

September 27, 2002
DECISION AND ORDER
OF THE DEPARTMENT OF ENERGY

Application for Exception

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

Date of Filing: February 25, 2002

Case Number: VEE-0081

On February 25, 2002, North Side Coal & Oil Co., Inc. (North Side) of Milwaukee, Wisconsin filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). In its application, North Side requests that it be excused from filing the Energy Information Administration's (EIA) form entitled "Resellers'/ Retailers' Monthly Petroleum Product Sales Report" (Form EIA-782B). As explained below, we conclude that it is appropriate to excuse North Side from filing the Form EIA-782B from September 2002 until March 2003 because the firm is a "noncertainty firm" and has demonstrated that it will experience an "undue hardship" if it is not granted exception relief during this period.^{1/}

A. Background

Form EIA-782B is part of the mandatory reporting requirements which grew out of the shortages of crude oil and petroleum products during the 1970's. It is designed to collect monthly information on refined petroleum product sales volumes and prices from a sample of resellers and retailers. 42 U.S.C. § 7135(b). Information obtained from Form EIA-782B 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 data is used by Congress and by more than 35 state governments to project trends and to formulate state and national energy policies.

^{1/} Certainty firms are firms that account for over five percent of the sales of any particular petroleum product in a state and are always included in the sample of firms required to file the report. Other firms are referred to as "noncertainty firms," and a random sample of such firms is selected to complete the Form EIA-782B every 12 to 20 months. Although a noncertainty firm may be re-selected 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.

The DOE has attempted to ensure that the surveys yield valuable information while minimizing the burden placed on the industry. Thus, 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. In addition, to reduce the amount of time spent completing the forms, firms may rely upon reasonable estimates.^{2/}

B. Exception Criteria

This Office 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 C.F.R. § 1003.25(b)(2). Exceptions are appropriate only in unusual 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 requirement in a way that differs significantly from similar reporting firms. Thus, mere inconvenience does not constitute a sufficient hardship to warrant relief. Glenn W. Wagoner Oil Co., 16 DOE ¶ 81,024 (1987).

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).

C. Analysis

North Side sells home heating oil and services its customers in Milwaukee, Wisconsin and the surrounding communities. It also sells a small amount of motor gasoline, and a very small amount of off-road and on-road diesel fuel. It is a family-owned business, and sells products to about 750 customers. Designated as a “noncertainty firm” by EIA, North Side has been responsible for submitting the Form EIA-782B since January of 2002.

On February 5, 2002, Steve Pitel, the firm’s General Manager-Service Manager, filed an application for exception requesting that the firm be excused from filing the Form EIA-782B for the following reasons:

We are a very small company with a total of four full time employees. Our owner had a stroke in April of 1999 and has yet to be able to return to work full time, our only Service man (HVAC) recently had hernia surgery and has [not] yet been cleared to return to his

^{2/} Form EIA-782B stipulates that the filer 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.

normal routine, and our one office lady will be retiring soon. I, myself, have been deeply involved in the reconstruction of our bulk plant and performing field services to compensate for my service man being out of duty.

North Side's Application for Exception (February 5, 2002).

Although the firm's service technician has returned to work, Mr. Pitel has indicated that it will be very difficult for North Side to file Form EIA-782B during the upcoming winter months because the firm must respond to service calls about heating problems during this period of time. See Memorandum of Telephone Conversation between Mr. Pitel and Linda Lazarus, Staff Attorney, OHA (June 4, 2002). ^{3/}

Based on the information provided by Mr. Pitel, we have determined that North Side has met the standards for temporary exception relief from the EIA reporting requirements. As set forth above, the firm is a small, family-owned business. In the recent past, the firm has been short-staffed because of limited manpower and temporary absences from work. Given North Side's recent personnel problems, we are convinced that it would suffer a hardship if it were required to file Form EIA-782B during the winter months because the firm will also have increased responsibilities during that time to respond to service calls. Thus, in balancing the public policy considerations favoring the gathering of information vital to the nation's energy security against the equities in North Side's favor, we have concluded that North Side's Application for Exception should be granted.

It Is Therefore Ordered That:

- (1) The Application for Exception by North Side Coal & Oil Co., Inc. on February 25, 2002 is granted in part.
- (2) North Side Coal & Oil Co., Inc. is excused from filing the Energy Information Administration's (EIA) form entitled "Resellers'/ Retailers' Monthly Petroleum Product Sales Report" (Form EIA-782B) from September 2002 until March 2003, but is otherwise required to continue to file Form EIA-782B.
- (3) This is a final Order of the Department of Energy.

George B. Breznay
Director
Office of Hearings and Appeals

Date: September 27, 2002

^{3/} During this telephone conversation, Mr. Pitel also indicated that it takes him between sixty and ninety minutes to complete the Form EIA-782B. See Memorandum of Telephone Conversation between Mr. Pitel and Ms. Lazarus (April 15, 2002).