload that the company has temporarily employed a part-time worker to help with paperwork in the office. Mr. Watts anticipates that the employee who is going on maternity leave will return to work on October 1, 1996.

## **D. Analysis**

Our review of the information presented in the Application for Exception submitted by Lee leads us to conclude that there is considerable merit to Lee's contention that it is currently significantly more burdened by the reporting requirement than similarly situated respondents. In the past, we have granted exception relief when a firm has demonstrated that the reporting requirement imposes an unusual burden on the firm or could seriously impede the firm's business operations. For example, as noted above, in *Midstream Fuel Serv.*, 24 DOE ¶ 81,023 (1994), we granted a three month extension of time to file Form EIA-782B when two of its office employees were simultaneously on maternity leave.

We believe such circumstances exist in the present case and that granting exception relief to Lee is appropriate. One employee of the firm, with the assistance of a part-time temporary employee, will soon be required to perform the duties of two employees on temporary leave, in addition to a full workload.

We conclude that the burden placed upon Lee at this time, due to the temporary unavailability of personnel to complete the form, is greater than that encountered by other firms required to complete Form EIA-782B. Accordingly, Lee should be granted temporary relief from its obligation to file Form EIA-782B. Because one of its employees will be returning to work on October 1, 1996, we will grant exception relief to Lee for a period of three months.

### **It Is Therefore Ordered That:**

- (1) The Application for Exception filed by Lee Oil Company, Case No. VEE-0030, is hereby granted to the extent set forth in paragraph (2) below.
- (2) Notwithstanding the instructions to Form EIA-782B, Lee Oil Company shall not be required to file reports to the Energy Information Administration for a period of three months, beginning August 1, 1996 and extending to November 1, 1996.
- (3) This is a final Order of the Department of Energy.

George B. Breznay

Director

Office of Hearings and Appeals

Date:

<1> Firms that do business in four or more states or which account for over five percent of the sales of any particular product in a state are always included in the sample of firms required to file the report. A random sample of other firms is also selected. This random sample changes approximately every 12 months, but a firm may be reselected for a subsequent sample. A firm that has been included in three consecutive random samples will generally not be included in a fourth consecutive sample, but may be included in a later sample.

DECISION AND ORDER  
OF THE DEPARTMENT OF ENERGY

Application for Exception

Name of Petitioner: Thomas Oil Company

Date of Filing: September 13, 1996

Case Number: VEE-0032

On September 13, 1996, Thomas Oil Company (Thomas Oil) filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). In its application, Thomas Oil requests that it be relieved of the requirement to file Form EIA-782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report."

## I. Background

In response to the 1979 oil crisis, Congress enacted the Emergency Energy Conservation Act of 1979 (EECA), Pub. L. No. 96-102, 42 U.S.C. § 8501 et seq. In legislating the EECA, Congress found that up-to-date and reliable information concerning the supply and demand of gasoline, diesel fuel, and other related data is not available to the President, the Congress, or the public." EECA § 201, 42 U.S.C. § 8501. This lack of information impeded Congress's ability to respond to the oil crisis. Congress therefore directed that the DOE establish a Middle Distillate Monitoring Program to monitor the supply and demand of middle distillates in each state at the refining, wholesale and retail levels. EECA § 242, 42 U.S.C. § 8532.

The responsibility for the Middle Distillate Monitoring Program was assumed by the Energy Information Administration (EIA) of the DOE. Under the provisions of Section 205 of the Department of Energy Organization Act, 42 U.S.C. § 7135, the EIA is authorized not only to collect and analyze energy information necessary for the proper functioning of the DOE, but also to require that any energy supplier or major consumer of energy provide such information to the DOE.

When the oil crisis subsided, the DOE thoroughly reviewed its Monitoring Program to determine the least costly method of gathering the information that Congress required. The DOE consulted with state governments, petroleum dealers, and other federal agencies and held a public hearing. Subsequent to these consultations, the EIA adopted Form EIA-782B, "Monthly No. 2 Distillate Sales Report." In November 1983, the EIA revised this Form to include information concerning sales of finished motor gasoline and residual fuel oil, and renamed the Form "Resellers'/Retailers' Monthly Petroleum Product Sales Report." In October 1993, the EIA further revised Form EIA-782B in response to the Clean Air Act Amendments of 1990, Pub. L. 101-549. These latest revisions to Form EIA-782B were (i) an expansion of finished motor gasoline reporting categories to include reformulated and oxygenated gasoline, (ii) separation of No. 2 diesel fuel into low and high sulphur content categories, and (iii) the addition of propane to the survey as a reporting product. See Form EIA-782B (10-93).

Form EIA-782B is a mandatory report designed to collect monthly data on sales volumes and unit prices of refined petroleum products from a random sample of resellers and retailers. Information obtained from the respondents constitutes the DOE's primary source of information about petroleum products at the reseller/retailer level. The DOE uses the information obtained from the respondents to perform state-by-state analyses and make projections related to energy supplies, demand, and prices. These data are vital to

the nation's ability to anticipate and respond to any future energy shortages. See H.R. Rep. No. 373, 96th Cong., 1st Sess., reprinted in 1979 U.S. Code Cong. & Admin. News 1764, 1781.

The applicant in this proceeding was designated by the EIA as a member of a sample group required to complete and submit Form EIA- 782B on a monthly basis, beginning in June 1994.

## **II. Thomas Oil Company's Application for Exception**

Thomas Oil is a petroleum product wholesaler-retailer located in Gainesville, Florida. Thomas Oil sells No. 2 diesel fuel, heating oil, distillates and motor gasoline. In its application, the firm requests an exception to the Form EIA-782B reporting requirement on the basis that the firm has been completing the form on a monthly basis for more than three years.(1) David Thomas, Vice President for Thomas Oil, claims that it is too time consuming to have to complete the form, which he does from a computer printout using actual figures. Mr. Thomas states that it takes him approximately two hours per month to complete the form. Mr. Thomas states in addition that his firm recently purchased another business, consisting of three stores and a small bulk storage plant for making commercial deliveries. This new business added an additional 20 employees and increased sales by approximately 150,000 gallons of fuel. According to Mr. Thomas, the acquisition was accomplished without taking on added personnel in the firm's home office, and this has caused the home office workload to double.

## **III. Analysis**

The OHA has the authority to grant exception relief to alleviate or prevent serious hardship or gross inequity. 10 C.F.R. § 1003.20. See also 6 Fed. Energy Guidelines ¶ 80,003 (Exceptions and Appeals Guidelines). In previous cases involving requests for exception relief, we have recognized that mandatory reporting requirements impose costs on the respondents. Since all reporting firms are burdened by the requirement, we have held that exception relief is appropriate only when a firm can demonstrate that it is adversely affected by the reporting requirement in a way that differs significantly from similar reporting firms. When evaluating an applicant's request for exception relief, we consider whether the difficulty in complying with the reporting requirement is outweighed by the benefits to the nation in obtaining the required data. See Lockheed Air Terminal, 15 DOE ¶ 81,010 (1986); Champlain Oil Co., 14 DOE ¶ 81,022 (1986); Three L Inc., 12 DOE ¶ 81,014 (1984); Pure Oil Co., 8 DOE ¶ 81,019 (1981).

In the past, we have granted full or partial relief from EIA reporting requirements in cases where applicants have shown that those requirements placed a burden upon them that was significantly different from the inconvenience generally associated with the requirement to submit EIA forms. For example, relief has been granted when firms have had severe financial difficulties or when the only persons capable of preparing a form have had serious medical problems. See Eastern Petroleum Corp., 14 DOE ¶ 81,011 (1986); LBM Distributors, Inc., 13 DOE ¶ 81,043 (1985); Ed Joyce Fuel and Feeds, 13 DOE ¶ 81,024 (1985).

We are unconvinced that the reporting requirement has adversely affected Thomas Oil in a way that differs significantly from similar reporting firms. The firm has submitted no evidence that it is experiencing any financial hardship. In view of its recent expansion of its business, one may assume that it is not suffering a serious hardship. Furthermore, even though Thomas Oil has participated in the survey since June 1994, we do not consider that length of participation to be excessive. Moreover, the OHA has previously held that the length of time that a firm must file Form EIA-782B does not in itself mandate exception relief. See Exxon Junction Service, 14 DOE ¶ 81,020 (1986); Piedmont Petroleum Co., 11 DOE ¶ 81,006 (1983).

We also reject Thomas Oil's contention that it should receive exception relief since preparing form EIA-782B takes too many hours. EIA estimates that it should take 2.5 hours per month for a firm to fill out EIA-782B. See Form EIA-782B, Schedule 1. This is slightly more than the length of time that Mr. Thomas estimates that it takes him each month to complete Form EIA-782B.



Furthermore, Thomas Oil may use estimates to alleviate the time spent preparing Form EIA-782B without compromising EIA's comprehensive survey of motor gasoline and middle distillate markets. We note that Thomas Oil does not use estimates to complete the form even though they are clearly permitted.

Moreover, the use of estimates to complete the EIA form is a straightforward procedure: "The basis for the estimates must be consistent with the standard accounting records maintained by the firm. The estimating procedure and data supporting the estimates should result in a reasonably accurate estimate which will be subject to review." Form EIA-782B, General Instructions ¶ VI. We believe that Thomas Oil could ease what it considers an onerous burden by providing estimated data.

Moreover, Thomas Oil has not demonstrated that its burden of providing the requested data outweighs the benefits which the DOE and the nation receive from access to the information. It is important to note that the data collected from Form EIA-782B provides the DOE with information on the supply, demand, and price of petroleum products. The federal and state governments, as well as private firms, use this information to perform analyses and make projections. Timely and reliable access to the data is vital to the nation's ability to anticipate and respond quickly and effectively to any future supply disruptions. See H.R. Rep. No. 373, 96th Cong., 1st Sess., reprinted in 1979 U.S. Code Cong. and Ad. News 1764, 1781. The DOE has attempted to minimize the burden placed on the public in gathering this information, while insuring that the reporting requirements are administered in a consistent and equitable manner. After balancing these strong public policy considerations against Thomas Oil's claim, we have concluded that the firm's Application for Exception should be denied.

## **It Is Therefore Ordered That:**

(1) The Application for Exception filed by Thomas Oil Company on September 13, 1996, is hereby denied.

(2) Administrative review of this Decision and Order may be sought by any person who is aggrieved or adversely affected by the denial of exception relief. Such review shall be commenced by the filing of a petition for review with the Federal Energy Regulatory Commission within 30 days of the date of this Decision and Order pursuant to 18 C.F.R. Part 385, Subpart J.

George B. Breznay

Director

Office of Hearings and Appeals

Date: January 7, 1997

(1)EIA's records indicate that the firm has been participating since June 1994, approximately 2-1/2 years ago. See November 5, 1996 memorandum of telephone conversation between Toni A. Brown, OHA, and Sherry A. Beri, EIA . Case No. (VEE-0032).

# Case No. VEE-0033

February 11, 1997

## DECISION AND ORDER OF THE DEPARTMENT OF ENERGY

### Application for Exception

Name of Petitioner: Nugent Motor Company

Date of Filing: October 16, 1996

Case Number: VEE-0033

On October 16, 1996, Nugent Motor company (Nugent) of Colebrook, New Hampshire, filed an Application for Exception with the Office of Hearings and Appeals of the Department of Energy. In its Application, Nugent requests that it be relieved of the requirement that it file the Energy Information Administration's (EIA) form entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report" (Form EIA-782B). As explained below, we have determined that the Application for Exception should be denied.

## A. Background

The EIA-782B reporting requirement grew out of the shortages of crude oil and petroleum products during the 1970s. In 1979, Congress found that the lack of reliable information concerning the supply, demand, and prices of petroleum products impeded the nation's ability to respond to the oil crisis. It therefore authorized the DOE to collect data on the supply and prices of petroleum products. The current form collects information concerning the volume and price of various grades and types of motor gasoline, No. 2 distillates, propane, and residual fuel oil, broken down by customer type.

Information obtained from the survey is used to analyze trends within the petroleum markets. Summaries of the information and the analyses are published by the EIA in publications such as "Petroleum Marketing Monthly." This data is used by Congress and by more than 35 state governments to project trends and to formulate state and national energy policies. In addition, firms in the petroleum industry frequently base business decisions on the data published by EIA.

The DOE has attempted to ensure that this survey yields valuable information while minimizing the burden placed on the industry. Thus, in designing the form, the DOE consulted with potential survey respondents, various industry associations, users of the energy data, state governments, and other federal agencies. Moreover, to minimize the reporting burden, the EIA periodically selects a relatively small sample of companies to file the report. In addition, to reduce the amount of time

spent completing the forms, firms may rely upon reasonable estimates.(1) EIA designates some companies as certainty firms. A company is designated as such because it either (a) sells five percent or more of a particular product sales category in a state in which it does business, or (b) does business in four or more states.(2) All certainty firms are included in the survey sample on a continuing basis because of their impact on the market. EIA examines the data that these companies submit more closely and considers it more instructive in gauging market trends than data submitted by smaller firms. The continuity of the

surveys cannot be maintained by replacing a certainty firm with a similar company since all companies of this kind are already survey participants.

## B. Exceptions Criteria

Form EIA-782B is a mandatory report designed to collect monthly information on refined petroleum sales volumes and prices from a sample of resellers and retailers. 42 U.S.C. § 7135 (b). This Office has authority to grant exception relief where the reporting requirement causes a "special hardship, inequity, or unfair distribution of burdens." 42 U.S.C. § 7194 (a); 10 C.F.R. § 1003.25 (b) (2). Exceptions are appropriate only in extreme cases. Because all reporting firms are burdened to some extent by reporting requirements, exception relief is appropriate only where a firm can demonstrate that it is adversely affected by the reporting requirement in a way that differs significantly from similar reporting firms. Thus, mere inconvenience does not constitute a sufficient hardship to warrant relief. Glenn W. Wagoner Oil Co., 16 DOE ¶ 81,024 (1987).

In considering a request for exception relief, we must weigh the firm's difficulty in complying with the reporting requirement against the nation's need for reliable energy data. Neither the fact that a firm is relatively small, nor the fact that it has filed the report for a number of years alone constitute grounds for exception relief. If firms of all sizes, both large and small, are not included, the estimates and projections generated by the EIA's statistical sample will be unreliable. Mulgrew Oil Co., 20 DOE ¶ 81,009 (1990).

The following examples illustrate the types of circumstances that may justify relief from the reporting requirement. Since each case is different, these examples are not intended to reflect all circumstances that justify exception relief:

- Financial difficulties underlie most approvals of exception relief. We have granted a number of exceptions where the applicant's financial condition is so precarious that the additional burden of meeting the DOE reporting requirements threatens its continued viability. Mico Oil Co., 23 DOE ¶ 81,015 (1994) (firm lost one million dollars over previous three years); Deaton Oil Co., 16 DOE ¶ 81,026 (1987) (firm in bankruptcy).
- Relief may be appropriate when the only person capable of preparing the report is ill and the firm cannot afford to hire outside help. S&S Oil & Propane Co., 21 DOE ¶ 81,006 (1991) (owner being treated for cancer); Midstream Fuel Serv., 24 DOE ¶ 81,023 (three month extension of time to file reports granted when two office employees simultaneously on maternity leave); Eastern Petroleum Corp., 14 DOE ¶ 81,011 (1986) (two months relief granted when computer operator broke wrist).
- A combination of factors may warrant exception relief. Exception relief for 10 months was granted where personnel shortages, financial difficulties, and administrative problems resulted from the long illness and death of a partner. Ward Oil Co., 24 DOE ¶ 81,002 (1994); see also Belcher Oil Co., 15 DOE ¶ 81,018 (1987) (extension of time granted where general manager abruptly left firm without notice).
- Extreme or unusual circumstances that disrupt a firm's activities may warrant relief. Little River Village Campground, Inc., 24 DOE ¶ 81,033 (1994) (five months relief because of flood); Utilities Bd. Of Citronelle-Gas, 4 DOE ¶ 81,025 (1979) (hurricane); Meier Oil Serv., 14 DOE ¶ 81,004 (1986) (three months where disruptions caused by installation of a new computer system left firm's records inaccessible).

## C. Nugent's Exception Application

Nugent, located in Colebrook, New Hampshire, sells #2 distillate, gasoline, and propane to retail customers. It requests an exception to its Form EIA-782 B reporting requirement on the basis that: (1) the company has been asked to file reports for the past two years; and (2) the company must pay overtime wages to an employee hired in another capacity in order to comply with the EIA's requirement. Nugent filled out the report for approximately two years, had a break for eight months, and has been completing

the form for the past two years. The firm's owner, Mr. Peter Nugent, informed us that there are many other companies in its area that could be selected to complete the form. At Nugent, the person who previously processed the report has moved to another position, and the clerk who normally handles medical insurance and safety work now is tasked with completing the EIA form. Mr. Nugent estimates that it takes one and one-half to two and one-half hours for the medical insurance clerk to complete the form. Because she was hired to handle the company's medical insurance work, she must attend to the EIA form after hours, forcing Mr. Nugent to pay her overtime wages in order to comply with the reporting requirement. Because Nugent is not automated and operates with a small clerical staff, Mr. Nugent asks to be excepted from the reporting requirement.

## **D. Analysis**

Our review of the record in this case indicates that Nugent has not met the standards for exception relief set forth above. Mr. Nugent's time estimate for completing the form is a maximum of two and one-half hours, which is in line with the EIA estimate for completing the reporting requirement. See Sound Oil Company, 25 DOE ¶ 81,006 (1994). In the past, we have denied exception relief to firms which claimed they required a longer period of time to complete the form than that estimated by EIA. Haynes Oil, 21 DOE ¶ 81,002 (1992) (one day); Delgado Oil Co., 17 DOE ¶ 81,005 (1988) (40 hours); Dell Oil Ltd., 13 DOE ¶ 81,009 (1985) (2 days). Although the amount of time Nugent's employee needs to fill out the form may be inconvenient, we find that the time required is not excessive and causes no special hardship.

Nugent also contends that because his firm has participated in the survey for the past four years (with an eight month break) it should be relieved of any further reporting requirement. We have repeatedly held that the length of time that a firm has been required to file an EIA form does not constitute grounds for exception relief. Sound Oil Co., 25 DOE ¶ 81,006 (1994) (10 years); Schaal Oil Co., 14 DOE ¶ 81,018 (1986) (3 years); Halron Oil Co., 16 DOE ¶ 81,001 (1987) (12 years). The basis for this conclusion is that the importance of the information collected by the EIA through the survey usually outweighs the inconvenience of providing the data. The fact that the firm has had to provide data to EIA for four years does not by itself constitute a gross inequity which would warrant exception relief. Unless firms such as Nugent are part of the EIA's statistical sample, the DOE will be unable to formulate valid estimates from a cross-section of the industry. Consequently, there is no evidence that the burden on Nugent of providing the requested data outweighs the benefits to DOE and the nation from access to the information.

We find that Nugent is not significantly more burdened by the reporting requirement than similarly situated respondents. Even though the medical insurance clerk does not have time during her normal work hours to complete the form, requiring her to work an additional two and one-half hours per month is not excessive. We can distinguish the facts in this case from those in other cases where respondents with small clerical staffs were granted exception relief. A small number of those firms were granted relief when one or more of the staff was unable to work for some length of time. Midstream Fuel Service, 24 DOE ¶ 81,023 (1994) (granted extension of time to file when two office employees were simultaneously on maternity leave); Lee Oil Company, 26 DOE ¶ 81,003 (1996) (granted relief when one employee was required to perform the duties of two employees on temporary leave). Because Nugent has not lost any employees and has been able to transfer responsibility for completing the form to an existing employee, we find that the requirement that Nugent file Form EIA-782B does not constitute a special hardship, inequity, or unfair distribution of burdens. Accordingly, the Application for Exception filed by Nugent should be denied.

It Is Therefore Ordered That:

The Application for Exception filed by Nugent Motor Company on October 16, 1996 is hereby denied.

George B. Breznay

Director

Office of Hearings and Appeals

Date: February 11, 1997

(1)The firm must make a good faith effort to provide reasonably accurate information that is consistent with the accounting records maintained by the firm. The firm must alert the EIA if the estimates are later found to be materially different from actual data.

(2)A random sample of other firms is also selected. This random sample changes approximately every 12 months, but a firm may be reselected for a subsequent sample. A firm that has been included in three consecutive random samples will generally not be included in a fourth consecutive sample, but may be included in a later sample.

# Case No. VEE-0034

January 28, 1997

## DECISION AND ORDER OF THE DEPARTMENT OF ENERGY

### Application for Exception

Name of Petitioner: LePiers' Inc.

Date of Filing: October 16, 1996

Case Number: VEE-0034

On October 16, 1996, LePiers' Inc. (LePiers') of Fosston, Minnesota filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). In its Application, LePiers' requests that it be relieved of the requirement to file Form EIA-782B, entitled "Resellers/Retailers' Monthly Petroleum Product Sales Report" (Form or Form EIA-782B).

## I. Background

The EIA-782B reporting requirement grew out of the shortages of crude oil and petroleum products during the 1970s. In 1979, Congress found that the lack of reliable information concerning the supply, demand and prices of petroleum products impeded the nation's ability to respond to the oil crisis. It therefore authorized the DOE to collect data on the supply and prices of petroleum products. The current form collects information concerning the volume and price of various grades and types of motor gasoline, No. 2 distillates, propane, and residual fuel oil, broken down by customer type.

Information obtained from the survey is used to analyze trends within petroleum markets. Summaries of the information and the analyses are published by the EIA in publications such as "Petroleum Marketing Monthly." This data is used by Congress and by more than 35 state governments to project trends and to formulate state and national energy policies. In addition, firms in the petroleum industry frequently base business decisions on the data published by the EIA.

The DOE has attempted to ensure that this survey yields valuable information while minimizing the burden placed on the industry. Thus, in designing the form, the DOE consulted with potential survey respondents, various industry associations, users of the energy data, state governments and other federal agencies. Moreover, to minimize the reporting burden, the EIA periodically selects a sample

of companies to file the report.<sup>(1)</sup> In addition, to reduce the amount of time spent completing the forms, firms may rely upon reasonable estimates.

## II. Exception Criteria

Form EIA-782B is a mandatory report designed to collect monthly information on refined petroleum sales volumes and prices from a sample of resellers and retailers. 42 U.S.C. § 7135(b). This Office has authority to grant exception relief where the reporting requirement causes a "serious hardship, gross inequity or

unfair distribution of burdens." 42 U.S.C. § 7194(a); 10 C.F.R. § 1003.25(b)(2). Because all reporting firms are burdened to some extent by reporting requirements, exception relief is appropriate only where a firm can demonstrate that it is adversely affected by the reporting requirement in a way that differs significantly from similar reporting firms. Thus, mere inconvenience does not constitute a sufficient hardship to warrant relief. *Glenn Wagoner Oil Company*, 16 DOE ¶ 81,024 (1987).

In considering a request for exception relief, we must weigh the firm's difficulty in complying with the reporting requirement against the nation's need for reliable energy data. See *Champlain Oil Company, Inc.*, 14 DOE ¶ 81,022 (1986); *Eastern Petroleum Corporation*, 14 DOE ¶ 81,011 (1986). This entails balancing any burden the firm may encounter in meeting its reporting requirement against the public interest in collecting reliable information concerning energy markets upon which public decisions may be based. Neither the fact that a firm is relatively small, nor the fact that it has filed the report for a number of years alone constitute grounds for exception relief. If firms of all sizes, both large and small, are not included, the estimates and projections generated by the EIA's statistical sample will be unreliable. *Mulgrew Oil Company*, 20 DOE ¶ 81,009 (1990).

The following examples illustrate the types of circumstances that may justify relief from the reporting requirement. Since each case is different, these examples are not intended to reflect all circumstances that justify exception relief.

- . Financial difficulties underlie most approvals of exception relief. We have granted a number of exceptions where the applicant's financial condition is so precarious that the additional burden of meeting the DOE reporting requirements threatens its continued viability.
- . Relief may be appropriate when the only person capable of preparing the report is ill and the firm cannot afford to hire outside help. *S&S Oil & Propane Co.*, 21 DOE ¶ 81,023 (1994)(three month extension of time to file reports granted when two office employees simultaneously on maternity leave); *Eastern Petroleum Corp.*, 14 DOE ¶ 81,011 (1986) (two months relief granted when computer operator broke wrist).
- . A combination of factors may warrant exception relief. Exception relief for 10 months was granted where personnel shortages, financial difficulties and administrative problems resulted from the long illness and death of a partner. *Ward Oil Co.*, 24 DOE ¶ 81,002 (1994); see also *Belcher Oil Co.*, 15 DOE ¶ 81,018 (1987) (extension of time granted where general manager abruptly left firm without notice).
- . Extreme or unusual circumstances that disrupt a firm's activities may warrant relief. *Little River Village Campground, Inc.*, 24 DOE ¶ 81,033 (1994) (five months relief because of flood); *Utilities Board of Citronelle-Gas*, 4 DOE ¶ 81,205 (1979) (hurricane); *Meier Oil Service*, 14 DOE ¶ 81,004 (1986) (three months where disruptions caused by installation of a new computer system left firm's records inaccessible).

### III. LePiers' Application for Exception

LePiers' sells No. 2 diesel fuel and No. 2 fuel oil to commercial and wholesale customers and motor gasoline to retail and wholesale customers. Classified by the EIA as a "medium sized company," LePiers' has filed Form EIA-782 throughout EIA Sample 10 and 11. Because LePiers' is not classified as a "certainty firm" by the EIA, it is possible, but not guaranteed, that the company will be rotated out of the reporting sample when EIA conducts the next random selection process for inclusion in EIA Sample 12. In its Application for Exception, the President of LePiers' requests relief from the EIA reporting requirement because he believes the requirement is currently unduly burdensome to the company. Mr. LePier maintains that the individual who is currently preparing the report, the company's Corporate Secretary, will be leaving for maternity leave around the end of November. In addition, he argues that he has been unsuccessful in finding a replacement for the Secretary for about six months. According to Mr. LePier, the Secretary's job duties will become his responsibility when she goes on maternity leave. In addition, Mr.

LePier states that the DOE informed him that he would have to file the report for only one year and that his company was selected to file the report almost three years ago. Mr. LePier requests that his company be taken off the list for filing Form EIA-782B.

## IV. Analysis

Our review of the record in this case indicates that LePiers' has not met the standards for an exception to the EIA reporting requirement that are set forth above. Although LePiers' may have experienced some degree of inconvenience as a result of the reporting requirement, it does not bear a burden that is significantly greater than that of other, similarly situated firms. On January 14, 1997, we contacted LePiers' to ascertain the current status of the Corporate Secretary. We were informed that the Corporate Secretary has returned to work and is working on completing the EIA reporting requirement. Therefore, LePiers' is no longer unduly burdened in completing the reporting requirement by the Secretary's absence, and short term exception relief based on her absence will not be necessary.

In addition, LePiers' asserted that it was randomly selected to file a report almost three years ago and that DOE informed LePiers' that it would be filing the report for only one year. We believe that LePiers' was perhaps misinformed as to the possible duration of the reporting requirement or that it misunderstood what it was told. It is the practice of the EIA to select a random sample of firms to participate in its survey. The EIA attempts to replace about 50% of Form EIA-782B's random sample participants on a two year cycle. As stated above, a firm that has reported for three consecutive sample periods will generally not be included in a fourth consecutive sample, but may be selected again in a later sample. Therefore, LePiers' second year of participation does not distinguish it from other firms as unduly or onerously affected. In this regard, we have also consistently ruled that the length of time that a firm has been required to file an EIA form does not alone constitute grounds for exception relief. See *Schaal Oil Company*, 14 DOE ¶ 81,018 (1986) (3 years); see also *Harbor Enterprises*, 20 DOE ¶ 81,004 (1990) (had been filing various forms, including EIA forms for 20 years). The basis for this conclusion is that the importance to the nation of the information collected by the EIA through the survey usually outweighs the inconvenience to the firm of providing the data.

In summary, LePiers' has not shown that providing EIA the data is excessively onerous to it as compared to other firms similarly affected. The applicant has also failed to show that the effort involved in providing the data outweighs the benefits which the DOE and the nation receive from access to the information. The data collected from Form EIA-782B constitute our primary source of information on supplies, demand and prices of petroleum products. Reliable data is vital to the nation's ability to anticipate and respond quickly and effectively to any future supply disruptions and thereby protect the public interest. Indeed, this is why the Congress mandated the collection of this type of data. Unless firms such as LePiers' are part of the EIA's statistical sample, the DOE will be unable to formulate valid estimates from a cross-section of the industry. Strong public policy considerations such as these lead us to conclude that LePiers' request for exception relief from the mandatory reporting requirements is unwarranted.

In accordance with the above discussion, we find that exception relief is not warranted in this case, because LePiers' is not experiencing a special hardship, inequity or unfair distribution of burdens as a result of the requirement that it file Form EIA-782B. Consequently, the Department of Energy has determined that the Application for Exception filed by LePiers' should be denied.

It Is Therefore Ordered That:

(1) The Application for Exception filed by LePiers' Inc., Case No. VEE-0034, is hereby denied.

(2) Administrative review of this Decision and Order may be sought by any person who is aggrieved or adversely affected by the denial of exception relief. Such review shall be commenced by the filing of a petition for review with the Federal Energy Regulatory Commission within 30 days of the date



of this Decision and Order pursuant to 18 C.F.R. Part 385, Subpart J.

George B. Breznay

Director

Office of Hearings and Appeals

Date: January 28, 1997

(1)\*/ Firms that do business in four or more states or which account for over five percent of the sales of any particular product in a state are always included in the sample of firms required to file the report. A random sample of other firms is also selected. This random sample changes approximately every 12 months, but a firm may be reselected for a subsequent sample. A firm that has been included in three consecutive random samples will generally not be included in a fourth consecutive sample, but may be included in a later sample.

# Case No. VEE-0035

March 21, 1997

DECISION AND ORDER

OF THE DEPARTMENT OF ENERGY

Application for Exception

Name of Petitioner: Rice Oil Company, Inc.

Date of Filing: October 22, 1996

Case Number: VEE-0035

On October 22, 1996, Rice Oil Company, Inc. (Rice) of Greenfield, Massachusetts filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). In its Application, Rice requests that it be relieved of the requirement to file Form EIA-782B, entitled "Resellers/Retailers' Monthly Petroleum Product Sales Report" (Form EIA- 782B), and Form EIA-821, entitled "Annual Fuel Oil and Kerosene Sales Report".

## I. Background

The EIA-782B reporting requirement grew out of the shortages of crude oil and petroleum products during the 1970s. In 1979, Congress found that the lack of reliable information concerning the supply, demand and prices of petroleum products impeded the nation's ability to respond to the oil crisis. It therefore authorized the DOE to collect data on the supply and prices of petroleum products. The current form collects information concerning the volume and price of various grades and types of motor gasoline, No. 2 distillates, propane, and residual fuel oil, broken down by customer type.

Information obtained from the survey is used to analyze trends within petroleum markets. Summaries of the information and the analyses are published by the EIA "Petroleum Marketing Monthly." These data are used by Congress and by more than 35 state governments to project trends and to formulate state and national energy policies. In addition, firms in the petroleum industry frequently base business decisions on the data published by the EIA.

The DOE has attempted to ensure that this survey yields valuable information while minimizing the burden placed on the industry. Thus, in designing the form, the DOE consulted with potential survey respondents, various industry associations, users of the energy data, state governments and other federal agencies. Moreover, to minimize the reporting burden, the EIA periodically selects a sample

of companies to file the report. In addition, to reduce the amount of time spent completing the forms, firms may rely upon reasonable estimates.

The second form at issue in this proceeding, Form EIA-821, requires information from fuel oil distributors in order to gauge the nation's annual demand for fuel oil and kerosene. Respondents must separate their sales of each product into several end-user categories. Survey results are published in the EIA "Fuel Oil and Kerosene Sales" report and in the "State Energy Data Report." These materials are available to the general public as well as to the petroleum industry. The data are also used by the DOE and other government agencies in determining current and projected fuel oil needs on a national, regional, and

statewide basis. Access to this data is vital to the nation's ability to anticipate and respond to potential energy shortages. See H.R. Rep. NO. 373, 96th Cong., 1st Sess., *reprinted in* 1979 U.S. Code Cong. & Admin. News 1764, 1781 (H.R. Report 373). Rice was designated by the EIA as a member of an annual sample required to complete and submit Form EIA- 821, as well as a monthly sample required to complete and submit Form EIA-782B.

## II. Exception Criteria

This Office has authority to grant exception relief where the reporting requirement causes a "serious hardship, gross inequity or unfair distribution of burdens." 42 U.S.C. § 7194; 10 C.F.R. §1003.25(b)(2). Because all reporting firms are burdened to some extent by reporting requirements, exception relief is appropriate only where a firm can demonstrate that it is adversely affected by the reporting requirement in a way that differs significantly from similar reporting firms. Thus, mere inconvenience does not constitute a sufficient hardship to warrant relief. Glenn Wagoner Oil Company, 16 DOE ¶ 81,024 (1987).

In considering a request for exception relief, we must weigh the firm's difficulty in complying with the reporting requirement against the nation's need for reliable energy data. See Champlain Oil Company, Inc., 14 DOE ¶ 81,022 (1986); Eastern Petroleum Corporation, 14 DOE ¶ 81,011 (1986). This entails balancing any burden the firm may encounter in meeting its reporting requirement against the public interest in collecting reliable information concerning energy markets upon which public decisions may be based. Neither the fact that a firm is relatively small, nor the fact that it has filed the report for a number of years alone constitute grounds for exception relief. If firms of all sizes, both large and small, are not included, the estimates and projections generated by the EIA's statistical sample will be unreliable. Mulgrew Oil Company, 20 DOE ¶ 81,009 (1990).

The following examples illustrate the types of circumstances that may justify relief from the reporting requirement. Since each case is different, these examples are not intended to reflect all circumstances that justify exception relief.

- . Financial difficulties underlie most approvals of exception relief. We have granted a number of exceptions where the applicant's financial condition is so precarious that the additional burden of meeting the DOE reporting requirements threatens its continued viability.

- . Relief may be appropriate when the only person capable of preparing the report is ill and the firm cannot afford to hire outside help. S&S Oil & Propane Co., 21 DOE ¶ 81,023 (1994)(three month extension of time to file reports granted when two office employees simultaneously on maternity leave); Eastern Petroleum Corp., 14 DOE ¶ 81,011 (1986) (two months relief granted when computer operator broke wrist).

- . A combination of factors may warrant exception relief. Exception relief for 10 months was granted where personnel shortages, financial difficulties and administrative problems resulted from the long illness and death of a partner. Ward Oil Co., 24 DOE ¶ 81,002 (1994); see also Belcher Oil Co., 15 DOE ¶ 81,018 (1987) (extension of time granted where general manager abruptly left firm without notice).

- . Extreme or unusual circumstances that disrupt a firm's activities may warrant relief. Little River Village Campground, Inc., 24 DOE ¶ 81,033 (1994) (five months relief because of flood); Utilities Board of Citronelle-Gas, 4 DOE ¶ 81,205 (1979) (hurricane); Meier Oil Service, 14 DOE ¶ 81,004 (1986) (three months where disruptions caused by installation of a new computer system left firm's records inaccessible).

