

Case No. VEE-0080

July 13, 2001

DECISION AND ORDER

OF THE DEPARTMENT OF ENERGY

Application for Exception

Name of Petitioner: Potter Oil Co., Inc.

Date of Filing: April 18, 2001

Case Number: VEE-0080

On April 18, 2001, Potter Oil Co., Inc. (Potter) filed an Application for Exception with the Office of Hearings and Appeals of the Department of Energy. In its Application, Potter 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.

I. 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 the 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. In addition, to reduce the amount of time spent completing the forms, firms may rely upon reasonable estimates.

II. Potter's Application for Exception

Potter is a retailer based in Kents Hill, Maine. In its application, the firm requests an exception to the Form EIA-782B reporting requirement on the basis that filing Form EIA 782B places an undue hardship upon it. In support of this assertion, Potter explains that its office manager spends 8 hours a month completing this form. This burden, according to Potter, is exacerbated by the firm's use of antiquated MS-Dos software, the small size of the firm's workforce, the recent loss of a key member of the firm's management team, and the rapid growth of its customer base.

III. Analysis

The OHA has the authority to grant exception relief to alleviate or prevent a 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 cause some inconvenience to respondents. Since all reporting firms are burdened by these requirements, 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 a particular 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. *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 have considered Potter's claim and find no serious hardship or gross inequity that would warrant exception relief in this case. Form EIA-782B requires little more than the essential type of pricing, supply, and inventory data that, at a minimum, is required to operate a business. Potter certainly records the prices at which it sells product, the volumes involved in each transaction, and the location of the purchaser. While we do not doubt that the firm's office staff is already very busy, we do not believe that the amount of time required to complete the form constitutes an onerous burden on them.

The EIA estimates that it should normally take approximately 2.5 hours per month for a firm to fill out EIA-782B. *See* Form EIA-782B, Schedule 1. This does not seem to be an unreasonable amount of time. The firm claims that it takes 8 hours a month for it to complete the form. We note that the burden of this requirement on the firm's office staff could be lessened by the use of estimates. The EIA permits firms to estimate sales data in order to reduce the time spent completing the form. *See* Section VI of the General Instructions to Form EIA-782B.

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 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 Potter's claim, we have concluded that its Application for Exception should be denied.

It Is Therefore Ordered That:

(1) The Application for Exception filed by Potter Oil Company, Inc. on April 18, 2001, Case No. VEE-0080, 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: July 13, 2001