

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, 96th 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.¹

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.

¹ 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 2001.² 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 ¶

² 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