## III. Rice's Application for Exception

Rice sells No. 2 fuel oil to residential, commercial and wholesale customers; motor gasoline to retail and

wholesale customers; No. 2 diesel fuel; and residential propane. Rice has filed Form EIA-782 throughout EIA Sample 9 and 10. Because Rice is not classified as a "certainty firm" by the EIA, it is possible, but not guaranteed, that the company will be rotated out of the reporting sample when EIA conducts the next random selection process for inclusion in EIA Sample 12. In addition, Rice has been required to file Form EIA-821 since 1994. Rice has requested an exception from filing these forms. In its Application for Exception, Donna Mowry of Rice requests relief from the EIA reporting requirements because she believes the requirements are currently unduly burdensome to the company. Ms. Mowry maintains that Rice has participated in filing the reports for many years. In addition, Ms. Mowry states that Rice has a new computer system which is not capable to preparing the EIA reports.

#### IV. Analysis

Our review of the record in this case indicates that Rice has not met the standards for an exception to the EIA reporting requirements that are set forth above. In its Application, Rice contends that it has been filing with the EIA for many years. We have consistently ruled that the length of time that a firm has been required to file an EIA form does not alone constitute grounds for exception relief. See Schaal Oil Company, 14 DOE ¶ 81,018 (1986) (3 years); see also Harbor Enterprises, 20 DOE ¶ 81,004 (1990) (had been filing various forms, including EIA forms for 20 years). The basis for this conclusion is that the importance to the nation of the information collected by the EIA through the survey usually outweighs the inconvenience to the firm of providing the data. The EIA, however, attempts to replace 50 percent of the reporting sample at the end of each reporting period. A firm that has reported for three consecutive sample periods will generally not be included in a fourth consecutive sample, but may be selected again in a later sample. Therefore, Rice's several years of participation does not distinguish it from other firms as unduly or onerously affected.

Rice also contends that preparing Forms EIA-782B and EIA-821 is a burden on the company because its new computer system is not capable of preparing the EIA reports. However, we have previously held that the lack of a computer system is insufficient grounds for showing serious hardship. Halron Oil Company, 16 DOE ¶ 81,001 (1987). EIA estimates that it should take 2.5 hours per month for a firm to fill out Form EIA-782B and 3.2 hours per year to fill out Form EIA-821. To shorten the time it takes to prepare Form EIA-782B and EIA-821, Rice may use estimates without compromising EIA's comprehensive survey of motor gasoline and middle distillate markets. EIA allows firms to use estimates as long as they are "consistent with standard accounting records maintained by the firm." 2 Federal Energy Guidelines ¶ 18,502 at 18,507. We recommend that Rice contact EIA to establish a method of estimation satisfactory to both parties. Toll-free numbers are provided in the General Instructions of the EIA forms.

In summary, Rice has not shown that providing EIA the data is excessively onerous to it as compared to other firms similarly affected. The applicant has also failed to show that the effort involved in providing the data outweighs the benefits which the DOE and the nation receive from access to the information. The data collected from Forms EIA-782B and EIA-821 constitute our primary source of information on supplies, demand and prices of petroleum products. Reliable data are vital to the nation's ability to anticipate and respond quickly and effectively to any future supply disruptions and thereby protect the public interest. Indeed, this is why the Congress mandated the collection of this type of data. Unless firms such as Rice are part of the EIA's statistical sample, the DOE will be unable to formulate valid estimates from a cross-section of the industry. Strong public policy considerations such as these lead us to conclude that Rice's request for exception relief from the mandatory reporting requirements is unwarranted.

In accordance with the above discussion, we find that exception relief is not warranted in this case, because Rice is not experiencing a special hardship, inequity or unfair distribution of burdens as a result of the requirement that it file Forms EIA-782B and EIA-821. Consequently, the Department of Energy has determined that the Application for Exception filed by Rice should be denied.

It Is Therefore Ordered That:

(1) The Application for Exception filed by Rice Oil Company, Inc., Case No. VEE-0035, is hereby denied.

(2) Administrative review of this Decision and Order may be sought by any person who is aggrieved or adversely affected by the denial of exception relief. Such review shall be commenced by the filing of a petition for review with the Federal Energy Regulatory Commission within 30 days of the date

of this Decision and Order pursuant to 18 C.F.R. Part 385, Subpart J.

George B. Breznay

Director

Office of Hearings and Appeals

Date: March 21, 1997

# Case No. VEE-0036

## DECISION AND ORDER OF THE DEPARTMENT OF ENERGY

### Application for Exception

Name of Petitioner: Kalamazoo Oil Co.

Date of Filing: November 26, 1996

Case Number: VEE-0036

On November 26, 1996, Kalamazoo Oil Co. (Kalamazoo), of Kalamazoo, Michigan, filed an Application for Exception with the Office of Hearings and Appeals of the Department of Energy. In its Application, Kalamazoo requests that it be relieved of the requirement that it file the Energy Information Administration's (EIA) form entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report" (Form EIA-782B). As explained below, we have determined that the Application for Exception should be denied.

## A. Background

The EIA-782B reporting requirement grew out of the shortages of crude oil and petroleum products during the 1970s. In 1979, Congress found that the lack of reliable information concerning the supply, demand, and prices of petroleum products impeded the nation's ability to respond to the oil crisis. It therefore authorized the DOE to collect data on the supply and prices of petroleum products. The current form collects information concerning the volume and price of various grades and types of motor gasoline, No. 2 distillates, propane, and residual fuel oil, broken down by customer type.

Information obtained from the survey is used to analyze trends within petroleum markets. Summaries of the information and the analyses are published by the EIA in publications such as "Petroleum Marketing Monthly." This data is used by Congress and by more than 35 state governments to project trends and to formulate state and national energy policies. In addition, firms in the petroleum industry frequently base business decisions on the data published by EIA.

The DOE has attempted to ensure that this survey yields valuable information while minimizing the burden placed on the industry. Thus, in designing the form, the DOE consulted with potential survey respondents, various industry associations, users of the energy data, state governments, and other federal agencies. Moreover, to minimize the reporting burden, the EIA periodically selects a relatively small sample of companies to file the report.(1) In addition, to reduce the amount of time spent completing the forms, firms may rely upon reasonable estimates.(2)

## B. Exceptions Criteria

Form EIA-782B is a mandatory report designed to collect monthly information on refined petroleum sales volumes and prices from a sample of resellers and retailers. 42 U.S.C. § 7135(b). This Office has authority to grant exception relief where the reporting requirement causes a "serious hardship, gross inequity or unfair distribution of burdens." 42 U.S.C. § 7194 (a); 10 C.F.R. § 1003.25(b)(2). Exceptions are

appropriate only in extreme cases. Because all reporting firms are burdened to some extent by reporting requirements, exception relief is appropriate only where a firm can demonstrate that it is adversely affected by the reporting requirement in a way that differs significantly from similar reporting firms. Thus, mere inconvenience does not constitute a sufficient hardship to warrant relief. Glenn W. Wagoner Oil Co., 16 DOE ¶ 81,024 (1987).

In considering a request for exception relief, we must weigh the firm's difficulty in complying with the reporting requirement against the nation's need for reliable energy data. Neither the fact that a firm is relatively small, nor the fact that it has filed the report for a number of years alone constitute grounds for exception relief. If firms of all sizes, both large and small, are not included the estimates and projections generated by the EIA's statistical sample will be unreliable. Mulgrew Oil Co., 20 DOE ¶ 81,009 (1990).

The following examples illustrate the types of circumstances that may justify relief from the reporting requirement. Since each case is different, these examples are not intended to reflect all circumstances that justify exception relief:

- Financial difficulties underlie most approvals of exception relief. We have granted a number of exceptions where the applicant's financial condition is so precarious that the additional burden of meeting the DOE reporting requirements threatens its continued viability. Mico Oil Co., 23 DOE ¶ 81,015 (1994) (firm lost one million dollars over previous three years); Deaton Oil Co., 16 DOE ¶ 81,026 (1987) (firm in bankruptcy).
- Relief may be appropriate when the only person capable of preparing the report is ill and the firm cannot afford to hire outside help. S&S Oil & Propane Co., 21 DOE ¶ 81,006 (1991) (owner being treated for cancer); Midstream Fuel Serv., 24 DOE ¶ 81,023 (three month extension of time to file reports granted when two office employees simultaneously on maternity leave); Eastern Petroleum Corp., 14 DOE ¶ 81,011 (1986) (two months relief granted when computer operator broke wrist).
- A combination of factors may warrant exception relief. Exception relief for 10 months was granted where personnel shortages, financial difficulties, and administrative problems resulted from the long illness and death of a partner. Ward Oil Co., 24 DOE ¶ 81,002 (1994); see also Belcher Oil Co., 15 DOE ¶ 81,018 (1987) (extension of time granted where general manager abruptly left firm without notice).
- Extreme or unusual circumstances that disrupt a firm's activities may warrant relief. Little River Village Campground, Inc., 24 DOE ¶ 81,033 (1994) (five months relief because of flood); Utilities Bd. of Citronelle-Gas, 4 DOE ¶ 81,205 (1979) (hurricane); Meier Oil Serv., 14 DOE ¶ 81,004 (1986) (three months where disruptions caused by installation of a new computer system left firm's records inaccessible).

## **C. Kalamazoo's Exception Application**

Kalamazoo sells motor gasoline (wholesale and retail), #2 distillate diesel, and #2 distillate residential fuel oil. Classified by the EIA as a "medium size company" and a "non-certainty firm," the company has filed form EIA-782B throughout Sample 11, which began in May 1994.(3)In the Application for Exception, co-owner Susan Sonnevil writes that she is one of only two employees who handle bookkeeping and customer service. According to Ms. Sonnevil, she works an average of fifty to sixty hours per week, and is often forced to complete Form EIA-782B at home on Sunday. She writes that completing the report takes an average of four or five hours per month, because Kalamazoo's computer system "is not capable of producing numbers for the report.(4)As such, Ms. Sonnevil must pull numbers from four other reports to calculate the correct figures for Form EIA-782B. In addition, Ms. Sonnevil argues that Kalamazoo has been filing Form EIA-782B "long enough," and that the company should not be penalized because budget cuts at the EIA have delayed the selection of participants for Sample 12. Ms. Sonnevil writes that she was told by an employee of the EIA that Sample 12 will probably not begin until early 1997.(5)

## D. Analysis

Kalamazoo has not shown that it meets the standards for exception relief set forth above. While it will no doubt experience some inconvenience in filling out Form EIA-782B each month, this inconvenience does not appear to be greater than that experienced by other reporting firms. Nothing in the record indicates that Kalamazoo is seriously financially strained, or that the reporting requirement burdens the firm in a unique or exceptional way. EIA estimates that it should take between two and two and one-half hours per month to complete form EIA-782B. Although Ms. Sonnevil states that it takes her longer than average to complete the form each month (i.e., four to five rather than two to two and one-half hours per month), there is no evidence that this time difference is due to unusual hardship or that it is indicative of an unfair distribution of burdens. It may be possible for Kalamazoo to reduce the amount of time required to complete the form through the use of an EIA-approved estimation technique. The EIA provides a toll-free hotline to assist respondents with any questions they may have, which should help Kalamazoo refine its estimation techniques to reduce the time necessary to complete the form.(6)Ms. Sonnevil's argument regarding the budget cuts at EIA that have extended the length of Sample 11 well past the anticipated end-date is a reasonable one. However, this Office has authority to grant exception relief only where the reporting requirement causes a "serious hardship, gross inequity or unfair distribution of burdens." 42 U.S.C. § 7194 (a); 10 C.F.R. §1003.25(b)(2). The fact that Kalamazoo, as well as every other non-certainty firm randomly selected to participate in Sample 11, has filed Form EIA-782B for longer than anticipated does not justify granting exception relief to Kalamazoo. Finally, it is important to note that Kalamazoo, as a non-certainty firm, may well be rotated out of the reporting sample once Sample 12 is selected by the EIA.

The data collected from Form EIA-782B constitutes the DOE's primary source of information on supplies, demand, and prices of petroleum products. Reliable data is vital to the nation's ability to formulate energy policies and to respond effectively to any future supply disruptions. Unless firms such as Kalamazoo are part of the EIA's statistical sample, the DOE will be unable to formulate valid estimates from a cross-section of the industry. Consequently, there is no evidence that the burden on Kalamazoo to provide the requested data outweighs the benefits which the DOE and the nation receive from access to the information.

In view of the foregoing considerations, we find that the requirement that Kalamazoo file Form EIA-782B does not constitute a special hardship, inequity, or unfair distribution of burdens. Accordingly, the Application for Exception filed by Kalamazoo should be denied.

### **It Is Therefore Ordered That:**

- (1) The Application for Exception filed by Kalamazoo Oil Co. on November 26, 1996, Case No. VEE-0036, is hereby denied.
- (2) Administrative review of this Decision and Order may be sought by any person who is aggrieved or adversely affected by the denial of exception relief. Such review shall be commenced by the filing of a petition for review with the Federal Energy Regulatory Commission within 30 days of the date of this Decision and Order pursuant to 18 C.F.R. Part 385, Subpart J.

George B. Breznay

Director

Office of Hearings and Appeals

Date: January 16, 1997



(1)Firms that do business in four or more states or which account for over five percent of the sales of any particular product in a state are always included in the sample of firms required to file the report. A random sample of other firms is also selected. This random sample changes approximately every 12 months, but a firm may be reselected for a subsequent sample. A firm that has been included in three consecutive random samples will generally not be included in a fourth consecutive sample, but may be included in a later sample.

(2)The firm must make a good faith effort to provide reasonably accurate information that is consistent with the accounting records maintained by the firm. The firm must also alert the EIA if the estimates are later found to be materially different from actual data.

(3)See Record of Telephone Conversation between Sherry Beri, EIA, and Darcy Goddard, Staff Analyst, Office of Hearings and Appeals (December 17, 1996).

(4)"See Application for Exception submitted by Kalamazoo Oil Co.

(5)Id. See also Record of Telephone Conversation between Susan Sonnevil, Kalamazoo Oil Co., and Darcy Goddard, Staff Analyst, Office of Hearings and Appeals (December 17, 1996).

(6)The toll-free number for questions regarding EIA-782B is (800) 638-8812.

# Case No. VEE-0037

May 7, 1997

DECISION AND ORDER

OF THE DEPARTMENT OF ENERGY

Application for Exception

Name of Petitioner: W. Gordon Smith Company

Date of Filing: December 24, 1996

Case Number: VEE-0037

On December 24, 1996, the W. Gordon Smith Company (Smith), filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). In its Application, Smith requests that it be temporarily relieved of the requirement that it file the Energy Information Administration's (EIA) form entitled "Resellers/Retailers' Monthly Petroleum Product Sales Report" (Form EIA-782B). As explained below, we have determined that the Application for Exception should be granted.

## A. Background

Form EIA-782B is a mandatory report designed to collect monthly information on refined petroleum sales volumes and prices from a sample of Resellers and Retailers. 42 U.S.C. § 7135(b). The EIA-782B reporting requirement grew out of the shortages of crude oil and petroleum products during the 1970s. In 1979, Congress found that the lack of reliable information concerning the supply, demand, and prices of petroleum products impeded the nation's ability to respond to the oil crisis. It therefore authorized the DOE to collect data on the supply and prices of petroleum products. The current form collects information concerning the volume and price of various grades and types of motor gasoline, No. 2 distillates, propane, and residual fuel oil, broken down by customer type.

Information obtained from the survey is used to analyze trends within petroleum markets. Summaries of the information and the analyses are published by the EIA in publications such as "Petroleum Marketing Monthly." This data is used by Congress and by more than 35 state governments to project trends and to formulate state and national energy policies. In addition, firms in the petroleum industry frequently base business decisions on the data published by the EIA.

The DOE has attempted to ensure that this survey yields valuable information while minimizing the burden placed on the industry. Thus, in designing the form, the DOE consulted with potential survey respondents, various industry associations, users of the energy data, state governments, and other federal agencies. Moreover, to minimize the reporting burden, the EIA periodically selects a sample of companies to file the report. (1) In addition, to reduce the amount of time spent completing the forms, firms may rely upon reasonable estimates.

## B. Exceptions Criteria

This Office has authority to grant exception relief where the reporting requirement causes a "serious hardship, gross inequity or unfair distribution of burdens." 42 U.S.C. § 7194 (a); 10 C.F.R. §1003.25(b)(2). Because all reporting firms are burdened to some extent by reporting requirements, exception relief is appropriate only where a firm can demonstrate that it is adversely affected by the reporting requirement in a way that differs significantly from similar reporting firms. Thus, mere inconvenience does not constitute a sufficient hardship to warrant relief. Glenn W. Wagoner Oil Co., 16 DOE ¶ 81,024 (1987).

## C. Smith's Exception Application

Smith, located in Eden Prairie, Minnesota, is classified by the EIA as a "medium sized company," Smith has filed Form EIA-782B since 1991 as part of EIA Samples 9 and 11. Because Smith is not classified as a "certainty firm" by the EIA, it is possible, but not guaranteed, that the company will be rotated out of the reporting sample when EIA conducts the random selection process for inclusion in the next EIA Sample (Sample 12).

In its Application for Exception, Smith requests retroactive relief from the EIA reporting requirements because of extreme and unusual circumstances that have disrupted the firm's activities and made it difficult to comply with the reporting requirement. Specifically, the firm has had the property where its primary place of business was located condemned by the State of Minnesota in order to provide the right of way for a new state highway. As a result, the firm has undergone protracted legal proceedings and has ultimately been forced to divest most of its business. These events have both considerably reduced the size of Smith's workforce. For example, the firm's financial operations staff decreased from four employees to one. Moreover, these events required a great deal of time and attention from Smith's management team. Because its attention was diverted to legal proceedings as well as to the divestment of several of the firm's business lines, the downsized and preoccupied work force was unable to devote sufficient attention to accumulating the data necessary to complete the form. These circumstances have placed a severe hardship upon Smith that prevented it from complying with the reporting requirements for several months. In past cases, we have found exception relief to be appropriate when extreme or unusual circumstances have disrupted a firm's activities. See, e.g., Little River Village Campground, Inc., 24 DOE ¶ 81,033 (1994) (five months relief because of flood); Utilities Bd. of Citronelle-Gas, 4 DOE ¶ 81,205 (1979) (hurricane); Meier Oil Serv., 14 DOE ¶ 81,004 (1986) (three months where disruptions caused by installation of a new computer system left firm's records inaccessible). We find that the State's condemnation of Smith's principal place of business is the type of extreme and unusual circumstance that warrants approval of exception relief to prevent a serious hardship to the firm.

In considering a request for exception relief, we must weigh the firm's difficulty in complying with the reporting requirement against the nation's need for reliable energy data. See Champlain Oil Co., Inc., 14 DOE ¶ 81,022 (1986); Eastern Petroleum Corp., 14 DOE ¶ 81,011 (1986). Balancing the nation's need for information against the expected harm to Smith that would result from mandatory compliance, we find that the granting of exception relief would be justified by the severe hardship mandatory compliance would place upon Smith. This burden and hardship are outside the realm of ordinary business conditions experienced by those firms required to complete EIA-782. Requiring the firm to retroactively comply with the reporting requirement could jeopardize its revitalization efforts. Accordingly, we find that since the burden placed upon Smith is greater than that encountered by other firms required to complete Form EIA-782B, and since complying with the reporting requirement would constitute a serious hardship to the firm, Smith should be granted retroactive exception relief from its obligation to file Form EIA-782B for the period beginning with August 1996 and extending to March 1, 1997.

It Is Therefore Ordered That:

(1) The Application for Exception filed by W. Gordon Smith Company, Case No. VEE-0037, is hereby granted to the extent set forth in paragraph (2) below.

(2) Notwithstanding the instructions to Form EIA-782B, W. Gordon Smith Company shall not be required to file reports to the Energy Information Administration for the period beginning August 1, 1996 and extending to March 1, 1997.

(3) This is a final Order of the Department of Energy.

George B. Breznay

Director

Office of Hearings and Appeals

Date: May 7, 1997

(1) Firms that do business in four or more states or which account for over five percent of the sales of any particular product in a state are always included in the sample of firms required to file the report. A random sample of other firms is also selected. This random sample changes approximately every 12 months, but a firm may be reselected for a subsequent sample. A firm that has been included in three consecutive random samples will generally not be included in a fourth consecutive sample, but may be included in a later sample.

# Case No. VEE-0039

February 24, 2000

DECISION AND ORDER

OF THE DEPARTMENT OF ENERGY

Application for Exception

Name of Petitioner: Froman Oil Company

Date of Filing: February 11, 1997

Case Number: VEE-0039

On February 11, 1997, Froman Oil Company (Froman) filed an Application for Exception with the Office of Hearings and Appeals of the Department of Energy. In its Application, Froman requests that it be relieved of the requirement that it file the Energy Information Administration's (EIA) form entitled "Resellers/Retailers' Monthly Petroleum Product Sales Report" (Form EIA-782B). As explained below, we have determined that the Application for Exception should be denied.

## I. Background

The EIA-782B reporting requirement grew out of the shortages of crude oil and petroleum products during the 1970s. In 1979, Congress found that the lack of reliable information concerning the supply, demand, and prices of petroleum products impeded the nation's ability to respond to the oil crisis. It therefore authorized the DOE to collect data on the supply and prices of petroleum products. The current form collects information concerning the volume and price of various grades and types of motor gasoline, No. 2 distillates, propane, and residual fuel oil, broken down by customer type.

Information obtained from the survey is used to analyze trends within the petroleum markets. Summaries of the information and the analyses are published by the EIA in publications such as "Petroleum Marketing Monthly." This data is used by Congress and by more than 35 state governments to project trends and to formulate state and national energy policies. In addition, firms in the petroleum industry frequently base business decisions on the data published by EIA.

The DOE has attempted to ensure that this survey yields valuable information while minimizing the burden placed on the industry. Thus, in designing the form, the DOE consulted with potential survey respondents, various industry associations, users of the energy data, state governments, and other federal agencies. Moreover, to minimize the reporting burden, the EIA periodically selects a relatively small sample of companies to file the report. In addition, to reduce the amount of time spent completing the forms, firms may rely upon reasonable estimates.

## II. Froman's Application for Exception

Froman is a retailer based in Claremore, Oklahoma. In its application, the firm requests an exception to the Form EIA-782B reporting requirement on the basis that the firm's owner is overworked and experiencing extenuating circumstances in his personal life. Specifically, the owner asserts that in addition

to working long hours, he must also care for “a sick wife, and three kids.” Application for Exemption at 1.

### III. Analysis

The OHA has the authority to grant exception relief to alleviate or prevent a serious hardship or gross inequity. 10 C.F.R. § 1003.20. See also 6 Fed. Energy Guidelines ¶ 80,003 (Exceptions and Appeals Guidelines). In previous cases involving requests for exception relief, we have recognized that mandatory reporting requirements cause some inconvenience to respondents. Since all reporting firms are burdened by these requirements, we have held that exception relief is appropriate only when a firm can demonstrate that it is adversely affected by the reporting requirement in a way that differs significantly from similar reporting firms. When evaluating an applicant's request for exception relief, we consider whether the difficulty in complying with a particular reporting requirement is outweighed by the benefits to the nation in obtaining the required data. See Lockheed Air Terminal, 15 DOE ¶ 81,010 (1986); Champlain Oil Co., 14 DOE ¶ 81,022 (1986); Three L Inc., 12 DOE ¶ 81,014 (1984); Pure Oil Co., 8 DOE ¶ 81,019 (1981).

We have granted full or partial relief from EIA reporting requirements in cases where applicants have shown that those requirements placed a burden upon them that was significantly different from the inconvenience generally associated with the requirement to submit EIA forms. For example, relief has been granted when firms have had severe financial difficulties or when the only persons capable of preparing a form have had serious medical problems. See Eastern Petroleum Corp., 14 DOE ¶ 81,011 (1986); LBM Distributors, Inc., 13 DOE ¶ 81,043 (1985); Ed Joyce Fuel and Feeds, 13 DOE ¶ 81,024 (1985).

We have considered Froman's claim and find no serious hardship or gross inequity that would warrant exception relief in this case. Form EIA-782B requires little more than the essential type of pricing, supply, and inventory data that, at a minimum, is required to operate a business. Froman certainly records the prices at which it sells product, the volumes involved in each transaction, and the location of the purchaser. While we do not doubt that the firm's office staff is already very busy, we do not believe that the amount of time required to complete the form constitutes an onerous burden on them. The EIA estimates that it should normally take approximately 2.5 hours per month for a firm to fill out EIA-782B. See Form EIA- 782B, Schedule 1. This does not seem to be an unreasonable amount of time. Furthermore, the burden of this requirement on the firm's office staff could be lessened by the use of estimates. The EIA permits firms to estimate sales data in order to reduce the time spent completing the form. See Section VI of the General Instructions to Form EIA- 782B.

It is important to note that the data collected from Form EIA-782B provides the DOE with information on the supply, demand, and price of petroleum products. The federal and state governments, as well as private firms, use this information to perform analyses and make projections. Timely and reliable access to the data is vital to the nation's ability to anticipate and respond quickly and effectively to any future supply disruptions. See H.R. Rep. No. 373, 96th Cong., 1st Sess., reprinted in 1979 U.S. Code Cong., and Ad. News 1764, 1781. The DOE has attempted to minimize the burden placed on the public in gathering this information, while insuring that the reporting requirements are administered in a consistent and equitable manner. After balancing these strong public policy considerations against Froman's claim, we have concluded that the Froman Application for Exception should be denied.

It Is Therefore Ordered That:

(1) The Application for Exception filed by Froman Oil Company, Inc. on February 11, 1997, Case No. VEE-0039, is hereby denied.

(2) Administrative review of this Decision and Order may be sought by any person who is aggrieved or adversely affected by the denial of exception relief. Such review shall be commenced by the filing of a petition for review with the Federal Energy Regulatory Commission within 30 days of the date of this Decision and Order pursuant to 18 C.F.R. Part 385, Subpart J.

George B. Breznay

Director

Office of Hearings and Appeals

Date: February 24, 2000

# Case No. VEE-0040

May 22, 1997

DECISION AND ORDER

OF THE DEPARTMENT OF ENERGY

Application for Exception

Name of Petitioner: Western Star Propane, Inc.

Date of Filing: February 18, 1997

Case Number: VEE-0040

On February 18, 1997, Western Star Propane, Inc. (Western) filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). In its application, Western requests that it be relieved of the requirement to file Form EIA-782B entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report."

## I. Background

In response to the 1979 oil crisis, Congress enacted the Emergency Energy Conservation Act of 1979 (EECA), Pub. L. No. 96-102, 42 U.S.C. § 8501 et seq. In legislating the EECA, Congress found that "up-to-date and reliable information concerning the supply and demand of gasoline, diesel fuel, and other related data is not available to the President, the Congress, or the public." EECA § 201, 42 U.S.C. § 8501. This lack of information impeded Congress's ability to respond to the oil crisis. Congress therefore directed that the DOE establish a Middle Distillate Monitoring Program. EECA § 242, 42 U.S.C. § 8532. Under this program, the DOE established a data collection program to monitor the supply and demand of middle distillates in each state at the refining, wholesale and retail levels. EECA § 242(a)(1).

The responsibility for the Middle Distillate Monitoring Program was assumed by the Energy Information Administration (EIA) of the DOE. Under the provisions of Section 205 of the Department of Energy Organization Act, 42 U.S.C. § 7135, the EIA is authorized not only to collect and analyze energy information necessary for the proper functioning of the DOE, but also to require that any energy supplier or major consumer of energy provide such information to the DOE.

When the oil crisis subsided, the DOE thoroughly reviewed its Monitoring Program to determine the least costly method of gathering the information that Congress required. The DOE consulted with state governments, petroleum dealers, and other federal agencies and held a public hearing. Subsequent to these consultations, the EIA adopted Form EIA-782B, "Monthly No. 2 Distillate Sales Report." In November 1983, the EIA revised this Form to include information concerning sales of

finished motor gasoline and residual fuel oil, and renamed the Form "Resellers'/Retailers' Monthly Petroleum Product Sales Report." In October 1993, the EIA further revised Form EIA-782B in response to the Clean Air Act Amendments of 1990, Pub. L. 101-549. These latest revisions to Form EIA-782B were (i) an expansion of finished motor gasoline reporting categories to include reformulated and oxygenated gasoline, (ii) separation of No. 2 diesel fuel into low and high sulphur content categories, and (iii) the addition of propane to the survey as a reporting product. See Form EIA-782B (10-93). Form EIA-782B is



a report designed to collect monthly data on sales volumes and unit prices of refined petroleum products from a random sample of resellers and retailers.

## II. Western's Application for Exception

Western is a propane wholesaler-retailer located in Littlerock, California. The firm sells residential and non-residential propane in the state of California. In the firm's application, Brenda Bones, Secretary-Treasurer, requests an exception to the Form EIA-782B reporting requirement on the basis that the firm's computer system does not separate the monthly sales data into different categories, or print out details on separate accounts. Ms. Bones also claims that it would require many hours to complete the form manually and the firm has only one employee who is responsible for this type of job.

## III. Analysis

The OHA has the authority to grant exception relief to alleviate or prevent serious hardship or gross inequity. 10 C.F.R. § 1003.20. See also 6 Fed. Energy Guidelines ¶ 80,003 (Exceptions and Appeals Guidelines). In previous cases involving requests for exception relief, we have recognized that mandatory reporting requirements impose costs on the respondents. Since all reporting firms are burdened by the requirement, we have held that exception relief is appropriate only when a firm can demonstrate that it is adversely affected by the reporting requirement in a way that differs significantly from similar reporting firms. When evaluating an applicant's request for exception relief, we consider whether the difficulty in complying with the reporting requirement is outweighed by the benefits to the nation in obtaining the required data. See Lockheed Air Terminal, 15 DOE ¶ 81,010 (1986); Champlain Oil Co., 14 DOE ¶ 81,022 (1986); Three L Inc., 12 DOE ¶ 81,014 (1984); Pure Oil Co., 8 DOE ¶ 81,019 (1981).

We have granted full or partial relief from EIA reporting requirements in cases where applicants have shown that those requirements placed a burden upon them that was significantly different from the inconvenience generally associated with the requirement to submit EIA forms. For example, relief has been granted when firms have had severe financial difficulties or when the only persons capable of preparing a form have had serious medical problems. See Eastern Petroleum Corp., 14 DOE ¶ 81,011 (1986); LBM Distributors, Inc., 13 DOE ¶ 81,043 (1985); Ed Joyce Fuel and Feeds, 13 DOE ¶ 81,024 (1985).

We have considered Western's claim and find no serious hardship or gross inequity that would warrant exception relief in this case. We are not persuaded by Western's claim that breaking out its sales by category of customer in order to complete the form would be too time consuming. If the data in its computerized bookkeeping system are not easily sorted by category of customer, the firm could complete the form manually. Form EIA-782B requires little more than the essential type of pricing, supply, and inventory data that, at a minimum, is required to operate a business operation. Western certainly records the prices and volumes involved in each transaction, and knows the types of customers to whom it sells. While we do not doubt that the firm's office staff is already very busy, we do not believe that the amount of time required to complete the form constitutes an onerous burden. EIA estimates that it should take 2.5 hours per month for a firm to fill out EIA-782B. See Form EIA-782B, Schedule 1. This does not seem to be an unreasonable amount of time. Furthermore, the burden of this requirement on the firm's office staff could be lessened by the use of estimates. The EIA permits firms to estimate sales data in order to reduce the time spent completing the form. See Section VI of the General Instructions to Form EIA-782B.

Western has not demonstrated that its burden of providing the requested data outweighs the benefits which the DOE and the nation receive from access to the information. It is important to note that the data collected from Form EIA-782B provides the DOE with information on the supply, demand, and price of petroleum products. The federal and state governments, as well as private firms, use this information to perform analyses and make projections. Timely and reliable access to the data is vital to the nation's ability to anticipate and respond quickly and effectively to any future supply disruptions. See H.R. Rep.

No. 373, 96th Cong., 1st Sess., reprinted in 1979 U.S. Code Cong. and Ad. News 1764, 1781. The DOE has attempted to minimize the burden placed on the public in gathering this information, while insuring that the reporting requirements are administered in a consistent and equitable manner. After balancing these strong public policy considerations against Western's claim, we have concluded that the Western Application for Exception should be denied.

It Is Therefore Ordered That:

(1) The Application for Exception filed by Western Star Propane, Inc. on February 18, 1997, is hereby denied.

(2) Administrative review of this Decision and Order may be sought by any person who is aggrieved or adversely affected by the denial of exception relief. Such review shall be commenced by the filing of a petition for review with the Federal Energy Regulatory Commission within 30 days of the date of this Decision and Order pursuant to 18 C.F.R. Part 385, Subpart J.

George B. Breznay

Director

Office of Hearings and Appeals

Date: May 22, 1997

# Case No. VEE-0041

May 22, 1997

DECISION AND ORDER

OF THE DEPARTMENT OF ENERGY

Application for Exception

Name of Petitioner: Hampton Gas Company, Inc.

Date of Filing: March 3, 1997

Case Number: VEE-0041

On March 3, 1997, Hampton Gas Company, Inc. (Hampton) filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). In its application, Hampton requests that it be relieved of the requirement to file Form EIA-782B entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report."

## I. Background

In response to the 1979 oil crisis, Congress enacted the Emergency Energy Conservation Act of 1979 (EECA), Pub. L. No. 96-102, 42 U.S.C. § 8501 et seq. In legislating the EECA, Congress found that "up-to-date and reliable information concerning the supply and demand of gasoline, diesel fuel, and other related data is not available to the President, the Congress, or the public." EECA § 201, 42 U.S.C. § 8501. This lack of information impeded Congress's ability to respond to the oil crisis. Congress therefore directed that the DOE establish a Middle Distillate Monitoring Program. EECA § 242, 42 U.S.C. § 8532. Under this program, the DOE established a data collection program to monitor the supply and demand of middle distillates in each state at the refining, wholesale and retail levels. EECA § 242(a)(1).

The responsibility for the Middle Distillate Monitoring Program was assumed by the Energy Information Administration (EIA) of the DOE. Under the provisions of Section 205 of the Department of Energy Organization Act, 42 U.S.C. § 7135, the EIA is authorized not only to collect and analyze energy information necessary for the proper functioning of the DOE, but also to require that any energy

supplier or major consumer of energy provide such information to the DOE.

When the oil crisis subsided, the DOE thoroughly reviewed its Monitoring Program to determine the least costly method of gathering the information that Congress required. The DOE consulted with state governments, petroleum dealers, and other federal agencies and held a public hearing. Subsequent to these consultations, the EIA adopted Form EIA-782B, "Monthly No. 2 Distillate Sales Report." In November 1983, the EIA revised this Form to include information concerning sales of finished motor gasoline and residual fuel oil, and renamed the Form "Resellers'/Retailers' Monthly Petroleum Product Sales Report." In October 1993, the EIA further revised Form EIA-782B in response to the Clean Air Act Amendments of 1990, Pub. L. 101-549. These latest revisions to Form EIA-782B were (i) an expansion of finished motor gasoline reporting categories to include reformulated and oxygenated gasoline, (ii) separation of No. 2 diesel fuel into low and high sulphur content categories, and (iii) the addition of propane to the survey as a reporting product. See Form EIA-782B (10-93). Form EIA-782B is a report designed to collect monthly

data on sales volumes and unit prices of refined petroleum products from a random sample of resellers and retailers.

## II. Hampton's Application for Exception

Hampton is a propane product retailer based in Hampton, South Carolina. The firm sells residential and non-residential propane in the state of South Carolina. In its application, Mr. Michael Thomas, Vice President of the firm, requests an exception to the Form EIA-782B reporting requirement on the basis that the firm's office staff consists of only two people both of whom, he asserts, are overworked. According to Mr. Thomas, the two employees must skip their lunch hours and work overtime to complete their existing work. Mr. Thomas also claims that the firm's computerized bookkeeping system does not break down the monthly sales data into different categories. He also claims that it would take a considerable amount of work to compile the information for the report.

## III. Analysis

The OHA has the authority to grant exception relief to alleviate or prevent a serious hardship or gross inequity. 10 C.F.R. § 1003.20. See also 6 Fed. Energy Guidelines ¶ 80,003 (Exceptions and Appeals Guidelines). In previous cases involving requests for exception relief, we have recognized that mandatory reporting requirements cause some inconvenience to respondents. Since all reporting firms are burdened by these requirements, we have held that exception relief is appropriate only when a firm can demonstrate that it is adversely affected by the reporting requirement in a way that differs significantly from similar reporting firms. When evaluating an applicant's request for exception relief, we consider whether the difficulty in complying with a particular reporting requirement is outweighed by the benefits to the nation in obtaining the required data. See *Lockheed Air Terminal*, 15 DOE ¶ 81,010 (1986); *Champlain Oil Co.*, 14 DOE ¶ 81,022 (1986); *Three L Inc.*, 12 DOE ¶ 81,014 (1984); *Pure Oil Co.*, 8 DOE ¶ 81,019 (1981).

We have granted full or partial relief from EIA reporting requirements in cases where applicants have shown that those requirements placed a burden upon them that was significantly different from the inconvenience generally associated with the requirement to submit EIA forms. For example, relief has been granted when firms have had severe financial difficulties or when the only persons capable of preparing a form have had serious medical problems. See *Eastern Petroleum Corp.*, 14 DOE ¶ 81,011 (1986); *LBM Distributors, Inc.*, 13 DOE ¶ 81,043 (1985); *Ed Joyce Fuel and Feeds*, 13 DOE ¶ 81,024 (1985).

We have considered Hampton's claim and find no serious hardship or gross inequity that would warrant exception relief in this case. We are not persuaded by Hampton's claim that breaking out its sales by category of customers in order to complete the form would be too time consuming. If the data in its computerized bookkeeping system are not easily sorted by category of customer, the firm could complete the form manually. Form EIA-782B requires little more than the essential type of pricing, supply, and inventory data that, at a minimum, is required to operate a business operation. Hampton certainly records the prices at which it sells product, the volumes involved in each transaction, and the location of the purchaser. While we do not doubt that the firm's office staff is already very busy, we do not believe that the amount of time required to complete the form constitutes an onerous burden on them. The EIA estimates that it should normally take approximately 2.5 hours per month for a firm to fill out EIA-782B. See Form EIA-782B, Schedule 1. This does not seem to be an unreasonable amount of time. Furthermore, the burden of this requirement on the firm's office staff could be lessened by the use of estimates. The EIA permits firms to estimate sales data in order to reduce the time spent completing the form. See Section VI of the General Instructions to Form EIA-782B.

It is important to note that the data collected from Form EIA-782B provides the DOE with information on the supply, demand, and price of petroleum products. The federal and state governments, as well as private firms, use this information to perform analyses and make projections. Timely and reliable access to the

data is vital to the nation's ability to anticipate and respond quickly and effectively to any future supply disruptions. See H.R. Rep. No. 373, 96th Cong., 1st Sess., reprinted in 1979 U.S. Code Cong., and Ad. News 1764, 1781. The DOE has attempted to minimize the burden placed on the public in gathering this information, while insuring that the reporting requirements are administered in a consistent and equitable manner. After balancing these strong public policy considerations against Hampton's claim, we have concluded that the Hampton Application for Exception should be denied.(1)

It Is Therefore Ordered That:

(1) The Application for Exception filed by Hampton Gas Company, Inc. on March 3, 1997, is hereby denied.

(2) Administrative review of this Decision and Order may be sought by any person who is aggrieved or adversely affected by the denial of exception relief. Such review shall be commenced by the filing of a petition for review with the Federal Energy Regulatory Commission within 30 days of the date of this Decision and Order pursuant to 18 C.F.R. Part 385, Subpart J.

George B. Breznay

Director

Office of Hearings and Appeals

Date: May 22, 1997

(1)We have been informed by EIA that it has designated Hampton as a "certainty company." See March 18, 1997, telephone conversation between Sherry Beri of EIA and Toni Brown of OHA. A certainty company is a firm whose EIA reports are vital because its data are crucial to the EIA's overall survey results in order to accurately reflect patterns of fuel demand and supply. See Texport Oil Co., 23 DOE ¶ 81,006 (1993); Halron Oil Co., 16 DOE ¶ 81,001 (1987).

Accordingly, the burden which certainty firms encounter must be extremely severe in order to outweigh the benefit to the nation in obtaining survey data from them. See Fletcher & Associates, Ltd., 23 DOE ¶ 81,008 (1994). Since Hampton does not meet the standards for exception relief required of firms generally, we do not need to determine whether it meets the stricter standards required of certainty firms.

# Case No. VEE-0042

April 9, 1997

DECISION AND ORDER

OF THE DEPARTMENT OF ENERGY

Application for Exception

Name of Petitioner: Edris Oil Service, Inc.

Date of Filing: March 5, 1997

Case Number: VEE-0042

On March 5, 1997, Edris Oil Service, Inc. (Edris) filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). In its application, Edris requests that it be relieved of the requirement to file Form EIA-782B entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report."

## I. Background

In response to the 1979 oil crisis, Congress enacted the Emergency Energy Conservation Act of 1979 (EECA), Pub. L. No. 96-102, 42 U.S.C. § 8501 et seq. In legislating the EECA, Congress found that "up-to-date and reliable information concerning the supply and demand of gasoline, diesel fuel, and other related data is not available to the President, the Congress, or the public." EECA § 201, 42 U.S.C. § 8501. This lack of information impeded Congress's ability to respond to the oil crisis. Congress therefore directed that the DOE establish a Middle Distillate Monitoring Program. EECA § 242, 42 U.S.C. § 8532. Under this program, the DOE established a data collection program to monitor the supply and demand of middle distillates in each state at the refining, wholesale and retail levels. EECA § 242(a)(1).

The responsibility for the Middle Distillate Monitoring Program was assumed by the Energy Information Administration (EIA) of the DOE. Under the provisions of Section 205 of the Department of Energy Organization Act, 42 U.S.C. § 7135, the EIA is authorized not only to collect and analyze energy information necessary for the proper functioning of the DOE, but also to require that any energy supplier or major consumer of energy provide such information to the DOE.

When the oil crisis subsided, the DOE thoroughly reviewed its Monitoring Program to determine the least costly method of gathering the information that Congress required. The DOE consulted with state governments, petroleum dealers, and other federal agencies and held a public hearing.

Subsequent to these consultations, the EIA adopted Form EIA-782B, "Monthly No. 2 Distillate Sales Report." In November 1983, the EIA revised this form to include information concerning sales of finished motor gasoline and residual fuel oil, and renamed the Form "Resellers'/Retailers' Monthly Petroleum Product Sales Report." In October 1993, the EIA further revised Form EIA-782B in response to the Clean Air Act Amendments of 1990, Pub. L. 101-549. These latest revisions to Form EIA-782B were (i) an expansion of finished motor gasoline reporting categories to include reformulated and oxygenated gasoline, (ii) separation of No. 2 diesel fuel into low and high sulphur content categories, and (iii) the addition of propane to the survey as a reporting product. See Form EIA-782B (10-93).

Form EIA-782B is a report designed to collect monthly data on sales volumes and unit prices of refined petroleum products from a random sample of resellers and retailers. Information obtained from the respondents constitutes the DOE's primary source of information about petroleum products at the reseller/retailer level. The DOE uses the information obtained from the respondents to perform state-by-state analyses and make projections related to energy supplies, demand, and prices. These data are vital to the nation's ability to anticipate and respond to any future energy shortages. See H.R. Rep. No. 373, 96th Cong., 1st Sess., reprinted in 1979 U.S. Code Cong. & Admin. News 1764, 1781.

The applicant in this proceeding has been designated by the EIA as a member of sample group 12 required to complete and submit Form EIA-782B on a monthly basis. The firm was previously in sample groups 9 and 10.

## II. Edris's Application for Exception

Edris is a petroleum product wholesaler-retailer located in York, Pennsylvania. Edris sells diesel fuel, heating oil, kerosene and motor gasoline. In its application, the firm requests an exception to the Form EIA-782B reporting requirement on the basis that it was selected in two earlier samples and submitted the form on a regular monthly basis for the period December 1992 through July 1994. Steven R. Edris, President of Edris, claims that his firm has only two clerical workers, and it would be very costly to complete the form because he would have to pay overtime. Mr. Edris further claims that since his competitors have not been chosen to complete the Form EIA-782B, they have not been forced to pay the "hidden taxes" that he believes his small business is being forced to pay. Mr. Edris therefore claims that his firm is being unfairly singled out to complete the form and that this creates a financial hardship to his company.

## III. Analysis

The OHA has the authority to grant exception relief to alleviate or prevent serious hardship or gross inequity. 10 C.F.R. § 1003.20. See also 6 Fed. Energy Guidelines ¶ 80,003 (Exceptions and Appeals Guidelines). In previous cases involving requests for exception relief, we have recognized that mandatory reporting requirements impose costs on the respondents. Since all reporting firms are burdened by the requirement, we have held that exception relief is appropriate only when a firm can demonstrate that it is adversely affected by the reporting requirement in a way that differs significantly from similar reporting firms. When evaluating an applicant's request for exception relief, we consider whether the difficulty in complying with the reporting requirement is outweighed by the benefits to the nation in obtaining the required data. See *Lockheed Air Terminal*, 15 DOE ¶ 81,010 (1986); *Champlain Oil Co.*, 14 DOE ¶ 81,022 (1986); *Three L Inc.*, 12 DOE ¶ 81,014 (1984); *Pure Oil Co.*, 8 DOE ¶ 81,019 (1981).

We have granted full or partial relief from EIA reporting requirements in cases where applicants have shown that those requirements placed a burden upon them that was significantly different from the inconvenience generally associated with the requirement to submit EIA forms. For example, relief has been granted when firms have had severe financial difficulties or when the only persons capable of preparing a form have had serious medical problems. See *Eastern Petroleum Corp.*, 14 DOE ¶ 81,011 (1986); *LBM Distributors, Inc.*, 13 DOE ¶ 81,043 (1985); *Ed Joyce Fuel and Feeds*, 13 DOE ¶ 81,024 (1985).

We are unconvinced that the reporting requirement has adversely affected Edris in a way that differs significantly from similar reporting firms. Although Edris has participated in Samples 9 and 10, we do not consider Edris's length of participation to be excessive. The OHA has previously held that the length of time that a firm must file Form EIA-782B does not in itself mandate exception relief. See *Exxon Junction Service*, 14 DOE ¶ 81,020 (1986); *Piedmont Petroleum Co.*, 11 DOE ¶ 81,006 (1983).

We also reject Edris's contention that it should receive exception relief because it is costly. We are not convinced that the additional cost which the firm must incur in paying for a few hours of overtime worked is sufficient to constitute a serious financial hardship or significant competitive burden to the company. While this cost is a burden to the firm, it is a burden experienced by all firms completing the form. Although Edris may be experiencing an inconvenience that some of its competitors do not share, the firm has not shown, or even alleged, that it has lost market share as a result of this additional requirement.

Also, Mr. Edris states that it takes the firm 2.5 hours to complete the form. This is exactly the length of time that EIA estimates it should take to complete Form EIA-782B. Mr. Edris also informed us that his firm used estimates. This should reduce the time and expense of completing the form.

Edris has not demonstrated that its burden of providing the requested data outweighs the benefits which the DOE and the nation receive from access to the information. It is important to note that the data collected from Form EIA-782B provides the DOE with information on the supply, demand, and price of petroleum products. The federal and state governments, as well as private firms, use this information to perform analyses and make projections. Timely and reliable access to the data is vital to the nation's ability to anticipate and respond quickly and effectively to any future supply disruptions. See H.R. Rep. No. 373, 96th Cong., 1st Sess., reprinted in 1979 U.S. Code Cong. and Ad. News 1764, 1781. The DOE has attempted to minimize the burden placed on the public in gathering this information, while insuring that the reporting requirements are administered in a consistent and equitable manner. After balancing these strong public policy considerations against Edris's claim, we have concluded that the Edris Application for Exception should be denied.

It Is Therefore Ordered That:

(1) The Application for Exception filed by Edris Oil Service, Inc. on March 5, 1997, is hereby denied.

(2) Administrative review of this Decision and Order may be sought by any person who is aggrieved or adversely affected by the denial of exception relief. Such review shall be commenced by the filing of a petition for review with the Federal Energy Regulatory Commission within 30 days of the date of this Decision and Order pursuant to 18 C.F.R. Part 385, Subpart J.

George B. Breznay

Director

Office of Hearings and Appeals

Date: April 9, 1997



# Case No. VEE-0043

May 22, 1997

DECISION AND ORDER

OF THE DEPARTMENT OF ENERGY

Application for Exception

Name of Petitioner: Greenville Automatic Gas Company

Date of Filing: March 11, 1997

Case Number: VEE-0043

On March 11, 1997, Greenville Automatic Gas Company (Greenville) filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). In its application, Greenville requests that it be relieved of the requirement to file Form EIA-782B entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report."

## I. Background

In response to the 1979 oil crisis, Congress enacted the Emergency Energy Conservation Act of 1979 (EECA), Pub. L. No. 96-102, 42 U.S.C. § 8501 et seq. In legislating the EECA, Congress found that "up-to-date and reliable information concerning the supply and demand of gasoline, diesel fuel, and other related data is not available to the President, the Congress, or the public." EECA § 201, 42 U.S.C. § 8501. This lack of information impeded Congress's ability to respond to the oil crisis. Congress therefore directed that the DOE establish a Middle Distillate Monitoring Program. EECA § 242, 42 U.S.C. § 8532. Under this program, the DOE established a data collection program to monitor the supply and demand of middle distillates in each state at the refining, wholesale and retail levels. EECA § 242(a)(1).

The responsibility for the Middle Distillate Monitoring Program was assumed by the Energy Information Administration (EIA) of the DOE. Under the provisions of Section 205 of the Department of Energy Organization Act, 42 U.S.C. § 7135, the EIA is authorized not only to collect and analyze energy information necessary for the proper functioning of the DOE, but also to require that any energy supplier or major consumer of energy provide such information to the DOE

When the oil crisis subsided, the DOE thoroughly reviewed its Monitoring Program to determine the least costly method of gathering the information that Congress required. The DOE consulted with state governments, petroleum dealers, and other federal agencies and held a public hearing. Subsequent to these consultations, the EIA adopted Form EIA-782B, "Monthly No. 2 Distillate Sales Report." In November 1983, the EIA revised this Form to include information concerning sales of finished motor gasoline and residual fuel oil, and renamed the Form "Resellers'/Retailers' Monthly Petroleum Product Sales Report." In October 1993, the EIA further revised Form EIA-782B in response to the Clean Air Act Amendments of 1990, Pub. L. 101-549. These latest revisions to Form EIA-782B were (i) an expansion of finished motor gasoline reporting categories to include reformulated and oxygenated gasoline, (ii) separation of No. 2 diesel fuel into low and high sulphur content categories, and (iii) the addition of propane to the survey as a reporting product. See Form EIA-782B (10-93). Form EIA-782B is a report designed to collect monthly data on sales volumes and unit prices of refined petroleum products from a random sample of resellers

and retailers.

## II. Greenville's Application for Exception

Greenville is a petroleum product retailer based in Greenville, Texas. The firm sells primarily propane, but also No. 2 distillate fuel and motor gasoline in the state of Texas. In its application, Mr. Tim Stainback requests an exception to the Form EIA-782B reporting requirement on the basis that the firm has been forced to cut expenses to compensate for declining revenues. Mr. Stainback also claims that the firm is currently short-handed and unable to undertake additional tasks such as completing this form. Mr. Stainback further claims that the firm's computer system does not track the categories as requested on the form, and in order to do so, the firm would have to do it manually.

## III. Analysis

The OHA has the authority to grant exception relief to alleviate or prevent serious hardship or gross inequity. 10 C.F.R. § 1003.20. See also 6 Fed. Energy Guidelines ¶ 80,003 (Exceptions and Appeals Guidelines). In previous cases involving requests for exception relief, we have recognized that mandatory reporting requirements cause some inconvenience to respondents. Since all reporting firms are burdened by these requirements, we have held that exception relief is appropriate only when a firm can demonstrate that it is adversely affected by the reporting requirement in a way that differs significantly from similar reporting firms. When evaluating an applicant's request for exception relief, we consider whether the difficulty in complying with a particular reporting requirement is outweighed by the benefits to the nation in obtaining the required data. See Lockheed Air Terminal, 15 DOE ¶ 81,010 (1986); Champlain Oil Co., 14 DOE ¶ 81,022 (1986); Three L Inc., 12 DOE ¶ 81,014 (1984); Pure Oil Co., 8 DOE ¶ 81,019 (1981).

We have granted full or partial relief from EIA reporting requirements in cases where applicants have shown that those requirements placed a burden upon them that was significantly different from the inconvenience generally associated with the requirement to submit EIA forms. For example, relief has been granted when firms have had severe financial difficulties or when the only persons capable of preparing a form have had serious medical problems. See Eastern Petroleum Corp., 14 DOE ¶ 81,011 (1986); LBM Distributors, Inc., 13 DOE ¶ 81,043 (1985); Ed Joyce Fuel and Feeds, 13 DOE ¶ 81,024 (1985).

We have considered Greenville's claim and find no serious hardship or gross inequity that would warrant exception relief in this case. We are not persuaded by Greenville's claim that manually breaking out its sales by category of customer would be too time consuming. Form EIA-782B requires little more than the essential type of pricing, supply, and inventory data that, at a minimum is required to operate a business operation. Greenville certainly records the prices at which it sells product, the volumes involved in each transaction, and the location of the purchaser. While we do not doubt that the firm's office staff is already very busy, we do not believe that the amount of time required to complete the form constitutes an onerous burden on the firm. The EIA estimates that it should normally take approximately 2.5 hours per month for a firm to fill out EIA-782B. See Form EIA-782B, Schedule 1. This does not seem to be an unreasonable amount of time. Furthermore, the burden of the requirement on the firm's office staff could be lessened by the use of estimates. The EIA permits firms to estimate sales data in order to reduce the time spent completing the forms. See Section VI of the General Instructions to Form EIA- 782B.

It is important to note that the data collected from Form EIA-782B provides the DOE with information on the supply, demand, and price of petroleum products. The federal and state governments, as well as private firms, use this information to perform analyses and make projections. Timely and reliable access to the data is vital to the nation's ability to anticipate and respond quickly and effectively to any future supply disruptions. See H.R. Rep. No. 373, 96th Cong., 1st Sess., reprinted in 1979 U.S. Code Cong., and Ad. News 1764, 1781. The DOE has attempted to minimize the burden placed on the public in gathering this information, while insuring that the reporting requirements are administered in a consistent and equitable

manner. After balancing these strong public policy considerations against Greenville's claim, we have concluded that the Greenville Application for Exception should be denied.(1)

It Is Therefore Ordered That:

(1) The Application for Exception filed by Greenville Automatic Gas Company on March 11, 1997, is hereby denied.

(2) Administrative review of this Decision and Order may be sought by any person who is aggrieved or adversely affected by the denial of exception relief. Such review shall be commenced by the filing of a petition for review with the Federal Energy Regulatory Commission within 30 days of the date of this Decision and Order pursuant to 18 C.F.R. Part 385, Subpart J.

George B. Breznay

Director

Office of Hearings and Appeals

Date: May 22, 1997

(1)We have been informed by EIA that it has designated Greenville as a "certainty company." See March 18, 1997, telephone conversation between Sherry Beri of EIA and Toni Brown of OHA. A certainty company is a firm whose EIA reports are vital because its data are crucial to the EIA's overall survey results in order to accurately reflect patterns of fuel demand and supply. See Texport Oil Co., 23 DOE ¶ 81,006 (1993); Halron Oil Co., 16 DOE ¶ 81,001 (1987).

Accordingly, the burden which certainty firms encounter must be extremely severe in order to outweigh the benefit to the nation in obtaining survey data from them. See Fletcher & Associates, Ltd., 23 DOE ¶ 81,008 (1994). Since Greenville does not meet the standards for exception relief required of firms generally, we do not need to determine whether it meets the stricter standards required of certainty firms.

# Case No. VEE-0044

February 24, 1998

DECISION AND ORDER

OF THE DEPARTMENT OF ENERGY

REQUEST FOR CONFIDENTIAL TREATMENT

Name of Petitioner: Public Service Electric and Gas Company (New Jersey)

Date of Filing: July 14, 1997

Case Number: VEE-0044

On July 14, 1997, the Office of Hearings and Appeals received from the Energy Information Administration (EIA) a "letter of appeal" that had been filed with the EIA by the Public Service Electric and Gas Company of New Jersey (PSE&G). In the letter, PSE&G requested confidential treatment of several items of information that it provides to the EIA on Form EIA-860, "Annual Electric Generator Report." For each electrical generator of each generating plant that PSE&G operates, the items of information are: (1) the unit heat rate; (2) the winter and summer net capabilities; and (3) the unit retirement date. During the lengthy discussion that followed, the request was limited by PSE&G to the unit heat rate data.

The Form EIA-860 is one of the documents through which EIA fulfills its mandate to collect, evaluate, and disseminate information concerning domestic energy production, demand, and technology. See Department of Energy Organization Act, 42 U.S.C. §7101, et seq. PSE&G and the approximately 900 other utilities that operate power plants in the United States file the Form EIA-860 annually. The EIA historically has regarded all data filed on the Form EIA-860 as non-confidential. Use of the Form EIA-860 has been approved by the Office of Management and Budget (OMB), which has oversight of EIA data collections, as a non-confidential survey.

The posture of the electric power industry appears to be changing from that of a highly regulated to a competitive industry. The EIA is aware that in this environment, some firms are becoming concerned at the availability of any company-specific information that might confer an advantage upon competitors. In this instance, PSE&G was concerned that information now reported on Form EIA-860, together with knowledge of the cost of fuel, would make it possible for competing firms to know PSE&G's marginal cost of generating electrical power. For competitive reasons similar to these, data for non-public firms and the Bonneville Power Administration has been withheld from release. The Edison Electric Institute, a trade group representing investor-owned electric utilities such as PSE&G, shares these concerns and has submitted comments in this proceeding in support of the PSE&G position. It also appeared likely that a favorable decision on the PSE&G request could precipitate numerous requests from other utilities that are surveyed, possibly disrupting EIA operations but not leading to a consistent resolution to the general issue of confidentiality. As a result

of these very special circumstances, we concluded that this issue should most appropriately be decided in the context of a public re-evaluation of the Form EIA-860.

During lengthy discussions which we conducted involving the EIA and PSE&G, in order to accommodate the PSE&G concerns, EIA volunteered that it would request only a one-year clearance from OMB,

through December 31, 1998, of its electric power surveys.(1) EIA also stated that it would not release in publication or via the Internet the individual company heat rate data provided on Form EIA-860 by all utilities through December 31, 1998. In addition, during 1998, EIA stated that it would issue a Federal Register notice soliciting comments from the industry on confidentiality associated with its electric surveys, and would work with industry to evaluate EIA's data for a specific company disclosure policy in this area. In the interim, consistent with OMB policy, EIA will release heat rate data only upon written request. For its part, PSE&G stated under the circumstances that it would agree to the dismissal without prejudice of its request for confidential treatment of the Form EIA-860 data, pending the review of EIA's disclosure policy, but that it would not be bound by the temporary relief offered by the EIA.(2)

In December 1997, before this agreement could become final, but in order to meet its commitments in a timely fashion, EIA released the calendar year 1996 data provided by submitters of Form

EIA-860, except for the "Unit Heat Rate" data. As it had agreed, in January, 1998, EIA published a Federal Register notice requesting comments concerning the confidentiality of data provided through all EIA electric power surveys. 63 F.R. 1960-62 ( January 13, 1998) As stated, these steps were necessary for EIA to fulfill its commitments in a timely fashion. Ultimately, in a letter dated January 23, 1998, PSE&G asked that its request for confidential treatment be withdrawn. See, Letter from Harold W. Borden, Jr., Vice President -- Law, PSE&G.

The foregoing steps taken by EIA are clearly intended to further the best interests of the public and the electric power industry. The public's interest is promoted by allowing the ultimate issue of confidentiality for all submitters to be resolved by a collaborative process with maximum participation from the public. See Best Practices for Government Agencies: Guidelines for Using Collaborative Agreement-Seeking Processes, Report and Recommendations for the SPIDR Environment/Public Disputes Sector Critical Issues Committee (1997). The interests of all submitters of Form EIA-860 are protected by insuring that proprietary and non-proprietary data on the form will be identified and treated accordingly by EIA within the 1998 calendar year. Finally, the interests of EIA and the public are furthered by permitting EIA to continue to distribute reports and information based on the Form EIA-860 during the evaluation process.

Under these circumstances, we believe that dismissing PSE&G's request is the best course to follow.

It Is Therefore Ordered That:

The request for confidential treatment made by the Public Service Electric and Gas Company of New Jersey is hereby dismissed.

George B. Breznay

Director

Office of Hearings and Appeals

Date: February 24, 1998

(1) For its electric power surveys, including Form 860, the EIA generally requests a three-year clearance.

(2) As these lengthy discussions--which took place from July 1997 through January 1998--were concluding, and after EIA had begun to take the agreed-upon measures, PSE&G asked that its request for confidential treatment be withdrawn.

# Case No. VEE-0045

August 4, 1997

DECISION AND ORDER

OF THE DEPARTMENT OF ENERGY

Application for Exception

Name of Petitioner: Patriot Petroleum, Inc.

Date of Filing: July 14, 1997

Case Number: VEE-0045

On July 14, 1997, Patriot Petroleum, Inc. (Patriot) of Newburyport, Massachusetts, filed an Application for Exception with the Office of Hearings and Appeals of the Department of Energy. In its Application, Patriot requests that it be relieved of the requirement that it file the Energy Information Administration's (EIA) form entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report" (Form EIA-782B). As explained below, we have determined that the Application for Exception should be denied.

## A. Background

The EIA-782B reporting requirement grew out of the shortages of crude oil and petroleum products during the 1970s. In 1979, Congress found that the lack of reliable information concerning the supply, demand, and prices of petroleum products impeded the nation's ability to respond to the oil crisis. It therefore authorized the DOE to collect data on the supply and prices of petroleum products. The current form collects information concerning the volume and price of various grades and types of motor gasoline, No. 2 distillates, propane, and residual fuel oil, broken down by customer type.

Information obtained from the survey is used to analyze trends within petroleum markets. Summaries of the information and the analyses are published by the EIA in publications such as "Petroleum Marketing Monthly." This data is used by Congress and by more than 35 state governments to project trends and to formulate state and national energy policies. In addition, firms

in the petroleum industry frequently base business decisions on the data published by EIA.

The DOE has attempted to ensure that this survey yields valuable information while minimizing the burden placed on the industry. Thus, in designing the form, the DOE consulted with potential survey respondents, various industry associations, users of the energy data, state governments, and other federal agencies. Moreover, to minimize the reporting burden, the EIA periodically selects a relatively small sample of companies to file the report.(1) In addition, to reduce the amount of time spent completing the forms, firms may rely upon reasonable estimates.(2)

## B. Exceptions Criteria

Form EIA-782B is a mandatory report designed to collect monthly information on refined petroleum sales volumes and prices from a sample of resellers and retailers. 42 U.S.C. § 7135(b). This Office has authority

to grant exception relief where the reporting requirement causes a "serious hardship, gross inequity or unfair distribution of burdens." 42 U.S.C. § 7194 (a); 10 C.F.R. §1003.25(b)(2). Exceptions are appropriate only in extreme cases. Because all reporting firms are burdened to some extent by reporting requirements, exception relief is appropriate only where a firm can demonstrate that it is adversely affected by the reporting requirement in a way that differs significantly from similar reporting firms. Thus, mere inconvenience does not constitute a sufficient hardship to warrant relief. Glenn W. Wagoner Oil Co., 16 DOE ¶ 81,024 (1987).

In considering a request for exception relief, we must weigh the firm's difficulty in complying with the reporting requirement against the nation's need for reliable energy data. Neither the fact that a firm is relatively small, nor the fact that it has filed the report for a number of years alone constitute grounds for exception relief. If firms of all sizes, both large and small, are not included the estimates and projections generated by the EIA's statistical sample will be unreliable. Mulgrew Oil Co., 20 DOE ¶ 81,009 (1990).

The following examples illustrate the types of circumstances that may justify relief from the reporting requirement. Since each case is different, these examples are not intended to reflect all circumstances that justify exception relief:

- Financial difficulties underlie most approvals of exception relief. We have granted a number of exceptions where the applicant's financial condition is so precarious that the additional burden of meeting the DOE reporting requirements threatens its continued viability. Mico Oil Co., 23 DOE ¶ 81,015 (1994) (firm lost one million dollars over previous three years); Deaton Oil Co., 16 DOE ¶ 81,026 (1987) (firm in bankruptcy).
- Relief may be appropriate when the only person capable of preparing the report is ill and the firm cannot afford to hire outside help. S&S Oil & Propane Co., 21 DOE ¶ 81,006 (1991) (owner being treated for cancer); Midstream Fuel Serv., 24 DOE ¶ 81,023 (three month extension of time to file reports granted when two office employees simultaneously on maternity leave); Eastern Petroleum Corp., 14 DOE ¶ 81,011 (1986) (two months relief granted when computer operator broke wrist).
- A combination of factors may warrant exception relief. Exception relief for 10 months was granted where personnel shortages, financial difficulties, and administrative problems resulted from the long illness and death of a partner. Ward Oil Co., 24 DOE ¶ 81,002 (1994); see also Belcher Oil Co., 15 DOE ¶ 81,018 (1987) (extension of time granted where general manager abruptly left firm without notice).
- Extreme or unusual circumstances that disrupt a firm's activities may warrant relief. Little River Village Campground, Inc., 24 DOE ¶ 81,033 (1994) (five months relief because of flood); Utilities Bd. of Citronelle-Gas, 4 DOE ¶ 81,205 (1979) (hurricane); Meier Oil Serv., 14 DOE ¶ 81,004 (1986) (three months where disruptions caused by installation of a new computer system left firm's records inaccessible).

## **C. Patriot's Exception Application**

Patriot, located in Newburyport, MA, sells several different petroleum products, and frequently acts as a broker, rather than as a direct supplier, of petroleum products.(3) Currently classified as a "certainty firm" based on its reported 1994 sales figures, the company has filed Form EIA-782B since January 1997.(4) In its Application for Exception, Patriot requests that it be excepted from the filing requirement because the firm is "extremely small" and "the forms are time-consuming to fill out and mail which proves a hardship for our firm.(5) According to a representative of the company, Ms. Sandy Barn, completing the form each month takes her approximately one and one-half to two hours. She asserts that completing the form is both difficult, because she is only a part-time employee, and wasteful of the firm's resources, because it takes her away from her other pressing duties such as payroll and other general accounting.(6)

## D. Analysis

Patriot has not shown that it meets the standards for exception relief set forth above. While it will no doubt experience some inconvenience in filling out Form EIA-782B each month, this inconvenience does not appear to be greater than that experienced by other reporting firms. Nothing in the record indicates that Patriot is financially strained, or that the reporting requirement burdens the firm in a unique or exceptional way. EIA estimates that it should take between two and two and one-half hours per month to complete Form EIA-782B. Ms. Barn has stated that it takes her approximately one and one-half to two hours to complete the form each month, which does not demonstrate that Patriot suffers unusual difficulties in preparing the form in a timely manner. Additionally, it may be possible for Patriot to further reduce the amount of time required to complete the form through the use of an EIA-approved estimation technique.(7) The EIA provides a toll- free hotline to assist respondents with any questions they may have, which could help Patriot in refining its estimation techniques to reduce the time necessary to complete the form.(8)

The data collected from Form EIA-782B constitutes the DOE's primary source of information on supplies, demand, and prices of petroleum products. Reliable data is vital to the nation's ability to formulate energy policies and to respond effectively to any future supply disruptions. Unless firms such as Patriot are part of the EIA's statistical sample, the DOE will be unable to formulate valid estimates from a cross-section of the industry. There is no evidence that the burden on Patriot of providing the requested data outweighs the benefits to the DOE and the nation from access to the information.

In view of the foregoing considerations, we find that the requirement that Patriot file Form EIA-782B does not constitute a special hardship, inequity, or unfair distribution of burdens. Accordingly, the Application for Exception filed by Patriot should be denied.

It Is Therefore Ordered That:

(1) The Application for Exception filed by Patriot Petroleum, Inc. on July 14, 1997 is hereby denied.

(2) Administrative review of this Decision and Order may be sought by any person who is aggrieved or adversely affected by the denial of exception relief. Such review shall be commenced by the filing of a petition for review with the Federal Energy Regulatory Commission within 30 days of the date of this Decision and Order pursuant to 18 C.F.R. Part 385, Subpart J.

George B. Breznay

Director

Office of Hearings and Appeals

Date: August 4, 1997

(1)Firms that do business in four or more states or which account for over five percent of the sales of any particular product in a state are always included in the sample of firms required to file the report. A random sample of other firms is also selected. This random sample changes approximately every 12 months, but a firm may be reselected for a subsequent sample. A firm that has been included in three consecutive random samples will generally not be included in a fourth consecutive sample, but may be included in a later sample.

(2)The firm must make a good faith effort to provide reasonably accurate information that is consistent with the accounting records maintained by the firm. The firm must also alert the EIA if the estimates are later found to be materially different from actual data.



(3)See Record of Telephone Conversation between Jayne Cecere-Peng and Sandy Barn of Patriot Petroleum, Inc., and OHA Staff Analyst Darcy Goddard, dated July 22, 1997.

(4)See Record of Telephone Conversation between Sherry Beri of EIA, and OHA Staff Analyst Darcy Goddard, dated July 16, 1997. Although the firm is currently classified as a certainty firm, there is some confusion regarding conflicting sales figures currently submitted by Patriot on Form EIA-782B and on other, past EIA forms. As such, EIA is investigating whether Patriot was correctly classified as a certainty firm when it was included in the current sample. However, Patriot does not argue in this Application for Exception that it should be rotated out of the current sample because it is a non- certainty firm which has filed Form EIA-782B for more than three consecutive random samples. Indeed, both EIA and Patriot agree that Patriot has only been filing the form for only eight (8) months. As such, Patriot's status as a possible certainty firm is not an issue in the instant Application, and is irrelevant to any determination regarding whether the firm meets the Exception criteria set forth at 10 C.F.R. §1003.25(b)(2)

(5)"See Application For Exception filed by Patriot Petroleum on July 14, 1997, Case No. VEE-0045.

(6)See Record of Telephone Conversation between Jayne Cecere-Peng and Sandy Barn of Patriot Petroleum, Inc., and OHA Staff Analyst Darcy Goddard, dated July 22, 1997.

(7)Ms. Barn confirmed that she uses actual sales figures each month, which she must draw from both computer records and printed reports. Id.

(8)The toll-free number for questions regarding Form EIA-782B is (800) 638-8812.

