

DECISION AND ORDER
OF THE DEPARTMENT OF ENERGY

Application for Exception

Name of Petitioner: Lee Oil Company

Date of Filing: July 19, 1996

Case Number: VEE-0030

On July 19, 1996, Lee Oil Company (Lee), located in Greensboro, North Carolina, filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy. In its Application, Lee 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 granted.

A. Background

The EIA-782B reporting requirement 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. The current form collects information concerning the volume and price of various grades and types of motor gasoline, No. 2 distillates, propane, and residual fuel oil, broken down by customer type.

Information obtained from the survey 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 the EIA.

The DOE has attempted to ensure that this survey yields 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 sample of companies to file the report. In addition, to reduce the amount of time spent completing the forms, firms may rely upon reasonable estimates.

B. Exceptions Criteria

Form EIA-782B is a mandatory report 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). This Office has authority to grant exception relief where the reporting requirement causes a "serious hardship, gross inequity or unfair distribution of burdens." 42 U.S.C. § 7194 (a); 10 C.F.R. § 1003.25(b)(2). 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. See Champlain Oil Co., Inc., 14 DOE ¶ 81,022 (1986); Eastern Petroleum Corp., 14 DOE ¶ 81,011 (1986). This entails balancing any burden the firm may encounter in meeting its reporting requirement against the public interest in collecting reliable information concerning energy markets upon which public decisions may be based. Neither the fact that a firm is relatively small, nor the fact that it has filed the report 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 (1994)(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. Lee's Exception Application

Lee, located in Greensboro, North Carolina, sells gasoline, #2 diesel fuel and #2 fuel oil. Classified by the EIA as a "medium sized company," Lee has filed Form EIA-782B since February 1993 as part of EIA Samples 10 and 11. Because Lee is not classified as a "certainty firm" by the EIA, it is possible, but not guaranteed, that the company will be rotated out of the reporting sample when EIA conducts the next random selection process for inclusion in EIA Sample 12.

In the Application for Exception, the Secretary/Treasurer of Lee, Leonard Watts, requests relief from the EIA reporting requirement because he believes the requirement is currently unduly burdensome to the company. Mr. Watts writes that Lee employs 3 people in its office. One of those employees, who had completed the form for the firm through February 1996, is currently on disability leave. Another employee took on this responsibility, but will be going on maternity leave this month. In a June 25, 1996 telephone conversation with Mr. Watts, he stated that his one remaining employee has been so overburdened by the additional workload that the company has temporarily employed a part-time worker to help with paperwork in the office. Mr. Watts anticipates that the employee who is going on maternity leave will return to work on October 1, 1996.

D. Analysis

Our review of the information presented in the Application for Exception submitted by Lee leads us to conclude that there is considerable merit to Lee's contention that it is currently significantly more burdened by the reporting requirement than similarly situated respondents. In the past, we have granted exception relief when a firm has demonstrated that the reporting requirement imposes an unusual burden on the firm or could seriously impede the firm's business operations. For example, as noted above, in Midstream Fuel Serv., 24 DOE ¶ 81,023 (1994), we granted a three month extension of time to file Form EIA-782B when two of its office employees were simultaneously on maternity leave.

We believe such circumstances exist in the present case and that granting exception relief to Lee is appropriate. One employee of the firm, with the assistance of a part-time temporary employee, will soon be required to perform the duties of two employees on temporary leave, in addition to a full workload.

We conclude that the burden placed upon Lee at this time, due to the temporary unavailability of personnel to complete the form, is greater than that encountered by other firms required to complete Form EIA-782B. Accordingly, Lee should be granted temporary relief from its obligation to file Form EIA-782B. Because one of its employees will be returning to work on October 1, 1996, we will grant exception relief to Lee for a period of three months.

It Is Therefore Ordered That:

(1) The Application for Exception filed by Lee Oil Company, Case No. VEE-0030, is hereby granted to the extent set forth in paragraph (2) below.

(2) Notwithstanding the instructions to Form EIA-782B, Lee Oil Company shall not be required to file reports to the Energy Information Administration for a period of three months, beginning August 1, 1996 and extending to November 1, 1996.

(3) This is a final Order of the Department of Energy.

George B. Breznay

Director

Office of Hearings and Appeals

Date:

<1> Firms that do business in four or more states or which account for over five percent of the sales of any particular product in a state are always included in the sample of firms required to file the report. A random sample of other firms is also selected. This random sample changes approximately every 12 months, but a firm may be reselected for a subsequent sample. 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.