

CONFIRMATION LETTER

This Confirmation Letter ("Confirmation") is being provided pursuant to and in accordance with the Master Power Purchase and Sale Agreement, dated August 31, 2005 (the "Master Agreement"), between **Covanta Otay 3 Company**, ("Seller") and **San Diego Gas & Electric Company** ("Buyer"), and constitutes part of and is subject to the terms and provisions of such Master Agreement (collectively, the "Agreement"). Terms used but not defined herein shall have the meanings ascribed to them in the Master Agreement.

1.0 Effectiveness of Confirmation Letter. The obligation of Buyer to purchase the Product, including the Output (as defined in Section 3 of this Confirmation), under this Agreement is expressly conditioned upon the following:

1.1 CPUC Approval. The Parties agree to cooperate and use all reasonable efforts to obtain the CPUC Approval as soon as is practicable. "CPUC Approval" means a final and non-appealable order of the CPUC, without conditions or modifications unacceptable to the Parties, or either of them, which contains the following terms: (1) Approves this Agreement in its entirety, including payments to be made by the Buyer, subject to CPUC review of Buyer's administration of the Agreement; (2) finds that any procurement pursuant to this Agreement is procurement from an eligible renewable energy resource for purposes of determining Buyer's compliance with any obligation that it may have to procure eligible renewable energy resources pursuant to the California Renewables Portfolio Standard (Public Utilities Code Section 399.11 et seq.), Decision 03-06-071, or other applicable law; (3) finds that any procurement pursuant to this Agreement constitutes incremental procurement or procurement for baseline replenishment by Buyer from an eligible renewable energy resource for purposes of determining Buyer's compliance with any obligation to increase its total procurement of eligible renewable energy resources that it may have pursuant to the California Renewables Portfolio Standard, CPUC Decision 03-06-071, or other applicable law; and CPUC Approval will be deemed to have occurred on the date that a CPUC decision containing such findings becomes final and non-appealable. Should the CPUC issue an order approving this Agreement with conditions or modifications that materially alter the commercial aspects of this Agreement or fail to issue an order by 03/01/2006, the Parties shall have ten (10) Business Days from the mailing date of such order to provide the other Party written notice of the issuing Party's acceptance or rejection of the CPUC order as issued; provided, however, if a Party fails to provide written notification of its acceptance or rejection to the other Party within such ten (10) day period, that Party's silence shall be deemed to constitute acceptance of the CPUC Approval as issued and agreement by such Party that this condition has been satisfied, upon the CPUC Approval Date. If a notice of rejection is sent, the Parties agree to use good faith efforts to renegotiate this Agreement. If, within sixty (60) days, no agreement is

reached, either Party may terminate this Agreement upon delivery of notice to the other Party. For purposes of this Agreement, the “CPUC Approval Date” shall be defined as the first Business Day after the date on which the CPUC issues a final, non-appealable order approving this Agreement.

2.0 Product: As-Available. “As Available” means, with respect to a Transaction, that Seller shall deliver to Buyer and Buyer shall purchase at the Delivery Point the Product from the Units, in accordance with the terms of this Agreement and subject to the excuses for performance specified in this Agreement.

3.0 Facility. The Output (defined below) will be supplied from the following generation assets only (collectively, the “Facility” or the “Units”):

Facility Name:	Otay – 3
Site Name:	Otay Landfill - State of California Solid Waste Information System Number 37-AA-0010
Facility Physical Address:	1600 Maxwell Road, Chula Vista, CA
Technology Type:	Biogas (landfill gas)
Specific Unit Description:	Cooper Superior Reciprocating Engines
Facility Total Nameplate Capacity:	3.75 MW (gross)
Net Output Capacity:	3.375MW

3.1 “Output” means all electrical energy produced from the Facility, net of electrical energy used to operate the Facility that is generated by the Facility, which may, on an instantaneous basis, be greater or less than the total nameplate rated Output of 3.75MW and an annual maximum Output of 29,565 MWh and an annual estimated Output of 24,000 MWh.

3.2 The Facility must meet Commercial Operation by the Commercial Operation Deadline.

“Commercial Operation Deadline” with respect to the Facility shall be no later than December 31, 2006 as extended by reason of Force Majeure, interconnection delays not attributable to Seller or as may otherwise be extended by written agreement signed by the Parties.

