

August 8, 2002
DECISION AND ORDER
OF THE DEPARTMENT OF ENERGY

Application for Exception

Name of Petitioner: Jefferson City Oil Co., Inc.

Case Number: VEE-0086

Date of Filing: April 18, 2002

On April 18, 2002, Jefferson City Oil Co., Inc. (Jefferson City Oil) filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). Jefferson City Oil requests that it be 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-782(b)). As explained below, we have concluded that Jefferson City Oil has not demonstrated that it is entitled to 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 DOE has a process through which firm can request an exception from a reporting requirement. That process is called an exception proceeding and is conducted by OHA pursuant to 10 C.F.R. Part 1003, Subpart B.

II. The Exception Application

Jefferson City Oil requests an exception on the ground that the reporting requirement imposes an unfair distribution of burdens on the firm. The firm states that it has been selected to file the form for the year 2002 but is unable to do so in a timely manner. The firm states that its accounting software requires that a given month's sales be closed before the next month's complete sales can be generated. The firm further states that it is roughly six months behind in closing its monthly sales and has obtained an extension from filing its federal tax returns. Moreover, the firm states that the EIA-782B format is inconsistent with the firm's bookkeeping system and that its president tried unsuccessfully for 12 hours to generate estimates for January 2002 data. Aside from accounting issues, the firm indicates that an expected threefold increase in insurance costs and reduced margins in the industry may leave the firm without any profit. The firm contends that, given all the foregoing circumstances, the firm does not have the resources to devote to completing the form.

In a July 17, 2002 letter to the firm, we discussed our preliminary assessment of its exception application. We advised the firm that it did not appear that the firm was entitled to exception relief:

All firms who are included in the filing sample bear some burden in completing the form. An exception is appropriate only if the filing requirement constitutes a gross inequity, serious hardship, or unfair distribution of burdens. The circumstances that you cite - delayed closing of your monthly books, bookkeeping that is inconsistent with the form format, expected insurance premium increases, and reduced margins - are not sufficient to establish any of those bases for exception

^{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.

^{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.

relief. In this regard, we note that the form permits estimates and it is unclear to us why the firm cannot provide estimates based on currently available monthly data.

July 17, 2002 letter at 1. We stated that if the firm had additional information that it would like us to consider, it should so advise us. We have not received any additional information and, therefore, base our assessment on the information in the firm's exception application.

III. Analysis

Exception relief is appropriate where a reporting requirement causes a "special hardship, inequity, or unfair distribution of burdens." 42 U.S.C. § 7194(a). *See also* 10 C.F.R. § 1003.25(b)(2). 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 burdened in a way that differs significantly from similar reporting firms. Mere inconvenience does not constitute a sufficient hardship to warrant relief. *Glenn W. Wagoner Oil Co.*, 16 DOE ¶ 81,024 (1987). Similarly, 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 at 82,523 (1990).

We consider each exception application based on the particular circumstances of the application. The following are examples of the types of circumstances that may warrant relief: (i) where the applicant is experiencing financial difficulties that are so serious that its continued viability is threatened, *see Mico Oil Co.*, 23 DOE ¶ 81,015 (1994) (bankruptcy proceeding was underway), (ii) where the only person capable of filing the form is on medical leave and the firm cannot not afford to hire a replacement, *see S&S Oil & Propane Co.*, 21 DOE ¶ 81,006 (1991) (owner, who was also sole office worker, was being treated for cancer), or (iii) where extreme or unusual circumstances disrupt a firm's operations, *see Little River Village Campground, Inc.*, 24 DOE ¶ 81,033 (1994) (flood damage). On the other hand, a firm's inability to use a computer to complete the form, by itself, does not warrant relief. *See Potter Oil Co.*, 28 DOE ¶ 81,006 (2001); *Belcourt Oil Co.*, 27 DOE ¶ 81,012 (2000).

Jefferson City Oil has not demonstrated that it is entitled to exception relief. The circumstances cited by the firm do not establish that the reporting requirement imposes an "unfair distribution of burdens" or "serious hardship" on the firm. The form permits reasonable estimates and therefore the delayed closing of the firm's monthly books does not provide a basis for exception relief. Similarly, general assertions that a firm's bookkeeping is inconsistent with the form format does not establish that the firm cannot make reasonable estimates. Finally, the firm's references to increased insurance premiums and reduced margins indicate that the firm views those matters as industry-wide, rather than matters that distinguish the firm from other reporting firms. Accordingly, the firm has not demonstrated that it meets the criteria for exception relief. *See Potter Oil*, 28 DOE ¶ 81,006 at 82,516 (form permits estimates and, therefore, antiquated software and reduced staff did not warrant exception relief).

It Is Therefore Ordered That:

(1) The Application for Exception filed by Jefferson City Oil Co., Inc., on April 18, 2002, Case No. VEE-0086, 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 calendar 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 8, 2002