

## Case No. VEE-0034

January 28, 1997

### DECISION AND ORDER

#### OF THE DEPARTMENT OF ENERGY

#### Application for Exception

Name of Petitioner: LePiers' Inc.

Date of Filing: October 16, 1996

Case Number: VEE-0034

On October 16, 1996, LePiers' Inc. (LePiers') of Fosston, Minnesota filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). In its Application, LePiers' requests that it be relieved of the requirement to file Form EIA-782B, entitled "Resellers/Retailers' Monthly Petroleum Product Sales Report" (Form or Form EIA-782B).

### I. 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.(1) In addition, to reduce the amount of time spent completing the forms, firms may rely upon reasonable estimates.

### II. Exception 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 Wagoner Oil Company, 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 Company, Inc., 14 DOE ¶ 81,022 (1986); Eastern Petroleum Corporation, 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 Company, 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.

. 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 ¶ 81,023 (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 Board of Citronelle-Gas, 4 DOE ¶ 81,205 (1979) (hurricane); Meier Oil Service, 14 DOE ¶ 81,004 (1986) (three months where disruptions caused by installation of a new computer system left firm's records inaccessible).

### III. LePiers' Application for Exception

LePiers' sells No. 2 diesel fuel and No. 2 fuel oil to commercial and wholesale customers and motor gasoline to retail and wholesale customers. Classified by the EIA as a "medium sized company," LePiers' has filed Form EIA-782 throughout EIA Sample 10 and 11. Because LePiers' 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 its Application for Exception, the President of LePiers' requests relief from the EIA reporting requirement because he believes the requirement is currently unduly burdensome to the company. Mr. LePier maintains that the individual who is currently preparing the report, the company's Corporate Secretary, will be leaving for maternity leave around the end of November. In addition, he argues that he has been unsuccessful in finding a replacement for the Secretary for about six months. According to Mr. LePier, the Secretary's job duties will become his responsibility when she goes on maternity leave. In addition, Mr. LePier states that the DOE informed him that he would have to file the report for only one year and that his company was selected to file the report almost three years ago. Mr. LePier requests that his company be taken off the list for filing Form EIA-782B.

### IV. Analysis

Our review of the record in this case indicates that LePiers' has not met the standards for an exception to the EIA reporting requirement that are set forth above. Although LePiers' may have experienced some degree of inconvenience as a result of the reporting requirement, it does not bear a burden that is significantly greater than that of other, similarly situated firms. On January 14, 1997, we contacted LePiers' to ascertain the current status of the Corporate Secretary. We were informed that the Corporate Secretary has returned to work and is working on completing the EIA reporting requirement. Therefore, LePiers' is no longer unduly burdened in completing the reporting requirement by the Secretary's absence, and short term exception relief based on her absence will not be necessary.

In addition, LePiers' asserted that it was randomly selected to file a report almost three years ago and that DOE informed LePiers' that it would be filing the report for only one year. We believe that LePiers' was perhaps misinformed as to the possible duration of the reporting requirement or that it misunderstood what it was told. It is the practice of the EIA to select a random sample of firms to participate in its survey. The EIA attempts to replace about 50% of Form EIA-782B's random sample participants on a two year cycle. As stated above, a firm that has reported for three consecutive sample periods will generally not be included in a fourth consecutive sample, but may be selected again in a later sample. Therefore, LePiers' second year of participation does not distinguish it from other firms as unduly or onerously affected. In this regard, we have also 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. See Schaal Oil Company, 14 DOE ¶ 81,018 (1986) (3 years); see also Harbor Enterprises, 20 DOE ¶ 81,004 (1990) (had been filing various forms, including EIA forms for 20 years). The basis for this conclusion is that the importance to the nation of the information collected by the EIA through the survey usually outweighs the inconvenience to the firm of providing the data.

In summary, LePiers' has not shown that providing EIA the 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 LePiers' 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 LePiers' 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 LePiers' is not experiencing a special hardship, inequity or unfair distribution of burdens as a result of the requirement that it file Form EIA-782B. Consequently, the Department of Energy has determined that the Application for Exception filed by LePiers' should be denied.

It Is Therefore Ordered That:

(1) The Application for Exception filed by LePiers' Inc., Case No. VEE-0034, 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 28, 1997

(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.