

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
ACTION AGENDA SUMMARY

DEPT: ENVIRONMENTAL RESOURCES *KMW*

BOARD AGENDA # *B-5

Urgent Routine

AGENDA DATE July 31, 2001

CEO Concurs with Recommendation YES *RW* NO
(Information Attached)

4/5 Vote Required YES NO

SUBJECT: AMENDMENT OF THE POWER PURCHASE AGREEMENT FOR LONG-TERM ENERGY AND CAPACITY BETWEEN STANISLAUS WASTE ENERGY COMPANY [COVANTA STANISLAUS, INC.] AND PACIFIC GAS AND ELECTRIC COMPANY.

STAFF RECOMMENDATIONS: CONSENT TO THE AMENDMENT OF THE POWER PURCHASE AGREEMENT FOR LONG-TERM ENERGY AND CAPACITY BETWEEN COVANTA STANISLAUS, INC. AND PACIFIC GAS AND ELECTRIC COMPANY.

FISCAL IMPACT: Upon required approvals, this amendment will result in an increase in anticipated revenues to the Waste-to-Energy Project Fund of about \$3.7 million per year for 5 years.

BOARD ACTION

No. 2001-555

On motion of Supervisor Blom, Seconded by Supervisor Caruso
and approved by the following vote,
Ayes: Supervisors: Mayfield, Blom, Caruso, and Chair Paul
Noes: Supervisors: None
Excused or Absent: Supervisors: Simon
Abstaining: Supervisor: None

- 1) X Approved as recommended
- 2) Denied
- 3) Approved as amended

MOTION:

ATTEST: CHRISTINE FERRARO TALLMAN, Clerk

By: *Christine Ferraro* Deputy

File No.

AMENDMENT OF THE POWER PURCHASE AGREEMENT FOR LONG-TERM ENERGY AND CAPACITY BETWEEN STANISLAUS WASTE ENERGY COMPANY [COVANTA STANISLAUS, INC.] AND PACIFIC GAS AND ELECTRIC COMPANY.

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DISCUSSION:

Covanta Stanislaus, Inc., formerly Ogden Martin Systems of Stanislaus and Stanislaus Waste Energy Company, and Pacific Gas and Electric Company (PG&E) are parties to a Standard Offer #4 Long-Term Energy and Capacity Power Purchase Agreement executed in August, 1984.

The Power Purchase Agreement is integral part of the Amended and Restated Service Agreement for the Supply and Acceptance of Solid Waste Among the City of Modesto, Stanislaus County and Covanta Stanislaus, Inc.

The Power Purchase Agreement obligates the waste-to-energy facility to sell and deliver capacity and energy to PG&E, who in turn is obligated to purchase and accept said capacity and energy. The price for capacity and energy was forecasted and set during the “fixed price period”, and for the remaining years of the term of the agreement energy would be paid at a price equal to PG&E’s “full short-run avoided operating costs” (SRAC).

Since November 1998 , when the “fixed price period” concluded, the waste-to-energy project has been paid according to the SRAC formula. Because natural gas has been the primary fuel for utility owned and operated facilities, this formula closely represents natural gas prices at the California border.

Beginning about June, 2000, California experienced shortfalls in energy supplies and, in conjunction with circumstances surrounding the 1996 deregulation of the electric industry, wholesale electricity prices skyrocketed. Having divested most of their generation facilities and paying exorbitant prices for energy supplies while consumer rates were frozen, PG&E ultimately filed for bankruptcy protection under Chapter 11 on April 6, 2001. The bankruptcy prevented Covanta from litigation for amounts past due, made their contract with PG&E vulnerable to rejection by the utility, and they assumed the position of an unsecured creditor.

During this same period and through April 6, 2001 the waste-to-energy project was, on one hand, the beneficiary of these rising prices, while on the other, became an unsecured creditor for nearly \$8,000,000. in capacity and energy sales unpaid by PG&E. Since April 7, 2001, per an order by the California Public Utilities Commission (PUC), PG&E has paid, in full, for all capacity and energy deliveries.

In June, 2001, the PUC issued a decision allowing qualifying facilities under Standard Offer Contracts with PG&E to request that their contracts be modified to

AMENDMENT OF THE POWER PURCHASE AGREEMENT FOR LONG-TERM ENERGY AND CAPACITY BETWEEN STANISLAUS WASTE ENERGY COMPANY [COVANTA STANISLAUS, INC.] AND PACIFIC GAS AND ELECTRIC COMPANY.

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DISCUSSION (Continued)

replace the energy pricing term with a five-year average fixed price of 5.37 cents/kWh, as proposed in the March 23, 2001 comments of the Independent

Energy Producers Assn. The order also contained a July 15, 2001 deadline for the exercise of this option.

Regarding the offered energy price of 5.37 cents/kWh, it should be noted that capacity payments are unchanged from the existing terms of the Power Purchase Agreement so actual revenues to the project will be about 7.63 cents/kWh. While this price per kWh is lower than the spot market and SRAC during the past few months, staff considers the recent spikes in prices to be an aberration from historical and expected future pricing. New generation facilities are coming on-line and a significant number of new facilities are under construction, or being permitted. With several large generators, CalPine Corporation as an example, signing on to the 5.37 cents/kWh offer, it's unlikely that the PUC will approve higher pricing for relatively small generators like ourselves.

