

June 11, 2010

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Application for Exception

Name of Case: Monroe Oil Company

Date of Filing: May 26, 2010

Case Number: TEE-0071

On May 26, 2010, Monroe Oil Company (Monroe) 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).

¹ OHA 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>.

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 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.

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).

III. The Application for Exception

Monroe is a retail and wholesale seller of gasoline and other petroleum products based in Monroe, North Carolina. The company, a non-certainty firm, was selected by the EIA to submit the monthly Form EIA-782B in Sample 10 (beginning in February 1993 and continuing about sixteen months), Sample 15 (beginning in October 2004 and continuing about five years) and Sample 16 (beginning in November 2009 and currently ongoing). *See* Memorandum of Telephone Conversation between Tammy Heppner, Survey Statistician, EIA and Kent Woods, Attorney-Examiner, OHA, May 28, 2010.

In its Application, Monroe requests that it be permanently relieved of the obligation to file Form EIA-782B. Monroe maintains that it has been required to file the monthly Form EIA-782B almost continuously since the early 1990's, and that it is unfair to subject Monroe to this administrative burden for such a lengthy period of time when there are other, similarly situated petroleum retailers in Monroe's marketing area who have never been required to submit the form. *See* Memorandum of Telephone Conversation between Mr. Olin Furr, President and owner of Monroe, and Kent Woods, OHA, June 8, 2010. Monroe also contends that preparing Form EIA-782B has recently become more burdensome because the employee charged with preparing the form is on six weeks of maternity leave from late May 2010 until early July 2010. If no exception relief is provided, Mr. Furr states that he will be required to ask this employee to return to the office and show him how to retrieve the data needed to prepare the form, and that he will be required to complete the form at home after working hours. He estimated that it will take him approximately two and a half hours to retrieve the data and prepare the form. *Id.*

IV. Analysis

The Form EIA-782B reporting requirement requires common information on pricing and inventory changes for various refined petroleum products. As we stated above, the EIA relies heavily on the market data collected from firms such as Monroe. While we can appreciate that Monroe 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 experiencing heavy workloads or other issues associated with maintaining a business. 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.

Monroe's assertion that it is unfair to require it to file Form EIA-782B for many years does not state a sufficient basis for exception relief. As we explained above, we have held that the length of time that a company has reported does not constitute a hardship warranting relief.

Further, although Monroe claims that completing the form is burdensome due to the temporary absence of the employee charged with this task, it has not established that it is experiencing the level of distress that has caused us to grant exception relief, such as extreme personnel shortages, bankruptcy, or natural disaster. As noted above, the company's president and owner estimates that in the absence of this employee, it will take him approximately two and one-half hours to compile the necessary data and to complete the form, which is identical to the EIA's estimated time for

completion of 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.

As the foregoing indicates, Monroe 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 Monroe Oil Company, Case No. TEE-0071, 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: June 11, 2010