Case No. VEE-0033

February 11, 1997

DECISION AND ORDER

OF THE DEPARTMENT OF ENERGY

Application for Exception

Name of Petitioner: Nugent Motor Company

Date of Filing: October 16, 1996

Case Number: VEE-0033

On October 16, 1996, Nugent Motor company (Nugent) of Colebrook, New Hampshire, filed an Application for Exception with the Office of Hearings and Appeals of the Department of Energy. In its Application, Nugent requests that it be relieved of the requirement that it file the Energy Information Administration's (EIA) form entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report" (Form EIA-782B). As explained below, we have determined that the Application for Exception should be denied.

A. Background

The EIA-782B reporting requirement grew out of the shortages of crude oil and petroleum products during the 1970s. In 1979, Congress found 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. The current form collects information concerning the volume and price of various grades and types of motor gasoline, No. 2 distillates, propane, and residual fuel oil, broken down by customer type.

Information obtained from the survey is used to analyze trends within the 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. In addition, firms in the petroleum industry frequently base business decisions on the data published by EIA.

The DOE has attempted to ensure that this survey yields 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 the report. In addition, to reduce the amount of time

spent completing the forms, firms may rely upon reasonable estimates.(1) EIA designates some companies as certainty firms. A company is designated as such because it either (a) sells five percent or more of a particular product sales category in a state in which it does business, or (b) does business in four or more states.(2) All certainty firms are included in the survey sample on a continuing basis because of their impact on the market. EIA examines the data that these companies submit more closely and considers it more instructive in gauging market trends than data submitted by smaller firms. The continuity of the surveys cannot be maintained by replacing a certainty firm with a similar company since all companies of this kind are already survey participants.

B. Exceptions Criteria

Form EIA-782B is a mandatory report designed to collect monthly information on refined petroleum sales volumes and prices from a sample of resellers and retailers. 42 U.S.C. § 7135 (b). 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 extreme 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).

In 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. Neither the fact that a firm is relatively small, nor the fact that it has filed the report for a number of years alone constitute grounds for exception relief. If firms of all sizes, both large and small, 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).

The following examples illustrate the types of circumstances that may justify relief from the reporting requirement. Since each case is different, these examples are not intended to reflect all circumstances that justify exception relief:

- Financial difficulties underlie most approvals of exception relief. We have granted a number of exceptions where the applicant's financial condition is so precarious that the additional burden of meeting the DOE reporting requirements threatens its continued viability. Mico Oil Co., 23 DOE ¶ 81,015 (1994) (firm lost one million dollars over previous three years); Deaton Oil Co., 16 DOE ¶ 81,026 (1987) (firm in bankruptcy).
- Relief may be appropriate when the only person capable of preparing the report is ill and the firm cannot afford to hire outside help. S&S Oil & Propane Co., 21 DOE ¶81,006 (1991) (owner being treated for cancer); Midstream Fuel Serv., 24 DOE ¶ 81,023 (three month extension of time to file reports granted when two office employees simultaneously on maternity leave); Eastern Petroleum Corp., 14 DOE ¶ 81,011 (1986) (two months relief granted when computer operator broke wrist).
- A combination of factors may warrant exception relief. Exception relief for 10 months was granted where personnel shortages, financial difficulties, and administrative problems resulted from the long illness and death of a partner. Ward Oil Co., 24 DOE ¶ 81,002 (1994); see also Belcher Oil Co., 15 DOE ¶ 81,018 (1987) (extension of time granted where general manager abruptly left firm without notice).
- Extreme or unusual circumstances that disrupt a firm's activities may warrant relief. 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); Meier Oil Serv., 14 DOE ¶81,004 (1986) (three months where disruptions caused by installation of a new computer system left firm's records unaccessible).