Covanta Stanislaus, Inc. notified PG&E of their interest in modifying the Power Purchase Agreement per the referenced decision. The terms of the agreement were to include:

1. Agreement on the amount of the pre-petition debt for energy and capacity delivered, and owed by PG&E (\$7,794,659);
2. The amount owed will be repaid with interest, although the interest rate has yet to be determined;
3. The timing of the repayment of the agreed to amount (July 15, 2005);
4. PG&E is to assume our contract, thus elevating our pre-petition debt to an administrative priority claim; and
5. Covanta and PG&E to enter into the Power Purchase Agreement Amendment agreeing to five years at the fixed average price of 5.37 cents/kWh.

After consultation with their bankruptcy counsel and representatives of the Contracting Communities, Covanta Stanislaus, Inc. executed an amendment of the Power Purchase Agreement with PG&E on July 13, 2001. The bankruptcy judge approved the assumption of our contract by PG&E; however, because of the pending deadline the assumption was conditioned upon approvals from the County Board of Supervisors and the Modesto City Council. Because of the July 15

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DISCUSSION (Continued)

deadline, it remains a possibility that the PUC may claim the “pre-approved” deal had expired and the amendment is void or have to be approved by the Commission at some future date.

Section 9.03 of the Service Agreement states that, “The Company [Covanta] shall not, without the consent of the Contracting Communities [Stanislaus County and the City of Modesto], which consent will not be unreasonably withheld, amend the Energy Agreement in any manner.”

Staff recommends that the Board consent to the amendment of the Power Purchase Agreement for Long-Term Energy and Capacity between Covanta Stanislaus, Inc. and Pacific Gas and Electric Company.

POLICY

ISSUE:

The Board of Supervisors should determine if the Amendment should be affirmed. This action supports the Board’s priorities of delivering excellent community services, promoting efficient governmental operations, and achieving multi-jurisdictional cooperation.

STAFFING

IMPACT:

There are no staffing impacts

RECEIVED

AUG 03 2001

COVANTA STANISLAUS

FIRST AMENDMENT TO THE
POWER PURCHASE AGREEMENT

BETWEEN

COVANTA STANISLAUS, INC.

AND

PACIFIC GAS AND ELECTRIC COMPANY

(PG&E LOG NO.16P052)

REDDING
AUG 02 2001



THIS FIRST AMENDMENT ("Amendment") is by and between PACIFIC GAS AND ELECTRIC COMPANY ("PG&E"), a California corporation and COVANTA STANISLAUS, INC., a California corporation ("Seller"). PG&E and Seller are sometimes referred to herein individually as "Party" and collectively as the "Parties."

RECITALS

- A. Seller and PG&E are Parties to a Power Purchase Agreement, executed by Stanislaus Waste Energy Company on December 3, 1984 and by PG&E on August 20, 1985 (the "PPA").
- B. On April 5, 2001, PG&E filed a voluntary petition under chapter 11 of the United States Bankruptcy Code in the San Francisco Division of the United States Bankruptcy Court for the Northern District of California (the "Bankruptcy Court") (*In re Pacific Gas and Electric Company*, Bankr. Case No. 01-03923).
- C. On June 14, 2001, the Commission issued D.01-06-015, which approved as reasonable certain non-standard PPA price modifications
- D. Seller and PG&E now desire to enter into the PPA price modification set forth below.

AMENDMENT

In consideration of the mutual promises and covenants contained herein, PG&E and Seller agree to as follows:

1. PPA AMENDMENT

Pursuant to that certain July 13, 2001 agreement between PG&E and Seller (the "July 13 Agreement"), a copy of which is attached hereto as Attachment I, Seller's PPA is hereby amended as set forth in Section I of the July 13 Agreement, entitled "Acceptance of the CPUC Five-Year Fixed Energy Price Option." and Attachment B of the July 13 Agreement, entitled "FIXED ENERGY PRICES FOR QUALIFYING FACILITIES UNDER D.01-06-015" No provision of the PPA other than the energy pricing term is or shall be deemed to be modified, amended, waived or otherwise affected by this Amendment.

2. SIGNATURES

IN WITNESS WHEREFORE, Seller and PG&E have caused this Amendment to be executed by their authorized representatives.

PACIFIC GAS AND ELECTRIC COMPANY

a California corporation

By: [Signature]

Title: _____

Date: July 14, 2001

COVANTA STANISLAUS, INC.

A California Corporation

By: [Signature]
Amy R. Wolfe

Title: Vice President

Date: July 13, 2001

Attachment I

AGREEMENT

THIS AGREEMENT, dated as of July 13, 2001 (the "Effective Date"), by and between Stanislaus Covanta, Inc. ("QF") and Pacific Gas and Electric Company ("PG&E"). The QF and PG&E are sometimes referred to herein as the "Parties."

WITNESSETH

WHEREAS, QF and PG&E are Parties to power purchase agreement for PG&E's purchase of power from QF's project identified by PG&E Log No. 16P052 ("PPA");

WHEREAS, starting on February 1, 2001 (the "Initial Default Date"), PG&E failed to pay the full amount due to such QF under the PPA for deliveries of energy and capacity for the period between December 1, 2000 and April 6, 2001 as of 9:04 a.m.;

WHEREAS, the amount of payables for the QF is set forth in Attachment A hereto for a total amount of Seven Million Seven Hundred Ninety-four Thousand Six Hundred Fifty-nine dollars (\$7,794,659), excluding interest thereon (the "Prepetition Payables");

WHEREAS, PG&E asserted that its failure to make certain of the Prepetition Payables was excused based on a claim of force majeure and the QFs protested PG&E's assertion of such a force majeure in a letter dated January 30, 2001 and QFs continue to dispute such assertions of PG&E's claim of force majeure;

