DECISION AND ORDER

OF THE DEPARTMENT OF ENERGY

Application for Exception

Name of Petitioner: R.W. Hays Co.

Date of Filing: June 11, 1996

Case Number: VEE-0026

On June 11, 1996 R. W. Hays Co. (Hays) of Medford, Oregon filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). In its Application, Hays 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

Form EIA-782B is a mandatory reporting requirement which 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. Form EIA-782B is 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).

Information obtained from Form EIA-782B 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 the surveys yield 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 Form EIA-782B. In addition, to reduce the amount of time spent completing the forms, firms may rely upon reasonable estimates.(1)

B. Exception Criteria

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. § 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 reports 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. Hays' Exception Application

Hays sells No. 2 distillate fuel, residential and nonresidential fuel, retail and wholesale fuel as well as retail and wholesale motor gasoline. Classified by EIA as a "medium size firm," Hays has been filing Form EIA-782B continuously since June 1994. Prior to this time, Hays had never participated in the survey.(2) According to Steven Hays, President, the company employs 28 workers and sells approximately 30 million gallons of petroleum annually. Mr. Hays estimates that it takes him approximately two hours to complete Form EIA-782B. According to Mr. Hays, the time spent preparing the form is burdensome because it takes him away from more important tasks, and he "is sick of completing the survey." Hays believes the firm has fulfilled its commitment to EIA and that the reporting burden should be shifted to one of the other oil companies in the region. He also questions the authority of the DOE to require firms to file Form EIA-782B.(3)

D. Analysis

Our review of the record in this case indicates that Hays has not met the standards for an exception to the EIA reporting requirement that are set forth above. The approximately 2 hours each month that Hays states it takes the firm to complete the survey is slightly less than the amount of time EIA estimates the form should require (2.5 hours). Therefore, Hays is not unduly or disproportionately affected by the reporting requirement and the time involved in filing cannot therefore lead to an exception. We have consistently withheld exception relief where firms spent considerably more time preparing Form EIA-782B but failed to show that they were otherwise burdened. See People's Oil and Gas Co., 13 DOE ¶ 81,021 (1985) (one and one half to two working days); St. Joe Petroleum Co., 13 DOE ¶ 81,040 (1985) (eight to ten hours).

Hays also asserts that it has filed the survey much longer than is normally required by EIA. Hays is incorrect. We believe that Hays must have misunderstood the possible duration of the reporting requirement. It is the practice of the EIA to select a random sample of firms to participate in its survey.(4) The EIA attempts to replace about 50% of Form EIA-782B's random sample participants after each sample period (one to two years).(5) Therefore, a firm could reasonably expect to participate for at least two years. A firm that has reported for three consecutive sample periods will generally not be included in a fourth consecutive sample, but may be selected again in a later sample. Therefore, like the time it takes to prepare the report, Hays' two year period of participation does not distinguish it from other firms as unduly or onerously affected. In this regard, we have also consistently ruled that the length of time that a firm has been required to file an EIA form does not alone 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.

Finally, Hays challenges the statutory authority of the DOE to administer Form EIA-782B. As the instructions on EIA-782B explain, the submission of EIA-782B by selected companies is mandatory under Section 13 (b) of the Federal Energy Administration Act of 1974 (FEAA) (Public Law 93-275), as amended. If a company fails to fulfill its responsibility, a civil penalty of not more than $2,500 for each violation, or a fine of not more than $5,000 for each willful violation may result.

In summary, Hays has not shown that providing EIA the data is excessively onerous to it as compared to other firms similarly affected. The applicant has also failed to show that the effort involved in providing the data outweighs the benefits which the DOE and the nation receive from access to the information. The data collected from Form EIA-782B constitute our primary source of information on supplies, demand, and prices of petroleum products. Reliable data is vital to the nation's ability to anticipate and respond quickly and effectively to any future supply disruptions and thereby protect the public interest. Indeed, this is why the Congress mandated the collection of this type of data. Unless firms such as Hays are part of the EIA's statistical sample, the DOE will be unable to formulate valid estimates from a cross-section of the industry. Strong public policy considerations such as these lead us to conclude that Hay's request for exception relief from the mandatory reporting requirements is unwarranted.

In accordance with the above discussion, we find that exception relief is not warranted in this case, because Hays is not experiencing a special hardship, inequity, or unfair distribution of burdens from the requirement that it file Form EIA-782B. Consequently, the Department of Energy has determined that the Application for Exception filed by Hays should be denied

It Is Therefore Ordered That:

(1) The Application for Exception filed by R.W. Hays Co. on June 11, 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)Form EIA-782B stipulates that 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) See Conversation between Ms. Allison Varzally, OHA staff analyst, and Ms. Sheri Berry, Energy Information Agency (June 19, 1996).

(3)See Conversation between Ms. Varzally and Mr. Steven Hays, President (June 19, 1996) and Letter to the Office of Hearings and Appeals from Mr. Hays (June 11, 1996).

(4) For Form EIA-782B, 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.

(5)According to EIA, changing the entire sample each year would adversely affect the quality of the survey's results because of the initial difficulties some firms experience as they become accustomed to preparing the Form. E.H. Moorhouse, Inc., 14 DOE ¶ 81,012, at 82,540 (1986); People's Oil & Gas Co., 13 DOE ¶ 81,021, at 82,573 (1985). The current EIA Sample in which Hays is included has lasted more than the usual two year maximum due to the temporary shut down of the federal government in fiscal year 1996.