3.3 “Commercial Operation” means that (a) Seller shall have satisfied the requirements set forth in the Certificate of Commercial Operation in the form attached as Exhibit D; (b) Seller shall have delivered and Buyer shall have accepted in its reasonable discretion completed Certificates of Commercial Operation from the Seller and a Licensed Professional Engineer (defined below); (c) Seller shall have delivered credit support, as accepted by Buyer, in accordance with Section 8.4(b) of the Master Agreement; and (d) Seller has received all local, state and federal licenses, permits and other approvals as may be required by law

as of the date of the certificate for the construction, operation and maintenance of the Facility, including approvals, if any, required under the California Environmental Quality Act for the Facility and related interconnection facilities.

3.4 “Licensed Professional Engineer” means a person acceptable to Buyer in its reasonable judgment who (i) is licensed to practice engineering in the state of California (ii) has training and experience in the gas fired reciprocating engine power industry, (iii) has no economic relationship, association, or nexus with the Seller, (iv) is not a representative of a consulting engineer, contractor, designer or other individual involved in the development of the Facility, or of a manufacturer or supplier of any equipment installed in the Facility, and (v) is licensed in an appropriate engineering discipline for the required certification being made.

4.0 Delivery Point. The Delivery Point is the Buyer’s facilities at the Point of Common Coupling as will be specified in the Generation Facility Interconnection Agreement.

5.0 Delivery Term. The Parties shall specify the period of Product delivery for the “Delivery Term,” as defined herein, by checking one of the following boxes:

(Check one)

- delivery shall be for a period of ten (10) years.
- delivery shall be for a period of fifteen (15) years.
- delivery shall be for a period of twenty (20) years.
- delivery shall be for a period of _____ years.

If the “Non-standard Delivery” contract term is selected, the Parties need to apply to the CPUC justifying the need for non-standard delivery.

5.1 “Delivery Term” shall begin on the Commercial Operation date and continue for the time period specified above.

5.2 “Contract Year” shall mean any of the twelve (12) consecutive months starting with the first day of the month following the Commercial Operation date.

6.0 Output Requirements.

6.1 Contract Quantity. During the Delivery Term, Seller shall deliver, and Buyer shall receive and pay for, the energy from the Facility as more fully described in Section 9. In no event shall Seller have the right to procure electric energy from sources other than the Facility for sale and delivery pursuant to this Agreement. Station Service Power - Retail (defined below) shall be provided by the local service provider and the electrical usage shall be metered separately from the Output metered at the Delivery Point.

6.2 “Station Service Power - Retail” means any electrical energy used to operate the Facility other than electrical energy that is generated by the Facility.

7.0 Performance Guarantees / Excuses for Failure to Perform.

7.1 Energy Production Guarantees. Buyer shall in its sole discretion have the right to declare an Event of Default if Seller fails to achieve the Guaranteed Energy Production in any 12 calendar month period and such failure is not excused by the reasons set forth in subSections (ii), (iii), or (v) of Section 7.2 of this Agreement, “Excuses for Failure to Perform.”

Guaranteed Energy Production = 20,000 MWh.

7.2 Seller Excuses. Seller shall not be liable to Buyer for any damages determined pursuant to Article Four of the Agreement in the event that Seller fails to deliver the Product to Buyer for any of the following reasons:

- i. if the specified generation asset(s) are unavailable as a result of a Forced Outage (as defined in the NERC Generating Unit Availability Data System (GADS) Forced Outage reporting guidelines) and such Forced Outage is not the result of Seller’s negligence or willful misconduct;
- ii. Force Majeure;
- iii. by Buyer’s failure to perform;
- iv. by Scheduled Maintenance Outages of the specified units;
- v. a reduction in Output as ordered under terms of the dispatch down and Curtailment provisions (including CAISO or Buyer’s system emergencies); or
- vi. the unavailability of landfill gas which was not anticipated as of the date this Confirmation was agreed to, which is not within the reasonable control of, or the result of negligence of, Seller or the party supplying such landfill gas to the Project, and which by the exercise of reasonable due diligence, Seller is unable to overcome or avoid or causes to be avoided;

7.3 Buyer Excuses. The performance of Buyer to receive the Product may be excused only (i) during periods of Force Majeure, (ii) by Seller’s failure to perform or (iii) during dispatch down periods.

Dispatch down periods will be treated in accordance with Section 17 of this Confirmation.

