

November 15, 2010

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Application for Exception

Name of Case: B&B Marine, Inc.
Date of Filing: October 15, 2010
Case No.: TEE-0072

On October 15, 2010, B&B Marine, Inc. (B&B) 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 do business in four or more states, designated as certainty firms, 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

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 assessed by entering the case number of the decision in the search engine located at <http://www.oha.doe.gov/search.htm>.

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).

III. The Application for Exception

B&B is a seller of petroleum products based in Newport, Rhode Island. The firm is designated as a non-certainty firm by the EIA. *See* E-mail from Tammy Heppner, EIA, to Kimberly

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.

Jenkins-Chapman, OHA, October 22, 2010. The firm was selected for the first time during the last sample rotation beginning with the February 2010 reference period.

In its Application, B&B requests that it be relieved of the obligation to file Form EIA-782B. *See* Letter from Robert Jankuska, B&B, to OHA, October 15, 2010 (Application for Exception). B&B maintains that it is a small company with limited resources. *Id.* The firm states that it is difficult “to keep up with all the paperwork needed to keep in business” and that completing the form is burdensome. *Id.* The firm further states that it does not have a problem completing the form once a year, but states that “it is unfair that every company dealing in these products does not have to fill this form out every month.” *Id.* The firm states that it “would like to be a company that does not have to fill these forms every month.” *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 B&B to give the company an opportunity to discuss its request for relief. *See* Memorandum of Telephone Conversation between Robert Jankuska, B&B, and Kimberly Jenkins-Chapman, OHA, November 8, 2010. B&B states that its five employees drive trucks during the day and that it must hire an accountant to complete its paper work, including the completion of Form EIA-782B. *Id.* According to B&B, the cost of hiring an accountant every month has become a financial burden to the company. *Id.* B&B states that its accountant usually charges the company for three hours at a rate of \$100 per hour. However, the company owner states that once it has compiled the information for the accountant, it probably takes the accountant about 10 minutes to complete the form. *Id.* The company owner reiterated that it is a small company and that the requirement to file Form EIA-782B is a “hassle” and is costly. *Id.* He stated that he would be willing to file the form on a quarterly basis, but that the monthly requirement is burdensome. *Id.*

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, B&B claims that it is adversely affected by the reporting requirement to a greater degree than other similar firms. It bases its request solely on the unsubstantiated assertion that compiling the data for the form has become a cost burden due to the expense of hiring an accountant to complete the form. However, B&B acknowledges that its accountant completes all of the company paperwork, not only Form EIA-782B. *See* Memorandum of Telephone Conversation between Robert Jankuska, B&B, and Kimberly Jenkins-Chapman, OHA, November 1, 2010. Although B&B asserts that its five employees drive trucks during the day, we find that it has not explored other alternatives to meet the requirement to file Form EIA-

782B, *i.e.*, completing paperwork at night. B&B's contention that the requirement to file Form EIA-782B is a hassle and cost burden, absent any showing of serious hardship, inequity, or unfair distribution of burdens, is insufficient to warrant relief.

As the foregoing indicates, B&B 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 B&B Marine, Inc., Case No. TEE-0072 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: November 15, 2010