

April 27, 2011

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Application for Exception

Name of Case: Brodeur's Oil Service, Inc.

Date of Filing: February 18, 2011

Case No.: TEE-0076

On February 18, 2011, Brodeur's Oil Service, Inc. (Brodeur's) filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). The firm requests temporary relief from its requirement to prepare and file the Energy Information Administration (EIA) Form EIA-782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report." As explained below, we have determined that the firm's request should be denied.¹

I. Background

The DOE's EIA is authorized to collect, analyze, and disseminate energy data and other information.² The EIA-782B reporting requirement grew out of the shortages of crude oil and petroleum products during the 1970s. In 1979, Congress determined 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. This information is used to analyze trends within petroleum markets. Summaries of the information and the analyses are reported by EIA in publications such as "Petroleum Marketing Monthly." This information is used by Congress and state governments to project trends and to formulate national and state energy policies. Access to this data is vital to the nation's ability to anticipate and respond to potential energy shortages.³

Form EIA-782B is a monthly report, pursuant to which resellers and retailers report the volume and price of sales of motor gasoline, No. 2 distillates, propane, and residual fuel oil. In order to minimize the reporting burden, the EIA periodically selects a relatively small sample of companies to file Form EIA-782B⁴ and permits reporting firms to rely on reasonable estimates.⁵

¹ OHA Exception Decisions issued since July 5, 1995, are available on the OHA website located at <http://www.oha.doe.gov>. The text of a cited decision may be accessed by entering the case number of the decision in the search engine located at <http://www.oha.doe.gov/search.htm>.

² 15 U.S.C. § 772(a); 42 U.S.C. § 7135(a)-(m).

³ See H.R. REP. NO. 373, 96-373, at 15, 17 (1979).

⁴ Firms that account for over five percent of the sales of any particular product in a state or do business in four or more states, designated as "certainty firms," 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 24 to 30 months,

II. Exception Criteria

OHA has the authority to grant exception relief where the reporting requirement causes a “serious hardship, inequity or unfair distribution of burdens.”⁶ Since all reporting firms are burdened 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.

When considering a request for exception relief, OHA must weigh the firm’s difficulty in complying with the reporting requirement against the nation’s need for reliable energy data. Thus, mere inconvenience does not constitute a hardship warranting relief.⁷ Similarly, the fact that a firm has filed reports for a number of years does not constitute a hardship warranting relief.⁸ If firms of all sizes, both large and small, are not included in the survey, the reporting sample’s estimates and projections will be unreliable.⁹

OHA has granted relief from the reporting requirement under various circumstances. For example, we have granted relief where the firm’s financial situation is so precarious that the additional burden of meeting the DOE reporting requirements threatens the firm’s continued viability;¹⁰ the firm’s only employee capable of preparing the report is ill and the firm cannot afford to hire outside help;¹¹ extreme or unusual circumstances disrupt a firm’s activities;¹² or, a combination of factors resulting from unavoidable circumstances makes completing the form impracticable.¹³

but a firm may be re-selected 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.

⁵ Form EIA-782B requires that the firm 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.

⁶ 42 U.S.C. § 7194 (a); 10 C.F.R. § 1003.25(b)(2).

⁷ *Glenn Wagoner Oil Co.*, 16 DOE ¶ 81,024 (1987).

⁸ *Rice Oil Co., Inc.*, Case No. VEE-0035 (1997) (stating, “We have consistently ruled that the length of time that a firm has been required to file an EIA form does not alone constitute grounds for exception relief”).

⁹ *Mulgrew Oil Co.*, 20 DOE ¶ 81,009 (1990).

¹⁰ *Mico Oil Co.*, 23 DOE ¶ 81,105 (1994) (granting exception relief where a firm lost one million dollars over the previous three years); *Deaton Oil Co.*, 16 DOE ¶ 81,206 (1987) (granting exception relief where a firm filed bankruptcy).

¹¹ *BarMac, Inc. d/b/a Highway Express and Highway Express 2*, Case No. TEE-0051 (2007) (granting one year exception relief where the sole employee responsible for the firm’s filings suffered from a severe medical condition); *Midstream Fuel Serv.*, 24 DOE ¶ 81,203 (1994) (granting three months exception relief when two office employees were simultaneously on maternity leave); *Eastern Petroleum Corp.*, 14 DOE ¶ 81,011 (1986) (granting two months exception relief where the firm’s computer operator broke a wrist).

¹² *Little River Village Campground, Inc.*, 24 DOE ¶ 81,033 (1994) (granting five months exception relief where a firm’s office flooded); *Utilities Bd. of Citronelle-Gas*, 4 DOE ¶ 81,025 (1979) (granting exception relief where a hurricane heavily damaged a firm’s office); *Meier Oil Serv.*, 14 DOE ¶ 81,004 (1986) (granting three months exception relief where disruptions caused by installation of new computer system left the firm’s records inaccessible).

