

UNITED STATES OF AMERICA  
BEFORE THE  
DEPARTMENT OF ENERGY  
OFFICE OF FUELS PROGRAMS, FOSSIL ENERGY

ORIGINAL

Midland Cogeneration Venture  
Limited Partnership

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Docket No. 99-70-NG

SEP 29 1999  
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APPLICATION OF  
MIDLAND COGENERATION VENTURE LIMITED PARTNERSHIP  
FOR AN ORDER AMENDING EXISTING AUTHORIZATION  
TO IMPORT NATURAL GAS FROM CANADA

ELISA J. GRAMMER  
Attorney for  
Midland Cogeneration Venture  
Limited Partnership  
1225 Eye Street, N.W. Suite 1225  
Washington, D.C. 20005  
(202) 408-5400

September 29, 1999

**UNITED STATES OF AMERICA  
BEFORE THE  
DEPARTMENT OF ENERGY  
OFFICE OF FUELS PROGRAMS, FOSSIL ENERGY**

Midland Cogeneration Venture                    )  
Limited Partnership                                )                   Docket No. 99-\_\_\_-NG  
  )

**APPLICATION OF  
MIDLAND COGENERATION VENTURE LIMITED PARTNERSHIP  
FOR AN ORDER AMENDING EXISTING AUTHORIZATION  
TO IMPORT NATURAL GAS FROM CANADA**

Pursuant to Section 3 of the Natural Gas Act, 15 U.S.C. § 717(b) and Part 590, Subpart B of the Regulations of the Department of Energy, 10 C.F.R. §§ 590.201-209, Midland Cogeneration Venture Limited Partnership (“MCV”) hereby requests an amendment to the authorization to import natural gas from Canada previously granted to MCV through DOE/FE Opinion and Order Nos. 305, 305-A, and 305-B which were issued in ERA Docket No. 88-39-NG on March 31, 1989 and February 6, 1990 and in ERA Docket No. 95-88 on November 14, 1995, respectively. The need for an amended authorization arises from amendments to the gas supply agreement between MCV and Husky Oil Operations Ltd. (“Husky”) that extends the overall term of the fuel supply agreement by one year to October 31, 2007 and more closely tailors the volumes and pricing to the parties’ current needs. These amendments enhance the fuel security and efficiency for the MCV generating facility. In support of its request to amend its authorization to import Canadian natural gas, MCV states as follows:

**I. INTRODUCTION**

**A. Description of MCV**

The exact legal name of applicant is Midland Cogeneration Venture Limited Partnership. MCV is a limited partnership organized under the laws of the State of Michigan. Its principal place of business is located at 100 Progress Place, Midland, Michigan 48640. MCV has been organized for the purpose of constructing, operating

and managing a natural gas-fired combined-cycle cogeneration facility located in Midland, Michigan.

The cogeneration facility that MCV operates was originally designed to have a generating capacity of approximately 1,370 megawatts. The Federal Energy Regulatory Commission has certified MCV's facility as a qualifying cogenerating facility under the Public Utility Regulatory Policies Act of 1978, 16 U.S.C. §§ 2601-45. Electricity produced by the facility is sold to Consumers Energy Company pursuant to a 35-year power purchase agreement. Electricity and steam output from the facility is sold to The Dow Chemical Company pursuant to a steam and electric power sales agreement. Steam is also sold to the Dow Corning Corporation pursuant to a steam purchase agreement. MCV also makes electric sales to third parties.

The MCV facility currently consumes between 110,000 and 300,000 Mcf of natural gas daily. MCV obtains gas supplies necessary to meet these requirements from domestic and Canadian sources through firm transportation arrangements utilizing Canadian natural gas pipelines, interstate natural gas pipelines and Michigan intrastate pipeline, distribution and storage facilities. The imported natural gas is transported from the international border near Emerson, Manitoba, through the pipeline systems of Great Lakes Gas Transmission Limited Partnership ("Great Lakes").

Communications regarding this application should be directed to the following:

L.W. Smith  
Midland Cogeneration Venture  
Limited Partnership  
100 Progress Place  
Midland, Michigan 48640  
(517) 839-6008 telephone  
(517) 839-6016 fax  
[gas4@mcv.cnchost.com](mailto:gas4@mcv.cnchost.com)

Elisa J. Grammer  
Grammer Kissel Robbins Skancke &  
Edwards  
1225 Eye Street, N.W. Suite 1225  
Washington, D.C. 20005  
(202) 408-5400 telephone  
(202) 408-5406 fax  
[ejgrammer@GKRSE-law.com](mailto:ejgrammer@GKRSE-law.com)

## **B. Background Of These Proceedings**

On August 31, 1988, MCV and Canterra Energy Ltd. (succeeded by Husky Oil Operations Limited) entered into the gas purchase agreement. At that time, MCV

arranged to purchase Canadian supplies from four suppliers: Norcen Energy Resources Limited, Shell Canada Limited, Canterra Energy Ltd., and TransCanada Pipelines Limited. The original arrangements provided for imports of 55,000 Mcf of natural gas per day for a 15-year term.

In Order No. 305, MCV was granted 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 that firm deliveries commenced. MCV also was granted conditional authorization to import 55,000 Mcf per day of Canadian gas beginning on the date of initial firm deliveries. That authorization was conditioned upon the completion of the environmental analysis of an expansion of the Great Lakes system.

DOE/FE Opinion and Order No. 305-A, issued on February 6, 1990, removed the conditions on the authorization to importation up to an aggregate daily contract quantity of 55,000 Mcf of Canadian gas over a 15-year term. DOE/FE Opinion and Order No. 305-B, issued on October 27, 1995, authorized an amendment to the 1988 agreement between Husky and MCV that increased the minimum annual quantity to be purchased, extended the contract term, granted the seller a termination option if certain levels of takes were not maintained, and revised the base reference price.

### **C. Summary Of The Amended Agreement**

On January 1, 1999, Husky, the successor to Canterra Energy Ltd., and MCV executed a second amendment to their August 31, 1988 gas purchase agreement (the "Second Amendment"). A copy of the Second Amendment is attached hereto as Appendix 1.

The Second Amendment makes the following changes:

- The "Maximum Daily Quantity" or "MDQ" is redefined to mean the aggregate total of MDQ<sup>1</sup> and MDQ<sup>2</sup>, where MDQ<sup>1</sup> reflects differing levels between 15,000 Mcf per day and 15,195 MMBtu per day or such other quantity as may be determined pursuant to the agreement for time periods between commencement of firm deliveries

and October 31, 2006 and MDQ<sup>2</sup> is 5,000 MMBtu per day or such other quantity as may be determined pursuant to the Agreement;

- Minimum Annual Quantity is revised to add 100% of MDQ<sup>2</sup> to the levels specified for the period commencing on November 1, 2004 and ending on October 31, 2007;
- The agreement's term is extended by one year to October 31, 2007;
- Pricing provisions are revised to reflect separate pricing for MDQ<sup>1</sup> volumes, whose pricing reflects a reduction from the \$3.00 (US) per MMBtu base price to \$2.65 (US) for the first 87% of MDQ<sup>1</sup> volumes taken after October 31, 2004, and MDQ<sup>2</sup> volumes, which are priced through reference to an adjusted NYMEX benchmark for the period between November 1, 2004 and October 31, 2007;
- Billing provisions are amended to include a pre-payment charge totaling \$83,415 (US) for the period beginning January 1, 1999 and ending on December 31, 2000 to reflect the price reduction from \$3.00 (US) to \$2.65 (US);
- A new provision is added to specify certain mitigation measures to protect Buyer in the event that Seller fails to deliver requisite volumes after October 31, 2004; and
- The conversion factor is amended.

