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

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AUG 29 2002

DOE/OFE/NGR

Midland Cogeneration Venture
Limited Partnership

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Docket No. 02-52-NG

**APPLICATION OF
MIDLAND COGENERATION VENTURE LIMITED PARTNERSHIP
FOR LONG-TERM AUTHORIZATION
TO IMPORT NATURAL GAS FROM CANADA**

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August 29, 2002

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

Midland Cogeneration Venture)	
Limited Partnership)	Docket No. 90-17-NG
)	

**APPLICATION OF
MIDLAND COGENERATION VENTURE LIMITED PARTNERSHIP
FOR LONG TERM AUTHORIZATION
TO IMPORT NATURAL GAS FROM CANADA**

Pursuant to Section 3 of the Natural Gas Act, 15 U.S.C. § 717(b), Sections 590.201-209 of the Regulations of the Department of Energy, Office of Fossil Energy ("DOE/FE"), 10 C.F.R. Part 509, and Section 201 of the Energy Policy Act of 1992, 15 U.S.C. § 717b(c), Midland Cogeneration Venture Limited Partnership ("MCV") hereby requests long-term authorization to import natural gas from Canada pursuant to a gas supply agreement between MCV and Husky Oil Operations Limited ("Husky Oil"). In support of its request for authorization to import Canadian natural gas, MCV states as follows:

I. COMMUNICATIONS

Correspondence and communications regarding this notification should be directed to the following:

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II. BACKGROUND

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 are 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.

B. Background Of This Proceeding

In order to satisfy its natural gas requirements, MCV entered into a gas purchase agreement (the "Agreement") (attached hereto as Appendix 1) with Husky Oil, a body corporate incorporated under the laws of the Province of Nova Scotia, which is the main operating subsidiary of Husky Energy, Inc., headquartered in Calgary, Alberta, Canada. Under the Agreement, executed by the parties on June 19, 2001, MCV agreed to purchase 10,000 MMBtu per day of Canadian natural gas for a term beginning November 1, 2001 and concluding October 31, 2004.

In DOE/FE Order No. 1651, issued in FE Docket No. 00-84-NG on November 17, 2000, MCV was granted blanket authority to import up to a combined total of 400 Bcf over a two year period beginning on the first date of delivery. MCV has been using this blanket authorization to import natural gas under the Husky Oil Agreement and has been filing the quarterly reports detailing the natural gas imported thereunder as required by that blanket authorization. Given the three-year term of the Husky Oil Agreement, MCV hereby files this request for long-term authorization to cover the remaining term of the Husky Oil Agreement, pursuant to advice received from DOE/FE, Office of Natural Gas and Petroleum Import and Export Activities.

III. AUTHORIZATION REQUESTED

MCV hereby requests long-term authority to import from Canada 10,000 MMBtu per day for the duration of deliveries under the Agreement, which will conclude on October 31, 2004.

IV. THE NATURAL GAS AGREEMENT

Under the Agreement, MCV will purchase 10,000 MMBtu (10 MMcf) per day on a firm basis. Delivery commenced on November 1, 2001 and will conclude on October 31, 2004. The term of the Agreement expires on the date that the parties have completed

the final settlement of all amounts owing under the Agreement. There are no provisions for renewal or extension of the term of the Agreement.

Husky Oil supplies the natural gas from Canadian sources not specified in the Agreement and has arranged for transportation service on the TCPL Mainline, which is owned and operated by TransCanada Pipelines Limited. MCV purchases the natural gas from Husky Oil at the international boundary of Canada and the United States near Emerson, Manitoba and has arranged for transportation service on the Great Lakes Gas Transmission Limited Partnership pipeline system. MCV's failure to take, or Husky Oil's failure to deliver one hundred percent of the daily quantity of gas will obligate the nonperforming party to pay liquidated damages.

The rate to be paid by MCV is the average of the NYMEX Price on the last 3 trading days of the NYMEX contract for the applicable delivery month, minus U.S. \$0.10/MMBtu. Husky Oil is responsible for all costs and charges associated with the transportation and delivery of natural gas to the delivery point, *i.e.* the international boundary. MCV is responsible for all costs and charges associated with transportation from the delivery point as well as any tax liability.

V. THE REQUESTED AUTHORIZATION IS IN THE PUBLIC INTEREST

DOE/FE has concluded that pursuant to Section 3(c) of the Natural Gas Act, as amended, 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. Because this request for long-term authorization would cover importation of natural gas from Canada, with which the United States has a free trade agreement, the requested authorization is in the public interest.

IV. ENVIRONMENTAL IMPACT

No new facilities have been or will be constructed as a result of the Agreement. Consequently, no environmental impact statement or environmental assessment is required under the National Environmental Policy Act, 42 U.S.C. §

4321, *et seq.* because DOE/FE will not perform a federal action significantly affecting the quality of the human environment by granting this request for authorization. MCV knows of no harmful environmental impact that will result from the authorization sought herein.

V. RELATED MATTERS

MCV knows of no other proceedings pending before the DOE or FERC which are related to the matters contained herein.

VI. REPORTING REQUIREMENTS

MCV is fully committed to complying with all reporting requirements of the DOE/FE for importation of natural gas pursuant to the authorization requested herein. To date, deliveries under the Agreement have been reported under the blanket authorization issued in FE Docket No. 00-84-NG.

VII. MCV'S AUTHORITY

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

VIII. CONCLUSION

MCV believes that this Application for Long-Term Authorization to Import Natural Gas from Canada is consistent with the public interest as set forth in Section 3 of the NGA. Wherefore, MCV respectfully requests that the Department of Energy, Office of Fuels Programs, Fossil Energy issue an Order granting authorization to import natural gas from Canada consistent with the natural gas purchase Agreement between MCV and Husky Oil, provided herewith.

Respectfully submitted,
MIDLAND COGENERATION VENTURE
LIMITED PARTNERSHIP

By: Elisa J. Grammer/EBT
Elisa J. Grammer

LeRoy W. Smith
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Partnership
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Dated August 29, 2002

APPENDIX 1

June 19, 2001
Long-Term Gas Agreement
Between
Midland Cogeneration Venture Limited Partnership
And
Husky Oil Operations Limited

LONG-TERM GAS AGREEMENT

DATED: June 19, 2001

BETWEEN:

HUSKY OIL OPERATIONS LIMITED,
a body corporate continued under the laws of the Province of Nova
Scotia

("Husky" or "Seller")

- and -

**MIDLAND COGENERATION VENTURE LIMITED
PARTNERSHIP,**
a limited partnership organized under the laws of the State of
Michigan

("MCV" or "Buyer")

In this Agreement, Seller and Buyer may also be referred to individually as a "Party" or collectively as "Parties."

1. **Definitions.** The terms used in this Agreement are defined as follows:

- 1.1. "Affiliate" means, as applied to any person, any other person directly or indirectly controlling, controlled by, or under common control with, that person. For the purposes of this definition, "control" (including with correlative meanings, the terms "controlling", "controlled by" and "under common control with"), as applied to any person, means the possession, directly or indirectly, of the power to either: (i) elect a majority of the directors of that person; or (ii) direct or cause the direction of the management or policies of that person, whether through the ownership of securities or partnership or other ownership interests, by contract or otherwise.
- 1.2. "Btu" shall mean one (1) British Thermal Unit, the amount of heat required to raise the temperature of one (1) pound of water one (1) degree Fahrenheit at sixty (60) degrees Fahrenheit at a constant pressure of 14.73 pounds per square inch absolute. Btu is measured on a dry basis.
- 1.3. "Business Day" shall mean any calendar day, exclusive of Saturdays, Sundays, and statutory holidays under the laws of the Province of Alberta,

and exclusive of any day that the Federal Reserve Bank in the United States is not open for business.