8.0 Exclusivity/Right of First Refusal.

8.1 Exclusivity. At no time shall Seller sell or otherwise dispose of Output or Environmental Attributes from the Facility to any third party except in the case of an Event of Default of Buyer.

8.2 Right of First Refusal. If, at any time during the term of this Agreement, Seller or any of its affiliates intends to install new facilities using landfill gas from the Otay Landfill or any expansion thereof to produce additional energy beyond that produced by the Facility or the two existing landfill gas facilities that are owned by affiliates of Seller and commonly referred to as Otay 1 and 2 (collectively, the “New Facilities Energy”), it shall first offer, or shall cause its affiliate to offer, the New Facilities Energy to Buyer by delivering notice to Buyer setting forth the terms and conditions of the offer in writing and in reasonable detail (each, an “Option Election Notice”). Except to the extent otherwise noted in the Option Election Notice, any such New Facilities Energy shall be purchased and sold pursuant to a power purchase agreement in form and substance (other than price) substantially the same as this Agreement (with the security requirements adjusted). Seller shall, or shall cause its affiliate to, promptly answer any questions that Buyer may have concerning the offered terms and conditions and shall meet with Buyer to discuss the offer. If Buyer does not accept in writing the offered terms and conditions within thirty (30) days after receiving the Option Election Notice, Seller or its affiliate may enter into an agreement to sell the New Facilities Energy to a third party on terms and conditions no more favorable to the third party than those offered to Buyer. If Seller or its affiliate wishes to enter into an agreement with a third party on terms more favorable than those previously offered to Buyer, Seller shall, or shall cause its affiliate to, first offer the revised terms and conditions to Buyer under this Section, and Buyer shall have an additional thirty (30) days after receiving the revised Option Election Notice to accept the revised offer. If Buyer accepts an offer made under this Section, Seller shall, or shall cause its affiliate to, within a further sixty (60) days enter into a power purchase agreement with Buyer in substantially the same form as this Agreement, but incorporating such changes as are expressly identified in the terms and conditions in the Option Election Notice.

9.0 Monthly Payments.

9.1 Contract Price. The Contract Price shall be \$57.00/MWH.

9.2 Energy Payment. Energy payment shall be only for Delivered Energy, delivered by Seller and received by Buyer. The energy payment shall be calculated as follows:

$$\text{Energy Payment} = \sum_1^{\text{Hr}} \text{Delivered Energy} \times \text{Contract Price}$$

Where:

H_T = All hours of the billing month.

Contract Price is the price specified in Section 9.1.

Delivered Energy means the lower of scheduled or metered amounts less Delivery Losses.

Delivery Losses means all electrical losses occurring between the CAISO approved revenue meter and the Delivery Point and electrical losses occurring over the CAISO grid as such losses are assigned by the CAISO to the Facility including if applicable, but not limited to:

- a. If the CAISO approved revenue meter is not installed on the high voltage side of the Facility's substation bus bar, transformer and other electrical losses occurring between the CAISO approved revenue meter and the high voltage side of the Facility's substation bus bar;
- b. Any electrical losses between the high voltage side of the Facility's substation bus bar and the CAISO grid, including the following if applicable: DLF or TLF.

DLF means a measure of all net electrical losses as determined by the CPUC associated with the transmission of electric energy through the electric system from the high voltage side of the Facility's substation bus bar to the interface with the CAISO grid, also known as the distribution loss factor.

TLF (for resources outside of the CAISO grid) means a measure of all net electrical losses, as determined by the Transmission Provider, associated with the transmission of electric energy through the electric system from the high voltage side of the Facility's substation bus bar to the interface with the CAISO Grid, also known as the transmission loss factor.

; and

- c. Electrical losses determined by utilizing the GMM, or TMM if applicable, assigned to the Facility.

GMM(s) means the generation meter multipliers as determined by the CAISO representing the calculation of all electrical losses assigned to the Facility associated with the transmission of electric energy delivered by the Facility over the CAISO grid, which values are, as of the Effective Date, posted by CAISO on its website. The values used in the Agreement will be those appearing on the CAISO website on the third (3rd) Business Day of the calendar month following the month for which such values are being applied.