# Case No. VEE-0055

September 22, 1999

DECISION AND ORDER

OF THE DEPARTMENT OF ENERGY

Application for Exception

Name of Petitioner: Wondrack Distributing Inc.

Date of Filing: March 5, 1999

Case Number: VEE-0055

On March 5, 1999, Wondrack Distributing Inc. (Wondrack) of Tri-Cities, Washington, filed an Application for Exception with the Office of Hearings and Appeals of the Department of Energy. In its Application, Wondrack requests that it be relieved of the requirement that it respond to the Energy Information Administration's (EIA) survey entitled "Motor Gasoline Price Survey" (EIA- 878). As explained below, we have determined that the Application for Exception should be denied.

## Background

The EIA-878 survey grew out of the shortages of crude oil and petroleum products during the 1970s. In 1979, Congress found that the lack of reliable information concerning the supply, demand, and prices of petroleum products impeded the nation's ability to respond to the oil crisis. It therefore authorized the DOE to collect data on the supply and prices of petroleum products.

The media, petroleum industry and government all routinely rely on the EIA-878 data as a measure of retail prices of reformulated, oxygenated, and conventional gasoline. In fact, the demand for this information is great enough that the DOE maintains a telephone hotline number that provides the national and regional retail gasoline price estimates. The DOE also publishes the data in the Weekly Petroleum Status Report. This data is also used by Congress, federal officials, and the transportation industry to measure the rapid price increases at both regional and national levels. Furthermore, this survey is necessary to the extent that other sources of gasoline price information do not meet the DOE's needs concerning timeliness, frequency, and reliability.

## Exceptions Criteria

The EIA-878 survey is a mandatory survey designed to collect on a weekly basis, the retail cash price by grade of unleaded self-service gasoline, including all taxes. This Office has authority to grant exception relief where the reporting requirement causes a "serious hardship, gross inequity or unfair distribution of burdens." 42 U.S.C. § 7194 (a); 10 C.F.R. §1003.25(b)(2). Exceptions are appropriate only in extreme cases. Because all surveyed firms are burdened to some extent by reporting requirements, exception relief is appropriate only where a firm can demonstrate that it is adversely affected by the survey in a way that differs significantly from similar surveyed firms. Thus, mere inconvenience does not constitute a sufficient hardship to warrant relief. Glenn W. Wagoner Oil Co., 16 DOE ¶ 81,024 (1987).

In considering a request for exception relief, we must weigh the firm's difficulty in complying with the survey against the nation's need for reliable energy data. Neither the fact that a firm is relatively small, nor the facts that it has been surveyed for a number of years alone constitute grounds for exception relief. If firms of all sizes, both large and small, are not included, the estimates and projections generated by the EIA's statistical sample will be unreliable. *Mulgrew Oil Co.*, 20 DOE ¶ 81,009 (1990).

The following examples illustrate the types of circumstances that may justify relief from the survey. Since each case is different, these examples are not intended to reflect all circumstances that justify exception relief:

× Financial difficulties underlie most approvals of exception relief. We have granted a number of exceptions where the applicant's financial condition is so precarious that the additional burden of meeting the DOE reporting requirements threatens its continued viability. *Mico Oil Co.*, 23 DOE ¶ 81,015 (1994) (firm lost one million dollars over previous three years); *Deaton Oil Co.*, 16 DOE ¶ 81,026 (1987) (firm in bankruptcy).

× Relief may be appropriate when the only person capable of providing information is ill and the firm cannot afford to hire outside help. *S&S Oil & Propane Co.*, 21 DOE ¶ 81,006 (1991) (owner being treated for cancer); *Midstream Fuel Serv.*, 24 DOE ¶ 81,023 (three month extension of time to file reports granted when two office employees simultaneously on maternity leave); *Eastern Petroleum Corp.*, 14 DOE ¶ 81,011 (1986) (two months relief granted when computer operator broke wrist).

× A combination of factors may warrant exception relief. Exception relief for 10 months was granted where personnel shortages, financial difficulties, and administrative problems resulted from the long illness and death of a partner. *Ward Oil Co.*, 24 DOE ¶ 81,002 (1994); see also *Belcher Oil Co.*, 15 DOE ¶ 81,018 (1987) (extension of time granted where general manager abruptly left firm without notice).

× Extreme or unusual circumstances that disrupt a firm's activities may warrant relief. *Little River Village Campground, Inc.*, 24 DOE ¶ 81,033 (1994) (five months relief because of flood); *Utilities Bd. of Citronelle-Gas*, 4 DOE ¶ 81,205 (1979) (hurricane); *Meier Oil Serv.*, 14 DOE ¶ 81,004 (1986) (three months where disruptions caused by installation of a new computer system left firm's records inaccessible).

## Wondrack's Exception Application

Wondrack sells both gasoline and diesel fuel. The firm requests that it be excepted from the weekly survey because it creates a "burden on the cashiers and food service people" it employs. Wondrack states that its business practice is to not quote prices over the phone to anyone unless it knows that person as a customer. Since the EIA-878 report uses a phone survey to compile information, the firm states that the survey creates a conflict with its normal business policy.

## Analysis

Wondrack has not shown that it meets the standards for exception relief set forth above. While it may experience some inconvenience in responding to the EIA-878 survey each week, this inconvenience does not appear to be greater than that experienced by other surveyed firms. Nothing in the record indicates that Wondrack is financially strained, or that the survey requirement burdens the firm in a unique or exceptional way.

The data collected from Form EIA-878 constitutes the DOE's only source of timely, reliable, weekly information on critical transportation fuels during market disruptions. Reliable data is vital to the nation's ability to formulate energy policies and to respond effectively to any future supply disruptions. Unless firms such as Wondrack are part of the EIA's statistical sample, the DOE will be unable to formulate valid

estimates from a cross-section of the industry. There is no evidence that the burden on Wondrack of providing the requested data outweighs the benefits to the DOE and the nation from access to the information.

In view of the foregoing considerations, we find that the requirement that Wondrack respond to the EIA-878 survey does not constitute a special hardship, inequity, or unfair distribution of burdens. Accordingly, the Application for Exception filed by Wondrack should be denied.

It Is Therefore Ordered That:

- (1) The Application for Exception filed by Wondrack Distributing Inc. on March 5, 1999 is hereby denied.
- (2) Administrative review of this Decision and Order may be sought by any person who is aggrieved or adversely affected by the denial of exception relief. Such review shall be commenced by the filing of a petition for review with the Federal Energy Regulatory Commission within 30 days of the date of this Decision and Order pursuant to 18 C.F.R. Part 385, Subpart J.

George B. Breznay

Director

Office of Hearings and Appeals

Date: September 22, 1999

# Case No. VEE-0056

August 6, 1999

DECISION AND ORDER

OF THE DEPARTMENT OF ENERGY

Application for Exception

Name of Petitioner: Stacey Oil Co.

Date of Filing: April 2, 1999

Case Number: VEE-0056

On April 2, 1999, Stacey Oil Co. (Stacey), of Whitefish, Montana, filed an Application for Exception with the Office of Hearings and Appeals of the Department of Energy. In its Application, Stacey requests that it be relieved of the requirement that it file the Energy Information Administration's (EIA) form entitled "Resellers/Retailers' Monthly Petroleum Product Sales Report" (Form EIA- 782B). As explained below, we have determined that the Application for Exception should be granted for a temporary period.

## A. Background

The EIA-782B reporting requirement grew out of the shortages of crude oil and petroleum products during the 1970s. In 1979, Congress found that the lack of reliable information concerning the supply, demand, and prices of petroleum products impeded the nation's ability to respond to the oil crisis. It therefore authorized the DOE to collect data on the supply and prices of petroleum products. The current form collects information concerning the volume and price of various grades and types of motor gasoline, No. 2 distillates, propane, and residual fuel oil, broken down by customer type.

Information obtained from the survey is used to analyze trends within petroleum markets. Summaries of the information and the analyses are published by the EIA in publications such as "Petroleum Marketing Monthly." This data is used by Congress and by more than 35 state governments to project trends and to formulate state and national energy policies. In addition, firms in the petroleum industry frequently base business decisions on the data published by EIA.

The DOE has attempted to ensure that this survey yields valuable information while minimizing the burden placed on the industry. Thus, in designing the form, the DOE consulted with potential survey respondents, various industry associations, users of the energy data, state governments, and other federal agencies. Moreover, to minimize the reporting burden, the EIA periodically selects a

relatively small sample of companies to file the report.(1) In addition, to reduce the amount of time spent completing the forms, firms may rely upon reasonable estimates.(2)

## B. Exceptions Criteria

Form EIA-782B is a mandatory report designed to collect monthly information on refined petroleum sales volumes and prices from a sample of resellers and retailers. 42 U.S.C. § 7135(b). This Office has authority

to grant exception relief where the reporting requirement causes a “serious hardship, gross inequity or unfair distribution of burdens.” 42 U.S.C. § 7194 (a); 10 C.F.R. §1003.25(b)(2). Exceptions are appropriate only in extreme cases. Because all reporting firms are burdened to some extent by reporting requirements, exception relief is appropriate only where a firm can demonstrate that it is adversely affected by the reporting requirement in a way that differs significantly from similar reporting firms. Thus, mere inconvenience does not constitute a sufficient hardship to warrant relief. Glenn W. Wagoner Oil Co., 16 DOE ¶ 81,024 (1987).

In considering a request for exception relief, we must weigh the firm's difficulty in complying with the reporting requirement against the nation's need for reliable energy data. Neither the fact that a firm is relatively small, nor the fact that it has filed the report for a number of years alone constitute grounds for exception relief. If firms of all sizes, both large and small, are not included the estimates and projections generated by the EIA's statistical sample will be unreliable. Mulgrew Oil Co., 20 DOE ¶ 81,009 (1990).

The following examples illustrate the types of circumstances that may justify relief from the reporting requirement. Since each case is different, these examples are not intended to reflect all circumstances that justify exception relief:

- Financial difficulties underlie most approvals of exception relief. We have granted a number of exceptions where the applicant's financial condition is so precarious that the additional burden of meeting the DOE reporting requirements threatens its continued viability. Mico Oil Co., 23 DOE ¶ 81,015 (1994) (firm lost one million dollars over previous three years); Deaton Oil Co., 16 DOE ¶ 81,026 (1987) (firm in bankruptcy).
- Relief may be appropriate when the only person capable of preparing the report is ill and the firm cannot afford to hire outside help. S&S Oil & Propane Co., 21 DOE ¶ 81,006 (1991) (owner being treated for cancer); Midstream Fuel Serv., 24 DOE ¶ 81,023 (three month extension of time to file reports granted when two office employees simultaneously on maternity leave); Eastern Petroleum Corp., 14 DOE ¶ 81,011 (1986) (two months relief granted when computer operator broke wrist).
- A combination of factors may warrant exception relief. Exception relief for 10 months was granted where personnel shortages, financial difficulties, and administrative problems resulted from the long illness and death of a partner. Ward Oil Co., 24 DOE ¶ 81,002 (1994); see also Belcher Oil Co., 15 DOE ¶ 81,018 (1987) (extension of time granted where general manager abruptly left firm without notice).
- Extreme or unusual circumstances that disrupt a firm's activities may warrant relief. Little River Village Campground, Inc., 24 DOE ¶ 81,033 (1994) (five months relief because of flood); Utilities Bd. of Citronelle-Gas, 4 DOE ¶ 81,205 (1979) (hurricane); Meier Oil Serv., 14 DOE ¶ 81,004 (1986) (three months where disruptions caused by installation of a new computer system left firm's records inaccessible).

## C. Stacey's Exception Application

Stacey sells motor gasoline (wholesale and retail), #2 residential heating oil, #2 non-residential heating oil, #2 distillate wholesale. Classified by the EIA as a “non-certainty firm,” the company has filed Form EIA-782B since Sample 13 began in early 1999. Email from Sherry Beri, EIA, to Dawn L. Goldstein, Staff Attorney, Office of Hearings and Appeals (April 6, 1999). The firm informed us that they only have two office employees out of eight total employees, they also run an auto repair shop and a convenience store, and finally that they have lost over \$322,000 since 1994. They also assert that it takes them 60 hours to fill out the form.(3)

## D. Analysis

Stacey has shown that it meets the standards for exception relief set forth above. Because Stacey appears to be operating at a considerable financial loss, in combination with the fact that it is running three

businesses with a small number of people (and two office employees), the reporting requirement burdens the firm in an exceptional way. In this case, the burden on the applicant in completing the form outweighs the benefit to the nation of having access to the data which the firm could provide. In view of the foregoing considerations, we find that the requirement that Stacey file Form EIA-782B constitutes a special hardship, inequity, or unfair distribution of burdens. 42 U.S.C. § 7194 (a); 10 C.F.R. §1003.25(b)(2). Accordingly, the Application for Exception filed by Stacey should be granted. However, we note that the major problems which the firm presently faces, i.e., financial difficulties, may be temporary. Therefore, we do not find that permanent exception relief is appropriate and shall extend exception relief to Stacey for a one-year period.(4)

It Is Therefore Ordered That:

(1) The Application for Exception filed by Stacey Oil Co. on April 2, 1999, Case No. VEE-0056, is hereby granted for a one year period.

(2) Administrative review of this Decision and Order may be sought by any person who is aggrieved or adversely affected by the denial of exception relief. Such review shall be commenced by the filing of a petition for review with the Federal Energy Regulatory Commission within 30 days of the date of this Decision and Order pursuant to 18 C.F.R. Part 385, Subpart J.

George B. Breznay

Director

Office of Hearings and Appeals

Date: August 6, 1999

(1)Firms that do business in four or more states or which account for over five percent of the sales of any particular product in a state are always included in the sample of firms required to file the report. A random sample of other firms is also selected. This random sample changes approximately every 12 months, but a firm may be reselected for a subsequent sample. A firm that has been included in three consecutive random samples will generally not be included in a fourth consecutive sample, but may be included in a later sample.

(2)The firm must make a good faith effort to provide reasonably accurate information that is consistent with the accounting records maintained by the firm. The firm must also alert the EIA if the estimates are later found to be materially different from actual data.

(3)We asked Stacey to explain why it took so much longer for it to fill out the form than the average 2 to 3 hours which EIA has calculated that the form requires. Stacey explained that it has an “antiquated” computer system which does not supply the information the form seeks. In addition, Stacey varies its prices for each customer according to volume, distance of travel, cash or credit and several other factors. Stacey’s transportation and delivery prices also vary. It also noted that they purchase almost all of their fuel “tax paid” and therefore have never calculated the price per gallon without tax as the form requires. See Letter from Stacey Renshaw, Stacey Oil Company, to Dawn Goldstein, OHA (May 4, 1999).

(4)When Stacey returns to the survey pool, we encourage it to use a sound method of estimation to reduce its reporting burden. The instructions for the form provide that if a firm does not have the actual sales volume and unit prices by the customer categories specified on the form, estimates may be supplied. In addition, we note that if its financial situation has not improved, it may file another request for exception.

February 23, 2007

**DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS**

**Application for Exception**

Name of Case: Sta-Lo Oil Company, Inc.

Date of Filing: April 2, 1999

Case No.: VEE-0057

On April 2, 1999, Sta-Lo Oil Company (Sta-Lo) filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). The firm requests that it be permanently relieved of the requirement to prepare and file the Energy Information Administration (EIA) Form EIA-782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report." As explained below, we have determined that Sta-Lo's request should be granted in part.

**I. Background**

The DOE's Energy Information Administration (EIA) is authorized to collect, analyze, and disseminate energy data and other information.<sup>1</sup> The EIA-782B reporting requirement grew out of the shortages of crude oil and petroleum products during the 1970s. In 1979, Congress determined that the lack of reliable information concerning the supply, demand and prices of petroleum products impeded the nation's ability to respond to the oil crisis. It therefore authorized the DOE to collect data on the supply and prices of petroleum products. This information is used to analyze trends within petroleum markets. Summaries of the information and the analyses are reported by EIA in publications such as "Petroleum Marketing Monthly." This information is used by Congress and state governments to project trends and to formulate national and state energy policies. Access to this data is vital to the nation's ability to anticipate and respond to potential energy shortages.<sup>2</sup>

Form EIA-782B is a monthly report, pursuant to which resellers and retailers report the volume and price of sales of motor gasoline, No. 2 distillates, propane, and residual fuel oil. In order to minimize the reporting burden, the EIA periodically selects a relatively small sample of companies to file Form EIA-782B<sup>3</sup> and permits reporting firms to rely on reasonable estimates.<sup>4</sup>

---

<sup>1</sup> 15 U.S.C. § 772(b); 42 U.S.C. § 7135(b).

<sup>2</sup> See H.R. Rep. No. 373, 96<sup>th</sup> Con., 1st Sess., reprinted in 1979 U.S. Code Cong. & Admin. News 1764, 1781 (H.R. Report 373).

<sup>3</sup> Firms that account for over five percent of the sales of any particular product in a state or do business in four or more states, designated as certainty firms, are always included in the sample of firms required to file the form. A random sample of other firms is also selected. This random sample changes approximately every 24 to 30 months, but a firm may be reselected for subsequent samples. A firm that has been included in three consecutive random samples will generally not be included in a fourth consecutive sample, but may be included in a later sample.



## **II. Exception Criteria**

OHA has the authority to grant exception relief where the reporting requirement causes a “serious hardship, gross inequity or unfair distribution of burdens.”<sup>5</sup> Since all reporting firms are burdened to some extent by reporting requirements, exception relief is appropriate only where a firm can demonstrate that it is adversely affected by the reporting requirement in a way that differs significantly from similar reporting firms.

When considering a request for exception relief, we must weigh the firm’s difficulty in complying with the reporting requirement against the nation’s need for reliable energy data. Thus, mere inconvenience does not constitute a hardship warranting relief.<sup>6</sup> Similarly, the fact that a firm is relatively small or has filed reports for a number of years does not constitute a hardship warranting relief.<sup>7</sup> If firms of all sizes, both large and small, are not included in the survey, the estimates and projections generated by EIA’s statistical sample will be unreliable.<sup>8</sup>

OHA has granted relief from the reporting requirement under various circumstances. For example, we have granted relief where: the firm’s financial situation is so precarious that the additional burden of meeting the DOE reporting requirements threatens the firm’s continued viability;<sup>9</sup> the firm’s only employee capable of preparing the report is ill and the firm cannot afford to hire outside help;<sup>10</sup> extreme or unusual circumstances disrupt a firm’s activities;<sup>11</sup> or, a combination of factors resulting from unavoidable circumstances makes completing the form impracticable.<sup>12</sup>

## **III. The Application for Exception**

Sta-Lo is a seller of petroleum products based in Kansas City, Missouri. In the past, Sta-Lo filed form EIA-782B in Sample 9 (from July 1991 to March 1993), Sample 11 (from April 1994 to February 1997), and most recently for the past eight years in Samples 13, 14, and 15 (from April 1999 to the present).<sup>13</sup> In its application, Sta-Lo states that it has reduced its staff as a result of difficulties in its retail market and the loss of a long-time clerical employee due to a serious

---

<sup>4</sup> Form EIA-782B requires that the firm make a good faith effort to provide reasonably accurate information that is consistent with the accounting records maintained by the firm. The firm must alert the EIA if the estimates are later found to be materially different from actual data.

<sup>5</sup> 42 U.S.C. § 7194; 10 C.F.R. § 1003.25(b)(2).

<sup>6</sup> *Glenn Wagoner Oil Co.*, 16 DOE ¶ 81,024 (1987).

<sup>7</sup> *Mulgrew Oil Co.*, 20 DOE ¶ 81,009 (1990).

<sup>8</sup> *Id.*

<sup>9</sup> *Mico Oil Co.*, 23 DOE ¶ 81,105 (1994) (firm lost one million dollars over previous three years); *Deaton Oil Co.*, 16 DOE ¶ 81,206 (1987) (firm in bankruptcy).

<sup>10</sup> *S&S Oil & Propane Co.*, 21 DOE ¶ 81,006 (1991) (owner being treated for cancer); *Midstream Fuel Serv.*, 24 DOE ¶ 81,203 (1994) (three month extension of time to file reports granted when two office employees simultaneously on maternity leave); *Eastern Petroleum Corp.*, 14 DOE ¶ 81,011 (1986) (two month extension granted when computer operator broke wrist).

<sup>11</sup> *Little River Village Campground, Inc.*, 24 DOE ¶ 81,033 (1994) (five months relief because of flood); *Utilities Bd. of Citronelle-Gas*, 4 DOE ¶ 81,025 (1979) (hurricane); *Meier Oil Serv.*, 14 DOE ¶ 81,004 (1986) (three month extension granted where disruptions caused by installation of new computer system left the firm’s records inaccessible).

<sup>12</sup> *Ward Oil Co.*, 24 DOE ¶ 81,002 (1994) (ten month extension granted where long illness and death of a partner resulted in personnel shortages, financial difficulties and other administrative problems).

<sup>13</sup> See Electronic Mail Message from Tammy Heppner, EIA, to Valerie Vance Adeyeye, OHA (January 31, 2007).

illness.<sup>14</sup> The firm also states that its finances are precarious.<sup>15</sup> The additional burden of meeting reporting requirements threatens the continued financial health of the firm, because now only one person is doing clerical work.<sup>16</sup> Since filing the application the firm's financial situation has continued to deteriorate, the general manager has sold all of the assets of his other fuel company and he is trying to sell Sta-Lo's stations.<sup>17</sup> The general manager contends that he cannot afford to hire additional staff and is in the process of selling off the company.<sup>18</sup> Sta-Lo requests that it be permanently relieved of the obligation to file form EIA-782B.

#### **IV. Analysis**

Upon careful examination of Sta-Lo's Application for Exception, we have determined that temporary exception relief is warranted. The firm has experienced financial setbacks and the general manager is trying to sell the remaining assets of the company. The firm lost a very experienced clerical employee to a severe illness, and now operates with only one staff person. Further, Sta-Lo has been included in the past three consecutive samples and EIA generally excludes such firms from a fourth consecutive sample.<sup>19</sup> Accordingly, we have determined that a temporary exception should be granted through August 2009.<sup>20</sup>

It Is Therefore Ordered That:

- (1) The Application for Exception filed by Sta-Lo Fuel Company, Case No., VEE-0057, be, and hereby is, granted as set forth in paragraph (2) below and denied in all other respects.
- (2) Sta-Lo Fuel Company is relieved of the requirement to file form EIA-782B for the months February 2007 through August 2009.
- (3) To the extent that the Application is denied, administrative review of this Decision and Order may be sought by any persons aggrieved or adversely affected by the denial of exception relief. Such review shall be commenced by filing a petition for

---

<sup>14</sup> See Application for Exception.

<sup>15</sup> See Memorandum of Telephone Conversation between Warren Foskett, Sta-Lo, and Valerie Vance Adeyeye, OHA (February 11, 2000).

<sup>16</sup> *Id.*; Memorandum of Telephone Conversation between Warren Foskett and Valerie Vance Adeyeye (January 19, 2007).

<sup>17</sup> See Memorandum of Telephone Conversation between Warren Foskett, Sta-Lo, and Valerie Vance Adeyeye, OHA (January 19, 2007).

<sup>18</sup> See Memoranda of Telephone Conversations between Warren Foskett, Sta-Lo, and Valerie Vance Adeyeye, OHA (January 19 and 26, 2007).

<sup>19</sup> See Electronic Mail Message from Tammy Heppner, EIA to Valerie Vance Adeyeye, OHA (January 31, 2007).

<sup>20</sup> See *Meier Oil Serv.*, 14 DOE ¶ 81,004 (1986); *Ward Oil Co.*, 24 DOE ¶ 81,002 (1994).

review with the Federal Energy Regulatory Commission within 30 days of the date of this Decision and Order pursuant to 18 C.F.R. Part 385, Subpart J.

Fred L. Brown  
Acting Director  
Office of Hearings and Appeals

Date: February 23, 2007

# Case No. VEE-0058

February 9, 2000

DECISION AND ORDER

OF THE DEPARTMENT OF ENERGY

Application for Exception

Name of Petitioner: Farmers Union Oil Company

Date of Filing: April 19, 1999

Case Number: VEE-0058

On April 19, 1999, Farmers Union Oil Company (Farmers) filed an Application for Exception with the Office of Hearings and Appeals of the Department of Energy. In its Application, Farmers requests that it be relieved of the requirement that it file the Energy Information Administration's (EIA) form entitled "Resellers/Retailers' Monthly Petroleum Product Sales Report" (Form EIA-782B). As explained below, we have determined that the Application for Exception should be denied.

## I. Background

The EIA-782B reporting requirement grew out of the shortages of crude oil and petroleum products during the 1970s. In 1979, Congress found that the lack of reliable information concerning the supply, demand, and prices of petroleum products impeded the nation's ability to respond to the oil crisis. It therefore authorized the DOE to collect data on the supply and prices of petroleum products. The current form collects information concerning the volume and price of various grades and types of motor gasoline, No. 2 distillates, propane, and residual fuel oil, broken down by customer type.

Information obtained from the survey is used to analyze trends within the petroleum markets. Summaries of the information and the analyses are published by the EIA in publications such as "Petroleum Marketing Monthly." This data is used by Congress and by more than 35 state governments to project trends and to formulate state and national energy policies. In addition, firms in the petroleum industry frequently base business decisions on the data published by EIA.

The DOE has attempted to ensure that this survey yields valuable information while minimizing the burden placed on the industry. Thus, in designing the form, the DOE consulted with potential survey respondents, various industry associations, users of the energy data, state governments, and other federal agencies. Moreover, to minimize the reporting burden, the EIA periodically selects a relatively small sample of companies to file the report. In addition, to reduce the amount of time spent completing the forms, firms may rely upon reasonable estimates.

## II. Farmers' Application for Exception

Farmers is a retailer based in Hettinger, North Dakota. In its application, the firm requests an exception to the Form EIA-782B reporting requirement on the basis that the firm's bookkeeper is overworked and experiencing difficult circumstances in her personal life. Specifically, Farmers asserts that completing

Form EIA-782B would require the firm's bookkeeper to work Saturdays. According to the firm: "This would not allow her spend time with her newborn infant." Application for Exception. In addition, the firm notes that it is suffering a financial hardship, having lost in excess of \$160,000 in the past two years. *Id.* According to the firm, requiring the bookkeeper to work Saturdays would require the firm to pay overtime, which it cannot currently afford to do. *Id.*

### III. Analysis

The OHA has the authority to grant exception relief to alleviate or prevent a serious hardship or gross inequity. 10 C.F.R. § 1003.20. *See also* 6 Fed. Energy Guidelines ¶ 80,003 (Exceptions and Appeals Guidelines). In previous cases involving requests for exception relief, we have recognized that mandatory reporting requirements cause some inconvenience to respondents. Since all reporting firms are burdened by these requirements, we have held that exception relief is appropriate only when a firm can demonstrate that it is adversely affected by the reporting requirement in a way that differs significantly from similar reporting firms. When evaluating an applicant's request for exception relief, we consider whether the difficulty in complying with a particular reporting requirement is outweighed by the benefits to the nation in obtaining the required data. *See Lockheed Air Terminal*, 15 DOE ¶ 81,010 (1986); *Champlain Oil Co.*, 14 DOE ¶ 81,022 (1986); *Three L Inc.*, 12 DOE ¶ 81,014 (1984); *Pure Oil Co.*, 8 DOE ¶ 81,019 (1981).

We have granted full or partial relief from EIA reporting requirements in cases where applicants have shown that those requirements placed a burden upon them that was significantly different from the inconvenience generally associated with the requirement to submit EIA forms. *See Eastern Petroleum Corp.*, 14 DOE ¶ 81,011 (1986); *LBM Distributors, Inc.*, 13 DOE ¶ 81,043 (1985); *Ed Joyce Fuel and Feeds*, 13 DOE ¶ 81,024 (1985).

We have considered Farmers' claim and find no serious hardship or gross inequity that would warrant exception relief in this case. Form EIA-782B requires little more than the essential type of pricing, supply, and inventory data that, at a minimum, is required to operate a business. Farmers certainly records the prices at which it sells product, the volumes involved in each transaction, and the location of the purchaser. While we do not doubt that the firm's office staff is already very busy, we do not believe that the amount of time required to complete the form constitutes an onerous burden on them. The EIA estimates that it should normally take approximately 2.5 hours per month for a firm to fill out EIA-782B. *See* Form EIA-782B, Schedule 1. This does not seem to be an unreasonable amount of time. Furthermore, the burden of this requirement on the firm's office staff could be lessened by the use of estimates. The EIA permits firms to estimate sales data in order to reduce the time spent completing the form. *See* Section VI of the General Instructions to Form EIA-782B.

It is important to note that the data collected from Form EIA-782B provides the DOE with information on the supply, demand, and price of petroleum products. The federal and state governments, as well as private firms, use this information to perform analyses and make projections. Timely and reliable access to the data is vital to the nation's ability to anticipate and respond quickly and effectively to any future supply disruptions. *See* H.R. Rep. No. 373, 96th Cong., 1st Sess., reprinted in 1979 U.S. Code Cong., and Ad. News 1764, 1781. The DOE has attempted to minimize the burden placed on the public in gathering this information, while insuring that the reporting requirements are administered in a consistent and equitable manner. After balancing these strong public policy considerations against Farmers' claim, we have concluded that its Application for Exception should be denied.

It Is Therefore Ordered That:

- (1) The Application for Exception filed by Farmers Union Oil Company, Inc. on April 19, 1999, Case No. VEE-0058, is hereby denied.
- (2) Administrative review of this Decision and Order may be sought by any person who is aggrieved or adversely affected by the denial of exception relief. Such review shall be commenced by the filing of a

petition for review with the Federal Energy Regulatory Commission within 30 days of the date of this Decision and Order pursuant to 18 C.F.R. Part 385, Subpart J.

George B. Breznay

Director

Office of Hearings and Appeals

Date: February 9, 2000

# Case No. VEE-0059

October 20, 1999

DECISION AND ORDER

OF THE DEPARTMENT OF ENERGY

Application for Exception

Name of Petitioner:XXXXXXXXXX Oil Co., Inc.

Date of Filing:April 26, 1999

Case Number: VEE-0059

On April 26, 1999, XXXXXXXXXXXX Oil Co., Inc. (XXXXXXXXXX) of XXXXXXXXXXXX, filed an Application for Exception with the Office of Hearings and Appeals of the Department of Energy. In its Application, XXXXXXXXXXXX requests that it be relieved of the requirement that it file the Energy Information Administration's (EIA) form entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report" (EIA-782B). As explained below, we have determined that the Application for Exception should be granted.

## Background

The EIA-782B reporting requirement grew out of the shortages of crude oil and petroleum products during the 1970s. In 1979, Congress found that the lack of reliable information concerning the supply, demand, and prices of petroleum products impeded the nation's ability to respond to the oil crisis. It therefore authorized the DOE to collect data on the supply and prices of petroleum products. The current form collects information concerning the volume and price of various grades and types of motor gasoline, No. 2 distillates, propane, and residual fuel oil, broken down by customer type.

Information obtained from the survey is used to analyze trends within petroleum markets. Summaries of the information and the analyses are published by the EIA in publications such as "Petroleum Marketing Monthly." This data is used by Congress and by more than 35 state governments to project trends and to formulate state and national energy policies. In addition, firms in the petroleum industry frequently base business decisions on the data published by the EIA.

The DOE has attempted to ensure that this survey yields valuable information while minimizing the burden placed on the industry. Thus, in designing the form, the DOE consulted with potential survey respondents, various industry associations, users of the energy data, state governments, and other federal agencies. Moreover, to minimize the reporting burden, the EIA periodically selects a sample of companies to file the report.(1) In addition, to reduce the amount of time spent completing the forms, firms may rely upon reasonable estimates.(2)

## Exceptions Criteria

Form EIA-782B is a mandatory report designed to collect monthly information on refined petroleum sales volumes and prices from a sample of resellers and retailers. 42 U.S.C. § 7135(b). This Office has authority

to grant exception relief where the reporting requirement causes a "serious hardship, gross inequity or unfair distribution of burdens." 42 U.S.C. § 7194 (a); 10 C.F.R. §1003.25(b)(2). Exceptions are appropriate only in extreme cases. Because all reporting firms are burdened to some extent by reporting requirements, exception relief is appropriate only where a firm can demonstrate that it is adversely affected by the reporting requirement in a way that differs significantly from similar reporting firms. Thus, mere inconvenience does not constitute a sufficient hardship to warrant relief. XXXXXXXXXXXX W. Wagoner Oil Co., 16 DOE ¶ 81,024 (1987).

In considering a request for exception relief, we must weigh the firm's difficulty in complying with the reporting requirement against the nation's need for reliable energy data. See Champlain Oil Co., Inc., 14 DOE ¶ 81,022 (1986); Eastern Petroleum Corp., 14 DOE ¶ 81,011 (1986). This entails balancing any burden the firm may encounter in meeting its reporting requirement against the public interest in collecting reliable information concerning energy markets upon which public decisions may be based. Neither the fact that a firm is relatively small, nor the fact that it has filed the report for a number of years alone constitute grounds for exception relief. If firms of all sizes, both large and small, are not included the estimates and projections generated by the EIA's statistical sample will be unreliable. Mulgrew Oil Co., 20 DOE ¶ 81,009 (1990).

The following examples illustrate the types of circumstances that may justify relief from the reporting requirement. Since each case is different, these examples are not intended to reflect all circumstances that justify exception relief.

× Financial difficulties underlie most approvals of exception relief. We have granted a number of exceptions where the applicant's financial condition is so precarious that the additional burden of meeting the DOE reporting requirements threatens its continued viability. Mico Oil Co., 23 DOE ¶ 81,015 (1994) (firm lost one million dollars over previous three years); Deaton Oil Co., 16 DOE ¶ 81,026 (1987) (firm in bankruptcy).

× Relief may be appropriate when the only person capable of preparing the report is ill and the firm cannot afford to hire outside help. S&S Oil & Propane Co., 21 DOE ¶ 81,006 (1991) (owner being treated for cancer); Midstream Fuel Serv., 24 DOE ¶ 81,023 (1994)(three month extension of time to file reports granted when two office employees simultaneously on maternity leave); Eastern Petroleum Corp., 14 DOE ¶ 81,011 (1986) (two months relief granted when computer operator broke wrist).

× A combination of factors may warrant exception relief. Exception relief for ten months was granted where personnel shortages, financial difficulties, and administrative problems resulted from the long illness and death of a partner. Ward Oil Co., 24 DOE ¶ 81,002 (1994); see also Belcher Oil Co., 15 DOE ¶ 81,018 (1987) (extension of time granted where general manager abruptly left firm without notice).

× Extreme or unusual circumstances that disrupt a firm's activities may warrant relief. Little River Village Campground, Inc., 24 DOE ¶ 81,033 (1994) (five months relief because of flood); Utilities Bd. of Citronelle-Gas, 4 DOE ¶ 81,205 (1979) (hurricane); Meier Oil Serv., 14 DOE ¶ 81,004 (1986) (three months where disruptions caused by the installation of a new computer system left firm's records inaccessible).

## **XXXXXXXXXX's Exception Application**

XXXXXXXXXX, located in XXXXXXXXXXXX, sells retail motor gasoline to service stations and convenience stores. Classified by the EIA as a "medium sized company," XXXXXXXXXXXX has filed Form EIA-782B throughout EIA Sample 13, which began in February/March 1999.(3) Because XXXXXXXXXXXX is not classified as a "certainty firm" by the EIA, it is possible, but not guaranteed, that the company will be rotated out of the reporting sample when EIA conducts the next random selection process for inclusion in EIA Sample 14.



