

## Case No. VEE-0037

May 7, 1997

DECISION AND ORDER

OF THE DEPARTMENT OF ENERGY

Application for Exception

Name of Petitioner: W. Gordon Smith Company

Date of Filing: December 24, 1996

Case Number: VEE-0037

On December 24, 1996, the W. Gordon Smith Company (Smith), filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). In its Application, Smith requests that it be temporarily 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

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). 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.

### B. Exceptions 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 (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).

### C. Smith's Exception Application

Smith, located in Eden Prairie, Minnesota, is classified by the EIA as a "medium sized company," Smith has filed Form EIA-782B since 1991 as part of EIA Samples 9 and 11. Because Smith 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 random selection process for inclusion in the next EIA Sample (Sample 12).

In its Application for Exception, Smith requests retroactive relief from the EIA reporting requirements because of extreme and unusual circumstances that have disrupted the firm's activities and made it difficult to comply with the reporting requirement.

Specifically, the firm has had the property where its primary place of business was located condemned by the State of Minnesota in order to provide the right of way for a new state highway. As a result, the firm has undergone protracted legal proceedings and has ultimately been forced to divest most of its business. These events have both considerably reduced the size of Smith's workforce. For example, the firm's financial operations staff decreased from four employees to one. Moreover, these events required a great deal of time and attention from Smith's management team. Because its attention was diverted to legal proceedings as well as to the divestment of several of the firm's business lines, the downsized and preoccupied work force was unable to devote sufficient attention to accumulating the data necessary to complete the form. These circumstances have placed a severe hardship upon Smith that prevented it from complying with the reporting requirements for several months. In past cases, we have found exception relief to be appropriate when extreme or unusual circumstances have disrupted a firm's activities. See, e.g., 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 unaccessible). We find that the State's condemnation of Smith's principal place of business is the type of extreme and unusual circumstance that warrants approval of exception relief to prevent a serious hardship to the firm.

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). Balancing the nation's need for information against the expected harm to Smith that would result from mandatory compliance, we find that the granting of exception relief would be justified by the severe hardship mandatory compliance would place upon Smith. This burden and hardship are outside the realm of ordinary business conditions experienced by those firms required to complete EIA-782. Requiring the firm to retroactively comply with the reporting requirement could jeopardize its revitalization efforts. Accordingly, we find that since the burden placed upon Smith is greater than that encountered by other firms required to complete Form EIA-782B, and since complying with the reporting requirement would constitute a serious hardship to the firm, Smith should be granted retroactive exception relief from its obligation to file Form EIA-782B for the period beginning with August 1996 and extending to March 1, 1997.

It Is Therefore Ordered That:

(1) The Application for Exception filed by W. Gordon Smith Company, Case No. VEE-0037, is hereby granted to the extent set forth in paragraph (2) below.

(2) Notwithstanding the instructions to Form EIA-782B, W. Gordon Smith Company shall not be required to file reports to the Energy Information Administration for the period beginning August 1, 1996 and extending to March 1, 1997.

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

George B. Breznay

Director

Office of Hearings and Appeals

Date: May 7, 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.