

August 7, 2002  
DECISION AND ORDER  
OF THE DEPARTMENT OF ENERGY

Application for Exception

Name of Petitioner: Gas'n Shop, Inc.

Date of Filing: March 26, 2002

Case Number: VEE-0084

On March 26, 2002, Gas'n Shop, Inc. (Gas'n Shop) of Lincoln, Nebraska filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). In its application, Gas'n Shop requests that it be excused from filing the Energy Information Administration's (EIA) form entitled "Resellers'/ Retailers' Monthly Petroleum Product Sales Report" (Form EIA-782B). For the reasons detailed below, we deny Gas'n Shop's request for exception relief.

**A. Background**

Form EIA-782B is part of the mandatory reporting requirements 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 product 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. In addition, to reduce the amount of time spent completing the forms, firms may rely upon reasonable estimates.<sup>1/</sup>

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<sup>1/</sup> Form EIA-782B stipulates that the filer must make a good faith effort to provide reasonably  
(continued...)

## 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 unusual 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 E. Wagoner Oil Co.*, 16 DOE ¶ 81,024 (1987).

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. For example, relief has been granted when firms have had severe financial difficulties or when the only persons capable of preparing a form have had serious medical problems. 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). Because of the importance of the data it provides, a “certainty firm”<sup>2/</sup> must show that the burden of complying with the reporting requirements is extremely severe in order to obtain exception relief. See *Fletcher & Associates*, 23 DOE ¶ 81,008 (1994) (*Fletcher*).

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) (*Mulgrew*).

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<sup>1/</sup>(...continued)

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.

<sup>2/</sup> “A “certainty firm” is a firm that accounts for over five percent of the sales of any particular petroleum product in a state. Because of the size of its market share, the information provided by a certainty firm is critical to insuring that the EIA survey accurately reflects the patterns of fuel demand and supply. As a result, such firms are typically required to complete and file Form EIA-782B. See *Texport Oil Co.*, 23 DOE ¶ 81,006 (1993); *Halron Oil Co., Inc*, 16 DOE ¶ 81,001 (1987).

### C. Analysis

Gas'n Shop operates sixty-four service stations that sell gasoline and diesel fuel in Nebraska, Kansas, and Iowa. Designated as a "certainty firm" by EIA, Gas'n Shop has been responsible for submitting the Form EIA-782B for almost ten years. However, Gas'n Shop has not filed this form since September 2000.

On March 26, 2002, Sue Smetter, Gas'n Shop's office manager, filed an application for exception in which she requested that the firm be excused from filing the Form EIA-782B for the following reasons:

I have been on this survey for over 10 years. It is a burden to our company. We have 70 convenience stores with gasoline sales in 64 stores. I'm the Office Manager and I have 8 employees. I handle all of the gasoline purchases and input all invoices for fuel, in addition to paying all of the taxes that go with these purchases. I tried for the 10 years to keep up with this program, but have been late several times, and unable due to time limits to catch up on several of these monthly reports as they take time to compile and send in. I believe in doing my part, but I also think after 10 years of doing a survey that it should be passed on to another chain. I can't afford hiring more staff for this project, and have no employees at this time that can compile this information. . . .

Ms. Smetter also claimed that filling out the form is a hardship because she is the only administrative employee who works on gasoline-related matters and has many other responsibilities. Among her other duties, Ms. Smetter indicated that she is responsible for hiring and training new administrative employees, as well as for ensuring that necessary tasks are completed when administrative employees are sick or on vacation. Ms. Smetter also informed us that she is responsible for maintaining and filing information involving the state gas and sales tax and, in the past year, has been involved in a Federal gas tax audit, a Kansas audit and a Nebraska sales tax audit. Ms. Smetter further indicated that, because of her work responsibilities, she finds it difficult to take a vacation. Ms. Smetter also indicated that it takes from two and a half to three and a half hours per month to complete the form, and that she does not use estimates. Ms. Smetter also maintains that EIA unfairly classified Gas'n Shop as a certainty firm when other large gasoline retailers in Nebraska have not received the same classification. However, Ms. Smetter failed to identify any specific firm that she believes should have been classified as a certainty firm. *See* Electronic Mail Message from Ms. Smetter to Linda Lazarus, OHA Staff Attorney and Memorandum of Telephone Conversation between Ms. Smetter and Ms. Lazarus (May 30, 2002).<sup>3/</sup>

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<sup>3/</sup> In her electronic mail message to Ms. Lazarus, Ms. Smetter also suggested that DOE should compensate Gas'n Shop for completing the Form EIA-782B and that the information requested on the Form should be obtained from the states. *Id.* These matters are outside the scope of a proper application for exception, and we will not address them in this decision. *See* 10 C. F.R. 1003.25(b)(2).

After considering all of the information provided Gas'n Shop, we have concluded that the Application for Exception should be denied. The firm has shown that its operations are spread over many outlets and jurisdictions, but it has not shown that its burden in furnishing the information necessary to complete Form EIA-782B is any greater or otherwise more onerous than that experienced by other, similar submitters. Gas'n Shop has not demonstrated any type of unique circumstances that would justify an exception <sup>4/</sup> or that its continued participation in the survey is inequitable or causes an unfair distribution of burdens. While the firm is required to file Form EIA-782B for its many outlets, the fact of its far-flung operations is itself a reason to include - not exclude - Gas'n Shop in a survey of domestic fuels distribution.

As for Gas'n Shops main complaint - that only Ms Smetter is assigned to fill out the form - that is not grounds for exception relief. *See Fletcher; Mulgrew*. Furthermore, the time Ms Smetter states she devotes to completing the form, 2.5 to 3.5 hours per month, is not significantly greater than EIA estimates is necessary. Hence the time alone does not constitute a hardship *See Fletcher; Mulgrew*. Because of the importance of Gas'n Shop's sales, and its market share, the inclusion of its data in the EIA survey is important and not outweighed by the stated inconvenience to the firm. Thus, when we balance public policy considerations favoring the gathering of the information necessary to the nation's energy security against the arguments raised by Gas'n Shop, we conclude that the firm's Application for Exception should be denied.

It Is Therefore Ordered That:

- (1) The Application for Exception filed by Gas'n Shop, Inc. on March 26, 2002 is hereby denied.
- (2) Gas'n Shop, Inc. is required to prepare and file the Energy Information Administration's (EIA) forms for the firm entitled "Resellers'/ Retailers' Monthly Petroleum Product Sales Report" (Form EIA-782B) that are past due by no later than December 31, 2002 and must continue to file each current Form EIA-782-B as it becomes due.
- (3) This is a final Order of the Department of Energy.

George B. Breznay  
Director  
Office of Hearings and Appeals

Date: August 7, 2002

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<sup>4/</sup> Moreover, as mentioned above, Gas'n Shop may utilize reasonable estimates rather than actual data. By using such estimates, Gas'n Shop may reduce the amount of time it takes to complete the form.



