

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