In the Application for Exception, the owner of XXXXXXXXXXXX, XXXXXXXXXXXX, requests relief from the EIA reporting requirement because, since November 1997, his company has been experiencing an operating loss of \$9,000 to \$10,000 per month. Mr. XXXXXXXXXXXX states that he has been spending all of his available hours at work trying to keep his business afloat. He states that he has recently had to sell one of his service stations and a rental property, and refinance some business loans just to keep his business solvent. Furthermore, Mr. XXXXXXXXXXXX states that, because of his inexperience with the EIA form and his current unavailability to learn how to properly fill out this form, he would be forced to hire an accountant to continue to fulfill the EIA reporting requirement. Given XXXXXXXXXXXX's current financial struggles, Mr. XXXXXXXXXXXX contends that requiring his company to fill out the EIA form is unduly burdensome on his business.

## Analysis

Our review of the information presented in XXXXXXXXXXXX's Application for Exception leads us to conclude that there is considerable merit to XXXXXXXXXXXX's contention that the EIA reporting requirement is currently significantly more burdensome to XXXXXXXXXXXX than to other potential respondents. As mentioned above, we have granted exception relief when a firm has demonstrated that the reporting requirement threatens its continued viability due to its precarious financial condition. We believe such circumstances exist in the present case and that granting exception relief to XXXXXXXXXXXX is appropriate. In its Application, XXXXXXXXXXXX has provided its financial statements for the last two years. These financial statements confirm that XXXXXXXXXXXX has had recent cash flow problems necessitating that the company sell off some of its assets to generate additional cash. XXXXXXXXXXXX's poor financial condition has also led it to refinance its debt so that it could significantly lower its monthly payments.

We conclude that the burden placed upon XXXXXXXXXXXX at this time, due to its precarious financial position, is greater than that encountered by other firms required to complete Form EIA-782B. Accordingly, XXXXXXXXXXXX should be granted temporary relief from its obligation to file Form EIA-782B. We will therefore grant exception relief to XXXXXXXXXXXX for a one-year period, which should give the firm sufficient time to rectify its current financial difficulties.

It Is Therefore Ordered That:

- (1) The Application for Exception filed by XXXXXXXXXXXX Oil Co., Case No. VEE-0059, is hereby granted to the extent set forth in paragraph (2) below.
- (2) Notwithstanding the instructions to Form EIA-782B, XXXXXXXXXXXX Oil Co. shall not be required to file reports to the Energy Information Administration for a one-year period, beginning November 1, 1999 and extending to November 1, 2000.
- (3) Administrative review of this Decision and Order may be sought by any person who is aggrieved or adversely affected by the denial of exception relief. Such review shall be commenced by the filing of a petition for review with the Federal Energy Regulatory Commission within 30 days of the date of this Decision and Order pursuant to 18 C.F.R. Part 385, Subpart J.

George B. Breznay

Director

Office of Hearings and Appeals

Date: October 20, 1999

(1) Firms that do business in four or more states or which account for over five percent of the sales of any

particular product in a state are always included in the sample of firms required to file the report. A random sample of other firms is also selected. This random sample changes approximately every 12 months, but a firm may be reselected for a subsequent sample. A firm that has been included in three consecutive random samples will generally not be included in a fourth consecutive sample, but may be included in a later sample.

(2)The firm must make a good faith effort to provide reasonably accurate information that is consistent with the accounting records maintained by the firm. The firm must also alert the EIA if the estimates are later found to be materially different from actual data.

(3)See Record of Telephone Conversation between Sherry Beri, EIA, and Leonard Tao, OHA Staff Attorney (October 13, 1999).

# Case No. VEE-0060

December 1, 1999

DECISION AND ORDER

OF THE DEPARTMENT OF ENERGY

Application for Exception

Name of Petitioner: Blakeman Propane, Inc.

Date of Filing: May 11, 1999

Case Number: VEE-0060

On May 11, 1999, Blakeman Propane, Inc. (Blakeman) of Moorcroft, Wyoming, filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). In its application, Blakeman requests that it be relieved of the requirement that it file the Energy Information Administration's (EIA) form entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report" (Form EIA-782B). As explained below, we have determined that the Application for Exception should be denied.

## A. Background

Form EIA-782B is a mandatory reporting requirement which grew out of the shortages of crude oil and petroleum products during the 1970's. In 1979, Congress found that the lack of reliable information concerning the supply, demand, and prices of petroleum products impeded the nation's ability to respond to the oil crisis. It therefore authorized the DOE to collect data on the supply and prices of petroleum products. Form EIA-782B is designed to collect monthly information on refined petroleum sales volumes and prices from a sample of resellers and retailers. 42 U.S.C. § 7135(b). Information obtained from Form EIA-782B is used to analyze trends within petroleum markets. Summaries of the information and the analyses are published by the EIA in publications such as "Petroleum Marketing Monthly." This data is used by Congress and by more than 35 state governments to project trends and to formulate state and national energy policies. In addition, firms in the petroleum industry frequently base business decisions on the data published by EIA.

The DOE has attempted to ensure that the surveys yield valuable information while minimizing the burden placed on the industry. Thus, in designing the form, the DOE consulted with potential survey respondents, various industry associations, users of the energy data, state governments, and other federal agencies. Moreover, to minimize the reporting burden, the EIA periodically selects a relatively small sample of companies to file Form EIA-782B.(1) In addition, to reduce the amount of time spent completing the forms, firms may rely upon reasonable estimates.(2)

## B. Exception Criteria

This Office has authority to grant exception relief where the reporting requirement causes a "special hardship, inequity, or unfair distribution of burdens." 42 U.S.C. § 7194(a); 10 C.F.R. § 1003.25(b)(2). Exceptions are appropriate only in extreme cases. Because all reporting firms are burdened to some extent by reporting requirements, exception relief is appropriate only where a firm can demonstrate that it is

adversely affected by the reporting requirement in a way that differs significantly from similar reporting firms. Thus mere inconvenience does not constitute a sufficient hardship to warrant relief. Glenn W. Wagoner Oil Co., 16 DOE ¶ 81,024 (1987).

In considering a request for exception relief, we must weigh the firm's difficulty in complying with the reporting requirement against the nation's need for reliable energy data. Neither the fact that a firm is relatively small, nor the fact that it has filed the reports for a number of years alone constitute grounds for exception relief. If firms of all sizes, both large and small, are not included, the estimates and projections generated by the EIA's statistical sample will be unreliable. Mulgrew Oil Co., 20 DOE ¶ 81,009 (1990).

The following examples illustrate the types of circumstances that may justify relief from the reporting requirement. Since each case is different, these examples are not intended to reflect all circumstances that justify exception relief:

1. Financial difficulties underlie most approvals of exception relief. We have granted a number of exceptions where the applicant's financial condition is so precarious that the additional burden of meeting the DOE reporting requirements threatens its continued viability. Mico Oil Co., 23 DOE ¶ 81,015 (1994) (firm lost one million dollars over previous three years); Deaton Oil Co., 16 DOE ¶ 81,026 (1987) (firm in bankruptcy).
2. Relief may be appropriate when the only person capable of preparing the report is ill and the firm cannot afford to hire outside help. S&S Oil & Propane Co., 21 DOE ¶ 81,006 (1991) (owner being treated for cancer); Midstream Fuel Serv., 24 DOE ¶ 81,023 (three month extension of time to file reports granted when two office employees simultaneously on maternity leave); Eastern Petroleum Corp., 14 DOE ¶ 81,011 (1986) (two months relief granted when computer operator broke wrist).
3. A combination of factors may warrant exception relief. Exception relief for 10 months was granted where personnel shortages, financial difficulties, and administrative problems resulted from the long illness and death of a partner. Ward Oil Co., 24 DOE ¶ 81,002 (1994); see also Belcher Oil Co., 15 DOE ¶ 81,018 (1987) (extension of time granted where general manager abruptly left firm without notice).
4. Extreme or unusual circumstances that disrupt a firm's activities may warrant relief. Little River Village Campground, Inc., 24 DOE ¶ 81,033 (1994) (five months relief because of flood); Utilities Bd. of Citronelle-Gas, 4 DOE ¶ 81,205 (1979) (hurricane); Meier Oil Serv., 14 DOE ¶ 81,004 (1986) (three months where disruptions caused by installation of a new computer system left firm's records inaccessible).

### **C. Blakeman's Application for Exception**

Blakeman is a propane wholesaler-retailer located in Moorcroft, Wyoming. Classified by EIA as a "medium size firm," Blakeman has filed Form EIA-782B in Samples 12 and 13. The firm sells residential and non-residential propane in the State of Wyoming. In the firm's application, Mr. Steve Blakeman, the Manager of Blakeman's requests an exception to the Form EIA-782B reporting requirement on the basis of the hardship involved in the additional work required to complete and file the form. Mr. Blakeman states that one employee must constantly monitor daily sales and categorize those sales. According to Mr. Blakeman, research must be done to establish the pricing structure for each month, and filing the form produces a situation in which one of Blakeman's employees becomes an unproductive employee for the firm. He also states that the firm is a company struggling in a very competitive market that is heavily dependent on the oil industry. He notes that there is a serious downturn in the agricultural industry in Wyoming. He argues that he will be at a disadvantage with respect to competitors who do not have to report. Mr. Blakeman also claims that it would require twice as many hours than the 2.5 hours that EIA estimates it would take to complete the form during the peak period of heating season.

### **D. ANALYSIS**

Our review of the record in this case indicates that Blakeman has not met the standards for an exception to the EIA reporting requirement that are set forth above. There is inconvenience involved in filling out Form EIA-782B each month, but that inconvenience does not appear to be significantly greater than that experienced by other reporting firms and does not alone justify an exception. In addition, nothing in the record indicates that Blakeman is financially strained, or that meeting the reporting requirement for a period of time will burden the firm in a unique or exceptional way.

EIA estimates that it should take the firm between 2 and 2-1/2 hours per month to complete Form EIA 782B. Blakeman claims that during the peak heating season it will take the firm twice that time to complete the form. There is however no documentation of this claim. See Section VI of the General Instructions to Form EIA- 782B. Furthermore, the time required to complete the form may be

shortened. Form EIA-782B requires little more than the essential type of pricing, supply, and inventory data that, at a minimum, is required to run a business operation. In any case, having to spend 5 hours to prepare the form, rather than 2 or 2-1/2 hours does not alone justify an exception. See Paul Smith Oil Co., 27 DOE ¶ 81,003 (1999). We do not doubt that the firm's office staff is busy, but we do not think that standing alone, the time required to complete the form constitutes an onerous burden.

Balancing the firm's Exception Request against the benefits which the DOE and the nation receive from access to the information, we must conclude that Blakeman has not shown that the extraordinary relief it seeks is warranted. It is important to note that the data collected from Form EIA-782B provides the DOE with information on the supply, demand, and price of petroleum products. The federal and state governments, as well as private firms, use this information to perform analyses and make projections. Timely and reliable access to the data is vital to the nation's ability to anticipate and respond quickly and effectively to any future supply disruptions. See H.R. Rep. No. 373, 96th Cong., 1st Sess., reprinted in 1979 U.S. Code Cong. and Ad. News 1764, 1781. The DOE has attempted to minimize the burden placed on the public in gathering this information, while insuring that the reporting requirements are administered in a consistent and equitable manner. After balancing these strong public policy considerations against Blakeman's claim, we have concluded that the Blakeman Application for Exception should be denied.

It Is Therefore Ordered That:

- (1) The Application for Exception filed by Blakeman Propane, Inc. on May 11, 1999, is hereby denied.
- (2) Administrative review of this Decision and Order may be sought by any person who is aggrieved or adversely affected by the denial of exception relief. Such review shall be commenced by the filing of a petition for review with the Federal Energy Regulatory Commission within 30 days of the date of this Decision and Order pursuant to 18 C.F.R. Part 385, Subpart J.

George B. Breznay

Director

Office of Hearings and Appeals

Date: December 1, 1999

(1) Firms that account for over five percent of the sales of any particular product in a state are always included in the sample of firms required to file the report. A random sample of other firms is also selected. This random sample changes approximately every 12 to 20 months, but a firm may be reselected for subsequent samples. A firm that has been included in three consecutive random samples will generally not be included in a fourth consecutive sample, but may be included in a later sample. Blakeman states that it is among the firms that will have to file indefinitely. However, EIA has informed this Office that Blakeman is a non-certainty firm, and will eventually be rotated out of the sample.

(2)Form EIA-782B stipulates that the firm must make a good faith effort to provide reasonably accurate information that is consistent with the accounting records maintained by the firm. The firm must alert the EIA if the estimates are later found to be materially different from actual data.

# Case No. VEE-0061

September 22, 1999

DECISION AND ORDER

OF THE DEPARTMENT OF ENERGY

Application for Exception

Name of Petitioner: Paul Smith Oil Company

Date of Filing: May 24, 1999

Case Number: VEE-0061

On May 24, 1999, Paul Smith Oil Company (Smith) filed an Application for Exception with the Office of Hearings and Appeals of the Department of Energy. In its Application, Smith asks that it be relieved of the requirement that it file the Energy Information Administration's (EIA) form entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report" (Form EIA-782B). As explained below, we have determined that the Application for Exception should be denied.

## A. Background

The EIA-782B reporting requirement grew out of the shortages of crude oil and petroleum products during the 1970s. In 1979, Congress found that the lack of reliable information concerning the supply, demand, and prices of petroleum products impeded the nation's ability to respond to the oil crisis. It therefore authorized the DOE to collect data on the supply and prices of petroleum products. The current form collects information concerning the volume and price of various grades and types of motor gasoline, No. 2 distillates, propane, and residual fuel oil, broken down by customer type.

Information obtained from the survey is used to analyze trends within the petroleum markets. Summaries of the information and the analyses are published by the EIA in publications such as "Petroleum Marketing Monthly." This data is used by Congress and by more than 35 state governments to project trends and to formulate state and national energy policies. In addition, firms in the petroleum industry frequently base business decisions on the data published by EIA.

The DOE has attempted to ensure that this survey yields valuable information while minimizing the burden placed on the industry. Thus, in designing the form, the DOE consulted with potential survey respondents, various industry associations, users of the energy data, state governments, and other federal agencies. Moreover, to minimize the reporting burden, the EIA periodically selects a relatively small sample of companies to file the report. In addition, to reduce the amount of time

spent completing the forms, firms may rely upon reasonable estimates.(1) EIA designates some companies as certainty firms. A company is designated as such because it either (a) sells five percent or more of a particular product sales category in a state in which it does business, or (b) does business in four or more states.(2) All certainty firms are included in the survey sample on a continuing basis because of their impact on the market. EIA examines the data that these companies submit more closely and considers it more instructive in gauging market trends than data submitted by smaller firms. The continuity of the surveys cannot be maintained by replacing a certainty firm with a similar company since all companies of

this kind are already survey participants.

## B. Exceptions Criteria

Form EIA-782B is a mandatory report designed to collect monthly information on refined petroleum sales volumes and prices from a sample of resellers and retailers. 42 U.S.C. § 7135 (b). This Office has authority to grant exception relief where the reporting requirement causes a “special hardship, inequity, or unfair distribution of burdens.” 42 U.S.C. § 7194 (a); 10 C.F.R. § 1003.25 (b) (2). Exceptions are appropriate only in extreme cases. Because all reporting firms are burdened to some extent by reporting requirements, exception relief is appropriate only where a firm can demonstrate that it is adversely affected by the reporting requirement in a way that differs significantly from similar reporting firms. Thus, mere inconvenience does not constitute a sufficient hardship to warrant relief. Glenn W. Wagoner Oil Co., 16 DOE ¶ 81,024 (1987).

In considering a request for exception relief, we must weigh the firm’s difficulty in complying with the reporting requirement against the nation’s need for reliable energy data. Neither the fact that a firm is relatively small, nor the fact that it has filed the report for a number of years alone constitute grounds for exception relief. If firms of all sizes, both large and small, are not included, the estimates and projections generated by the EIA’s statistical sample will be unreliable. Mulgrew Oil Co., 20 DOE ¶ 81,009 (1990).

The following examples illustrate the types of circumstances that may justify relief from the reporting requirement. Since each case is different, these examples are not intended to reflect all circumstances that justify exception relief:

- Financial difficulties underlie most approvals of exception relief. We have granted a number of exceptions where the applicant’s financial condition is so precarious that the additional burden of meeting the DOE reporting requirements threatens its continued viability. Mico Oil Co., 23 DOE ¶ 81,015 (1994) (firm lost one million dollars over previous three years); Deaton Oil Co., 16 DOE ¶ 81,026 (1987) (firm in bankruptcy).
- Relief may be appropriate when the only person capable of preparing the report is ill and the firm cannot afford to hire outside help. S&S Oil & Propane Co., 21 DOE ¶ 81,006 (1991) (owner being treated for cancer); Midstream Fuel Serv., 24 DOE ¶ 81,023 (three month extension of time to file reports granted when two office employees simultaneously on maternity leave); Eastern Petroleum Corp., 14 DOE ¶ 81,011 (1986) (two months relief granted when computer operator broke wrist).
- A combination of factors may warrant exception relief. Exception relief for 10 months was granted where personnel shortages, financial difficulties, and administrative problems resulted from the long illness and death of a partner. Ward Oil Co., 24 DOE ¶ 81,002 (1994); see also Belcher Oil Co., 15 DOE ¶ 81,018 (1987) (extension of time granted where general manager abruptly left firm without notice).
- Extreme or unusual circumstances that disrupt a firm’s activities may warrant relief. Little River Village Campground, Inc., 24 DOE ¶ 81,033 (1994) (five months relief because of flood); Utilities Bd. Of Citronelle-Gas, 4 DOE ¶ 81,025 (1979) (hurricane); Meier Oil Serv., 14 DOE ¶ 81,004 (1986) (three months where disruptions caused by installation of a new computer system left firm’s records inaccessible).

## C. Smith’s Exception Application

Smith, located in Adrian, Michigan, sells #2 distillate residential fuel oil, #2 diesel wholesale, and motor oil and gasoline (retail and wholesale). Smith is a non-certainty company that is currently included in Sample 13, and also participated in Sample 12. See Memorandum of Telephone Conversation between Sherri Beri, EIA, and Valerie Vance Adeyeye, OHA (August 3, 1999). The company requests an exception to its Form EIA-782B reporting requirement on the basis that: (1) Smith has been filing the reports since February 1997; (2) there are other oil companies in the area that could furnish the requested



data to DOE instead of Smith; and (3) Smith's computer system is not Y2K compliant, and, according to the owner, a replacement system will not be able to produce the data that Smith currently uses to complete the report. The firm's owner, Mr. Paul Smith, also explains that the company only has three employees (Mr. Smith, his wife and a driver), and that both he and his wife work long hours for six or seven days a week. For the above reasons, Smith asks to be excepted from the reporting requirement.

## D. Analysis

Our review of the record in this case indicates that Smith has not met the standards for exception relief set forth above. Mr. Smith states that he spends two hours on Sundays completing the form. This is greater than the EIA estimate for completing the reporting requirement. See Sound Oil Company, 25 DOE ¶ 81,006 (1994). However, in the past, we have denied exception relief to firms which claimed they required a longer period of time to complete the form than that estimated by EIA. Haynes Oil, 21 DOE ¶ 81,002 (1992) (one day); Delgado Oil Co., 17 DOE ¶ 81,005 (1988) (40 hours); Dell Oil Ltd., 13 DOE ¶ 81,009 (1985) (2 days). Although the amount of time Smith requires to fill out the form may be inconvenient, we find that the time required is not excessive and causes no special hardship.

Smith also contends that because the firm has participated in the survey for the past two years and because another oil company could furnish data to DOE, Smith should be relieved of any further reporting requirement. We have repeatedly held that the length of time that a firm has been required to file an EIA form does not constitute grounds for exception relief. Sound Oil Co., 25 DOE ¶ 81,006 (1994) (10 years); Schaal Oil Co., 14 DOE ¶ 81,018 (1986) (3 years); Halron Oil Co., 16 DOE ¶ 81,001 (1987) (12 years). The basis for this conclusion is that the importance of the information collected by the EIA through the survey usually outweighs the inconvenience of providing the data. The fact that the firm has had to provide data to EIA for two years does not by itself constitute a gross inequity which would warrant exception relief. Even though another oil company could furnish data to DOE, Smith's data is unique and no other company can respond on Smith's behalf. Unless firms such as Smith are part of the EIA's statistical sample, the DOE will be unable to formulate valid estimates from a cross-section of the industry. Consequently, there is no evidence that the burden on Smith of providing the requested data outweighs the benefits to DOE and the nation from access to the information.

We find that Smith is not significantly more burdened by the reporting requirement than similarly situated respondents. Even though Mr. Smith does not have time during his normal work hours to complete the form, there is no evidence in the record that completing the form on the weekend is the result of an unusual hardship or that it is indicative of an unfair distribution of burdens. There is also no evidence in the record of serious financial strain on the company. We can distinguish the facts in this case from those in other cases where respondents with small clerical staffs were granted exception relief. A small number of those firms were granted relief when one or more of the staff was unable to work for some length of time. Midstream Fuel Service, 24 DOE ¶ 81,023 (1994) (granted extension of time to file when two office employees were simultaneously on maternity leave); Lee Oil Company, 26 DOE ¶ 81,003 (1996) (granted relief when one employee was required to perform the duties of two employees on temporary leave). Because Smith has not presented evidence of an adverse effect on the company caused by the reporting requirement, we find that the requirement that Smith file Form EIA-782B does not constitute a special hardship, inequity, or unfair distribution of burdens. Accordingly, the Application for Exception filed by Smith should be denied.

It Is Therefore Ordered That:

The Application for Exception filed by Paul Smith Oil Company on May 24, 1999 is hereby denied.

George B. Breznay

Director

## Office of Hearings and Appeals

Date: September 22, 1999

(1)The firm must make a good faith effort to provide reasonably accurate information that is consistent with the accounting records maintained by the firm. The firm must alert the EIA if the estimates are later found to be materially different from actual data.

(2)A random sample of other firms is also selected. This random sample changes approximately every 12 months, but a firm may be reselected for a subsequent sample. A firm that has been included in three consecutive random samples will generally not be included in a fourth consecutive sample, but may be included in a later sample.

# Case No. VEE-0064

May 30, 2000

DECISION AND ORDER

OF THE DEPARTMENT OF ENERGY

Application for Exception

Name of Petitioner: Belcourt Oil Company

Date of Filing: July 23, 1999

Case Number: VEE-0064

On July 23, 1999, Belcourt Oil Company (Belcourt) of Belcourt, North Dakota filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). In its Application, Belcourt requests that it be relieved of the requirement to file Form EIA-782B, entitled "Resellers/Retailers' Monthly Petroleum Product Sales Report" (Form EIA-782B). As explained below, we have determined that the Application for Exception should be denied.

## I. Background

The EIA-782B reporting requirement grew out of the shortages of crude oil and petroleum products during the 1970s. In 1979, Congress found that the lack of reliable information concerning the supply, demand and prices of petroleum products impeded the nation's ability to respond to the oil crisis. It therefore authorized the DOE to collect data on the supply and prices of petroleum products. The current form collects information concerning the volume and price of various grades and types of motor gasoline, No. 2 distillates, propane, and residual fuel oil, broken down by customer type.

Information obtained from the survey is used to analyze trends within petroleum markets. Summaries of the information and the analyses are published by the EIA "Petroleum Marketing Monthly." These data are used by Congress and by more than 35 state governments to project trends and to formulate state and national energy policies. In addition, firms in the petroleum industry frequently base business decisions on the data published by the EIA.

The DOE has attempted to ensure that this survey yields valuable information while minimizing the burden placed on the industry. Thus, in designing the form, the DOE consulted with potential survey respondents, various industry associations, users of the energy data, state governments and other federal agencies. Moreover, to minimize the reporting burden, the EIA periodically selects a sample of companies to file the report. In addition, to reduce the amount of time spent completing the forms,

firms may rely upon reasonable estimates. (1)EIA designates some companies as certainty firms. A company is designated as such because it either (a) sells five percent or more of a particular product sales category in a state in which it does business, or (b) does business in four or more states.(2) All certainty firms are included in the survey sample on a continuing basis because of their impact on the market. EIA examines the data that these companies submit more closely and considers it more instructive in gauging market trends than data submitted by smaller firms. The continuity of the surveys cannot be maintained by replacing a certainty firm with a similar company since all companies of this kind are already survey

participants.

## II. Exception Criteria

This Office has authority to grant exception relief where the reporting requirement causes a “serious hardship, gross inequity or unfair distribution of burdens.” 42 U.S.C. § 7194; 10 C.F.R. §1003.25(b)(2). Because all reporting firms are burdened to some extent by reporting requirements, exception relief is appropriate only where a firm can demonstrate that it is adversely affected by the reporting requirement in a way that differs significantly from similar reporting firms. Thus, mere inconvenience does not constitute a sufficient hardship to warrant relief. Glenn Wagoner Oil Company, 16 DOE ¶ 81,024 (1987).

In considering a request for exception relief, we must weigh the firm’s difficulty in complying with the reporting requirement against the nation’s need for reliable energy data. See Champlain Oil Company, Inc., 14 DOE ¶ 81,022 (1986); Eastern Petroleum Corporation, 14 DOE ¶ 81,011 (1986). This entails balancing any burden the firm may encounter in meeting its reporting requirement against the public interest in collecting reliable information concerning energy markets upon which public decisions may be based. Neither the fact that a firm is relatively small, nor the fact that it has filed the report for a number of years alone constitute grounds for exception relief. If firms of all sizes, both large and small, are not included, the estimates and projections generated by the EIA’s statistical sample will be unreliable. Mulgrew Oil Company, 20 DOE ¶ 81,009 (1990).

The following examples illustrate the types of circumstances that may justify relief from the reporting requirement. Since each case is different, these examples are not intended to reflect all circumstances that justify exception relief.

- . Financial difficulties underlie most approvals of exception relief. We have granted a number of exceptions where the applicant’s financial condition is so precarious that the additional burden of meeting the DOE reporting requirements threatens its continued viability.
- . Relief may be appropriate when the only person capable of preparing the report is ill and the firm cannot afford to hire outside help. S&S Oil & Propane Co., 21 DOE ¶ 81,023 (1994)(three month extension of time to file reports granted when two office employees simultaneously on maternity leave); Eastern Petroleum Corp., 14 DOE ¶ 81,011 (1986) (two months relief granted when computer operator broke wrist).
- . A combination of factors may warrant exception relief. Exception relief for 10 months was granted where personnel shortages, financial difficulties and administrative problems resulted from the long illness and death of a partner. Ward Oil Co., 24 DOE ¶ 81,002 (1994); see also Belcher Oil Co., 15 DOE ¶ 81,018 (1987) (extension of time granted where general manager abruptly left firm without notice).
- . Extreme or unusual circumstances that disrupt a firm’s activities may warrant relief. Little River Village Campground, Inc., 24 DOE ¶ 81,033 (1994) (five months relief because of flood); Utilities Board of Citronelle-Gas, 4 DOE ¶ 81,205 (1979) (hurricane); Meier Oil Service, 14 DOE ¶ 81,004 (1986) (three months where disruptions caused by installation of a new computer system left firm’s records inaccessible).

## III. Belcourt’s Application for Exception

Belcourt, located in Belcourt, North Dakota, sells motor gasoline, No. 2 diesel fuel, No. 2 fuel oil and propane. As a non-certainty firm, Belcourt has filed Form EIA-782 in sample 11. However, Belcourt is now a certainty firm currently participating in sample 13. It has been nonrespondent in 8 of the 12 months in sample 13. In its Application for Exception, Michelle Parisien of Belcourt requests relief from the EIA reporting requirements because she believes the requirements are currently unduly burdensome to the

company. Ms. Parisien states that Belcourt had to purchase a new computer and that she is the only one in the office who is familiar with the system. She further states that Belcourt lacks the personnel to complete the forms.

## IV. Analysis

Our review of the record in this case indicates that Belcourt has not met the standards for an exception to the EIA reporting requirements that are set forth above. In its Application, Belcourt contends that it has been filing with the EIA for many years. We have consistently ruled that the length of time that a firm has been required to file an EIA form does not alone constitute grounds for exception relief. See Schaal Oil Company, 14 DOE ¶ 81,018 (1986) (3 years); see also Harbor Enterprises, 20 DOE ¶ 81,004 (1990) (had been filing various forms, including EIA forms for 20 years). The basis for this conclusion is that the importance to the nation of the information collected by the EIA through the survey usually outweighs the inconvenience to the firm of providing the data. The EIA, however, attempts to replace 50 percent of the reporting sample at the end of each reporting period. A firm that has reported for three consecutive sample periods will generally not be included in a fourth consecutive sample, but may be selected again in a later sample. Therefore, Belcourt's several years of participation does not distinguish it from other firms as unduly or onerously affected.

Belcourt also contends that preparing Form EIA-782B is a burden on the company because it has purchased a new computer system and that there is only one employee who is familiar with the new system. However, we have previously held that the lack of a computer system or the employees to operate a system is insufficient grounds for showing serious hardship. Halron Oil Company, 16 DOE ¶ 81,001 (1987). EIA estimates that it should take 2.5 hours per month for a firm to fill out Form EIA-782B. To shorten the time it takes to prepare Form EIA-782B, Belcourt may use estimates without compromising EIA's comprehensive survey of motor gasoline and middle distillate markets. EIA allows firms to use estimates as long as they are "consistent with standard accounting records maintained by the firm." 2 Federal Energy Guidelines ¶ 18,502 at 18,507. We recommend that Belcourt contact EIA to establish a method of estimation satisfactory to both parties. Toll-free numbers are provided in the General Instructions of the EIA forms.

In summary, Belcourt has not shown that providing EIA the data is excessively onerous to it as compared to other firms similarly affected. The applicant has also failed to show that the effort involved in providing the data outweighs the benefits which the DOE and the nation receive from access to the information. The data collected from Form EIA-782B constitutes our primary source of information on supplies, demand and prices of petroleum products. Reliable data are vital to the nation's ability to anticipate and respond quickly and effectively to any future supply disruptions and thereby protect the public interest. Indeed, this is why the Congress mandated the collection of this type of data. Unless firms such as Belcourt are part of the EIA's statistical sample, the DOE will be unable to formulate valid estimates from a cross-section of the industry. Strong public policy considerations such as these lead us to conclude that Belcourt's request for exception relief from the mandatory reporting requirements is unwarranted.

In accordance with the above discussion, we find that exception relief is not warranted in this case, because Belcourt is not experiencing a special hardship, inequity or unfair distribution of burdens as a result of the requirement that it file Form EIA-782B. Consequently, the Department of Energy has determined that the Application for Exception filed by Belcourt should be denied.

It Is Therefore Ordered That:

- (1) The Application for Exception filed by Belcourt Oil Company, Case No. VEE-0067, is hereby denied.
- (2) Administrative review of this Decision and Order may be sought by any person who is aggrieved or adversely affected by the denial of exception relief. Such review shall be commenced by the filing of a petition for review with the Federal Energy Regulatory Commission within 30 days of the date of this

Decision and Order pursuant to 18 C.F.R. Part 385, Subpart J.

George B. Breznay

Director

Office of Hearings and Appeals

Date: May 30, 2000

(1)The firm must make a good faith effort to provide reasonably accurate information that is consistent with the accounting records maintained by the firm. The firm must alert the EIA if the estimates are later found to be materially different from actual data.

(2)A random sample of other firms is also selected. This random sample changes approximately every 12 months, but a firm may be reselected for a subsequent sample. A firm that has been included in three consecutive random samples will generally not be included in a fourth consecutive sample, but may be included in a later sample.

# Case No. VEE-0066

March 9, 2000

DECISION AND ORDER

OF THE DEPARTMENT OF ENERGY

Application for Exception

Name of Petitioner: Taylor Oil Company

Date of Filing: July 30, 1999

Case Number: VEE-0066

On July 30, 1999, Taylor Oil Company (Taylor) of Somerville, New Jersey filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). In its Application, Taylor requests that it be relieved of the requirement to file Form EIA-782B, entitled "Resellers/Retailers' Monthly Petroleum Product Sales Report" (Form EIA-782B). As explained below, we have determined that the Application for Exception should be denied.

## I. Background

The EIA-782B reporting requirement grew out of the shortages of crude oil and petroleum products during the 1970s. In 1979, Congress found that the lack of reliable information concerning the supply, demand and prices of petroleum products impeded the nation's ability to respond to the oil crisis. It therefore authorized the DOE to collect data on the supply and prices of petroleum products. The current form collects information concerning the volume and price of various grades and types of motor gasoline, No. 2 distillates, propane, and residual fuel oil, broken down by customer type.

Information obtained from the survey is used to analyze trends within petroleum markets. Summaries of the information and the analyses are published by the EIA "Petroleum Marketing Monthly." These data are used by Congress and by more than 35 state governments to project trends and to formulate state and national energy policies. In addition, firms in the petroleum industry frequently base business decisions on the data published by the EIA.

The DOE has attempted to ensure that this survey yields valuable information while minimizing the burden placed on the industry. Thus, in designing the form, the DOE consulted with potential survey respondents, various industry associations, users of the energy data, state governments and other federal agencies. Moreover, to minimize the reporting burden, the EIA periodically selects a sample of companies to file the report. In addition, to reduce the amount of time spent completing the forms, firms may rely upon reasonable estimates. (1) EIA designates some companies as certainty firms. A company is designated as such because it either (a) sells five percent or more of a particular product sales category in a state in which it does business, or (b) does business in four or more states. (2) All certainty firms are included in the survey sample on a continuing basis because of their impact on the market. EIA examines the data that these companies submit more closely and considers it more instructive in gauging market trends than data submitted by smaller firms. The continuity of the surveys cannot be maintained by replacing a certainty firm with a similar company since all companies of this kind are already survey participants.

## II. Exception Criteria

This Office has authority to grant exception relief where the reporting requirement causes a “serious hardship, gross inequity or unfair distribution of burdens.” 42 U.S.C. § 7194; 10 C.F.R. §1003.25(b)(2). Because all reporting firms are burdened to some extent by reporting requirements, exception relief is appropriate only where a firm can demonstrate that it is adversely affected by the reporting requirement in a way that differs significantly from similar reporting firms. Thus, mere inconvenience does not constitute a sufficient hardship to warrant relief. Glenn Wagoner Oil Company, 16 DOE ¶ 81,024 (1987).

In considering a request for exception relief, we must weigh the firm’s difficulty in complying with the reporting requirement against the nation’s need for reliable energy data. See Champlain Oil Company, Inc., 14 DOE ¶ 81,022 (1986); Eastern Petroleum Corporation, 14 DOE ¶ 81,011 (1986). This entails balancing any burden the firm may encounter in meeting its reporting requirement against the public interest in collecting reliable information concerning energy markets upon which public decisions may be based. Neither the fact that a firm is relatively small, nor the fact that it has filed the report for a number of years alone constitute grounds for exception relief. If firms of all sizes, both large and small, are not included, the estimates and projections generated by the EIA’s statistical sample will be unreliable. Mulgrew Oil Company, 20 DOE ¶ 81,009 (1990).

The following examples illustrate the types of circumstances that may justify relief from the reporting requirement. Since each case is different, these examples are not intended to reflect all circumstances that justify exception relief.

