Case No. VEE-0061

September 22, 1999

DECISION AND ORDER

OF THE DEPARTMENT OF ENERGY

Application for Exception

Name of Petitioner: Paul Smith Oil Company

Date of Filing: May 24, 1999

Case Number: VEE-0061

On May 24, 1999, Paul Smith Oil Company (Smith) filed an Application for Exception with the Office of Hearings and Appeals of the Department of Energy. In its Application, Smith asks 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. Smith's Exception Application

Smith, located in Adrian, Michigan, sells #2 distillate residential fuel oil, #2 diesel wholesale, and motor oil and gasoline (retail and wholesale). Smith is a non-certainty company that is currently included in Sample 13, and also participated in Sample 12. *See* Memorandum of Telephone Conversation between Sherri Beri, EIA, and Valerie Vance Adeyeye, OHA (August 3, 1999). The company requests an exception to its Form EIA-782B reporting requirement on the basis that: (1) Smith has been filing the reports since February 1997; (2) there are other oil companies in the area that could furnish the requested data to DOE instead of Smith; and (3) Smith's computer system is not Y2K compliant, and, according to the owner, a replacement system will not be able to produce the data that Smith currently uses to complete the report. The firm's owner, Mr. Paul Smith, also explains that the company only has three employees (Mr. Smith, his wife and a driver), and that both he and his wife work long hours for six or seven days a week. For the above reasons, Smith asks to be excepted from the reporting requirement.

D. Analysis

Our review of the record in this case indicates that Smith has not met the standards for exception relief set forth above. Mr. Smith states that he spends two hours on Sundays completing the form. This is greater than the EIA estimate for completing the reporting requirement. See Sound Oil Company, 25 DOE ¶ 81,006 (1994). However, 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 Smith requires to fill out the form may be inconvenient, we find that the time required is not excessive and causes no special hardship.

Smith also contends that because the firm has participated in the survey for the past two years and because another oil company could furnish data to DOE, Smith 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 two years does not by itself constitute a gross inequity which would warrant exception relief. Even though another oil company could furnish data to DOE, Smith's data is unique and no other company can respond on Smith's behalf. Unless firms such as Smith 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 Smith of providing the requested data outweighs the benefits to DOE and the nation from access to the information.

We find that Smith is not significantly more burdened by the reporting requirement than similarly situated respondents. Even though Mr. Smith does not have time during his normal work hours to complete the form, there is no evidence in the record that completing the form on the weekend is the result of an unusual hardship or that it is indicative of an unfair distribution of burdens. There is also no evidence in the record of serious financial strain on the company. 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 Smith has not presented evidence of an adverse effect on the company caused by the reporting requirement, we find that the requirement that Smith file Form EIA-782B does not constitute a special hardship, inequity, or unfair distribution of burdens. Accordingly, the Application for Exception filed by Smith should be denied.

It Is Therefore Ordered That:

The Application for Exception filed by Paul Smith Oil Company on May 24, 1999 is hereby denied.

George B. Breznay

Director

Office of Hearings and Appeals

Date: September 22, 1999

(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.