

Case No. VEE-0064

May 30, 2000

DECISION AND ORDER

OF THE DEPARTMENT OF ENERGY

Application for Exception

Name of Petitioner: Belcourt Oil Company

Date of Filing: July 23, 1999

Case Number: VEE-0064

On July 23, 1999, Belcourt Oil Company (Belcourt) of Belcourt, North Dakota filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). In its Application, Belcourt requests that it be relieved of the requirement to file Form EIA-782B, 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.

I. 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 "Petroleum Marketing Monthly." These data are 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. 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.

II. Exception Criteria

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; 10 C.F.R. § 1003.25(b)(2). 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 Wagoner Oil Company*, 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 Company, Inc.*, 14 DOE ¶ 81,022 (1986); *Eastern Petroleum Corporation*, 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 Company*, 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.

- . 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 ¶ 81,023 (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 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 Board of Citronelle-Gas, 4 DOE ¶ 81,205 (1979) (hurricane); Meier Oil Service, 14 DOE ¶ 81,004 (1986) (three months where disruptions caused by installation of a new computer system left firm's records inaccessible).

III. Belcourt's Application for Exception

Belcourt, located in Belcourt, North Dakota, sells motor gasoline, No. 2 diesel fuel, No. 2 fuel oil and propane. As a non-certainty firm, Belcourt has filed Form EIA-782 in sample 11. However, Belcourt is now a certainty firm currently participating in sample 13. It has been nonrespondent in 8 of the 12 months in sample 13. In its Application for Exception, Michelle Parisien of Belcourt requests relief from the EIA reporting requirements because she believes the requirements are currently unduly burdensome to the company. Ms. Parisien states that Belcourt had to purchase a new computer and that she is the only one in the office who is familiar with the system. She further states that Belcourt lacks the personnel to complete the forms.

IV. Analysis

Our review of the record in this case indicates that Belcourt has not met the standards for an exception to the EIA reporting requirements that are set forth above. In its Application, Belcourt contends that it has been filing with the EIA for many years. We have consistently ruled that the length of time that a firm has been required to file an EIA form does not alone constitute grounds for exception relief. See Schaal Oil Company, 14 DOE ¶ 81,018 (1986) (3 years); see also Harbor Enterprises, 20 DOE ¶ 81,004 (1990) (had been filing various forms, including EIA forms for 20 years). The basis for this conclusion is that the importance to the nation of the information collected by the EIA through the survey usually outweighs the inconvenience to the firm of providing the data. The EIA, however, attempts to replace 50 percent of the reporting sample at the end of each reporting period. A firm that has reported for three consecutive sample periods will generally not be included in a fourth consecutive sample, but may be selected again in a later sample. Therefore, Belcourt's several years of participation does not distinguish it from other firms as unduly or onerously affected.

Belcourt also contends that preparing Form EIA-782B is a burden on the company because it has purchased a new computer system and that there is only one employee who is familiar with the new system. However, we have previously held that the lack of a computer system or the employees to operate a system is insufficient grounds for showing serious hardship. Halron Oil Company, 16 DOE ¶ 81,001 (1987). EIA estimates that it should take 2.5 hours per month for a firm to fill out Form EIA-782B. To shorten the time it takes to prepare Form EIA-782B, Belcourt may use estimates without compromising EIA's comprehensive survey of motor gasoline and middle distillate markets. EIA allows firms to use estimates as long as they are "consistent with standard accounting records maintained by the firm." 2 Federal Energy Guidelines ¶ 18,502 at 18,507. We recommend that Belcourt contact EIA to establish a method of estimation satisfactory to both parties. Toll-free numbers are provided in the General Instructions of the EIA forms.

In summary, Belcourt has not shown that providing EIA the data is excessively onerous to it as compared to other firms similarly affected. The applicant has also failed to show that the effort involved in providing the data outweighs the benefits which the DOE and the nation receive from access to the information. The data collected from Form EIA-782B constitutes our primary source of information on supplies, demand and prices of petroleum products. Reliable data are vital to the nation's ability to anticipate and respond quickly and effectively to any future supply disruptions and thereby protect the public interest. Indeed, this is why the Congress mandated the collection of this type of data. Unless firms such as Belcourt are part of the EIA's statistical sample, the DOE will be unable to formulate valid estimates from a cross-section of the industry. Strong public policy considerations such as these lead us to conclude that Belcourt's request for exception relief from the mandatory reporting requirements is unwarranted.

In accordance with the above discussion, we find that exception relief is not warranted in this case, because Belcourt is not experiencing a special hardship, inequity or unfair distribution of burdens as a result of the requirement that it file Form EIA-782B. Consequently, the Department of Energy has determined that the Application for Exception filed by Belcourt should be denied.

It Is Therefore Ordered That:

(1) The Application for Exception filed by Belcourt Oil Company, Case No. VEE-0067, is hereby denied.

(2) 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: May 30, 2000

(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.