

Cited as "1 FE Para. 70,344"

Midland Cogeneration Venture Limited Partnership, POCO Petroleum, Inc.
(FE Docket No. 90-17-NG), August 14, 1990.

DOE/FE Opinion and Order No. 418

Order Reassigning an Authorization to Import Natural Gas from Canada and
Approving Amendments

I. Background

On February 16, 1990, Midland Cogeneration Venture Limited Partnership (Midland) and POCO Petroleum, Inc. (POCO) filed separate applications with the Office of Fossil Energy (FE) of the Department of Energy (DOE) under section 3 of the Natural Gas Act (NGA) to transfer an import authorization. Midland and POCO request that the authorization granted to POCO by DOE/FE Opinion and Order No. 287-A (Order 287-A)¹ to import up to 25 MMcf per day of Canadian natural gas on Midland's behalf over a 15-year period through October 31, 2004, be transferred to allow Midland to import the gas itself. The gas would be imported from POCO's Canadian parent company, POCO Petroleum, Ltd. (POCO Ltd.), to fuel Midland's new 1,370 megawatt cogeneration facility in Midland County, Michigan.² The entire volume was originally to be delivered to POCO at the international border near Emerson, Manitoba and transported from there by the pipeline facilities of Great Lakes Transmission Company (Great Lakes) and Michigan Gas Storage Company (MGSCO) to an interconnect with Midland. Midland contracted to purchase this gas under the provisions of an agreement with POCO Ltd., dated April 29, 1988, as amended August 12, 1988. The proposed transfer of POCO's authorization would not result in any net change in volumes authorized for import.

Midland and POCO also request approval of other changes in the gas supply arrangement and underlying contract authorized by Order 287-A. They submitted with their applications copies of five letter agreements signed in 1989, containing a number of proposed amendments to the original gas purchase contract. One of the amendments would reduce the maximum daily quantity that POCO Ltd. is required to supply from 25 MMcf to 15 MMcf. By other contractual amendments, (1) the point of sale to Midland would be at the U.S. border rather than in Michigan where the facilities of MGSCO and Great Lakes interconnect; (2) POCO would assign Midland its firm transportation capacity entitlement on Great Lakes to move the gas from the border import point; (3) the price of the gas would be adjusted to account for Midland's assumption of responsibility for pipeline transportation from the U.S. border; and (4) if

Midland's purchases from Poco Ltd. fall below 75 percent of the aggregate of the maximum daily quantities in a contract year (15,000 x 365), Midland (with makeup rights) must pay a deficiency charge levied on the volumes not taken below the minimum quantity, equal to 15 percent of the commodity charges in effect during the last month of the contract year in which the deficiency is incurred.

Poco states that the net sales price of this gas to Midland would not change as a result of the amendments to the Poco Ltd. contract. Although most features in the original contract remain essentially unchanged, it should be noted that previously there was no minimum take or deficiency payment provision. We also note that, as before, Midland would continue to be obligated to pay the demand charges regardless of the level of takes.

To offset the reduction in the volumes of gas received from Poco Ltd., Midland proposes to import up to 10 MMcf per day of Canadian gas from North Canadian Oils Limited (NCO) under a gas purchase agreement dated September 1, 1989, filed with its application. Midland's contract with NCO contains similar provisions to the amended Poco Ltd. contract. In both contracts the price established for the imported gas is based on a two-part, demand/commodity rate which will track energy charges in a power purchase agreement between Consumers Power Company and Midland, subject to a minimum floor price. Specifically, the contracts set a reference price equal to the higher of: (1) a price indexed to the monthly energy charges experienced by Consumers Power, consistent with the determination of avoided cost rates for power production from "qualifying facilities" under section 201 of the Public Utilities Regulatory Policy Act of 1978; or (2) a price equal to or greater than--\$1.78 per MMBtu as of January 1, 1987, compounded annually, for the Poco Ltd. contract and \$1.95 per MMBtu as of January 1, 1989, compounded annually, for the NCO contract. The commodity charge is then determined in the Poco Ltd. contract by subtracting from the reference price the monthly demand charge divided by a factor of 0.75 and divided by the maximum daily quantity for the month. The 0.75 factor is not a component of the formula in the NCO contract. The monthly demand component of the price will equal the demand charges by the pipelines used to transport the gas within Canada.

If the firm transportation capacity which Midland has contracted for is not fully used because Midland took less than the maximum contract quantity, then both contracts allow credit against the monthly transportation charges for excess pipeline capacity which NCO and Poco Ltd. are able to sell to third parties. If excess pipeline capacity arises because Poco Ltd. or NCO fail to deliver at least 90 percent of the sum of the daily quantities requested, then Midland may have the excess pipeline capacity assigned to it in order to be

able to mitigate the burden of demand charges it must pay regardless of the level of takes.

Midland's contracts with Poco Ltd. and NCO both contain minimum take provisions. The Poco Ltd. provision was described above. The provision in the Midland/NCO contract will require Midland to pay NCO a deficiency charge equal to the volumes not taken below the minimum annual quantity (50 percent of aggregate maximum daily volumes) times the average monthly commodity charge.

In the event of any monthly underdelivery under either the Poco Ltd. or NCO gas purchase contracts, the monthly demand charge is reduced in proportion to the amount of the underdelivery. In addition, Poco Ltd. and NCO are obligated to reimburse Midland for any additional costs incurred in obtaining alternate supplies of gas equal to the amount of the monthly underdelivery. Further, if during any period of at least 120 consecutive days, Poco Ltd. or NCO fails to deliver at least 90 percent of the sum of the daily contract quantities of gas requested by Midland, then Midland may reduce the maximum daily quantity to a quantity equal to the average daily delivery of gas during such period; and may terminate the respective gas purchase contracts with Poco Ltd. and NCO altogether if the maximum daily quantity is or could be reduced to an amount less than or equal to 50 percent of the initial maximum quantity.

