

Case No. VEE-0060

December 1, 1999

DECISION AND ORDER

OF THE DEPARTMENT OF ENERGY

Application for Exception

Name of Petitioner: Blakeman Propane, Inc.

Date of Filing: May 11, 1999

Case Number: VEE-0060

On May 11, 1999, Blakeman Propane, Inc. (Blakeman) of Moorcroft, Wyoming, filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). In its application, Blakeman 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 1970's. 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.(1) In addition, to reduce the amount of time spent completing the forms, firms may rely upon reasonable estimates.(2)

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:

1. 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).

2. 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).

3. 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).

4. 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).

C. Blakeman's Application for Exception

Blakeman is a propane wholesaler-retailer located in Moorcroft, Wyoming. Classified by EIA as a "medium size firm," Blakeman has filed Form EIA-782B in Samples 12 and 13. The firm sells residential and non-residential propane in the State of Wyoming. In the firm's application, Mr. Steve Blakeman, the Manager of Blakeman's requests an exception to the Form EIA-782B reporting requirement on the basis of the hardship involved in the additional work required to complete and file the form. Mr. Blakeman states that one employee must constantly monitor daily sales and categorize those sales. According to Mr. Blakeman, research must be done to establish the pricing structure for each month, and filing the form produces a situation in which one of Blakeman's employees becomes an unproductive employee for the firm. He also states that the firm is a company struggling in a very competitive market that is heavily dependent on the oil industry. He notes that there is a serious downturn in the agricultural industry in Wyoming. He argues that he will be at a disadvantage with respect to competitors who do not have to report. Mr. Blakeman also claims that it would require twice as many hours than the 2.5 hours that EIA estimates it would take to complete the form during the peak period of heating season.

D. ANALYSIS

Our review of the record in this case indicates that Blakeman has not met the standards for an exception to the EIA reporting requirement that are set forth above. There is inconvenience involved in filling out Form EIA-782B each month, but that inconvenience does not appear to be significantly greater than that experienced by other reporting firms and does not alone justify an exception. In addition, nothing in the record indicates that Blakeman is financially strained, or that meeting the reporting requirement for a period of time will burden the firm in a unique or exceptional way.

EIA estimates that it should take the firm between 2 and 2-1/2 hours per month to complete Form EIA 782B. Blakeman claims that during the peak heating season it will take the firm twice that time to complete the form. There is however no documentation of this claim. See Section VI of the General Instructions to Form EIA- 782B. Furthermore, the time required to complete the form may be

shortened. Form EIA-782B requires little more than the essential type of pricing, supply, and inventory data that, at a minimum, is required to run a business operation. In any case, having to spend 5 hours to prepare the form, rather than 2 or 2-1/2 hours does not alone justify an exception. See Paul Smith Oil Co., 27 DOE ¶ 81,003 (1999). We do not doubt that the firm's office staff is busy, but we do not think that standing alone, the time required to complete the form constitutes an onerous burden.

Balancing the firm's Exception Request against the benefits which the DOE and the nation receive from access to the information, we must conclude that Blakeman has not shown that the extraordinary relief it seeks is warranted. It is important to note that the data collected from Form EIA-782B provides the DOE with information on the supply, demand, and price of petroleum products. The federal and state governments, as well as private firms, use this information to perform analyses and make projections. Timely and reliable access to the data is vital to the nation's ability to anticipate and respond quickly and effectively to any future supply disruptions. See H.R. Rep. No. 373, 96th Cong., 1st Sess., reprinted in 1979 U.S. Code Cong. and Ad. News 1764, 1781. The DOE has attempted to minimize the burden placed on the public in gathering this information, while insuring that the reporting requirements are administered in a consistent and equitable manner. After balancing these strong public policy considerations against Blakeman's claim, we have concluded that the Blakeman Application for Exception should be denied.

It Is Therefore Ordered That:

(1) The Application for Exception filed by Blakeman Propane, Inc. on May 11, 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: December 1, 1999

(1) Firms that 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 to 20 months, but a firm may be reselected for subsequent samples. 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. Blakeman states that it is among the firms that will have to file indefinitely. However, EIA has informed this Office that Blakeman is a non-certainty firm, and will eventually be rotated out of the sample.

(2) 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.