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March 25, 2011

**VIA HAND DELIVERY**

Secretary  
Indiana Utility Regulatory Commission  
101 W. Washington Street  
Suite 1500 E  
Indianapolis, IN 46204

RECEIVED

MAR 25 2011

INDIANA UTILITY  
REGULATORY COMMISSION

Re: Citizens Thermal Energy / 30-Day Filing

Dear Secretary:

Citizens Thermal Energy ("CTE") hereby submits for approval **under the Commission's Thirty-Day Administrative Filing Procedures (170 IAC 1-6)** its proposed *First Amendment to Steam Purchase Agreement between Citizens Thermal Energy and Covanta Indianapolis, Inc.* (the "First Amendment"). A copy of the First Amendment is enclosed as Attachment 1.

Upon approval by the Commission and execution by the parties, the First Amendment will modify the terms of the *Steam Purchase Agreement between Citizens Thermal Energy and Covanta, Inc.* dated December 9, 2005 (the "Original Agreement"), a copy of which is enclosed as Attachment 2. In the Original Agreement, Covanta Indianapolis, Inc. ("Covanta") agreed to sell and CTE agreed to purchase steam meeting certain requirements from Covanta's Indianapolis Resource Recovery Project located at 2320 South Harding Street, Indianapolis, Indiana. The Commission approved the Original Agreement by its December 28, 2006 Order in Cause No. 43025, a copy of which is enclosed as Attachment 3.

CTE and Covanta have determined that the language of Article IV(B) and Exhibit A to the Original Agreement create ambiguities that could result in unreasonable adjustments to the Base Rate and Winter Incentive Premium that were neither intended nor contemplated by them. While no such unreasonable adjustment has yet occurred, the First Amendment amends the Original Agreement for the limited purpose of correcting Article IV(B) and Exhibit A to more accurately reflect the intent of the parties and how they have determined to make the adjustment provided for in Article IV(B) and Exhibit A. Enclosed as Attachment 4 are the pages from the Original Agreement marked to show the changes that the First Amendment will make to the Original Agreement if approved by the Commission. No refunds of additional payments will be made as a result of the approval of the First Amendment.

Attachment 5 is a spreadsheet illustrating the impact of the possible unreasonable adjustments to the Base Rate that could result under Article IV(B) and Exhibit A to the Original Agreement. As shown on Attachment 5, the Original Agreement could have been read to require

the application during 2010 of an Adjusted Base Rate of \$0.5875 per Therm, or approximately a 35% increase over the Adjusted Base Rate of \$0.4343 per Therm applicable during 2009. CTE and Covanta recognized, however, that such an increase was contrary to their intentions and unreasonable given that the various indices that were intended to control adjustments to the Base Rate all decreased between 2009 and 2010. Instead, CTE and Covanta agreed to a reading of the Original Agreement that resulted in a decrease in Adjusted Base Rate for 2010 of approximately 5%. The proposed First Amendment memorializes the reading adopted by CTE and Covanta for 2010.

The First Amendment is not subject to any other Commission rules establishing specific filing requirements and does not constitute a "prohibited filing" under 170 IAC 1-6-4. CTE believes 170 IAC 1-6-3 allows for approval of the First Amendment under the Commission's 30-Day filing procedure. A statement verifying that CTE has satisfied the requirements of 170 IAC 1-6-6 in connection with this submission is enclosed as Attachment 6. If approved by the Commission, the parties will execute the First Amendment and a copy will be submitted for the Commission's records.

If you have any questions, please do not hesitate to contact:

Mr. Robert Purdue  
Director Steam Operations  
Citizens Thermal Energy  
366 Kentucky Avenue  
Indianapolis, Indiana 46225  
[Rpurdue@CitizensEnergyGroup.com](mailto:Rpurdue@CitizensEnergyGroup.com)  
Phone and Fax: 317-693-8701

Thank you in advance for your consideration of CTE's request.

Sincerely,



LaTona S. Prentice  
Executive Director of Regulatory Affairs  
Citizens Energy Group

Cc (w/encl.): Indiana Office of Utility Consumer Counselor

**FIRST AMENDMENT**  
**TO**  
**STEAM PURCHASE AGREEMENT**  
**BETWEEN**  
**CITIZENS THERMAL ENERGY**  
**AND**  
**COVANTA INDIANAPOLIS, INC.**

This First Amendment to Steam Purchase Agreement (the "First Amendment") is entered into this \_\_\_\_ day of \_\_\_\_\_, 2010, by and between COVANTA INDIANAPOLIS, INC. (hereafter "Covanta"), an Indiana corporation having its principal office at 2320 South Harding Street, Indianapolis, IN 46221, and THE BOARD OF DIRECTORS FOR UTILITIES OF THE DEPARTMENT OF PUBLIC UTILITIES OF THE CITY OF INDIANAPOLIS, as successor trustee of a public charitable trust, d/b/a CITIZENS THERMAL ENERGY (hereafter "CTE" or the "Company"), having its principal office at 2020 North Meridian Street, Indianapolis, Indiana 46202.

RECITALS

WHEREAS, Covanta and CTE entered into a certain Steam Purchase Agreement dated the ninth of December, 2005 (the "Agreement"), whereby Covanta agreed to sell and CTE agreed to purchase certain thermal energy in the manner and to the extent set forth in the Agreement; and

WHEREAS, the Agreement included a provision for annually escalating the Base Rate for Base Steam and Winter Incentive Premium, which adjustments were further expressed by the formula attached as Exhibit A to the Agreement; and

WHEREAS, the parties have determined that the Agreement contains ambiguities that could result in unreasonable adjustments to the Base Rate for Base Steam and Winter Incentive Premium that were neither intended nor contemplated by the parties; and

WHEREAS, the parties desire to amend the Agreement for the limited purpose of correcting it to more accurately reflect the intent of the parties and the actual performance of the parties under the Agreement prior hereto.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, the parties agree as follows:

1. Article IV Section B of the Agreement is hereby modified, replaced, and restated in its entirety to read as follows:

B. Escalated Base Rate for Base Steam and Winter Incentive Steam.

Commencing with the calendar month which includes the Effective Date, the Base Rate and the Winter Incentive Premium shall be adjusted annually and calculated for each Contract Year by multiplying the initial Base Rate of \$0.305 per Therm or initial Winter Incentive Premium of \$0.10 per Therm, respectively, by the Rate Adjustor. The escalated Base Rate and escalated Winter Incentive Premium are expressed by a formula attached hereto as Exhibit A-1 and incorporated herein.