- 1.4. **"Canadian Regulatory Authorities"** shall mean each provincial or local governmental agency or other authority in the Province of Alberta that has jurisdiction over the sale and removal from Alberta of gas to be sold and purchased hereunder, including the Alberta Energy and Utilities Board and the provincial Lieutenant Governor General-in-Council and each federal authority in Canada that has jurisdiction over the export from Canada of gas to be sold and purchased hereunder, including the National Energy Board and the federal Governor General-in-Council.
- 1.5. **"Contract Price"** is defined in Section 4 (Contract Price).
- 1.6. **"Day"** means a period of 24 consecutive hours beginning at 0900hours Central Time on one day and ending at 0900 hours Central Time on the following day and the reference for any day shall be the calendar date upon which the 24-hour period shall commence.
- 1.7. **"Delivery Period"** means the period of time commencing on **November 1, 2001** and ending on **October 31, 2004**.
- 1.8. **"DCQ"** means the daily quantity of gas to be delivered under this Agreement, as set forth in Section 3 (Daily Contract Quantity).
- 1.9. **"Delivery Point"** shall mean the point on the international boundary of Canada and the United States of America near Emerson, Manitoba where the Delivering Pipeline and the Receiving Pipeline are interconnected.
- 1.10. **"Delivering Pipeline"** shall mean the pipeline system referred to as the **"TCPL Mainline"** and which is owned and operated by TransCanada Pipelines Limited.
- 1.11. **"Effective Date"** means the date and year first above written.
- 1.12. **"Firm"** means a transaction in which a Party may interrupt its performance without liability only to the extent that such performance is excused by the other Party's failure to perform obligations, or as a result of an event of Force Majeure.
- 1.13. **"Force Majeure"** means any occurrence which is not within the reasonable control of or the result of the gross negligence of the Party claiming Force Majeure (the **"Affected Party"**), which in whole or in part, prevents the Affected Party from performing its obligations under this Agreement, and includes, without limiting the generality of the foregoing, the following specific occurrences: acts of God, strikes, lockouts, acts of the public enemy, wars, sabotage, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, arrests and restraints, civil disturbances, explosions, breakages or accident to machinery or lines of pipe, hydrate obstructions, line freeze-ups, well blowouts and craterings, freezing of wells, curtailments of or declarations of force majeure relating to firm transportation service by the Delivering Pipeline or the Receiving Pipeline that applies to all of that pipeline's firm

customers at the Delivery Point, or acts or orders of any federal, provincial, state, or local government, regulatory authority, or court which prevents or prohibits performance of this Agreement (other than acts or orders caused to be enacted or ordered as a result of an act or omission of the Affected Party), but shall exclude lack of market; the curtailment or stoppage of interruptible transportation; the inability of either Party to meet financial obligations; lack of firm transportation or lack of gas supply, other than for the reasons described above.

- 1.14. "gas" shall mean any mixture of hydrocarbon and non-combustible gases in a gaseous form consisting primarily of methane and includes natural gas produced from gas wells (gas well gas), gas that immediately prior to being produced from a reservoir is in solution with crude oil or dispersed in an intimate association with crude oil or in contact with crude oil across a gas-oil contact (casinghead gas), or residue gas resulting from the processing of either or both casinghead gas and gas well gas.
- 1.15. "GST" means the Canadian federal Goods and Services Tax, as more particularly set forth in Section 4.6 (GST).
- 1.16. "Interest Rate" means a rate of interest per annum equal to the Prime Rate plus 2% calculated and compounded monthly; provided that, the Interest Rate shall never exceed the maximum interest rate permitted by law.
- 1.17. "MMBtu" shall mean one million Btu's. One MMBtu of Gas at a standard condition of 14.73 pounds per square inch absolute and 60 degrees Fahrenheit shall be considered equivalent to 1.055056 GJ of Gas at a standard condition of 101.325 kilopascals and 15 degrees Celsius.
- 1.18. "NYMEX Price" shall mean the price at the close of a trading day of the New York Mercantile Exchange Henry Hub natural gas futures contract, expressed in U.S. dollars per MMBtu.
- 1.19. "Prime Rate" shall mean the fluctuating per annum lending rate of interest from time to time published by CITIBANK, N.A., or its successor, for its best commercial customers.
- 1.20. "Receiving Pipeline" shall mean the Great Lakes Gas Transmission Limited Partnership pipeline system.
- 1.21. "Spot Price" means the price reported for the Day of such delivery in *Gas Daily* under the heading "Daily Price Survey Daily Midpoint" at Emerson, Manitoba or the geographic location closest in proximity to the Delivery Point, as adjusted (up or down, as the case may be) by any incremental transportation costs or savings between the location of the applicable listing and the Delivery Point; provided that, if there is no single published price for such location, but there is a published range of daily prices, then the Spot Price shall be the average of the highest and lowest prices. Gas purchased and sold for gas flow on any day for which "Gas Daily" does not publish a price shall be determined by the arithmetic average of the price reported in the *Gas Daily* on the trading day immediately preceding and the trading day immediately following such a day.

- 1.22. **"Term"** means period of time during which this Agreement is in full force and effect, as more particularly set forth in Section 5.1 (Term).
- 1.23. **"Transportation Charges"** means imbalance charges, penalties or additional transportation costs or expenses assessed by a transporter as a result of the failure by a Party to take or deliver the DCQ on any Day.
- 1.24. **"United States Regulatory Authorities"** means each federal, state and local governmental agency or other authority in the United States that has jurisdiction over the sale or import of gas into the United States, transportation of gas on facilities of Buyer's transporters, construction or operation of Buyer's Plant or sale of electricity therefrom, or other related matter, including the Office of Fossil Energy of the United States Department of Energy, the Federal Energy Regulatory Commission, and the Michigan Public Service Commission.

2. Conditions Precedent and Subsequent.

- 2.1. **Canadian Authorizations.** Seller is the holder of Export Order G0-85-2000 from the National Energy Board which expires on **April 30, 2003** (collectively, the **"Canadian Authorizations"**). The Canadian Authorizations allow the transactions contemplated by the Agreement, including the sale and removal of gas from the province in which the gas is produced, and the export of gas from Canada.
- 2.2. **U.S. Authorizations.** Buyer is the holder of Department of Energy Import Authorization DOE/FE Order No. 1651, which expires two years from the date of the first import delivery (anticipated to be November 1, 2001) (collectively, the **"U.S. gas from Canada. Authorizations"**). The U.S. Authorizations authorize the transactions contemplated by the Agreement, including the purchase and import of gas from Canada, subject to the necessity to obtain further authorization for any import deliveries after the expiration of the current two-year authorization period referenced immediately above.
- 2.3. **Seller's Conditions Precedent.** This Agreement shall be subject to the satisfaction of the following express conditions precedent on or before **August 1, 2001**, which are inserted for the sole benefit of Seller:
 - 2.3.1. Buyer shall enter into agreements which are necessary to transport the gas to be purchased hereunder from the Delivery Point on a Firm basis, including, transportation agreements with United States transporters; and
 - 2.3.2. Buyer shall deliver to Seller copies of the certificates, permits, licenses, authorizations and agreements enumerated in Section 2.2 (U.S. Authorizations);
- 2.4. **Seller's Condition Date.** In the event the Seller's Conditions Precedent are not duly satisfied by Buyer, or expressly waived in writing by Seller, on or before **August 1, 2001**, this Agreement shall be terminated in its entirety and shall be null and void and of no further force or effect.

- 2.5. **Buyer's Conditions Precedent.** This Agreement shall be subject to the satisfaction of the following express conditions precedent on or before **August 1, 2001**, which are inserted for the sole benefit of Buyer:
- 2.5.1. Seller shall enter into agreements which are necessary to transport the gas to be purchased hereunder to the Delivery Point on a Firm basis, including transportation agreements with Canadian transporters; and
- 2.5.2. Seller shall deliver to Buyer copies of the certificates, permits, licenses, authorizations and agreements enumerated in Section 2.1 (Canadian Authorizations);
- (the "Buyer's Conditions Precedent").
- 2.6. **Buyer's Condition Date.** In the event the Buyer's Conditions Precedent are not duly satisfied by Seller, or expressly waived in writing by Buyer, on or before **August 1, 2001**, this Agreement shall be terminated in its entirety and shall be null and void and of no further force or effect.
- 2.7. **2003 Condition Subsequent.** This Agreement shall be subject to the satisfaction of the following express conditions subsequent on or before **May 1, 2003**:
- 2.7.1. Buyer shall use all reasonable efforts, by **March 1, 2003**, to obtain all necessary certificates, permits, licenses and authorizations from United States Regulatory Authorities to permit Buyer to complete the transactions contemplated by this Agreement for the period commencing **May 1, 2003** until the last day of the Delivery Period ("**Seller's Condition Subsequent**"), including but not limited to the necessity for additional authorization from the Department of Energy for import deliveries subsequent to the current two-year authorization period described in section 2.2 above;
- 2.7.2. Seller shall use all reasonable efforts, by **March 1, 2003**, to obtain all necessary certificates, permits, licenses and authorizations from Canadian Regulatory Authorities to permit Seller to complete the transactions contemplated by this Agreement for the period commencing **May 1, 2003** until the last day of the Delivery Period, ("**Buyer's Condition Subsequent**");
- 2.7.3. Buyer and Seller shall each deliver to the other Party copies of their respective foregoing certificates, permits, licenses, authorizations and agreements; and
- 2.7.4. Only Buyer may waive Buyer's Condition Subsequent, and the Seller's document delivery obligation in Section 2.7.3, and only Seller may waive Seller's Condition Subsequent and the Buyer's document delivery obligation in Section 2.7.3, as provided above;
- (2.7.1, 2.7.2 and 2.7.3 are collectively referred to as the "**2003 Conditions Subsequent**").