WHEREAS, PG&E filed a Chapter 11 bankruptcy petition pursuant to Title 11 United States Codes §§ 101 *et seq.* ("Bankruptcy Code") in the United States Bankruptcy Court for the Northern District of California, San Francisco Division (the "Bankruptcy Court") on April 6, 2001;

WHEREAS, on June 13, 2001, the California Public Utilities Commission (the "CPUC") issued Decision No. 01-06-015 whereby Qualifying Facilities under Standard Offer Contracts with PG&E may request that their contracts be modified to replace the energy pricing term with a five-year average fixed price of 5.37 cents/kWh, as proposed in the March 23, 2001 comments of the Independent Energy Producers referred to in Decision No. 01-06-015;

WHEREAS, the QF notified PG&E of its desire to modify the PPA pursuant to CPUC Decision No. 01-06-015 on the condition, among other things, that the Bankruptcy Court authorize PG&E to assume the PPA on or before July 27, 2001, and in so doing shall elevate the Prepetition Payables to administrative priority status pursuant to sections 365 and 503 of the Bankruptcy Code and preserve the net present value of the Prepetition Payables;

NOW THEREFORE, in consideration of the premises described above and the terms and conditions set forth below, the Parties hereby agree as follows:

1. Acceptance of the CPUC Five-Year Fixed Energy Price Option.

1.1 Upon entry of a Bankruptcy Court order authorizing the assumption of the PPA as specified in Section 2 hereafter, the "Bankruptcy Court Approval Date,") unless otherwise set forth in the PPA, for the period commencing with the date on which the PPA amendment specified in Section 1.2 below has been executed by the Parties and ending upon the commencement of the Fixed Rate Period, as defined in Section 1.2 below, the price for energy delivered to PG&E by QF shall be determined pursuant to the PPA, without reference to the pricing set forth in Attachment B to this Agreement.

1.2 Commencing with the date that is the earlier of August 16, 2001 or September 1, 2001 following the Bankruptcy Court Approval Date and ending on July 15, 2006 (this period referred to hereafter as the "Fixed Rate Period"), QF elects to replace the energy price term specified in the PPA (PG&E's "full short-run avoided costs" or "full short-run avoided operating costs" as the case may be) with the applicable energy prices as specified in Attachment B to this Agreement. No provision of the PPA other than the energy price term is or shall be deemed to be modified, amended, waived or otherwise affected by this Agreement. The Parties agree to reasonably cooperate and contest any challenge in any Commission proceeding that seeks to alter or modify the energy pricing terms set forth in Attachment B to this Agreement, including, but not limited to any challenge to the reasonableness of PG&E having entered into this Agreement. If, despite such cooperation and contest, a CPUC decision that alters or modifies the pricing terms in Attachment B to this Agreement becomes final and nonappealable, the Parties shall in good faith renegotiate the pricing terms in Attachment B to this Agreement, solely on a prospective basis, to preserve a five-year annual average fixed price of 5.37 cents/kwh, as proposed in the March 23, 2001 comments of the Independent Energy Producers referred to in Decision No. 01-06-015. By no later than July 13, 2001 the Parties shall execute an amendment to the PPA consistent with the terms of this Section 1.

2. Court Approval. In connection with the assumption of the PPA:

a. PG&E and the QF shall use their respective best efforts to enter into a Stipulation Regarding Assumption of the PPA ("Stipulation") on or before July 13, 2001 that shall be filed in the Bankruptcy Court specifying the terms of this Agreement;

b. PG&E shall use its best efforts to file and serve a Notice of Hearing on Resolution of the Motions; and

c. On July 13, 2001, PG&E and the QF shall jointly request that the Motion be heard on an expedited basis.

3. Full Payment. In connection with PG&E's assumption of the PPA, PG&E agrees to pay to QF the Prepetition Payables, including all interest thereon at the Interest Rate (as defined in Section 4), which shall accrue and be added to the outstanding balance of the

Prepetition Payables and which shall constitute an administrative expense (the "Cure Amount") on the sooner of the following (the "Due Date"): (i) the date on which an order converting the PG&E Chapter 11 case to a Chapter 7 case is final and all appeals have been concluded; (ii) the date on which an order dismissing the PG&E Chapter 11 case is entered and with no stay having been timely; or (iii) the "Plan Effective Date" (as such term is defined in the plan of reorganization as confirmed in the PG&E Chapter 11 case, the "Plan"), all as part of its administrative priority cure obligations pursuant to sections 365, 1129 and 503 of the Bankruptcy Code. There is no "Cure Amount" other than as defined in this Section 3. In the event that the Plan Effective Date does not occur on or before July 15, 2003, PG&E will commence to pay QF on July 15, 2003, and thereafter monthly on the 15th day of each month, a sum equal to two percent (2%) of the total Cure Amount, excluding any accrued but unpaid interest thereon, until the sooner of the occurrence of the Due Date or July 15, 2005, at which time all remaining Cure Amounts including all accrued but unpaid interest will be paid in full under (iii) above, or will be payable under (i) and (ii) above. Interest shall continue to accrue on the then outstanding amounts until paid.

4. **Interest.** Interest shall accrue on the Prepetition Payables from their respective due dates until paid at a rate to be determined under the provisions of this paragraph (the "Interest Rate"). The parties shall negotiate in good faith in an attempt to determine what is an appropriate rate of interest, taking into consideration the facts of this case. Any dispute over the appropriate Interest Rate shall be submitted to the Bankruptcy Court for resolution if the parties have not agreed on the appropriate Interest Rate by the earliest of the following to occur: (a) the entry of an order of the Bankruptcy Court in the PG&E case approving a disclosure statement; (b) the conversion of the PG&E case to a case under Chapter 7; or (c) the dismissal of the PG&E Bankruptcy case. If the Bankruptcy Court declines to resolve such dispute, then the dispute over the appropriate Interest Rate shall be submitted to any other court of competent jurisdiction. The Parties agree that interest shall accrue and the Interest Rate shall be determined as set forth herein, but each of the Parties reserves all of their respective rights as to the appropriate Interest Rate.