TMM means the tie meter multipliers as determined by the CAISO representing the calculation of all electrical losses over the CAISO grid associated with the transmission of electric energy delivered at a

CAISO Control Area boundary, which values are, as of the Effective Date, posted by the CAISO on its website. The values used in the Agreement will be those appearing on the CAISO website on the third (3rd) Business Day of the calendar month following the month for which such values are being applied.

9.2.1 CAISO Charges. Seller shall assume all liability and pay for all imbalance charges attributable to it and inter-zonal congestion charges. Seller shall also assume all liability and reimburse Buyer for any Penalties (as defined below) incurred by Buyer as a result of Seller's failure to abide by the CAISO Tariff and all applicable protocols. The Parties shall cooperate to eliminate imbalances and minimize Penalties to the extent possible. Seller shall promptly notify Buyer as soon as possible of any material imbalance that is occurring or has occurred. Such notification shall not impact Seller's responsibilities for payment for all imbalance and inter-zonal congestion charges and Penalties under this Agreement. Notwithstanding anything to the contrary which may be contained herein, Seller shall be entitled to any and all credits and/or payments made by CAISO to Seller or its Scheduling Coordinator in accordance with the CAISO Tariff and all applicable protocols.

9.2.2 "Penalties" shall be defined as any fees, liabilities, assessments, or similar charges assessed by the CAISO.

10.0 Environmental Attributes. Seller hereby provides and conveys all Environmental Attributes from the Unit(s) to Buyer as part of the Product being delivered, as such term is described in the applicable Transaction confirmation for the period set forth in such confirmation. Seller represents and warrants that Seller holds the right to all Environmental Attributes from the Unit(s), and Seller agrees to convey and hereby conveys all such Environmental Attributes to Buyer as included in the delivery of the Product from the Unit(s).

11.0 Facility Schedule. The Facility Milestones are the following:

No.	Task	Milestone Date
1	Apply for RPS registration number	02/15/2006
2	Obtain Air Quality Management District's Permit to Construct	02/28/2006
3	Initial Submittal of engineering/design plans to San Diego County	03/01/2006
4	Submit application to CAISO for Participating Generator Agreement	04/30/2006
5	Submit application to CAISO for Meter Service Agreement	04/30/2006

11.1 Buyer's Right to Monitor. Buyer may exercise its due diligence responsibilities via the following:

11.1.1 Buyer shall have the right to review Facility design drawings and documents.

11.1.2 Buyer may inspect the Facility's construction site or on-site Seller data and information pertaining to the Facility during business hours upon reasonable notice.

11.1.3 Within seven (7) days after the close of each calendar quarter until the Commercial Operation date, Seller shall provide to Buyer Quarterly Progress Reports similar in form and content of Exhibit E: Quarterly Progress Reports. Regularly scheduled meetings shall be held between representatives of Seller and Buyer for the purpose of reviewing Quarterly Progress Reports and Seller's construction progress.

11.2 Milestone Completion Notice. No later than seven (7) days after completion of each milestone set forth in Section 11.0, Seller shall submit written notice to inform Buyer of milestone completion. Seller must provide accompanying documentation (including copies of applicable agreements redacted, permits and certificates) sufficient to demonstrate evidence of such milestone completion.

12.0 Facility Delays.

12.1 Missed Milestones. If Seller misses three or more milestones set forth in Section 11.0 or misses any one by more than ninety (90) days except as a result of Force Majeure, Seller shall submit to Buyer, within ten (10) days of such missed milestone date, a remedial action plan (the "Remedial Action Plan").

12.2 Missed Commercial Operation Deadline. Seller shall cause the Facility to achieve Commercial Operation on or before the scheduled Commercial Operation

Deadline. If Commercial Operation occurs after the scheduled Commercial Operation Deadline (for reasons other than attributable to Force Majeure), Seller shall pay Buyer delay damages equal to three hundred and twenty nine dollars (US\$329.00) for each day or portion of a day that the Commercial Operation occurs after the scheduled Commercial Operation Deadline, up to a total of one hundred and eighty (180) days. Seller shall also submit a Remedial Action Plan within ten (10) days of a missed Commercial Operation Deadline. Each Party agrees and acknowledges that (a) the actual damages that Buyer would incur due to delay in achieving the Commercial Operation on or before the scheduled Commercial Operation Deadline would be difficult or impossible to predict with certainty, (b) the daily delay damages set forth in this section are a reasonable and appropriate approximation of such damages, and (c) the daily delay damages set forth in this section are the exclusive remedy for Seller's delay in achieving Commercial Operation by the scheduled Commercial Operation Deadline but shall not otherwise act to limit any of Buyer's rights or remedies arising from any other Event of Default by Seller, including, without limitation, the failure by Seller to achieve Commercial Operation altogether.

