

Case No. VEE-0042

April 9, 1997

DECISION AND ORDER

OF THE DEPARTMENT OF ENERGY

Application for Exception

Name of Petitioner: Edris Oil Service, Inc.

Date of Filing: March 5, 1997

Case Number: VEE-0042

On March 5, 1997, Edris Oil Service, Inc. (Edris) filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). In its application, Edris 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. Information obtained from the respondents constitutes the DOE's primary source of information about petroleum products at the reseller/retailer level. The DOE uses the information obtained from the respondents to perform state-by-state analyses and make projections related to energy supplies, demand, and prices. These data are vital to the nation's ability to anticipate and respond to any future energy shortages. See H.R. Rep. No. 373, 96th Cong., 1st Sess., reprinted in 1979 U.S. Code Cong. & Admin. News 1764, 1781.

The applicant in this proceeding has been designated by the EIA as a member of sample group 12 required to complete and submit Form EIA-782B on a monthly basis. The firm was previously in sample groups 9 and 10.

II. Edris's Application for Exception

Edris is a petroleum product wholesaler-retailer located in York, Pennsylvania. Edris sells diesel fuel, heating oil, kerosene and motor gasoline. In its application, the firm requests an exception to the Form EIA-782B reporting requirement on the basis that it

was selected in two earlier samples and submitted the form on a regular monthly basis for the period December 1992 through July 1994. Steven R. Edris, President of Edris, claims that his firm has only two clerical workers, and it would be very costly to complete the form because he would have to pay overtime. Mr. Edris further claims that since his competitors have not been chosen to complete the Form EIA-782B, they have not been forced to pay the "hidden taxes" that he believes his small business is being forced to pay. Mr. Edris therefore claims that his firm is being unfairly singled out to complete the form and that this creates a financial hardship to his company.

III. Analysis

The OHA has the authority to grant exception relief to alleviate or prevent 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 impose costs on the respondents. Since all reporting firms are burdened by the requirement, 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 the 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 are unconvinced that the reporting requirement has adversely affected Edris in a way that differs significantly from similar reporting firms. Although Edris has participated in Samples 9 and 10, we do not consider Edris's length of participation to be excessive. The OHA has previously held that the length of time that a firm must file Form EIA-782B does not in itself mandate exception relief. See Exxon Junction Service, 14 DOE ¶ 81,020 (1986); Piedmont Petroleum Co., 11 DOE ¶ 81,006 (1983).

We also reject Edris's contention that it should receive exception relief because it is costly. We are not convinced that the additional cost which the firm must incur in paying for a few hours of overtime worked is sufficient to constitute a serious financial hardship or significant competitive burden to the company. While this cost is a burden to the firm, it is a burden experienced by all firms completing the form. Although Edris may be experiencing an inconvenience that some of its competitors do not share, the firm has not shown, or even alleged, that it has lost market share as a result of this additional requirement.

Also, Mr. Edris states that it takes the firm 2.5 hours to complete the form. This is exactly the length of time that EIA estimates it should take to complete Form EIA-782B. Mr. Edris also informed us that his firm used estimates. This should reduce the time and expense of completing the form.

Edris has not demonstrated that its burden of providing the requested data outweighs the benefits which the DOE and the nation receive from access to the information. 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 Edris's claim, we have concluded that the Edris Application for Exception should be denied.

It Is Therefore Ordered That:

- (1) The Application for Exception filed by Edris Oil Service, Inc. on March 5, 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: April 9, 1997