

Case No. VEE-0069

March 15, 2000

DECISION AND ORDER

OF THE DEPARTMENT OF ENERGY

Application for Exception

Name of Petitioner: Wadleigh's, Inc.

Date of Filing: December 6, 1999

Case Number: VEE-0069

On December 6, 1999, Wadleigh's, Inc. (Wadleigh's) of Hallowell, Maine, filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). In its application, Wadleigh's 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 Wadleigh's shall receive a four month extension to file Form EIA-782B.

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

Wadleigh's, based in Hallowell, Maine, sells motor gasoline, diesel fuel and No. 2 fuel oil to residential and non-residential consumers and resellers in Maine and neighboring New Hampshire. Because of its size and the scope of its operations, Wadleigh's is classified by EIA as a "large" retailer of these products. The firm has prepared and filed EIA Form 782B every year since 1991.

In its request for a temporary exception, the controller of the firm, Mr. Tom Bouchard, states that the firm is experiencing temporary difficulties in three areas which involve the preparation of the EIA Form 782B. First, the firm has had to train a large number of new office personnel due to unusually rapid employee turnover. Secondly, the individual most closely involved in

budget and financial record-keeping left the firm unexpectedly. Finally, Mr. Bouchard himself is heavily involved with programming difficulties affecting the firm's Accounts Receivable software and programs. The difficulties being experienced in this area include overcoming potential Y2K problems. These Accounts Receivable programs are vital to the preparation of EIA form 782B. Mr. Bouchard asserts that the firm's records are only current through the month of October, 1999, which is not sufficient to allow the firm to prepare and file the Form.

Our review of the record in this case indicates that Wadleigh's has met the standards for temporary relief from its EIA reporting requirements. Given the combination of Wadleigh's serious accounting and computer software difficulties, and the firm's short term personnel problems, we believe that temporary exception relief is merited. See Ward Oil Co., 24 DOE ¶ 81,002 (1994)(relief granted when firm experienced personnel shortage, financial difficulties, and administrative problems following the death of a partner); Meier Oil Serv., 14 DOE ¶ 81,004 (1986)(relief granted for three months where disruption caused by the installation of a new computer system left the firm's records inaccessible). In balancing the public policy considerations favoring the gathering of information vital to the nation's energy security against the equities in Wadleigh's favor, we have concluded that the Wadleigh's Application for Exception should be granted for a period not to exceed the four months of January, February, March, and April, 2000.

It Is Therefore Ordered That:

(1) The Application for Exception by Wadleigh's on December 6, 1999 is hereby granted to the extent set forth in paragraph (2) below.

(2) Wadleigh's 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 from January 2000 through April 2000.

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

George B. Breznay

Director

Office of Hearings and Appeals

Date: March 15, 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.