

Case No. VEE-0041

May 22, 1997

DECISION AND ORDER

OF THE DEPARTMENT OF ENERGY

Application for Exception

Name of Petitioner: Hampton Gas Company, Inc.

Date of Filing: March 3, 1997

Case Number: VEE-0041

On March 3, 1997, Hampton Gas Company, Inc. (Hampton) filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). In its application, Hampton 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. EECA § 242, 42 U.S.C. § 8532. Under this program, the DOE established a data collection program to monitor the supply and demand of middle distillates in each state at the refining, wholesale and retail levels. EECA § 242(a)(1).

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 report designed to collect monthly data on sales volumes and unit prices of refined petroleum products from a random sample of resellers and retailers.

II. Hampton's Application for Exception

Hampton is a propane product retailer based in Hampton, South Carolina. The firm sells residential and non-residential propane in the state of South Carolina. In its application, Mr. Michael Thomas, Vice President of the firm, requests an exception to the Form EIA-782B reporting requirement on the basis that the firm's office staff consists of only two people both of whom, he asserts, are overworked. According to Mr. Thomas, the two employees must skip their lunch hours and work overtime to complete their existing work. Mr. Thomas also claims that the firm's computerized bookkeeping system does not break down the monthly sales data into different categories. He also claims that it would take a considerable amount of work to compile the information for the report.

III. Analysis

The OHA has the authority to grant exception relief to alleviate or prevent a 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 cause some inconvenience to respondents. Since all reporting firms are burdened by these requirements, 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 a particular 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).

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 have considered Hampton's claim and find no serious hardship or gross inequity that would warrant exception relief in this case. We are not persuaded by Hampton's claim that breaking out its sales by category of customers in order to complete the form would be too time consuming. If the data in its computerized bookkeeping system are not easily sorted by category of customer, the firm could complete the form manually. Form EIA-782B requires little more than the essential type of pricing, supply, and inventory data that, at a minimum, is required to operate a business operation. Hampton certainly records the prices at which it sells product, the volumes involved in each transaction, and the location of the purchaser. While we do not doubt that the firm's office staff is already very busy, we do not believe that the amount of time required to complete the form constitutes an onerous burden on them. The EIA estimates that it should normally take approximately 2.5 hours per month for a firm to fill out EIA-782B. See Form EIA-782B, Schedule 1. This does not seem to be an unreasonable amount of time. Furthermore, the burden of this requirement on the firm's office staff could be lessened by the use of estimates. The EIA permits firms to estimate sales data in order to reduce the time spent completing the form. See Section VI of the General Instructions to Form EIA-782B.

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 Hampton's claim, we have concluded that the Hampton Application for Exception should be denied. (1)

It Is Therefore Ordered That:

(1) The Application for Exception filed by Hampton Gas Company, Inc. on March 3, 1997, 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: May 22, 1997

(1) We have been informed by EIA that it has designated Hampton as a "certainty company." See March 18, 1997, telephone conversation between Sherry Beri of EIA and Toni Brown of OHA. A certainty company is a firm whose EIA reports are vital because its data are crucial to the EIA's overall survey results in order to accurately reflect patterns of fuel demand and supply. See Texport Oil Co., 23 DOE ¶ 81,006 (1993); Halron Oil Co., 16 DOE ¶ 81,001 (1987).

Accordingly, the burden which certainty firms encounter must be extremely severe in order to outweigh the benefit to the nation in obtaining survey data from them. See Fletcher & Associates, Ltd., 23 DOE ¶ 81,008 (1994). Since Hampton does not meet the standards for exception relief required of firms generally, we do not need to determine whether it meets the stricter standards required of certainty firms.