- 2.8. **2003 Condition Date.** In the event the 2003 Conditions Subsequent have not been duly satisfied, or expressly waived in writing by Seller or Buyer, as the case may be, on or before **March 1, 2003**, this Agreement shall terminate at, and be null and void and of no further force or effect as of, 0900 hours Central Time on **May 1, 2003**, save and except that each Party shall be liable to the other for any costs, damages or claims whatsoever arising prior to such termination, but not by reason of the failure of a party to satisfy a 2003 Condition Subsequent.
3. **Daily Contract Quantity.** On each Day of the Delivery Period, Seller shall deliver and sell, or cause to be delivered, and Buyer shall receive and purchase, or cause to be received, **10,000 MMBtu** of gas (the "DCQ"), on a Firm basis, at the Delivery Point, in accordance with the terms and conditions of this Agreement.
4. **Contract Price.**
- 4.1. **"Contract Price"** means the price (expressed in U.S. dollars per MMBtu) for all quantities of gas delivered at the Delivery Point during a calendar month of the Delivery Period, which shall be the average of the NYMEX Price on the last 3 trading days of the NYMEX contract for the applicable delivery month minus **U.S. \$0.10/MMBtu**.
- 4.2. **Contract Price.** Buyer shall pay Seller the Contract Price for all quantities of gas delivered in accordance with this contract to the Delivery Point during the Delivery Period.
- 4.3. **Transportation Costs.** Seller shall be responsible for all costs and charges imposed or associated with transportation and delivery of DCQ to the Delivery Point. Buyer shall be responsible for all costs and charges imposed or associated with the receipt of DCQ at, and the transportation from, the Delivery Point.
- 4.4. **Seller's Liability for Taxes.** The Contract Price includes full reimbursement to the Seller for (and Seller is liable for and shall pay or cause to be paid, or reimburse Buyer if Buyer shall have paid) all royalties, property and production taxes and all business transfer, sales, value added and other similar taxes, levies, assessments and charges (each a "tax") that are validly exigible on the gas delivered hereunder prior to the delivery thereof at the Delivery Point whether or not any such tax is in effect as of the date hereof or is imposed thereafter, including any increase in any existing tax or any new tax.
- 4.5. **Buyer's Liability for Taxes.** The Contract Price does not include (and Buyer is liable for and shall pay or cause to be paid, or reimburse Seller if Seller shall have paid), all taxes that are validly exigible on the gas delivered hereunder after the delivery thereof at the Delivery Point. Any tax which is imposed at the point of sale of gas at the Delivery Point shall be borne by the Party which is intended to bear the incidence of such tax under the legislation establishing such tax.

- 4.6. **GST.** The Contract Price does not include any amounts payable by Buyer for GST. The transactions contemplated in this Agreement relate solely to exports from Canada and accordingly should not be subject to GST. Each Party agrees to provide to the other Party, or to such third party as may be directed by the other Party, any authorizations, declarations, certificates and documents evidencing the export nature of the transactions pursuant to this Agreement, as may be requested under this Agreement, or as may be required by law in relation to GST, so that the sale of gas under this Agreement may be zero-rated for GST purposes.

5. **Term.**

- 5.1. **Term.** This Agreement shall be in full force and effect and continue, except as otherwise provided for herein, as and from the Effective Date until final settlement between the Parties of the amounts owing under this Agreement ("Term").
- 5.2. **Delivery Period.** Deliveries and purchases of gas shall commence on November 1, 2001 and continue through October 31, 2004.

6. **Measurement, Quality and Pressure.**

- 6.1. **Measurement Standards.** All gas to be delivered under this Agreement shall be measured as to volume, quality, heating value and energy content by the Receiving Pipeline in accordance with the standards of measurement and meter testing procedures utilized by the Receiving Pipeline from time to time. These measurements and all other volume, quality, heating value and energy measurements as made by the Receiving Pipeline, or as may be adjusted by the Receiving Pipeline from time to time, shall be final and binding upon the Parties and utilized for all purposes of this Agreement.
- 6.2. **Delivery Quality.** The quality, heating value, pressure and temperature of gas sold and delivered by Seller at the Delivery Point must meet the requirements of the Receiving Pipeline's tariff.
- 6.3. **Non-Conforming Gas.** Buyer shall not be obligated to purchase and may reject without notice any gas not meeting the requirements of the Receiving Pipeline's tariff ("Non-Conforming Gas"). Non-Conforming Gas that has been delivered by Seller and has been rejected by Buyer pursuant to this clause may cause a failure to deliver under Section 3 (Daily Contract Quantity), in which case the provisions of Section 12 (Remedies for Daily Deficiency) shall apply for any such failure. In the event the Receiving Pipeline will accept Non-Conforming Gas subject to the requirement to pay penalties, Buyer shall have the option to accept or reject Non-Conforming Gas and to the extent that Non-Conforming Gas is accepted by Buyer, any penalties levied by the Receiving Pipeline on Buyer in consequence of their acceptance of Non-Conforming Gas shall be deducted from the Contract Price to be paid Seller hereunder, or otherwise paid by Seller, so that the responsibility for such penalty burdens is borne entirely by Seller.

- 6.4. **Delivery in a Common Stream.** The Parties each recognize that the gas purchased by Buyer under this Agreement shall be from a commingled stream of gas and shall be received for Buyer's account at the Delivery Point.
7. **Deliveries.**
- 7.1. **Delivery Point.** Seller shall not use any other point to deliver gas other than the Delivery Point, without Buyer's written consent, which Buyer may grant or withhold in its sole discretion.
- 7.2. **Procedures for delivery.** To the extent that the procedures for the delivery of gas set forth herein conflict with the rules and tariffs of the Receiving Pipeline, the Receiving Pipeline's rules and tariffs will prevail, and the Parties shall cooperate fully with each other in complying with such rules and tariffs.
8. **Billings, Payments and Audit.**
- 8.1. **MMBtu's.** The unit of measurement of gas for purposes of billing shall be MMBtu's.
- 8.2. **Invoicing.** Seller will invoice Buyer on or before the 15th day of each calendar month for the quantity of gas delivered in the preceding calendar month. If the actual quantity is not available to Seller prior to such day, Seller may use estimates and all necessary adjustments shall be made on the next invoice rendered after the actual quantity has been made available to Seller.
- 8.3. **Payment.** Unless otherwise agreed as to mode of payment, Buyer will pay Seller by wire funds transfer to the account designated by Seller on or before the 25th day of the month in which Seller's invoice is rendered. If the 25th day is not a Business Day, Buyer will make payment on or before the Business Day that precedes the 25th day. If Seller invoices Buyer after the 15th day of the month, Buyer will have additional days to pay the invoice equivalent to the number of days after the 15th day of the month that Seller invoices Buyer.
- 8.4. **Notice of disputes.** Neither Party shall be entitled to dispute the quantity of gas delivered in any calendar month or any amount paid or payable therefore, unless the dispute is raised by notice to the other Party within TWO (2) YEARS after the end of the calendar month in question.
- 8.5. **Monies payable by Seller to Buyer.** For monies due to Buyer from Seller, if any, the above provisions shall apply *mutatis mutandis*.
9. **Title, Warranty and Risk Responsibility.**
- 9.1. **Seller's Indemnity.** Seller represents and warrants that it has the right to sell the gas it delivers to Buyer and that the gas is free and clear of any liens, encumbrances, or adverse claims of any kind or nature whatsoever. Seller shall indemnify and hold harmless Buyer for all claims, proceedings,

losses, costs, and damages arising out of a breach of this representation and warranty including, but not limited to any associated legal fees and costs.