As a result of these changes, MCV has obtained a secure and efficient source of natural gas over a longer period of time under more current pricing mechanisms. This authorization is necessary for the operation of MCV's facility and the satisfaction of MCV's facility and the satisfaction of MCV's long-term electricity and steam sales operations.

## **II. DESCRIPTION OF RELIEF REQUESTED**

MCV requests that its authorization to import Canadian natural gas be amended to allow MCV to import Canadian gas purchased from Husky for one additional year through October 31, 2007 consistent with the terms and conditions contained in the Second Amendment.

## **III. THE REQUESTED AGREEMENT IS IN THE PUBLIC INTEREST**

DOE/FE concluded in Order 305-B concerning a similar amendment to the MCV-Husky gas purchase agreement,

Under section 3 of the NGA, as amended by section 201 of the Energy Policy Act of 1992 (Pub. L. 102-486), the importation of natural gas from a nation with which there is in effect a free trade agreement requiring national treatment for trade in natural gas is deemed to be consistent with the public interest, and related applications must be granted without modification or delay.

Moreover, approval of the requested revision to MCV's import authorization is in the public interest because the gas imported thereunder is competitive, is needed, and secure, as discussed below.

**A. The Terms Of The Amended Agreement Are Competitive.**

In Order No. 305, the Department of Energy ("DOE") found that the competitiveness of the imported gas would be assured by the pricing mechanism in the contracts. The price adjustment mechanism is largely unchanged, except for the modifications set forth above. The prices continue to be adjusted to reflect the changes to the net fuel equivalent of the avoided cost rate that is payable to MCV under its power purchase agreement. This mechanism ensures that the gas purchased from Husky will be marketable by MCV as part of its fuel cost for generated power.

The changes provided in this Second Amendment enhance the efficiency and market-responsiveness of the underlying agreement. The amendment includes a price reduction. Additionally, it includes reference to an adjusted NYMEX benchmark for certain volumes beginning in 2004. Moreover, the agreement now contains pricing mechanisms that mitigate the adverse consequences to MCV should Husky fail to deliver requisite volumes in future years.

**B. The Imported Gas Is Needed.**

In Order No. 305, DOE concluded that the need for the imported gas was demonstrated. The DOE has noted that the "[n]eed for a gas supply is intrinsically related to its anticipated marketability." Policy Guidelines, 49 Fed. Reg. 6684, 6686. Gas that is shown to be competitive is presumed to be needed.

In addition to this presumptive need, MCV obligations under its long-term electric and steam sales agreements demonstrate an actual need for gas to be provided under the Amended Agreement. Under its agreement with Consumers Power Company, MCV is obligated to provide up to 1,240 megawatts over a term of 35 years. The one-year extension provided by the Second Amendment is a critical component of MCV's efforts to arrange a competitively priced, long-term fuel supply portfolio consistent with that power sale obligation.

**C. The Imported Gas Is Secure.**

In Order No. 305, DOE also found that the supply of gas to be secure. The arrangement with Husky, as reflected by the Second Amendment, continues to be a dependable and reliable source of supply. The reliability of this source of gas continues to be supported by the proximity of MCV's facility to the Canadian border. Reliability is also enhanced by the Second Amendment's additional mitigation measures in the event of nondelivery, as well as MCV's continuing right, in the event Husky fails to deliver at least 90 percent of daily quantities requested by MCV, to reduce its MDQ and to be indemnified by Husky.

**IV. ENVIRONMENTAL CONSIDERATIONS**

As noted in Order No. 305-A, the Federal Energy Regulatory Commission ("FERC") was the lead Federal agency for the examination of the environmental effects of the facilities that were constructed to transport the imported Canadian gas to the MCV facility. FERC concluded that those facilities would not be a major Federal action significantly affecting the quality of the human environment and approved the construction of those facilities. DOE, in its own environmental analysis, also concluded that the MCV project and the expansion of Great Lakes' pipeline facilities would not constitute a major Federal action significantly affecting the quality of the human environment and that no environmental impact statement or further environmental assessment would be required.

Because no new facilities will be constructed as a result of the Amended Agreement, the conclusions reached by DOE and relied upon in Order No. 305-A continue to be valid.

#### **V. RELATED MATTERS**

MCV knows of no other proceedings pending before the DOE or FERC which are related to the matters contained herein. MCV knows of no potential harmful environmental impact as a result of the extension and amendments sought herein.

#### **VI. MCV'S AUTHORITY**

A statement from MCV's General Counsel is attached as Appendix 2, indicating that his opinion MCV has the authority under its partnership agreement and Michigan law to enter into the Second Amendment to import gas from Canada. Additionally, a copy of the verification of this application is provided as Appendix 3.

#### **VII. CONCLUSION**

MCV believes that this Application For an Order Amending Existing Authorization to Import Natural Gas From Canada is consistent with the public interest as set forth in Section 3 of the NGA in that MCV's imports are competitively priced and are obtained from a secure and reliable supply source. These imports serve an established market for which there is a continuing need through the term requested herein and which need cannot be reliably served through other supply sources. They are also supported by the DOE's conclusion, based upon its interpretation of section 3 of the NGA as amended, that the importation of natural gas from a nation with which there is in effect a free trade agreement requiring national treatment for trade in natural gas is deemed to be consistent with the public interest, and related applications must be granted without modification or delay.

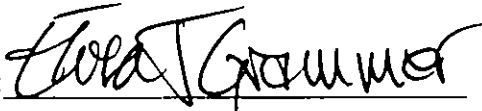
Wherefore, MCV respectfully requests that the Department of Energy, Office of Fuels Programs, Fossil Energy issue an Order amending the Existing Authorization to



Import Natural Gas From Canada consistent with the Second Amendment to the 1988 gas purchase agreement between MCV and Husky, provided herewith.

Respectfully submitted,

MIDLAND COGENERATION VENTURE  
LIMITED PARTNERSHIP

By: 

Elisa J. Grammer

LeRoy W. Smith  
Midland Cogeneration Venture  
Limited Partnership  
100 Progress Place  
Midland, Michigan 48640  
(517) 839-6008

Elisa J. Grammer  
Grammer Kissel Robbins  
Skancke & Edwards  
1225 Eye Street, N.W. Suite 1225  
Washington, D.C. 20005  
(202) 408-5400 telephone

Dated September 29, 1999

APPENDIX 1

January 1, 1999 Amendment to

August 31, 1988

Gas Purchase Agreement

Between

Husky Oil Operations Limited

And

Midland Cogeneration Venture Limited Partnership

THIS AMENDING AGREEMENT made as of the 1<sup>st</sup> day of January, 1999 BETWEEN:

Husky Oil Operations Limited ("Seller")

And

Midland Cogeneration Venture Limited Partnership ("Buyer")

WHEREAS Canterra Energy Limited, Seller's predecessor in title, and Buyer are parties to a natural gas purchase agreement dated as of August 31, 1988, as amended, (the "Agreement"); and

WHEREAS Seller and Buyer wish to provide for certain further amendments to the Agreement effective as of January 1, 1999;

NOW THEREFORE THIS AMENDING AGREEMENT WITNESSES that, in consideration of the mutual covenants herein contained, the parties covenant and agree as follows:

1. Definitions

Except as otherwise provided in this Amending Agreement, capitalized words and phrases shall have the meaning attributed to them in the Agreement.

