

DECISION AND ORDER
OF THE DEPARTMENT OF ENERGY

Application for Exception

Name of Petitioner: Lakes Gas Company

Date of Filing: March 12, 1996

Case Number: VEE-0018

On March 12, 1996, the Lakes Gas Company (Lakes) of Forest Lake, Minnesota, filed an Application for Exception with the Office of Hearings and Appeals of the Department of Energy. In its Application, Lakes 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.<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 "serious hardship, gross 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).

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 instillation of a new computer system left firm's records inaccessible).

C. Lakes' Exception Application

Lakes, located in Forest Lake, Minnesota, sells #2 fuel oil, diesel fuel, motor gasoline and propane. Classified by EIA as a "large company" and a "certainty firm," the company has filed form EIA-782B for three years.<3>In its Application for Exception, Lakes' Marketing Manager Thomas R. Jilek requests that Lakes be excepted from the filing requirement because he believes the form takes too long to complete. According to the Application, compiling an accurate record of Lakes' sales takes Mr. Jilek almost three hours.

D. Analysis

Lakes 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 greater than that experienced by other reporting firms. Nothing in the record indicates that Lakes is financially strained, or that the reporting requirement burdens the firm in a unique or exceptional way. EIA estimates that it should take between two and two and one-half hours per month to complete form EIA-782B. Mr. Jilek stated in his Application that it took him approximately three hours to complete the form, which does not imply that Lakes suffers unusual difficulties in preparing the form in a timely manner. Additionally, although Mr. Jilek is hesitant to provide estimates rather than actual figures when submitting the form, it may be possible for Lakes to reduce the amount of time required to complete the form through the use of an EIA-approved estimation technique.<4> The EIA provides a toll-free hotline to assist respondents with any questions they may have, which should help Lakes in refining its estimation techniques to reduce the time necessary to complete the form.<5>

The data collected from Form EIA-782B constitutes 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 Lakes 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 Lakes 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 Lakes file Form EIA-782B does not constitute a special hardship, inequity, or unfair distribution of burdens. Accordingly, the Application for Exception filed by Lakes should be denied.

It Is Therefore Ordered That:

(1) The Application for Exception filed by Lakes Gas Company on March 12, 1996 is hereby denied.

(2) Administrative review of this Decision and Order may be sought by any person who is aggrieved or adversely affected by the denial of exception relief. Such review shall be commenced by the filing of a petition for review with the Federal Energy Regulatory Commission within 30 days of the date of this Decision and Order pursuant to 18 C.F.R. Part 385, Subpart J.

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 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.

<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 also alert the EIA if the estimates are later found to be materially different from

actual data.

<3>See Record of Telephone Conversation between Sherry Beri, EIA, and Darcy Goddard, Staff Analyst, Office of Hearings and Appeals (March 26, 1996).

<4>Mr. Jilek is hesitant to use estimates because he submitted the form with estimates in December 1995, and was called by someone at EIA and told that the figures submitted were insufficient due to some significant price changes that were not accounted for in his estimation procedures.

<5>The toll-free number for questions regarding EIA-782B is (800) 638-8812.