9.2. **Transfer of Title.** Title to and risk of loss of the gas will transfer from Seller to Buyer upon delivery of the gas at the Delivery Point.

9.3. **Control and Possession.** As between the Parties hereto, Seller shall be, or shall be deemed to be, in exclusive control and possession of the gas sold hereunder and responsible for any loss, damage, or injury caused thereby until the gas is delivered at the Delivery Point, at which time Buyer shall be, or shall be deemed to be, in exclusive control and possession of such gas and responsible for any loss, damage, or injury caused thereby, except as otherwise provided in Section 9.1 (Seller's Indemnity).

10. Force Majeure.

10.1. **Immediate Notice.** If either Party is rendered unable to perform an obligation in this Agreement due to Force Majeure, that Party must give prompt notice to the other Party by telephone or facsimile, followed promptly by a written notice to the other containing full particulars of the Force Majeure.

10.2. **Suspension of Obligations.** If such notice is given, the obligations of both Parties, except for the payment of money then due, will be suspended, but only to the extent necessitated by the event of Force Majeure, and neither Party shall be deemed to have failed in such obligations to the other during such occurrence or event.

10.3. **Strikes, Lockouts.** Notwithstanding anything to the contrary herein, the Parties agree that the settlement of strikes, lockouts, or other industrial disturbances shall be entirely within the discretion of the Party experiencing such disturbance.

10.4. **Curtailment of Interruptible Sales and Purchases.** In the event of Force Majeure, the Party claiming relief must first curtail all affected interruptible sales or purchases on the Receiving Pipeline or the Delivering Pipeline before suspending deliveries or takes under this Agreement and must use all reasonable efforts to allocate its available gas supply or markets pro rata among all Firm sales and purchases on the Receiving Pipeline or the Delivering Pipeline, as applicable, including this Agreement.

10.5. **Attempt to Cure.** The Party claiming Force Majeure shall diligently and continuously attempt to cure and use all commercially reasonable efforts to resume performance and shall promptly notify the other Party when the event of Force Majeure ends.

10.6. **Partial Force Majeure.** In the event of Force Majeure that prevents deliveries or receipts to the Delivering Pipeline or the Receiving Pipeline on a partial basis at the Delivery Point, then such Force Majeure shall excuse only that portion of the Affected Party's delivery or receipt obligation under this Agreement.

10.7. **No Extension.** Force Majeure will not extend the Term of this Agreement.

11. **Remedies for Failure to Pay.**

- 11.1. **Suspension.** Except as otherwise provided in Section 11.3 (Interest on Unpaid Amounts), if Buyer fails to pay when due any amount owing to Seller under this Agreement, and such failure to pay continues for a period of **THREE (3) BUSINESS DAYS** after the date that payment was due, then Seller may upon providing at least **TWO (2) BUSINESS DAYS** notice to Buyer of its intention to do so, suspend any further deliveries of gas hereunder until such amount (including interest at the Interest Rate) is paid in full, and during such period of suspension Seller shall be relieved of its obligation to deliver gas to Buyer.
- 11.2. **Termination.** Seller may terminate this Agreement for Buyer's failure to pay, in accordance with Section 17 (Other Acts of Default).
- 11.3. **Interest on Unpaid Amounts.** If Buyer fails to make any payment pursuant to any obligation or indemnity hereunder or any portion thereof to Seller when such amount is due, interest thereon shall accrue from the date that payment was due until the date payment is made at the Interest Rate and shall be payable both before and after judgment. All such interest shall be payable by Buyer to Seller on demand of Seller to Buyer. Seller shall also be entitled to set off such amounts against any amounts due to Buyer hereunder.
- 11.4. **Payment of Disputed Monies.** Notwithstanding the provisions of Section 11.1 (Suspension), if Buyer shall in good faith dispute all or any portion of the amount payable and (1) Buyer pays to Seller such portion of the amount as Buyer concedes to be correct and thereafter, within **FOURTEEN (14) DAYS** of a notice of demand for payment made upon Buyer by Seller, and (2) Buyer either pays the disputed amount into an interest bearing escrow account or trust account, or furnishes or causes to be furnished a letter of credit in the amount of the disputed amount or provides other security which is satisfactory to Seller guaranteeing payment to Seller of the amount which may be ultimately found due, either by agreement, an arbitration decision or a judgment of the courts, then Seller shall not be entitled to suspend further delivery of gas because of such non-payment unless and until a default occurs in relation to the conditions of any such escrow, trust arrangement, letter of credit or other security instrument. When any such dispute is resolved, Buyer shall pay (or Seller shall refund, as the case may be) the amount determined to be correct and payable within **TEN (10) DAYS** with interest calculated at the Interest Rate as and from the date such monies were originally payable or paid, as the case may be.
- 11.5. **Other Remedies.** Any right to suspend deliveries or purchases of gas and terminate this Agreement will be in addition to and not in substitution for any other remedy, as provided herein, which Seller or Buyer, as the case may be, has either at law or in equity. Neither Party shall be liable to the other

Party whatsoever for any losses or damages suffered by a Party as a consequence of any such suspension.

- 11.6. **Monies payable by Seller to Buyer.** For monies due to Buyer from Seller, if any, the above provisions shall apply *mutadis mutandis*.

12. Remedies for Daily Deficiency.

- 12.1. **Buyer's Remedy for Seller's Failure to Deliver.** Seller's failure to deliver 100 percent of the DCQ on any Day during the Delivery Period for any reason other than Force Majeure shall obligate Seller to pay Buyer as non-refundable liquidated damages an amount equal to the product of the positive difference between the Spot Price minus the Contract Price, if any, multiplied by the positive difference between:
- 12.1.1. the DCQ (less any quantities not delivered by reason of Force Majeure or Buyer's failure to take); minus
- 12.1.2. the quantity of gas delivered by Seller on that Day.
- 12.2. **Seller's Remedy for Buyer's Failure to Take.** Buyer's failure to take 100 percent of the DCQ on any Day during the Delivery Period for any reason other than Force Majeure shall obligate Buyer to pay Seller as non-refundable liquidated damages an amount equal to the product of the positive difference between the Contract Price minus the Spot Price, if any, multiplied by the positive difference between:
- 12.2.1. the DCQ (less any quantities not taken by reason of Force Majeure or Seller's failure to deliver); minus
- 12.2.2. the quantity of gas taken by Buyer on that Day.
- 12.3. **Liquidated damages.** The amounts payable as liquidated damages under Section 12.1 and 12.2:
- 12.3.1. are intended to compensate the non-defaulting Party for lost revenue, administrative expenses and other costs associated with the other Party's failure to deliver or take; and
- 12.3.2. are genuine pre-estimates of the loss and damage, which would be sustained by a non-defaulting Party, and shall not under any circumstances be construed as a penalty.
- 12.4. **Payments Due.** All amounts payable under this Section must be paid forthwith upon receipt of written notice from the non-defaulting Party confirming the amounts payable. The Party obliged to pay such amounts shall have a right to dispute payment in accordance with the provisions of Section 11.4 (Payment of Disputed Monies) or 11.6 (Monies payable by Seller to Buyer) as the case may be.
- 12.5. **Set-off and counterclaim.** Each Party reserves for itself all rights to set-off or counterclaim, and other remedies and defenses that such Party is or may be entitled to arising solely from or out of this Agreement. For further

certainty, all such rights shall relate to amounts owing under this Agreement only.

13. **Transportation Charges.** Each Party will be liable to reimburse the other Party for all Transportation Charges assessed by any transporting pipeline which result from the defaulting Party's failure to perform its obligations under this Agreement. The non-defaulting Party shall invoice the defaulting Party and the defaulting Party shall pay the invoiced amount within **THREE (3) BUSINESS DAYS** of receipt of the invoice.

