

DECISION AND ORDER
OF THE DEPARTMENT OF ENERGY

Application for Exception

Name of Petitioner: Sound Oil Company

Date of Filing: August 16, 1994

Case Number: LEE-0152

On August 16, 1994, Sound Oil Company (Sound) of Seattle Washington, filed an Application for Exception with the Office of Hearings and Appeals of the Department of Energy. In its Application, Sound 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 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 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. § 205.55(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 ¶ 81,205 (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. Sound's Exception Application

Sound, located in Seattle, Washington, sells #2 fuel oil to both residential and non-residential customers. It requests an exception to its Form EIA-782B reporting requirement on the basis that it has been asked to file for an unusually long period of time. Classified by EIA as a "large company" and a "certainty firm," Sound has been filing Form EIA-782B for 10 years. Mr. Richard Franck, President of the company, filed the Application on behalf of Sound. Mr. Franck is concerned that his company has been required to fill out Form EIA-782B for a number of years, while none of his competitors have to fill out any such forms. Mr. Frank states that while it takes only a short period of time to complete the Forms, it bothers him that the Government is wasting money on these surveys. He believes the firm will never be relieved of this duty, and therefore asks to be excepted from it.

D. Analysis

Our review of the record in this case indicates that Sound has not met the standards for exception relief set forth above. According to Mr. Franck, it takes him very little time to complete the Form. EIA estimates that it should take two to two and one-half hours per month. 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 Co., 21 DOE ¶ 81,002 (1992) (one day); Franken, 20 DOE at 82,501; Delgado Oil Co., 17 DOE ¶ 81,005 (1988) (40 hours); Dell Oil Ltd., 13 DOE ¶ 81,009 (1985) (2 days).

Mr. Franck also argues that because Sound has participated in the survey for the past ten years it 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 generally does not constitute grounds for exception relief. Schaal Oil Co., 14 DOE ¶ 81,018 (1986) (3 years); See Harbor Enters., 20 DOE ¶ 81,004 (1990) (had been filing various forms, including EIA forms for 20 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 ten years does not alone constitute a gross inequity which would warrant exception relief.

On the other hand, the data collected from Form EIA-782B constitute the DOE's primary source of information on supplies, demand, and prices of petroleum products. Reliable data is vital to the nation's ability formulate energy policies and to respond effectively to any future supply disruptions. Unless firms such as Sound 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 Sound of providing the requested data outweighs the benefits which the DOE and the nation receive from access to the information.

In view of the foregoing considerations, we find that the requirement that Sound file Form EIA-782B does not constitute a special hardship, inequity, or unfair distribution of burdens. Accordingly, the Application for Exception filed by Sound should be denied.

On January 19, 1995, a copy of the determination that appears above was provided to Sound Oil Company in the form of a Proposed Decision and Order. In accordance with the procedures that govern this matter, Sound was advised of its right to file a Notice of Objection with respect to any finding of fact or conclusion of law reached in the Proposed Decision and Order. See 10 C.F.R. §§ 205.58 and 205.62. Sound was further advised that it would be deemed to consent to the issuance of the Proposed Decision and Order in final form unless such a Notice was filed within the prescribed time period. The time period within which a Notice of Objection could be filed has now expired, and we have received no such document from Sound or any other potentially aggrieved party. Consequently, this Decision and Order is being issued in final form. Sound will accordingly be deemed to consent to the issuance of the present determination.

It Is Therefore Ordered That:

(1) The Application for Exception filed by Sound Oil Company on August 16, 1994 is hereby denied.

George B. Breznay

Director

Office of Hearings and Appeals

Date:

<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.