5. **Waiver of Pecuniary Loss Damages.** The QF waives its right to assert claims to recover "pecuniary loss" damages in connection with assumption of the PPA pursuant to Bankruptcy Code section 365(b)(1)(B). This waiver shall not diminish or affect QF's right to payment of the Prepetition Payables or the Cure Amount, or to recover interest thereon; nor shall this waiver affect the determination of the Interest Rate.

6. **Waiver of Right to Pre-Assumption Claim.** The QF waives its right to assert claims to receive the difference between the market price and the contract price for energy and capacity delivered to PG&E from and after April 6, 2001 through the entry of an order approving this Agreement.

7. **Payment of Post-Assumption Obligations.** PG&E shall pay in full any and all post-assumption obligations due under the PPA on such dates and at such times, pursuant to Bankruptcy Code section 365. Such obligations shall be afforded administrative priority status under Bankruptcy Code section 503. Good faith disputes regarding the amounts to be paid to the QF under the PPA for post-assumption deliveries of energy and capacity shall not be deemed a

breach of this Agreement and if the parties cannot resolve such disputes, they will be submitted to the Bankruptcy Court for resolution.

8. **Reservation of Rights.** Neither this Agreement nor PG&E's assumption of the PPA in the manner contemplated herein shall modify, waive, or otherwise prejudice either Party's rights and obligations with respect to any proceedings before the CPUC, the Federal Energy Regulatory Commission and the courts, relating to the energy price to be paid pursuant to the PPA for the period prior to PG&E's assumption of the PPA provided herein, including, but not limited to, PG&E's pending Emergency Motion for Stay of D.99-11-025 to End True-Up for Switching QFs, filed January 10, 2001 in CPUC proceeding R.99-11-022, and petitions for rehearing, enforcement actions, and judicial challenges to CPUC Decision No. 01-03-067 and the dispute between the Parties with respect to the statement, computation and payment for electricity sold and delivered pursuant to the PPA during the period from January 1 through January 18, 2001.

9. **Termination.** If there is not an order by the Bankruptcy Court authorizing this agreement and assumption by PG&E of the PPA by August 31, 2001, QF has the sole right to unilaterally either terminate this Agreement, or terminate all provisions of this Agreement other than paragraph 1. Upon termination of this Agreement, none of the waivers, covenants, warranties, representations, and other provisions of the Agreement shall survive.

10. **Further Approvals.** The effectiveness of this Agreement is also contingent upon the receipt by the QF of all approvals and authorizations required from the County of Stanislaus and the City of Modesto, which approvals are to be received by the QF no later than August 16, 2001. If said approvals have not been received by August 16, 2001 this Agreement terminates. Upon termination of this Agreement, none of the waivers, covenants, warranties, representations, and other provisions of the Agreement shall survive.

11. **Further Assurances.** The QF and PG&E shall take all necessary action to implement the terms and conditions contemplated herein, including but not limited to executing further documents, if any, to confirm the amendments contemplated in Section 1 and preparing any documentation and taking any actions necessary to implement Section 2 and approving, executing and delivering this Agreement.

12. **Descriptive Headings.** The descriptive headings of this Agreement are inserted for convenience of reference only and do not constitute a part of this Agreement. All references to sections, attachments, or exhibits are to the sections, attachments or exhibits of this Agreement.

13. **Expenses.** Each Party shall pay its own expenses, professional fees and other costs connected with or associated with the negotiation and execution of this Agreement. In the event any Party breaches this Agreement, the breaching Party shall pay all costs and expenses (including attorneys' fees and expenses) incurred by the other Party or Parties in connection with or arising out of such breach.

14. **Governing Law.** This Agreement is made and entered into in the State of

California, and shall in all respects be interpreted and governed under the laws of California, without regard to principles of conflicts of law.

15. **Entire Agreement.** This Agreement, and all attachments hereto, sets forth the entire agreement between the Parties relating to the acceptance by the QF of the CPUC five-year fixed energy price option, assumption by PG&E of the PPA and the payment of the Cure Amount and supercedes and replaces any prior understanding, correspondence, commitments or agreement, whether oral or written concerning the subject matters of this Agreement. Any modification or amendment to this Agreement must be in writing and must be signed and dated by the Parties, and must explicitly state that it is intended to be an amendment to or modification of this Agreement.

16. **Binding Agreement.** This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the Parties hereto.

17. **Construction of Agreement.** Counsel for the respective Parties have reviewed and participated in the drafting of this Agreement. Consequently, the principle of construction of contracts that ambiguities shall be resolved against the drafter shall not be used or applied in the interpretation of this Agreement.

18. **Representations.** Each Party hereby represents and warrants to each of the other Parties that (a) the execution of this Agreement has been duly authorized by all necessary corporate, shareholder and similar actions; (b) this Agreement has been duly executed and delivered and constitutes the legal valid and binding obligation of such Party, enforceable against such Party is in accordance with its terms; and (c) the execution and delivery of this Agreement and the performance by such Party of its obligations hereunder do not and will not conflict with, contravene or breach, and law, judgment, order or material contract applicable to or binding on such Party or any of its properties or assets.

19. **Execution by Counterparts.** This Agreement may be executed in separate counterparts, each of which when executed shall be an original, but all of which, taken together, shall constitute one and the same instrument.

