

Case No. VEE-0055

September 22, 1999

DECISION AND ORDER

OF THE DEPARTMENT OF ENERGY

Application for Exception

Name of Petitioner: Wondrack Distributing Inc.

Date of Filing: March 5, 1999

Case Number: VEE-0055

On March 5, 1999, Wondrack Distributing Inc. (Wondrack) of Tri-Cities, Washington, filed an Application for Exception with the Office of Hearings and Appeals of the Department of Energy. In its Application, Wondrack requests that it be relieved of the requirement that it respond to the Energy Information Administration's (EIA) survey entitled "Motor Gasoline Price Survey" (EIA-878). As explained below, we have determined that the Application for Exception should be denied.

Background

The EIA-878 survey 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 media, petroleum industry and government all routinely rely on the EIA-878 data as a measure of retail prices of reformulated, oxygenated, and conventional gasoline. In fact, the demand for this information is great enough that the DOE maintains a telephone hotline number that provides the national and regional retail gasoline price estimates. The DOE also publishes the data in the Weekly Petroleum Status Report. This data is also used by Congress, federal officials, and the transportation industry to measure the rapid price increases at both regional and national levels. Furthermore, this survey is necessary to the extent that other sources of gasoline price information do not meet the DOE's needs concerning timeliness, frequency, and reliability.

Exceptions Criteria

The EIA-878 survey is a mandatory survey designed to collect on a weekly basis, the retail cash price by grade of unleaded self-service gasoline, including all taxes. 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 surveyed 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 survey in a way that differs significantly from similar surveyed 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 survey against the nation's need for reliable energy data. Neither the fact that a firm is relatively small, nor the facts that it has been surveyed 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 survey. 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 providing information 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).

Wondrack's Exception Application

Wondrack sells both gasoline and diesel fuel. The firm requests that it be excepted from the weekly survey because it creates a "burden on the cashiers and food service people" it employs. Wondrack states that its business practice is to not quote prices over the phone to anyone unless it knows that person as a customer. Since the EIA-878 report uses a phone survey to compile information, the firm states that the survey creates a conflict with its normal business policy.

Analysis

Wondrack has not shown that it meets the standards for exception relief set forth above. While it may experience some inconvenience in responding to the EIA-878 survey each week, this inconvenience does not appear to be greater than that experienced by other surveyed firms. Nothing in the record indicates that Wondrack is financially strained, or that the survey requirement burdens the firm in a unique or exceptional way.

The data collected from Form EIA-878 constitutes the DOE's only source of timely, reliable, weekly information on critical transportation fuels during market disruptions. 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 Wondrack are part of the EIA's statistical sample, the DOE will be unable to formulate valid estimates from a cross-section of the industry. There is no evidence that the burden on Wondrack of providing the requested data outweighs the benefits to the DOE and the nation from access to the information.

In view of the foregoing considerations, we find that the requirement that Wondrack respond to the EIA-878 survey does not constitute a special hardship, inequity, or unfair distribution of burdens. Accordingly, the Application for Exception filed by Wondrack should be denied.

It Is Therefore Ordered That:

(1) The Application for Exception filed by Wondrack Distributing Inc. on March 5, 1999 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: September 22, 1999