The applicants assert that the revised import arrangement under the proposed transfer of import authority encompassed by both Midland's amended Poco Ltd. contract and new NCO contract is essentially the same as the import arrangement approved by Order 287-A as to volumes imported, competitiveness and need for the gas, and security of the gas supply. In addition, Midland states that each contract contains provisions similar to those found in Midland's contracts with four other Canadian gas suppliers (Norcen Energy Resources Limited, Shell Canada Limited, Canterra Energy Ltd., and TransCanada Pipelines Limited) for which FE has granted import authorization.^{3/}

The DOE issued a notice of the applications on April 12, 1990, inviting protests, motions to intervene, notices of intervention, and comments to be filed by May 23, 1990.^{4/} No response to this notice was received.

II. Decision

The applications filed by Midland and Poco have been evaluated to determine if the proposed import arrangement meets the public interest requirements of section 3 of the NGA. Under section 3, an import must be authorized unless there is a finding that it "will not be consistent with the public interest." ^{5/} This determination is guided by the DOE's natural gas

import policy guidelines.^{6/} Under these guidelines, the competitiveness of an import in the markets served is the primary consideration for meeting the public interest test. Need for the import and security of supply are also considerations in long-term import arrangements.

The applicants' uncontested proposal to transfer import authority and substitute the NCO contract for a portion of the import volumes is consistent with section 3 of the NGA and the DOE policy guidelines. The guidelines direct DOE to look for, as an indication of competitiveness, flexible contract arrangements which permit the parties to respond to changing market conditions over the life of the import.

Midland's supply arrangement with POCO Ltd. and NCO provides such flexibility. The pricing mechanism in both contracts is designed to ensure that the commodity price of the imported gas will reflect any changes in the net fuel equivalent of the avoided cost rate for generated power. This should ensure that the price of the imported gas will automatically reflect changes in the price of available alternative fuels in the market area and that the gas is marketable by Midland as part of its fuel costs for generated power. Further, as asserted by the applicant, the pricing mechanisms in both contracts are comparable to those in Midland's contracts with other Canadian suppliers of natural gas. Accordingly, both contracts contain market-responsive pricing mechanisms that should maintain the competitiveness of the imported gas over the term of the import authorization requested.

In Order 287-A, the DOE concluded that the imported gas was needed from the unrebutted presumption of need arising from its competitiveness and the additional demand arising from Midland's new cogeneration facility. Finally, the DOE noted in that order that there was no dispute with respect to the security of the Canadian gas supplies. There is nothing in the record of this proceeding that could form a basis for altering the DOE's findings in Order 287-A that the imported gas is needed and that the supply of gas is secure. While NCO has replaced POCO Ltd. as a supplier of a portion of the imported gas, no one has questioned the reliability of NCO's gas supply sources.

After taking into consideration all of the information in the record of this proceeding, I find that reassigning POCO's authority to import up to 25,000 Mcf per day of Canadian gas to Midland, from the date of issuance of this Opinion and Order through October 31, 2004, in accordance with Midland's gas purchase agreements with POCO Ltd. and NCO, as described herein, 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. The authorization previously granted to POCO Petroleum, Inc. (Poco), in Ordering Paragraph A of DOE/ERA Opinion and Order No. 287-A (Order 287-A), issued February 6, 1990, to import from Canada up to 25,000 Mcf of natural gas per day at Emmerson, Manitoba is hereby reassigned to Midland Cogeneration Venture Limited Partnership (Midland). This authority shall become effective from the date of issuance of this Opinion and Order through October 31, 2004.

B. The authorization granted herein is based on the pricing and other provisions of Midland's gas purchase agreements with POCO Petroleums, Ltd. and North Canadian Oils Limited as described in the applications filed in this proceeding and discussed in this Opinion and Order.

C. POCO's authority to import natural gas granted under Order 287-A is hereby terminated.

D. Within two weeks after deliveries begin, Midland shall notify the Office of Fuels Programs, Fossil Energy, Room 3F-056, FE50, 1000 Independence Avenue, S.W., Washington, D.C., 20585, in writing of the date that the first import authorized in Ordering Paragraph A above occurs.

E. 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, by supplier, the quantities of natural gas in Mcf imported under this authorization, and the average price per MMBtu paid for those volumes at the international border. The price information shall include a demand-commodity charge breakdown on a monthly and per unit (MMBtu) basis, as well as the average delivered price at the Canadian border per MMBtu.

Issued in Washington, D.C., on August 14, 1990.

--Footnotes--

1/ On December 23, 1988, the Economic Regulatory Administration (ERA), exercising the authority to regulate natural gas imports and exports now vested in FE, granted POCO authorization on a conditional basis in DOE/ERA Opinion and Order No. 287 (1 ERA Para. 70,829) to import natural gas for Midland dependent on review by DOE of the environmental impacts of the U.S. pipeline system expansions that were required to implement the imports. That review was completed, and the condition on the import authority was removed in

Order 287-A issued February 6, 1990 (1 FE Para. 70,289).

2/ The cogeneration facility began operating in early 1990 and is receiving Canadian natural gas on an interim basis under POCO's blanket authority while this application is pending. Imports under Order 287-A have not yet commenced.

3/ See DOE/FE Opinion and Order Nos. 305 issued March 31, 1989 (1 FE Para. 70,208) and 305A issued February 5, 1990 (1 FE Para. 70,327).

4/ 55 FR 15284, April 23, 1990.

5/ 15 U.S.C. Sec. 717b.

6/ 49 FR 6684, February 22, 1984.