20. **Bankruptcy Court Approval.** This Agreement is subject to Bankruptcy Court approval. Notwithstanding execution of this Agreement and entry of an order by the Bankruptcy Court approving this Agreement, all parties to this Agreement shall continue to have standing to be heard at all times and on all matters in the Bankruptcy Case of PG&E. The obligations of PG&E hereunder shall be binding on any trustee in a Chapter 7 or Chapter 11 Bankruptcy case.

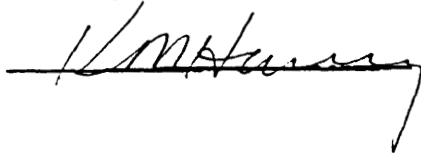
IN WITNESS WHEREOF, this Agreement has been duly executed by or on behalf of the QF and PG&E as of the Effective Date.

Covanta Stanislaus, Inc.
a California corporation

By: 

Anthony Orlando
Executive Vice President

Pacific Gas and Electric Company
a California corporation

By: 

IN WITNESS WHEREOF, this Agreement has been duly executed by or on behalf of the QF and PG&E as of the Effective Date.

Covanta Stanislaus, Inc.
a California corporation

By: _____



Anthony Orlando
Executive Vice President

Pacific Gas and Electric Company
a California corporation

By: _____

ATTACHMENT A

NAME	LOG #	PRE-PETITION Dec '00 Outstanding A/R	PRE-PETITION Jan '01 Outstanding A/R	PRE-PETITION Feb '01 Outstanding A/R	PRE-PETITION Mar '01 Outstanding A/R	PRE-PETITION Apr 1-'01 Outstanding A/R	PRE-PETITION INVOICE TOTAL
Covanta Stanislaus, Inc.	18P052	\$ 1,982,339	\$ 2,033,153	\$ 1,938,748	\$ 1,775,348	\$ 220,145	\$ 7,794,889
		\$ 1,982,339	\$ 2,033,153	\$ 1,783,874	\$ 1,775,348	\$ 220,145	\$ 7,794,889

Attachment B

Pacific Gas and Electric Company

FIXED ENERGY PRICES FOR QUALIFYING FACILITIES UNDER D. 01-06-015

Effective through December 31, 2001

	Starting Energy Value \$/kwh	2001 TOU Hours	SRAC TF Base ²	2001 TOU Factor ³	2001 TOU Energy Price ⁴ \$/kwh
	(a)	(b)	(c)	(d)	(e) = a * d
Allocation of Annual Fixed Price to Seasons:					Without Time-of-Use Metering:
Period A - Summer	0.053700	4,417	0.018748	0.879	0.047181
Period B - Winter	0.053700	4,343	0.023973	1.123	0.060330
Annual Average	0.053700	8,760	0.021338		0.053700
Allocation of Seasonal Prices to TOU Periods:					With Time-of-Use Metering:
Period A - Summer					
Peak	0.047181	774		1.065	0.050248
Partial-Peak	0.047181	903		1.022	0.048219
Off-Peak	0.047181	2,003		0.985	0.046466
Super Off-Peak	0.047181	737		0.946	0.044833
Period B - Winter					
Peak	-	-		-	-
Partial-Peak	0.060330	1,612		1.032	0.062261
Off-Peak	0.060330	2,008		0.992	0.059866
Super Off-Peak	0.060330	723		0.950	0.057314

1. These energy prices are derived solely for purposes of implementing the five-year fixed energy price (5.37 cents/kwh) option in CPUC Decision (D.) 01-06-015. These prices will be reallocated annually using appropriate TOU calendar hours.
2. SRAC TF Base values reflect the seasonal allocation factors currently specified in PG&E's SRAC Transition Formula, as adopted by the CPUC in D.96-12-028. Seasonal values reflect the Base SRAC energy prices adopted in D.96-12-028. The annual average value shown derives from weighting the seasonal values by TOU period hours.
3. TOU factors allocate the fixed annual energy price for seasons, and seasonal values for time-of-use periods. Seasonal TOU factors are derived from the ratio of the seasonal SRAC TF Base values to the average annual value shown. Intra-seasonal TOU factors are as adopted in D.96-12-028 (as corrected in CPUC D.97-01-027). Off-peak period values are determined using seasonal period hours for the applicable year, per the following:

Period A (May 1 - October 31)	Period B (November 1 - April 30)
$\frac{[\text{Total Summer hours} - (1.065 * \text{Summer Peak hours}) - (1.022 * \text{Summer Partial Peak hours}) - (0.946 * \text{Summer Super Off-Peak hours})]}{\text{Summer Off-Peak hours}}$	$\frac{[\text{Total Winter hours} - (1.032 * \text{Winter Partial-Peak hours}) - (0.950 * \text{Winter Super Off-Peak hours})]}{\text{Winter Off-Peak hours}}$

4. TOU energy price is the product of the starting energy value and the TOU factor. Energy prices shown do not include applicable line loss adjustments. Line loss adjustments will be determined in accordance with CPUC D.01-01-007.

AGREEMENT

THIS AGREEMENT, dated as of July 13, 2001 (the "Effective Date"), by and between Stanislaus Covanta, Inc. ("QF") and Pacific Gas and Electric Company ("PG&E"). The QF and PG&E are sometimes referred to herein as the "Parties."

