

Case No. VEE-0076

June 28, 2002

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Application for Exception

Name of Case: Green Mountain Energy Company

Date of Filing: August 23, 2000

Case Number: VEE-0076

On August 23, 2000, the Green Mountain Energy Company (Green Mountain) of Austin, Texas, filed an Application for Exception with the Office of Hearings and Appeals of the Department of Energy (DOE). In its application, Green Mountain requests an exception, pursuant to 10 C.F.R. § 1003, which, if granted, would have the effect of withholding from public release – either through regular publication by the Energy Information Administration (EIA) or through the Freedom of Information Act (FOIA), 5 U.S.C. § 552 -- data which the firm files with the DOE Energy Information Administration on Forms EIA-826 and EIA-861. These Forms are, respectively, the “Monthly Electric Utility Sales and Revenue Report with State Distributions,” and the “Annual Electric Utility Report.”

I. Regulatory Background

The EIA reporting requirements arise from domestic dislocations of crude oil and petroleum products that occurred during the 1970s. Specifically, 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 an oil crisis. Congress therefore authorized the DOE to collect data on petroleum product supply and price. Forms EIA-826 and -861 collect monthly and annual information, respectively, regarding the retail sales and associated revenue from the retail sales of electricity of individual firms identified as energy service providers. As an energy provider, i.e., a reseller of electricity in Pennsylvania and California, Green Mountain is required to submit Forms EIA-826 and -861.

An Application for Exception may be granted 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). Because all reporting firms are burdened to some extent by the 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 the impact of the requirement on other reporting firms.

II. Application for Exception

The specific Green Mountain request is for an exception permitting “confidential treatment” of the information it provides to EIA. According to the Application, “Confidential Treatment . . . mean(s) refraining from disclosing any Reported Information to the public except either (1) on an aggregate basis with like information of a sufficient number of reporting persons as will prevent the public from discerning the extent to which such information describes or is attributable to Green Mountain; or (2) when the reported information relates to events which occurred more than two years prior to its disclosure.” Green Mountain asserts that competitors could obtain a competitive advantage by using information obtained from Form EIA-861 *together* with information from Form EIA-826.

III. Analysis

There are two circumstances where the data referred to in the Green Mountain application could be released to the public: the customary release by EIA of data provided by reporting firms through Form EIA-826 and -861; and a request for the same information under the FOIA. Under the specific terms of the Green Mountain request, the data EIA receives through Form EIA-861 may be excluded from consideration because, in the ordinary course of events, that material is released by EIA in aggregate form only on a state-by-state basis. Regarding the monthly Form EIA-826, we have examined the sample filings provided by Green Mountain and are unable to see – nor does the Green Mountain submission describe – how anyone might gain an competitive advantage from access to that material alone.

The EIA-826s provided by Green Mountain set forth some matters which are obviously not confidential: the name of the firm, the month for which filed, and a contact name and telephone number. The firm apparently resells electricity in Pennsylvania and California – also not confidential – and therefore files monthly reports for each state. The other information provided by Green Mountain through the monthly filings consists of the total number of its residential and commercial customers in the two states, and its sales to each group reported in thousands of dollars, and megawatt hours. There is no customer identification of any sort, no identification of the sources or uses of the power resold, or the location or nature of any power supplier or customer. Consequently, we cannot see that any person or entity would gain any advantage over Green Mountain by access to any or all of these filings. Nor has Green Mountain provided any. We consequently see no basis for exception relief. This conclusion applies equally to the regular release by EIA of the information provided through Form EIA-826 or release under the FOIA.

For the same reasons, we see no basis for the claim that release of the information from Form EIA-861 *together* with Form EIA-826 would afford unnamed competitors some type of advantage. As described, all of the information Green Mountain provides to EIA is very general: Aggregate sales and revenue data pertaining to sales of energy at unspecified prices to unspecified customers at unspecified locations prices in California and Pennsylvania. The claim that availability of the Form-826 and -861 data together would adversely affect Green Mountain is unsupported by specific examples or other data that might indicate the adverse effect on Green Mountain's sales. Such effects would need to be tied to specific customers in specific market areas in relation to specific competitors. As a result, we reject this claim.

In addition, granting the Green Mountain exception would frustrate certain of the goals of the Federal Energy Administration Act, Energy Conservation and Production Act and Energy Policy Act of 1992, which require not only the collection by EIA, but also the release, of material concerning the nation's energy supplies. *See* Federal Energy Administration Act of 1974, Pub. L. No. 93-275, 88 Stat. 96; Energy Conservation and Production Act, Pub. L. No. 94-385, 90 Stat. 1125; Energy Policy Act of 1992, Pub. L. No. 102-486, 106 Stat. 2776. These Acts mandate EIA to collect, assemble, evaluate, and analyze energy information; provide energy information and projections to the Federal Government, State Governments, and the public; and provide Congress with an annual report summarizing these activities. Withholding energy information of the type provided by Green Mountain, in the absence of a compelling reasons, would frustrate the very purpose for which Congress created EIA.

In sum, we find that Green Mountain's request for confidential treatment of the material it files with EIA through Forms 826 and 861 is not warranted based upon the information in its Application for Exception. Consequently we will deny the request.

It Is Therefore Ordered That:

(1) The Request for Exception filed by Green Mountain Energy Co., Case No. VEE-0076, on August 23, 2000 is hereby denied.

George B. Breznay

Director

Office of Hearings and Appeals

Date: June 28, 2002