2. Exhibit A to the Agreement is hereby modified, replaced, and restated in its entirety with Exhibit A-1, a copy of which is attached hereto and incorporated herein by reference. All references to Exhibit A contained in the Agreement shall be read, and shall constitute, a reference to Exhibit A-1.

3. Except as expressly amended by this First Amendment, Covanta and CTE ratify and confirm the Agreement in all respects, and acknowledge that the Agreement, as modified by this First Amendment, is in full force and effect, and the revisions set forth above are merged into the Agreement as though a part thereof. This First Amendment and the Agreement contain the entire agreement and understanding between the Parties, their agents, and employees as to the subject matter of this Agreement, and merge and supersede all prior agreements, commitments, representations, and discussions between the Parties with respect to the subject matter of this First Amendment and the Agreement. No Party shall be bound to any other obligations, conditions, or representations with respect to the subject matter of this First Amendment and the Agreement.

4. All capitalized terms not defined in this First Amendment shall have the same meaning ascribed to those terms in the Agreement.

5. All captions, subject headings, paragraph titles and similar items are provided for the purpose of reference and convenience and are not intended to be inclusive, definitive or to affect the meaning of the contents or scope of this First Amendment.

6. CTE shall be responsible for obtaining all necessary or appropriate relief from the Commission approving this First Amendment as executed.

7. Each party represents and warrants to the other party that it has the power, authority and legal right to enter into this First Amendment, that the execution, delivery and performance hereof have been duly authorized by all necessary corporate or governmental action, that its execution will not violate any judgment, order, law or regulation applicable to the party, and that this First Amendment has been duly entered into and delivered and constitutes a legal, valid and binding obligation of the party, enforceable in accordance with its terms.

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment as of this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

THE BOARD OF DIRECTORS FOR  
UTILITIES OF THE DEPARTMENT OF  
PUBLIC UTILITIES OF THE CITY OF  
INDIANAPOLIS, as successor trustee of a  
public charitable trust, d/b/a CITIZENS  
THERMAL ENERGY

COVANTA INDIANAPOLIS, INC.

By: \_\_\_\_\_  
Name: William A. Tracy  
Title: Senior Vice President

By: \_\_\_\_\_  
Name: Seth Myones  
Title: Senior Vice President

Witness: \_\_\_\_\_

Witness: \_\_\_\_\_

**EXHIBIT A-1**

**ESCALATED BASE RATE/WINTER INCENTIVE PREMIUM FORMULA**

**Calculation of Base/Winter Rate Escalator:**

The Base Rate and Winter Incentive Premium shall be adjusted annually and be calculated for each Contract Year by multiplying the initial Base Rate of \$0.305 per Therm or initial Winter Incentive Premium of \$0.10 per Therm, respectively, by the Rate Adjustor.

The Rate Adjustor for each Contract Year shall be equal to the greater of (a) 0.95 times the previous Contract Year's Rate Adjustor and (b) the Base/Winter Rate Escalator for such Contract Year.

The Base/Winter Rate Escalator for each Contract Year shall be an amount equal to the sum of:

- (i) The product of (A) 0.50, and (B) a fraction the numerator of which is the CPI Index for the Measurement Period for such Contract Year, and the denominator of which is the CPI Index for the Base Period, plus
- (ii) The product of (A) 0.39, and (B) the Coal Index. The "Coal Index" is the average of (1) the Platt's Coal Component and (2) the Perry K Coal Component. The "Platt's Coal Component" equals a fraction, the numerator of which is the Platt's Coal Index for the Measurement Period for such Contract Year, and the denominator of which is the Platt's Coal Index for the Base Period. The "Perry K Coal Component" equals a fraction, the numerator of which is the Perry K Coal Index for the Measurement Period for such Contract Year, and the denominator of which is the Perry K Coal Index for the Base Period; plus
- (iii) The product of (A) 0.11 and (B) the Natural Gas Index. The "Natural Gas Index" is the average of (1) the NYMEX Gas Component and (2) the Perry K Gas Component. The "NYMEX Gas Component" equals a fraction, the numerator of which is the NYMEX Gas Index for the Measurement Period for such Contract Year, and the denominator of which is the NYMEX Gas Index for the Base Period. The "Perry K Gas Component" equals a fraction, the numerator of which is the Perry K Gas Index for the Measurement Period for such Contract Year, and the denominator of which is the Perry K Gas Index for the Base Period.

**EXHIBIT A-1, continued**

For the purposes of calculating the Base/Winter Rate Escalator for a given Contract Year, “**Measurement Period**” shall mean:

- (1) with respect to the CPI Index, the last publication date of the CPI Index occurring immediately prior to the November 30 of the Contract Year then ending;
- (2) with respect to Platt’s Coal Index and the NYMEX Gas Index, the month of November 30 of the Contract Year then ending, and
- (3) with respect to Perry K Coal Index and the Perry K Gas Index, the average of the twelve (12) month period ending November 30<sup>th</sup> of Contract Year then ending,

Provided, that, with respect to the initial year (2005) the Measurement Period would be calculated from each Index starting month or Base month to December 1, 2005.

