

DECISION AND ORDER  
OF THE DEPARTMENT OF ENERGY

Application for Exception

Name of Petitioner: Mercury Fuel Service, Inc.

Date of Filing: April 9, 1996

Case Number: VEE-0020

On April 9, 1996, Mercury Fuel Service, Inc. (Mercury) of Waterbury, Connecticut, filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). In its application, Mercury 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 was designated by the EIA as a member of a sample group required to complete and submit Form EIA-782B on a monthly basis, beginning in February 1993.

## II. Mercury's Application for Exception

Mercury is a petroleum product wholesaler-retailer located in Waterbury, Connecticut. Mercury sells No. 2 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 lacks sufficient personnel to complete the form. According to Mr. Robert C. Bonneau, the Gasoline Division Manager of Mercury, Mercury is understaffed because of numerous very serious illnesses. Mr. Bonneau states that the owner of the business and his wife, who is also the Secretary of the Corporation and the key administrative/clerical employee, have been unavailable to oversee the firm for the last five months because the owner is ill with cancer. In addition, the individual who actually compiles the necessary information to complete Form EIA-782B, has also been fighting cancer for the past 18 months, and has not returned to work since December 1995. Moreover, another key clerical/administrative staffer was also recently diagnosed with cancer, and has not returned to work since the beginning of February 1996. Mr. Bonneau also alleges that although the firm does have a computer system, it is not programmed or capable of being programmed to provide the necessary information for completion of the form in a

concise manner. Finally, Mr. Bonneau states that due to the firm's personnel shortage and administrative problems, the remaining staff has found it a burden to maintain day to day operations.<1>

### 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).

In the past, 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 Valley City Oil Co., 15 DOE ¶ 81,028 (1987). In that case, the reporting firm's sole employee was burdened with an increased workload due to major surgery. In granting exception relief, we concluded that the surgery and the period of time necessary to recuperate resulted in a lack of sufficient personnel to complete Form EIA-782B.

Mercury has clearly shown that in light of the serious illnesses that have stricken its key personnel, it bears an unusually great burden in filing the Form. Because of the illnesses, the firm is barely able to maintain its day to day operations, and lacks the expertise needed to complete the form. For these reasons, we have concluded that a serious hardship exists and that an exception is warranted in this proceeding. We will therefore grant Mercury exception relief from the requirement to file Form EIA-782B; beginning with the month of November 1995. We note, however, that Mercury's situation may improve in time. We therefore do not find that permanent exception relief is appropriate, and shall extend exception relief to Mercury from November 1995 through September 1997. If the firm is selected for the EIA-782B reporting sample after that date and still faces personnel shortages due to illness, it may reapply for exception relief at that time.

### It Is Therefore Ordered That:

- (1) The Application for Exception filed by Mercury Fuel Service, Inc. on April 9, 1996, is hereby granted as set forth below.
- (2) Mercury Fuel Service, Inc. 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 from November 1995 through September 1997.
- (3) This exception is based upon the presumed validity of statements, allegations, and documentary material submitted by the applicant. This exception may be revoked or modified at any time upon a determination that the factual bases or other circumstances underlying the application are incorrect.
- (4) This is a final Order of the Department of Energy.

George B. Breznay

Director

Office of Hearings and Appeals

Date:

<1>\*/ The OHA has been informed by EIA that Mercury has failed to complete Form EIA-782B since October 1995.