

Cited as "1 FE Para. 70,327"

Midland Cogeneration Venture Limited Partnership (ERA Docket No. 88-39-NG), February 6, 1990.

DOE/FE Opinion and Order No. 305-A

Final Authorization for Importation of Natural Gas from Canada

## I. Background

On March 31, 1989, the Assistant Secretary of Fossil Energy (FE) of the U.S. Department of Energy (DOE) issued DOE/FE Opinion and Order No. 305 1/ (Order 305) to Midland Cogeneration Venture Limited Partnership (Midland) conditionally authorizing Midland to import from four Canadian suppliers up to an aggregate daily contract quantity of 55,000 Mcf of Canadian natural gas over a 15-year period beginning on the date of initial firm deliveries. Order 305 granted Midland final authority to import up to 51,500 Mcf per day of Canadian natural gas on an interruptible basis using existing facilities beginning in 1989 and ending in 1990 on the date of initial firm deliveries. The imported gas would be used to fuel a proposed new cogeneration facility to be constructed in Midland County, Michigan, by conversion of a portion of the idled Midland nuclear plant. The authority granted to Midland to import up to 55,000 Mcf per day of Canadian natural gas on a firm basis was conditioned upon completion of the environmental analysis of the impact of the Midland project required by the National Environmental Policy Act of 1969 (NEPA).2/

Under the import proposal, Midland would import Canadian gas under natural gas purchase agreements with the following four Canadian suppliers: (1) from Norcen Energy Resources Limited, up to 6,500 Mcf per day through November 1, 1994, and thereafter up to 10,000 Mcf per day over a term of 12 years, or through November 1, 2001, whichever is earlier; (2) from Shell Canada Limited, up to 15,000 Mcf per day for 15 years or such earlier date as may be required by U.S. or Canadian regulatory authorities; (3) Canterra Energy Ltd., up to 15,000 Mcf per day through December 31, 2004; and (4) from TransCanada PipeLines Limited, up to 15,000 Mcf per day for 15 years, or such earlier date as may be required by U.S. or Canadian regulatory authorities.

The gas imported by Midland to fuel the proposed cogeneration plant would enter the U.S. at the import point near Emerson, Manitoba, and would be transported from there to the cogeneration plant through the pipeline systems of Great Lakes Gas Transmission Corporation (Great Lakes), Consumers Power Company (Consumers) and Michigan Storage Company (Michigan). While no new

facilities would be required for the interruptible gas service beginning in 1989, firm gas service commencing in 1990 would require the looping of approximately 82.3 miles of 36-inch pipeline facilities of Great Lakes. In addition, Midland would construct approximately 25 miles of 26-inch pipeline between its proposed new cogeneration plant and a new point of interconnection with the facilities of Michigan, located in Isabella County, Michigan.

Construction of the new cogeneration facility is expected to be completed in 1990; full operation of the plant as a 1,370-MW cogeneration facility is scheduled for 1996. When completed, the cogeneration facility would be operated by Midland as a "qualified facility" under section 201 of the Public Utility Regulatory Policies Act of 1978 (PURPA).<sup>3/</sup>

The NEPA requires the DOE to give appropriate consideration to the environmental effects of gas import authorizations. At the time Order 305 was issued, the environmental analysis of the Midland project had not been completed.<sup>4/</sup> Specifically, with respect to the portion of the import arrangement under which Midland would import gas on a firm basis to fuel commercial operation of the new cogeneration facility, the authorization granted by Order 305 was conditioned upon entry of a final opinion and order after review by the DOE of the environmental documentation being prepared by the Federal Energy Regulatory Commission (FERC) with respect to new pipeline construction proposed by Great Lakes to transport the gas to Midland.<sup>5/</sup> This analysis is now complete.

## II. Decision

Under section 3 of the Natural Gas Act (NGA) an arrangement to import natural gas must be approved unless it is found that the import "will not be consistent with the public interest." <sup>6/</sup> The Office of Fossil Energy (FE) is guided in making its determination by the DOE's natural gas import policy guidelines.<sup>7/</sup> Under this policy, the competitiveness of an import in the markets served is the primary consideration for meeting the public interest test. In addition, NEPA requires the DOE to consider the environmental effects of natural gas import arrangements.

### A. Environmental Considerations

The FERC was the lead agency in conducting an examination of the environmental effects of constructing the pipeline looping and related construction that Great Lakes proposes to construct in order to transport the Canadian gas for the Midland import project. Subsequent to issuance of Order 305, the FERC completed an environmental assessment (EA) of these

facilities.<sup>8/</sup> The FERC EA concluded that Great Lakes' proposed pipeline looping and related construction would not be a major Federal action significantly affecting the quality of the human environment if the construction is completed in accordance with FERC specifications set forth in the EA and the FERC order approving construction of Great Lakes' new pipeline facilities.<sup>9/</sup> The DOE, after reviewing the environmental material prepared by the FERC, adopted the EA as DOE/EA-0417 in partial satisfaction of its responsibilities under the NEPA statute. The DOE also conducted its own independent environmental analysis and concluded that the Midland project, including, in particular, Great Lakes' pipeline construction proposal, would not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of NEPA, and that no environmental impact statement (EIS) or additional EA is required.<sup>10/</sup>

## B. Order 305

Order 305 operates as a final opinion and order granting the short-term import of gas on an interruptible basis until initial firm service commences sometime in 1990. Findings made in Order 305 as they pertain to long-term firm imports were preliminary and are being reexamined herein in light of our review of the environmental analyses.

