

December 17, 2009

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Application for Exception

Name of Case: North Side Coal & Oil Co., Inc.

Date of Filing: December 2, 2009

Case No.: TEE-0067

On December 2, 2009, North Side Coal & Oil Co., Inc. (North Side) 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 permanently 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.¹

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 of the volume and prices of motor gasoline, No. 2 distillates, propane, and residual fuel oil sold by resellers and retailers. 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

¹OHA Exception Decisions issued since July 5, 1995, are available on the OHA website located at <http://www.oha.doe.gov>. The text of a cited decision may be accessed by entering the case number of the decision in the search engine located at <http://www.oha.doe.gov/search.htm>.

do business in four or more states are designated as certainty firms, and 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 periodically, 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.²

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).

² 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.

III. The Application for Exception

North Side is a seller of petroleum products based in Milwaukee, Wisconsin. The company sells gasoline, on- and off-road diesel, and heating oil. *See* Memorandum of Telephone Conversation between Steve Pitel, North Side, and Diane DeMoura, OHA, December 10, 2009. The company is currently designated as a certainty firm by the EIA and is reporting in its second consecutive sample. *See* E-mail from Tammy Heppner, EIA, to Diane DeMoura, OHA, December 9, 2009.

In its Application, North Side requests that it be permanently relieved of the obligation to file Form EIA-782B. *See* E-Mail from Steve Pitel, North Side, to OHA, December 2, 2009 (Application for Exception). North Side maintains that completing the form has become burdensome because the company has limited staff and finds it difficult to find time to complete the form. *Id.* Specifically, the firm states that it currently has only four full-time employees, each of whom carries a heavy workload. *Id.*

Based upon a review of the Application, we concluded that there was not sufficient information to permit us to act favorably on the request. Therefore, we contacted North Side to give the company an opportunity to discuss its request for relief. *See* Memorandum of Telephone Conversation between Steve Pitel, North Side, and Diane DeMoura, OHA, December 10, 2009. The task of completing the Form EIA-782B is assigned to North Side's general manager. The general manager spends about one and one-half hours each month completing Form EIA-782B. *Id.* The general manager also functions as the company's service manager and installer. He is currently also training a new service technician. *Id.* He stated that the winter months are a particularly busy time for the company. *Id.* He noted that the company has been selected in EIA's reporting samples in the past, but has not submitted information since 2005, because the firm was "able to obtain a waiver" from the requirement with the help of his district's congressman.³

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, although North Side claims that completing the form is burdensome, it has not established that it is adversely affected by the reporting requirement to a greater degree than other similar firms. To the contrary, it takes the company's general manager approximately one

³ In addition, North Side previously applied for, and was granted, temporary exception relief in February 2002. *See North Side Coal & Oil Co., Inc.*, Case No. VEE-0081 (2002).

and one-half hours each month to compile the necessary data for the form, less than EIA's estimated time for completion of the form. *See* Memorandum of Telephone Conversation between Steve Pitel, North Side, and Diane DeMoura, OHA, December 10, 2009.

As stated above, the EIA relies heavily on the market data collected from certainty firms such as North Side. While we can appreciate that North Side has a limited staff and a heavy workload, the reliability of the reporting sample would be compromised if we were to grant an exception to all firms – particularly certainty firms – experiencing heavy workloads or other issues associated with maintaining a business.

As the foregoing indicates, North Side 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 North Side Coal & Oil Co., Inc., Case No. TEE-0067, be, and hereby 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: December 17, 2009