

DECISION AND ORDER
OF THE DEPARTMENT OF ENERGY

Application for Exception

Name of Petitioner: Oil Products, Inc.

Date of Filing: May 13, 1996

Case Number: VEE-0023

On May 13, 1996, Oil Products, Inc. (Oil Products) filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). In its application, Oil Products 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 that the DOE 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 June 1994.

II. Oil Products' Application for Exception

Oil Products is a petroleum product wholesaler-retailer located in Mt. Angel, Oregon. Oil Products sells No. 2 diesel fuel, heating oil, distillates and motor gasoline. In its application, the firm requests an exception to the Form EIA-782B reporting requirement on the bases that the firm has been completing the form on a regular monthly basis for the past 18 months and lacks sufficient personnel to complete the form. Robert Rash, Vice President for Oil Products, claims that it is a very small company, and has had employee changes that prevent the firm from furnishing this report. According to Mr. Rash, the person who originally prepared the report has left the company without notice; therefore, no one else was trained to complete the form. He also claims that Oil Products is in the midst of upgrading its computer programs, and has not been able to cross-train anyone to do the form. Furthermore, Mr. Rash asserts that another employee has retired, and having yet another employee complete the form would mean paying overtime pay for 4-6 hours per month (the amount of time that he claims it takes to complete the form). Mr. Rash also argues that the reduction in staff and the financial hardship of compiling the information cause a significant burden on the

company.

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 6 Fed. Energy Guidelines ¶ 80,003 (Exceptions and Appeals Guidelines). 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 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 Oil Products in a way that differs significantly from similar reporting firms. Although Oil Products has participated in the survey since June 1994, we do not consider Oil Products' 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 Oil Products' contention that it should receive exception relief because it must spend an inordinate amount of time completing the form. According to Mr. Rash, it took approximately 4-6 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. 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). 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. We are also not convinced that any additional cost which the firm must incur in paying for a few hours of overtime worked is sufficient to constitute a financial hardship to the company.

Furthermore, Oil Products may use estimates to alleviate the inconvenience of filing Form EIA-782B without compromising EIA's comprehensive survey of motor gasoline and middle distillate markets. 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.(1)

Oil Products 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. The federal and state governments, as well as private firms, use this information to perform analyses and make projections. Timely and reliable access to the data is vital to the nation's ability to anticipate and respond quickly and effectively to any future supply disruptions. See H.R. Rep. No. 373, 96th Cong., 1st Sess., reprinted in 1979 U.S. Code Cong. and Ad. News 1764, 1781. The DOE has attempted to minimize the burden placed on the public in gathering this information, while insuring that the reporting requirements are administered in a consistent and equitable manner. After balancing these strong public policy considerations against Oil Products' claim, we have concluded that the Oil Products Application for Exception should be denied.

It Is Therefore Ordered That:

- (1) The Application for Exception filed by Oil Products, Inc. on May 13, 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 Energy Information Administration has informed us that it is willing to assist Oil Products in reducing the amount of hours

that it takes the firm to complete Form EIA-782B. The firm may contact Charles Riner of EIA, at telephone number (202) 586-6610.