

DECISION AND ORDER  
OF THE DEPARTMENT OF ENERGY

Application for Exception

Name of Petitioner: Thomas Oil Company

Date of Filing: September 13, 1996

Case Number: VEE-0032

On September 13, 1996, Thomas Oil Company (Thomas Oil) filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). In its application, Thomas Oil 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. Thomas Oil Company's Application for Exception

Thomas Oil is a petroleum product wholesaler-retailer located in Gainesville, Florida. Thomas Oil 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 basis that the firm has been completing the form on a monthly basis for more than three years.(1) David Thomas, Vice President for Thomas Oil, claims that it is too time consuming to have to complete the form, which he does from a computer printout using actual figures. Mr. Thomas states that it takes him approximately two hours per month to complete the form. Mr. Thomas states in addition that his firm recently purchased another business, consisting of three stores and a small bulk storage plant for making commercial deliveries. This new business added an additional 20 employees and increased sales by approximately 150,000 gallons of fuel. According to Mr. Thomas, the acquisition was accomplished without taking on added personnel in the firm's home office, and this has caused the home office workload to double.

### 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 Thomas Oil in a way that differs significantly from similar reporting firms. The firm has submitted no evidence that it is experiencing any financial hardship. In view of its recent expansion of its business, one may assume that it is not suffering a serious hardship. Furthermore, even though Thomas Oil has participated in the survey since June 1994, we do not consider that length of participation to be excessive. Moreover, 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 Thomas Oil's contention that it should receive exception relief since preparing form EIA-782B takes too many hours. 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 slightly more than the length of time that Mr. Thomas estimates that it takes him each month to complete Form EIA-782B.

Furthermore, Thomas Oil may use estimates to alleviate the time spent preparing Form EIA-782B without compromising EIA's comprehensive survey of motor gasoline and middle distillate markets. We note that Thomas Oil does not use estimates to complete the form even though they are clearly permitted. Moreover, 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. We believe that Thomas Oil could ease what it considers an onerous burden by providing estimated data.

Moreover, Thomas Oil 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 Thomas Oil's claim, we have concluded that the firm's Application for Exception should be denied.

### It Is Therefore Ordered That:

- (1) The Application for Exception filed by Thomas Oil Company on September 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: January 7, 1997

(1)EIA's records indicate that the firm has been participating since June 1994, approximately 2-1/2 years ago. See November 5, 1996 memorandum of telephone conversation between Toni A. Brown, OHA, and Sherry A. Beri, EIA . Case No. (VEE-0032).