

DECISION AND ORDER
OF THE DEPARTMENT OF ENERGY

Application for Exception

Name of Petitioner: J. Enterprises, Inc.

Date of Filing: April 16, 1996

Case Number: VEE-0027

On June 11, 1996, J. Enterprises, Inc. (Enterprises) of Swansea, Massachusetts, filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). In its Application, Enterprises requests that it be relieved of the requirement that it file the Energy Information Administration's (EIA) form entitled "Resellers/Retailers' Monthly Petroleum Product Sales Report" (Form EIA-782B). As explained below, we have determined that the Application for Exception should be denied.

A. Background

Form EIA-782B is a mandatory reporting requirement which grew out of the shortages of crude oil and petroleum products during the 1970s. In 1979, Congress found 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. Form EIA-782B is designed to collect monthly information on refined petroleum sales volumes and prices from a sample of resellers and retailers. 42 U.S.C. § 7135(b). Information obtained from Form EIA-782B 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 data is used by Congress and by more than 35 state governments to project trends and to formulate state and national energy policies. In addition, firms in the petroleum industry frequently base business decisions on the data published by EIA.

The DOE has attempted to ensure that the surveys yield valuable information while minimizing the burden placed on the industry. Thus, 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 In addition, to reduce the amount of time spent completing the forms, firms may rely upon reasonable estimates. (1)

B. Exception Criteria

This Office has authority to grant exception relief where the reporting requirement causes a "special hardship, inequity, or unfair distribution of burdens." 42 U.S.C. § 7194(a); 10 C.F.R. § 1003.25(b)(2). Exceptions are appropriate only in extreme cases. 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 adversely affected by the reporting requirement in a way that differs significantly from similar reporting firms. Thus, mere inconvenience does not constitute a sufficient hardship to warrant relief. *Glenn W. Wagoner Oil Co.*, 16 DOE ¶ 81,024 (1987).

In considering a request for exception relief, we must weigh the firm's difficulty in complying with the reporting requirement against the nation's need for reliable energy data. Neither the fact that a firm is relatively small, nor the fact that it has filed the reports for a number of years alone constitute grounds for exception relief. If firms of all sizes, both large and small, are not included, the estimates and projections generated by the EIA's statistical sample will be unreliable. *Mulgrew Oil Co.*, 20 DOE ¶ 81,009 (1990).

The following examples illustrate the types of circumstances that may justify relief from the reporting requirement. Since each case is different, these examples are not intended to reflect all circumstances that justify exception relief:

- Financial difficulties underlie most approvals of exception relief. We have granted a number of exceptions where the applicant's financial condition is so precarious that the additional burden of meeting the DOE reporting requirements threatens its continued viability. *Mico Oil Co.*, 23 DOE ¶ 81,015 (1994) (firm lost one million dollars over previous three years); *Deaton Oil Co.*, 16 DOE ¶ 81,026 (1987) (firm in bankruptcy).
- Relief may be appropriate when the only person capable of preparing the report is ill and the firm cannot afford to hire outside help. *S&S Oil & Propane Co.*, 21 DOE ¶ 81,006 (1991) (owner being treated for cancer); *Midstream Fuel Serv.*, 24

DOE ¶ 81,023 (three month extension of time to file reports granted when two office employees simultaneously on maternity leave); Eastern Petroleum Corp., 14 DOE ¶ 81,011 (1986) (two months relief granted when computer operator broke wrist).

- A combination of factors may warrant exception relief. Exception relief for 10 months was granted where personnel shortages, financial difficulties, and administrative problems resulted from the long illness and death of a partner. Ward Oil Co., 24 DOE ¶ 81,002 (1994); see also Belcher Oil Co., 15 DOE ¶ 81,018 (1987) (extension of time granted where general manager abruptly left firm without notice).
- Extreme or unusual circumstances that disrupt a firm's activities may warrant relief. Little River Village Campground, Inc., 24 DOE ¶ 81,033 (1994) (five months relief because of flood); Utilities Bd. of Citronelle-Gas, 4 DOE ¶ 81,205 (1979) (hurricane); Meier Oil Serv., 14 DOE ¶ 81,004 (1986) (three months where disruptions caused by installation of a new computer system left firm's records inaccessible).