2. Conditions Precedent

This Amending Agreement is subject to the satisfaction on or before March 1, 2000 of the following conditions precedent each on terms and conditions satisfactory to both parties;

- (a) Seller is the holder of Removal Permit GR 89-33B from the Alberta Energy and Utilities Board and Export License GL 114 from the National Energy Board, which authorize the transactions contemplated by the Agreement, including the sale and removal of gas from the Province of Alberta and the export of gas from Canada, respectively (the "Canadian Authorizations"). This Amending Agreement provides for an increase in volumes and the extension of the term of the Agreement for a period of one year. Seller shall obtain the necessary regulatory approvals to extend or otherwise supplement the Canadian Authorizations to provide for such increase in volumes and this one-year extension of the Agreement.
- (b) Buyer is the holder of Department of Energy Import Authorization DOE/FE Opinion and Order No. 305A, which authorize the transactions contemplated by the Agreement, including the purchase and import of gas from Canada (the "United States Authorizations"). This Amending Agreement provides for an increase in volumes and the extension of the term of the Agreement for a period

of one year. Buyer shall obtain the necessary regulatory approvals to extend or otherwise supplement the United States Authorizations to provide for such increase in volumes and this one-year extension of the Agreement.

- (c) Seller shall provide Buyer with a guarantee as part of the transactions contemplated by this Amending Agreement, in the form of "Exhibit B – Parental Guarantee" attached hereto.
- (d) In the event that conditions (a) through (c) above are not satisfied or waived by March 1, 2000, or that no agreement has been made to extend this deadline for satisfying any outstanding conditions, Seller shall pay back to Buyer any amounts which Buyer has paid to Seller with respect to the Pre-Payment Charges described in part 6 of this Amending Agreement, plus any interest accrued at the Prime Rate plus 1% per annum, by March 31, 2000.

3. Amendment to Definition of Maximum Daily Quantity

The Agreement is amended by deleting subsection 1.1 (r) in its entirety and substituting the following therefor:

*1.1 (r) "Maximum Daily Quantity" or "MDQ" shall mean the aggregate total of "MDQ<sup>1</sup>" and "MDQ<sup>2</sup>" and:*

- (i) *MDQ<sup>1</sup> shall mean:*
  - (a) *for the period commencing on the Commencement of Firm Deliveries and ending on October 31, 1998, 15,000 Mcf per day of gas;*
  - (b) *commencing on November 1, 1998 and ending on October 31, 1999, 15,175 MMbtu per day of gas;*
  - (c) *commencing on November 1, 1999 and ending on October 31, 2006, 15,195 MMbtu per day of gas or such other quantity of gas as may be determined from time to time pursuant to the terms of this Agreement;*
- (ii) *MDQ<sup>2</sup> shall mean 5,000 MMbtu per day of gas or such other quantity of gas as may be determined from time to time pursuant to the terms of this Agreement;*

4. Amendment to Definition of Minimum Annual Quantity

The Agreement is amended by deleting subsection 1.1 (t) (i) in its entirety and substituting the following therefor:

*1.1 (t) (i) for MDQ<sup>1</sup> and for the period:*

- (a) *commencing on the Commencement of Firm Deliveries and ending on December 31, 1994, seventy-five percent (75%) of MDQ<sup>1</sup> in the subject Contract Year;*

- (b) commencing on January 1, 1995 and ending on December 31, 1996, one hundred percent (100%) of MDQ<sup>1</sup> in the subject Contract Year;
- (c) commencing on January 1, 1997 and ending on October 31, 2004, eighty percent (80%) of MDQ<sup>1</sup> in the subject Contract Year;
- (d) commencing on November 1, 2004 and ending on October 31, 2006, eighty seven percent (87%) of MDQ<sup>1</sup> in the subject Contract Year;

for MDQ<sup>2</sup> and for the period:

- (e) commencing on November 1, 2004 and ending on October 31, 2007, one hundred percent (100%) of MDQ<sup>2</sup> in the subject Contract Year;

minus:

5. Definition of NYMEX

The Agreement is amended by adding 1.1 (ii) as follows:

*1.1 (ii) "NYMEX" shall mean the New York Mercantile Exchange Henry Hub natural gas futures contract traded on the New York Mercantile Exchange.*

*Should the NYMEX cease to be traded, Buyer and Seller shall identify and agree on a replacement index. In the event that Buyer and Seller can not agree on a replacement index within 30 days, either party may request the matter be submitted to an expert for determination by providing the other party with written notice of its election. In such event, the parties shall attempt to agree upon a single expert with academic training and industry experience relevant to determining the matter in dispute. If the parties are unable to agree upon a single expert within 30 days after the date of the notice of election, each party shall select an expert and the two selected experts shall together select a third expert to serve on a panel to determine the disputed matter. The parties shall each submit to the expert (or panel of experts, as applicable) all relevant information concerning the disputed matter within 30 days after the selection of the last expert. The final decision of the expert (or panel of experts, as applicable) shall be delivered to the parties in writing, shall constitute the final resolution of all matters so determined and shall be binding upon the parties. Unless the expert (or panel of experts, as applicable) directs otherwise, the fees of the expert (or panel of experts, as applicable) and the cost of conducting the investigation shall be shared equally by the parties. Each party shall bear its own costs and expenses and those of its counsel.*

6. Amendment as to Term

The Agreement is amended by deleting subsection 3.1 (a) in its entirety and substituting the following therefor:

- (a) October 31, 2007; or

7. Amendment as to Price

The Agreement is amended by inserting before Section 6.1 the following:

*Sections 6.1 through 6.7 inclusive shall apply to MDQ<sup>1</sup> exclusively, and Section 6.8 shall apply to MDQ<sup>2</sup> exclusively.*

The Agreement is amended by deleting Section 6.2 in its entirety and substituting the following therefor:

6.2 *For the period beginning at the commencement of Firm Deliveries and ending on October 31, 2004, the Reference Price each month shall be the product obtained when \$1.90 (U.S.) per MMBtu is multiplied by a fraction, the numerator of which is the sum of such Month's energy charges associated with fixed expenses and variable expenses referenced in Schedule "A" and the denominator of which is \$0.0229 (U.S. per kWh); provided that the Reference Price during this period shall never be less than \$1.90 (U.S.) per MMBtu.*

*For the first eighty seven percent (87%) of MDQ<sup>1</sup>, for the period beginning on November 1, 2004, the Reference Price each month shall be the product obtained when \$2.65 (U.S.) per MMBtu is multiplied by a fraction, the numerator of which is the sum of such Month's energy charges associated with fixed expenses and variable expenses referenced in Schedule "A" and the denominator of which is \$0.0229 (U.S. per kWh); provided that the Reference Price during this period shall never be less than \$2.65 (U.S.) per MMBtu.*

*For all quantities of gas taken in excess of eighty seven percent (87%) of MDQ<sup>1</sup>, for the period beginning on and after November 1, 2004, the Reference Price each month shall be the product obtained when \$3.00 (U.S.) per MMBtu is multiplied by a fraction, the numerator of which is the sum of such Month's energy charges associated with fixed expenses and variable expenses referenced in Schedule "A" and the denominator of which is \$0.0229 (U.S. per kWh); provided that the Reference Price during this period shall never be less than \$3.00 (U.S.) per MMBtu.*

The Agreement is amended by inserting as Section 6.8 the following:

6.8 *For the period beginning on November 1, 2004, and ending on October 31, 2007, the price for all quantities of gas taken with respect to MDQ<sup>2</sup> shall equal the average of the closes of the last three days of trading for each such month of the NYMEX natural gas contract minus \$0.15 (U.S.) per MMBtu.*

The Agreement is amended by inserting as Section 6.9 the following:

6.9 *For each of the 24 monthly sales periods, beginning on January 1, 1999, and ending on December 31, 2000, Seller shall include with its monthly invoice to*

Buyer, a pre-payment charge of \$83,415 U.S. ("Pre-Payment Charge"). Buyer shall remit payment for the Pre-Payment Charge each month, in addition to all other monthly invoice amounts payable, according to the terms of this Agreement. The Pre-Payment Charge represents the discounted cash flows, using a 9% discount rate, of the price reduction from \$3.00 (U.S.) per MMBtu to \$2.65 (U.S.) per MMBtu as agreed to in Section 6.2 of this Agreement.

