

Cited as "1 ERA Para. 70,670"

Yankee International Company, ERA Docket No. 86-36-NG, September 26, 1986.

DOE/ERA Opinion and Order No. 147

Order Granting Blanket Authorization to Export Natural Gas on a Short-Term or Spot Market Basis

### I. Background

On June 4, 1986, Yankee International Company (Yankee) filed an application with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE), pursuant to Section 3 of the Natural Gas Act (NGA) and DOE Delegation Order No. 0204-111, for blanket authorization to export up to 200 MMcf of natural gas per day and a maximum of 146 Bcf for a term of two years, beginning on the date of first delivery, for sales on a short-term or spot market basis. Yankee, a U.S. corporation with its principal place of business in Dublin, Ohio, is a wholly-owned subsidiary of The Yankee Gas Company, which itself is a wholly-owned subsidiary of The Yankee Companies, Inc.

Under the proposed export arrangement, Yankee states that the gas would be supplied by numerous domestic suppliers and resold to various purchasers outside the United States, primarily in Canada. Although Yankee states in its application that it presently contemplates exporting primarily domestic natural gas, it may also import Canadian natural gas for ultimate redelivery to Canada. Yankee previously was authorized to import up to 400 MMcf per day of Canadian natural gas on a blanket basis by the ERA.<sup>1</sup> Yankee, acting as an agent on behalf of both producers and purchasers, proposes to market the natural gas supplies to local distribution firms, pipelines, and commercial and industrial end-users, among others. Yankee also states that the exported gas would be transported through existing pipeline facilities, and proposes filing quarterly sales and price reports to the ERA.

In support of its application, Yankee maintains that its proposed export arrangement is fully consistent with the public interest requirement of Section 3 of the NGA and with the DOE's announced international gas trade policies. Yankee states that it is widely recognized that there is a current natural gas supply surplus in the United States and that the limited proposed term of two years for its export protects against the possibility that there may be a need for these supplies in the future. Yankee also argues that the

proposed export would benefit both domestic gas producers that have been hard hit by the current surplus of natural gas and gas producing states through increased tax receipts and related revenues. Moreover, Yankee asserts that the proposed export arrangement would promote competition in the international marketplace, reduce trade barriers, and achieve a more rational, competitive distribution of goods between the U.S. and Canada.

## II. Interventions and Comments

The ERA issued a notice of the application on July 2, 1986, inviting protests, motions to intervene, notices of intervention, and comments to be filed by August 1, 1986.<sup>2</sup> The ERA received motions to intervene from Pacific Gas Transmission Company (PGT) and Western Gas Marketing Limited (WGML). This order grants intervention to both of these movants.

PGT did not express an opinion on the merits of the export proposal, nor did it request any further proceedings. WGML, a wholly-owned gas marketing subsidiary of TransCanada PipeLines Limited (TransCanada), protested the application and requested that the ERA hold a trial-type hearing on the competition issues of the proposal. On August 18, 1986, Yankee filed an answer to WGML's protest and request for hearing.

In its filing, WGML argues that Yankee's proposed export may displace sales currently being made by its parent company, TransCanada, in eastern Canada and thus adversely affect TransCanada's ability to meet its take-or-pay obligations. In view of the fact that the ERA has not yet approved its affiliate's blanket import application, WGML contends that "it would be totally unfair to allow Yankee to compete with WGML for identical sales in Canada."

WGML also maintains that approval of this blanket export application "may result in reduced competition among suppliers for short-term and spot sales to U.S. customers." WGML contends that the proposed export might adversely impact the substantial competition that now exists between U.S. pipelines and other suppliers for markets served by the pipelines. WGML reasons that the export might reduce available domestic supplies that might otherwise compete with the pipeline's own sales. Further, WGML alleges that the pipeline capacity used by these export volumes might reduce the capacity available to the pipeline's customers who want to obtain alternative supplies. WGML states that a trial-type hearing is necessary "to quantify the adverse impact that the proposed export would have on U.S. customers."

Finally, WGML states that action on the blanket import application filed

by its affiliate, WGML U.S.A., has been delayed by the ERA in order to obtain additional comment on a proposal to require that all import authorizations be subject to a condition whereby imported gas can be transported on only U.S. pipelines operating under the "open access" provisions of the Federal Energy Regulatory Commission Order No. 436.3/ Although WGML states its general opposition to such a condition, WGML believes that it is only equitable to impose this same condition on Yankee's authorization if the ERA grants an import authorization to WGML U.S.A. with this condition.