- . Financial difficulties underlie most approvals of exception relief. We have granted a number of exceptions where the applicant’s financial condition is so precarious that the additional burden of meeting the DOE reporting requirements threatens its continued viability.
- . Relief may be appropriate when the only person capable of preparing the report is ill and the firm cannot afford to hire outside help. S&S Oil & Propane Co., 21 DOE ¶ 81,023 (1994)(three month extension of time to file reports granted when two office employees simultaneously on maternity leave); Eastern Petroleum Corp., 14 DOE ¶ 81,011 (1986) (two months relief granted when computer operator broke wrist).
- . A combination of factors may warrant exception relief. Exception relief for 10 months was granted where personnel shortages, financial difficulties and administrative problems resulted from the long illness and death of a partner. Ward Oil Co., 24 DOE ¶ 81,002 (1994); see also Belcher Oil Co., 15 DOE ¶ 81,018 (1987) (extension of time granted where general manager abruptly left firm without notice).
- . Extreme or unusual circumstances that disrupt a firm’s activities may warrant relief. Little River Village Campground, Inc., 24 DOE ¶ 81,033 (1994) (five months relief because of flood); Utilities Board of Citronelle-Gas, 4 DOE ¶ 81,205 (1979) (hurricane); Meier Oil Service, 14 DOE ¶ 81,004 (1986) (three months where disruptions caused by installation of a new computer system left firm’s records inaccessible).

## III. Taylor’s Application for Exception

Taylor, located in Somerville, New Jersey, sells motor gasoline, No. 2 diesel fuel and No. 2 fuel oil. As a certainty firm, Taylor has filed Form EIA-782 in the last three samples, 11, 12, and 13. In its Application for Exception, Elizabeth Cappelletti of Taylor requests relief from the EIA reporting requirements because she believes the requirements are currently unduly burdensome to the company. Ms. Cappelletti maintains that Taylor has participated in filing the reports for many years.

## IV. Analysis



Our review of the record in this case indicates that Taylor has not met the standards for an exception to the EIA reporting requirements that are set forth above. In its Application, Taylor contends that it has been filing with the EIA for many years. We have consistently ruled that the length of time that a firm has been required to file an EIA form does not alone constitute grounds for exception relief. See Schaal Oil Company, 14 DOE ¶ 81,018 (1986) (3 years); see also Harbor Enterprises, 20 DOE ¶ 81,004 (1990) (had been filing various forms, including EIA forms for 20 years). The basis for this conclusion is that the importance to the nation of the information collected by the EIA through the survey usually outweighs the inconvenience to the firm of providing the data. The EIA, however, attempts to replace 50 percent of the reporting sample at the end of each reporting period. A firm that has reported for three consecutive sample periods will generally not be included in a fourth consecutive sample, but may be selected again in a later sample. Therefore, Taylor's several years of participation does not distinguish it from other firms as unduly or onerously affected.

Taylor also contends that preparing Form EIA-782B is a burden on the company because its company is growing at a tremendous rate and it is "beginning to find certain tasks to be a hindrance." EIA estimates that it should take 2.5 hours per month for a firm to fill out Form EIA-782B. To shorten the time it takes to prepare Form EIA-782B, Taylor may use estimates without compromising EIA's comprehensive survey of motor gasoline and middle distillate markets. EIA allows firms to use estimates as long as they are "consistent with standard accounting records maintained by the firm." 2 Federal Energy Guidelines ¶ 18,502 at 18,507. We recommend that Taylor contact EIA to establish a method of estimation satisfactory to both parties. Toll-free numbers are provided in the General Instructions of the EIA forms.

In summary, Taylor has not shown that providing EIA the data is excessively onerous to it as compared to other firms similarly affected. The applicant has also failed to show that the effort involved in providing the data outweighs the benefits which the DOE and the nation receive from access to the information. The data collected from Form EIA-782B constitutes our primary source of information on supplies, demand and prices of petroleum products. Reliable data are vital to the nation's ability to anticipate and respond quickly and effectively to any future supply disruptions and thereby protect the public interest. Indeed, this is why the Congress mandated the collection of this type of data. Unless firms such as Rice are part of the EIA's statistical sample, the DOE will be unable to formulate valid estimates from a cross-section of the industry. Strong public policy considerations such as these lead us to conclude that Taylor's request for exception relief from the mandatory reporting requirements is unwarranted.

In accordance with the above discussion, we find that exception relief is not warranted in this case, because Taylor is not experiencing a special hardship, inequity or unfair distribution of burdens as a result of the requirement that it file Form EIA-782B. Consequently, the Department of Energy has determined that the Application for Exception filed by Taylor should be denied.

It Is Therefore Ordered That:

- (1) The Application for Exception filed by Taylor Oil Company, Case No. VEE-0066, is hereby denied.
- (2) Administrative review of this Decision and Order may be sought by any person who is aggrieved or adversely affected by the denial of exception relief. Such review shall be commenced by the filing of a petition for review with the Federal Energy Regulatory Commission within 30 days of the date of this Decision and Order pursuant to 18 C.F.R. Part 385, Subpart J.

George B. Breznay

Director

Office of Hearings and Appeals

Date: March 9, 2000

(1)The firm must make a good faith effort to provide reasonably accurate information that is consistent with the accounting records maintained by the firm. The firm must alert the EIA if the estimates are later found to be materially different from actual data.

(2)A random sample of other firms is also selected. This random sample changes approximately every 12 months, but a firm may be reselected for a subsequent sample. A firm that has been included in three consecutive random samples will generally not be included in a fourth consecutive sample, but may be included in a later sample.

<BR>

## Case No. VEE-0067

September 18, 2000

DECISION AND ORDER

OF THE DEPARTMENT OF ENERGY

Application for Exception

Name of Petitioner: M.L.Halle Oil Service, Inc.

Date of Filing: August 9, 1999

Case Number: VEE-0067

On August 9, 1999 M.L. Halle Oil Service, Inc. (Halle) of Manchester, New Hampshire, filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). In its application, Halle requests that it be temporarily relieved of the requirement to prepare and file the Energy Information Administration's (EIA) form entitled "Resellers'/ Retailers' Monthly Petroleum Product Sales Report" (Form EIA-782B). As explained below, we have concluded that Halle shall be excused from filing Form EIA-782B for four months.

### A. Background

Form EIA-782B is a mandatory reporting requirement which grew out of the shortages of crude oil and petroleum products during the 1970's. It is designed to collect monthly information on refined petroleum sales volumes and prices from a sample of resellers and retailers. 42 U.S.C. § 7135(b). Information obtained from Form EIA-782B is used to analyze trends within petroleum markets. Summaries of the information and the analyses are published by the EIA in publications such as "Petroleum Marketing Monthly." This data is used by Congress and by more than 35 state governments to project trends and to formulate state and national energy policies.

The DOE has attempted to ensure that the surveys yield valuable information while minimizing the burden placed on the industry. Thus, in designing the form, the DOE consulted with potential survey respondents, various industry associations, users of the energy data, state governments, and other federal agencies. Moreover, to minimize the reporting burden, the EIA periodically selects a relatively small sample of companies to file Form EIA-782B.(1) In addition, to reduce the amount of time spent completing the forms, firms may rely upon reasonable estimates.(2)

### B. Exception Criteria

This Office has authority to grant exception relief where the reporting requirement causes a "special hardship, inequity, or unfair distribution of burdens." 42 U.S.C. § 7194(a); 10 C.F.R. § 1003.25(b)(2). Exceptions are appropriate only in extreme cases. Because all reporting firms are burdened to some extent by reporting requirements, exception relief is appropriate only where a firm can demonstrate that it is adversely affected by the reporting requirement in a way that differs significantly from similar reporting firms. Thus mere inconvenience does not constitute a sufficient hardship to warrant relief. Glenn W. Wagoner Oil Co., 16 DOE ¶ 81,024 (1987).

Neither the fact that a firm is relatively small, nor the fact that it has filed a report for a number of years has, alone, constituted grounds for exception relief. All firms that participate in the EIA surveys bear some burden that they would not otherwise, and if firms of all sizes are not included, the estimates and projections generated by the EIA's statistical sample will be unreliable. Mulgrew Oil Co., 20 DOE ¶ 81,009 (1990).

## **C. Analysis**

Halle sells motor gasoline, diesel fuel and No. 2 fuel oil to residential and non-residential consumers and resellers in New Hampshire, and in the past, in Massachusetts. The firm has prepared and filed EIA Form 782B in sample period 12 and in the current sample period 13 (February 1999 through approximately December 2000.)

According to the request for exception, because of the way it conducts business and because of personnel difficulties, Halle is experiencing continuing, serious hardship in preparing and filing EIA Form 782B. While Halle maintains business transaction records, the firm finds it difficult to use these data for the purpose of completing EIA Form 782B. All of Halle's records are compiled by hand, and as a result the firm does not believe that it can easily produce accurate estimates for purposes of preparing and submitting EIA Form 782B, especially since its client and product base varies so widely. Furthermore, the firm's business manager left more than 21 months ago, but no permanent replacement has been located. Exacerbating all of these difficulties, is the fact that Mr. Mark Halle, the founder and owner-operator of the firm has had open heart surgery and has not been able to return to the office other than sporadically for very short periods.

At this point, we are informed that Mr. Halle is spending about 5 hours per month manually preparing each submission of EIA Form 782B, because he is the only person capable of doing so. Furthermore, according to a supplemental submission, Mr. Halle's health is deteriorating, and the firm is involved in a number of legal actions which are further aggravating its precarious financial condition.

## **D. Conclusion**

We have carefully weighed all of the serious difficulties raised in the Halle submission against the public policy interests served by the collection of the information provided by EIA Form 782B, and have concluded that a temporary exception relieving M.L. Halle Oil Services, Inc., of any requirement to file Form 782B through the month of January 2001, is warranted. If at the end of that period, the firm's difficulties and the EIA filing requirement continue, the firm may seek further exception relief.

It Is Therefore Ordered That:

- (1) The Application for Exception by M. L. Halle Oil Service, Inc. (Halle) on August 9, 1999 is hereby granted to the extent set forth in paragraph (2) below.
- (2) Halle shall be removed from the list of firms required to submit data on Form EIA782B to the Energy Information Administration of the Department of Energy for the period from October 2000 through January 2001.
- (3) This is a final Order of the Department of Energy.

George B. Breznay

Director

Office of Hearings and Appeals

Date: September 18, 2000

(1) Firms that account for over five percent of the sales of any particular product in a state are always included in the sample of firms required to file the report. A random sample of other firms is also selected. This random sample changes approximately every 12 to 20 months, but a firm may be reselected for subsequent samples. A firm that has been included in three consecutive random samples will generally not be included in a fourth consecutive sample, but may be included in a later sample.

(2) Form EIA-782B stipulates that the firm must make a good faith effort to provide reasonably accurate information that is consistent with the accounting records maintained by the firm. The firm must alert the EIA if the estimates are later found to be materially different from actual data.

# Case No. VEE-0069

March 15, 2000

DECISION AND ORDER

OF THE DEPARTMENT OF ENERGY

Application for Exception

Name of Petitioner: Wadleigh's, Inc.

Date of Filing: December 6, 1999

Case Number: VEE-0069

On December 6, 1999, Wadleigh's, Inc.(Wadleigh's) of Hallowell, Maine, filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). In its application, Wadleigh's requests that it be temporarily relieved of the requirement to prepare and file the Energy Information Administration's (EIA) form entitled "Resellers'/ Retailers' Monthly Petroleum Product Sales Report" (Form EIA-782B). As explained below, we have concluded that Wadleigh's shall receive a four month extension to file Form EIA-782B.

## A. Background

Form EIA-782B is a mandatory reporting requirement which grew out of the shortages of crude oil and petroleum products during the 1970's. It is designed to collect monthly information on refined petroleum sales volumes and prices from a sample of resellers and retailers. 42 U.S.C. § 7135(b). Information obtained from Form EIA-782B is used to analyze trends within petroleum markets. Summaries of the information and the analyses are published by the EIA in publications such as "Petroleum Marketing Monthly." This data is used by Congress and by more than 35 state governments to project trends and to formulate state and national energy policies.

The DOE has attempted to ensure that the surveys yield valuable information while minimizing the burden placed on the industry. Thus, in designing the form, the DOE consulted with potential survey respondents, various industry associations, users of the energy data, state governments, and other federal agencies. Moreover, to minimize the reporting burden, the EIA periodically selects a relatively small sample of companies to file Form EIA-782B.(1) In addition, to reduce the amount of time spent completing the forms, firms may rely upon reasonable estimates.(2)

## B. Exception Criteria

This Office has authority to grant exception relief where the reporting requirement causes a "special hardship, inequity, or unfair distribution of burdens." 42 U.S.C. § 7194(a); 10 C.F.R. § 1003.25(b)(2). Exceptions are appropriate only in extreme cases. Because all reporting firms are burdened to some extent by reporting requirements, exception relief is appropriate only where a firm can demonstrate that it is adversely affected by the reporting requirement in a way that differs significantly from similar reporting firms. Thus mere inconvenience does not constitute a sufficient hardship to warrant relief. Glenn W. Wagoner Oil Co., 16 DOE ¶ 81,024 (1987).

Neither the fact that a firm is relatively small, nor the fact that it has filed a report for a number of years has, alone, constituted grounds for exception relief. All firms that participate in the EIA surveys bear some burden that they would not otherwise, and if firms of all sizes are not included, the estimates and projections generated by the EIA's statistical sample will be unreliable. *Mulgrew Oil Co.*, 20 DOE ¶ 81,009 (1990).

## C. Analysis

Wadleigh's, based in Hallowell, Maine, sells motor gasoline, diesel fuel and No. 2 fuel oil to residential and non-residential consumers and resellers in Maine and neighboring New Hampshire. Because of its size and the scope of its operations, Wadleigh's is classified by EIA as a "large" retailer of these products. The firm has prepared and filed EIA Form 782B every year since 1991.

In its request for a temporary exception, the controller of the firm, Mr. Tom Bouchard, states that the firm is experiencing temporary difficulties in three areas which involve the preparation of the EIA Form 782B. First, the firm has had to train a large number of new office personnel due to unusually rapid employee turnover. Secondly, the individual most closely involved in budget and financial record-keeping left the firm unexpectedly. Finally, Mr. Bouchard himself is heavily involved with programming difficulties affecting the firm's Accounts Receivable software and programs. The difficulties being experienced in this area include overcoming potential Y2K problems. These Accounts Receivable programs are vital to the preparation of EIA form 782B. Mr. Bouchard asserts that the firm's records are only current through the month of October, 1999, which is not sufficient to allow the firm to prepare and file the Form.

Our review of the record in this case indicates that Wadleigh's has met the standards for temporary relief from its EIA reporting requirements. Given the combination of Wadleigh's serious accounting and computer software difficulties, and the firm's short term personnel problems, we believe that temporary exception relief is merited. See *Ward Oil Co.*, 24 DOE ¶ 81,002 (1994)(relief granted when firm experienced personnel shortage, financial difficulties, and administrative problems following the death of a partner); *Meier Oil Serv.*, 14 DOE ¶ 81,004 (1986)(relief granted for three months where disruption caused by the installation of a new computer system left the firm's records inaccessible). In balancing the public policy considerations favoring the gathering of information vital to the nation's energy security against the equities in Wadleigh's favor, we have concluded that the Wadleigh's Application for Exception should be granted for a period not to exceed the four months of January, February, March, and April, 2000.

It Is Therefore Ordered That:

- (1) The Application for Exception by Wadleigh's on December 6, 1999 is hereby granted to the extent set forth in paragraph (2) below.
- (2) Wadleigh's shall be removed from the list of firms required to submit data on Form EIA782B to the Energy Information Administration of the Department of Energy from January 2000 through April 2000.
- (3) This is a final Order of the Department of Energy.

George B. Breznay

Director

Office of Hearings and Appeals

Date: March 15, 2000

(1)Firms that account for over five percent of the sales of any particular product in a state are always

included in the sample of firms required to file the report. A random sample of other firms is also selected. This random sample changes approximately every 12 to 20 months, but a firm may be reselected for subsequent samples. A firm that has been included in three consecutive random samples will generally not be included in a fourth consecutive sample, but may be included in a later sample.

(2)Form EIA-782B stipulates that the firm must make a good faith effort to provide reasonably accurate information that is consistent with the accounting records maintained by the firm. The firm must alert the EIA if the estimates are later found to be materially different from actual data.



# Case No. VEE-0074

December 15, 2000

DECISION AND ORDER

OF THE DEPARTMENT OF ENERGY

Application for Exception

Name of Petitioner: H.A. Mapes, Inc.

Date of Filing: May 30, 2000

Case Number: VEE-0074

On May 30, 2000, H.A. Mapes, Inc., (Mapes) of Springvale, Maine, filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). In its application, Mapes requests that it be relieved of the requirement that it file the Energy Information Administration's (EIA) form entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report" (Form EIA-782B). As explained below, we have determined that the Application for Exception should be granted.

## A. Background

Form EIA-782B is a mandatory reporting requirement which grew out of the shortages of crude oil and petroleum products during the 1970's. It is designed to collect monthly information on refined petroleum sales volumes and prices from a sample of resellers and retailers. 42 U.S.C. § 7135(b). Information obtained from Form EIA-782B is used to analyze trends within petroleum markets. Summaries of the information and the analyses are published by the EIA in publications such as "Petroleum Marketing Monthly." This data is used by Congress and by more than 35 state governments to project trends and to formulate state and national energy policies.

The DOE has attempted to ensure that the surveys yield valuable information while minimizing the burden placed on the industry. Thus, in designing the form, the DOE consulted with potential survey respondents, various industry associations, users of the energy data, state governments, and other federal agencies. Moreover, to minimize the reporting burden, the EIA periodically selects a relatively small sample of companies to file Form EIA-782B.(1) In addition, to reduce the amount of time spent completing the forms, firms may rely upon reasonable estimates.

## B. Exception Criteria

This Office has authority to grant exception relief where the reporting requirement causes a "special hardship, inequity, or unfair distribution of burdens." 42 U.S.C. § 7194(a); 10 C.F.R. § 1003.25(b)(2). Exceptions are appropriate only in extreme cases. Because all reporting firms are burdened to some extent by reporting requirements, exception relief is appropriate only where a firm can demonstrate that it is adversely affected by the reporting requirement in a way that differs significantly from similar reporting firms. Thus mere inconvenience does not constitute a sufficient hardship to warrant relief. Glenn W. Wagoner Oil Co., 16 DOE ¶ 81,024 (1987).

Neither the fact that the firm is relatively small, nor that it has filed reports for a number of years, alone, constitute grounds for exception relief. If firms of all sizes, both large and small, are not included, the estimates and projections generated by the EIA's statistical sample will be unreliable. *Mulgrew Oil Co.*, 20 DOE ¶ 81,009 (1990).

## C. Analysis

Mapes is a petroleum product wholesaler-retailer located in Springvale, Maine. Classified by EIA as a "medium size firm," Mapes has filed Form EIA-782B in Samples 12 and 13. The firm sells motor gasoline and residential, non-residential and wholesale No. 2 distillate in Maine and New Hampshire.

In the firm's application its owner, Mr. Allen Mapes, requests an exception to the Form EIA-782B reporting requirement on the basis that the firm has been completing the form on a regular monthly basis between three and four years. Mr. Mapes states that he is 72 years of age, the sole owner of the firm, and has himself always prepared and filed Form EIA-782B. Because of his age, Mr. Mapes states that the Form requires a good deal more time to complete than the average reporting firm. Mr. Mapes further states that the only other employee able to complete and file the form is overburdened with work. In one regard, the firm's bookkeeper is suffering from limiting back pain, and another key employee recently left the firm.

Mr. Mapes also states that while the firm does have some computer capability, it is not programmed or capable of being programmed to generate the information necessary to complete the form. Due to its personnel problems, the existing staff is burdened by having to maintain the data for the forms manually on 3x5 cards. Finally, due to these difficulties and his age, Mr. Mapes states that he is negotiating to sell the firm.

We have carefully weighed all of the serious difficulties raised in the Mapes submission against the public policy interests served by the collection of the information provided by Form EIA-782B, and have concluded that a temporary exception relieving H.A. Mapes, Inc. of the requirement to file Form EIA-782B is warranted. If at the end of that period, the firm's difficulties with the EIA filing requirement continue, the firm may seek further exception relief. In the event the firm is sold, this Exception relief shall cease.

It Is Therefore Ordered That:

- (1) The Application for Exception filed by H.A. Mapes, Inc. on May 30, 2000, is hereby granted as set forth below.
- (2) H.A. Mapes, Inc. shall be removed from the list of firms required to submit data on Form EIA-782B to the Energy Information Administration for the period from November 2000 to May 2001.
- (3) In the event that Mr. Allen Mapes sells or transfers H.A. Mapes, Inc., the exception described in paragraph (2) will end effective on the date of the transfer of H.A. Mapes, Inc.
- (4) This is a final Order of the Department of Energy.

George B. Breznay

Director

Office of Hearings and Appeals

Date: December 15, 2000

(1) Firms that account for over five percent of the sales of any particular product in a state are always included in the sample of firms required to file the report. A random sample of other firms is also selected. This random sample changes approximately every 12 to 20 months, but a firm may be reselected for subsequent samples. A firm that has been included in three consecutive random samples will generally not be included in a fourth consecutive sample, but may be included in a later sample. EIA has informed this Office that Mapes is a non-certainty firm, and will eventually be rotated out of the sample.

# Case No. VEE-0076

June 28, 2002

DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

## Application for Exception

Name of Case: Green Mountain Energy Company

Date of Filing: August 23, 2000

Case Number: VEE-0076

On August 23, 2000, the Green Mountain Energy Company (Green Mountain) of Austin, Texas, filed an Application for Exception with the Office of Hearings and Appeals of the Department of Energy (DOE). In its application, Green Mountain requests an exception, pursuant to 10 C.F.R. § 1003, which, if granted, would have the effect of withholding from public release – either through regular publication by the Energy Information Administration (EIA) or through the Freedom of Information Act (FOIA), 5 U.S.C. § 552 -- data which the firm files with the DOE Energy Information Administration on Forms EIA-826 and EIA- 861. These Forms are, respectively, the “Monthly Electric Utility Sales and Revenue Report with State Distributions,” and the “Annual Electric Utility Report.”

## I. Regulatory Background

The EIA reporting requirements arise from domestic dislocations of crude oil and petroleum products that occurred during the 1970s. Specifically, in 1979 Congress found that the lack of reliable information concerning the supply, demand and prices of petroleum products impeded the nation’s ability to respond to an oil crisis. Congress therefore authorized the DOE to collect data on petroleum product supply and price. Forms EIA-826 and -861 collect monthly and annual information, respectively, regarding the retail sales and associated revenue from the retail sales of electricity of individual firms identified as energy service providers. As an energy provider, i.e., a reseller of electricity in Pennsylvania and California, Green Mountain is required to submit Forms EIA-826 and -861.

An Application for Exception may be granted where the reporting requirement causes a “special hardship, inequity, or unfair distribution of burdens.” 42 U.S.C. § 7194(a); 10 C.F.R. § 1003.25(b)(2). Because all reporting firms are burdened to some extent by the reporting requirements, exception relief is appropriate only where a firm can demonstrate that it is adversely affected by the reporting requirement in a way that differs significantly from the impact of the requirement on other reporting firms.

## II. Application for Exception

The specific Green Mountain request is for an exception permitting “confidential treatment” of the information it provides to EIA. According to the Application, “Confidential Treatment . . . mean(s) refraining from disclosing any Reported Information to the public except either (1) on an aggregate basis with like information of a sufficient number of reporting persons as will prevent the public from discerning

the extent to which such information describes or is attributable to Green Mountain; or (2) when the reported information relates to events which occurred more than two years prior to its disclosure.” Green Mountain asserts that competitors could obtain a competitive advantage by using information obtained from Form EIA-861 *together* with information from Form EIA-826.

### III. Analysis

There are two circumstances where the data referred to in the Green Mountain application could be released to the public: the customary release by EIA of data provided by reporting firms through Form EIA-826 and -861; and a request for the same information under the FOIA. Under the specific terms of the Green Mountain request, the data EIA receives through Form EIA-861 may be excluded from consideration because, in the ordinary course of events, that material is released by EIA in aggregate form only on a state-by-state basis. Regarding the monthly Form EIA-826, we have examined the sample filings provided by Green Mountain and are unable to see – nor does the Green Mountain submission describe – how anyone might gain a competitive advantage from access to that material alone.

The EIA-826s provided by Green Mountain set forth some matters which are obviously not confidential: the name of the firm, the month for which filed, and a contact name and telephone number. The firm apparently resells electricity in Pennsylvania and California – also not confidential – and therefore files monthly reports for each state. The other information provided by Green Mountain through the monthly filings consists of the total number of its residential and commercial customers in the two states, and its sales to each group reported in thousands of dollars, and megawatt hours. There is no customer identification of any sort, no identification of the sources or uses of the power resold, or the location or nature of any power supplier or customer. Consequently, we cannot see that any person or entity would gain any advantage over Green Mountain by access to any or all of these filings. Nor has Green Mountain provided any. We consequently see no basis for exception relief. This conclusion applies equally to the regular release by EIA of the information provided through Form EIA-826 or release under the FOIA.

For the same reasons, we see no basis for the claim that release of the information from Form EIA-861 *together* with Form EIA-826 would afford unnamed competitors some type of advantage. As described, all of the information Green Mountain provides to EIA is very general: Aggregate sales and revenue data pertaining to sales of energy at unspecified prices to unspecified customers at unspecified locations prices in California and Pennsylvania. The claim that availability of the Form-826 and -861 data together would adversely affect Green Mountain is unsupported by specific examples or other data that might indicate the adverse effect on Green Mountain’s sales. Such effects would need to be tied to specific customers in specific market areas in relation to specific competitors. As a result, we reject this claim.

In addition, granting the Green Mountain exception would frustrate certain of the goals of the Federal Energy Administration Act, Energy Conservation and Production Act and Energy Policy Act of 1992, which require not only the collection by EIA, but also the release, of material concerning the nation’s energy supplies. *See* Federal Energy Administration Act of 1974, Pub. L. No. 93-275, 88 Stat. 96; Energy Conservation and Production Act, Pub. L. No. 94-385, 90 Stat. 1125; Energy Policy Act of 1992, Pub. L. No. 102-486, 106 Stat. 2776. These Acts mandate EIA to collect, assemble, evaluate, and analyze energy information; provide energy information and projections to the Federal Government, State Governments, and the public; and provide Congress with an annual report summarizing these activities. Withholding energy information of the type provided by Green Mountain, in the absence of a compelling reasons, would frustrate the very purpose for which Congress created EIA.

In sum, we find that Green Mountain’s request for confidential treatment of the material it files with EIA through Forms 826 and 861 is not warranted based upon the information in its Application for Exception. Consequently we will deny the request.

It Is Therefore Ordered That:

(1) The Request for Exception filed by Green Mountain Energy Co., Case No. VEE-0076, on August 23, 2000 is hereby denied.

George B. Breznay

Director

Office of Hearings and Appeals

Date: June 28, 2002

# Case No. VEE-0080

July 13, 2001

DECISION AND ORDER

OF THE DEPARTMENT OF ENERGY

Application for Exception

Name of Petitioner: Potter Oil Co., Inc.

Date of Filing: April 18, 2001

Case Number: VEE-0080

On April 18, 2001, Potter Oil Co., Inc. (Potter) filed an Application for Exception with the Office of Hearings and Appeals of the Department of Energy. In its Application, Potter requests that it be relieved of the requirement that it file the Energy Information Administration's (EIA) form entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report" (Form EIA-782B). As explained below, we have determined that the Application for Exception should be denied.

## I. Background

The EIA-782B reporting requirement grew out of the shortages of crude oil and petroleum products during the 1970s. In 1979, Congress found that the lack of reliable information concerning the supply, demand, and prices of petroleum products impeded the nation's ability to respond to the oil crisis. It therefore authorized the DOE to collect data on the supply and prices of petroleum products. The current form collects information concerning the volume and price of various grades and types of motor gasoline, No. 2 distillates, propane, and residual fuel oil, broken down by customer type.

Information obtained from the survey is used to analyze trends within the petroleum markets. Summaries of the information and the analyses are published by the EIA in publications such as "Petroleum Marketing Monthly." This data is used by Congress and by more than 35 state governments to project trends and to formulate state and national energy policies. In addition, firms in the petroleum industry frequently base business decisions on the data published by EIA.

The DOE has attempted to ensure that this survey yields valuable information while minimizing the burden placed on the industry. Thus, in designing the form, the DOE consulted with potential survey respondents, various industry associations, users of the energy data, state governments, and other federal agencies. Moreover, to minimize the reporting burden, the EIA periodically selects a relatively small sample of companies to file the report. In addition, to reduce the amount of time spent completing the forms, firms may rely upon reasonable estimates.

## II. Potter's Application for Exception

Potter is a retailer based in Kents Hill, Maine. In its application, the firm requests an exception to the Form EIA-782B reporting requirement on the basis that filing Form EIA 782B places an undue hardship upon it. In support of this assertion, Potter explains that its office manager spends 8 hours a month

completing this form. This burden, according to Potter, is exacerbated by the firm's use of antiquated MS-Dos software, the small size of the firm's workforce, the recent loss of a key member of the firm's management team, and the rapid growth of its customer base.

### III. Analysis

The OHA has the authority to grant exception relief to alleviate or prevent a serious hardship or gross inequity. 10 C.F.R. § 1003.20. *See also* 6 Fed. Energy Guidelines ¶ 80,003 (Exceptions and Appeals Guidelines). In previous cases involving requests for exception relief, we have recognized that mandatory reporting requirements cause some inconvenience to respondents. Since all reporting firms are burdened by these requirements, we have held that exception relief is appropriate only when a firm can demonstrate that it is adversely affected by the reporting requirement in a way that differs significantly from similar reporting firms. When evaluating an applicant's request for exception relief, we consider whether the difficulty in complying with a particular reporting requirement is outweighed by the benefits to the nation in obtaining the required data. *See Lockheed Air Terminal*, 15 DOE ¶ 81,010 (1986); *Champlain Oil Co.*, 14 DOE ¶ 81,022 (1986); *Three L Inc.*, 12 DOE ¶ 81,014 (1984); *Pure Oil Co.*, 8 DOE ¶ 81,019 (1981).

We have granted full or partial relief from EIA reporting requirements in cases where applicants have shown that those requirements placed a burden upon them that was significantly different from the inconvenience generally associated with the requirement to submit EIA forms. *See Eastern Petroleum Corp.*, 14 DOE ¶ 81,011 (1986); *LBM Distributors, Inc.*, 13 DOE ¶ 81,043 (1985); *Ed Joyce Fuel and Feeds*, 13 DOE ¶ 81,024 (1985).

We have considered Potter's claim and find no serious hardship or gross inequity that would warrant exception relief in this case. Form EIA-782B requires little more than the essential type of pricing, supply, and inventory data that, at a minimum, is required to operate a business. Potter certainly records the prices at which it sells product, the volumes involved in each transaction, and the location of the purchaser. While we do not doubt that the firm's office staff is already very busy, we do not believe that the amount of time required to complete the form constitutes an onerous burden on them.

The EIA estimates that it should normally take approximately 2.5 hours per month for a firm to fill out EIA-782B. *See* Form EIA-782B, Schedule 1. This does not seem to be an unreasonable amount of time. The firm claims that it takes 8 hours a month for it to complete the form. We note that the burden of this requirement on the firm's office staff could be lessened by the use of estimates. The EIA permits firms to estimate sales data in order to reduce the time spent completing the form. *See* Section VI of the General Instructions to Form EIA-782B.

It is important to note that the data collected from Form EIA-782B provides the DOE with information on the supply, demand, and price of petroleum products. The federal and state governments, as well as private firms, use this information to perform analyses and make projections. Timely and reliable access to the data is vital to the nation's ability to anticipate and respond quickly and effectively to supply disruptions. *See* H.R. Rep. No. 373, 96th Cong., 1st Sess., reprinted in 1979 U.S. Code Cong., and Ad. News 1764, 1781. The DOE has attempted to minimize the burden placed on the public in gathering this information, while insuring that the reporting requirements are administered in a consistent and equitable manner. After balancing these strong public policy considerations against Potter's claim, we have concluded that its Application for Exception should be denied.

It Is Therefore Ordered That:

- (1) The Application for Exception filed by Potter Oil Company, Inc. on April 18, 2001, Case No. VEE-0080, is hereby denied.
- (2) Administrative review of this Decision and Order may be sought by any person who is aggrieved or adversely affected by the denial of exception relief. Such review shall be commenced by the filing of a



petition for review with the Federal Energy Regulatory Commission within 30 days of the date of this Decision and Order pursuant to 18 C.F.R. Part 385, Subpart J.

George B. Breznay

Director

Office of Hearings and Appeals

Date: July 13, 2001

September 27, 2002  
DECISION AND ORDER  
OF THE DEPARTMENT OF ENERGY

Application for Exception

Name of Petitioner: North Side Coal & Oil Co., Inc.

Date of Filing: February 25, 2002

Case Number: VEE-0081

On February 25, 2002, North Side Coal & Oil Co., Inc. (North Side) of Milwaukee, Wisconsin filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). In its application, North Side requests that it be excused from filing the Energy Information Administration's (EIA) form entitled "Resellers'/ Retailers' Monthly Petroleum Product Sales Report" (Form EIA-782B). As explained below, we conclude that it is appropriate to excuse North Side from filing the Form EIA-782B from September 2002 until March 2003 because the firm is a "noncertainty firm" and has demonstrated that it will experience an "undue hardship" if it is not granted exception relief during this period.<sup>1/</sup>

**A. Background**

Form EIA-782B is part of the mandatory reporting requirements which grew out of the shortages of crude oil and petroleum products during the 1970's. It is designed to collect monthly information on refined petroleum product sales volumes and prices from a sample of resellers and retailers. 42 U.S.C. § 7135(b). Information obtained from Form EIA-782B is used to analyze trends within petroleum markets. Summaries of the information and the analyses are published by the EIA in publications such as "Petroleum Marketing Monthly." This data is used by Congress and by more than 35 state governments to project trends and to formulate state and national energy policies.

---

<sup>1/</sup> Certainty firms are firms that account for over five percent of the sales of any particular petroleum product in a state and are always included in the sample of firms required to file the report. Other firms are referred to as "noncertainty firms," and a random sample of such firms is selected to complete the Form EIA-782B every 12 to 20 months. Although a noncertainty firm may be re-selected for subsequent samples, a firm that has been included in three consecutive random samples will generally not be included in a fourth consecutive sample, but may be included in a later sample.

The DOE has attempted to ensure that the surveys yield valuable information while minimizing the burden placed on the industry. Thus, in designing the form, the DOE consulted with potential survey respondents, various industry associations, users of the energy data, state governments, and other federal agencies. Moreover, to minimize the reporting burden, the EIA periodically selects a relatively small sample of companies to file Form EIA-782B. In addition, to reduce the amount of time spent completing the forms, firms may rely upon reasonable estimates.<sup>2/</sup>

## **B. Exception Criteria**

This Office has authority to grant exception relief where the reporting requirement causes a “special hardship, inequity, or unfair distribution of burdens.” 42 U.S.C. § 7194(a); 10 C.F.R. § 1003.25(b)(2). Exceptions are appropriate only in unusual cases. Because all reporting firms are burdened to some extent by reporting requirements, exception relief is appropriate only where a firm can demonstrate that it is adversely affected by the reporting requirement in a way that differs significantly from similar reporting firms. Thus, mere inconvenience does not constitute a sufficient hardship to warrant relief. Glenn W. Wagoner Oil Co., 16 DOE ¶ 81,024 (1987).