The Agreement is amended by inserting as Section 6.10 the following:

6.10 For the period beginning on November 1, 2004, and ending on October 31, 2006, any failure by Seller to deliver the full volume of gas nominated by Buyer, up to 100% of the sum of MDQ<sup>1</sup> and MDQ<sup>2</sup> then in effect, shall be allocated pro-rata between MDQ<sup>1</sup> and MDQ<sup>2</sup>.

For any month in the period beginning on November 1, 2004, and ending on October 31, 2006, should Seller fail to deliver at least 87% of MDQ<sup>1</sup>, Seller will provide a credit to Buyer on Seller's monthly invoice to Buyer, or make a payment to Buyer, as required, of the positive difference, if any, between 87% of MDQ<sup>1</sup> minus the volume of MDQ<sup>1</sup> actually delivered, times 35¢ U.S. per MMBtu. Any payment described in this section will be in addition to all other remedies provided for in this Agreement.

8. Amendment as to Conversion Factor

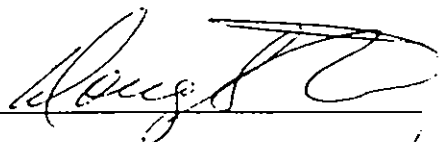
Section 20.3 of the Agreement is amended by replacing the number "1.054615" with the number "1.055056", effective as of the date of this Amending Agreement.

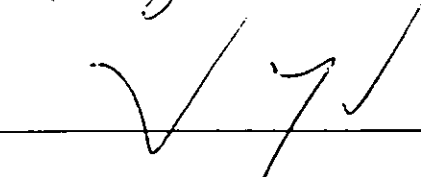
9. Ratification

All other terms of the Agreement shall remain in full force and effect with any changes necessary to give effect to the provisions of this Amending Agreement, and the Agreement as amended herein is hereby ratified and confirmed.

IN WITNESS HEREOF the parties hereto have executed these presents as of the day and year first above written.

HUSKY OIL OPERATIONS LIMITED

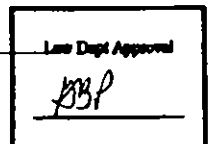
per: 

per: 

MIDLAND COGENERATION  
VENTURE LIMITED PARTNERSHIP

per: 

per: \_\_\_\_\_



## EXHIBIT B – GUARANTY

Guaranty dated effective as of the 1<sup>st</sup> day of January, 1999, by Husky Oil Limited, a company continued under the laws of the Province of Nova Scotia, Canada (hereinafter referred to as the “Guarantor”), in favor of Midland Cogeneration Venture Limited Partnership, a Michigan limited partnership (hereinafter referred to as “Creditor”).

WHEREAS, Creditor and Husky Oil Operations Limited (hereinafter referred to as “Debtor”) have entered into that certain Gas Sales Agreement dated August 31, 1988 and amendments thereto, and now desire to enter into another amendment effective as of January 1, 1999, (“Proposed Amendment”) (hereinafter referred to as the “Contract”); and

WHEREAS, as a condition precedent to and as part of the consideration for Creditor’s entering into the Proposed Amendment, Guarantor has agreed to provide this Guaranty.

NOW, THEREFORE, for and in consideration of the premises, Guarantor hereby agrees as follows:

1. Guaranty. Guarantor unconditionally guarantees to Creditor the payment of amounts Debtor is obligated to pay to Creditor arising out of the Contract with respect to the Pre-Payment Charges (as described in Section 6.9 of the Contract pursuant to the Proposed Amendment) to a maximum amount in the aggregate of \$3,377,621 U.S. (such obligations being hereinafter referred to as the “Obligations”); provided, however, that as to Obligations which Guarantor is called upon to honor, Guarantor is and shall be entitled to assert any and all claims, counterclaims, defenses, offsets and other rights which Debtor could assert against Creditor with respect to the Obligations, except as provided in paragraph 7 below. In the event Debtor fails to make any payment of any of the Obligations, after ten days written notice to Guarantor at the address provided below, Guarantor shall make such payment of otherwise cause same to be paid. Guarantor’s obligations are subject to its receiving from Creditor copies of any and all notices of defaults and events of default given by Creditor to Debtor pursuant to the Contract in the same manner and at the same time as such notices are given by Creditor to Debtor, except to Guarantor’s address for notice set forth in this Guaranty.
2. Termination. This Guaranty is continuing and irrevocable and shall remain in full force and effect until November 1, 2006 or such earlier time that the Contract has been fully satisfied, performed and discharged.
3. Waivers. Except as is otherwise provided in this Guaranty, Guarantor waives notice of acceptance of the guaranty contained herein, presentment, demand, notice of dishonor, protest and notice of protest, and prosecution of litigation in connection with the Obligations.
4. Assignment. Guarantor may not assign its rights or obligations under this Guaranty without the Creditor’s written consent. Subject to the foregoing, this Guaranty shall be binding upon and inure to the benefit of the parties hereto and their respective successors, permitted assigns, and legal representatives.
5. Notices. Any notice or other communication required or permitted to be given to Guarantor under this Guaranty shall be deemed to have been given when delivered personally or otherwise actually received or on the tenth (10<sup>th</sup>) day after being deposited in the United



States mail if registered or certified, postage prepaid, or one (1) day after delivery to a nationally recognized overnight courier service, fee prepaid, return receipt requested, if in writing and addressed as follows:

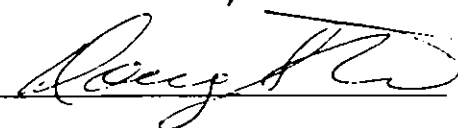
Husky Oil Limited  
707 Eighth Avenue S.W.  
Box 6525, Station D  
Calgary, Alberta, Canada  
T2P 3G7  
Attention: Vice President, Midstream

6. Applicable Law. This Guaranty shall in all respects be governed by, enforced under and construed in accordance with the laws of the Province of Alberta.
7. Effect of Certain Events. Guarantor agrees that Guarantor's liability hereunder will not be released, reduced, impaired or otherwise affected by the occurrence of any one of more of the following events:
  - a. The insolvency, bankruptcy, reorganization, or disability of Debtor;
  - b. The renewal, consolidation, extension, modification, or amendment from time to time of the Contract;
  - c. The failure, delay, waiver, or refusal by Creditor to exercise any right or remedy held by Creditor with respect to the Contract;
  - d. The sale, encumbrance, transfer of other modification of the ownership of Debtor or the change in the financial condition or management of Debtor.

IN WITNESS WHEREOF, Guarantor has duly executed this Guaranty effective as of the date first written above.

HUSKY OIL OPERATIONS LIMITED

per:   
\_\_\_\_\_

per:   
\_\_\_\_\_

APPENDIX 2

Opinion Of Counsel



**Gary B. Pasek**  
*Vice President,  
General Counsel and Secretary*

September 29, 1999

Office of Fuels Programs, Fossil Energy  
U.S. Department of Energy  
1000 Independence Avenue, SW  
Washington, DC 20461

Ladies and Gentlemen:

Re: Midland Cogeneration Venture, LP's Application for an Order Amending Existing  
Authorization to Import Natural Gas from Canada

With reference to 10 C.F.R. § 590.202(c) of the Department of Energy's regulations, this is my opinion as to certain matters involving the powers of Midland Cogeneration Venture Limited Partnership (MCV) to execute the January 1, 1999 amendment to the gas purchase contract between MCV and Husky Oil Operations Limited, and to import natural gas as proposed in this application. In this regard, I have examined pertinent documents, records, legal provisions as deemed necessary for purposes of this opinion.

Please be advised that, in my opinion:

1. MCV is duly organized and validly existing in good standing under the laws of the State of Michigan.
2. MCV has the authority to import natural gas.
3. MCV has the authority to enter into contracts and amend contracts for the purpose of purchasing and importing natural gas as described in this above-referenced application.