- 12.3 Remedial Action Plan/Additional Event of Default. For purposes of Section 12.1 and Section 12.2, at a minimum, a Remedial Action Plan shall set forth a detailed description of Seller's course of action and plan to achieve all milestones set forth in Section 11.0 and Commercial Operation by the Commercial Operation Deadline. Approval of a Remedial Action Plan shall not relieve Seller of its obligation to meet any subsequent milestones and Commercial Operation by the Commercial Operation Deadline. Buyer at its sole discretion may reject any Remedial Action Plan submitted under Section 12.1 or 12.2 and declare an Event of Default.
- 13.0 Operating Procedures. No later than forty-five (45) days before the Commercial Operation date, and from time to time as reasonably determined necessary by the Parties, the Parties shall meet to address how each Party will perform its respective obligations under this Agreement, including, but not limited to: (1) the method of day-to-day communications; (2) key personnel lists for each Party; (3) procedures for Forced Outage and Scheduled Maintenance Outage reporting; (4) procedures for delivery forecasting; (5) procedures for record keeping; (6) scheduling procedures, including executing a Scheduling Coordinator Services Agreement between the Parties (the "Scheduling Coordinator Agreement"); and (7) invoicing and payment procedures; provided, that the failure to agree on operating procedures will not relieve the Parties of their respective obligations under this Agreement.
- 14.0 Maintenance.
- 14.1 Scheduled Maintenance Outages. Seller shall operate, maintain, and arrange Scheduled Maintenance Outages for the Facility in accordance with Good Utility Practices. Seller shall be limited to eight hundred forty (840) hours of Scheduled Maintenance Outages per year.

14.1.1 No later than forty-five (45) days before the start of each calendar year, Seller shall provide Buyer with a timetable of Scheduled Maintenance Outages for the following twelve (12) months. Buyer may accept or reject such schedules but shall not unreasonably withhold or delay approval. If Seller reasonably determines that it is necessary to change a Scheduled Maintenance Outage, Seller shall notify Buyer of the proposed change at least ten (10) days before the outage begins. Buyer shall promptly respond to such notice and may request reasonable modifications in the schedule for the outage. Seller shall use best efforts in accordance with Good Utility Practices not to schedule Scheduled Maintenance Outages during Summer Months (as defined below). "Summer Months" shall be defined as July, August, September and October.

14.1.2 A "Scheduled Maintenance Outage" means a planned shut down of any part of the Facility scheduled by Seller in accordance with this Section that affects Seller's ability to provide Output from the Facility to Buyer under this Agreement.

14.2 Emergency Periods. At Buyer's request, Seller shall use commercially reasonable efforts to deliver Output during CAISO declared emergency periods. In the event Seller has previously scheduled a Scheduled Maintenance Outage coincident with an emergency, Seller shall use commercially reasonable efforts to reschedule the Scheduled Maintenance Outage.

14.3 Maintenance Log. Seller shall maintain a maintenance log for the Facility. The log shall include but not be limited to information on power production, fuel consumption and efficiency (if applicable), availability, maintenance (both breakdown and preventative) performed, outages, changes in operating status, inspections, manufacturer recommended services and replacement, electrical characteristics of the generators, control settings or adjustments of equipment and protective devices. Information maintained pursuant to this paragraph shall be kept for two years and provided to Buyer electronically, within thirty (30) days of Buyer's request.

15.0 Participating Generator. Seller shall execute a CAISO Participating Generator Agreement and a Meter Service Agreement for CAISO Metered Entities.

16.0 Scheduling and Scheduling Coordinator.

Buyer or Buyer's designee shall be the Scheduling Coordinator for the Facility and shall be responsible for scheduling the forecast of Output to the Delivery Point during the Delivery Term. Buyer shall submit schedules, and any updates to such schedules, to the CAISO based on the Seller's most current schedule, as submitted to Buyer in accordance with Section 16. All generation scheduling and transmission services shall be performed in accordance with all applicable operating policies, criteria, guidelines and the CAISO

Tariff or its successor, and any other generally accepted operational requirements. Seller shall fulfill contractual, metering and interconnection requirements set forth in the CAISO Tariff and implementing CAISO standards and requirements, including but not limited to executing a CAISO Participating Generator Agreement, so as to be able to deliver Output to the CAISO controlled grid.