WITNESSETH

WHEREAS, QF and PG&E are Parties to power purchase agreement for PG&E's purchase of power from QF's project identified by PG&E Log No. 16P052 ("PPA");

WHEREAS, starting on February 1, 2001 (the "Initial Default Date"), PG&E failed to pay the full amount due to such QF under the PPA for deliveries of energy and capacity for the period between December 1, 2000 and April 6, 2001 as of 9:04 a.m.;

WHEREAS, the amount of payables for the QF is set forth in Attachment A hereto for a total amount of Seven Million Seven Hundred Ninety-four Thousand Six Hundred Fifty-nine dollars (\$7,794,659), excluding interest thereon (the "Prepetition Payables");

WHEREAS, PG&E asserted that its failure to make certain of the Prepetition Payables was excused based on a claim of force majeure and the QFs protested PG&E's assertion of such a force majeure in a letter dated January 30, 2001 and QFs continue to dispute such assertions of PG&E's claim of force majeure;

WHEREAS, PG&E filed a Chapter 11 bankruptcy petition pursuant to Title 11 United States Codes §§ 101 *et seq.* ("Bankruptcy Code") in the United States Bankruptcy Court for the Northern District of California, San Francisco Division (the "Bankruptcy Court") on April 6, 2001;

WHEREAS, on June 13, 2001, the California Public Utilities Commission (the "CPUC") issued Decision No. 01-06-015 whereby Qualifying Facilities under Standard Offer Contracts with PG&E may request that their contracts be modified to replace the energy pricing term with a five-year average fixed price of 5.37 cents/kWh, as proposed in the March 23, 2001 comments of the Independent Energy Producers referred to in Decision No. 01-06-015;

WHEREAS, the QF notified PG&E of its desire to modify the PPA pursuant to CPUC Decision No. 01-06-015 on the condition, among other things, that the Bankruptcy Court authorize PG&E to assume the PPA on or before July 27, 2001, and in so doing shall elevate the Prepetition Payables to administrative priority status pursuant to sections 365 and 503 of the Bankruptcy Code and preserve the net present value of the Prepetition Payables;

NOW THEREFORE, in consideration of the premises described above and the terms and conditions set forth below, the Parties hereby agree as follows:

1. Acceptance of the CPUC Five-Year Fixed Energy Price Option.

1.1 Upon entry of a Bankruptcy Court order authorizing the assumption of the PPA as specified in Section 2 hereafter, the "Bankruptcy Court Approval Date,") unless otherwise set forth in the PPA, for the period commencing with the date on which the PPA amendment specified in Section 1.2 below has been executed by the Parties and ending upon the commencement of the Fixed Rate Period, as defined in Section 1.2 below, the price for energy delivered to PG&E by QF shall be determined pursuant to the PPA, without reference to the pricing set forth in Attachment B to this Agreement.

1.2 Commencing with the date that is the earlier of August 16, 2001 or September 1, 2001 following the Bankruptcy Court Approval Date and ending on July 15, 2006 (this period referred to hereafter as the "Fixed Rate Period"), QF elects to replace the energy price term specified in the PPA (PG&E's "full short-run avoided costs" or "full short-run avoided operating costs" as the case may be) with the applicable energy prices as specified in Attachment B to this Agreement. No provision of the PPA other than the energy price term is or shall be deemed to be modified, amended, waived or otherwise affected by this Agreement. The Parties agree to reasonably cooperate and contest any challenge in any Commission proceeding that seeks to alter or modify the energy pricing terms set forth in Attachment B to this Agreement, including, but not limited to any challenge to the reasonableness of PG&E having entered into this Agreement. If, despite such cooperation and contest, a CPUC decision that alters or modifies the pricing terms in Attachment B to this Agreement becomes final and nonappealable, the Parties shall in good faith renegotiate the pricing terms in Attachment B to this Agreement, solely on a prospective basis, to preserve a five-year annual average fixed price of 5.37 cents/kwh, as proposed in the March 23, 2001 comments of the Independent Energy Producers referred to in Decision No. 01-06-015. By no later than July 13, 2001 the Parties shall execute an amendment to the PPA consistent with the terms of this Section 1.

2. Court Approval. In connection with the assumption of the PPA:

a. PG&E and the QF shall use their respective best efforts to enter into a Stipulation Regarding Assumption of the PPA ("Stipulation") on or before July 13, 2001 that shall be filed in the Bankruptcy Court specifying the terms of this Agreement;

b. PG&E shall use its best efforts to file and serve a Notice of Hearing on Resolution of the Motions; and

c. On July 13, 2001, PG&E and the QF shall jointly request that the Motion be heard on an expedited basis.

3. Full Payment. In connection with PG&E's assumption of the PPA, PG&E agrees to pay to QF the Prepetition Payables, including all interest thereon at the Interest Rate (as defined in Section 4), which shall accrue and be added to the outstanding balance of the

Prepetition Payables and which shall constitute an administrative expense (the "Cure Amount") on the sooner of the following (the "Due Date"): (i) the date on which an order converting the PG&E Chapter 11 case to a Chapter 7 case is final and all appeals have been concluded; (ii) the date on which an order dismissing the PG&E Chapter 11 case is entered and with no stay having been timely; or (iii) the "Plan Effective Date" (as such term is defined in the plan of reorganization as confirmed in the PG&E Chapter 11 case, the "Plan"), all as part of its administrative priority cure obligations pursuant to sections 365, 1129 and 503 of the Bankruptcy Code. There is no "Cure Amount" other than as defined in this Section 3. In the event that the Plan Effective Date does not occur on or before July 15, 2003, PG&E will commence to pay QF on July 15, 2003, and thereafter monthly on the 15th day of each month, a sum equal to two percent (2%) of the total Cure Amount, excluding any accrued but unpaid interest thereon, until the sooner of the occurrence of the Due Date or July 15, 2005, at which time all remaining Cure Amounts including all accrued but unpaid interest will be paid in full under (iii) above, or will be payable under (i) and (ii) above. Interest shall continue to accrue on the then outstanding amounts until paid.