C. Nugent's Exception Application

Nugent, located in Colebrook, New Hampshire, sells #2 distillate, gasoline, and propane to retail customers. It requests an exception to its Form EIA-782 B reporting requirement on the basis that: (1) the company has been asked to file reports for the past two years; and (2) the company must pay overtime wages to an employee hired in another capacity in order to comply with the EIA's requirement. Nugent filled out the report for approximately two years, had a break for eight months, and has been completing the form for the past two years. The firm's owner, Mr. Peter Nugent, informed us that there are many other companies in its area that could be selected to complete the form. At Nugent, the person who previously processed the report has moved to another position, and the clerk who normally handles medical insurance and safety work now is tasked with completing the EIA form. Mr. Nugent estimates that it takes one and one-half to two and one-half hours for the medical insurance clerk to complete the form. Because she was hired to handle the company's medical insurance work, she must attend to the EIA form after hours, forcing Mr. Nugent to pay her overtime wages in order to comply with the reporting requirement. Because Nugent is not automated and operates with a small clerical staff, Mr. Nugent asks to be excepted from the reporting requirement.

D. Analysis

Our review of the record in this case indicates that Nugent has not met the standards for exception relief set forth above. Mr. Nugent's time estimate for completing the form is a maximum of two and one-half hours, which is in line with the EIA estimate for completing the reporting requirement. See Sound Oil Company, 25 DOE ¶ 81,006 (1994). In the past, we have denied exception relief to firms which claimed they required a longer period of time to complete the form than that estimated by EIA. Haynes Oil, 21 DOE ¶ 81,002 (1992) (one day); Delgado Oil Co., 17 DOE ¶ 81,005 (1988) (40 hours); Dell Oil Ltd., 13 DOE ¶ 81,009 (1985) (2 days). Although the amount of time Nugent's employee needs to fill out the form may be inconvenient, we find that the time required is not excessive and causes no special hardship.

Nugent also contends that because his firm has participated in the survey for the past four years (with an eight month break) it should be relieved of any further reporting requirement. We have repeatedly held that the length of time that a firm has been required to file an EIA form does not constitute grounds for exception relief. Sound Oil Co., 25 DOE ¶ 81,006 (1994) (10 years); Schaal Oil Co., 14 DOE ¶ 81,018 (1986) (3 years); Halron Oil Co., 16 DOE ¶ 81,001 (1987) (12 years). The basis for this conclusion is that the importance of the information collected by the EIA through the survey usually outweighs the inconvenience of providing the data. The fact that the firm has had to provide data to EIA for four years does not by itself constitute a gross inequity which would warrant exception relief. Unless firms such as Nugent are part of the EIA's statistical sample, the DOE will be unable to formulate valid estimates from a cross-section of the industry. Consequently, there is no evidence that the burden on Nugent of providing the requested data outweighs the benefits to DOE and the nation from access to the information.

We find that Nugent is not significantly more burdened by the reporting requirement than similarly situated respondents. Even though the medical insurance clerk does not have time during her normal work hours to complete the form, requiring her to work an additional two and one-half hours per month is not excessive. We can distinguish the facts in this case from those in other cases where respondents with small clerical staffs were granted exception relief. A small number of those firms were granted relief when one or more of the staff was unable to work for some length of time. Midstream Fuel Service, 24 DOE ¶ 81,023 (1994) (granted extension of time to file when two office employees were simultaneously on maternity leave); Lee Oil Company, 26 DOE ¶ 81,003 (1996) (granted relief when one employee was required to perform the duties of two employees on temporary leave). Because Nugent has not lost any employees and has been able to transfer responsibility for completing the form to an existing employee, we find that the requirement that Nugent file Form EIA-782B does not constitute a special hardship, inequity, or unfair distribution of burdens. Accordingly, the Application for Exception filed by Nugent should be denied.

It Is Therefore Ordered That:

The Application for Exception filed by Nugent Motor Company on October 16, 1996 is hereby denied.

George B. Breznay

Director

Office of Hearings and Appeals

Date: February 11, 1997

(1)The firm 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.

(2)A random sample of other firms is also selected. This random sample changes approximately every 12 months, but a firm may be reselected for a subsequent sample. 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.