Notwithstanding anything to the contrary herein, in the event Seller makes a change to its schedule on the actual date of delivery for any reason including Forced Outages (other than a scheduling change imposed by Buyer or CAISO) which results in a change to its Daily Delivery Schedules as defined in Section 16.3 (whether in part or in whole), Seller shall notify Buyer immediately by calling Buyer's on-duty scheduling coordinator. Within two hours of the scheduling change due to Forced Outage, Seller shall submit Exhibit F: Outage Notification Form to Buyer in accordance with the instructions shown on the form. Seller shall keep Buyer informed of any developments that will affect either the duration of the outage or the availability of the Facility during or after the end of the outage.

- 16.1 Annual Delivery Schedules. No later than forty-five (45) days before the beginning of each calendar year, Seller shall provide an annual forecast of each month's average-day deliveries of Output, by hour, for the following calendar year (the "Annual Delivery Schedule").
- 16.2 Monthly Delivery Schedules. Ten (10) Business Days before the beginning of each month, Seller shall provide a monthly forecast of each day's average deliveries of Output, by hour, for the following month ("Monthly Delivery Forecast").
- 16.3 Daily Delivery Schedules. In accordance with the Scheduling Coordinator Agreement and by 5:30 AM Pacific Prevailing Time on the Business Day immediately preceding the date of delivery, Seller shall provide Buyer with a copy of the required schedule of deliveries of Output for each hour of the immediately succeeding day concurrent. A schedule provided in a day prior to any non-Business Day(s) shall include schedules for the immediate day, each succeeding non-Business Day and the next Business Day. Seller shall provide Buyer with a copy of any and all updates to such schedule indicating a change in scheduled Output.
17. Dispatch Down/Curtailment. Both parties shall be excused from performing their obligations under this Agreement for (a) curtailments ordered directly or indirectly by the CAISO or (b) scheduled and unscheduled maintenance on Buyer's facilities that prevents Seller and/or Buyer from delivering and/or taking Output at the Delivery Point.
18. Delivery and Metering. All deliveries of Output shall be metered in real-time basis to reflect deliveries at the Delivery Point. A copy of hourly metered and hourly scheduled information shall be included in each monthly invoice. All meters and equipment used

for the measurement of Output shall be provided, owned, maintained, inspected, tested and read at no cost to Buyer by Seller.

- 18.1 CAISO Agreements. Seller shall enter into a Participating Generator Agreement and a Meter Service Agreement with the CAISO and shall comply with the CAISO Tariff and standards applicable to metering. All meters and equipment used for the measurement of deliveries shall be provided, owned, maintained, inspected and tested at no cost to Buyer. To facilitate monthly settlement processes, Seller shall authorize Buyer to view the Facility's CAISO on-line meter data by identifying Buyer as an authorized user with "read only" privileges on Schedule 3 of Seller's Meter Service Agreement with the CAISO.
- 18.2 Testing and Calibration. Seller shall perform or cause to be performed, at its expense, annual testing and calibration of the electric meters in accordance with Good Industry Practice and the CAISO Tariff. Seller shall give Buyer reasonable advance notice of any inspection, testing or calibration of the electric meters. Buyer shall have the right to have a representative or designee present at such inspection, test or calibration of the electric meters. Buyer shall have the right to require, at Buyer's expense, except as required below, a test of any of the electric meters not more often than two (2) times every twelve (12) months.
- 18.3 Inaccurate Meters. If any of the electric meters is deemed to be inaccurate under the Meter Service Agreement, deliveries shall be measured by reference to Seller's check-meters, if installed and registering accurately, or the meter readings for the period of inaccuracy shall be adjusted as far as can be reasonably ascertained by Seller from the best available data, subject to review and approval by Buyer. If the period of the inaccuracy cannot be ascertained reasonably, any such adjustment shall be for a period equal to one-half of the time elapsed since the preceding test by applying the percentage of inaccuracy so found. Seller shall promptly cause such electric meters to be corrected and, where such inaccuracy was determined pursuant to a test required by Buyer, Seller shall bear the expense of any such test.
- 18.4 Delivered MWh Adjustments. In the event that, due to correction for inaccurate electric meters deemed to be inaccurate under the Meter Service Agreement, the amount of Output is increased or decreased, the revised quantity of Output shall be used for purposes of calculating the Energy Payment. If any of such amounts for any period have already been calculated using the previous quantity of Output, they shall be recalculated using the revised quantity of Output. If the recalculation increases any amount payable by Seller to Buyer or decreases any amount payable by Buyer to Seller, Seller shall pay to Buyer the amount of such increase or decrease. If the recalculation increases any amount payable by Buyer to Seller or decreases any amount payable by Seller to Buyer, Buyer shall pay to Seller the amount of such increase or decrease.