4. **Interest.** Interest shall accrue on the Prepetition Payables from their respective due dates until paid at a rate to be determined under the provisions of this paragraph (the "Interest Rate"). The parties shall negotiate in good faith in an attempt to determine what is an appropriate rate of interest, taking into consideration the facts of this case. Any dispute over the appropriate Interest Rate shall be submitted to the Bankruptcy Court for resolution if the parties have not agreed on the appropriate Interest Rate by the earliest of the following to occur: (a) the entry of an order of the Bankruptcy Court in the PG&E case approving a disclosure statement; (b) the conversion of the PG&E case to a case under Chapter 7; or (c) the dismissal of the PG&E Bankruptcy case. If the Bankruptcy Court declines to resolve such dispute, then the dispute over the appropriate Interest Rate shall be submitted to any other court of competent jurisdiction. The Parties agree that interest shall accrue and the Interest Rate shall be determined as set forth herein, but each of the Parties reserves all of their respective rights as to the appropriate Interest Rate.

5. **Waiver of Pecuniary Loss Damages.** The QF waives its right to assert claims to recover "pecuniary loss" damages in connection with assumption of the PPA pursuant to Bankruptcy Code section 365(b)(1)(B). This waiver shall not diminish or affect QF's right to payment of the Prepetition Payables or the Cure Amount, or to recover interest thereon; nor shall this waiver affect the determination of the Interest Rate.

6. **Waiver of Right to Pre-Assumption Claim.** The QF waives its right to assert claims to receive the difference between the market price and the contract price for energy and capacity delivered to PG&E from and after April 6, 2001 through the entry of an order approving this Agreement.

7. **Payment of Post-Assumption Obligations.** PG&E shall pay in full any and all post-assumption obligations due under the PPA on such dates and at such times, pursuant to Bankruptcy Code section 365. Such obligations shall be afforded administrative priority status under Bankruptcy Code section 503. Good faith disputes regarding the amounts to be paid to the QF under the PPA for post-assumption deliveries of energy and capacity shall not be deemed a

breach of this Agreement and if the parties cannot resolve such disputes, they will be submitted to the Bankruptcy Court for resolution.

8. **Reservation of Rights.** Neither this Agreement nor PG&E's assumption of the PPA in the manner contemplated herein shall modify, waive, or otherwise prejudice either Party's rights and obligations with respect to any proceedings before the CPUC, the Federal Energy Regulatory Commission and the courts, relating to the energy price to be paid pursuant to the PPA for the period prior to PG&E's assumption of the PPA provided herein, including, but not limited to, PG&E's pending Emergency Motion for Stay of D.99-11-025 to End True-Up for Switching QFs, filed January 10, 2001 in CPUC proceeding R.99-11-022, and petitions for rehearing, enforcement actions, and judicial challenges to CPUC Decision No. 01-03-067 and the dispute between the Parties with respect to the statement, computation and payment for electricity sold and delivered pursuant to the PPA during the period from January 1 through January 18, 2001.

9. **Termination.** If there is not an order by the Bankruptcy Court authorizing this agreement and assumption by PG&E of the PPA by August 31, 2001, QF has the sole right to unilaterally either terminate this Agreement, or terminate all provisions of this Agreement other than paragraph 1. Upon termination of this Agreement, none of the waivers, covenants, warranties, representations, and other provisions of the Agreement shall survive.

10. **Further Approvals.** The effectiveness of this Agreement is also contingent upon the receipt by the QF of all approvals and authorizations required from the County of Stanislaus and the City of Modesto, which approvals are to be received by the QF no later than August 16, 2001. If said approvals have not been received by August 16, 2001 this Agreement terminates. Upon termination of this Agreement, none of the waivers, covenants, warranties, representations, and other provisions of the Agreement shall survive.

11. **Further Assurances.** The QF and PG&E shall take all necessary action to implement the terms and conditions contemplated herein, including but not limited to executing further documents, if any, to confirm the amendments contemplated in Section 1 and preparing any documentation and taking any actions necessary to implement Section 2 and approving, executing and delivering this Agreement.

12. **Descriptive Headings.** The descriptive headings of this Agreement are inserted for convenience of reference only and do not constitute a part of this Agreement. All references to sections, attachments, or exhibits are to the sections, attachments or exhibits of this Agreement.

13. **Expenses.** Each Party shall pay its own expenses, professional fees and other costs connected with or associated with the negotiation and execution of this Agreement. In the event any Party breaches this Agreement, the breaching Party shall pay all costs and expenses (including attorneys' fees and expenses) incurred by the other Party or Parties in connection with or arising out of such breach.

14. **Governing Law.** This Agreement is made and entered into in the State of

California, and shall in all respects be interpreted and governed under the laws of California, without regard to principles of conflicts of law.

15. **Entire Agreement.** This Agreement, and all attachments hereto, sets forth the entire agreement between the Parties relating to the acceptance by the QF of the CPUC five-year fixed energy price option, assumption by PG&E of the PPA and the payment of the Cure Amount and supercedes and replaces any prior understanding, correspondence, commitments or agreement, whether oral or written concerning the subject matters of this Agreement. Any modification or amendment to this Agreement must be in writing and must be signed and dated by the Parties, and must explicitly state that it is intended to be an amendment to or modification of this Agreement.

16. **Binding Agreement.** This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the Parties hereto.

