

Case No. VEE-0045

August 4, 1997

DECISION AND ORDER

OF THE DEPARTMENT OF ENERGY

Application for Exception

Name of Petitioner: Patriot Petroleum, Inc.

Date of Filing: July 14, 1997

Case Number: VEE-0045

On July 14, 1997, Patriot Petroleum, Inc. (Patriot) of Newburyport, Massachusetts, filed an Application for Exception with the Office of Hearings and Appeals of the Department of Energy. In its Application, Patriot 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 installation of a new computer system left firm's records inaccessible).

C. Patriot's Exception Application

Patriot, located in Newburyport, MA, sells several different petroleum products, and frequently acts as a broker, rather than as a direct supplier, of petroleum products.⁽³⁾ Currently classified as a "certainty firm" based on its reported 1994 sales figures, the company has filed Form EIA-782B since January 1997.⁽⁴⁾ In its Application for Exception, Patriot requests that it be excepted from the filing requirement because the firm is "extremely small" and "the forms are time-consuming to fill out and mail which proves a hardship for our firm."⁽⁵⁾ According to a representative of the company, Ms. Sandy Barn, completing the form each month takes her approximately one and one-half to two hours. She asserts that completing the form is both difficult, because she is only a part-time employee, and wasteful of the firm's resources, because it takes her away from her other pressing duties such as payroll and other general accounting.⁽⁶⁾

D. Analysis

Patriot 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 Patriot is 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. Ms. Barn has stated that it takes her approximately one and one-half to two hours to complete the form each month, which does not demonstrate that Patriot suffers unusual difficulties in preparing the form in a timely manner. Additionally, it may be possible for Patriot to further reduce the amount of time required to complete the form through the use of an EIA-approved estimation technique.⁽⁷⁾ The EIA provides a toll-free hotline to assist respondents with any questions they may have, which could help Patriot in refining its estimation techniques to reduce the time necessary to complete the form.⁽⁸⁾

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 Patriot are part of the EIA's statistical sample, the DOE will be unable to formulate valid estimates from a cross-section of the industry. There is no evidence that the burden on Patriot of providing the requested data outweighs the benefits to the DOE and the nation from access to the information.

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

It Is Therefore Ordered That:

(1) The Application for Exception filed by Patriot Petroleum, Inc. on July 14, 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: August 4, 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 Jayne Cecere-Peng and Sandy Barn of Patriot Petroleum, Inc., and OHA Staff Analyst Darcy Goddard, dated July 22, 1997.

(4)See Record of Telephone Conversation between Sherry Beri of EIA, and OHA Staff Analyst Darcy Goddard, dated July 16, 1997. Although the firm is currently classified as a certainty firm, there is some confusion regarding conflicting sales figures currently submitted by Patriot on Form EIA-782B and on other, past EIA forms. As such, EIA is investigating whether Patriot was correctly classified as a certainty firm when it was included in the current sample. However, Patriot does not argue in this Application for Exception that it should be rotated out of the current sample because it is a non- certainty firm which has filed Form EIA-782B for more than three consecutive random samples. Indeed, both EIA and Patriot agree that Patriot has only been filing the form for only eight (8) months. As such, Patriot's status as a possible certainty firm is not an issue in the instant Application, and is irrelevant to any determination regarding whether the firm meets the Exception criteria set forth at 10 C.F.R. §1003.25(b)(2)

(5)"See Application For Exception filed by Patriot Petroleum on July 14, 1997, Case No. VEE-0045.

(6)See Record of Telephone Conversation between Jayne Cecere-Peng and Sandy Barn of Patriot Petroleum, Inc., and OHA Staff Analyst Darcy Goddard, dated July 22, 1997.

(7)Ms. Barn confirmed that she uses actual sales figures each month, which she must draw from both computer records and printed reports. Id.

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