

United States Department of Energy  
Office of Hearings and Appeals

In the Matter of Mr. Quick Store )  
 )  
Filing Date: June 30, 2022 ) Case No.: EXC-22-0002  
 )  
 )  
\_\_\_\_\_ )

**Issued:** July 11, 2022

**Decision and Order**

This Decision and Order concerns a petition filed by Mr. Quick Store on June 30, 2022 (Petition), requesting that the Office of Hearings and Appeals (OHA) grant it an exception from filing Energy Information Administration (EIA) Form EIA-878, “Motor Gasoline Price Survey.” For the reasons set forth below, the Petition is denied.

**I. Background**

**A. EIA’s Motor Gasoline Price Survey**

In 1979, Congress determined that a lack of timely and reliable information concerning petroleum product supplies and prices was impeding the country’s ability to respond to the oil crisis ongoing at that time. H.R. REP. NO. 96-373, at 17, 22 (1979). Congress directed the Department of Energy (DOE) to exercise its authority to collect information on supplies, pricing, and distribution of motor fuels. *Id.* at 28; *see also* 15 U.S.C. § 772(b) (requiring owners and operators of energy-related business facilities to make data available to EIA). EIA has carried out this responsibility through numerous surveys, including Form EIA-878.

Form EIA-878 is a mandatory, weekly survey of unleaded gasoline prices from a sample of retail outlets nationwide. *FAQs for Survey Form EIA-878*, U.S. ENERGY INFORMATION ADMINISTRATION, [https://www.eia.gov/survey/form/eia\\_878/faqs.php](https://www.eia.gov/survey/form/eia_878/faqs.php) (last visited Jul. 8, 2022); *see also* 15 U.S.C. § 772(i) (indicating that outlets required to submit information will be subjected to penalties for failure to respond). EIA’s survey methodology depends upon collecting “[a] representative sample [which] includes a selection of large, medium[,] and small outlets.” *FAQs for Survey Form EIA-878*, U.S. ENERGY INFORMATION ADMINISTRATION, [https://www.eia.gov/survey/form/eia\\_878/faqs.php](https://www.eia.gov/survey/form/eia_878/faqs.php) (last visited Jul. 8, 2022). EIA publishes the results of the survey on a weekly basis. *Gasoline and Diesel Fuel Update*, U.S. ENERGY INFORMATION ADMINISTRATION, <https://www.eia.gov/petroleum/gasdiesel/> (last visited Jul. 8, 2022).

### ***B. OHA Procedural Regulations***

Any person may seek an adjustment to an action by DOE undertaken pursuant to the Federal Energy Administration Act, which would include inclusion in an EIA survey under 15 U.S.C. § 772, by filing a petition with OHA. 42 U.S.C. § 7194(a); 10 C.F.R. § 1003.11. OHA will grant such a petition “only if it determines that doing so will alleviate or prevent serious hardship, gross inequity or unfair distribution of burdens.” 10 C.F.R. § 1003.17.

### ***C. Mr. Quick Store’s Petition***

On June 30, 2022, EIA forwarded the Petition to OHA. On July 7, 2022, Mr. Quick Store filed a one-page letter (Letter) supplementing the Petition. Mr. Quick Store argued that requiring it to continue responding to the survey conducted through Form EIA-878 posed a serious hardship, gross inequity, and unfair distribution of burdens because it had participated in the survey for over five years, collecting the data for the survey consumed an undue portion of an employee’s time, and its competitors that were not sampled for the survey were not subjected to a similar burden. Letter at 1.

## **II. Analysis**

OHA has previously granted temporary relief from EIA survey obligations to petitioners where significant, unavoidable events made participation extremely burdensome. *See Little River Village Campground, Inc.*, OHA Case No. LEE-0127 (1994) (excepting an outlet from completing an EIA survey for five months after the outlet’s office flooded); *see also Middleton Oil Co., Inc.*, OHA Case No. VEE-0025 (1996) (excepting a firm from completing an EIA survey for one year after the death of its owner-operator).<sup>1</sup> OHA has generally only excepted petitioners from EIA surveys for the entirety of the survey period in cases where the petitioner has demonstrated compelling financial difficulties. *See Palisades Oil Co.*, OHA Case No. TEE-0007 (2003) (excepting an outlet from completing EIA surveys for the remainder of the survey period after the outlet laid off fifty percent of its employees during a downsizing); *see also Deaton Oil Co.*, 16 DOE 81,026 (1987) (excepting an outlet from completing EIA surveys after it filed for bankruptcy).

The burdens asserted by Mr. Quick Store do not rise to the level of those for which OHA has previously granted relief. OHA has consistently held that the duration of an outlet’s participation in an EIA survey does not constitute serious hardship, gross inequity, or unfair distribution of burdens. *See Monroe Oil Co.*, OHA Case No. TEE-0071 at 3 (2010) (finding that the petitioner’s inclusion in the survey group “almost continuously since the early 1990s” did not constitute a basis for relief); *see also Snider Petroleum*, OHA Case No. TEE-0032 at 3–4 (2006) (finding that the duration of an outlet’s participation in an EIA survey is not a basis for relief and that excluding an outlet on the basis of the duration of its inclusion in a survey group could compromise EIA’s survey methodology); *Halron Oil Co.*, 16 DOE 81,001 (1987) (rejecting a petition premised on the firm’s participation in a survey for 12 years). Likewise, the time spent compiling data and completing the Survey is not a basis upon which the Petition can be granted. *Pitcher Sales, Inc.*, OHA Case No. VEE-0004 at 2 (1994) (determining that “the amount of time invested in filing is

---

<sup>1</sup> Decisions issued by OHA are available on the OHA website located at <http://www.energy.gov/OHA>.

not in itself a sufficient criteri[on] to warrant exception,” even if a petitioner requires more time to complete a survey than estimated by EIA).

The data collected through Form EIA-878 provides DOE, Congress, state policymakers, and the public with an essential resource for understanding unleaded gasoline price trends. It is unavoidable that retail outlets will experience differing burdens in providing the necessary data based on their size, location, and other factors. Mr. Quick Store has failed to establish that the burden of responding to the survey has escalated from that incumbent upon any similarly situated establishment to “a serious hardship, gross inequity, [or] unfair distribution of burdens,” and therefore we will deny the Petition.

### **III. Conclusion**

It is hereby ordered that the petition filed by Mr. Quick Store on June 30, 2022, OHA Case No. EXC-22-0002, is denied.

Pursuant to 10 C.F.R. § 1003.19, Mr. Quick Store may file a Motion for Reconsideration with OHA by the 20th day after this Decision and Order is made available to the public.

Poli A. Marmolejos  
Director  
Office of Hearings and Appeals