C. Enterprises' Exception Application

Enterprises sells motor gasoline to retail customers in Massachusetts and Rhode Island. Classified by EIA as a "large size firm," Enterprises has been filing Form EIA-782B continuously since February 1993. The firm's accountant, Mark's Accounting Service (Mark's), handles the preparation of the Form.(2) Debbie Greco, Office Manager for Mark's, estimates that it takes her firm approximately 15 minutes to complete the Form. Ms. Greco argues that the length of time that Marks' has had to file the Form for Enterprises is burdensome and the firm should therefore be taken off the list of sample participants.

D. Analysis

Our review of the record in this case indicates that Enterprises has not met the standards for an exception to the EIA reporting requirement that are set forth above. For example, the 15 minutes each month that Mark's states it takes the firm to complete the survey is substantially less than the amount of time EIA estimates the form should require (2.5 hours). Therefore, Enterprises is not unduly or disproportionately affected by the time involved in filing the report. We note that we have consistently withheld exception relief where firms spent considerably more time preparing Form EIA-782B but failed to show that they were otherwise burdened. See People's Oil and Gas Co., 13 DOE ¶ 81,021 (1985) (one and one half to two working days); St. Joe Petroleum Co., 13 DOE ¶ 81,040 (1985) (eight to ten hours).

Nor does the length of time that it has filed the survey indicate that the reporting responsibility should be eliminated or transferred to another firm. Enterprises' sales of motor gasoline constitute over five percent of the total sales of gasoline in Rhode Island, and consequently, it is classified by EIA as a "certainty unit."(3) Certainty units are always included in the sample of firms required to file the report. (4) 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. Schaal Oil Co., 14 DOE ¶ 81,018 (1986) (3 years). See Harbor Enters., 20 DOE ¶ 81,004 (1990) (had been filing various forms, including EIA forms for 20 years); Halron Oil Co., 16 DOE ¶ 81,001 (1987) (12 years). The basis for this conclusion is that the importance of the information collected by the EIA through the survey usually outweighs the inconvenience of providing the data.

In summary, Enterprises has not shown that providing EIA the requested data is excessively onerous to it as compared to other firms similarly affected. The applicant has also failed to show that the effort involved in providing the data outweighs the benefits which the DOE and the nation receive from access to the information. The data collected from Form EIA-782B constitute our primary source of information on supplies, demand, and prices of petroleum products. Reliable data is vital to the nation's ability to anticipate and respond quickly and effectively to any future supply disruptions and thereby protect the public interest. Indeed, this is why the Congress mandated the collection of this type of data. Unless firms such as Enterprises are part of the EIA's statistical sample, the DOE will be unable to formulate valid estimates from a cross-section of the industry. Strong public policy considerations such as these lead us to conclude that Enterprises' request for exception relief from the mandatory reporting requirements is unwarranted.

In accordance with the above discussion, we find that exception relief is not warranted in this case, because Enterprises is not experiencing a special hardship, inequity, or unfair distribution of burdens from the requirement that it file Form EIA-782B. Consequently, the Department of Energy has determined that the Application for Exception filed by Enterprises should be denied.

It Is Therefore Ordered That:

(1) The Application for Exception filed by J. Enterprises, Inc., on June 11, 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)/ 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.

(2)2/ See Letter to the Office of Hearings and Appeals from Paul Sroczynski, President of Enterprises (June 11, 1996).

(3)3/ See Conversation between Sherri Beri, EIA, and Ms. Kimberly Smith, OHA Staff Analyst (July 1, 1996).

(4)4/ For Form EIA-782B, certainty units consist of firms that do business in four or more states or which account for over five percent of sales of any particular product in a state. The EIA also selects a random sample of non-certainty firms to participate in the survey.