

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: