Cited as "1 FE Para. 70,362"

Phibro Energy, Inc. (FE Docket No. 90-38-NG), October 15, 1990.

DOE/FE Opinion and Order No. 436

Order Granting Blanket Authorization to Import and Export Natural Gas, Including Liquefied Natural Gas, and Granting Intervention

I. Background

On May 8, 1990, Phibro Energy, Inc. (Phibro) filed an application with the Office of Fossil Energy (FE) of the Department of Energy (DOE), under section 3 of the Natural Gas Act (NGA) and DOE Delegation Order Nos. 0204-111 and 0204-127, requesting blanket authority to import up to 200 Bcf of natural gas, including liquefied natural gas (LNG), from Mexico, Canada, and other countries, and to export up to 200 Bcf of natural gas, including LNG, to Mexico, Canada, and other countries, over a two-year term beginning on the date of first import or export.

Phibro, a Delaware corporation with its principal place of business in Greenwich, Connecticut, currently holds a two-year blanket import authorization granted by DOE/ERA Opinion and Order No. 136 1/ in ERA Docket No. 86-32-NG. To date, Phibro has not imported any natural gas. Phibro seeks to amend its existing import authorization to request the flexibility to enter into agreements for the importation and exportation of natural gas and LNG with Mexico and Canada as well as other similarly situated countries. Phibro would import and export natural gas and LNG both for its own account as well as for the accounts of others. Phibro asserts that the specific terms of each import and export arrangement would be negotiated on an individual basis at market responsive prices. Because it has not entered into any agreements, Phibro does not know at this time the identity of the purchasers, suppliers and transporters which will participate in these proposed transactions.

In support of its application, Phibro asserts that the proposed imports will make competitively priced gas available to U.S. markets while the short-term nature of the transactions will minimize the potential for undue dependence on foreign sources of energy. With regard to the proposed exports, Phibro stated that the exported volumes would be incremental to current domestic demand and that the sale of the gas would benefit domestic producers by reducing excess domestic supply during off-peak periods and generating tax and other revenue. In addition, Phibro argues the export will reduce the U.S. trade deficit.

A notice of the application was issued on July 13, 1990, inviting protests, motions to intervene, notices of intervention, and comments to be filed by August 20, 1990. 2/ A motion to intervene without comment or request for additional procedures was filed by Distrigas Corporation. This order grants intervention to this movant.

II. Decision

The application filed by Phibro has been evaluated to determine if the proposed import/export arrangement meets the public interest requirements of section 3 of the NGA. Under section 3, an import or export must be authorized unless there is a finding that it "will not be consistent with the public interest." 3/ This determination is guided by the DOE's natural gas import policy guidelines. 4/ Under these guidelines, the competitiveness of an import in the markets served is the primary consideration for meeting the public interest test. In reviewing natural gas export applications, domestic need for the natural gas to be exported is considered, and any other issues determined to be appropriate in a particular case.

Phibro's uncontested import/export proposal for short-term sales of natural gas and/or LNG, as set forth in the application, is consistent with section 3 of the NGA, DOE's natural gas import policy guidelines and DOE's international trade policy. Phibro's market-based approach for negotiating short-term blanket imports and exports will enhance competition in the international gas market. Under the proposed arrangement, Phibro contemplates individual, short-term sales negotiated in response to the marketplace. Transactions would only occur to the extent sellers can provide supplemental spot or short-term volumes and customers need such import/export volumes, and the prices remain competitive. Thus, each transaction must reflect the true value of the commodity being traded, or no gas sales presumably would take place.

In addition, the current domestic gas supply, coupled with the short-term, market-responsive nature of the contracts into which Phibro proposes to enter, indicate that it is unlikely the proposed export volumes will be needed domestically during the term of this authorization. Finally, Phibro's proposal will further the Secretary of Energy's policy goals of reducing trade barriers by encouraging market forces to achieve a more competitive distribution of goods between the U.S. and foreign natural gas purchasers and suppliers. Thus, Phibro's import/export arrangement, like other similar blanket imports/exports approved by DOE, 5/ will enhance competition in the marketplace.

After taking into consideration all of the information in the record of this proceeding, I find that granting Phibro blanket authority to import up to 200 Bcf of natural gas, including LNG, from Mexico, Canada, and other countries, and to export up to 200 Bcf of natural gas, including LNG, to Mexico, Canada, and other countries, over a two-year term under contracts with terms of two years or less, beginning on the date of first import or export is not inconsistent with the public interest and should be approved. 6/

ORDER

For the reasons set forth above, under section 3 of the Natural Gas Act, it is ordered that:

A. Phibro Gas Limited (Phibro) is authorized to import up to 200 Bcf of natural gas, including liquefied natural gas (LNG), from Mexico, Canada, and other countries, and to export up to 200 Bcf of natural gas, including LNG, to Mexico, Canada, and other countries, over a two-year term beginning on the date of first import or export.

B. The two-year blanket import authorization granted to Phibro by DOE/ERA Opinion and Order No. 136 in ERA Docket No. 86-32-NG is vacated, effective on the date of this order.

C. This natural gas may be imported/exported at any point on the international border where existing pipeline or LNG facilities are located.

D. Within two weeks after deliveries begin, Phibro shall notify the Office of Fuels Programs, Fossil Energy, Room 3F-056, FE-50, 1000 Independence Avenue, S.W., Washington, D.C. 20585, in writing of the date that the first delivery of natural gas authorized in Ordering Paragraph A above occurs.

E. With respect to the natural gas and/or LNG imports and exports authorized by this Order, Phibro shall file with the Office of Fuels Programs, within 30 days following each calendar quarter, quarterly reports indicating whether sales of imported and/or exported natural gas have been made, and if so, giving, by month, the total volume of the imports and exports in Mcf and the average price for these volumes per MMBtu at the international border. The reports shall also provide the details of each import or export transaction, including the country of origin for the imports, the names of the seller(s), and the purchaser(s), including those other than Phibro, estimated or actual duration of the agreement(s), transporter(s), including any LNG tankers used, points of entry or exit, market(s) served, and, if applicable, the per unit (MMBtu) demand/commodity charge breakdown of the price, any special contract price adjustment clauses, and any take-or-pay or make-up provisions.

F. The motion to intervene filed by Distrigas Corporation is hereby granted, provided that participation of the intervenor shall be limited to matters specifically set forth in its motion to intervene and not herein specifically denied, and that its admission shall not be construed as recognition that it might be aggrieved because of any order issued in these proceedings.

Issued in Washington, D.C., on October 15, 1990.

--Footnotes--

1/ DOE/ERA Opinion and Order No. 136, 1 ERA Para. 70,659 (July 14, 1986).

2/ 55 FR 29663, July 20, 1990.

3/ 15 U.S.C. Sec. 717b.

4/ 49 FR 6684, February 22, 1984.

5/ See, e.g., Nortech Energy Corporation, 1 FE Para. 70,343 (August 13, 1990); Louis Dreyfus Energy Corp., 1 FE Para. 70,335 (August 13, 1990); and TXG Gas Marketing Company, 1 FE Para. 70,329 (June 21, 1990).

6/ Because the proposed importation/exportation of gas will use existing facilities, the DOE has determined that granting this application is clearly not a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act (42 U.S.C. 4321, et seq.) and therefore an environmental impact statement or environmental assessment is not required. See 40 CFR Sec. 1508.4 and 54 FR 12474 (March 27, 1989).