19. SEP Awards, Contingencies.

Seller Termination Right

- (a) If Seller's Bid Price exceeds the Market Price Referent, Seller may seek a PGC Funding Award from the California Energy Commission, or its successor agency ("CEC"), for an amount (in \$ per MWh) equal to the positive difference derived by subtracting (a) the Market Price Referent (in \$ per MWh) from (b) the Bid Price (in \$ per MWh) ("PGC Fund Amount"). To the extent that Seller seeks such PGC Fund Award, Seller shall use best efforts to comply with all funding criteria and obtain the PGC Fund Amount and Buyer shall reasonably support Seller's efforts. If Seller does not obtain a PGC Funding Confirmation or PGC Funding Award by 11:59 p.m. Pacific Standard Time on the 120th day from the date on which Buyer files this Transaction for CPUC Approval ("Funding Termination Deadline"), then Seller may unilaterally terminate this Transaction prior to the Funding Termination Deadline effective as of the date on which Buyer receives Seller's written notice of termination. If Seller exercises this termination right, neither Buyer nor Seller shall be subject to liability of any kind.
- (b) At any time prior to the Funding Termination Deadline, if applicable, Seller shall send to Buyer within ten (10) days of (i) obtaining a PGC Funding Confirmation or PGC Funding Award, written notice of such confirmation or award and a copy of the final funding award agreement entered into by the California Energy Commission, or its successor agency ("CEC") and Seller, if the funding award agreement has been granted at that time, or (ii) receiving written notice from the CEC denying Seller's application for the requested PGC Fund Amount, a copy of such notice and a written statement from Seller, in which Seller shall (A) waive its termination rights under this Section 19 or (B) notify Buyer that the Transaction is terminated, pursuant to the terms of this Confirmation. If Seller has the right to terminate this Transaction, but fails to send written notice of termination by the Funding Termination Deadline, then Seller's termination right per this Section 19 shall be deemed waived in its entirety.

"Bid Price" means the price as bid by Seller in response to the RFP or such other price as may be arrived at through negotiation.

"Market Price Referent" means the market price referent applicable to this Agreement, as determined by the CPUC in accordance with Public Utilities Code Section 399.15(c).

"Public Goods Charge Funding" or "PGC Funds" means any supplemental energy payments, pursuant to Public Utilities Code Section 399.15, as shall be modified or amended from time to time.

“PGC Funding Award” means the final award of allocated PGC Funds from the CEC to Seller, pursuant to Section 25743(a) of the Public Resource Code, as shall be modified or amended from time to time.

“PGC Funding Confirmation” means a written notice from the CEC to Seller acknowledging Seller’s request for PGC Funds and the availability of such funds for Seller in a future PGC Funding Award.

20. PGC Funding Termination Event

- (a) PGC Funding Revocation. If at any time after Seller obtains a PGC Funding Confirmation or PGC Funding Award, (i) the PGC Funding Confirmation or PGC Funding Award is revoked in whole or in part by the CEC for reasons not caused by Seller’s action or inaction, (ii) such revocation occurs prior to the issuance of a PGC Funding Award or during the term of the PGC Funding Award, and (iii) Seller has not received a financial benefit in the form of tax credits or any other source of public funding or credit directly related to the Product sold under this Confirmation, which benefit would offset the loss incurred from the revocation of the PGC Funding Confirmation or PGC Funding Award, then Seller shall have the right to terminate this Transaction, subject to Buyer’s Right of First Refusal Option. If Seller exercises this termination right neither Buyer nor Seller shall be subject to liability arising from such termination.

