

Case No. VEE-0074

December 15, 2000

DECISION AND ORDER

OF THE DEPARTMENT OF ENERGY

Application for Exception

Name of Petitioner: H.A. Mapes, Inc.

Date of Filing: May 30, 2000

Case Number: VEE-0074

On May 30, 2000, H.A. Mapes, Inc., (Mapes) of Springvale, Maine, filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). In its application, Mapes 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 granted.

A. Background

Form EIA-782B is a mandatory reporting requirement 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 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.

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

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 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).

Neither the fact that the firm is relatively small, nor that it has filed reports 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).

C. Analysis

Mapes is a petroleum product wholesaler-retailer located in Springvale, Maine. Classified by EIA as a "medium size firm," Mapes has filed Form EIA-782B in Samples 12 and 13. The firm sells motor gasoline and residential, non-residential and wholesale No. 2 distillate in Maine and New Hampshire.

In the firm's application its owner, Mr. Allen Mapes, requests an exception to the Form EIA-782B reporting requirement on the basis that the firm has been completing the form on a regular monthly basis between three and four years. Mr. Mapes states that he is 72 years of age, the sole owner of the firm, and has himself always prepared and filed Form EIA-782B. Because of his age, Mr. Mapes states that the Form requires a good deal more time to complete than the average reporting firm. Mr. Mapes further states that the only other employee able to complete and file the form is overburdened with work. In one regard, the firm's bookkeeper is

suffering from limiting back pain, and another key employee recently left the firm.

Mr. Mapes also states that while the firm does have some computer capability, it is not programmed or capable of being programmed to generate the information necessary to complete the form. Due to its personnel problems, the existing staff is burdened by having to maintain the data for the forms manually on 3x5 cards. Finally, due to these difficulties and his age, Mr. Mapes states that he is negotiating to sell the firm.

We have carefully weighed all of the serious difficulties raised in the Mapes submission against the public policy interests served by the collection of the information provided by Form EIA-782B, and have concluded that a temporary exception relieving H.A. Mapes, Inc. of the requirement to file Form EIA-782B is warranted. If at the end of that period, the firm's difficulties with the EIA filing requirement continue, the firm may seek further exception relief. In the event the firm is sold, this Exception relief shall cease.

It Is Therefore Ordered That:

- (1) The Application for Exception filed by H.A. Mapes, Inc. on May 30, 2000, is hereby granted as set forth below.
- (2) H.A. Mapes, Inc. shall be removed from the list of firms required to submit data on Form EIA-782B to the Energy Information Administration for the period from November 2000 to May 2001.
- (3) In the event that Mr. Allen Mapes sells or transfers H.A. Mapes, Inc., the exception described in paragraph (2) will end effective on the date of the transfer of H.A. Mapes, Inc.
- (4) This is a final Order of the Department of Energy.

George B. Breznay

Director

Office of Hearings and Appeals

Date: December 15, 2000

(1) Firms that 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 to 20 months, but a firm may be reselected 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. EIA has informed this Office that Mapes is a non-certainty firm, and will eventually be rotated out of the sample.