14. **Creditworthiness.**

- 14.1 **Midland Funding Corp I.** Seller shall have the right to re-examine the creditworthiness of Buyer and request additional assurances of Buyer's ability to perform its obligations under this Agreement at any time; provided, however, that Seller shall extend credit to Buyer so long as Buyer maintains a cash reserve greater than \$137 million and, except as provided below, a rating of at least Baa3 by Moody's Investor Service or BBB- by Standard & Poor's for senior lease obligation bonds expiring July 23, 2002 as issued by Midland Funding Corp I. Upon extinguishment of the aforesaid senior lease obligation bonds, the aforesaid rating test shall be applied to the then outstanding most senior rated debt of Midland Funding Corp. I.
- 14.2 **Letter of Credit** In the event these financial requirements are not maintained during the Term, Seller shall have the right to request additional assurances in the form of an irrevocable standby letter of credit in an amount covering **TWO (2) MONTHS** worth of purchases and issued by a U.S. commercial bank or foreign bank with a U.S. office having a credit rating of at least "A-" from Standard & Poor's or "A3" from Moody's. Furthermore, Seller may suspend deliveries of gas if such security is not received within **TEN (10) BUSINESS DAYS** after the delivery to Buyer of written notice requesting additional assurances.
- 14.3 **Husky Oil Operations Limited.** Husky Energy Inc., on behalf of Seller, shall submit a letter to Buyer in substantially the form as EXHIBIT A attached hereto. Buyer may request and Seller shall provide not more than once each year, a replacement for said letter which is substantially in the form set forth in EXHIBIT A.
- 14.4 **Guaranty.** In the event the senior unsecured debt of Husky Energy Inc. should have a credit rating of lower than Baa2 by Moody's Investor Service or BBB- by Standard & Poor's, or Seller does not provide Buyer with a letter in accordance with Section 14.3, Buyer shall have the right to request sufficient security in the form and for the term reasonably specified by Buyer. Furthermore, Seller shall provide such security to Buyer within **TEN (10) BUSINESS DAYS** after the delivery to Seller of written notice of any such request.

15. Representations and Warranties.

- 15.1. **Husky Oil Operations Limited.** Seller hereby covenants, represents, and warrants to Buyer that Seller is a body corporate under the laws of the Province of Nova Scotia; that the transactions contemplated by this Agreement have been duly authorized by all necessary corporate action; and that this Agreement is enforceable against Seller in accordance with its terms.
- 15.2. **Midland Cogeneration Venture Limited Partnership.** Buyer hereby covenants, represents, and warrants to Seller that the Midland Cogeneration Venture Limited Partnership is a limited partnership duly organized, validly existing, and in good standing under the laws of the State of Michigan; that the transactions contemplated by this Agreement have been duly authorized by all necessary partnership action; and that this Agreement is enforceable against Buyer in accordance with its terms.
- 15.3. **Corporate Authority.** Buyer represents and warrants that it has full and complete authority to enter into and to perform this Agreement. Seller represents and warrants that it has full and complete authority to enter into and to perform this Agreement.

16. Right to Terminate Agreement.

- 16.1. **Buyer's Right to Terminate.** In addition to any other remedy of Buyer under law or provided under other provisions of this Agreement, Buyer shall have the right at its election to terminate this Agreement, if Seller fails to deliver to the Delivery Point:
- 16.1.1. at least **NINETY (90) PERCENT** of the DCQ on each of the Days in a delivery period of **THIRTY (30)** consecutive days; or
- 16.1.2. an aggregate volume of gas, during a delivery period of no less than **SIXTY (60) DAYS**, which is less than **NINETY (90) PERCENT** of the cumulative DCQ for the delivery period:
- (each such delivery period shall be referred to as a "Default Period"), unless such failure is caused by:
- 16.1.3. Force Majeure;
- 16.1.4. Buyer's failure to take;
- 16.1.5. a suspension of gas deliveries by Seller which are permitted under this Agreement; or
- 16.1.6. a failure by Buyer to pay any undisputed amounts.
- 16.2. **Seller's Right to Terminate.** In addition to any other remedy of Seller under law or provided under other provisions of this Agreement, Seller shall have the right at its election to terminate this Agreement, if Buyer fails to take at the Delivery Point:
- 16.2.1. at least **NINETY (90) PERCENT** of the DCQ on each of the Days in a delivery period of **THIRTY (30)** consecutive days; or

16.2.2. an aggregate volume of gas, during a delivery period of no less than **SIXTY (60) DAYS**, which is less than **NINETY (90) PERCENT** of the cumulative DCQ for the delivery period;

(each such delivery period shall be referred to as a "Default Period"),

unless such failure is caused by:

16.2.3. Force Majeure;

16.2.4. Seller's failure to deliver; or

16.2.5. a failure by Seller to pay any undisputed amounts.

16.3. **Notice of Termination.** A Party may exercise its right to terminate the Agreement in accordance with this provision by delivering written notice of termination to the defaulting Party within **FIFTEEN (15) DAYS** of the last day of the Default Period. A written notice of termination shall set forth the particulars of the breach, including the:

16.3.1. commencement date of the Default Period;

16.3.2. volume of gas taken or delivered on each Day of the Default Period;

16.3.3. aggregate volume of gas taken or delivered during the Default Period;

16.3.4. effective date of termination, which in any event shall be no sooner than **TEN (10) DAYS** and no later than **THIRTY (30) DAYS** following the delivery of the notice of termination.

17. Other Acts of Default.

17.1. **Acts of Default.** In this Agreement, a Party shall be deemed to have committed an "Act of Default" if:

17.1.1. **Payment default.** In respect of Buyer, if Buyer fails to pay monies when due, any payment required under this Agreement, where such failure is not remedied within the time periods set forth in Section 11 (Remedies for Failure to Pay), and further fails to pay such monies and any accrued interest at the Interest Rate within **FIFTEEN (15) DAYS** from the original date such monies were payable, provided the payment is not the subject of a dispute as described in Section 11.4 (Payment of Disputed Monies), and in respect to Seller, if Seller fails to pay monies when due, any payment required under this Agreement, where such failure is not remedied within the time periods set forth in Section 11 (Remedies for Failure to Pay), and further fails to pay such monies and any accrued interest at the Interest Rate within **FIFTEEN (15) DAYS** from the original date such monies were payable, provided the payment is not the subject of a dispute as described in Section 11.4 (Payment of Disputed Monies);

- 17.1.2. **Financial assurances.** In respect of Buyer, the failure by Buyer to provide the necessary financial assurances to Seller pursuant to Section 14.2 (Letter of Credit) within **TEN (10) BUSINESS DAYS** of a demand therefore, and in respect to Seller, the failure by Seller to provide the necessary financial assurances to Buyer pursuant to Section 14.4 (Guaranty) within **TEN 10 BUSINESS DAYS** of a demand therefore;
- 17.1.3. **Material breach.** The Party commits a material breach of this Agreement (other than its obligation to make any payment or obligation which are otherwise specifically covered in this Section as a separate Act of Default), where such breach is not excused by the applicable provisions of the Agreement and not cured within **FIVE (5) BUSINESS DAYS** after written notice thereof to the Defaulting Party;
- 17.1.4. **Receiver or trustee.** The entry by a court of competent jurisdiction of a decree or order appointing a receiver, custodian, assignee, trustee, liquidator, sequestrator or other similar official of a Party or of any substantial part of the property of a Party, or ordering the winding up or liquidation of its affairs, and the continuance of any such decree or order which is not stayed on final appeal or otherwise, or the commencement by a Party of a voluntary case under the bankruptcy laws, or under any other bankruptcy or insolvency law, including proceedings under any legislation seeking reorganization, liquidation, arrangement, adjustment or composition of such Party under the bankruptcy laws or any similar statute;
- 17.1.5. **Assignment for the benefit of creditors.** The making by a Party of an assignment for the benefit of creditors, or the failure of a Party generally to pay its debts as they become due, or the consenting by a Party to the appointment of or taking possession by a receiver, assignee, custodian, trustee, liquidator, sequestrator or other similar official of it or of any substantial part of its property, or the taking of corporate action by a Party in furtherance of any such action; or
- 17.1.6. **Dissolution or wind-up.** The filing by a Party for dissolution or wind-up under the laws of the jurisdiction of its incorporation or the entering of a final order dissolving a party by any court of competent jurisdiction.
- 17.2. **Notice of termination.** If a Party commits an Act of Default under Sections 17.1.1, 17.1.2 or 17.1.3, the non-defaulting Party may terminate the Agreement by delivering written notice of termination to the defaulting Party setting forth the particulars of the breach and the effective date of termination, which in any event shall be no sooner than **TEN (10) DAYS** and no later than **THIRTY (30) DAYS** following the delivery of the notice of termination. If the defaulting Party remedies the breach within **FIVE (5)**

DAYS of the delivery of the notice of termination, the notice of termination shall be of no further force or effect, and this Agreement shall remain in full force and effect notwithstanding such notice. If a Party commits an Act of Default under Sections 17.1.4, 17.1.5 or 17.1.6, the non-Defaulting Party may terminate this Agreement on written notice to the Defaulting Party, which termination shall be effective on either the date on which the Act of Default occurred, or the date of delivery of the notice, at the non-Defaulting Party's option.

