November 21, 2002
DECISION AND ORDER
OF THE DEPARTMENT OF ENERGY

Application for Exception

Name of Petitioner: Farmers Union Oil Company of Bowman

Date of Filing: October 2, 2002

Case Number: TEE-0002

On October 2, 2002, Farmers Union Oil Company of Bowman, North Dakota (Farmers), filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy. In its Application, Farmers 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 granted.

A. 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 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 the 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 sample of companies to file the report.[1] In addition, to reduce the amount of time spent completing the forms, firms may rely upon reasonable estimates.[2]

B. Exceptions Criteria

Form EIA-782B is a mandatory report 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). This Office has authority to grant exception relief where the reporting requirement causes a "serious hardship, gross 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 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).

In considering a request for exception relief, we must weigh the firm's difficulty in complying with the reporting requirement against the nation's need for reliable energy data. See Champlain Oil Co., Inc., 14 DOE ¶ 81,022 (1986); Eastern Petroleum Corp., 14 DOE ¶ 81,011 (1986). This entails balancing any burden the firm may encounter in meeting its reporting requirement against the public interest in collecting reliable information concerning energy markets upon which public decisions may be based. Neither the fact that a firm is relatively small, nor the fact that it has filed the report for a number of years, alone constitute grounds for exception relief. If firms of all sizes, both large and small, 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).

The following examples illustrate the types of circumstances that may justify relief from the reporting requirement. Since each case is different, these examples are not intended to reflect all circumstances that justify exception relief:

- Financial difficulties underlie most approvals of exception relief. We have granted a number of exceptions where the applicant's financial condition is so precarious that the additional burden of meeting the DOE reporting requirements threatens its continued viability. Mico Oil Co., 23 DOE ¶ 81,015 (1994) (firm lost one million dollars over previous three years); Deaton Oil Co., 16 DOE ¶ 81,026 (1987) (firm in bankruptcy).

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[1] Firms that do business in four or more states or which 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 months, but a firm may be reselected for a subsequent sample. 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. Firms may contact EIA to establish a method of estimation satisfactory to both parties. Toll-free numbers are provided in the General Instructions of the EIA forms.

- Relief may be appropriate when the only person capable of preparing the report is ill and the firm cannot afford to hire outside help. S&S Oil & Propane Co., 21 DOE ¶ 81,006 (1991) (owner being treated for cancer); Midstream Fuel Serv., 24 DOE ¶ 81,023 (1994)(three month extension of time to file reports granted when two office employees simultaneously on maternity leave); Eastern Petroleum Corp., 14 DOE ¶ 81,011 (1986) (two months relief granted when computer operator broke wrist).

- A combination of factors may warrant exception relief. Exception relief for 10 months was granted where personnel shortages, financial difficulties, and administrative problems resulted from the long illness and death of a partner. Ward Oil Co., 24 DOE ¶ 81,002 (1994); see also Belcher Oil Co., 15 DOE ¶ 81,018 (1987) (extension of time granted where general manager abruptly left firm without notice).

- Extreme or unusual circumstances that disrupt a firm's activities may warrant relief. Little River Village Campground, Inc., 24 DOE ¶ 81,033 (1994) (five months relief because of flood); Utilities Bd. of Citronelle-Gas, 4 DOE ¶ 81,205 (1979) (hurricane); Meier Oil Serv., 14 DOE ¶ 81,004 (1986) (three months where disruptions caused by instillation of a new computer system left firm's records unaccessible).

C. Farmer's Exception Application

Farmers has filed Form EIA-782B since early 1999 as part of EIA Sample 13. Electronic mail from Tammy Heppner, Energy Information Administration, to Steve Goering, OHA (November 4, 2002). Because Farmers is not classified as a "certainty firm" by the EIA, it is possible, but not guaranteed, that the company will be rotated out of the reporting sample when EIA conducts the next random selection process for inclusion in EIA Sample 15. Id.

In the Application for Exception, the Office Manager of Farmers, Polly Carlson, requests relief from the EIA reporting requirement because they "do not at this time have the manpower to get everything done and have asked for extensions on most of our reports." Application at 1.

> This survey has been done by our company for several years in a timely manner, up until we lost our manager in July [2002]. Not only have we lost our manager, we have also had a major reduction in office staff. It is not feasible for our company to keep up with the monthly federal and states reports plus do any additional reports. At this time we are behind in our daily work, because of the employment situation. There is no one who has time to learn how to complete this form or go back to the ones you have not received. This will only add to the hardship the company is now facing.

Id. In a telephone conversation with our office, Ms. Carlson informed us that she hoped that a new manager would be hired in December 2002. Memorandum of telephone conversation between Polly Carlson, Farmers, and Steven Goering, OHA (November 4, 2002).

D. Analysis

Our review of the information presented in the Application for Exception submitted by Farmers leads us to conclude that there is considerable merit to Farmers' contention that it is currently significantly more burdened by the reporting requirement than similarly situated respondents. In the past, we have granted exception relief when a firm has demonstrated that the reporting requirement imposes an unusual burden on the firm or could seriously impede the firm's business operations. For example, as noted above, in Midstream Fuel Serv., 24 DOE ¶ 81,023 (1994), we granted a three month extension of time to file Form EIA-782B when two of its office employees were simultaneously on maternity leave.

We conclude that the burden placed upon Farmers at this time, due to the temporary unavailability of personnel to complete the form, is greater than that encountered by other firms required to complete Form EIA-782B. Accordingly, Farmers should be granted temporary relief from its obligation to file Form EIA-782B. On the assumption that Farmers will have a new manager in place by the beginning of 2003, we will grant exception relief to the firm until February 1, 2003.

It Is Therefore Ordered That:

(1) The Application for Exception filed by Farmers Union Oil Company of Bowman, Case No. TEE-0002, is hereby granted to the extent set forth in paragraph (2) below.

(2) Notwithstanding the instructions to Form EIA-782B, Farmers Union Oil Company of Bowman shall not be required to file reports to the Energy Information Administration for a period of five months, beginning September 1, 2002 and extending to February 1, 2003.

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

George B. Breznay
Director
Office of Hearings and Appeals

Date: November 21, 2002