Very truly yours,

A handwritten signature in black ink, appearing to read "Gary B. Pasek", written in a cursive style.

Gary B. Pasek

APPENDIX 3

Verification

State of Michigan )  
 )        Verification  
County of Midland )

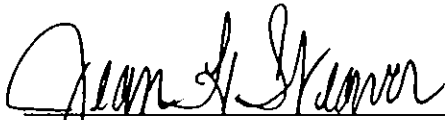
I, Gary B. Pasek, state under oath that I serve as Vice President, General Counsel & Secretary of Midland Cogeneration Venture Limited Partnership, that I have reviewed the foregoing documents and they are true and accurate to the best of my knowledge and belief, and that Elisa J. Grammer is authorized to submit the foregoing filing on behalf of Midland Cogeneration Venture Limited Partnership.

Sworn and signed this 28<sup>th</sup> day of September, 1999.

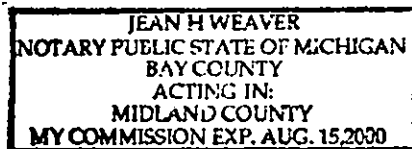


Gary B. Pasek  
Vice President, General Counsel  
& Secretary

Subscribed and sworn to before me this 28<sup>th</sup> day of September, 1999.



Notary Public



THIS AGREEMENT made as of the 20th day of July, A.D. 1992.

BETWEEN:

CANTERRA ENERGY LTD., a corporation incorporated under the laws of Canada (hereinafter called the "Assignor")

- and -

HUSKY OIL OPERATIONS LTD., a corporation incorporated under the laws of the Province of Alberta (hereinafter called the "Assignee")

- and -

MIDLAND COGENERATION VENTURE LIMITED PARTNERSHIP ("Buyer"), a corporation incorporated under the laws of the State of Michigan (hereinafter called the "Third Party")

WHEREAS the Assignor and the Third Party are parties to that agreement described in Exhibit "A" attached hereto (the "Agreement");

AND WHEREAS the Assignor wishes to assign and transfer to the Assignee all of the obligations and liabilities of the Assignor pursuant to the Agreement;

AND WHEREAS the Third Party has agreed to accept the Assignee in the place and stead of the Assignor under the Agreement;

NOW, THEREFORE, THIS AGREEMENT WITNESSETH that in consideration of the premises and of the mutual covenants and agreements set forth, the parties agree as follows:

1. The Assignor hereby assigns, transfers, conveys and sets over unto the Assignee, or its successors and assigns, absolutely and forever, all of the Assignor's right, title interest and estate in, to and under the Agreement.
2. The Assignee accepts the assignment and covenants and agrees with the Assignor, and the Third Party, that from and after the effective date, the Assignee will observe and perform the covenants and agreements of the Assignor contained in the Agreement.

3. The Assignee expressly acknowledges that in all matters relating to the Agreement, subsequent to the assignment thereof to the Assignee, the Assignor has been acting as trustee for and as the duly authorized agent of the Assignee, and the Assignee does hereby expressly ratify, adopt and confirm all acts or omissions of the Assignor in its capacity as such trustee and agent to the end that all such acts or omissions shall for all purposes be construed as made or done by the Assignee.

4. The Third Party hereby consents to the Assignor assigning its right, title, interest and estate in the Agreement to the Assignee and agrees with the Assignor that from and after the effective date of this assignment, it shall hold the Assignee wholly responsible for the observance and performance of covenants and agreements contained in the Agreement, and agreed to be observed and performed by the Assignor, provided that nothing herein shall relieve the Assignor of any obligations arising prior to such effective date.

5. The address of the Assignee shall be:

Husky Oil Operations Ltd.  
707 - 8th Avenue, S.W.  
P.O. Box 6525, Station D  
Calgary, Alberta  
T2P 3G7

Attention: Natural Gas Marketing Manager

6. The effective date of the assignment is December 31, 1990.

7. This Agreement shall become effective when executed by all parties named herein.

8. The Agreement as hereby amended, is ratified and confirmed.

9. Nothing herein contained shall be taken as authorization for or consent to any further assignment of the right, title and interest or the obligations of the Assignee under the Agreement.

10. This Agreement shall enure to the benefit of and be binding upon the Assignor and Assignee, their heirs, executors, administrators and assigns.

IN WITNESS WHEREOF the Assignor, the Assignee and the Third Party have set their hands and seal the day and year first above written.

CANTERRA ENERGY LTD.

Per: [Signature]

Per: \_\_\_\_\_

HUSKY OIL OPERATIONS LTD.

Per: [Signature]

Per: \_\_\_\_\_

MIDLAND COGENERATION VENTURE  
LIMITED PARTNERSHIP

Per: [Signature]

Per: \_\_\_\_\_



EXHIBIT "A" attached to and forming part of an Agreement dated as of the 20th day of July, A.D. 1992 among CANTERRA ENERGY LTD., as Assignor, HUSKY OIL OPERATIONS LTD., as Assignee and MIDLAND COGENERATION VENTURE LIMITED PARTNERSHIP, as Third Party

---

the "Agreement"

Natural Gas Sales Agreement dated August 31, 1988 between Canterra Energy Ltd. ("Seller") and Midland Cogeneration Venture Limited Partnership ("Buyer")

Amendment dated June 12, 1989 to Natural Gas Sales Agreement.

THIS AMENDING AGREEMENT made as of the 1<sup>st</sup> day of January, 1999 BETWEEN:

Husky Oil Operations Limited ("Seller")

And

Midland Cogeneration Venture Limited Partnership ("Buyer")

WHEREAS Canterra Energy Limited, Seller's predecessor in title, and Buyer are parties to a natural gas purchase agreement dated as of August 31, 1988, as amended, (the "Agreement"); and

WHEREAS Seller and Buyer wish to provide for certain further amendments to the Agreement effective as of January 1, 1999;

NOW THEREFORE THIS AMENDING AGREEMENT WITNESSES that, in consideration of the mutual covenants herein contained, the parties covenant and agree as follows:

1. Definitions

Except as otherwise provided in this Amending Agreement, capitalized words and phrases shall have the meaning attributed to them in the Agreement.

2. Conditions Precedent

This Amending Agreement is subject to the satisfaction on or before March 1, 2000 of the following conditions precedent each on terms and conditions satisfactory to both parties;

- (a) Seller is the holder of Removal Permit GR 89-33B from the Alberta Energy and Utilities Board and Export License GL 114 from the National Energy Board, which authorize the transactions contemplated by the Agreement, including the sale and removal of gas from the Province of Alberta and the export of gas from Canada, respectively (the "Canadian Authorizations"). This Amending Agreement provides for an increase in volumes and the extension of the term of the Agreement for a period of one year. Seller shall obtain the necessary regulatory approvals to extend or otherwise supplement the Canadian Authorizations to provide for such increase in volumes and this one-year extension of the Agreement.
- (b) Buyer is the holder of Department of Energy Import Authorization DOE/FE Opinion and Order No. 305A, which authorize the transactions contemplated by the Agreement, including the purchase and import of gas from Canada (the "United States Authorizations"). This Amending Agreement provides for an increase in volumes and the extension of the term of the Agreement for a period

of one year. Buyer shall obtain the necessary regulatory approvals to extend or otherwise supplement the United States Authorizations to provide for such increase in volumes and this one-year extension of the Agreement.

- (c) Seller shall provide Buyer with a guarantee as part of the transactions contemplated by this Amending Agreement, in the form of "Exhibit B – Parental Guarantee" attached hereto.
- (d) In the event that conditions (a) through (c) above are not satisfied or waived by March 1, 2000, or that no agreement has been made to extend this deadline for satisfying any outstanding conditions, Seller shall pay back to Buyer any amounts which Buyer has paid to Seller with respect to the Pre-Payment Charges described in part 6 of this Amending Agreement, plus any interest accrued at the Prime Rate plus 1% per annum, by March 31, 2000.