18. Assignment

- 18.1. Assignment.** Except as otherwise provided in this Section, neither Party shall have the right to assign this Agreement or any part thereof, or any of its rights, benefits, duties and obligations hereunder without the prior written consent of the other Party which consent shall not be unreasonably withheld.
- 18.2. Assignment without consent.** Either Party may assign its interest under this Agreement without the consent of the other Party to an Affiliate whose performance the assignor guarantees, or to any person which may succeed by purchase, merger, consolidation or other transfer to substantially all of the assignor's assets. In the event of any such assignment, such successor shall be entitled to the rights and shall be subject to the obligations of its predecessor.
- 18.3. Successors and permitted assignees.** The terms, covenants and conditions hereof shall be binding on the Parties hereto and on their successors and permitted assignees.
- 18.4. Dow Chemical Company Gas Backup Agreement.** Seller acknowledges that pursuant to a certain Gas Backup Agreement among Consumers Energy Company (previously Consumers Power Company), The Dow Chemical Company ("Dow") and the Midland Cogeneration Venture Limited Partnership dated January 27, 1987, Buyer may be required to make an assignment to Dow of certain rights under this Agreement. Seller specifically agrees to accept such assignments, if any, made by Buyer to Dow in accordance with the aforementioned Gas Backup Agreement; provided, however, that such assignment shall not relieve Buyer of its obligations under this Agreement absent Seller's express written consent to release Buyer of such liability.
- 18.5. Financial encumbrances.** Nothing herein contained shall prevent or restrict either Party from pledging, granting a security interest in, or assigning as collateral all or any portion of such Party's interest to secure any debt or obligation of such Party under any mortgage, deed of trust, security agreement, or similar instrument.

19. Replacement of a Published Index Price.

- 19.1. **Replacement Index.** If the NYMEX Price, the Spot Price, or any other published index price on which the Contract Price may be based ceases to exist, then the Parties agree to promptly and in good faith negotiate a mutually satisfactory replacement index (a "Replacement Index Price").
- 19.2. **Failure to Agree on a Replacement Index.** If the Parties cannot agree on a substitute methodology or publication by the end of the first month for which the index price cannot be determined then each of the Parties shall in good faith prepare a list of up to **FIVE (5)** alternative published reference postings or prices representative of prices for gas delivered at the same Delivery Point for a similar Delivery Period and on a Firm basis. Each list shall be set forth in that Party's priority order with the highest priority listed first. Each Party shall submit its list to the other within **TEN (10) DAYS** after the end of the first month for which the index price ceases to exist. The first alternative appearing in Seller's list that also appears in Buyer's list shall constitute the Replacement Index Price. If either Party fails to provide a list of alternatives within the time herein provided such Party's list shall not be considered and the first alternative appearing in the other Party's list shall constitute the Replacement Index Price. If Seller's list and Buyer's list fail to contain a common alternative then an appropriate Replacement Index Price shall be resolved in accordance with Section 20 (Arbitration).
- 19.3. **Retroactive adjustments.** Until a Replacement Index Price is determined the last available index price shall continue in effect and be used hereunder. Upon the determination of a Replacement Index Price, any necessary adjustments will be retroactively adjusted utilizing the Replacement Index Price; provided that, there shall be no adjustment made for any interest.

20. Arbitration.

- 20.1. **Disputes to be settled by arbitration.** If the Parties are unable to resolve a disagreement regarding a Replacement Index Price under Section 19 (Replacement of a Published Index Price), or audits under Section 21 (Audit Rights), such disagreement shall be settled by arbitration. Either Party may then commence arbitration by serving written notice thereof on the other Party.
- 20.2. **Arbitration protocol.** All arbitrable disputes under Section 20.1 shall be forwarded to and resolved by binding arbitration in accordance with the *Arbitration Act* (Alberta), by a single arbitrator in accordance (unless otherwise provided in this Agreement) with the following provisions:
- 20.2.1. the Parties will appoint a mutually acceptable arbitrator within **FIFTEEN (15) DAYS** of delivery of a notice of arbitration. If the Parties cannot agree on the appointment of an arbitrator in such period, then either Party may immediately apply to the Chair of the Alberta Arbitration and Mediation Society to appoint a qualified arbitrator;

- 20.2.2. the Parties consent to the arbitration being conducted in Calgary, Alberta no later than **THIRTY (30) DAYS** following the selection or appointment of an arbitrator, at which the Parties shall present such evidence and witnesses as they may choose, with or without counsel;
 - 20.2.3. the arbitrator shall proceed promptly to determine the matters in issue and shall render his or her decision within **SIXTY (60) DAYS** from the appointment of the arbitrator, except where the Parties agree to a different period of time;
 - 20.2.4. the arbitrator shall have the discretion to shorten or lengthen time frames for actions to be taken by any Party pursuant to this Agreement;
 - 20.2.5. each Party shall bear the expense of prosecuting its own case and the compensation and expenses of the arbitrator and all administration costs of the arbitration including the fees of any arbitral institution shall be paid in equal portions by the Parties;
 - 20.2.6. except as expressly provided in this Agreement, any decision by the arbitrator shall be final, binding and non-appealable. Any such decision may be filed in any court of competent jurisdiction and may be enforced by either Party as a final judgment in such court. There shall be no grounds for appeal of any arbitration award hereunder;
 - 20.2.7. it shall be a condition of the appointment of the arbitrator that such arbitrator shall maintain in strict confidence all documents, the transcripts of the proceedings and other materials and all information disclosed by or on behalf of the Parties and shall not use the same or allow the same to be used for any purpose collateral to such arbitration and, at the request of a Party that provided any documents or other printed materials, shall return all originals and any copies of such documents and printed materials. The arbitrator shall be responsible for ensuring that its officers, employees, representatives and consultants comply with the obligation of confidentiality set forth in Section 24 (Confidentiality).
- 20.3. **Injunctive Relief.** At any time following **TEN (10) DAYS** after referral of a dispute to senior management of the Parties, or such longer period as agreed to by the Parties in accordance with Section 20.1 (Disputes to be settled by arbitration), and prior to the determination of the subject matter of the dispute by an arbitrator pursuant to Section 20.2 (Arbitration protocol), a Party may seek any injunctive remedies available at law with respect to the actions of other Party as they relate to the obligations of the other Party under this Agreement.
- 20.4. **Enforcement.** Enforcement of the award may be entered in any court having jurisdiction over the Parties.

21. Audit Rights.

- 21.1. **Right to Audit.** Upon reasonable notice from one Party (the "Auditing Party") to the other Party (the "Audited Party") the Auditing Party shall have the right to audit those accounts, books and records of the Audited Party which specifically relate to this Agreement in order to verify the accuracy of any quantity, volume, charge, computation or amount in any statement delivered pursuant to this Agreement.
- 21.2. **Auditors.** Any such audit shall be conducted on not more than one occasion during any consecutive **TWELVE (12) MONTH** period. Any audit must be commenced by the date which is **TWENTY-FOUR (24) MONTHS** after the end of the calendar year in which the statement was delivered.
- 21.3. **Conduct of Audits.** All audits shall be carried out at the Audited Party's offices during business hours. Any claims of a discrepancy disclosed by such audit shall be made in writing to the Audited Party within **SIX (6) MONTHS** of the Auditing Party's notice of its intention to audit. All expenses related to such audit will be borne by the Auditing Party. The Audited Party shall respond to any claim of a discrepancy within **SIXTY (60) DAYS** of receipt of such claim. Should the Parties not agree to the resolution of any claim of a discrepancy within **SIXTY (60) DAYS** of the Audited Party's response to the claim of the Auditing Party of a discrepancy, then the Auditing Party's claim shall be referred to arbitration and the arbitrator shall conclusively determine the resolution of the Auditing Party's claim of a discrepancy and shall determine whether it is appropriate to allow any claim for interest on the amount of any discrepancy considering whether such discrepancy arose as a result of an error on the part of the Audited Party.

