Case No. VEE-0056

August 6, 1999

DECISION AND ORDER

OF THE DEPARTMENT OF ENERGY

Application for Exception

Name of Petitioner:Stacey Oil Co.

Date of Filing:April 2, 1999

Case Number: VEE-0056

On April 2, 1999, Stacey Oil Co. (Stacey), of Whitefish, Montana, filed an Application for Exception with the Office of Hearings and Appeals of the Department of Energy. In its Application, Stacey 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 granted for a temporary period.

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 unaccessible).

C. Stacey’s Exception Application

Stacey sells motor gasoline (wholesale and retail), #2 residential heating oil, #2 non-residential heating oil, #2 distillate wholesale. Classified by the EIA as a “non-certainty firm,” the company has filed Form EIA-782B since Sample 13 began in early 1999. Email from Sherry Beri, EIA, to Dawn L. Goldstein, Staff Attorney, Office of Hearings and Appeals (April 6, 1999). The firm informed us that they only have two office employees out of eight total employees, they also run an auto repair shop and a convenience store, and finally that they have lost over $322,000 since 1994. They also assert that it takes them 60 hours to fill out the form.(3)

D. Analysis

Stacey has shown that it meets the standards for exception relief set forth above. Because Stacey appears to be operating at a considerable financial loss, in combination with the fact that it is running three businesses with a small number of people (and two office employees), the reporting requirement burdens the firm in an exceptional way. In this case, the burden on the applicant in completing the form outweighs the benefit to the nation of having access to the data which the firm could provide. In view of the foregoing considerations, we find that the requirement that Stacey file Form EIA-782B constitutes a special hardship, inequity, or unfair distribution of burdens. 42 U.S.C. § 7194 (a); 10 C.F.R. §1003.25(b)(2). Accordingly, the Application for Exception filed by Stacey should be granted. However, we note that the major problems which the firm presently faces, i.e., financial difficulties, may be temporary. Therefore, we do not find that permanent exception relief is appropriate and shall extend exception relief to Stacey for a one-year period.(4)

It Is Therefore Ordered That:

(1) The Application for Exception filed by Stacey Oil Co. on April 2, 1999, Case No. VEE-0056, is hereby granted for a one year period.

(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: August 6, 1999

(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)We asked Stacey to explain why it took so much longer for it to fill out the form than the average 2 to 3 hours which EIA has calculated that the form requires. Stacey explained that it has an “antiquated” computer system which does not supply the information the form seeks. In addition, Stacey varies its prices for each customer according to volume, distance of travel, cash or credit and several other factors. Stacey's transportation and delivery prices also vary. It also noted that they purchase almost all of their fuel "tax paid" and therefore have never calculated the price per gallon without tax as the form requires. See Letter from Stacey Renshaw, Stacey Oil Company, to Dawn Goldstein, OHA (May 4, 1999).

(4)When Stacey returns to the survey pool, we encourage it to use a sound method of estimation to reduce its reporting burden. The instructions for the form provide that if a firm does not have the actual sales volume and unit prices by the customer categories specified on the form, estimates may be supplied. In addition, we note that if its financial situation has not improved, it may file another request for exception.