

DECISION AND ORDER
OF THE DEPARTMENT OF ENERGY

Application for Exception

Name of Petitioner: Boyd Jolley Company

Date of Filing: March 28, 1995

Case Number: VEE-0006

On March 28, 1995, the Boyd Jolley Company (Boyd Jolley) of Shelley, Idaho, filed an Application for Exception with the Office of Hearings and Appeals of the Department of Energy. In its Application, the Company 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>

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 a 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 are 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 inaccessible).

C. Boyd Jolley's Application for Exception

Boyd Jolley is a medium-sized firm that sells motor gasoline, No. 2 diesel, and No. 2 fuel oil. The firm has been participating in the EIA survey since February of 1993. Mr. Boyd Jolley, the owner of the firm, argues in his Exception Application that his firm should be excused from filing the EIA-782B because it has prepared and filed this form longer than other firms.<2> Moreover, Mr. Jolley contends that his firm is burdened by additional DOE reporting requirements. Mr. Jolley specifically stated that "During 1994, I filed Form EIA-782B each month. But then I started to receive phone calls from another department of the D.O.E., demanding that I call each Monday morning and report prices and gallons sold and to whom. And then at the end of 1994, I received another form . . . requesting the same information for the total year that had already been sent on Form EIA-782B forms."<3>

During a telephone conversation, Mr. Jolley explained that only two people perform administrative tasks for the firm and that they do not have sufficient time to complete the forms. See Memorandum of Telephone Conversation between Linda Lazarus, Staff Attorney, Office of Hearings and Appeals, and Boyd Jolley (April 11, 1995). The firm does not, however, claim to be experiencing financial difficulties.

D. Analysis

Boyd Jolley has not shown that it meets the standards for exception relief set forth above. While the firm will no doubt experience some inconvenience in filling out Form EIA-782B each month, this inconvenience does not appear to be greater than that experienced by other reporting firms. Nothing in the record indicates that Boyd Jolley is financially stressed or that the reporting requirement burdens the firm in a unique or exceptional way. The fact that the firm has been required to complete a form for more than two years does not alone justify an exception .

Contrary to the firm's assertion, there is no evidence that it has been singled out to participate in the monthly EIA-782B survey in an unfair manner. The survey is conducted by selecting a random sample of firms. A firm that has been included in three consecutive random samples (which normally last from twelve to eighteen months each) will generally not be included in a fourth consecutive sample, but may be included in a later sample. However, firms that do business in four or more states or which 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. Although Boyd Jolley states that it has been reporting for "about five years," DOE records indicate that it has only been reporting since February of 1993. These standards for selecting firms to participate in the survey are reasonable and appear to have been followed in this case. Consequently, Boyd Jolley has submitted no evidence to indicate that its selection to participate in this survey is unfair.

Boyd Jolley's claim that it is unduly burdened by its obligation to report on other EIA surveys is similarly without merit. Indeed, the record indicates that Boyd Jolley is not currently responding to any other EIA surveys. Mr. Jolley has admitted that he refuses to answer any questions on the weekly telephone survey. See Memorandum of Telephone Conversation between Linda Lazarus, Staff Attorney, Office of Hearings and Appeals and Boyd Jolley (April 11, 1995). Further, Boyd Jolley was excused from filing the annual Form EIA-863 after Mr. Jolley complained to EIA that he was already filing Form EIA-782B.<4> We emphasize, however, that even if Boyd Jolley were reporting on other surveys, it would not follow that exception relief is warranted.

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 to formulate energy policies and respond effectively to any future supply disruptions. Unless firms such as Boyd Jolley 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 Boyd Jolley 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 Boyd Jolley file Form EIA-782B does not constitute a special hardship, inequity, or unfair distribution of burdens. Accordingly, the Application for Exception filed by Boyd Jolley should be denied.

On April 4, 1996, a copy of the determination that appears above was provided to Boyd Jolley in the form of a Proposed Decision and Order. In accordance with the procedures that govern this matter, Boyd Jolley 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. See 10 C.F.R. § 205.58. Boyd Jolley was further advised that it would be deemed to consent to the issuance of the Proposed Decision 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 no Notice of Objection has been received from Boyd Jolley or any other potentially aggrieved party. Consequently, Boyd Jolley shall be deemed to consent to issuance of this Decision and Order as the final determination of the Department of Energy.

It Is Therefore Ordered That:

The Application for Exception filed by Boyd Jolley Company on March 28, 1995, 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> Mr. Jolley also alleged that he was threatened when he requested to be relieved from his obligation to complete the survey. This is contrary to DOE policy and there is no record of such a threat. Indeed, as detailed below, rather than being threatened, DOE records indicate that Mr. Jolley was accommodated when he indicated that he lacked sufficient resources to complete Form EIA-863.

<3>It appears that Mr. Jolley is referring to Form EIA-863, entitled "Petroleum Products Sales Identification Survey".

<4>As an accommodation, EIA annualized the information contained in Form EIA-782B to recreate the data required by Form EIA-863.