

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.¹ Congress therefore directed the EIA to collect data on the supply, demand, and pricing of petroleum products.² 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.³ In order to minimize firms' reporting burden, the EIA periodically selects a relatively small sample of companies⁴ to file the form and permits firms to rely on reasonable estimates.⁵

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.

¹ See H.R. REP. NO. 96-373, at 15, 17 (1979).

² 15 U.S.C. § 772(a).

³ 42 U.S.C. §§ 7135(a)-(m).

⁴ 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.

⁵ 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. . . .”⁶ 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 inconvenience⁷ or the length of time a firm has reported⁸ 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.⁹

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;¹⁰ the firm experienced personnel deaths, illnesses or absences;¹¹ and where extreme or unusual circumstances disrupted the firm’s activities.¹²

III. Bowlin Travel Center, Inc.’s Application for Exception

⁶ 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”).

⁷ *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>.

⁸ *Rice Oil Co., Inc.*, Case No. VEE-0035 (1997) (citations omitted).

⁹ *Mulgrew Oil Co., Inc.*, Case No. LEE-0012 (1990) (citations omitted).

¹⁰ *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).

¹¹ *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).

¹² *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 firm¹³ located in Albuquerque, New Mexico. The firm has reported in three samples, dating back to February 1999.¹⁴ 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.”¹⁵

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.¹⁶

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

¹³ E-mail from Tammy G. Heppner, Survey Statistician, EIA, to David M. Petrush, Attorney-Examiner, OHA, Mar. 19, 2010.

¹⁴ *Id.*

¹⁵ Letter from Kim D. Stake, Chief Admin. Officer, Bowlin Travel Centers, Inc., to OHA, Mar. 3, 2010.

¹⁶ 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.