For the purposes of calculating the Base/Winter Rate Escalator, the “**Base Period**” shall mean:

- (1) with respect to the CPI Index: Consumer Price Index (CPI) - The February 2005 index of 190.5. CPI Series: CPI – All Urban Consumers for Chicago-Gary-Kenosha” Base Year, all items, 1982-1984 = 100
- (2) with respect to Platt’s Coal Index: February 2005 Index is \$43.15. Illinois Basin coal, 11,500 Btu/lb, 2.5 lb SO<sub>2</sub>.
- (3) with respect to Perry K Coal Index: The March 2005 is \$1.68. Weighted average price of coal purchased for consumption at its Perry K Plant.
- (4) with respect to the NYMEX Gas Index: The February Index is \$6.09. The price of natural gas delivered at Henry Hub as reported on NYMEX.
- (5) with respect to the Perry K Gas Index: The index for February 2005 is \$7.14. Weighted average price of natural gas purchased by CTE for consumption in its Perry K Plant.

**EXHIBIT A-1, continued**

**Escalated Base Rate/Winter Incentive Premium Formula**

Sample Calculation for Escalated Base Rate (Figures are only for example purposes and not actual values)

The Base Rate (For Each Year) = initial Base Rate of \$0.305 /Therm x Rate Adjustor for current Contract Year

The Rate Adjustor for each Contract Year shall be equal to the greater of:

- a) 0.95 times previous Contract Year's Rate Adjustor; and
- b) Base/Winter Rate Escalator for such Contract Year

The Base/Winter Rate Escalator for each Contract Year shall be an amount equal to the sum of:

- i) 0.50 multiplied by the quantity of the CPI Index for the Measurement Period for such Contract Year divided by the CPI Index for the Base Period.
- ii) 0.39 multiplied by the quantity of [(0.5 x the Platts Coal Index for the Measurement Period for such Contract Year divided by the Platts Coal Index for the Base Period) + (0.5 x the CTE Coal Index for the Measurement Period for such Contract Year divided by the CTE Coal Index for the Base Period)]
- iii) 0.11 multiplied by the quantity of [(0.5 x the NYMEX Natural Gas Index for the Measurement Period for such Contract Year divided by the NYMEX Natural Gas Index for the Base Period) + (0.5 x the CTE Natural Gas Index for the Measurement Period for such Contract Year divided by the CTE Natural Gas Index for the Base Period)]

Sample Calculation:

MP = Measurement Period

BP = Base Period

Year	50% CPI Index			39% Coal Index				11% Natural Gas Index				(a)	(b)	Rate Adjustor	Rate Escalator	Base Rate		
	MP	BP	(i)	MP	BP	MP	BP	(ii)	MP	BP	MP						BP	(iii)
2005		\$190.5			\$43.15		\$1.68			\$6.09		\$7.14			1.0000	1.0000	1.0000	\$0.305
2006	\$195.0	\$190.5	0.5118	\$45.00	\$43.15	\$1.80	\$1.68	0.4123	\$10.00	\$6.09	\$8.00	\$7.14	0.1519	0.9500	1.0760	1.0760	1.0760	\$0.328
2007	\$200.0	\$190.5	0.5249	\$45.50	\$43.15	\$1.90	\$1.68	0.4262	\$10.00	\$6.09	\$8.00	\$7.14	0.1519	1.0222	1.1030	1.1030	1.1030	\$0.336
2008	\$205.0	\$190.5	0.5381	\$46.00	\$43.15	\$2.00	\$1.68	0.4400	\$10.50	\$6.09	\$8.00	\$7.14	0.1565	1.0478	1.1346	1.1346	1.1346	\$0.346
2009	\$210.0	\$190.5	0.5512	\$46.50	\$43.15	\$2.05	\$1.68	0.4481	\$11.00	\$6.09	\$8.00	\$7.14	0.1610	1.0778	1.1603	1.1603	1.1603	\$0.354

**STEAM PURCHASE AGREEMENT**

**BETWEEN**

**THE BOARD OF DIRECTORS FOR UTILITIES OF THE  
DEPARTMENT OF PUBLIC UTILITIES OF THE CITY OF  
INDIANAPOLIS, as successor trustee of a public charitable trust,  
d/b/a CITIZENS THERMAL ENERGY**

**AND**

**COVANTA INDIANAPOLIS, INC.**

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- Exhibit A: Escalated Base/Winter Rate Formula
- Exhibit B: Escalated Summer Rate Formula
- Exhibit C: Anticipated Monthly Base Steam Take by CTE
- Exhibit D: Maximum and Minimum Loads on Perry K boilers
- Exhibit E: Chemicals Used at IRRF for Water and Steam Treatment
- Exhibit F: O&M Escalator Formula
- Exhibit G: Sample Report Showing Non-Rate 3 Annual Steam Sales

## STEAM PURCHASE AGREEMENT

BETWEEN

CITIZENS THERMAL ENERGY

AND

COVANTA INDIANAPOLIS, INC.

This Steam Purchase Agreement (the "Agreement") is entered into as of this ninth day of December, 2005 by and between COVANTA INDIANAPOLIS, INC. (hereafter "Covanta"), an Indiana corporation having its principal office at 2320 South Harding Street, Indianapolis, IN 46221, and THE BOARD OF DIRECTORS FOR UTILITIES OF THE DEPARTMENT OF PUBLIC UTILITIES OF THE CITY OF INDIANAPOLIS, as successor trustee of a public charitable trust, d/b/a CITIZENS THERMAL ENERGY (hereafter "CTE" or the "Company"), having its principal office at 2020 North Meridian Street, Indianapolis, Indiana 46202.

### RECITALS

Covanta owns, operates and maintains the Indianapolis Resource Recovery Project (the "IRRF" or the "Project") located at 2320 South Harding Street in Indianapolis, Indiana. Covanta wishes to sell, and CTE is willing to purchase, thermal energy (i.e., steam expected to be at a minimum pressure of 490 psig and superheated to a temperature not to exceed 710°F at the metering point) from Covanta in the manner and to the extent set forth below.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, the Parties agree as follows:

### ARTICLE I

#### DEFINITIONS

When used with initial capitalizations, whether in the singular or in the plural, the following terms shall have the following meanings:

Agreement: This Steam Purchase Agreement, as amended from time to time in accordance with its terms.

Alternative Proposal: Has the meaning specified in Article XII.B.

Availability Multiplier: Has the meaning set forth in Article IV.E.

Available Production: The output of steam from the IRRF which Covanta offers for sale to CTE at any time pursuant to the terms of this Agreement.