In its August 18 response, Yankee states that WGML's concerns regarding increased take-or-pay obligations should not be an issue in this proceeding, because it is an issue that concerns the effects of competition outside the U.S. on a company that is not a party to this proceeding. Yankee maintains that it is an issue that should be taken up by the Canadian National Energy Board (NEB), and that WGML's concern regarding this matter is merely to avoid competition in its Canadian markets.

With respect to WGML's claims that the proposed blanket export would affect adversely competition in the U.S. gas market, Yankee argues that national or regional need for the gas is the ERA's primary consideration in export authorizations; nevertheless, the instant proposal does foster competition. Yankee maintains that WGML's arguments fail to mention the fact that substantial volumes of Canadian gas are being imported into the U.S. market, which more than compensate for any exports that might flow to Canada under this authorization. Yankee also argues that the proposed export project would assist the U.S. gas producers during the present situation of supply surpluses by opening up a new market.

Yankee further points out that no domestic gas producer or consumer has protested this export proposal and that WGML's comment on the potential for this project to result in lost transportation capacity for U.S. pipelines' system supply customers is unfounded because it ". . . overlooks the fact that, where these customers depend on the pipeline for continuous deliveries, they will have contracted for firm service. . . ." Yankee also states that the issue of allocating pipeline capacity should not be an issue decided by the ERA, but belongs with the pipelines, its customers, and the FERC.

Finally, Yankee agrees with WGML that gas to be imported or exported should not be conditioned by FERC order 436; however, Yankee disagrees with WGML that its application should be delayed until WGML U.S.A.'s import application is approved. Yankee states that the proposed condition on all imports was based on the "perceived advantage of Canadian gas over domestic production in the U.S. market . . . ." by some U.S. gas producers. Yankee

maintains that approval of this blanket export application ". . . will give complaining producers additional outlets for their supplies, thus offsetting any perceived advantage of Canadian supplies."

### III. Decision

The application filed by Yankee has been evaluated in accordance with the Administrator's authority to determine if the proposed export arrangement meets the public interest requirements of Section 3 of the NGA. Under Section 3 an export is to be authorized unless there is a finding that it "will not be consistent with the public interest." 4/ In reviewing natural gas export applications, the ERA considers the domestic need for the gas to be exported, and any other issues determined by the Administrator to be appropriate in a particular case.

WGML has contested Yankee's application for several reasons. WGML contends that the proposed export would hinder competition in U.S. markets by reducing gas supplies and by tying up pipeline capacity that would otherwise be available to transport competing supplies into U.S. markets. WGML implies that U.S. pipelines would give preferential treatment to gas exports headed for eastern Canada in order to lessen competition in U.S. markets. WGML also alleges that the exported gas would compete with and displace sales of its parent company, TransCanada, in Canadian markets.

WGML's contentions are without merit. There is no reason to believe that Yankee would transport gas out of U.S. markets if it could be sold domestically at market-responsive prices, or that Yankee's proposed gas export arrangement would get preferential transportation treatment as opposed to having idle pipeline capacity allocated to it. Further, exportation of surplus gas,<sup>5/</sup> i.e., gas not marketable at competitive prices in the U.S. by Yankee, would enhance competition, not reduce it. While WGML may understandably be concerned about competition from U.S. spot market gas for Canadian market sales of its parent, TransCanada, such competition will reduce gas prices and is part of a natural evolution towards a fully developed North America spot market. The ERA believes that natural gas blanket import and export arrangements further the goals established on March 18, 1985, in the joint U.S./Canadian Declaration on Trade.<sup>6/</sup> The principal goals of this joint trade declaration with respect to energy are to reduce and eliminate existing barriers between the two countries, strengthen our market approach to trade, and extend open access to each other's energy markets.

Although WGML requests that a trial-type hearing be conducted on the impact of reduced competition arising from Yankee's proposed export, the ERA

sees no reason to conduct such a hearing. The flexibility afforded to Yankee to sell its gas on the spot market wherever it can be sold under market-responsive terms will enhance, not reduce competition. Further, WGML has failed to demonstrate that there is a material issue of fact genuinely in dispute for which a trial-type hearing is needed to obtain a full and true disclosure of the facts as required by the ERA's administrative procedures.<sup>7/</sup> WGML's request for a trial-type hearing is therefore denied.