In Order 305, the DOE found that the Midland project as then arranged would not be inconsistent with the public interest, subject to satisfying the NEPA requirements. The DOE concluded that the competitiveness of the imported gas over the 15-year term of the import proposal would be assured by the pricing mechanism in Midland's gas purchase contract. This mechanism is structured so that the commodity price of the imported gas would reflect any changes in the net fuel equivalent of the avoided cost rate for generated power and thus automatically reflect changes in the price of available alternative fuels in the market area served. The DOE noted that the impact of the minimum take provision in Midland's gas purchase agreement of 75 percent of maximum daily quantities was minimized by make up provisions for deficiencies in gas purchases, provision for sale of gas to third parties that Midland is unable to use, and reduction of Midland's minimum take obligations if Midland does not meet its minimum annual requirement because of force majeure or failure of suppliers to deliver the gas.

In addition, in Order 305, the DOE concluded that need for the gas was shown by the uncontested presumption of need arising from the competitiveness of the imported gas and the new demand for gas arising from the proposed cogeneration facility when it begins operation. Finally, the DOE noted that there was no dispute with respect to the security of the Canadian gas

supplies. The reliability of the gas supply was supported by the contractual warranties of the gas suppliers and the proximity of the proposed cogeneration facility to the Canadian border.

### C. Conclusion

The Midland import as currently configured is the same as it was when conditionally approved in Order 305. After examining the entire record of this proceeding, including the EA prepared by the FERC, I find that there is no information in the record that would provide a basis for altering the finding in Order 305 that long-term, firm import proposed by Midland is not inconsistent with the public interest. Accordingly, the DOE is hereby removing the condition imposed by Ordering Paragraph C of Order 305 and is granting Midland authority to import up to an aggregate daily contract quantity of 55,000 Mcf of Canadian natural gas over a 15-year term.

### ORDER

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

A. Midland Cogeneration Venture Limited Partnership (Midland) is authorized to import up to an aggregate daily contract quantity of 55,000 Mcf of Canadian natural gas over a 15-year period beginning on the date of initial firm delivery in accordance with the arrangement proposed in the application in this proceeding as discussed in Opinion and Order 305 and in this Opinion.

B. Midland shall notify the Office of Fuels Programs, Fossil Energy, Room 3F-056, FE-50, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, in writing of the date of initial delivery of natural gas imported under Ordering Paragraph A within two weeks after deliveries begin.

C. With respect to the imports authorized by this Opinion and Order, Midland shall file with the Office of Fuels Programs within 30 days following each calendar quarter, quarterly reports showing, by month, and by contract, the total volume of natural gas imports in Mcf and the average purchase price per MMBtu at the international border. The monthly pricing information shall include a demand/commodity charge breakdown on a monthly and per unit (MMBtu) basis.

Issued in Washington, D.C., on February 6, 1990.

--Footnotes--

1/ 1 FE Para. 70,208.

2/ 42 U.S.C. 4321, et seq.

3/ 16 U.S.C. 824a-3. The cogeneration facility was certified by the Federal Energy Regulatory Commission (FERC) as a qualified facility under PURPA, March 12, 1987 (FERC Docket No. QF-237), based on a filing by CMS Midland, Inc., acting as agent for Midland. Consumers, also acting as agent for Midland, filed with the DOE a Certificate of Compliance pursuant to the Powerplant and Industrial Fuel Use Act of 1978, Pub. L. 96-620 (November 9, 1978), as amended by Pub. L. 97-35 (August 13, 1981), as amended by Pub. L. 100-42 (May 22, 1987). See Notice of Certification, 52 FR 41762, October 30, 1987.

4/ See page 10-11 of Order 305 and Ordering Para. C of Order 305.

5/ Under section 7 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127, the FERC has the authority to approve or disapprove the site, construction and operation of interstate pipeline facilities, and must perform an environmental review before making its decision.

6/ 15 U.S.C. Para. 717b.

7/ 49 FR 6684, February 22, 1984.

8/ The FERC EA, dated June 1989, was entitled Midland Cogeneration Venture Limited Partnership Pipeline Project. The FERC approved the EA and Great Lakes' pipeline construction proposal in Great Lakes Gas Transmission Company, CP88-542-000, July 28, 1989, with specific directions for steps to be taken by Great Lakes to protect the environment. See pages 16-20 of the FERC Order.

9/ Id.

10/ See the Finding of No Significant Impact issued by the DOE on January 25, 1990, and filed in this docket.