17. **Construction of Agreement.** Counsel for the respective Parties have reviewed and participated in the drafting of this Agreement. Consequently, the principle of construction of contracts that ambiguities shall be resolved against the drafter shall not be used or applied in the interpretation of this Agreement.

18. **Representations.** Each Party hereby represents and warrants to each of the other Parties that (a) the execution of this Agreement has been duly authorized by all necessary corporate, shareholder and similar actions; (b) this Agreement has been duly executed and delivered and constitutes the legal valid and binding obligation of such Party, enforceable against such Party in accordance with its terms; and (c) the execution and delivery of this Agreement and the performance by such Party of its obligations hereunder do not and will not conflict with, contravene or breach, and law, judgment, order or material contract applicable to or binding on such Party or any of its properties or assets.

19. **Execution by Counterparts.** This Agreement may be executed in separate counterparts, each of which when executed shall be an original, but all of which, taken together, shall constitute one and the same instrument.

20. **Bankruptcy Court Approval.** This Agreement is subject to Bankruptcy Court approval. Notwithstanding execution of this Agreement and entry of an order by the Bankruptcy Court approving this Agreement, all parties to this Agreement shall continue to have standing to be heard at all times and on all matters in the Bankruptcy Case of PG&E. The obligations of PG&E hereunder shall be binding on any trustee in a Chapter 7 or Chapter 11 Bankruptcy case.

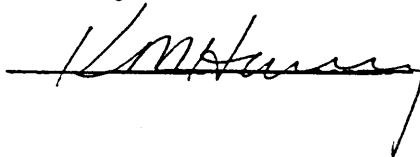
IN WITNESS WHEREOF, this Agreement has been duly executed by or on behalf of the QF and PG&E as of the Effective Date.

Covanta Stanislaus, Inc.
a California corporation

By: 

Anthony Orlando
Executive Vice President

Pacific Gas and Electric Company
a California corporation

By: 

ATTACHMENT A

NAME	LOG #	PRE-PETITION Dec '00 Outstanding A/R	PRE-PETITION Jan '01 Outstanding A/R	PRE-PETITION Feb '01 Outstanding A/R	PRE-PETITION Mar '01 Outstanding A/R	PRE-PETITION Apr 1-6 '01 Outstanding A/R	PRE-PETITION INVOICE TOTAL
		Due 2/2/01	Due 3/6/01	Due 4/3/01	Due 5/4/01	Due 4/17/01	
Covanta Stanislaus, Inc.	16P052	\$ 1,982,339	\$ 2,033,153	\$ 1,783,874	\$ 1,775,348	\$ 220,145	\$ 7,794,659
		\$ 1,982,339	\$ 2,033,153	\$ 1,783,874	\$ 1,775,348	\$ 220,145	\$ 7,794,659

Attachment B

Pacific Gas and Electric Company

FIXED ENERGY PRICES FOR QUALIFYING FACILITIES UNDER D. 01-06-015¹

Effective through December 31, 2001

	Starting Energy Value \$/kwh	2001 TOU Hours	SRAC TF Base ²	2001 TOU Factor ³	2001 TOU Energy Price ⁴ \$/kwh
	(a)	(b)	(c)	(d)	(e) = a * d
Allocation of Annual Fixed Price to Seasons:					
					Without Time-of-Use Metering:
Period A - Summer	0.063700	4,417	0.018748	0.879	0.047181
Period B - Winter	0.063700	4,343	0.023973	1.123	0.060330
Annual Average	0.063700	8,760	0.021338		0.053700
Allocation of Seasonal Prices to TOU Periods:					
					With Time-of-Use Metering:
Period A - Summer					
Peak	0.047181	774		1.085	0.060248
Partial-Peak	0.047181	803		1.022	0.048219
Off-Peak	0.047181	2,003		0.985	0.046466
Super Off-Peak	0.047181	737		0.948	0.044833
Period B - Winter					
Peak	-	-		-	-
Partial-Peak	0.060330	1,812		1.032	0.062261
Off-Peak	0.060330	2,008		0.992	0.059866
Super Off-Peak	0.060330	723		0.950	0.057314

1. These energy prices are derived solely for purposes of implementing the five-year fixed energy price (5.37 cents/kwh) option in CPUC Decision (D.) 01-06-015. These prices will be reallocated annually using appropriate TOU calendar hours.
2. SRAC TF Base values reflect the seasonal allocation factors currently specified in PG&E's SRAC Transition Formula, as adopted by the CPUC in D.96-12-028. Seasonal values reflect the Base SRAC energy prices adopted in D.96-12-028. The annual average value shown derives from weighting the seasonal values by TOU period hours.
3. TOU factors allocate the fixed annual energy price for seasons, and seasonal values for time-of-use periods. Seasonal TOU factors are derived from the ratio of the seasonal SRAC TF Base values to the average annual value shown. Intra-seasonal TOU factors are as adopted in D.98-12-028 (as corrected in CPUC D.97-01-027). Off-peak period values are calculated using seasonal period hours for the applicable year, per the following:

<u>Period A (May 1 - October 31)</u> [(Total Summer hours - (1.085 * Summer Peak hours) - (1.022 * Summer Partial Peak hours) - (0.946 * Summer Super Off-Peak hours)) / Summer Off-Peak hours]	<u>Period B (November 1 - April 30)</u> [(Total Winter hours - (1.032 * Winter Partial-Peak hours) - (0.960 * Winter Super Off-Peak hours)) / Winter Off-Peak hours]
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4. TOU energy price is the product of the starting energy value and the TOU factor. Energy prices shown do not include applicable line loss adjustments. Line loss adjustments will be determined in accordance with CPUC D.01-01-007.