3. Amendment to Definition of Maximum Daily Quantity

The Agreement is amended by deleting subsection 1.1 (r) in its entirety and substituting the following therefor:

*1.1 (r) "Maximum Daily Quantity" or "MDQ" shall mean the aggregate total of "MDQ<sup>1</sup>" and "MDQ<sup>2</sup>" and:*

- (i) *MDQ<sup>1</sup> shall mean:*
  - (a) *for the period commencing on the Commencement of Firm Deliveries and ending on October 31, 1998, 15,000 Mcf per day of gas;*
  - (b) *commencing on November 1, 1998 and ending on October 31, 1999, 15,175 MMbtu per day of gas;*
  - (c) *commencing on November 1, 1999 and ending on October 31, 2006, 15,195 MMbtu per day of gas or such other quantity of gas as may be determined from time to time pursuant to the terms of this Agreement;*
- (ii) *MDQ<sup>2</sup> shall mean 5,000 MMbtu per day of gas or such other quantity of gas as may be determined from time to time pursuant to the terms of this Agreement;*

4. Amendment to Definition of Minimum Annual Quantity

The Agreement is amended by deleting subsection 1.1 (t) (i) in its entirety and substituting the following therefor:

*1.1 (t) (i) for MDQ<sup>1</sup> and for the period:*

- (a) *commencing on the Commencement of Firm Deliveries and ending on December 31, 1994, seventy-five percent (75%) of MDQ<sup>1</sup> in the subject Contract Year;*

- (b) commencing on January 1, 1995 and ending on December 31, 1996, one hundred percent (100%) of MDQ<sup>1</sup> in the subject Contract Year;
- (c) commencing on January 1, 1997 and ending on October 31, 2004, eighty percent (80%) of MDQ<sup>1</sup> in the subject Contract Year;
- (d) commencing on November 1, 2004 and ending on October 31, 2006, eighty seven percent (87%) of MDQ<sup>1</sup> in the subject Contract Year;

for MDQ<sup>2</sup> and for the period:

- (e) commencing on November 1, 2004 and ending on October 31, 2007, one hundred percent (100%) of MDQ<sup>2</sup> in the subject Contract Year;

minus:

5. Definition of NYMEX

The Agreement is amended by adding 1.1 (ii) as follows:

*1.1 (ii) "NYMEX" shall mean the New York Mercantile Exchange Henry Hub natural gas futures contract traded on the New York Mercantile Exchange.*

*Should the NYMEX cease to be traded, Buyer and Seller shall identify and agree on a replacement index. In the event that Buyer and Seller can not agree on a replacement index within 30 days, either party may request the matter be submitted to an expert for determination by providing the other party with written notice of its election. In such event, the parties shall attempt to agree upon a single expert with academic training and industry experience relevant to determining the matter in dispute. If the parties are unable to agree upon a single expert within 30 days after the date of the notice of election, each party shall select an expert and the two selected experts shall together select a third expert to serve on a panel to determine the disputed matter. The parties shall each submit to the expert (or panel of experts, as applicable) all relevant information concerning the disputed matter within 30 days after the selection of the last expert. The final decision of the expert (or panel of experts, as applicable) shall be delivered to the parties in writing, shall constitute the final resolution of all matters so determined and shall be binding upon the parties. Unless the expert (or panel of experts, as applicable) directs otherwise, the fees of the expert (or panel of experts, as applicable) and the cost of conducting the investigation shall be shared equally by the parties. Each party shall bear its own costs and expenses and those of its counsel.*

6. Amendment as to Term

The Agreement is amended by deleting subsection 3.1 (a) in its entirety and substituting the following therefor:

- (a) October 31, 2007; or

7. Amendment as to Price

The Agreement is amended by inserting before Section 6.1 the following:

*Sections 6.1 through 6.7 inclusive shall apply to MDQ<sup>1</sup> exclusively, and Section 6.8 shall apply to MDQ<sup>2</sup> exclusively.*

The Agreement is amended by deleting Section 6.2 in its entirety and substituting the following therefor:

6.2 *For the period beginning at the commencement of Firm Deliveries and ending on October 31, 2004, the Reference Price each month shall be the product obtained when \$1.90 (U.S.) per MMBtu is multiplied by a fraction, the numerator of which is the sum of such Month's energy charges associated with fixed expenses and variable expenses referenced in Schedule "A" and the denominator of which is \$0.0229 (U.S. per kWh); provided that the Reference Price during this period shall never be less than \$1.90 (U.S.) per MMBtu.*

*For the first eighty seven percent (87%) of MDQ<sup>1</sup>, for the period beginning on November 1, 2004, the Reference Price each month shall be the product obtained when \$2.65 (U.S.) per MMBtu is multiplied by a fraction, the numerator of which is the sum of such Month's energy charges associated with fixed expenses and variable expenses referenced in Schedule "A" and the denominator of which is \$0.0229 (U.S. per kWh); provided that the Reference Price during this period shall never be less than \$2.65 (U.S.) per MMBtu.*

*For all quantities of gas taken in excess of eighty seven percent (87%) of MDQ<sup>1</sup>, for the period beginning on and after November 1, 2004, the Reference Price each month shall be the product obtained when \$3.00 (U.S.) per MMBtu is multiplied by a fraction, the numerator of which is the sum of such Month's energy charges associated with fixed expenses and variable expenses referenced in Schedule "A" and the denominator of which is \$0.0229 (U.S. per kWh); provided that the Reference Price during this period shall never be less than \$3.00 (U.S.) per MMBtu.*

The Agreement is amended by inserting as Section 6.8 the following:

6.8 *For the period beginning on November 1, 2004, and ending on October 31, 2007, the price for all quantities of gas taken with respect to MDQ<sup>2</sup> shall equal the average of the closes of the last three days of trading for each such month of the NYMEX natural gas contract minus \$0.15 (U.S.) per MMBtu.*

The Agreement is amended by inserting as Section 6.9 the following:

6.9 *For each of the 24 monthly sales periods, beginning on January 1, 1999, and ending on December 31, 2000, Seller shall include with its monthly invoice to*

Buyer, a pre-payment charge of \$83,415 U.S. ("Pre-Payment Charge"). Buyer shall remit payment for the Pre-Payment Charge each month, in addition to all other monthly invoice amounts payable, according to the terms of this Agreement. The Pre-Payment Charge represents the discounted cash flows, using a 9% discount rate, of the price reduction from \$3.00 (U.S.) per MMBtu to \$2.65 (U.S.) per MMBtu as agreed to in Section 6.2 of this Agreement.

The Agreement is amended by inserting as Section 6.10 the following:

6.10 For the period beginning on November 1, 2004, and ending on October 31, 2006, any failure by Seller to deliver the full volume of gas nominated by Buyer, up to 100% of the sum of MDQ<sup>1</sup> and MDQ<sup>2</sup> then in effect, shall be allocated pro-rata between MDQ<sup>1</sup> and MDQ<sup>2</sup>.

For any month in the period beginning on November 1, 2004, and ending on October 31, 2006, should Seller fail to deliver at least 87% of MDQ<sup>1</sup>, Seller will provide a credit to Buyer on Seller's monthly invoice to Buyer, or make a payment to Buyer, as required, of the positive difference, if any, between 87% of MDQ<sup>1</sup> minus the volume of MDQ<sup>1</sup> actually delivered, times 35¢ U.S. per MMBtu. Any payment described in this section will be in addition to all other remedies provided for in this Agreement.