Base Rate: Has the meaning specified in Article IV.A.

Base Period: The designated starting month and year for the indices used to escalate the Base/ Winter Rate and the O&M Charges, as indicated in the relevant formula for calculating the escalation of such rates.

Base/Winter Rate Escalator: Annual rate escalator to be applied to both the Base Rate and Winter Incentive Premium at the beginning of each Contract Year, designed to reflect a weighted average annual increase representative of 50 percent of the annual change in the CPI Index over the prior Contract Year, 39 percent of the annual change in the Coal Index over the prior Contract Year, and 11 percent of the annual change in the Natural Gas Index over the prior Contract Year, as more specifically set forth and calculated pursuant to Exhibit A.

Base Steam: Therms of steam sold by the IRRF to CTE each Contract Year for Displaced Net Steam to Mains a monthly estimate of which is shown in Exhibit C.

Business Day: Any calendar day other than Saturday, Sunday or the following holidays: New Years Day, Martin Luther King Day, Presidents' Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, Christmas day and other holidays on which CTE is officially closed for business provided that with respect to such other holidays, CTE provides written notice of such holidays 30 days prior to the commencement of each calendar year during the term of this Agreement.

City: The Consolidated City of Indianapolis and Marion County, Indiana.

Change in Law means either (a) the enactment, adoption, promulgation, modification or repeal or a material modification or change in the administrative or judicial application, after the date of this Agreement, by any federal, state or local government, agency, court or other governmental body, of any applicable law, plan or other similar legal requirement or (b) the imposition, after the date of this Agreement, of any terms or conditions of any official permit, license or approval, or the renewal thereof, necessary or desirable for the operation of the IRRF or the performance by Covanta of its obligations under this Agreement.

Change in Law Requirements: Has the meaning specified in Article XIII.B.1.

Coal Index: Has the meaning set forth in Exhibit A.

Commission: The Indiana Utility Regulatory Commission or any successor governmental agency with jurisdiction over steam and electric rates in the State of Indiana.

Contemplated Chemical Changes: Has the meaning specified in Article XII.B.

Contract Term: The period from December 1, 2008 through November 30, 2028.

Contract Year: Each annual period beginning on the Effective Date through November 30, 2009 and each year thereafter beginning on December 1 and ending on November 30.

CPI Index: The Consumer Price Index published by the U.S. Department of Labor's Bureau of Labor Statistics (the "BLS" or successor organization) known as the "CPI - All Urban Consumers for Chicago-Gary-Kenosha" Base Year, all items, 1982-1984 = 100, or in the event that the BLS (or its successor) ceases to publish or otherwise disseminate a "Consumer Price Index" for the such area, an index price which is a reasonable substitute therefor, to which the Parties mutually agree. The CPI Index for February 2005 shall be established as 190.5.

Cure Period: Has the meaning set forth in Article XII. C.

Demand Charge: Has the meaning set forth in Article IV. F.

Demand Charge Rebate: Has the meaning set forth in Article III.B.

Displaced Net Steam to Mains: Available Production which can be utilized by CTE to meet the total requirement of the Steam System, including steam customer requirements and line losses, in excess of the minimum net steam export capability, including consideration of all reasonable and applicable internal steam use and production and thermodynamic cycle losses, of the minimum number of boilers at Perry K Plant required to be operated periodically to maintain Steam System reliability, based on good utility practices, and subject to the agreed upon minimum load levels of each of the existing Perry K boilers so utilized, as set forth in Exhibit D hereto. In the event the reported maximum load levels of the existing Perry K boilers as shown in Exhibit D are permanently changed, the corresponding minimum load levels used to calculate Displaced Net Steam to Mains shall be adjusted proportionately. In the event any of the existing boilers at Perry K are permanently retired, and/or new boilers added, Exhibit D shall be modified accordingly and such modification incorporated into any subsequent calculations hereunder.

Effective Date: December 1, 2008.

Force Majeure: Any cause or event which is neither reasonably within the control nor caused by the negligence or willful misconduct of the Party claiming Force Majeure, and which has a direct material adverse effect on the rights or obligations of the Parties under the Steam Purchase Agreement, including but not limited to the following: Change in Law, Acts of God; acts of public enemies; orders of any civil or military authority; orders of courts of competent jurisdiction or the orders of federal and state regulatory authorities having jurisdiction in the premises; orders or permits or the absence of orders or permits of any kind essential to the operation of the Project or the Steam System, which have been properly applied for from the government of the United States, the State of Indiana, any political subdivision or municipal subdivision, (except orders or permits or the absence of orders or permits from the City unless the City or any of its departments, agencies or officials are implementing federal or state law or judicial decree); unavailability of a fuel or resource used in connection with the generation of steam; epidemics; landslides; lightning; earthquakes; fires; hurricanes; tornadoes; storms; floods; washouts; drought; arrest; war; civil disturbances; explosions; accident to machinery, transmission lines or pipes; or partial or entire failure of utilities; sabotage.

Force Majeure Capital Costs: Has the meaning specified in Article XIII.B.2.

Force Majeure Operating Costs: Has the meaning specified in Article XIII.B.2.

Force Majeure Surcharge: Has the meaning specified in Article XIII.B.2.

Force Majeure Termination Payment: Has the meaning specified in Article XIII.B.3.

Holdover Period: Has the meaning specified in Article V.B.4.

Incremental Chemical Costs: Has the meaning specified in Article XII.B.

Independent Expert: Means the independent engineer or other independent expert in the area of engineering, construction, procurement, accounting or other germane expertise mutually agreed upon and jointly selected, engaged and paid by Covanta and CTE following the occurrence of a Change in Law for which the Change in Law Requirements are anticipated to exceed \$1 million to consult with the Parties in connection with the calculation and estimation of Force Majeure Capital Costs and/or Force Majeure Operating Costs.

Initial Minimum Annual Purchase Requirement: Twenty-nine million (29,000,000) Therms.