Neither the fact that a firm is relatively small, nor the fact that it has filed a report for a number of years has, alone, constituted grounds for exception relief. All firms that participate in the EIA surveys bear some burden that they would not otherwise, and if firms of all sizes are not included, the estimates and projections generated by the EIA’s statistical sample will be unreliable. Mulgrew Oil Co., 20 DOE ¶ 81,009 (1990).

## **C. Analysis**

North Side sells home heating oil and services its customers in Milwaukee, Wisconsin and the surrounding communities. It also sells a small amount of motor gasoline, and a very small amount of off-road and on-road diesel fuel. It is a family-owned business, and sells products to about 750 customers. Designated as a “noncertainty firm” by EIA, North Side has been responsible for submitting the Form EIA-782B since January of 2002.

On February 5, 2002, Steve Pitel, the firm’s General Manager-Service Manager, filed an application for exception requesting that the firm be excused from filing the Form EIA-782B for the following reasons:

We are a very small company with a total of four full time employees. Our owner had a stroke in April of 1999 and has yet to be able to return to work full time, our only Service man (HVAC) recently had hernia surgery and has [not] yet been cleared to return to his

---

<sup>2/</sup> Form EIA-782B stipulates that the filer must make a good faith effort to provide reasonably accurate information that is consistent with the accounting records maintained by the firm. The firm must alert the EIA if the estimates are later found to be materially different from actual data.

normal routine, and our one office lady will be retiring soon. I, myself, have been deeply involved in the reconstruction of our bulk plant and performing field services to compensate for my service man being out of duty.

North Side's Application for Exception (February 5, 2002).

Although the firm's service technician has returned to work, Mr. Pitel has indicated that it will be very difficult for North Side to file Form EIA-782B during the upcoming winter months because the firm must respond to service calls about heating problems during this period of time. See Memorandum of Telephone Conversation between Mr. Pitel and Linda Lazarus, Staff Attorney, OHA (June 4, 2002). <sup>3/</sup>

Based on the information provided by Mr. Pitel, we have determined that North Side has met the standards for temporary exception relief from the EIA reporting requirements. As set forth above, the firm is a small, family-owned business. In the recent past, the firm has been short-staffed because of limited manpower and temporary absences from work. Given North Side's recent personnel problems, we are convinced that it would suffer a hardship if it were required to file Form EIA-782B during the winter months because the firm will also have increased responsibilities during that time to respond to service calls. Thus, in balancing the public policy considerations favoring the gathering of information vital to the nation's energy security against the equities in North Side's favor, we have concluded that North Side's Application for Exception should be granted.

It Is Therefore Ordered That:

- (1) The Application for Exception by North Side Coal & Oil Co., Inc. on February 25, 2002 is granted in part.
- (2) North Side Coal & Oil Co., Inc. is excused from filing the Energy Information Administration's (EIA) form entitled "Resellers'/ Retailers' Monthly Petroleum Product Sales Report" (Form EIA-782B) from September 2002 until March 2003, but is otherwise required to continue to file Form EIA-782B.
- (3) This is a final Order of the Department of Energy.

George B. Breznay  
Director  
Office of Hearings and Appeals

Date: September 27, 2002

---

<sup>3/</sup> During this telephone conversation, Mr. Pitel also indicated that it takes him between sixty and ninety minutes to complete the Form EIA-782B. See Memorandum of Telephone Conversation between Mr. Pitel and Ms. Lazarus (April 15, 2002).

November 1, 2002  
DECISION AND ORDER  
OF THE DEPARTMENT OF ENERGY

*Application for Exception*

Name of Petitioner: Fleischli Oil Company

Case Number: VEE-0082

Date of Filing: February 26, 2002

On February 26, 2002, Fleischli Oil Company (Fleischli) filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). Fleischli requests that it be relieved of the requirement to prepare and file the Energy Information Administration (EIA) form entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report," Form EIA-782B. As explained below, we have concluded that Fleischli has not demonstrated that it should receive exception relief.

*I. Background*

The DOE's Energy Information Administration is authorized to collect, analyze, and disseminate energy data and other information. 15 U.S.C. § 772(b); 42 U.S.C. § 7135(b). Form EIA-782B collects monthly information on refined petroleum sales volumes and prices from a sample of resellers and retailers. The information is used to analyze trends within petroleum markets. Summaries of the information and the analyses are published by the EIA in publications such as "Petroleum Marketing Monthly." This information is used by Congress and by more than 35 state governments to project trends and to formulate state and national energy policies.

The DOE has attempted to ensure that the surveys yield valuable information while minimizing the burden placed on the industry. In designing the form, the DOE consulted with potential survey respondents, various industry associations, users of the energy data, state governments, and other federal agencies. Moreover, to minimize the reporting burden, the EIA periodically

selects a relatively small sample of companies to file Form EIA-782B 1/ and permits reporting firms to rely on reasonable estimates. 2/

The form's instructions estimate that it takes a total of 2.5 hours to complete the form. The OHA has authority to grant exception relief where the reporting requirement causes a "special hardship, inequity, or unfair distribution of burdens." 42 U.S.C. § 7194(a); 10 CFR § 1003.25(b)(2). Exceptions are appropriate only in extreme cases. Because all reporting firms are burdened to some extent by reporting requirements, exception relief is appropriate only where a firm can demonstrate that it is adversely affected by the reporting requirements in a way that differs significantly from that experienced by other, similarly situated reporting firms. Thus, mere inconvenience does not constitute a sufficient hardship to warrant relief. *Glenn W. Wagoner Oil Co.*, 16 DOE ¶ 81,024 (1987).

We have granted full or partial relief from EIA reporting requirements in cases where applicants have shown that those requirements placed a burden upon them that was significantly different from the inconvenience generally associated with the requirement to submit EIA forms. For example, relief has been granted when firms have had severe financial difficulties or when the only persons capable of preparing a form have had serious medical problems. *See Eastern Petroleum Corp.*, 14 DOE ¶ 81,011 (1986); *LBM Distributors, Inc.*, 13 DOE ¶ 81,043 (1985); *Ed Joyce Fuel and Feeds*, 13 DOE ¶ 81,024 (1985). Because of the importance of the data it provides, a "certainty firm"<sup>2/</sup> must show that the burden of complying with the reporting requirements is extremely severe in order to obtain exception relief. *See Fletcher & Associates*, 23 DOE ¶ 81,008 (1994) (*Fletcher*).

---

1/ Firms that account for over five percent of the sales of any particular product in a state are always included in the sample of firms required to file the form. A random sample of other firms is also selected.. This random sample changes approximately every 12 to 20 months, but a firm may be reselected for subsequent samples. A firm that has been included in three consecutive random samples will generally not be included in a fourth consecutive sample, but may be included in a later sample. Form EIA-782B stipulates that the firm must make a good faith effort to provide reasonably accurate information that is consistent with the accounting records maintained by the firm. The firm must alert the EIA if the estimates are later found to be materially different from actual data.

2/ "A "certainty firm" is a firm that accounts for over five percent of the sales of any particular petroleum product in a state. Because of the size of its market share, the information provided by a certainty firm is critical to insuring that the EIA survey accurately reflects the patterns of fuel demand and supply. As a result, such firms are typically required to complete and file Form EIA-782B. *See Texport Oil Co.*, 23 DOE ¶ 81,006 (1993); *Halron Oil Co., Inc.*, 16 DOE ¶ 81, 001 (1987).

Neither the fact that a firm is relatively small, nor the fact that it has filed a report for a number of years has, alone, constituted grounds for exception relief. All firms that participate in the EIA surveys bear some burden that they would not otherwise, and if firms of all sizes are not included, the estimates and projections generated by the EIA's statistical sample will be unreliable. *Mulgrew Oil Co.*, 20 DOE ¶ 81,009 (1990) (*Mulgrew*).

## *II. The Fleischli Exception Application*

Fleischli requests an exception on the ground that the reporting requirement imposes an unfair distribution of burdens on the firm. According to its exception application, Fleischli, along with sister company, Graves Oil & Butane, has reported petroleum product sales information to the EIA for many years. Although Fleischli has not submitted Form EIA-782B in recent years, it has continually submitted Form EIA-821, the Annual Fuel Oil and Kerosene Sales Report. Graves Oil is also a participant in the EIA-821 survey, and has been submitting Form EIA-782B for "at least . . . the last nine or ten years." Fleischli Exception Application. For these reasons, the firm argues that it has done its share in supplying petroleum sales data to the EIA.

In addition, Fleischli claims that unlike Graves Oil, it is very difficult for the firm to extract the required information from the Fleischli computer data system and place it into the categories required by the EIA-782B report. Richard Harrison, Fleischli's assistant controller, indicates that the firm operates "seven or eight terminals in three different states, and has sales in Colorado, Wyoming, Nevada and Montana." He claims that it would take a full day each month to do reports for Fleischli, and even then, Fleischli would have to use estimates, rather than hard data, to prepare Form EIA-782B. Memorandum of September 24, 2002 telephone call from Richard Harrison of Fleischli and Thomas O. Mann of OHA.

## *III. Analysis*

Designated as a "certainty firm" by EIA, Fleischli was responsible for submitting the Form EIA-782B for three previous survey periods (samples 9, 10 and 11), lasting approximately two and one-half years each. Fleischli was not included in the next two survey periods, samples 12 and 13. However, the firm has now been selected for sample 14, and they must again report the data on EIA Form 782B.

After considering all of the information provided by Fleischli, we have concluded that the Application for Exception should be denied. The firm has shown that its operations are spread over several states, but it has not shown that its burden in furnishing the information necessary to complete Form EIA-782B is any greater than that experienced by other, similarly situated certainty firms. Fleischli has not demonstrated that the reporting requirement would cause it to experience a serious financial hardship that would justify an exception, or that its renewed participation in the survey is inequitable or causes an unfair distribution of burdens. While the firm is required to file Form EIA-782B for its sales operations in several states, the fact of its widespread operations is, in and of itself, a reason to include, rather than exclude, Fleischli in a

survey of domestic fuels distribution. *See Gas 'n Shop, Inc.*, OHA Case No. VEE-0084, 28 DOE ¶ 81,009 (2002).

It Is Therefore Ordered That:

(1) The Application for Exception filed by Fleischli Oil Company, on February 26, 2002, Case No. VEE-0082, is hereby denied.

(2) Administrative review of this Decision and Order may be sought by any person who is aggrieved or adversely affected by the denial of exception relief. Such review shall be commenced by the filing of a petition for review with the Federal Energy Regulatory Commission within 30 days of the date of this Decision and Order pursuant to 18 C.F.R. Part 385, Subpart J.

George B. Breznay  
Director  
Office of Hearings and Appeals

Date: November 1, 2002



July 17, 2002  
DECISION AND ORDER  
OF THE DEPARTMENT OF ENERGY

*Application for Exception*

Name of Petitioner: Ken Bettridge Distributing, Inc.

Case Number: VEE-0083

Date of Filing: February 28, 2002

On February 28, 2002, Ken Bettridge Distributing, Inc. (Bettridge) of Cedar City, Utah, filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). In its application, Bettridge requests that it be temporarily relieved of the requirement to prepare and file the Energy Information Administration's (EIA) form entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report" (Form EIA-782B). As explained below, we have concluded that Bettridge shall be excused from filing Form EIA-782B for one year.

*Background*

Form EIA-782B is a mandatory reporting requirement which grew out of the shortages of crude oil and petroleum products during the 1970's. It is designed to collect monthly information on refined petroleum sales volumes and prices from a sample of resellers and retailers. 42 U.S.C. § 7135(b). Information obtained from Form EIA-782B is used to analyze trends within petroleum markets. Summaries of the information and the analyses are published by the EIA in publications such as "Petroleum Marketing Monthly." This data is used by Congress and by more than 35 state governments to project trends and to formulate state and national energy policies.

The DOE has attempted to ensure that the surveys yield valuable information while minimizing the burden placed on the industry. Thus, in designing the form, the DOE consulted with potential survey respondents, various industry associations, users of the energy data, state governments, and other federal agencies. Moreover, to minimize the reporting burden, the EIA periodically selects a relatively small sample of

companies to file Form EIA-782B. <sup>1/</sup> In addition, to reduce the amount of time spent completing the forms, firms may rely upon reasonable estimates. <sup>2/</sup>

### *Exception Criteria*

This Office has authority to grant exception relief where the reporting requirement causes a "special hardship, inequity, or unfair distribution of burdens." 42 U.S.C. § 7194(a); 10 C.F.R. § 1003.25(b)(2). Exceptions are appropriate only in extreme cases. Because all reporting firms are burdened to some extent by reporting requirements, exception relief is appropriate only where a firm can demonstrate that it is adversely affected by the reporting requirement in a way that differs significantly from similar reporting firms. Thus, mere inconvenience does not constitute a sufficient hardship to warrant relief. *Glenn W. Wagoner Oil Co.*, 16 DOE ¶ 81,024 (1987).

Neither the fact that a firm is relatively small, nor the fact that it has filed a report for a number of years alone constitutes grounds for exception relief. All firms that participate in the EIA surveys bear some burden that they would not otherwise, and if firms of all sizes are not included, the estimates and projections generated by the EIA's statistical sample would be unreliable. *Mulgrew Oil Co.*, 20 DOE ¶ 81,009 (1990).

### *Analysis*

According to the request for exception, the preparation and filing of Form EIA-782B would pose a serious hardship on the firm. Bettridge states that the company is temporarily without the services of the full-time individual responsible for the preparation and filing of reports, because the individual is preparing to have a liver transplant. Furthermore, Bettridge states that it cannot fulfill the filing requirements with its current small staff. Bettridge states that it currently has only one part-time employee available to prepare all of its monthly Utah and Nevada fuel tax reports, and sales tax reports, as well as Form EIA-782B. According to Bettridge, the part-time employee cannot easily produce accurate estimates for Form EIA-782B because this individual has only a few hours each weekend to work for Bettridge. Accordingly, Bettridge states that it needs a temporary exception in order to figure out if the full-time individual will be able to come back to work, or whether it will need to hire another full-time replacement. Thus, Bettridge is requesting a temporary exception until its employment issues have been resolved.

---

<sup>1/</sup> Firms that account for over five percent of the sales of any particular product in a state are always included in the sample of firms required to file the report. A random sample of other firms is also selected. This random sample changes approximately every 12 to 20 months, but a firm may be reselected for subsequent samples. A firm that has been included in three consecutive random samples will generally not be included in a fourth consecutive sample, but may be included in a later sample.

<sup>2/</sup> Form EIA-782B stipulates that the firm must make a good faith effort to provide reasonably accurate information that is consistent with the accounting records maintained by the firm. The firm must alert the EIA if the estimates are later found to be materially different from actual data.

*Conclusion*

We have carefully weighed the serious difficulties raised in the Bettridge submission against the public policy interests served by the collection of the information provided by Form EIA-782B, and have concluded that a temporary exception relieving Ken Bettridge Distributing, Inc., of any requirement to file Form EIA-782B through the month of March 2003 is warranted.

It Is Therefore Ordered That:

- (1) The Application for Exception by Ken Bettridge Distributing, Inc. (Bettridge) filed on February 28, 2002 is hereby granted to the extent set forth in Paragraph (2) below.
- (2) Bettridge shall be removed from the list of firms required to submit data on Form EIA-782B to the Energy Information Administration of the Department of Energy for the period from March 2002 through March 2003.
- (3) This is a final order of the Department of Energy.

George B. Breznay  
Director  
Office of Hearings and Appeals

Date: July 17, 2002



August 7, 2002  
DECISION AND ORDER  
OF THE DEPARTMENT OF ENERGY

Application for Exception

Name of Petitioner: Gas'n Shop, Inc.

Date of Filing: March 26, 2002

Case Number: VEE-0084

On March 26, 2002, Gas'n Shop, Inc. (Gas'n Shop) of Lincoln, Nebraska filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). In its application, Gas'n Shop requests that it be excused from filing the Energy Information Administration's (EIA) form entitled "Resellers'/ Retailers' Monthly Petroleum Product Sales Report" (Form EIA-782B). For the reasons detailed below, we deny Gas'n Shop's request for exception relief.

**A. Background**

Form EIA-782B is part of the mandatory reporting requirements which grew out of the shortages of crude oil and petroleum products during the 1970's. It is designed to collect monthly information on refined petroleum product sales volumes and prices from a sample of resellers and retailers. 42 U.S.C. § 7135(b). Information obtained from Form EIA-782B is used to analyze trends within petroleum markets. Summaries of the information and the analyses are published by the EIA in publications such as "Petroleum Marketing Monthly." This data is used by Congress and by more than 35 state governments to project trends and to formulate state and national energy policies.

The DOE has attempted to ensure that the surveys yield valuable information while minimizing the burden placed on the industry. Thus, in designing the form, the DOE consulted with potential survey respondents, various industry associations, users of the energy data, state governments, and other federal agencies. Moreover, to minimize the reporting burden, the EIA periodically selects a relatively small sample of companies to file Form EIA-782B. In addition, to reduce the amount of time spent completing the forms, firms may rely upon reasonable estimates.<sup>1/</sup>

---

<sup>1/</sup> Form EIA-782B stipulates that the filer must make a good faith effort to provide reasonably  
(continued...)

## B. Exception Criteria

This Office has authority to grant exception relief where the reporting requirement causes a “special hardship, inequity, or unfair distribution of burdens.” 42 U.S.C. § 7194(a); 10 C.F.R. § 1003.25(b)(2). Exceptions are appropriate only in unusual cases. Because all reporting firms are burdened to some extent by reporting requirements, exception relief is appropriate only where a firm can demonstrate that it is adversely affected by the reporting requirement in a way that differs significantly from similar reporting firms. Thus mere inconvenience does not constitute a sufficient hardship to warrant relief. *Glenn E. Wagoner Oil Co.*, 16 DOE ¶ 81,024 (1987).

We have granted full or partial relief from EIA reporting requirements in cases where applicants have shown that those requirements placed a burden upon them that was significantly different from the inconvenience generally associated with the requirement to submit EIA forms. For example, relief has been granted when firms have had severe financial difficulties or when the only persons capable of preparing a form have had serious medical problems. See *Eastern Petroleum Corp.*, 14 DOE ¶ 81,011 (1986); *LBM Distributors, Inc.*, 13 DOE ¶ 81,043 (1985); *Ed Joyce Fuel and Feeds*, 13 DOE ¶ 81,024 (1985). Because of the importance of the data it provides, a “certainty firm”<sup>2/</sup> must show that the burden of complying with the reporting requirements is extremely severe in order to obtain exception relief. See *Fletcher & Associates*, 23 DOE ¶ 81,008 (1994) (*Fletcher*).

Neither the fact that a firm is relatively small, nor the fact that it has filed a report for a number of years has, alone, constituted grounds for exception relief. All firms that participate in the EIA surveys bear some burden that they would not otherwise, and if firms of all sizes are not included, the estimates and projections generated by the EIA’s statistical sample will be unreliable. *Mulgrew Oil Co.*, 20 DOE ¶ 81,009 (1990) (*Mulgrew*).

---

<sup>1/</sup>(...continued)

accurate information that is consistent with the accounting records maintained by the firm. The firm must alert the EIA if the estimates are later found to be materially different from actual data.

<sup>2/</sup> “A “certainty firm” is a firm that accounts for over five percent of the sales of any particular petroleum product in a state. Because of the size of its market share, the information provided by a certainty firm is critical to insuring that the EIA survey accurately reflects the patterns of fuel demand and supply. As a result, such firms are typically required to complete and file Form EIA-782B. See *Texport Oil Co.*, 23 DOE ¶ 81,006 (1993); *Halron Oil Co., Inc*, 16 DOE ¶ 81,001 (1987).

### C. Analysis

Gas'n Shop operates sixty-four service stations that sell gasoline and diesel fuel in Nebraska, Kansas, and Iowa. Designated as a "certainty firm" by EIA, Gas'n Shop has been responsible for submitting the Form EIA-782B for almost ten years. However, Gas'n Shop has not filed this form since September 2000.

On March 26, 2002, Sue Smetter, Gas'n Shop's office manager, filed an application for exception in which she requested that the firm be excused from filing the Form EIA-782B for the following reasons:

I have been on this survey for over 10 years. It is a burden to our company. We have 70 convenience stores with gasoline sales in 64 stores. I'm the Office Manager and I have 8 employees. I handle all of the gasoline purchases and input all invoices for fuel, in addition to paying all of the taxes that go with these purchases. I tried for the 10 years to keep up with this program, but have been late several times, and unable due to time limits to catch up on several of these monthly reports as they take time to compile and send in. I believe in doing my part, but I also think after 10 years of doing a survey that it should be passed on to another chain. I can't afford hiring more staff for this project, and have no employees at this time that can compile this information. . . .

Ms. Smetter also claimed that filling out the form is a hardship because she is the only administrative employee who works on gasoline-related matters and has many other responsibilities. Among her other duties, Ms. Smetter indicated that she is responsible for hiring and training new administrative employees, as well as for ensuring that necessary tasks are completed when administrative employees are sick or on vacation. Ms. Smetter also informed us that she is responsible for maintaining and filing information involving the state gas and sales tax and, in the past year, has been involved in a Federal gas tax audit, a Kansas audit and a Nebraska sales tax audit. Ms. Smetter further indicated that, because of her work responsibilities, she finds it difficult to take a vacation. Ms. Smetter also indicated that it takes from two and a half to three and a half hours per month to complete the form, and that she does not use estimates. Ms. Smetter also maintains that EIA unfairly classified Gas'n Shop as a certainty firm when other large gasoline retailers in Nebraska have not received the same classification. However, Ms. Smetter failed to identify any specific firm that she believes should have been classified as a certainty firm. *See* Electronic Mail Message from Ms. Smetter to Linda Lazarus, OHA Staff Attorney and Memorandum of Telephone Conversation between Ms. Smetter and Ms. Lazarus (May 30, 2002).<sup>3/</sup>

---

<sup>3/</sup> In her electronic mail message to Ms. Lazarus, Ms. Smetter also suggested that DOE should compensate Gas'n Shop for completing the Form EIA-782B and that the information requested on the Form should be obtained from the states. *Id.* These matters are outside the scope of a proper application for exception, and we will not address them in this decision. *See* 10 C. F.R. 1003.25(b)(2).

After considering all of the information provided Gas'n Shop, we have concluded that the Application for Exception should be denied. The firm has shown that its operations are spread over many outlets and jurisdictions, but it has not shown that its burden in furnishing the information necessary to complete Form EIA-782B is any greater or otherwise more onerous than that experienced by other, similar submitters. Gas'n Shop has not demonstrated any type of unique circumstances that would justify an exception <sup>4/</sup> or that its continued participation in the survey is inequitable or causes an unfair distribution of burdens. While the firm is required to file Form EIA-782B for its many outlets, the fact of its far-flung operations is itself a reason to include - not exclude - Gas'n Shop in a survey of domestic fuels distribution.

As for Gas'n Shops main complaint - that only Ms Smetter is assigned to fill out the form - that is not grounds for exception relief. *See Fletcher; Mulgrew*. Furthermore, the time Ms Smetter states she devotes to completing the form, 2.5 to 3.5 hours per month, is not significantly greater than EIA estimates is necessary. Hence the time alone does not constitute a hardship *See Fletcher; Mulgrew*. Because of the importance of Gas'n Shop's sales, and its market share, the inclusion of its data in the EIA survey is important and not outweighed by the stated inconvenience to the firm. Thus, when we balance public policy considerations favoring the gathering of the information necessary to the nation's energy security against the arguments raised by Gas'n Shop, we conclude that the firm's Application for Exception should be denied.

It Is Therefore Ordered That:

- (1) The Application for Exception filed by Gas'n Shop, Inc. on March 26, 2002 is hereby denied.
- (2) Gas'n Shop, Inc. is required to prepare and file the Energy Information Administration's (EIA) forms for the firm entitled "Resellers'/ Retailers' Monthly Petroleum Product Sales Report" (Form EIA-782B) that are past due by no later than December 31, 2002 and must continue to file each current Form EIA-782-B as it becomes due.
- (3) This is a final Order of the Department of Energy.

George B. Breznay  
Director  
Office of Hearings and Appeals

Date: August 7, 2002

---

<sup>4/</sup> Moreover, as mentioned above, Gas'n Shop may utilize reasonable estimates rather than actual data. By using such estimates, Gas'n Shop may reduce the amount of time it takes to complete the form.







November 1, 2002  
DECISION AND ORDER  
OF THE DEPARTMENT OF ENERGY

*Application for Exception*

Name of Petitioner: Smith Brothers Gas Company

Case Number: VEE-0085

Date of Filing: April 18, 2002

On April 18, 2002, Smith Brothers Gas Company (Smith) filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). Smith requests that it be relieved of the requirement to prepare and file the Energy Information Administration (EIA) form entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report," Form EIA-782B. As explained below, we have concluded that Smith has demonstrated that it is eligible for temporary exception relief.

*I. Background*

The DOE's Energy Information Administration is authorized to collect, analyze, and disseminate energy data and other information. 15 U.S.C. § 772(b); 42 U.S.C. § 7135(b). Form EIA-782B collects monthly information on refined petroleum sales volumes and prices from a sample of resellers and retailers. The information is used to analyze trends within petroleum markets. Summaries of the information and the analyses are published by the EIA in publications such as "Petroleum Marketing Monthly." This information is used by Congress and by more than 35 state governments to project trends and to formulate state and national energy policies.

The DOE has attempted to ensure that the surveys yield valuable information while minimizing the burden placed on the industry. In designing the form, the DOE consulted with potential survey respondents, various industry associations, users of the energy data, state governments, and other federal agencies. Moreover, to minimize the reporting burden, the EIA periodically

selects a relatively small sample of companies to file Form EIA-782B 1/ and permits reporting firms to rely on reasonable estimates. 2/

The form's instructions estimate that it takes a total of 2.5 hours to complete the form. The OHA has authority to grant exception relief where the reporting requirement causes a "special hardship, inequity, or unfair distribution of burdens." 42 U.S.C. § 7194(a); 10 CFR § 1003.25(b)(2). Exceptions are appropriate only in extreme cases. Because all reporting firms are burdened to some extent by reporting requirements, exception relief is appropriate only where a firm can demonstrate that it is adversely affected by the reporting requirements in a way that differs significantly from that experienced by other, similarly situated reporting firms. Thus, mere inconvenience does not constitute a sufficient hardship to warrant relief. *Glenn W. Wagoner Oil Co.*, 16 DOE ¶ 81,024 (1987).

We have granted full or partial relief from EIA reporting requirements in cases where applicants have shown that those requirements placed a burden upon them that was significantly different from the inconvenience generally associated with the requirement to submit EIA forms. For example, relief has been granted when firms have had severe financial difficulties or when the only persons capable of preparing a form have had serious medical problems. *See Eastern Petroleum Corp.*, 14 DOE ¶ 81,011 (1986); *LBM Distributors, Inc.*, 13 DOE ¶ 81,043 (1985); *Ed Joyce Fuel and Feeds*, 13 DOE ¶ 81,024 (1985). Because of the importance of the data it provides, a "certainty firm"2/ must show that the burden of complying with the reporting requirements is extremely severe in order to obtain exception relief. *See Fletcher & Associates*, 23 DOE ¶ 81,008 (1994) (*Fletcher*).

Neither the fact that a firm is relatively small, nor the fact that it has filed a report for a number of years has, alone, constituted grounds for exception relief. All firms that participate in the EIA surveys bear some burden that they would not otherwise, and if firms of all sizes are not included, the estimates and projections generated by the EIA's statistical sample will be unreliable. *Mulgrew Oil Co.*, 20 DOE ¶ 81,009 (1990) (*Mulgrew*).

---

1/ Firms that account for over five percent of the sales of any particular product in a state are always included in the sample of firms required to file the form. A random sample of other firms is also selected.. This random sample changes approximately every 12 to 20 months, but a firm may be reselected for subsequent samples. A firm that has been included in three consecutive random samples will generally not be included in a fourth consecutive sample, but may be included in a later sample.

2/ Form EIA-782B stipulates that the firm must make a good faith effort to provide reasonably accurate information that is consistent with the accounting records maintained by the firm. The firm must alert the EIA if the estimates are later found to be materially different from actual data.

## *II. The Smith Exception Application*

Smith requests an exception on the ground that the reporting requirement imposes an unfair distribution of burdens on the firm. The firm was selected to file the form beginning in March 2002 but claims that it has been temporarily unable to do so. The firm's president, Mr. Bobby N. Smith, states that he did the survey for a number of years, and would ordinarily have no problem doing it, but there are several circumstances that have recently occurred which make this task difficult for the present time. According to Mr. Smith, his father recently passed away, leaving him burdened with settling his father's estate, and Mr. Smith is currently serving a one-year term as president of the North Carolina Propane Gas Association. At the present time, the firm employs mostly drivers and servicemen, and has no other clerical or administrative employees who can prepare a proper response to the survey. Mr. Smith indicates that his son just graduated from college, and has joined the business, but is still too unfamiliar with its operations to be able to prepare a response to the EIA Form 782B. Finally, Mr. Smith claims that it would be impossible at this time for him to go back to March 2002 and catch up with the reports that he missed while his exception application was pending.

The firm requests that in view of the foregoing circumstances, it be granted temporary exception relief for the one-year period March 2002 through February 2003. According to Mr. Smith, by March 2003, he will no longer be president of his trade association, his father's estate will be closed, and his son will be trained. In March 2003, Smith will be ready, able and willing to prepare and submit EIA Form 782B.

## *III. Analysis*

We have carefully weighed the situation described in the Smith submission against the public policy interests served by the collection of the information provided by Form EIA-782B, and have concluded that a temporary exception relieving Smith, of any requirement to file Form EIA-782B through the month of February 2003 is warranted. We are persuaded that the only person capable of preparing Form EIA-782B, Mr. Bobby N. Smith, has been temporarily unable to do so because of exigencies that are beyond his control. *See Ken Bettridge Distributing, Inc.*, Case No. VEE-0083, 28 DOE ¶ 81,008 (2002) (exception relief granted for a limited time based on showing that the only individual capable of preparing Form EIA-782B was temporarily unable to do so). Under these circumstances, we have concluded that exception relief is necessary to prevent an unfair distribution of burdens on the firm. We also note, however, that the situation warranting approval of exception relief will end soon, so that the relief will be temporary, to expire on February 28, 2003, after which Smith shall again be required to file Form EIA-782B.

It Is Therefore Ordered That:

(1) The Application for Exception filed by Smith Brothers Gas Company, on April 18, 2002, Case No. VEE-0085, is hereby granted to the extent set forth in Paragraph (2) below.

(2) Smith Brothers Gas Company shall be removed from the list of firms required to submit data on Form EIA-782B to the Energy Information Administration of the Department of Energy for the period March 2002 through February 2003.

(3) This is a final order of the Department of Energy.

George B. Breznay  
Director  
Office of Hearings and Appeals

Date: November 1, 2002

August 8, 2002  
DECISION AND ORDER  
OF THE DEPARTMENT OF ENERGY

*Application for Exception*

Name of Petitioner: Jefferson City Oil Co., Inc.

Case Number: VEE-0086

Date of Filing: April 18, 2002

On April 18, 2002, Jefferson City Oil Co., Inc. (Jefferson City Oil) filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). Jefferson City Oil requests that it be relieved of the requirement to prepare and file the Energy Information Administration's (EIA) form entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report" (Form EIA-782(b)). As explained below, we have concluded that Jefferson City Oil has not demonstrated that it is entitled to exception relief.

*I. Background*

The DOE's Energy Information Administration is authorized to collect, analyze, and disseminate energy data and other information. 15 U.S.C. § 772(b); 42 U.S.C. § 7135(b). Form EIA-782B collects monthly information on refined petroleum sales volumes and prices from a sample of resellers and retailers. The information is used to analyze trends within petroleum markets. Summaries of the information and the analyses are published by the EIA in publications such as "Petroleum Marketing Monthly." This information is used by Congress and by more than 35 state governments to project trends and to formulate state and national energy policies.

The DOE has attempted to ensure that the surveys yield valuable information while minimizing the burden placed on the industry. In designing the form, the DOE consulted with potential survey respondents, various industry associations, users of the energy data, state governments, and other federal agencies. Moreover, to minimize the reporting burden, the EIA periodically selects a relatively small sample of

companies to file Form EIA-782B<sup>1/</sup> and permits reporting firms to rely on reasonable estimates. <sup>2/</sup> The form's instructions estimate that it takes a total of 2.5 hours to complete the form.

The DOE has a process through which firm can request an exception from a reporting requirement. That process is called an exception proceeding and is conducted by OHA pursuant to 10 C.F.R. Part 1003, Subpart B.

## *II. The Exception Application*

Jefferson City Oil requests an exception on the ground that the reporting requirement imposes an unfair distribution of burdens on the firm. The firm states that it has been selected to file the form for the year 2002 but is unable to do so in a timely manner. The firm states that its accounting software requires that a given month's sales be closed before the next month's complete sales can be generated. The firm further states that it is roughly six months behind in closing its monthly sales and has obtained an extension from filing its federal tax returns. Moreover, the firm states that the EIA-782B format is inconsistent with the firm's bookkeeping system and that its president tried unsuccessfully for 12 hours to generate estimates for January 2002 data. Aside from accounting issues, the firm indicates that an expected threefold increase in insurance costs and reduced margins in the industry may leave the firm without any profit. The firm contends that, given all the foregoing circumstances, the firm does not have the resources to devote to completing the form.

In a July 17, 2002 letter to the firm, we discussed our preliminary assessment of its exception application. We advised the firm that it did not appear that the firm was entitled to exception relief:

All firms who are included in the filing sample bear some burden in completing the form. An exception is appropriate only if the filing requirement constitutes a gross inequity, serious hardship, or unfair distribution of burdens. The circumstances that you cite - delayed closing of your monthly books, bookkeeping that is inconsistent with the form format, expected insurance premium increases, and reduced margins - are not sufficient to establish any of those bases for exception

---

<sup>1/</sup> Firms that account for over five percent of the sales of any particular product in a state are always included in the sample of firms required to file the form. A random sample of other firms is also selected. This random sample changes approximately every 12 to 20 months, but a firm may be reselected for subsequent samples. A firm that has been included in three consecutive random samples will generally not be included in a fourth consecutive sample, but may be included in a later sample.

<sup>2/</sup> Form EIA-782B stipulates that the firm must make a good faith effort to provide reasonably accurate information that is consistent with the accounting records maintained by the firm. The firm must alert the EIA if the estimates are later found to be materially different from actual data.



relief. In this regard, we note that the form permits estimates and it is unclear to us why the firm cannot provide estimates based on currently available monthly data.

July 17, 2002 letter at 1. We stated that if the firm had additional information that it would like us to consider, it should so advise us. We have not received any additional information and, therefore, base our assessment on the information in the firm's exception application.

