

## Case No. VEE-0035

March 21, 1997

### DECISION AND ORDER

#### OF THE DEPARTMENT OF ENERGY

#### Application for Exception

Name of Petitioner: Rice Oil Company, Inc.

Date of Filing: October 22, 1996

Case Number: VEE-0035

On October 22, 1996, Rice Oil Company, Inc. (Rice) of Greenfield, Massachusetts filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). In its Application, Rice requests that it be relieved of the requirement to file Form EIA-782B, entitled "Resellers/Retailers' Monthly Petroleum Product Sales Report" (Form EIA-782B), and Form EIA-821, entitled "Annual Fuel Oil and Kerosene Sales Report".

#### 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 "Petroleum Marketing Monthly." These data are 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.

The second form at issue in this proceeding, Form EIA-821, requires information from fuel oil distributors in order to gauge the nation's annual demand for fuel oil and kerosene. Respondents must separate their sales of each product into several end-user categories. Survey results are published in the EIA "Fuel Oil and Kerosene Sales" report and in the "State Energy Data Report." These materials are available to the general public as well as to the petroleum industry. The data are also used by the DOE and other government agencies in determining current and projected fuel oil needs on a national, regional, and statewide basis. Access to this data is vital to the nation's ability to anticipate and respond to potential energy shortages. See H.R. Rep. NO. 373, 96th Cong., 1st Sess., *reprinted in* 1979 U.S. Code Cong. & Admin. News 1764, 1781 (H.R. Report 373). Rice was designated by the EIA as a member of an annual sample required to complete and submit Form EIA-821, as well as a monthly sample required to complete and submit Form EIA-782B.

#### II. Exception Criteria

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; 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. Rice's Application for Exception

Rice sells No. 2 fuel oil to residential, commercial and wholesale customers; motor gasoline to retail and wholesale customers; No. 2 diesel fuel; and residential propane. Rice has filed Form EIA-782 throughout EIA Sample 9 and 10. Because Rice 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 addition, Rice has been required to file Form EIA-821 since 1994. Rice has requested an exception from filing these forms. In its Application for Exception, Donna Mowry of Rice requests relief from the EIA reporting requirements because she believes the requirements are currently unduly burdensome to the company. Ms. Mowry maintains that Rice has participated in filing the reports for many years. In addition, Ms. Mowry states that Rice has a new computer system which is not capable to preparing the EIA reports.

### IV. Analysis

Our review of the record in this case indicates that Rice has not met the standards for an exception to the EIA reporting requirements that are set forth above. In its Application, Rice contends that it has been filing with the EIA for many years. 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. 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. The EIA, however, attempts to replace 50 percent of the reporting sample at the end of each reporting period. 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, Rice's several years of participation does not distinguish it from other firms as unduly or onerously affected.

Rice also contends that preparing Forms EIA-782B and EIA-821 is a burden on the company because its new computer system is not capable of preparing the EIA reports. However, we have previously held that the lack of a computer system is insufficient grounds for showing serious hardship. Halron Oil Company, 16 DOE ¶ 81,001 (1987). EIA estimates that it should take 2.5 hours per month for a firm to fill out Form EIA-782B and 3.2 hours per year to fill out Form EIA-821. To shorten the time it takes to prepare Form EIA-782B and EIA-821, Rice may use estimates without compromising EIA's comprehensive survey of motor gasoline and middle distillate markets. EIA allows firms to use estimates as long as they are "consistent with standard accounting records maintained by the firm." 2 Federal Energy Guidelines ¶ 18,502 at 18,507. We recommend that Rice contact EIA to establish a method of estimation satisfactory to both parties. Toll-free numbers are provided in the General Instructions of the EIA forms.

In summary, Rice 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 Forms EIA-782B and EIA-821 constitute our primary source of information on supplies, demand and prices of petroleum products. Reliable data are 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 Rice 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 Rice's 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 Rice is not experiencing a special hardship, inequity or unfair distribution of burdens as a result of the requirement that it file Forms EIA-782B and EIA-821. Consequently, the Department of Energy has determined that the Application for Exception filed by Rice should be denied.

It Is Therefore Ordered That:

(1) The Application for Exception filed by Rice Oil Company, Inc., Case No. VEE-0035, 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: March 21, 1997