8. Amendment as to Conversion Factor

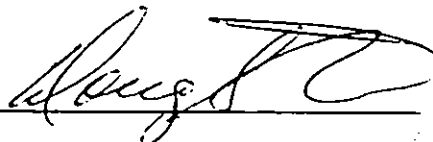
Section 20.3 of the Agreement is amended by replacing the number "1.054615" with the number "1.055056", effective as of the date of this Amending Agreement.


9. Ratification

All other terms of the Agreement shall remain in full force and effect with any changes necessary to give effect to the provisions of this Amending Agreement, and the Agreement as amended herein is hereby ratified and confirmed.

IN WITNESS HEREOF the parties hereto have executed these presents as of the day and year first above written.

HUSKY OIL OPERATIONS LIMITED

per: 

per: 

MIDLAND COGENERATION  
VENTURE LIMITED PARTNERSHIP

per: 

per: \_\_\_\_\_

Law Dept Approval  
BBP

## EXHIBIT B – GUARANTY

Guaranty dated effective as of the 1<sup>st</sup> day of January, 1999, by Husky Oil Limited, a company continued under the laws of the Province of Nova Scotia, Canada (hereinafter referred to as the "Guarantor"), in favor of Midland Cogeneration Venture Limited Partnership, a Michigan limited partnership (hereinafter referred to as "Creditor").

WHEREAS, Creditor and Husky Oil Operations Limited (hereinafter referred to as "Debtor") have entered into that certain Gas Sales Agreement dated August 31, 1988 and amendments thereto, and now desire to enter into another amendment effective as of January 1, 1999, ("Proposed Amendment") (hereinafter referred to as the "Contract"); and

WHEREAS, as a condition precedent to and as part of the consideration for Creditor's entering into the Proposed Amendment, Guarantor has agreed to provide this Guaranty.

NOW, THEREFORE, for and in consideration of the premises, Guarantor hereby agrees as follows:

1. **Guaranty.** Guarantor unconditionally guarantees to Creditor the payment of amounts Debtor is obligated to pay to Creditor arising out of the Contract with respect to the Pre-Payment Charges (as described in Section 6.9 of the Contract pursuant to the Proposed Amendment) to a maximum amount in the aggregate of \$3,377,621 U.S. (such obligations being hereinafter referred to as the "Obligations"); provided, however, that as to Obligations which Guarantor is called upon to honor, Guarantor is and shall be entitled to assert any and all claims, counterclaims, defenses, offsets and other rights which Debtor could assert against Creditor with respect to the Obligations, except as provided in paragraph 7 below. In the event Debtor fails to make any payment of any of the Obligations, after ten days written notice to Guarantor at the address provided below, Guarantor shall make such payment of otherwise cause same to be paid. Guarantor's obligations are subject to its receiving from Creditor copies of any and all notices of defaults and events of default given by Creditor to Debtor pursuant to the Contract in the same manner and at the same time as such notices are given by Creditor to Debtor, except to Guarantor's address for notice set forth in this Guaranty.
2. **Termination.** This Guaranty is continuing and irrevocable and shall remain in full force and effect until November 1, 2006 or such earlier time that the Contract has been fully satisfied, performed and discharged.
3. **Waivers.** Except as is otherwise provided in this Guaranty, Guarantor waives notice of acceptance of the guaranty contained herein, presentment, demand, notice of dishonor, protest and notice of protest, and prosecution of litigation in connection with the Obligations.
4. **Assignment.** Guarantor may not assign its rights or obligations under this Guaranty without the Creditor's written consent. Subject to the foregoing, this Guaranty shall be binding upon and inure to the benefit of the parties hereto and their respective successors, permitted assigns, and legal representatives.
5. **Notices.** Any notice or other communication required or permitted to be given to Guarantor under this Guaranty shall be deemed to have been given when delivered personally or otherwise actually received or on the tenth (10<sup>th</sup>) day after being deposited in the United

States mail if registered or certified, postage prepaid, or one (1) day after delivery to a nationally recognized overnight courier service, fee prepaid, return receipt requested, if in writing and addressed as follows:

Husky Oil Limited  
707 Eighth Avenue S.W.  
Box 6525, Station D  
Calgary, Alberta, Canada  
T2P 3G7  
Attention: Vice President, Midstream

6. Applicable Law. This Guaranty shall in all respects be governed by, enforced under and construed in accordance with the laws of the Province of Alberta.
7. Effect of Certain Events. Guarantor agrees that Guarantor's liability hereunder will not be released, reduced, impaired or otherwise affected by the occurrence of any one of more of the following events:
  - a. The insolvency, bankruptcy, reorganization, or disability of Debtor;
  - b. The renewal, consolidation, extension, modification, or amendment from time to time of the Contract;
  - c. The failure, delay, waiver, or refusal by Creditor to exercise any right or remedy held by Creditor with respect to the Contract;
  - d. The sale, encumbrance, transfer of other modification of the ownership of Debtor or the change in the financial condition or management of Debtor.

IN WITNESS WHEREOF, Guarantor has duly executed this Guaranty effective as of the date first written above.

HUSKY OIL OPERATIONS LIMITED

per:  \_\_\_\_\_

per:  \_\_\_\_\_



THIS AMENDING AGREEMENT made as of the 1st day of January, 1995

BETWEEN:

Husky Oil Operations Ltd. ("Seller")

-and-

Midland Cogeneration Venture Limited Partnership ("Buyer")

WHEREAS Canterra Energy Limited, Seller's predecessor in title, and Buyer are parties to a natural gas purchase agreement dated as of August 31, 1988 (the "Agreement"); and

WHEREAS Seller and Buyer wish to provide for certain amendments to the Agreement effective as of January 1, 1995;

NOW THEREFORE THIS AMENDING AGREEMENT WITNESSES that, in consideration of the mutual covenants herein contained, the parties covenant and agree as follows:

1. Definitions

Except as otherwise provided in this Amending Agreement, capitalized words and phrases shall have the meaning attributed to them in the Agreement.

2. Conditions Precedent

The Amending Agreement is subject to the satisfaction on or before April 1, 1996 of the following conditions precedent each on terms and conditions satisfactory to both parties;

- (a) Seller is the holder of Removal Permit GR 89-33B from the Energy Resources Conservation Board and Export License GL 114 from the National Energy Board, which authorize the transactions contemplated by the Agreement, including the sale and removal of gas from the province of Alberta and the export of gas from Canada, respectively (the "Canadian Authorizations"). The Amending Agreement provides for the extension of the term of the Agreement for a period of two years. Seller shall obtain the necessary regulatory approvals to extend or otherwise supplement the Canadian Authorizations to provide for this two year extension of the Agreement.
- (b) Buyer is currently the holder of Department of Energy Import Authorization DOE/FE Opinion and Order No. 305A, which authorize the transactions contemplated by the Agreement, including the purchase and import of gas from Canada (the "United States Authorizations"). The Amending Agreement provides for the extension of the term of the Agreement for a period of two years. Buyer

shall obtain the necessary regulatory approvals to extend or otherwise supplement the United States Authorizations to provide for this two year extension of the Agreement.

- (c) On or before April 1, 1996 Seller shall enter into agreements with TCPL and Nova required to transport the MDQ to be sold hereunder for the period of November 1, 2004 to October 31, 2006 from Seller's facilities to the Point of Delivery on a firm basis. On or before April 1, 1996 Buyer shall enter into agreements with United States Transporter required to transport the MDQ to be sold hereunder for the period of November 1, 2004 to October 31, 2006 from the Point of Delivery to Buyer's Plant on a firm basis.