### *III. Analysis*

Exception relief is appropriate where a reporting requirement causes a "special hardship, inequity, or unfair distribution of burdens." 42 U.S.C. § 7194(a). *See also* 10 C.F.R. § 1003.25(b)(2). Because all reporting firms are burdened to some extent by reporting requirements, exception relief is appropriate only where a firm can demonstrate that it is burdened in a way that differs significantly from similar reporting firms. Mere inconvenience does not constitute a sufficient hardship to warrant relief. *Glenn W. Wagoner Oil Co.*, 16 DOE ¶ 81,024 (1987). Similarly, neither the fact that a firm is relatively small, nor the fact that it has filed a report for a number of years alone constitutes grounds for exception relief. All firms that participate in the EIA surveys bear some burden that they would not otherwise, and if firms of all sizes are not included, the estimates and projections generated by the EIA's statistical sample would be unreliable. *Mulgrew Oil Co.*, 20 DOE ¶ 81,009 at 82,523 (1990).

We consider each exception application based on the particular circumstances of the application. The following are examples of the types of circumstances that may warrant relief: (i) where the applicant is experiencing financial difficulties that are so serious that its continued viability is threatened, *see Mico Oil Co.*, 23 DOE ¶ 81,015 (1994) (bankruptcy proceeding was underway), (ii) where the only person capable of filing the form is on medical leave and the firm cannot not afford to hire a replacement, *see S&S Oil & Propane Co.*, 21 DOE ¶ 81,006 (1991) (owner, who was also sole office worker, was being treated for cancer), or (iii) where extreme or unusual circumstances disrupt a firm's operations, *see Little River Village Campground, Inc.*, 24 DOE ¶ 81,033 (1994) (flood damage). On the other hand, a firm's inability to use a computer to complete the form, by itself, does not warrant relief. *See Potter Oil Co.*, 28 DOE ¶ 81,006 (2001); *Belcourt Oil Co.*, 27 DOE ¶ 81,012 (2000).

Jefferson City Oil has not demonstrated that it is entitled to exception relief. The circumstances cited by the firm do not establish that the reporting requirement imposes an "unfair distribution of burdens" or "serious hardship" on the firm. The form permits reasonable estimates and therefore the delayed closing of the firm's monthly books does not provide a basis for exception relief. Similarly, general assertions that a firm's bookkeeping is inconsistent with the form format does not establish that the firm cannot make reasonable estimates. Finally, the firm's references to increased insurance premiums and reduced margins indicate that the firm views those matters as industry-wide, rather than matters that distinguish the firm from other reporting firms. Accordingly, the firm has not demonstrated that it meets the criteria for exception relief. *See Potter Oil*, 28 DOE ¶ 81,006 at 82,516 (form permits estimates and, therefore, antiquated software and reduced staff did not warrant exception relief).

It Is Therefore Ordered That:

(1) The Application for Exception filed by Jefferson City Oil Co., Inc., on April 18, 2002, Case No. VEE-0086, is hereby denied.

(2) Administrative review of this Decision and Order may be sought by any person who is aggrieved or adversely affected by the denial of exception relief. Such review shall be commenced by the filing of a petition for review with the Federal Energy Regulatory Commission within 30 calendar days of the date of this Decision and Order pursuant to 18 C.F.R. Part 385, Subpart J.

George B. Breznay  
Director  
Office of Hearings and Appeals

Date: August 8, 2002

July 8, 2003  
DECISION AND ORDER  
OF THE DEPARTMENT OF ENERGY

*Applications for Exception*

Names of Petitioners: CPKelco Cogeneration, *et al.*

Dates of Filings: May 31, 2002, *et al.*

Case Numbers: VEE-0088, *et al.*

This Decision decides the merits of five Applications for Exception filed with the Office of Hearings and Appeals (OHA) of the U.S. Department of Energy (DOE) under the provisions of 10 C.F.R. § 1003.20. *See infra* Appendix. These Applications concern annual revenues and sales data pertaining to each firm's sale of electricity that the DOE Energy Information Administration (EIA) collects through Form EIA-861, "Annual Electric Power Industry Report." EIA publishes this data, by state, in firm-specific form. The present exception request seeks to have the Applicants' data withheld as confidential. In their Applications for Exception, the Applicants incorporated an Application for Stay to prevent release of some of the information contained in Form EIA-861 pending resolution of the exception request. The Applications for Stay were denied on June 26, 2002, and July 2, 2002. *Cargill, Incorporated*, Case No. VES-0092 (June 26, 2002); *CPKelco Cogeneration, et al.*, Case Nos. VES-0088, *et al.* (July 2, 2002).

*I. Background*

The EIA reporting requirements arise from domestic dislocations of crude oil and petroleum products that occurred during the 1970s. Specifically, in 1979 Congress found that the lack of reliable information concerning the supply, demand and prices of petroleum products impeded the nation's ability to respond to an oil crisis. Congress therefore authorized the DOE to collect data on petroleum product supply and price. Form EIA-861 collects annual information, regarding the retail sales and associated revenue from the retail sales of electricity of individual firms identified as energy service providers. As energy providers, the Applicants are required to submit Form EIA-861. Normally, due to the public interest in the material filed with EIA, with few exceptions, the material is required to be released to the public. In the case of the Form EIA-861, release of the material by EIA occurs approximately one year following the period for which the data is furnished.

An Application for Exception may be granted where the reporting requirement causes a "special hardship, inequity, or unfair distribution of burdens." 42 U.S.C. § 7194(a);

10 C.F.R. § 1003.25(b)(2). Because all reporting firms are burdened to some extent by the reporting requirements, exception relief is appropriate only where a firm can demonstrate that it is adversely affected by the reporting requirement in a way that differs significantly from the impact of the requirement on other reporting firms.

## *II. Analysis*

In their submissions, the Applicants make various general assertions as to the competitive disadvantage they will experience if the material to be submitted to EIA is released. For example, CPKelco Cogeneration, argues that disclosure of the material would put it at a disadvantage in future negotiations for contracts to sell electricity to third parties because its current contract calls for transactions that are below market rates. There is, however, no explanation of how the terms of the present contract might harm the firm in a future dealings. This type of very general assertion might be made by any firm that files corporate data with the Federal Government. Therefore, these type of arguments cannot support an exception which would relieve the applicant of a filing obligation with which all, similarly situated firms must comply. A successful application for this relief must include specific material and detailed fact-based explanations as to how, specifically, the applicant, doing business in its particular competitive market area and with its customers and competitors, will be harmed by the release of the data in question. In this case, such a showing should include consideration of the fact that when the data is to be released it will be in aggregate form and, on average, more than one year old.

We requested additional, supporting information from each of the Applicants in this proceeding. None, however, responded with the type of material we requested, and hence there is nothing in the record that would lead us to conclude the requested exception is warranted. As a result, the Applicants have not demonstrated that they will succeed on the merits of the Application for Exception.

## *III. Conclusion*

In accordance with the above discussion, we find that an Exception is not warranted in these cases, because the arguments are insufficient to support the claim that the Applicant will experience any injury or competitive disadvantage. Consequently, the Department of Energy has determined that the Applications for Exception filed by the Applicants listed on the Appendix to this Decision should be denied.

It Is Therefore Ordered That:

1. The Applications for Exception filed by the Applicants listed in the Appendix to this Decision are hereby denied.

2. Administrative review of this Decision and Order may be sought by any person who is aggrieved or adversely affected by the denial of exception relief. Such review shall be commenced by the filing of a petition for review with the Federal Energy Regulatory Commission within 30 calendar days of the date of this Decision and Order pursuant to 18 C.F.R. Part 385, Subpart J.

George B. Breznay  
Director  
Office of Hearings and Appeals

Date: July 8, 2003

**APPENDIX**

<b><i>Name</i></b>	<b><i>Case Number</i></b>
CPKelco Cogeneration	VEE-0088
Smurfitt Stone Container Corp.	VEE-0090
Jefferson Smurfit Corp.	VEE-0091
Cargill, Incorporated	VEE-0092
OLS Energy-Camarillo	VEE-0095



April 29, 2004  
DECISION AND ORDER  
OF THE DEPARTMENT OF ENERGY

***Application for Exception***

Name of Petitioner: Southern Company

Date of Filing: August 6, 2002

Case Number: VEE-0096

On August 13, 2002, the Southern Company Services, Inc.,<sup>1/</sup> (Southern) of Birmingham, Alabama, filed with the Office of Hearings and Appeals (OHA) of the U.S. Department of Energy (DOE) an Application for Exception and an Application for Stay under the provisions of 10 C.F.R. § 1003.20. The Southern Application concerns various operating data pertaining to the firm's sale of electricity that the DOE Energy Information Administration (EIA) collects through Form EIA-411, "Coordinated Bulk Power Supply Program Report." EIA publishes this data, by state, in firm-specific form. In its exception request, Southern seeks authorization to have its revenue and sales data withheld from public release on grounds of confidentiality as well as serious hardship and burden. The exception application incorporates an Application for Stay of release of the information contained in Form EIA-411, pending resolution of the exception request.<sup>2/</sup> The Application for Stay was denied October 2, 2002.

***I. Background***

The EIA reporting requirements arise from domestic dislocations of crude oil and petroleum products that occurred during the 1970s. Specifically, in 1979 Congress found

---

<sup>1/</sup> According to the submission, the application "is submitted by Southern Company Services, Inc., as agent for Alabama Power Company, Georgia Power Company, Mississippi Power Company, Gulf Power Company, and Savannah Electric & Power Company."

<sup>2/</sup> The provisions of Section 1003.9 require that "[e]ach application, petition or request for OHA action shall be submitted as a separate document, even if the applications, petitions, or requests deal with the same or a related issue, act or transaction, or are submitted in connection with the same proceeding." 10 C.F.R. § 1003.9. We have waived that requirement in this case.



that the lack of reliable information concerning the supply, demand and prices of petroleum products impeded the nation's ability to respond to an oil crisis. Congress therefore authorized the DOE to collect data on petroleum product supply and price. Form EIA-861 collects annual information, regarding the retail sales and associated revenue from the retail sales of electricity of individual firms identified as energy service providers. As energy providers, the Applicants are required to submit Form EIA-861. Normally, due to the public interest in the material filed with EIA, with few exceptions, the material is required to be released to the public. In the case of the Form EIA-861, release of the material in aggregate form by EIA occurs approximately one year following the period for which the data is furnished.

An Application for Exception may be granted where the reporting requirement causes a "special hardship, inequity, or unfair distribution of burdens." 42 U.S.C. § 7194(a); 10 C.F.R. § 1003.25(b)(2). Because all reporting firms are burdened to some extent by the reporting requirements, exception relief is appropriate only where a firm can demonstrate that it is adversely affected by the reporting requirement in a way that differs significantly from the impact of the requirement on other reporting firms.

## ***II. Analysis***

In its Application for Exception, Southern claims that the material it provides on Form EIA-411 is confidential under the Trade Secrets Act, and exempt from disclosure under Exemption 2, 4, and 7(f) of the Freedom of Information Act. Southern also argues that because of its size and scope of operations, the burden of filing the report falls more heavily on Southern than others. If this is so, *i.e.*, that Southern has more filing obligations than others, it is because of Southern's vast operations. *See supra* note 1. By the same token, however, the firm's resources are also vast and so it is not apparent that the relative burden upon Southern of filing Form EIA-411 is inequitable or disproportionate. More importantly, Southern is one of the largest groups of power utilities in the domestic economy and the data the firm provides is critical to the EIA's mission to provide policy-independent data, forecasts, and analyses that promote sound policy making, efficient markets, and public understanding regarding energy and its interaction with the economy and the environment. After reviewing Southern's arguments, we find they are insufficient to support the claim that Southern will experience an injury or inequitable distribution of burdens.<sup>3/</sup>

---

<sup>3/</sup> A claim of this type should include specific material and detailed, fact-based explanations as to how, specifically, in the case of Southern, its doing business in its particular competitive market area and with its customers and competitors will be harmed by release of this data. Such a showing should include consideration of the fact that when the data is to be released, it will be in aggregate form and, on average, more than one year old.

We requested additional, supporting information from Southern. The firm, however, responded that it believed the supporting information submitted with the Application was sufficient to demonstrate its right to confidential treatment. In the absence of the type of factual material that would establish hardship or inequity, there is nothing that would lead us to conclude the requested exception is warranted.

### ***III. Conclusion***

In accordance with the above discussion, we find that an Exception is not warranted in this case, because the arguments provided are insufficient to support the claim that the Applicant will experience any injury or competitive disadvantage. Consequently, the Department of Energy has determined that the Application for Exception filed by Southern Company should be denied.

It Is Therefore Ordered That:

1. The Application for Exception filed by Southern Company, Case No. VEE-0096, is hereby denied.
2. Administrative review of this Decision and Order may be sought by any person who is aggrieved or adversely affected by the denial of exception relief. Such review shall be commenced by the filing of a petition for review with the Federal Energy Regulatory Commission within 30 calendar days of the date of this Decision and Order pursuant to 18 C.F.R. Part 385, Subpart J.

George B. Breznay  
Director  
Office of Hearings and Appeals

Date: April 29, 2004

# Case No. VES-0071

May 23, 2000

DECISION AND ORDER

OFFICE OF HEARINGS AND APPEALS

Application for Stay

Petitioner: Mississippi Power Company

Date of Filing: May 1, 2000

Case Number: VES-0071

On May 1, 2000, the Mississippi Power Company, of Gulfport, Mississippi (Mississippi Power), filed with the Office of Hearings and Appeals (OHA) of the Department of Energy an Application for Exception and an Application for Stay pursuant to 10 C.F.R. Part 1003. The first request seeks “an exception to the EIA (Energy Information Administration) policy of public disclosure of certain EIA Form 861 (Annual Electric Utility Report for the Reporting Period 1999) material which the Company deems confidential and proprietary commercial and financial information.(1) Application for Stay at 1. The material at issue is “commercial and financial information, including without limitation, information concerning the Company’s sales for resale and monthly peaks and output.” Id. The Application for Stay requests the suspension of any requirement that Mississippi Power file Form 861 for its 1999 operations pending a decision on the merits of the Application for Exception. In the alternative, during the pendency of the Exception proceeding the firm requests that the Department of Energy withhold from release any of the material Mississippi Power states is confidential.

As a public utility, Mississippi Power is required by regulation to file Form 861(2) with the EIA. The data from these filings, along with similarly collected data concerning motor gasoline, heating oil, propane and other fuel supplies, is used by EIA to fulfill its Congressional mandate to monitor and disseminate information concerning the nation’s energy supplies. EIA publishes or otherwise releases much of this material in aggregate and/or company-specific form.

Of the material included in Mississippi Power’s 8 page proposed submission of EIA Form 861 for its 1999 operations, the firm requests confidential treatment only for the material set forth in Schedules II and III on page 3 of the Form. This material depicts Mississippi Power’s “Sources” and “Disposition of Energy,” and its “Electric Operating Revenues.”

In support of its Stay request, Mississippi Power argues that to “allow competitors access to this type of confidential information . . . will (cause the Company) to suffer irreparable harm.” Id. Referencing its enclosed Request for Confidential Treatment of Certain Commercial and Financial Information, Mississippi Power argues that information relating to its sales, purchase and transmission of electricity would provide Mississippi Power’s competitors with commercially sensitive information relating to potential competitors. See April 28, 2000 Request for Confidential Treatment of Certain Commercial and Financial Information at 3. Mississippi Power also argues that competitors and suppliers would be able to gain advantage by knowledge of its transactions, costs and operations. Id. Additionally, Mississippi Power points out that the competitive environment has changed in that non-traditional utilities, which are not subject to utility reporting requirements, are now able to compete with traditional utilities such as Mississippi Power. Id. at 4.

While we express no opinion as to the ultimate merit of Mississippi Power's underlying Request for Exemption, we find that its explanation as to the likelihood of commercial harm is not such that we can now conclude that it has made a sufficient showing that it will succeed on the merits of its Exception Request. See 10 C.F.R. § 1003.45(b)(5). For example, it is not entirely clear how this material might lead a competitor to derive Mississippi Power's pricing strategies, such as, its cost of generating a kilowatt hour of electricity, or otherwise gain a competitive advantage. (3) In addition, EIA has no current plans to release this data. In the normal course of operations, it would not be disseminated until October 2000.(4) Consequently, we also do not find that Mississippi Power has made a sufficient showing that irreparable injury would result if its stay request is denied. See 10 C.F.R. § 1003.45(b)(1).

Of importance in considering this Application for Stay is the fact that in 1997, EIA began a very extensive rulemaking proceeding specifically concerning the confidentiality of the material which EIA collects and disseminates -- including material derived through Form 861.(5) The proceeding was announced and comments solicited on a four separate occasions, and all of the firms from which the relevant data is collected -- including Mississippi Power itself -- received direct mail notice from EIA of the proceeding and of the opportunity to comment. Furthermore, because EIA is very sensitive to the dynamic state of the power industry and its divergent views on confidentiality, EIA also held public hearings to allow interested persons a full opportunity to make their views known.

In response to the EIA rulemaking and comment, Mississippi Power's parent, The Southern Company, made a brief submission to EIA in which it simply indicated that it supported the comments of the Edison Electric Institute, a Washington, D.C., association representing the interests of various electric utility members. Thus Mississippi Power has already had a very ample and recent opportunity to present its views as to the confidentiality of all of the Form 861 data. It did so to only a very limited extent. The Mississippi Power submission is silent as to whether the Edison Electric Institute -- or any other submitter in the EIA rulemaking proceeding -- opposed the release of the data in Schedules II and III of Form 861. If such comments were made, it is clear from the outcome of the proceeding that they were weighed and rejected by EIA. In any event, Mississippi Power itself received direct mail notice of the EIA rulemaking proceeding, had an ample opportunity to make its views known directly to EIA on a number of occasions, but apparently elected not to do so. This weighs against the firm's request for stay.

In the course of this very extensive rulemaking proceeding, EIA carefully reviewed and considered the comments of all parties, both for and against any limitations on the dissemination of the data EIA collects, and also weighed these comments against EIA's Congressional mandate to collect and disseminate information concerning the country's energy supply. Finally, in late 1998, EIA final procedures concerning the submission and release of company-specific data were submitted to the Office of Management and Budget (OMB) on November 28, 1998, and were authorized by OMB for a three-year period on December 29, 1998. Little more than one year has passed since that approval and implementation of these final procedures (OMB ACTION/APPROVAL No. 1905-0129, December 29, 1998). Neither in the Mississippi Power Stay submission nor in the firm's exception request is there any explanation of what changes might have occurred in the marketplace or in Mississippi Power's own business operations in this brief period that would warrant the extraordinary relief of a stay.

Reviewing the facts surrounding the foregoing EIA decisions regarding the confidentiality of information and Mississippi Power's other arguments, we can not find that sufficient public policy reasons have been demonstrated to favor the granting of a stay. See 10 C.F.R. § 1003.45(b)(3). Further, there is no factual material or persuasive argument indicating that a denial of the stay would result in Mississippi Power experiencing a more immediate hardship or inequity than a grant of the stay would cause to other affected parties. See 10 C.F.R. § 1003.45(b)(2). Nor is there any information indicating that the applicant cannot meet the filing requirement(6). See 10 C.F.R. § 1003.45(b)(4). In sum, application of the criteria listed in 10 C.F.R. § 1003.45(b) to the facts as we know them now leads us to the conclusion that a stay is not warranted.

As discussed earlier, any claim of injury to Mississippi Power through the release of the data during the

pendency of its Application for Exception is speculative because, as stated above, no release of the 1999 Form 861 data in any form is planned by EIA until October 2000. That is the earliest date when EIA expects to (a) finish receiving and digesting the data provided by submitters such as Mississippi Power and (b) release the material to the public. Even then, company-specific material would not be released under normal EIA procedures. With no release of the Mississippi Power data proposed, no immediate threat of harm is presented. See 10 C.F.R. §1003.45(b)(1).

It Is Therefore Ordered That:

The Mississippi Power Company Application for Stay submitted on May 1, 2000 is hereby denied.

George B. Breznay

Director

Office of Hearings and Appeals

Date: May 23, 2000

(1) A similar but considerably more expansive request has been filed by Mississippi Power with the Federal Energy Regulatory Commission. Copies of that submission accompanied the firm's Applications for Stay and Exception.

(2) The Form states that: "This report is mandatory under Public Law 93-275, the Federal Energy Administration Act of 1974, Public Law 95-91, Department of Energy Organization Act, and Public Law 102-486, the Energy Policy Act of 1992."

(3) The Mississippi Power Application for Exception is similarly deficient in this respect.

(4) A possibility exists that the Mississippi Power data could be requested under the Freedom of Information Act (FOIA). EIA generally grants such requests for this type of material because: "Information reported on the form EIA-861 is not considered confidential." See form EIA-861, "Annual Electric Utility Report for the Reporting Period 1999." However, should EIA decide that Mississippi Power's Form 861 commercial information would be released pursuant to a FOIA request, Mississippi Power would be given at least 7 days advance notice in which time it may file in a federal court to seek to prevent release of the allegedly confidential information. See 10 C.F.R. § 1004.11(g).

(5) EIA has published the following relevant notices: Comment Request on Provisions for Confidentiality, 63 Fed. Reg. 1,960 (1998); Comment Request on Modification & Extension of Electric Power Survey Forms, 63 Fed. Reg. 35582 (1998); Comment Request on Procedure of Confidential Treatment of Electric Power Survey Data, 63 Fed. Reg. 38620 (1998); EIA Submission to OMB Final Procedure of Confidential Treatment of Electric Power Survey Data & Survey Forms Modifications and Extensions, 63 Fed. Reg. 64682 (1998).

(6) To the contrary, Mississippi Power submitted a completed Form 861 for the year 1999 with its Application for Exception and Application for Stay.

# Case No. VES-0094

July 2, 2002

## DECISION AND ORDER OF THE DEPARTMENT OF ENERGY

### Applications for Stay

Names of Petitioners: CPKelco Cogeneration, *et al.*

Dates of Filing: June 17, 2002, *et al.*

Case Numbers: VES-0088, *et al.*

On various dates in June 2002, the firms specified in the Appendix filed Applications for Exception and Applications for Stay with the Office of Hearings and Appeals (OHA) of the U.S. Department of Energy (DOE). The Applications concern electricity sales and revenue data that the DOE Energy Information Administration (EIA) requires the firms to provide annually on Form EIA-861, "Annual Electric Power Industry Report." EIA in turn evaluates and publishes this individual firm data listed by state. The exception requests seek to have this data held as confidential and not released in any way. The Applications for Stay seek confidentiality pending resolution of the exception requests. For the reasons discussed below, we will deny the Applications for Stay.

## I. Background

The evaluation of an Application for Stay is governed by Section 1003.45 (b):

(b) The criteria to be considered and weighed by the OHA in determining whether a stay should be granted are:

(1) Whether a showing has been made that an irreparable injury will result in the event that the stay is denied;

(2) Whether a showing has been made that a denial of the stay will result in a more immediate hardship or inequity to the applicant than a grant of the stay would cause to other persons affected by the proceeding;

(3) Whether a showing has been made that it would be desirable for public policy reasons to grant immediate relief pending a decision by OHA on the merits;

(4) Whether a showing has been made that it is impossible for the applicant to fulfill the requirements of an outstanding order or regulatory provision; and

(5) Whether a showing has been made that there is a strong likelihood of success on the merits.

10 C.F.R. § 1003.45 (b).

## II. Analysis

The Applicants have made no showing of irreparable injury or immediate hardship or inequity in the absence of a stay. While the Applicants seek to avoid public release of various data to be submitted in their Form EIA-861s, the EIA does not plan to publish any of the data at issue until September or October 2002, two to three months from now. Immediate action in the form of a Stay is therefore unnecessary.

Each Application for Stay includes the general assertion that the Applicant will experience a competitive disadvantage if the Form-861 material is released. In general, the Applicants claim that if their EIA Form-861 data is released, competitors could closely calculate operating margin structures and thus know the price charged for the electricity that the Applicants sell. Each Applicant also claims disclosure of the information would place it at a competitive disadvantage in future transactions. However, these claims are unsupported, general assertions that might be made by any firm that files corporate data with the federal government. None of the Applicants has made the kind of specific, detailed factual showing that would demonstrate that it would be harmed in any way by release of this very general operating information for the calendar year 2001. Therefore, the arguments are not specific enough to support the claim that the Applicants will experience any injury or competitive disadvantage from the release of data from EIA Form-861.(1) Thus, the current stay submissions do not demonstrate a likelihood of success on the merits of the underlying Applications for Exception. 10 C.F.R. § 1003.45 (b)

The Applicants also each point out that they are party to commercial agreements that mandate that they keep the terms of their power sales agreements confidential. These assertions are unsupported. Moreover, the Energy Information Administration is authorized by federal law to collect and disseminate the information collected by EIA Form-861. *See* Federal Energy Administration Act of 1974, 15 U.S.C. § 761 *et seq.* The existence of a private contractual agreement cannot bar EIA's collection or use of the EIA Form-861 data.

## III. Conclusion

In accordance with the above discussion, we find that a Stay is not warranted for these Applicants because there is no immediate jeopardy to the Applicants, and because none of the Applicants have shown that it will succeed, based upon the information at hand, on the merits of the underlying Applications for Exception. Consequently, the Department of Energy has determined that these Applications for Stay filed should be denied.

It Is Therefore Ordered That:

The Applications for Stay, Case Nos. VES-0088, *et al.*, filed by the firms listed in the Appendix to this Decision are hereby denied.

George B. Breznay

Director

Office of Hearings and Appeals

Date: July 2, 2002

(1) The Applicants, in pursuing their Applications for Exceptions, should supplement their applications with specific material and detailed fact-based explanations as to how, specifically, its ability to do business in its particular competitive market area and with its customers and competitors, will be harmed by the release of this data. Such a showing should include consideration of the fact that when the data is to be

released it will be in aggregate form and, on average, more than one year old.

## **APPENDIX**

VES-0088

CPKelco Cogeneration  
c/o Andy Friedl, P.E.  
2025 East Harbor Drive  
San Diego, CA 92113

VES-0089

Berry Petroleum Co.  
c/o John E. Rosenbaum  
White & Case  
Two Embarcadero Center, Suite 650  
San Francisco, CA 94111-3162

VES-0090

Smurfit Stone Container Corp.  
c/o John E. Rosenbaum  
White & Case  
Two Embarcadero Center, Suite 650  
San Francisco, CA 94111-3162

VES-0091

Jefferson Smurfit Corp.  
c/o John E. Rosenbaum  
White & Case  
Two Embarcadero Center, Suite 650  
San Francisco, CA 94111-3162

VES-0095

OLS Energy-Chino  
c/o Kenneth E. Smith  
67 Park Place East  
Morristown, NJ 07960



# Case No. VES-0094

June 27, 2002

## DECISION AND ORDER OF THE DEPARTMENT OF ENERGY

### Application for Stay

Name of Petitioner: Sithe Energies, Inc.

Date of Filing: June 4, 2002

Case Number: VES-0094

On June 4, 2002, Sithe Energies, Inc., (Sithe) of New York, New York, filed with the Office of Hearings and Appeals (OHA) of the U.S. Department of Energy (DOE) an Application for Exception and an Application for Stay under the provisions of 10 C.F.R. § 1003.20. The Sithe Application concerns annual revenues and sales data pertaining to the firm's sale of electricity that the DOE Energy Information Administration (EIA) collects through Form EIA-861, "Annual Electric Power Industry Report." EIA publishes this data, by state, in firm-specific form. In its exception request, Sithe seeks authorization to have its revenue and sales data withheld from public release on grounds of confidentiality. Sithe has also filed an Application for Stay of release of the information contained in Form EIA-861, pending resolution of the exception request. This determination considers only the Application for Stay.

## I. Background

The evaluation of an Application for Stay is governed by Section 1003.45 (b):

(b) The criteria to be considered and weighed by the OHA in determining whether a stay should be granted are:

(1) Whether a showing has been made that an irreparable injury will result in the event that the stay is denied;

(2) Whether a showing has been made that a denial of the stay will result in a more immediate hardship or inequity to the applicant than a grant of the stay would cause to other persons affected by the proceeding;

(3) Whether a showing has been made that it would be desirable for public policy reasons to grant immediate relief pending a decision by OHA on the merits;

(4) Whether a showing has been made that it is impossible for the applicant to fulfill the requirements of an outstanding order or regulatory provision; and

(5) Whether a showing has been made that there is a strong likelihood of success on the merits.

10 C.F.R. § 1003.45 (b). The Sithe submission does not satisfy these criteria and no stay is warranted in

this case.

## II. Analysis

Sithe has made no showing of irreparable injury or immediate hardship or inequity in the absence of a stay. Sithe seeks to avoid public release of the data, but EIA does not plan to publish any of the Form EIA-861 data until September or October 2002, two to three months from now. Immediate action on its submission is therefore unnecessary. Furthermore, as to harm or injury of a longer term nature, Sithe has not provided the kind of detailed factual material that would show that it would be harmed in any way by release of this very general data for its operations for the calendar year 2001.

In its Application for Exception, Sithe makes the general assertion that it will suffer a competitive disadvantage if this material is released. Sithe argues that, if the information were released, its competitor in sales to the United States Navy, San Diego Gas & Electric Company (SDG&E), could use the data, combined with knowledge of the price it charges Sithe for electricity, to calculate Sithe's operating margin structure. Sithe also claims that SDG&E can derive the price Sithe charged for electricity sold to the Navy. This would impact its contract negotiations with SDG&E, Sithe claims. These very general assertions might be made by any firm that files corporate data with the federal government. Therefore, the arguments are insufficient to support the claim that Sithe will experience any injury or competitive

disadvantage. (1)

In the absence of this type of material, there is nothing in the record that would lead us to conclude the requested exception might be warranted. As a result, Sithe does not demonstrate that it will succeed on the merits of the Application for Exception, and the Stay request fails on these grounds as well. 10 C.F.R. § 1003.45 (b).

## III. Conclusion

In accordance with the above discussion, we find that a Stay is not warranted in this case, because there is no immediate jeopardy to Sithe, and because Sithe has not shown that it will succeed on the merits of the underlying Application for Exception. Consequently, the Department of Energy has determined that the Application for Stay filed by Sithe Energies, Inc., on June 4, 2002, should be denied.

It Is Therefore Ordered That:

The Application for Stay filed by Sithe Energies, Inc., Case No. VES-0094, on June 4, 2002, is hereby denied.

George B. Breznay  
Director  
Office of Hearings and Appeals

Date: June 27, 2002

(1) A claim of this type should include specific material and detailed, fact-based explanations as to how, specifically, in the case of Sithe, its doing business in its particular competitive market area and with its customers and competitors will be harmed by the release of this data. Such a showing should include consideration of the fact that when the data is to be released it will be in aggregate form and, on average, more than one year old.

October 2, 2002  
DECISION AND ORDER  
OF THE DEPARTMENT OF ENERGY

*Application for Stay*

Name of Petitioner: Southern Company

Date of Filing: August 6, 2002

Case Number: VES-0096

On August 6, 2002, the Southern Company Services, Inc.,<sup>1/</sup> (Southern) of Birmingham, Alabama, filed with the Office of Hearings and Appeals (OHA) of the U.S. Department of Energy (DOE) an Application for Exception and an Application for Stay under the provisions of 10 C.F.R. § 1003.20. The Southern Application concerns various operating data pertaining to the firm's sale of electricity that the DOE Energy Information Administration (EIA) collects through Form EIA-411, "Coordinated Bulk Power Supply Program Report." EIA publishes this data, by state, in firm-specific form. In its exception request, Southern seeks authorization to have its revenue and sales data withheld from public release on grounds of confidentiality as well as serious hardship and burden. The exception application incorporates an Application for Stay of release of the information contained in Form EIA-411, pending resolution of the exception request.<sup>2/</sup> This determination considers only the Application for Stay.

***I. Background***

The evaluation of an Application for Stay is governed by Section 1003.45 (b):

---

<sup>1/</sup> According to the submission, the application "is submitted by Southern Company Services, Inc., as agent for Alabama Power Company, Georgia Power Company, Mississippi Power Company, Gulf Power Company, and Savannah Electric & Power Company."

<sup>2/</sup> The provisions of Section 1003.9 require that "[e]ach application, petition or request for OHA action shall be submitted as a separate document, even if the applications, petitions, or requests deal with the same or a related issue, act or transaction, or are submitted in connection with the same proceeding." 10 C.F.R. § 1003.9. We have waived that requirement in this case.

(b) The criteria to be considered and weighed by the OHA in determining whether a stay should be granted are:

- (1) Whether a showing has been made that an irreparable injury will result in the event that the stay is denied;
- (2) Whether a showing has been made that a denial of the stay will result in a more immediate hardship or inequity to the applicant than a grant of the stay would cause to other persons affected by the proceeding;
- (3) Whether a showing has been made that it would be desirable for public policy reasons to grant immediate relief pending a decision by OHA on the merits;
- (4) Whether a showing has been made that it is impossible for the applicant to fulfill the requirements of an outstanding order or regulatory provision; and
- (5) Whether a showing has been made that there is a strong likelihood of success on the merits.

10 C.F.R. § 1003.45 (b). The Southern submission does not address nor satisfy these criteria and no stay is warranted in this case.

## *II. Analysis*

Southern has not shown or even asserted that irreparable injury or immediate hardship or inequity will result in the absence of a stay. Southern asserts no immediate harm or injury from release of the EIA-411 data. Nor has the firm provided the kind of detailed factual material that would show that in the absence of an exception it would be harmed in any way by release of this very general data for its operations for the calendar year 2001. Southern has been providing this material to EIA for many years and EIA has been releasing the material. No harm is claimed to have resulted so far. Thus no need for the emergency relief provided by a stay has been demonstrated.

In its Application for Exception, Southern claims that the material it provides on Form EIA-411 is confidential under the Trade Secrets Act, and exempt from disclosure under Exemption 2, 4, and 7(f) of the Freedom of Information Act. Southern also argues that because of its size and scope of operations, the burden of filing the report falls more heavily on Southern than others. If this is so, *i.e.*, that Southern has more filing obligations than others, it is because of Southern's vast operations. *See supra* note 1. By the same token, however, the firm's resources are also vast and so it is not apparent that the relative burden upon Southern of filing Form EIA-411 is inequitable or disproportionate. More importantly, Southern is a one of the largest groups of power utilities in the domestic economy and the data the firm provides is critical to the EIA's mission to provide policy-independent data, forecasts, and analyses that promote sound policy making, efficient

markets, and public understanding regarding energy and its interaction with the economy and the environment. After reviewing Southern's arguments, we find they are insufficient to support the claim that Southern will experience an injury or inequitable distribution of burdens.<sup>3/</sup>

In the absence of the type of factual material that would establish hardship or inequity, there is nothing that would lead us to conclude the requested exception might be warranted. As a result, Southern has not demonstrated that it will succeed on the merits of the Application for Exception, and the Stay request fails on these grounds as well. 10 C.F.R. § 1003.45 (b).

### *III. Conclusion*

In accordance with the above discussion, we find that a Stay is not warranted in this case, because there is no immediate jeopardy to Southern, and because Southern has not shown that it will succeed on the merits of the underlying Application for Exception. Consequently, the Department of Energy has determined that the Application for Stay filed by the Southern Company, on August 6, 2002, should be denied.

It Is Therefore Ordered That:

The Application for Stay filed by the Southern Company, Case No. VES-0096, on August 6, 2002, is hereby denied.

George B. Breznay  
Director  
Office of Hearings and Appeals

Date: October 2, 2002

---

<sup>3/</sup> A claim of this type should include specific material and detailed, fact-based explanations as to how, specifically, in the case of Southern, its doing business in its particular competitive market area and with its customers and competitors will be harmed by release of this data. Such a showing should include consideration of the fact that when the data is to be released, it will be in aggregate form and, on average, more than one year old.