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 unaccessible).

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.(3) 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.(4) 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.