

May 15, 2009

DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

Application for Exception

Name of Case: Sauder Fuel Inc.

Date of Filing: April 28, 2009

Case No.: TEE-0059

On April 28, 2009, Sauder Fuel Inc. (Sauder), 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 Sauder’s Application should be denied.

**I. Background**

The DOE’s Energy Information Administration (EIA) is authorized to collect, analyze, and disseminate energy data and other information.<sup>1</sup> 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.<sup>2</sup>

Form EIA-782B is a monthly report of the volumes and prices of motor gasoline, No. 2 distillates, propane, and residual fuel oil sold by resellers and retailers. In order to minimize the reporting

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<sup>1</sup> 15 U.S.C. § 772(b); 42 U.S.C. § 7135(b).

<sup>2</sup> 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).

burden, the EIA periodically selects a relatively small sample of companies to file Form EIA-782B and permits reporting firms to rely on reasonable estimates.<sup>3</sup>

## II. Exception Criteria

The 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. Analysis

Sauder’s reasons for seeking exception relief are not as compelling as those for which we have previously granted relief. The firm argues that it should be relieved of its duty to file Form EIA-782B because its owner and employees “haven’t the time nor access to the necessary information to complete the forms.” Application at 1. The company further argues that his company is unable to accurately complete the form because its “record system does not differentiate between ULSD and

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<sup>3</sup> 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.

500 ppm diesel. We handle off road diesel which is labeled LSD NRLM. There does not seem to be a category for this product. Nor do we differentiate between commercial, industrial, etc. which the for asks us to do." *Id.*

Sauder has not demonstrated that the reporting requirement imposes a serious hardship, inequity, or unfair distribution of burdens.<sup>4</sup> As previously mentioned, 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. As for the categorization of sales as reported on Form EIA-782B, we have been informed that Sauder has been in contact with EIA analysts, who have attempted to provide him guidance in this regard. E-mail from Tammy Heppner, EIA, to Steven Goering, OHA (May 14, 2009). We also note that the instructions provided for this form allow for estimates of "sales volumes and unit prices by the customer categories specified on the form." *See* Section 7 of the General Instructions to Form EIA-782B; *see also supra* note 3. Accordingly, we find that exception relief is not warranted in this case. Sauder's Application for Exception should therefore be denied.

It Is Therefore Ordered That:

(1) The Application for Exception filed by Sauder Fuel Inc., Case No. TEE-0059, is hereby denied.

(2) Administrative review of this Decision and Order may be sought by any person who is aggrieved or adversely affected by the denial 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 385, Subpart J.

Poli A. Marmolejos  
Director  
Office of Hearings and Appeals

Date: May 15, 2009

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<sup>4</sup>In its application, Sauder also questions the relevance and necessity of the information required on the form, neither of which is relevant to whether the reporting requirement, as applied to Sauder, causes a serious hardship, gross inequity or unfair distribution of burdens.