

Case No. VEE-0036

DECISION AND ORDER

OF THE DEPARTMENT OF ENERGY

Application for Exception

Name of Petitioner: Kalamazoo Oil Co.

Date of Filing: November 26, 1996

Case Number: VEE-0036

On November 26, 1996, Kalamazoo Oil Co. (Kalamazoo), of Kalamazoo, Michigan, filed an Application for Exception with the Office of Hearings and Appeals of the Department of Energy. In its Application, Kalamazoo 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

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 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 relatively small 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.(2)

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). 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 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 (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 instillation of a new computer system left firm's records inaccessible).

C. Kalamazoo's Exception Application

Kalamazoo sells motor gasoline (wholesale and retail), #2 distillate diesel, and #2 distillate residential fuel oil. Classified by the EIA as a "medium size company" and a "non- certainty firm," the company has filed form EIA-782B throughout Sample 11, which began in May 1994.(3)In the Application for Exception, co-owner Susan Sonnevil writes that she is one of only two employees who handle bookkeeping and customer service. According to Ms. Sonnevil, she works an average of fifty to sixty hours per week, and is often forced to complete Form EIA-782B at home on Sunday. She writes that completing the report takes an average of four or five hours per month, because Kalamazoo's computer system "is not capable of producing numbers for the report.(4)As such, Ms. Sonnevil must pull numbers from four other reports to calculate the correct figures for Form EIA-782B. In addition, Ms. Sonnevil argues that Kalamazoo has been filing Form EIA-782B "long enough," and that the company should not be penalized because budget cuts at the EIA have delayed the selection of participants for Sample 12. Ms. Sonnevil writes that she was told by an employee of the EIA that Sample 12 will probably not begin until early 1997.(5)

D. Analysis

Kalamazoo has not shown that it meets the standards for exception relief set forth above. While it will no doubt experience some inconvenience in filling out Form EIA-782B each month, this inconvenience does not appear to be greater than that experienced by other reporting firms. Nothing in the record indicates that Kalamazoo is seriously financially strained, or that the reporting requirement burdens the firm in a unique or exceptional way. EIA estimates that it should take between two and two and one-half hours per month to complete form EIA-782B. Although Ms. Sonnevil states that it takes her longer than average to complete the form each month (i.e., four to five rather than two to two and one-half hours per month), there is no evidence that this time difference is due to unusual hardship or that it is indicative of an unfair distribution of burdens. It may be possible for Kalamazoo to reduce the amount of time required to complete the form through the use of an EIA-approved estimation technique. The EIA provides a toll-free hotline to assist respondents with any questions they may have, which should help Kalamazoo refine its estimation techniques to reduce the time necessary to complete the form.(6)Ms. Sonnevil's argument regarding the budget cuts at EIA that have extended the length of Sample 11 well past the anticipated end-date is a reasonable one. However, this Office has authority to grant exception relief only 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). The fact that Kalamazoo, as well as every other non-certainty firm randomly selected to participate in Sample 11, has filed Form EIA-782B for longer than anticipated does not justify granting exception relief to Kalamazoo. Finally, it is important to note that Kalamazoo, as a non-certainty firm, may well be rotated out of the reporting sample once Sample 12 is selected by the EIA.

The data collected from Form EIA-782B constitutes the DOE's primary source of information on supplies, demand, and prices of petroleum products. Reliable data is vital to the nation's ability to formulate energy policies and to respond effectively to any future supply disruptions. Unless firms such as Kalamazoo are part of the EIA's statistical sample, the DOE will be unable to formulate valid estimates from a cross-section of the industry. Consequently, there is no evidence that the burden on Kalamazoo to provide the requested data outweighs the benefits which the DOE and the nation receive from access to the information.

In view of the foregoing considerations, we find that the requirement that Kalamazoo file Form EIA-782B does not constitute a special hardship, inequity, or unfair distribution of burdens. Accordingly, the Application for Exception filed by Kalamazoo should be denied.

It Is Therefore Ordered That:

(1) The Application for Exception filed by Kalamazoo Oil Co. on November 26, 1996, Case No. VEE-0036, 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 16, 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.

(2) 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 also alert the EIA if the estimates are later found to be materially different from actual data.

(3) See Record of Telephone Conversation between Sherry Beri, EIA, and Darcy Goddard, Staff Analyst, Office of Hearings and Appeals (December 17, 1996).

(4) "See Application for Exception submitted by Kalamazoo Oil Co.

(5) Id. See also Record of Telephone Conversation between Susan Sonnevil, Kalamazoo Oil Co., and Darcy Goddard, Staff Analyst, Office of Hearings and Appeals (December 17, 1996).

(6) The toll-free number for questions regarding EIA-782B is (800) 638-8812.