

DECISION AND ORDER
OF THE DEPARTMENT OF ENERGY

Application for Exception

Name of Petitioner: Heller & Sons Distributing, Inc.

Date of Filing: February 14, 1996

Case Number: VEE-0016

On February 14, 1996, Heller & Sons Distributing, Inc. (Heller) of Hermiston, Oregon, filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). In its application, Heller requests that it be relieved of the requirement to file Form EIA-782B entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report."

I. Background

In response to the 1979 oil crisis, Congress enacted the Emergency Energy Conservation Act of 1979 (EECA), Pub. L. No. 96-102, 42 U.S.C. § 8501 et seq. In legislating the EECA, Congress found that "up-to-date and reliable information concerning the supply and demand of gasoline, diesel fuel, and other related data is not available to the President, the Congress, or the public." EECA § 201, 42 U.S.C. § 8501. This lack of information impeded Congress's ability to respond to the oil crisis. Congress therefore directed the DOE to establish a Middle Distillate Monitoring Program to monitor the supply and demand of middle distillates in each state at the refining, wholesale and retail levels. EECA § 242, 42 U.S.C. § 8532.

The responsibility for the Middle Distillate Monitoring Program was assumed by the Energy Information Administration (EIA) of the DOE. Under the provisions of Section 205 of the Department of Energy Organization Act, 42 U.S.C. § 7135, the EIA is authorized not only to collect and analyze energy information necessary for the proper functioning of the DOE, but also to require that any energy supplier or major consumer of energy provide such information to the DOE.

When the oil crisis subsided, the DOE thoroughly reviewed its Monitoring Program to determine the least costly method of gathering the information that Congress required. The DOE consulted with state governments, petroleum dealers, and other federal agencies and held a public hearing. Subsequent to these consultations, the EIA adopted Form EIA-782B, "Monthly No. 2 Distillate Sales Report." In November 1983, the EIA revised this Form to include information concerning sales of finished motor gasoline and residual fuel oil, and renamed the Form "Resellers'/Retailers' Monthly Petroleum Product Sales Report." In October 1993, the EIA further revised Form EIA-782B in response to the Clean Air Act Amendments of 1990, Pub. L. 101-549. These latest revisions to Form EIA-782B were (i) an expansion of finished motor gasoline reporting categories to include reformulated and oxygenated gasoline, (ii) separation of No. 2 diesel fuel into low and high sulphur content categories, and (iii) the addition of propane to the survey as a reporting product. See Form EIA-782B (10-93).

Form EIA-782B is a mandatory report designed to collect monthly data on sales volumes and unit prices of refined petroleum products from a random sample of resellers and retailers. Information obtained from the respondents constitutes the DOE's primary source of information about petroleum products at the reseller/retailer level. The DOE uses the information obtained from the respondents to perform state-by-state analyses and make projections related to energy supplies, demand, and prices. These data are vital to the nation's ability to anticipate and respond to any future energy shortages. See H.R. Rep. No. 373, 96th Cong., 1st Sess., reprinted in 1979 U.S. Code Cong. & Admin. News 1764, 1781.

The applicant in this proceeding has been designated by the EIA as a member of a sample group required to complete and submit Form EIA-782B on a monthly basis, since February 1993.

II. Heller's Application for Exception

Heller is a petroleum product wholesaler-retailer located in Hermiston, Oregon. Heller sells diesel fuel, heating oil and motor gasoline. In its application, the firm requests an exception from the Form EIA-782B reporting requirement on the basis that it has complied with the monthly reporting requirement for three years. Mike Heller, Vice President for Heller, states that in addition to having to complete Form EIA-782B, he has had to replace his whole office staff and is still training the new staff. Mr. Heller claims that completing the form requires a lot of time that the company could better spend on other business. He feels that Heller has done more than its share of providing information to the EIA.

III. Analysis

The OHA has the authority to grant exception relief to alleviate or prevent serious hardship or gross inequity. 10 C.F.R. § 1003.20. See also Exceptions and Appeals Guidelines, 6 Fed. Energy Guidelines ¶ 80,003. In previous cases involving requests for exception relief, we have recognized that mandatory reporting requirements impose costs on the respondents. Since all reporting firms are burdened by the requirement, we have held that exception relief is appropriate only when a firm can demonstrate that it is adversely affected by the reporting requirement in a way that differs significantly from similar reporting firms. When evaluating an applicant's request for exception relief, we consider whether the difficulty in complying with the reporting requirement is outweighed by the benefits to the nation in obtaining the required data. See Lockheed Air Terminal, 15 DOE ¶ 81,010 (1986); Champlain Oil Co., 14 DOE ¶ 81,022 (1986); Three L Inc., 12 DOE ¶ 81,014 (1984); Pure Oil Co., 8 DOE ¶ 81,019 (1981).

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).

We are unconvinced that the reporting requirement has adversely affected Heller in a way that differs significantly from similar reporting firms. Although Heller has participated in the survey since 1993, we do not consider Heller's length of participation to be excessive. The OHA has previously held that the length of time that a firm must file Form EIA-782B does not in itself mandate exception relief. See Exxon Junction Service, 14 DOE ¶ 81,020 (1986); Piedmont Petroleum Co., 11 DOE ¶ 81,006 (1983).

We also reject Heller's contention that it should receive exception relief because it must spend an inordinate amount of time completing the form. According to Mr. Heller, he must assist the bookkeeper in completing the forms, and it takes approximately 2 to 4 hours to complete the form each month. EIA estimates that it should take 2.5 hours per month for a firm to fill out EIA-782B. See Form EIA-782B, Schedule 1. This is approximately the length of time that Mr. Heller estimates that it takes him and the bookkeeper each month to complete the form. While we recognize that the firm's need to train new staff is time-consuming, it is a temporary problem which should require less time in the future and does not convince us of the need for exception relief.

Heller has indicated that it already uses estimates in order to perform the task more quickly. By doing so, it alleviates somewhat the inconvenience of filing Form EIA-782B.

Moreover, Heller has not demonstrated that its burden of providing the requested data outweighs the benefits which the DOE and the nation receive from access to the information. 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. Reliable data is vital to the nation's ability to formulate energy policies and to respond effectively to any future supply disruptions. Unless firms such as Heller are part of the EIA's statistical sample, the DOE will be unable to formulate valid estimates from a cross-section of the industry.

In view of the foregoing considerations, we find that the requirement that Heller file Form EIA-782B does not constitute a special hardship, inequity, or unfair distribution of burdens. Accordingly, the Application for Exception filed by Heller should be denied.

Is Therefore Ordered That:

- (1) The Application for Exception filed by Heller & Sons Distributing, Inc. on February 14, 1996, 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:

<1>/ The OHA, moreover, has determined that even if a firm claims to spend a greater amount of time complying with reporting requirements than the average firm, that does not alone constitute sufficient grounds for exception relief. See, e.g., People's Oil & Gas Co., 13 DOE ¶ 81,021 (1985) (relief denied despite claims of 1.5 to 2 days to complete Form EIA-782B).

<2>/ The use of estimates to complete the EIA form is a straightforward procedure: "The basis for the estimates must be consistent with the standard accounting records maintained by the firm. The estimating procedure and data supporting the estimates should result in a reasonably accurate estimate which will be subject to review." Form EIA-782B, General Instructions ¶ VI.