November 1, 2002
DECISION AND ORDER
OF THE DEPARTMENT OF ENERGY

Application for Exception

Name of Petitioner: Fleischli Oil Company

Case Number: VEE-0082

Date of Filing: February 26, 2002

On February 26, 2002, Fleischli Oil Company (Fleischli) filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). Fleischli requests that it be relieved of the requirement to prepare and file the Energy Information Administration (EIA) form entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report," Form EIA-782B. As explained below, we have concluded that Fleischli has not demonstrated that it should receive exception relief.

I. Background

The DOE's Energy Information Administration is authorized to collect, analyze, and disseminate energy data and other information. 15 U.S.C. § 772(b); 42 U.S.C. § 7135(b). Form EIA-782B collects monthly information on refined petroleum sales volumes and prices from a sample of resellers and retailers. The information 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 information is used by Congress and by more than 35 state governments to project trends and to formulate state and national energy policies.

The DOE has attempted to ensure that the surveys yield valuable information while minimizing the burden placed on the industry. 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/ and permits reporting firms to rely on reasonable estimates. 2/

The form's instructions estimate that it takes a total of 2.5 hours to complete the form. The OHA 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 CFR § 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 requirements in a way that differs significantly from that experienced by other, similarly situated reporting firms. Thus, mere inconvenience does not constitute a sufficient hardship to warrant relief. *Glenn W. Wagoner Oil Co.*, 16 DOE ¶ 81,024 (1987).

We have granted full or partial relief from EIA reporting requirements in cases where applicants have shown that those requirements placed a burden upon them that was significantly different from the inconvenience generally associated with the requirement to submit EIA forms. For example, relief has been granted when firms have had severe financial difficulties or when the only persons capable of preparing a form have had serious medical problems. *See Eastern Petroleum Corp.,* 14 DOE ¶ 81,011 (1986); *LBM Distributors, Inc.*, 13 DOE ¶ 81,043 (1985); *Ed Joyce Fuel and Feeds*, 13 DOE ¶ 81,024 (1985). Because of the importance of the data it provides, a "certainty firm"2/ must show that the burden of complying with the reporting requirements is extremely severe in order to obtain exception relief. *See Fletcher & Associates*, 23 DOE ¶ 81,008 (1994) (*Fletcher*).

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 form. 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.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/ "A "certainty firm" is a firm that accounts for over five percent of the sales of any particular petroleum product in a state. Because of the size of its market share, the information provided by a certainty firm is critical to insuring that the EIA survey accurately reflects the patterns of fuel demand and supply. As a result, such firms are typically required to complete and file Form EIA-782B. *See Texport Oil Co.*, 23 DOE ¶ 81,006 (1993); *Halron Oil Co.*, Inc, 16 DOE ¶ 81, 001 (1987).

Neither the fact that a firm is relatively small, nor the fact that it has filed a report for a number of years has, alone, constituted grounds for exception relief. All firms that participate in the EIA surveys bear some burden that they would not otherwise, and if firms of all sizes 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) (*Mulgrew*).

II. The Fleischli Exception Application

Fleischli requests an exception on the ground that the reporting requirement imposes an unfair distribution of burdens on the firm. According to its exception application, Fleischli, along with sister company, Graves Oil & Butane, has reported petroleum product sales information to the EIA for many years. Although Fleischli has not submitted Form EIA-782B in recent years, it has continually submitted Form EIA-821, the Annual Fuel Oil and Kerosene Sales Report. Graves Oil is also a participant in the EIA-821 survey, and has been submitting Form EIA-782B for "at least . . . the last nine or ten years." Fleischli Exception Application. For these reasons, the firm argues that it has done its share in supplying petroleum sales data to the EIA.

In addition, Fleischli claims that unlike Graves Oil, it is very difficult for the firm to extract the required information from the Fleischli computer data system and place it into the categories required by the EIA-782B report. Richard Harrison, Fleischli's assistant controller, indicates that the firm operates "seven or eight terminals in three different states, and has sales in Colorado, Wyoming, Nevada and Montana." He claims that it would take a full day each month to do reports for Fleischli, and even then, Fleischli would have to use estimates, rather than hard data, to prepare Form EIA-782B. Memorandum of September 24, 2002 telephone call from Richard Harrison of Fleischli and Thomas O. Mann of OHA.

III. Analysis

Designated as a "certainty firm" by EIA, Fleischli was responsible for submitting the Form EIA-782B for three previous survey periods (samples 9, 10 and 11), lasting approximately two and one-half years each. Fleischli was not included in the next two survey periods, samples 12 and 13. However, the firm has now been selected for sample 14, and they must again report the date on EIA Form 782B.

After considering all of the information provided by Fleischli, we have concluded that the Application for Exception should be denied. The firm has shown that its operations are spread over several states, but it has not shown that its burden in furnishing the information necessary to complete Form EIA-782B is any greater than that experienced by other, similarly situated certainty firms. Fleischli has not demonstrated that the reporting requirement would cause it to experience a serious financial hardship that would justify an exception, or that its renewed participation in the survey is inequitable or causes an unfair distribution of burdens. While the firm is required to file Form EIA-782B for its sales operations in several states, the fact of its widespread operations is, in and of itself, a reason to include, rather than exclude, Fleischli in a survey of domestic fuels distribution. *See Gas 'n Shop, Inc.*, OHA Case No. VEE-0084, 28 DOE ¶ 81,009 (2002).

It Is Therefore Ordered That:

(1) The Application for Exception filed by Fleischli Oil Company, on February 26, 2002, Case No. VEE-0082, 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: November 1, 2002