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Case No. VEE-0059

October 20, 1999

DECISION AND ORDER

OF THE DEPARTMENT OF ENERGY

Application for Exception

Name of Petitioner:XXXXXXXXXX Oil Co., Inc.

Date of Filing:April 26, 1999

Case Number: VEE-0059

On April 26, 1999, XXXXXXXXXXXX Oil Co., Inc. (XXXXXXXXXX) of XXXXXXXXXXXX, filed an Application for Exception with the Office of Hearings and Appeals of the Department of Energy. In its Application, XXXXXXXXXXXX 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" (EIA-782B). As explained below, we have determined that the Application for Exception should be granted.

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 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 the 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 sample of companies to file the report.(1) In addition, to reduce the amount of time spent completing the forms, firms may rely upon reasonable estimates.(2)

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 "serious hardship, gross 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. XXXXXXXXXXXX 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. See Champlain Oil Co., Inc., 14 DOE ¶ 81,022 (1986); Eastern Petroleum Corp., 14 DOE ¶ 81,011 (1986). This entails balancing any burden the firm may encounter in meeting its reporting requirement against the public interest in collecting reliable information concerning energy markets upon which public decisions may be based. 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 (1994) (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 ten 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 ¶ 81,205 (1979) (hurricane); Meier Oil Serv., 14 DOE ¶ 81,004 (1986) (three months where disruptions caused by the installation of a new computer system left firm's records inaccessible).

XXXXXXXXXX's Exception Application

XXXXXXXXXX, located in XXXXXXXXXXXX, sells retail motor gasoline to service stations and convenience stores. Classified by the EIA as a "medium sized company," XXXXXXXXXXXX has filed Form EIA-782B throughout EIA Sample 13, which began in February/March 1999.(3) Because XXXXXXXXXXXX is not classified as a "certainty firm" by the EIA, it is possible, but not guaranteed, that the company will be rotated out of the reporting sample when EIA conducts the next random selection process for inclusion in EIA Sample 14.

In the Application for Exception, the owner of XXXXXXXXXXXX, XXXXXXXXXXXX, requests relief from the EIA reporting requirement because, since November 1997, his company has been experiencing an operating loss of \$9,000 to \$10,000 per month. Mr. XXXXXXXXXXXX states that he has been spending all of his available hours at work trying to keep his business afloat. He states that he has recently had to sell one of his service stations and a rental property, and refinance some business loans just to keep his business solvent. Furthermore, Mr. XXXXXXXXXXXX states that, because of his inexperience with the EIA form and his current unavailability to learn how to properly fill out this form, he would be forced to hire an accountant to continue to fulfill the EIA reporting requirement. Given XXXXXXXXXXXX's current financial struggles, Mr. XXXXXXXXXXXX contends that requiring his company to fill out the EIA form is unduly burdensome on his business.

Analysis

Our review of the information presented in XXXXXXXXXXXX's Application for Exception leads us to conclude that there is considerable merit to XXXXXXXXXXXX's contention that the EIA reporting requirement is currently significantly more burdensome to XXXXXXXXXXXX than to other potential respondents. As mentioned above, we have granted exception relief when a firm has demonstrated that the reporting requirement threatens its continued viability due to its precarious financial condition. We believe such circumstances exist in the present case and that granting exception relief to XXXXXXXXXXXX is appropriate. In its Application, XXXXXXXXXXXX has provided its financial statements for the last two years. These financial statements confirm that XXXXXXXXXXXX has had recent cash flow problems necessitating that the company sell off some of its assets to generate additional cash. XXXXXXXXXXXX's poor financial condition has also led it to refinance its debt so that it could significantly lower its monthly payments.

We conclude that the burden placed upon XXXXXXXXXXXX at this time, due to its precarious financial position, is greater than that encountered by other firms required to complete Form EIA-782B. Accordingly, XXXXXXXXXXXX should be granted temporary relief from its obligation to file Form EIA-782B. We will therefore grant exception relief to XXXXXXXXXXXX for a one-year period, which should give the firm sufficient time to rectify its current financial difficulties.

It Is Therefore Ordered That:

(1) The Application for Exception filed by XXXXXXXXXXXX Oil Co., Case No. VEE-0059, is hereby granted to the extent set forth in paragraph (2) below.

(2) Notwithstanding the instructions to Form EIA-782B, XXXXXXXXXXXX Oil Co. shall not be required to file reports to the Energy Information Administration for a one-year period, beginning November 1, 1999 and extending to November 1, 2000.

(3) Administrative review of this Decision and Order may be sought by any person who is aggrieved or adversely affected by the denial 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 385, Subpart J.

George B. Breznay

Director

Office of Hearings and Appeals

Date: October 20, 1999

(1)Firms that do business in four or more states or which account for over five percent of the sales of any particular product in a state are always included in the sample of firms required to file the report. 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.

(2)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 also alert the EIA if the estimates are later found to be materially different from actual data.

(3)See Record of Telephone Conversation between Sherry Beri, EIA, and Leonard Tao, OHA Staff Attorney (October 13, 1999).