¹³ *Ward Oil Co.*, 24 DOE ¶ 81,002 (1994) (granting ten months exception relief where long illness and death of a partner resulted in personnel shortages, financial difficulties and other administrative problems).

III. Brodeur's Oil Service, Inc.'s Application for Exception

Brodeur's filed its Application for Exception on February 18, 2011.¹⁴ After reviewing the Application, we determined that we had insufficient information to evaluate the request, so we contacted Brodeur's to gather more information.¹⁵

Brodeur's is a small heating oil vendor based in Moosup, Connecticut.¹⁶ The firm is currently participating in its first reporting sample, which began in February 2010.¹⁷ Brodeur's requests temporary relief from the EIA reporting requirement on the grounds that completing the monthly reporting form is burdensome.¹⁸

In its Application, Brodeur's made several arguments to support its request for exception relief. Brodeur's argues that completing the form is a "time-consuming" responsibility.¹⁹ Brodeur's explained that it is a small company with limited office staff, and it takes one person a "couple of hours" to complete the survey.²⁰ Brodeur's further believes that the firm is entitled to exception relief because it has reported for "several" years.²¹ Brodeur's maintains that completing the form has become an "onerous responsibility" and believes that it is "somewhat of a discrimination" that some of its competitors have not been charged with this task.²²

IV. Analysis

Exception relief is appropriate where a reporting requirement poses a serious hardship, inequity, or unfair distribution of burdens. Thus, relief is appropriate where the reporting requirement adversely affects the firm to a significantly greater degree than it affects other firms.

None of the arguments advanced by Brodeur's in support of its exception request are availing. Indeed, we have routinely denied exception applications in precisely these circumstances.²³

Regarding Brodeur's argument that completing the form is time-consuming, we have previously held that the Form EIA-782B reporting requirement is not particularly burdensome.²⁴ It requires

¹⁴ Letter from Brodeur's Oil Service, Inc. to OHA, received February 18, 2011 (Application for Exception).

¹⁵ See Memorandum of Telephone Conversation between Steven P. Lombardi, President and Owner, Brodeur's Oil Service, Inc., and Avery R. Webster, Attorney-Examiner, OHA, dated March 2, 2011 (Lombardi Telephone Memo).

¹⁶ *Id.*

¹⁷ See Memorandum of Telephone Conversation between Tammy G. Heppner, Survey Statistician, EIA, and Avery R. Webster, Attorney-Examiner, OHA, dated February 28, 2011 (Heppner Telephone Memo).

¹⁸ See Application for Exception.

¹⁹ *Id.*

²⁰ *Id.*; See also Lombardi Telephone Memo.

²¹ See Application for Exception.

²² *Id.*

²³ See *Cole Distributing, Inc.*, Case No. TEE-0073 (2011) (denying exception relief where firm experienced heavy workload due to reduction in office staff); *Monroe Oil Co.*, Case No. TEE-0071 (2010) (denying exception relief where firm had limited staff and a heavy workload); see also *The Kiesel Co.*, Case No. TEE-0033 (2006) (denying a firm exception relief where it had only one employee, reporting took between one and two days to complete, and reporting interfered with their business).

²⁴ See *American Energy*, Case No. TEE-0053 (2008); *Ullman Oil Company*, Case No. TEE-0052 (2008); *Mark's Appliance & Heating*, Case No. TEE-0048 (2007).

little more than the essential pricing, supply, and inventory data required in operating a business. The EIA estimates that it should normally take a firm approximately two and one half hours per month to complete the form.²⁵ We note that according to its own estimate, Brodeur's spends a "couple of hours" per month completing the form, which is on target with the EIA estimate.²⁶ Furthermore, Brodeur's may reduce its reporting burden by employing reasonable estimates.²⁷

In addition, Brodeur's argument that it has filed the form for several years does not warrant relief. We have consistently held that the length of time a firm has been required to file an EIA form does not justify relief.²⁸ Furthermore, EIA informed us that Brodeur's is participating in its first reporting cycle, which began a little over one year ago. In sum, Brodeur's has not demonstrated that the reporting requirement poses a burden significantly greater than that experienced by other firms.

Based on the foregoing, we find that Brodeur's has not demonstrated that the requirement to file Form EIA-782B is burdensome in a manner that distinguishes it from other similarly affected firms. Accordingly, Brodeur's application for exception should be denied.

It is Therefore Ordered That:

- (1) The Application for Exception filed by Brodeur's Oil Service, Inc., Case No. TEE-0076, be and hereby is denied.
- (2) Administrative review of this Decision and Order may be sought by any persons aggrieved or adversely affected by the denial of exception relief. Such review shall be commenced by filing 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.

Poli A. Marmolejos
Director
Office of Hearings and Appeals

Date: April 27, 2011

²⁵ Section 10 of the General Instructions to Form EIA-782B.

²⁶ See Lombardi Telephone Memo.

²⁷ See Section 7 of the General Instructions to Form EIA-782B.

²⁸ *Emerson Oil Co.*, Case No. TEE-0043 (2007).