22. Notices.

- 22.1. **Notice.** Every notice, statement, invoice, payment or correspondence required or permitted to be given by one Party to another pursuant to this Agreement (a "notice"), if no particular manner is specified in which it is to be given, must be in writing and delivered or sent to the other Party via a reputable overnight delivery service, hand delivery, or facsimile. Notices delivered by overnight delivery, hand delivery, or facsimile will be considered delivered on the Business Day on which it was received, provided that if the date of delivery is not a Business Day in the recipient province or state, or the time of delivery is not within the hours during which business is normally conducted by the recipient Party, then such notice shall be deemed to have been received at the commencement of business on the next Business Day in the recipient province or state. The addresses of the Parties are provided in Sections 22.2 and 22.3.

22.2. TO SELLER:**Husky Oil Operations Limited**707 - 8th Ave, SW; Box 6525, Station D; Calgary, AB, T2P 3G7

Notices: Attn: Manager, Natural Gas Marketing
Telephone: 403-298-6922 Facsimile: 403-298-6349

Invoices: Attn: Manager, Natural Gas Logistics
Telephone: 403-298-6803 Facsimile: 403-298-6349

Wire Transfer: BANK: Bank of America NT & SA, New York, NY
ACCT: 03-46217 for the account of Husky Oil Operations Limited
ABA: 026009593

22.3. TO BUYER**Midland Cogeneration Venture Limited Partnership**

100 Progress Place; Midland MI 48640

Notices: Attn: Contract Administration
Telephone: 517-633-7852 Facsimile: 517-633-7857

Invoices: Attn: Gas Accounting
Telephone: 517-633-7854 Facsimile: 517-633-7857

Wire Transfer: BANK: U.S. Bank Trust, N.A., Minneapolis, MN
ACCT: 180121167365
ABA: 091000022
DETAILS: MI Clearing 47300196 - FBO MCV 76608640

22.4. Change of address for notice. Either Party may change its address from time to time by giving written notice of the change to the other Party.**23. Miscellaneous.**

23.1. Governing law. Except as specifically provided in the Exhibits hereto, this Agreement shall be governed by the laws of the Province of Alberta and the Parties irrevocably attorn to the jurisdiction of the courts of the Province of Alberta.

23.2. No waiver. Either Party may in its sole discretion waive any provision hereof which is for the benefit or protection of such Party or may waive any breach or default by the other Party; provided that, any such waiver by such Party is in writing. No failure by any Party to insist upon compliance with any term of this Agreement or to enforce any right or seek any remedy upon any default of the other Party shall affect or constitute a waiver of the first Party's right to insist upon such strict compliance, enforce that right or seek that remedy with respect to any prior, contemporaneous, or subsequent default nor shall any custom or practice of the Parties at variance with any provisions of this Agreement affect or constitute a waiver of any Party's right to demand strict compliance with all provisions of this Agreement.

- 23.3. **Currency.** Unless otherwise specified, all references to currency or dollar amounts under this Agreement are deemed to refer to United States dollars.
- 23.4. **Amendments in writing.** This Agreement may be amended only by a written instrument executed by the Parties hereto. Exhibit A appended hereto is incorporated into and is part of this Agreement, by this reference, as fully as though contained in the body of this Agreement.
- 23.5. **Entire Agreement.** This Agreement contains the entire understanding of the Parties with respect to the matters contained in said documents. There are no promises, covenants or undertakings other than those expressly set forth in said documents.
- 23.6. **Conflicts.** Whenever any provision of any exhibit to this Agreement conflicts with any provision in the body of this Agreement, the provisions of the body of this Agreement shall prevail. References herein to an exhibit shall mean a reference to an exhibit of this Agreement. Reference in any exhibit hereto to this Agreement to an agreement shall mean a reference to this Agreement.
- 23.7. **No Recourse to Midland Cogeneration Venture Partner Assets.** Notwithstanding anything to the contrary contained in this Agreement, the liabilities and obligations of Buyer arising out of, or in connection with, this Agreement or any other agreements entered into pursuant hereto shall not be enforced by any action or proceeding wherein damages or any money judgment or specific performance of any covenant in any such document and whether based upon contract, warranty, negligence, indemnity, strict liability or otherwise, shall be sought against the assets of the partners of Buyer, save and except for:
- 23.7.1. assets belonging to the Midland Cogeneration Venture Limited Partnership;
 - 23.7.2. any asset provided as financial assurance under Section 14.2 (Letter of Credit); or
 - 23.7.3. unless a partner(s) executes an express agreement specifically obligating itself to such liabilities and obligations or to the terms of this Agreement.
- Subject to the foregoing, by entering into this Agreement, Seller waives any and all right to sue for, seek or demand any judgment against such partners and their Affiliates, other than Buyer by reason of the performance by Buyer of its obligations under this Agreement or any other agreements entered into pursuant hereto, except to the extent such partners have entered into agreements with the intent of obligating itself individually hereunder or are legally required to be named in any action to be brought against Buyer.
- 23.8. **Electronic Recording.** Without further notice or consent, each Party consents to the electronic recording of telephone conversations between

the Parties. Further, each Party agrees that either Party may use these recordings in its business affairs, as it deems appropriate.

- 23.9. **Headings.** The division of this Agreement into sections, subsections, paragraphs, and sub-paragraphs and the provision of headings for all or any of them are for convenience of reference only and shall not affect the interpretation of this Agreement.
- 23.10. **Singular, gender, et al.** In this Agreement, unless there is something in the subject matter or context inconsistent therewith:
- 23.10.1. words importing the singular shall include the plural and vice versa;
- 23.10.2. words importing gender shall include the masculine, feminine and neuter genders;
- 23.10.3. the term "including" shall be construed to mean, where appropriate, "including without limitation"; and
- 23.10.4. references to any statute shall extend to any orders-in-council or regulations passed under and pursuant thereto, or any amendment or reenactment of such statute, orders-in-council or regulations, or any statute, orders-in-council or regulations substantially in replacement thereof.
- 23.11. **Survival.** The provisions of this Agreement shall survive the termination of this Agreement for so long as is necessary to complete all business transactions, payment obligations or indemnification obligations outstanding between the Parties related to this Agreement. Confidentiality provisions shall survive the termination of this Agreement for a period of **ONE (1) YEAR** after the date of termination.
- 23.12. **Consequential damages.** Unless expressly provided elsewhere in this Agreement, neither Party shall be liable to the other Party for consequential, special, incidental, punitive, exemplary, or indirect damages, costs, expenses, injury, or other loss, in tort, contract, negligence, or otherwise, howsoever or whosoever caused.
24. **Confidentiality.**
- 24.1. **Confidential Information.** Any and all information and knowledge relating to this Agreement, and all data, documents and information of a confidential nature concerning the business or assets of either Party that a Party may acquire under the terms of this Agreement, or by virtue of the relationship between the Parties created by this Agreement (collectively "**Confidential Information**") shall be considered confidential and, except as permitted below, shall not be revealed or divulged to others, or published in any manner whatsoever, without first obtaining the written consent of the other Party.
- 24.2. **Permitted Disclosure.** The confidentiality obligations in Section 24.1 shall not extend to the disclosure of Confidential Information:

- 24.2.1. which is already in the public domain or becomes, after having been disclosed to a Party, generally available to the public through publication or otherwise unless the publication or other disclosure was made directly or indirectly by a Party in breach of this Agreement;
- 24.2.2. to Affiliates, or officers, directors, employees, agents or other representatives on a need to know basis;
- 24.2.3. required by applicable laws or stock exchange requirements;
- 24.2.4. to any financial institution which will or may provide financing in respect of this Agreement;
- 24.2.5. to a governmental or regulatory authority having jurisdiction which release is mandated by law;
- 24.2.6. to a prospective purchaser of an interest in the Agreement on a need to know basis;
- 24.2.7. to any pipeline if such disclosure is required to effectuate the transportation of gas to be sold and purchased under this Agreement.