IRRF: The waste to energy facility located at 2320 South Harding Street, Indianapolis, Indiana that is owned and operated by Covanta, which produces steam from three boilers.

Labor Index: National Employment, Hours and Earnings Index (NEHEI), Series CEU4422000006, Utilities, Utilities – Average Earnings of Production Workers as published by the United States Bureau of Labor Statistics (<http://data.bls.gov/cgi-bin/srgate>), or, in the event such index is no longer published (whether in print or electronic format), any successor website or publication reflecting substantially the same data for labor costs. The Labor Index for February 2005 shall be established as 25.98.

Lagging Index: Has the meaning specified in Article V.B.4.

Material Steam Load Change: A net decrease in CTE's Non-Rate 3 Annual Steam Sales, which decrease lasts for two consecutive Contract Years, such that CTE's aggregate Non-Rate 3 Annual Steam Sales are in the aggregate less than 53,100,000 Therms per Contract Year for each of two consecutive Contract Years.

Minimum Annual Purchase Requirement: The Initial Minimum Annual Purchase Requirement, as adjusted, if applicable, pursuant to Article III.A.

MISO: Midwest ISO, a non-profit regional transmission organization, or its successors or assigns or any entity that undertakes the function of creating a liquid market for electricity and related products in the geographical area of the IRRF and the Steam System.

MISO Price: The Locational Marginal Price ("LMP") at the node known as "IPL16STOU3O3" as reported on MISO's website, [www.midwestiso.org](http://www.midwestiso.org), or any successor

website or publication or, in the event, there ceases to be a liquid market for electricity and related products in the geographical area of the IRRF and the Steam System, an index price which is a reasonable substitute therefor, to which the Parties mutually agree.

Monthly Steam Payment: Has the meaning specified in Article V.

Natural Gas Index: Has the meaning set forth in Exhibit A.

Non-Rate 3 Annual Steam Sales: The aggregate annual sales of steam by CTE pursuant to all of its tariff rates other than Rate 3A and Rate 3B from December 1 of a particular year to November 30<sup>th</sup> of the following year, as such information is reported or presented to the Commission on an annual or other periodic basis (as updated or corrected), a copy of a portion of which report is attached hereto as Exhibit G for illustrative purposes. In the event that rate classifications are altered, re-named or recharacterized in any way, the Parties shall amend this definition to effectuate the intent of the original definition.

NYMEX: The New York Mercantile Exchange, Inc., its successors and assigns.

NYMEX Gas Component: Has the meaning set forth in Exhibit A.

NYMEX Gas Index: The arithmetic average of the prices for natural gas reported for each hour of each day in the month of November in any given Contract Year by NYMEX for gas delivered at Henry Hub during such month.

O&M Charge: Has the meaning specified in Article IV.G.

O&M Adjustor: Has the meaning set forth and calculated pursuant to Exhibit F.

O&M Escalator: For any Contract Year, an annual rate escalator designed to reflect a weighted average annual increase representative of 50 percent of the annual change in the CPI Index over the prior Contract Year, and 50 percent of the annual change in the Labor Index over the prior Contract Year, as more specifically set forth and calculated pursuant to Exhibit F.

Operating Representative: The person(s) designated by each Party as its representative on the Operating Committee created by Article X of this Agreement.

Perry K Coal Component: Has the meaning set forth in Exhibit A.

Perry K Coal Index: The weighted average price of coal purchased by CTE for consumption in its Perry K Plant during the applicable Contract Year. The intent of the Parties is that the Perry K Coal Index reflect the book cost of coal, which shall include the invoice price of fuel less any cash or other discounts, freight, switching, demurrage and other transportation charges (not including, however, any charges for unloading from the shipping medium), excise taxes, purchasing agents' commissions, insurance and other expenses directly assignable to cost of fuel.

Perry K Plant: CTE's steam and electric production facilities located on Kentucky Avenue, Indianapolis, Indiana, as may be modified from time to time.

Platt's Coal Component: Has the meaning set forth in Exhibit A.

Platt's Coal Index: The average of the weekly prices for the month of November of any given Contract Year as reported for coal commodity spot prices for Illinois Basin coal, 11,500 Btu/lb, 2.5 lb SO<sub>2</sub>, as reported by Platt's "Coal Outlook" Weekly Price Survey (or any successor website or through any manner of publication).

Perry K Gas Component: Has the meaning set forth in Exhibit A.

Perry K Gas Index: The weighted average price of natural gas purchased by CTE for consumption in its Perry K Plant during the relevant Contract Year.

Point of Delivery: Unless changed by agreement of the Parties, the point at which the steam pipeline from the IRRF and the Steam System are connected for the purpose of delivering steam from the IRRF to CTE. Specifically, this point is identified to be the south wall of CTE valve manhole B1231. This wall is located approximately 60 feet south of the south face of the southeast wing wall of the railroad bridge over old Kentucky Avenue. In the event that the steam line is sold to CTE at any time before or during the contract term, the point of delivery will change from the above referenced location to the west wall of Covanta manhole 0. This wall is located approximately eighty feet (80') west of Harding Street at the point that the steam line crosses over Harding Street.

Prime Rate: the prime rate of interest charged by money center banks, as reported in the Wall Street Journal.

Project: the IRRF.

Proration Factor: Equals the product of (A) the difference, if positive, between 53,100,000 Therms minus the average of the Non-Rate 3 Annual Steam Sales (in Therms) for the preceding two Contract Years times (B) the fraction, the numerator of which is 29,000,000 Therms and the denominator of which is 53,100,000 Therms (i.e., .546 expressed as a decimal).

Rate Adjustor: Has the meaning set forth and calculated pursuant to Exhibit A.

Scheduled Maintenance: Has the meaning set forth in Article IX.B.

Secondary Rate: Means (1) prior to the effective date of electric deregulation in the state of Indiana, the product of 0.90 times the actual average monthly electric price received from IPL by CTE for the sale by CTE of electricity generated with steam supplied by the IRRF, and (2) on and after the effective date of electric deregulation in the state of Indiana, the product of 0.90 times the average monthly price received by CTE for the sale of electricity generated from steam supplied by the IRRF and sold to MISO.

