

Cited as "1 FE Para. 70,251"

Harbert Energy Corporation (FE Docket No. 89-51-NG), October 13, 1989.

DOE/FE Opinion And Order No. 340

Order Granting Blanket Authorization to Import and Export Natural Gas and Granting Intervention

I. Background

On July 31, 1989, Harbert Energy Corporation (Harbert) filed an application with the Department of Energy (DOE), under section 3 of the Natural Gas Act (NGA) and DOE Delegation Order Nos. 0204-111 and 0204-127, for blanket authorization to import up to 100 Bcf, and to export up to 100 Bcf of natural gas over a term of two years from the date of first deliveries.

According to the application, the authority requested by Harbert contemplates the following types of import and export transactions: (1) importation of Canadian and Mexican natural gas for consumption in U.S. markets; (2) importation of Canadian natural gas for eventual return (via export) to Canadian markets; (3) exportation of domestically produced natural gas for consumption in Canadian and Mexican markets; and (4) exportation of domestically produced natural gas for eventual return (via import) to U.S. markets.

Harbert, a Texas corporation with its principal place of business in Houston, Texas, proposes to import and export natural gas either for its own account or as agent on behalf of both suppliers and purchasers, including local distribution companies, pipelines, and commercial and industrial end-users. The specific terms, including price and volumes, of each transaction would be negotiated on an individual basis in response to market conditions existing at the time of negotiation. The company intends to use existing pipeline facilities for the transportation of the volumes to be imported and exported, and proposes to file quarterly reports detailing each transaction.

In support of its application, Harbert asserts that the import of Canadian and Mexican gas under market-responsive terms would make available to U.S. consumers competitively-priced spot market gas. Harbert asserts an authorization to export gas would permit it to make available to spot-market purchasers in Canada and Mexico supplies of U.S. gas for which there is no present regional or national need. Additionally, Harbert maintains that the export and return to the U.S. of domestically-produced gas would enable U.S. consumers who might not otherwise be able to secure transportation on U.S. pipelines, the ability to purchase domestically produced gas or to take

advantage of least cost transportation. Finally, Harbert states the proposed transactions would improve pipeline utilization, thereby reducing per-unit costs of any U.S. pipelines providing transportation service.

A notice of the application was issued on August 24, 1989, inviting protests, motions to intervene, notices of intervention, and comments to be filed by October 2, 1989.^{1/} A motion to intervene without comment or request for additional procedures was filed by Clajon Gas Co., L.P. This order grants intervention to this movant.

II. Decision

The application filed by Harbert 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."^{2/} With regard to import authorizations, the determination is guided by the DOE's natural gas import policy guidelines.^{3/} 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, the domestic need for the gas to be exported is considered, and any other issues determined to be appropriate in a particular case.

Harbert's uncontested import/export proposal for Canadian, Mexican, and U.S. natural gas, as set forth in the application, is consistent with section 3 of the NGA and the DOE's international gas trade policy. We believe that Harbert's market-based approach for negotiating short-term imports and exports will enhance competition in gas markets. Under Harbert's proposed arrangement, which contemplates individual, short-term sales negotiated in response to the marketplace, it is reasonable to assume U.S., Mexican, and Canadian participants will only buy and sell gas to the extent that spot or short-term volumes are available, that those purchasers need such import/export volumes, and that the prices remain competitive. Thus, each transaction must reflect the true value of the commodity being traded, or no gas sales will be made.

In addition, the short-term, market-responsive nature of the contracts into which Harbert proposes to enter, indicate that it is unlikely the proposed export volumes will be needed domestically during the term of this authorization. Finally, Harbert's proposal, like other blanket import/export proposals that have been approved,^{4/} will further the Secretary's policy goals of reducing trade barriers by encouraging market forces to achieve a more competitive distribution of goods between the U.S., Canada, and Mexico. Thus, Harbert's import/export arrangement will enhance cross-border competition in the marketplace.

After taking into consideration all of the information in the record of this proceeding, I find that granting Harbert blanket authority to import up to 100 Bcf of Canadian and Mexican natural gas and to export up to 100 Bcf of domestically produced natural gas to Canada and to Mexico over two-year terms beginning on the date of the first import and export is not inconsistent with the public interest.

ORDER

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

A. Harbert Energy Corporation (Harbert) is authorized to import up to 100 Bcf of Canadian and Mexican natural gas and to export to Canada and to Mexico up to 100 Bcf of domestically produced natural gas over a two-year term beginning on the dates the first import and the first export commence.

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

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

D. With respect to the imports and exports authorized by this Order, Harbert 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 imports and exports per MMBtu at the international border. The reports shall also provide the details of each import or export transaction, including the names of the seller(s), and the purchaser(s), including those other than Harbert, estimated or actual duration of the agreement(s), transporter(s), 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.

E. The motion to intervene filed by Clajon Gas Company, L.P. is hereby granted, provided that its participation is limited to matters specifically set forth in its motion to intervene and not herein specifically denied, and that the admission of such intervenor 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 13, 1989.

--Footnotes--

1/ 54 FR 36048, August 31, 1989.

2/ 15 U.S.C. Sec. 717b.

3/ 49 FR 6684, February 22, 1984.

4/ See e.g., CMEX Energy, Inc., 1 FE Para. 70,238 (August 24, 1989); TransAmerican Natural Gas Corp., 1 FE Para. 70,220 (April 28, 1989); Cornerstone Natural Gas Company, 1 FE Para. 70,214 (April 12, 1989); and American Central Gas Marketing Company, 1 FE Para. 70,834 (January 11, 1989).