Not more than ten (10) days from Seller’s receipt of written notification regarding revocation of the PGC Funding Confirmation or PGC Funding Award in whole or part, Seller shall notify Buyer in writing of the revocation of the PGC Funding Confirmation or PGC Funding Award, certify it has not received an offsetting financial benefit per clause (iii) above, and certify that such revocation is not due to Seller’s action or inaction. Seller shall also provide Buyer with a copy of such CEC notification. (the “Revocation Notice”). Seller shall specify in its Revocation Notice what percentage of lost PGC funding it is willing to accept to continue to perform under this Transaction (not exceeding 100%).

- (b) Right of First Refusal Option.

(i) Option. Buyer, in its sole discretion, shall have the right, but not the obligation, to pay to Seller the percentage of lost PGC funding specified in its Revocation Notice (“Lost PGC Funds”) and Seller shall continue performing under the Transaction for the remaining term of the Transaction (the “Option”). Buyer shall have thirty (30) days from its receipt of the Revocation Notice to exercise the Option (“Exercise Period”), subject to Option Approval, as defined below.

(ii) Exercise of Option. If Buyer chooses to exercise the Option, Buyer shall send written notice to Seller stating that Buyer is exercising the Option, conditioned upon Buyer’s receipt of Option Approval, as defined below, within 180 days of date on which Buyer received the Revocation Notice. The effectiveness of the

Option exercise shall be subject to Buyer's receipt of a final, non-appealable order issued by the CPUC, satisfactory to Buyer, approving Buyer's exercise of the Option and recovery of costs associated with the payment of the percentage of lost PGC Funding ("Option Approval"). The date on which Buyer provides written notice of its Option exercise to Seller shall be the "Exercise Date." Buyer shall file an advice filing or application seeking the Option Approval within thirty (30) days of the Exercise Date.

(iii) Payment. Prior to Buyer's receipt of Option Approval, Buyer shall pay Seller the Lost PGC Funds, which would have been due to Seller on a monthly basis for the period between the Exercise Date and the next invoice following the date on which the Option Approval is issued. Upon receipt of Option Approval Buyer shall continue paying Seller's Lost PGC Funds on a monthly basis until the expiration of the term of Seller's PGC Funding Award, or Reinstatement of Seller's PGC funding, whichever comes first.

(iv) Seller's Termination Right. Seller may terminate the Transaction in accordance with subSection (a) above upon the occurrence of any of the following events: (A) Buyer provides written notice to Seller rejecting the exercise of the Option, (B) the Option expires without being exercised, (C) Buyer fails to seek Option Approval within thirty (30) days of the Exercise Date, or (D) Buyer fails to obtain Option Approval within 180 days of Buyer's receipt of the Revocation Notice. If Seller then terminates the Transaction, such termination shall be effective thirty (30) days from the date on which Seller notifies Buyer of such termination. Both Parties shall continue to perform under this Transaction until the effectiveness of any such termination by Seller.

(c) Reinstatement of PGC Funding. If the PGC Funding Award is reinstated in its entirety, including retroactive payments for lost PGC Funds, at anytime before (i) Seller's termination of this Transaction or (ii) Buyer's exercise of the Option, then Seller shall no longer be permitted to terminate this Transaction, pursuant to Section 20(a), and both Parties shall continue to perform under this Transaction. If the PGC Funding Award is reinstated in whole or in part at anytime after Buyer has exercised the Option, then Buyer shall be relieved of all further obligations to pay any of Seller's lost PGC Funds, which will be covered by the reinstated PGC Funding Award. If PGC Funding Award is reinstated in whole or in part on a retroactive basis after Buyer has exercised the Option, then Buyer shall have the right to offset against payments due to Seller that portion of such award amount equivalent to the lost PGC Funds paid by Buyer to Seller between the period in which the PGC Funds were revoked and reinstated. Seller shall notify Buyer in writing of any such reinstatement of PGC Funds within ten (10) days of receiving notice of such reinstatement from the CEC, CPUC, or other regulatory agency responsible for the PGC Funds program, which notice shall include a copy of such notice.

IN WITNESS WHEREOF, the Parties have caused this Confirmation Letter to be duly executed as of the date first above written.

Seller: Covanta Otay 3 Company

Buyer: San Diego Gas & Electric Company

Signature: 

Signature: 

By: Amy R. Wolfe

By: William Reed

Title: Vice President,
Regional Business Management

Title: Senior Vice President,
Regulatory and Strategic Planning

Approved as to form: AS . AS