Secondary Steam: Steam generated by the IRRF other than Base Steam or Summer Steam, which is expected to be used in CTE's turbines for the generation of electricity.

Steam Quality Standards: Has the meaning specified in Article XII.A.

Steam System: The facilities owned and operated by CTE to furnish steam service in and around the downtown area of the City of Indianapolis.

Steam Transportation: The transfer by CTE of thermal energy produced by the Project over CTE's Steam System for delivery to a steam customer of the Project.

Summer Rate: Has the meaning specified in Article IV.C.

Summer Steam: Steam generated by the IRRF which (a) is in excess of quantities which can be utilized as Displaced Net Steam to Mains, and (b) is used for the production of chilled water or other warm weather applications to designated customers during the months of April through October, or on any day during the remaining months with the preceding day's mean temperature was 40 degrees F or higher as published by the Indianapolis Weather Bureau.

Therm: 100,000 British Thermal Units (Btu's).

Total Contract Revenues: Has the meaning specified in Article XIII.B.6.

True-Up Interest Rate: the Prime Rate plus two percent per annum.

Winter Availability Factor: A fraction, the numerator of which is the sum of the number of hours of operation for the three boilers at the IRRF during the Winter Period and the denominator of which is the product of the number of days in such Winter Period times 24 hours per day times three (3) boilers. The number of hours in the denominator shall be reduced to adjust for any Force Majeure event and acts or omissions of CTE that reduce the hours of operation of one or more boilers during such Winter Period

Winter Incentive Premium: Has the meaning specified in Article IV.E.

Winter Period: the months of December, January and February.

Winter Premium Rebate: Has the meaning set forth in Article V. B.

## ARTICLE II

### RENEWAL AND TERMINATION

A. Notice In order to permit adequate time to develop a new Agreement following the end of the Contract Term, any Party which wishes to sell or purchase steam from the IRRF beyond the Contract Term shall advise the other Party of such intent in writing not less than thirty (30) months prior to the end of the Contract Term.

B. Termination for Convenience This Agreement may be terminated for convenience by either Party prior to the end of the Contract Term by delivering thirty months' prior written notice of its decision to terminate the Agreement on the date stated therein.

C. Liability upon Termination If this Agreement is terminated pursuant to this Article II, neither Party will have any liability arising out of this agreement to the other Party following the date of termination except for the payment of amounts due under Article VI.

D. Termination or Suspension for Material Breach. Covanta shall have the right to suspend deliveries of Available Production in the event of a breach by CTE of its payment obligations hereunder on ten days' prior written notice, unless CTE shall have cured such breach within such ten-day period, and shall have a right to terminate this Agreement on thirty days' prior written notice, unless CTE shall have cured such breach within such thirty-day period; provided, further, that, notwithstanding the foregoing, Covanta shall have the right to terminate this Agreement for persistent and repeated breaches by CTE of its payment obligations hereunder. CTE shall have the right to terminate this Agreement for a persistent and material breach by Covanta of its obligation to deliver its Available Production from the IRRF to the extent required hereunder.

### ARTICLE III

#### APPLICABILITY OF BASE RATE, SECONDARY RATE, SUMMER RATE, AND WINTER INCENTIVE RATE

A. Obligation to Purchase Except as otherwise provided in Articles II.D., XII and XIII of this Agreement, CTE shall purchase the IRRF's Available Production during the Contract Term, provided, CTE may refuse to purchase Available Production to the extent that such Available Production exceeds the total quantity of steam which CTE is physically capable of utilizing for (1) Displaced Net Steam to Mains, (2) the production of Summer Steam for chilled water production, or (3) utilization in CTE's turbines for the production of electricity; provided however, that, notwithstanding the foregoing, each Contract Year, CTE shall be obligated to pay for an amount of Base Steam equal to the Initial Minimum Annual Purchase Requirement regardless of its actual usage; provided, however, that such Initial Minimum Annual Purchase Requirement (or Minimum Annual Purchase Requirement, as the case may be) shall in any particular Contract Year be reduced (1) in the event of a Material Steam Load Change, by the Proration Factor; or (2) in the event of a breach in such Contract Year by Covanta of its obligation to provide Steam as required hereunder from the IRRF, on a Therm-per-Therm basis; provided, further, that if, following an adjustment to the Minimum Annual Purchase Requirement due to (x) a Material Steam Load Change, CTE's Non-Rate 3 Annual Steam Sales in any subsequent Contract Year (i) increase to a level above that which triggered a Material Steam Load Change that resulted in a reduction in the Minimum Annual Purchase Requirement, the Minimum Annual Purchase Requirement shall be re-adjusted using the calculation contained in the Proration Factor to reflect such upward change or (ii) equals or exceeds 53,100,000 Therms, the Minimum Annual Purchase Requirement shall be re-adjusted to 29 million Therms or (y) a breach by Covanta of its obligation to provide steam as required hereunder from the IRRF, the Minimum Annual Purchase Requirement shall be re-adjusted to be the Initial Minimum Annual Purchase Requirement in the following Contract Year. CTE will use its best efforts to prudently maintain and expand Steam System load and retain existing customers.

B. Obligation to Sell. Except as otherwise provided in Articles XII and XIII of this Agreement, Covanta shall produce and sell to CTE its Available Production in an amount at least equal to the Minimum Annual Purchase Requirement, subject to Article XIII.A. In the event that Covanta breaches its obligation under this Article III.B. to produce and sell to CTE its Available Production in an amount at least equal to the Minimum Annual Purchase Requirement, subject to Article XIII.A, and except as provided for in Article II.D., CTE's sole and exclusive remedy for such breach shall be the following: Covanta shall be obligated to rebate to CTE a portion of the Demand Charge paid by CTE for such Contract Year. Such rebate shall equal the product of (x) the difference between the Minimum Annual Purchase Requirement minus the actual amount of steam from the IRRF tendered to CTE by Covanta during such Contract Year times (y) \$0.055/Therm (the "Demand Charge Rebate").

