

Case No. VEE-0067

September 18, 2000

DECISION AND ORDER

OF THE DEPARTMENT OF ENERGY

Application for Exception

Name of Petitioner: M.L.Halle Oil Service, Inc.

Date of Filing: August 9, 1999

Case Number: VEE-0067

On August 9, 1999 M.L. Halle Oil Service, Inc. (Halle) of Manchester, New Hampshire, filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). In its application, Halle requests that it be temporarily relieved of the requirement to prepare and file the Energy Information Administration's (EIA) form entitled "Resellers/ Retailers' Monthly Petroleum Product Sales Report" (Form EIA-782B). As explained below, we have concluded that Halle shall be excused from filing Form EIA-782B for four months.

A. Background

Form EIA-782B is a mandatory reporting requirement which grew out of the shortages of crude oil and petroleum products during the 1970's. It is 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). Information obtained from Form EIA-782B 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.

The DOE has attempted to ensure that the surveys yield 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 Form EIA-782B.(1) In addition, to reduce the amount of time spent completing the forms, firms may rely upon reasonable estimates.(2)

B. Exception Criteria

This Office has authority to grant exception relief where the reporting requirement causes a "special hardship, 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).

Neither the fact that a firm is relatively small, nor the fact that it has filed a report for a number of years has, alone, constituted grounds for exception relief. All firms that participate in the EIA surveys bear some burden that they would not otherwise, and if firms of all sizes 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).

C. Analysis

Halle sells motor gasoline, diesel fuel and No. 2 fuel oil to residential and non-residential consumers and resellers in New Hampshire, and in the past, in Massachusetts. The firm has prepared and filed EIA Form 782B in sample period 12 and in the current sample period 13 (February 1999 through approximately December 2000.)

According to the request for exception, because of the way it conducts business and because of personnel difficulties, Halle is experiencing continuing, serious hardship in preparing and filing EIA Form 782B. While Halle maintains business transaction

records, the firm finds it difficult to use these data for the purpose of completing EIA Form 782B. All of Halle's records are compiled by hand, and as a result the firm does not believe that it can easily produce accurate estimates for purposes of preparing and submitting EIA Form 782B, especially since its client and product base varies so widely. Furthermore, the firm's business manager left more than 21 months ago, but no permanent replacement has been located. Exacerbating all of these difficulties, is the fact that Mr. Mark Halle, the founder and owner-operator of the firm has had open heart surgery and has not been able to return to the office other than sporadically for very short periods.

At this point, we are informed that Mr. Halle is spending about 5 hours per month manually preparing each submission of EIA Form 782B, because he is the only person capable of doing so. Furthermore, according to a supplemental submission, Mr. Halle's health is deteriorating, and the firm is involved in a number of legal actions which are further aggravating its precarious financial condition.

D. Conclusion

We have carefully weighed all of the serious difficulties raised in the Halle submission against the public policy interests served by the collection of the information provided by EIA Form 782B, and have concluded that a temporary exception relieving M.L. Halle Oil Services, Inc., of any requirement to file Form 782B through the month of January 2001, is warranted. If at the end of that period, the firm's difficulties and the EIA filing requirement continue, the firm may seek further exception relief.

It Is Therefore Ordered That:

- (1) The Application for Exception by M. L. Halle Oil Service, Inc. (Halle) on August 9, 1999 is hereby granted to the extent set forth in paragraph (2) below.
- (2) Halle shall be removed from the list of firms required to submit data on Form EIA782B to the Energy Information Administration of the Department of Energy for the period from October 2000 through January 2001.
- (3) This is a final Order of the Department of Energy.

George B. Breznay

Director

Office of Hearings and Appeals

Date: September 18, 2000

(1) Firms that 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 to 20 months, but a firm may be reselected for subsequent samples. 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) Form EIA-782B stipulates that 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 alert the EIA if the estimates are later found to be materially different from actual data.