IN WITNESS WHEREOF, this Agreement is executed in multiple originals effective as of the day and year first herein above written.

Husky Oil Operations Limited



Donald R. Ingram
Senior Vice-President,
Midstream Operations & Refined Products

Midland Cogeneration Venture Limited Partnership 



LeRoy W. Smith
Vice President Energy Supply and
Marketing

EXHIBIT A

Date: _____, 2001

Attention:

Dear Sirs:

Husky Energy Inc. is a Canadian, publicly traded, integrated energy company headquartered in Calgary, Alberta, Canada.

Husky Energy ranks among Canada's top producers of crude oil, natural gas, and recovered sulphur with assets with a book value of approximately Cdn. \$9 billion and approximately 2,500 employees.

Husky Energy conducts business primarily through operating subsidiaries. The Husky Energy group of companies' operations include the:

- exploration for and the development of crude oil and natural gas,
- production, purchase, transportation, and marketing of crude oil, natural gas, natural gas liquids, sulphur, and petroleum coke,
- upgrading and refining of crude oil,
- marketing of refined petroleum products, including gasoline, alternative fuels, and asphalt.

The natural gas and crude oil marketing activities within Husky Energy are managed principally by two subsidiaries, both headquartered and sharing staff in the Calgary office. Husky Oil Operations Limited owns and markets natural gas and crude oil within Canada. Husky Gas Marketing Inc. purchases natural gas and crude oil from Husky Oil Operations Limited at the United States-Canada border and markets these commodities in the United States.

Husky Oil Operations Limited is the main operating subsidiary of Husky Energy. Based on Canadian GAAP, the total assets of Husky Oil Operations Limited at August 31, 2000, represented approximately 95% of the total consolidated assets of Husky Energy.

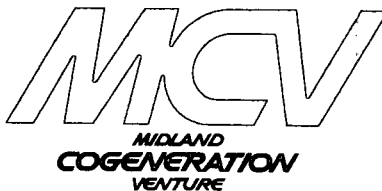
As at the date of this letter, Husky Energy's senior unsecured debt have a credit rating from Standard & Poor's of BBB, and Baa2 from Moody's Investors Service.

Yours truly,

HUSKY ENERGY INC.

APPENDIX 2

Midland Cogeneration Venture Limited Partnership Statement of Authority



August 23, 2002

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

Office of Natural Gas and Petroleum Import /Export Activities
U.S. Department of Energy
1000 Independence Ave., SW
Room 3E-042, FE-34
Washington, D.C. 20585

Ladies and Gentlemen:

**RE: MIDLAND COGENERATION VENTURE LIMITED PARTNERSHIP'S
APPLICATION TO AMEND 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 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 or export natural gas.
3. MCV has the authority to enter into contracts and amend contracts for the purpose of purchasing, selling, importing or exporting 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 over a large, stylized "P" that loops around the text.

Gary B. Pasek

GBP/jhw

APPENDIX 3

Verification

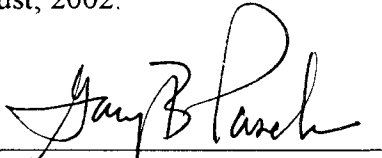
STATE OF MICHIGAN)

) Verification

COUNTY OF MIDLAND)

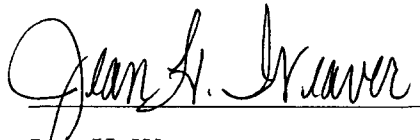
I, Gary B. Pasek, state under oath that I serve as Vice President, General Counsel and Secretary of Midland Cogeneration Venture Limited Partnership, that I have reviewed the foregoing documents and they are true and accurate to the best of my knowledge and belief, and that Elisa J. Grammer is authorized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

Sworn and signed this 23rd day of August, 2002.



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

Subscribed and sworn to before me this 23rd day of August, 2002.



Jean H. Weaver
Notary Public, Bay County, Michigan
Acting in Midland County, Michigan
My Commission Expires August 15, 2005

UNITED STATES OF AMERICA

DEPARTMENT OF ENERGY

OFFICE OF FOSSIL ENERGY

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FE DOCKET ROOM

2002 SEP 12 P 1:51

OFFICE OF FOSSIL ENERGY
U.S. DEPARTMENT OF ENERGY

MIDLAND COGENERATION VENTURE)
LIMITED PARTNERSHIP)
_____)

FE DOCKET NO. 02-59-NG

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

DOE/FE ORDER NO. 1807

SEPTEMBER 12, 2002

I. DESCRIPTION OF REQUEST

On August 29, 2002, 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),^{1/} requesting authorization to import natural gas from Canada. MCV would import up to 10,000 MMBtu^{2/} per day of natural gas. MCV is a limited partnership organized under the laws of the State of Michigan, with its principal place of business in Midland, Michigan. MCV contracted to purchase the natural gas from Husky Oil (Husky) for a four-year term beginning on November 1, 2001, and extending through October 31, 2004. The imported volumes will be used to generate electricity and process steam at a 1,370-megawatt, natural gas-fired, combined-cycle, cogeneration facility which MCV operates in Midland, Michigan.

The price paid by MCV to Husky under the gas purchase contract dated June 19, 2001, is the average of the NYMEX Price on the last three trading days of the NYMEX contract for the applicable delivery month, minus U.S. \$0.10/MMBtu. Husky is responsible for all costs and charges associated with the transportation and delivery to the international border delivery point. MCV is responsible for all costs and charges associated with transportation from the delivery point as well as any tax liability. The imported natural gas will be transported by TransCanada Pipelines Limited to the international border near Emerson, Manitoba, (Noyes, Minnesota) at which point MCV will take ownership, and Great Lakes Gas Transmission Limited Partnership will provide transportation to the facility.

^{1/} 15 U.S.C. § 717b. This authority is delegated to the Assistant Secretary for Fossil Energy pursuant to Redesignation Order No. 00-002.4 (January 8, 2002).

^{2/} One MMBtu is equal to approximately one Mcf of natural gas.

II. FINDING

The application filed by MCV, has been evaluated to determine if the proposed import arrangement meets the public interest requirement of section 3 of the NGA, as amended by section 201 of the Energy Policy Act of 1992 (Pub. L. 102-486). Under section 3(c), the import 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 must be granted without modification or delay. The authorization sought by MCV to import natural gas from Canada, a nation with which a free trade agreement is in effect, 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. Midland Cogeneration Venture Limited Partnership (MCV), is authorized to import up to 10,000 MMBtu (approximately 10,000 Mcf) per day of natural gas from Canada, under a gas purchase agreement with Husky Oil, which began November 1, 2001, and extends through October 31, 2004.

B. This gas will be imported at Noyes, Minnesota, consistent with the terms and conditions of the gas sales agreement between MCV and Husky Oil dated June 19, 2001.

C. With respect to the natural gas imports authorized by this Order, MCV will file with the Office of Natural Gas & Petroleum Import & Export Activities, within 30 days following each calendar quarter, quarterly reports indicating whether imports of natural gas have been made by MCV. Quarterly reports must be filed whether or not deliveries have been made. If no imports of natural gas have been made, a report of "no activity" for that calendar quarter must be filed. If

imports have occurred, MCV must report total monthly volumes in Mcf and the average purchase price of gas per MMBtu (in U.S. dollars) delivered at the international border. The reports will also provide the demand/commodity/reservation charge breakdowns of the contract price. [OMB NO.: 1901-0294]

D. The quarterly reports described in Ordering Paragraph C of this Order will be filed with the Office of Natural Gas & Petroleum Import & Export Activities, Fossil Energy, Room 3E-042, FE-34, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

E. The first quarterly report required by Ordering Paragraph C of this Order is due not later than October 30, 2002, and should cover the period from the date of this Order, until the end of the third calendar quarter, September 30, 2002.

Issued in Washington, D.C., on September 12, 2002.



Clifford Tomaszewski
Manager, Natural Gas Regulation
Office of Natural Gas & Petroleum
Import & Export Activities
Office of Fossil Energy