C. Applicability of Base, Summer Rate, Secondary Rate, and Winter Incentive Premiums The Base Rate shall apply to Base Steam, the Summer Rate shall apply to Summer Steam, the Secondary Rate shall apply to Secondary Steam and the Winter Incentive Premium shall apply shall apply to all Base Steam provided during the Winter Period, subject to the limitations set forth in Article IV.E. CTE agrees to use its best efforts, consistent with the safe and reliable operation of the Steam System, to operate the Steam System in a manner, which maximizes the quantity of Available Production that CTE can purchase at the Base Rate.

D. Title and Risk of Loss. Title to and risk of loss related to steam shall transfer from Covanta to CTE at the Point of Delivery. Covanta warrants that it will deliver to CTE the steam from the IRRF free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person arising prior to the Point of Delivery .

#### ARTICLE IV

##### COMPUTATION OF RATES FOR STEAM FROM IRRF

A. Base Rate The Base Rate for Base Steam shall be \$0.305/Therm (in February 2005 dollars) and shall escalate as provided in Article IV.B.

B. Escalated Base Rate for Base Steam and Winter Incentive Steam. Commencing with the calendar month which includes the Effective Date, the Base Rate and the Winter Incentive Premium shall be adjusted by multiplying the Base Rate or Winter Incentive Premium in effect on the date hereof, times the Rate Adjustor. The escalated Base Rate and Winter Incentive Premium is expressed by a formula attached hereto as Exhibit A and incorporated herein.

C. Summer Rate Commencing with the calendar month which includes the Effective Date, the Summer Rate for Summer Steam shall be \$0.20/Therm (in 2005 dollars) and shall escalate as provided in Article IV.D.

D. Escalated Summer Rate for Summer Steam Commencing with the calendar month which includes the Effective Date, the Summer Rate for Summer Steam shall be adjusted by multiplying the initial Summer Rate in effect on the date hereof (\$0.20/Therm), times the

ratio, the numerator of which shall be the weighted average cost of electricity for a typical customer with electric usage comparable to that of CTE's electric chilled water production facilities (as defined in Exhibit B) purchasing electricity from IPL under IPL's published Rate SL, customer (large), as approved by the Commission, during the month preceding the calendar month for which the adjustment is to be made, and the denominator of which shall be the weighted average cost of electricity for such typical customer (as defined in Exhibit B) purchasing electricity from IPL under IPL's published Rate SL, steam customer (large) during the base year ending February 1, 2005. In the event that IPL's rate SL is no longer in effect, a comparable IURC-approved electric tariff shall be used provided IPL is subject to electric regulation in Indiana. In the event of retail electric deregulation in Indiana, a comparable escalation provision shall be implemented based on the monthly changes in the MISO Price relative to the average MISO Price experienced during the base year ending February 1, 2005.

E. Winter Incentive Premium During the months of December, January, and February, the Winter Incentive Premium will apply to all steam delivered to CTE pursuant to the terms hereof, in addition to the Base Rate. The Winter Incentive Premium shall be \$0.10 per Therm (in February 2005 dollars), as escalated pursuant to Article IV.B. On March 15<sup>th</sup> of each year, Covanta shall calculate the Winter Availability Factor, and if the Winter Availability Factor is less than 85% for such Winter Period, then Covanta shall pay to CTE the Winter Premium Rebate, which shall be determined as provided in Article V.B, based on the Winter Availability Factor and the corresponding Availability Multiplier identified below:

<u>Winter Availability Factor</u>	<u>Availability Multiplier</u>
85% and greater	1.00
80% through 84.99%	.90
70% through 79.99%	.80
Below 70%	0

Notwithstanding anything contained in this Agreement, in the event that the achievement of the Winter Availability Factor during any particular Winter Period was adversely impacted due to the unavailability (on economic terms and conditions) of waste to fuel the IRRF, then the Winter Availability Factor shall be equitably increased to account for such circumstances and Covanta's obligation to pay the Winter Premium Rebate shall accordingly be adjusted based on such adjusted Winter Availability Factor.

F. Demand Charge The "Demand Charge" represents a monthly payment to be made by CTE during the Contract Term in respect of costs savings to CTE as a result of avoiding costs and expenses associated with acquisition, construction and installation of additional capital facilities to meet its steam requirements due to continued long-term steam purchases from the IRRF, and shall equal \$133,333.00 per month.

G. O&M Charge Each month, CTE shall pay to Covanta an O&M Charge (the "O&M Charge") equal to \$83,333 per month, as escalated by the O&M Adjustor; provided, however, there shall be no decrease in the above-stated amount of the O&M charge.

## ARTICLE V

### COMPUTATION OF PAYMENT FOR MONTHLY PAYMENT

A. Monthly Steam Payment Each month, CTE shall pay to Covanta a payment the "Monthly Steam Payment" which shall equal the sum of the following:

$$\text{MSP} = \text{BSP} + \text{NWSP} + \text{SSP} + \text{DC} + \text{O\&M} + \text{FMS} + \text{ICC}$$

Where

MSP = Monthly Steam Payment

BSP = Base Steam Payment, which is equal to (i) during the months of December, January and February, the product of the sum of (A) the then-current Base Rate for Base Steam in effect for that month, plus (B) the Winter Incentive Premium in effect for that Winter Period (without regard to the Availability Multiplier) plus (C) the Force Majeure Surcharge if any, as calculated in accordance with Article XIII.B times the Steam amount actually tendered by Covanta during such month, as adjusted pursuant to Article VII, or (ii) during all other months, the product of the sum of (A) the then-current Base Rate for Base Steam in effect for that month plus (B) the Force Majeure Surcharge if any, as calculated in accordance with Article XIII.B times the Base Steam amount tendered by Covanta during such month, as adjusted pursuant to Article VII.

NWSP = the Summer Steam Payment shall equal to the product of the Summer Rate in effect for that month times the amount of Summer Steam tendered by Covanta during such month, as adjusted pursuant to Article VII.

SSP = the Secondary Steam Payment shall which is equal to the product of the Secondary Rate in effect for that month times the amount of Secondary Steam tendered by Covanta during such month, as adjusted pursuant to Article VII.

