July 17, 2002
DECISION AND ORDER
OF THE DEPARTMENT OF ENERGY

Application for Exception

Name of Petitioner: Ken Bettridge Distributing, Inc.

Case Number: VEE-0083

Date of Filing: February 28, 2002

On February 28, 2002, Ken Bettridge Distributing, Inc. (Bettridge) of Cedar City, Utah, filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). In its application, Bettridge requests that it be temporarily relieved of the requirement to prepare and file the Energy Information Administration's (EIA) form entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report" (Form EIA-782B). As explained below, we have concluded that Bettridge shall be excused from filing Form EIA-782B for one year.

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. It 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.

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/

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).

Neither the fact that a firm is relatively small, nor the fact that it has filed a report for a number of years alone constitutes 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 would be unreliable. *Mulgrew Oil Co.,* 20 DOE ¶ 81,009 (1990).

Analysis

According to the request for exception, the preparation and filing of Form EIA-782B would pose a serious hardship on the firm. Bettridge states that the company is temporarily without the services of the full-time individual responsible for the preparation and filing of reports, because the individual is preparing to have a liver transplant. Furthermore, Bettridge states that it cannot fulfill the filing requirements with its current small staff. Bettridge states that it currently has only one part-time employee available to prepare all of its monthly Utah and Nevada fuel tax reports, and sales tax reports, as well as Form EIA-782B. According to Bettridge, the part-time employee cannot easily produce accurate estimates for Form EIA-782B because this individual has only a few hours each weekend to work for Bettridge. Accordingly, Bettridge states that it needs a temporary exception in order to figure out if the full-time individual will be able to come back to work, or whether it will need to hire another full-time replacement. Thus, Bettridge is requesting a temporary exception until its employment issues have been resolved.

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.

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.

Conclusion

We have carefully weighed the serious difficulties raised in the Bettridge submission against the public policy interests served by the collection of the information provided by Form EIA-782B, and have concluded that a temporary exception relieving Ken Bettridge Distributing, Inc., of any requirement to file Form EIA-782B through the month of March 2003 is warranted.

It Is Therefore Ordered That:

(1) The Application for Exception by Ken Bettridge Distributing, Inc. (Bettridge) filed on February 28, 2002 is hereby granted to the extent set forth in Paragraph (2) below.

(2) Bettridge shall be removed from the list of firms required to submit data on Form EIA-782B to the Energy Information Administration of the Department of Energy for the period from March 2002 through March 2003.

(3) This is a final order of the Department of Energy.

George B. Breznay
Director
Office of Hearings and Appeals

Date: July 17, 2002