DECISION AND ORDER

OF THE DEPARTMENT OF ENERGY

Application for Exception

Name of Petitioner:O'Brian Oil Company

Dates of Filing:July 18, 1994, November 22, 1995

Case Numbers: LEE-0138, VEE-0013

On July 18, 1994 and November 22, 1995, O'Brian Oil Company (O'Brian) of Shellsburg, Iowa, filed Applications for Exception with the Office of Hearings and Appeals of the Department of Energy. In its Applications, O'Brian 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 Applications 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.(1) In addition, to reduce the amount of time spent completing the forms, firms may rely upon reasonable estimates.(2)

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. O'Brian's Exception Applications

O'Brian is a small firm that has yearly gross sales of approximately two million dollars of #2 distillate (residential and nonresidential), and motor gasoline (retail and wholesale). This is the first time that O'Brian has been selected to participate in an EIA survey. In its exception applications, Mrs. Darlene O'Brian, the firm's bookkeeper, states that the monthly filing and preparation of the Form takes valuable time away from other office duties and record-keeping. Mrs. O'Brian states that she holds down a full-time job in addition to her bookkeeping duties at the oil company owned by her husband and son. She further explained that besides herself, the firm employs three part-time workers, one of whom assists her in the preparation of the EIA Form.

D. Analysis

O'Brian has not shown that it meets the standards for exception relief set forth above. While it will no doubt experience some inconvenience in filling out Form EIA-782B each month, this inconvenience does not appear to be significantly greater than that experienced by other reporting firms. Nothing in the record indicates that O'Brian is financially strained, or that the reporting requirement burdens the firm in a unique or exceptional way. EIA estimates that it should take a filer between two and two and one-half hours per month to complete Form EIA-782B. Mrs. O'Brian states that it took her one hour, using estimates, but not a computer, to complete the Form. See Telephone Conversation between Darlene O'Brian, O'Brian Oil Company, and Jennet Kirkpatrick, Exceptions and Appeals Analyst, Office of Hearings and Appeals (August 1, 1994). Since this is less than the 2.5 hours which EIA estimates the Form should require, the time Mrs. O'Brian spends preparing Form 782-B is not burdensome to the extent that would warrant an exception. See, e.g. Haynes Oil Co., 21 DOE ¶ 81,002 (1992) (one day to complete form does not warrant exception); Dell Oil Ltd., 13 DOE ¶ 81,009 (1985) (2 days). Nor does O'Brian's limited office personnel present a basis for exception relief. Shearon, Inc., 22 DOE ¶ 81,006 (1992); Leemon Oil, 21 DOE ¶ 81,003 (1991); Range Oil Co., 19 DOE ¶ 81,004 (1989).

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 to respond effectively to any future supply disruptions. Unless firms such as O'Brian 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 O'Brian 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 O'Brian file Form EIA-782B does not constitute a special hardship, inequity, or unfair distribution of burdens. Accordingly, the Applications for Exception filed by O'Brian should be denied.

On January 16, 1996, a copy of the determination that appears above was provided to O'Brian in the form of a Proposed Decision and Order. In accordance with the procedures that govern this matter, O'Brian was advised of its right to file a Notice of Objection with respect to any finding of fact of conclusion of law reached in the Proposed Decision. See 10 C.F.R. § 205.58. O'Brian was further advised that it would be deemed to consent to the issuance of the Proposed Decision in its 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 expired and no Notice of Objection has been received from O'Brian or any other aggrieved party. Consequently, O'Brian 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 Applications for Exception filed by O'Brian Oil Company, on July 18, 1994 and November 22, 1995, are hereby denied.

George B. Breznay

Director

Office of Hearings and Appeals

Date:

(1)/ 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. A random sample of other firms is also selected. This random sample changes approximately every 12 months, but a firm may be reselected for 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.

(2)/ 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.