### 3. Amendment to Definition of Minimum Annual Quantity

The following amendment shall be made to the Agreement by deleting subsection 1.1(t)(1) in its entirety and by substituting the following therefor:

- "1.1(t)(1) for the period:
- (A) commencing on the Commencement of Firm Deliveries and ending on December 31, 1994, seventy-five percent (75%) of the aggregate of the Maximum Daily Quantities in the subject Contract Year;
  - (B) commencing on January 1, 1995 and ending on December 31, 1996, one hundred (100%) of the aggregate of the Maximum Daily Quantities in the subject Contract Year;
  - (C) commencing on January 1, 1997 and ending on October 31, 2004, eighty percent (80%) of the aggregate of the Maximum Daily Quantities for each month in the subject Contract Year;
  - (D) commencing on November 1, 2004 and ending on October 31, 2006, eighty percent seven (87%) of the aggregate of the Maximum Daily Quantities for each month in the subject Contract Year;

minus".

### 4. Amendment as to Term

#### (a) Term

The Agreement is amended by deleting in subsection 3.1(a) the words "Fifteen (15) Contract Years after the Commencement of Firm Delivery but in no event later than November 1, 2004" and by substituting therefor the words "October 31, 2006.

## (b) Amendment of subsection 3.3(b)

The Agreement is further amended by renumbering subsection 3.3(b) as subsection 3.3(c) and by inserting the following as the new subsection 3.3(b):

"3.3(b) Seller may elect, by providing Buyer with written notice of such election prior to December 31, 2003, to terminate this Agreement as of the date indicated below if the average of daily quantities of gas purchased by Buyer from Seller hereunder from November 1, 2000 until November 1, 2003 is less than eighty percent (80%) of the average MDQ during such period. In the event of such an election, this agreement shall terminate as of November 1, 2004. In determining the average daily quantity of gas purchased during any period, the same manner of calculation used in the aforementioned renumbered subsection 3.3(c) shall be used for the period November 1, 2000 until November 1, 2003."

## 5. Amendments as to Quantity

## (a) Amendment of subsection 4.5

The Agreement is amended by deleting Section 4.5 in its entirety.

## (b) Amendment of subsection 4.6

The Agreement is amended by deleting Section 4.6 in its entirety and by substituting the following therefor:

## "4.6 If

- (a) during the Contract Year commencing November 1, 1994 the sum of the daily quantities of gas taken by Buyer is less than ninety-six percent (96%) of the aggregate of the MDQ's for such Contract Year;
- (b) during the Contract Year commencing November 1, 1995 the sum of the daily quantities of gas taken by Buyer is less than one hundred percent (100%) of the aggregate of the MDQ's for such Contract Year;
- (c) during the Contract Year of commencing November 1, 1996 the sum of the daily quantities of gas taken by Buyer is less than eighty-three percent (83%) of the aggregate of the MDQ's for such Contract Year;
- (d) during any of the Contract Years for the period commencing November 1, 1997 and ending October 31, 2004 the sum of the daily quantities of gas taken by Buyer is less than eighty percent (80%) of the aggregate of the MDQ's for such Contract Year;

then, within sixty (60) days following the end of such Contract Year, Seller shall have the option to elect to reduce the MDQ effective at the commencement of the following Contract Year to a daily quantity of gas not less than one hundred thirty-three percent (133%) of the sum of the quantities so nominated by Buyer in the most recently concluded Contract Year divided by the number of Days in such Contract Year by giving notice to Buyer within the prescribed time period stating that Seller elects to exercise such option. For the purposes of this Section, the volume of gas taken by Buyer during any Contract Year shall be deemed to include all volumes which Buyer was prevented or excused from taking or which Seller was prevented or excused from delivering due to force majeure, quality deficiencies or non-performance by the Seller of its obligations hereunder."

6. Amendment as to Price

The Agreement is amended by deleting Section 6.2 in its entirety and by substituting the following therefor:

"6.2 For the period beginning at the Commencement of Firm Deliveries and ending on October 31, 2004, the Reference Price each month shall be the product obtained when \$1.90 (U.S.) per MMBtu is multiplied by a fraction, the numerator of which is the sum of such Month's energy charges associated with fixed expenses and variable expenses referenced in Schedule "A" and the denominator of which is \$0.0229 (U.S. per Kwh); provided that the Reference Price during this period shall never be less than \$1.90 (U.S.) per MMBtu.

For the period beginning on November 1, 2004, the Reference Price each month shall be the product obtained when \$3.00 (U.S.) per MMBtu is multiplied by a fraction, the numerator of which is the sum of such Month's energy charges associated with fixed expenses and variable expenses referenced in Schedule "A" and the denominator of which is \$0.0229 (U.S. per Kwh); provided that the Reference Price during this period shall never be less than \$3.00 (U.S.) per MMBtu."

7. Consequential Changes

The Agreement is amended by deleting the references to "November 1, 2003" in Sections 21.2 and 21.3 and by substituting the therefor "November 1, 2005".

8. Ratification

All other terms of the Agreement shall remain in full force and effect with any changes necessary to give effect to the provisions of this Amending Agreement, and the Contract as amended herein is hereby ratified and confirmed.

IN WITNESS WHEREOF the parties hereto have executed these presents as of the day and year first above written.

HUSKY OIL OPERATIONS LTD.

MIDLAND COGENERATION  
VENTURE LIMITED PARTNERSHIP

per: *[Signature]* D.L. STOUT  
Vice President

per: *[Signature]*

per: *[Signature]*  
G.J. DANIEL  
Secretary

per: \_\_\_\_\_

*(Handwritten mark)*

UNITED STATES OF AMERICA      09/29/99 DOE/FE  
DEPARTMENT OF ENERGY      10:23 AM '99  
OFFICE OF FOSSIL ENERGY

\_\_\_\_\_  
MIDLAND COGENERATION VENTURE )  
LIMITED PARTNERSHIP            )

FE DOCKET NO. 99-70-NG

ORDER AMENDING LONG-TERM AUTHORIZATION  
TO IMPORT NATURAL GAS FROM CANADA

DOE/FE ORDER NO. 305-C

On September 29, 1999, Midland Cogeneration Venture Limited Partnership (MCV) 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)<sup>1/</sup> and DOE Delegation Order Nos. 0204-111 and 0204-127, to amend its long-term import authorization to reflect an amendment to one of four Canadian supply arrangements. MCV is authorized by DOE/FE Opinion and Order No. 305 as amended,<sup>2/</sup> to import up to an aggregate daily quantity of 55,000 Mcf of natural gas in accordance with purchase contracts with the following four 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 through November 1, 2001, (2) from Shell Canada Limited, up to 15,000

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<sup>1/</sup> 15 U.S.C. § 717b.

<sup>2/</sup> 1 FE ¶ 70,208 (March 31, 1989); as amended by DOE/FE Opinion and Order Nos. 305-A, 1 FE ¶ 70,327 (February 6, 1990), and 305-B, 1 FE ¶ 71,200 (November 5, 1995).

trade agreement requiring national treatment for trade in natural gas is deemed to be consistent with the public interest, and related applications must be granted without modification or delay. MCV's application to amend its current authority to import natural gas produced in Canada meets the section 3(c) criterion and, therefore, is consistent with the public interest.

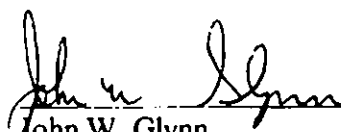
ORDER

Pursuant to section 3 of the Natural Gas Act, it is ordered that:

A. The long-term import authorization held by Midland Cogeneration Venture Limited Partnership (MCV) under DOE/FE Opinion and Order No 305, as amended, is amended to extend its term to October 31, 2007, consistent with the terms and conditions of the amended gas purchase agreement with Husky Oil Operations Limited.

C. All other terms and conditions of the import authorization contained in Order 305, as amended shall remain in full force and effect.

Issued in Washington, D.C., on November 30, 1999.

  
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John W. Glynn  
Manager, Natural Gas Regulation  
Office of Natural Gas & Petroleum  
Import & Export Activities  
Office of Fuels Programs