WGML also requests: (1) that a decision on Yankee's application be deferred until after the ERA has acted on WGML U.S.A.'s import application, and (2) that any condition imposed on WGML U.S.A.'s proposed import be also imposed on any export authorization issued to Yankee. Under the ERA's administrative procedures, ERA decisions are rendered on a case-by-case basis taking into account all of the information in the record in each proceeding.<sup>8/</sup> There is no linkage to cases in other ERA dockets unless there is a substantive or procedural reason for such linkage. No such reasons have arisen in this case. Accordingly, WGML's request that the ERA delay or condition its decision on Yankee's export application based on resolution of WGML U.S.A.'s import application in an unrelated proceeding is denied.

Yankee's arrangement for the export of natural gas, as set forth in the application, is consistent with DOE's international gas trade policy and Section 3 of the NGA. The current gas surplus and the fact that no party indicates a need for the gas proposed to be exported indicates that the gas will not be required for domestic use during the term of this authorization. Thus, this, like another similar blanket export arrangements recently approved by the ERA,<sup>9/</sup> will enhance competition in the marketplace. The ERA also finds that Yankee's export proposal will further the policy goals of reducing trade barriers and encouraging market forces to achieve a more competitive distribution of goods between the U.S. and Canada.

After taking into consideration all the information in the record of this proceeding, I find that granting Yankee blanket authority to export up to 146 Bcf of domestic natural gas over a term of two years is not inconsistent with the public interest.<sup>10/</sup>

### Order

For the reasons set forth above, pursuant to Section 3 of the Natural Gas Act, it is ordered that:

A. Yankee International Company (Yankee) is authorized to export up to 200 MMcf of domestic natural gas per day, or up to 146 Bcf over a two-year

period, beginning on the date of first delivery.

B. Yankee shall notify the ERA in writing of the date of first delivery of natural gas exported under Ordering Paragraph A above within two weeks after the date of such delivery.

C. With respect to the exports authorized by this Order, Yankee shall file with the ERA within 30 days following each calendar quarter, quarterly reports indicating whether sales of exported gas have been made and, if so, giving, by month, the total volume of exports in MMcf and the average selling price per MMBtu at the international border. The reports shall also provide the detail of each transaction, including the names of the sellers and purchasers, estimated or actual duration of the agreements, transporters, points of exit, markets served and, if applicable, any demand/commodity charge breakdown of the contract price, any special contract price adjustment clauses, and any take-or-pay or make-up provisions.

D. The motions to intervene, as set forth in this Opinion and Order, are hereby granted, provided that participation of the intervenors shall be limited to matters specifically set forth in their motions to intervene and not herein specifically denied, and that the admission of such intervenors shall not be construed as recognition that they might be aggrieved because of any order issued in these proceedings.

E. The request for a trial-type hearing filed by Western Gas Marketing Limited (WGML) is hereby denied. The separate request by WGML that the ERA delay or condition its decision on Yankee's application based on resolution of WGML U.S.A.'s import application in Docket No. 86-08-NG is also denied.

Issued in Washington, D.C., on September 26, 1986.

--Footnotes--

1/ Yankee International Company, DOE/ERA Opinion and Order No. 107, 1 ERA Para. 70,625 (January 29, 1986).

2/ 51 FR 24202, July 2, 1986.

3/ FERC Statutes and Regulations Para. 30,665 (50 FR 42208, October 18, 1985).

4/ 15 U.S.C. Sec. 717b.

5/ Energy Information Administration, U.S. Department of Energy, Natural Gas Monthly, May 1986, DOE/EIA-0130 (86/05), Table 6, page 14.

6/ "Declaration by the Prime Minister of Canada and the President of the United States of America Regarding Trade in Goods and Services"; March 18, 1985; Weekly Compilation of Presidential Documents, March 25, 1985, (Vol. 21, No. 12, pages 325-26).

7/ 10 CFR Part 590.313.

8/ 10 CFR Part 590.404.

9/ See e.g., Tricentrol Petroleum Marketing, Inc., 1 ERA Para. 70,662 (August 1, 1986); Hadson Canada, Inc. (September 9, 1986), unpublished.

10/ Because the proposed exportation of gas will use existing pipeline 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.