DC = the Demand Charge shall be calculated as described in Article IV.FO&M = Operations and Maintenance Component, which is equal to the O&M Charge. ICC = Incremental Chemical Costs as described in Article XII.B.

O&M = O&M Charge

FMS = Force Majeure Surcharge

ICC = Incremental Chemical Costs

B. True-Ups.

(1) Within 60 days of the end of each Contract Year, CTE shall pay to Covanta an amount equal to the product of (i) the Base Rate plus the Force Majeure Surcharge times (ii) the difference, if positive, between the Minimum Annual Purchase Requirement minus the actual amount of Base Steam purchased by CTE from the IRRF during the preceding Contract Year, times (iii) one plus the True-Up Interest Rate (expressed as a decimal).

(2) On April 30 of each Contract Year, if the Winter Availability Factor was less than 85% for the preceding Winter Period, Covanta shall rebate to CTE an amount equal to one minus the Winter Availability Factor (expressed as a decimal of three places) times the aggregate amount of the Winter Incentive Premium paid by CTE during such Winter Period (the "Winter Premium Rebate") plus interest on the Winter Premium Rebate calculated at the True-Up Interest Rate (expressed as a decimal).

(3) Within 60 days of the end of each Contract Year, Covanta shall pay to CTE an amount equal to (i) the Demand Charge Rebate if any required to be paid pursuant to Article III.B times (ii) one plus the True-Up Interest Rate (expressed as a decimal).

(4) In the event that a published index used in this Agreement to calculate a Rate Adjustor has not been published in time (the "Lagging Index") to re-adjust the rate of escalation for the Base/Winter Rate, the Summer Rate, or the O&M Charge, the Base/Winter Rate, the Summer Rate and the O&M Charge for the immediately preceding Contract Year shall be used for the period beginning on the commencement of the new Contract Year until the end of the month in which the Lagging Index is published (the "Holdover Period"). Once the Lagging Index has been published and the Rate Adjustor calculated, the new Base/Winter Rate, Summer Rate or O&M Charge shall be effective, and the Parties shall do a reconciliation to calculate the difference between what was paid during the Holdover Period and what should have been paid had the new rates been calculable. If such amount is positive, Covanta shall credit such amount to CTE's invoice for the next month; if such amount is negative, CTE shall pay Covanta such amount within twenty days of receipt of an invoice therefor.

ARTICLE VI

PAYMENT

Not later than three (3) Business Days after the end of each calendar month, CTE shall send via electronic mail to Covanta, or such other person as Covanta may designate, a statement setting forth in detail CTE's computation of the amount due Covanta for CTE's purchases of Available Production during such month and all other amounts due hereunder, as calculated pursuant to Article V. Not later than twenty (20) days after the end of each calendar month, CTE shall mail to Covanta, or such other person as Covanta may designate, CTE's check in payment of said amount or shall make such payment by wire transfer in accordance with wire transfer instructions provided by Covanta. Any payments received ten (10) or more days after the date specified in the second sentence of this Article VI or which are less than the full

amounts due shall include a late charge equal to the charge which the Commission permits CTE to charge its steam customers for late payment.

## ARTICLE VII

### METERING

A. All meters and equipment used for the measurement of the steam energy content of the IRRF's Available Production shall be provided, owned and maintained by CTE at its own expense and located at the IRRF. CTE's metering equipment shall be sealed and the seals shall be broken only by CTE's authorized personnel. Covanta shall be given reasonable notice of scheduled inspection, testing or adjustment, and shall have the right to have its Operating Representative present on such occasions.

B. The accuracy of the meters and related equipment shall be tested at least semi-annually, and at any other reasonable time upon request by either Party. CTE shall, upon Covanta's request, provide Covanta with a copy of all test results measuring the accuracy of the meters and related equipment. If any test, except for semi-annual tests, shall be requested by Covanta and, upon such test, the metering equipment in question shall be found to be inaccurate by two percent (2%) or less, the cost of such test shall be charged to and borne by Covanta; otherwise, the cost of all such tests shall be borne by CTE. If any meter is found to be inaccurate by two percent (2%) or more, the billing quantities will be adjusted in accordance with the result of the test, for a period equal to one-half of the time since the last previous test, but not to exceed six months.

## ARTICLE VIII

### DISPATCHABILITY

Covanta will use commercially reasonable efforts to match Available Production to Displaced Net Steam to Mains and to respond to emergency conditions, to the extent that such dispatch is consistent with its contractual obligations, legal requirements and the safe, efficient and economical operation of the IRRF. The Operating Committee will mutually agree on the procedures pursuant to which dispatching of the IRRF will occur.

## ARTICLE IX

### MAINTENANCE; SCHEDULED AND UNSCHEDULED OUTAGES

A. Covanta shall be responsible for the maintenance (and assume risk of loss) of the IRRF and all costs related thereto. Subject to the terms and conditions of this Article IX, all maintenance activities that result in interruptions or reductions to steam deliveries will be

coordinated by the Operations Committee and with CTE so as to minimize disruption to the operations of the IRRF and Perry K Plant.

B. On or about each October 1<sup>st</sup> of the Term, the Parties shall cooperate to establish a reasonable schedule of regular maintenance of each unit at the IRRF and the facilities used to deliver steam to CTE, as well as regular maintenance of each Perry K Plant Boiler that result in interruptions or reductions of steam deliveries to the Steam System ("Scheduled Maintenance"). Notwithstanding the foregoing provisions of this Article IX.B, Covanta shall be entitled to conduct additional Scheduled Maintenance on the IRRF as required pursuant to prudent utility practices.

C. Notwithstanding the other provisions of this Article IX.B, each Party agrees to use reasonable efforts to reschedule its Scheduled Maintenance in the event that the other Party experiences an unplanned outage. Each Party shall use reasonable efforts to prevent unplanned outages of its facilities and to mitigate the adverse effects thereof.

## ARTICLE X

### OPERATING COMMITTEE

There shall be an Operating Committee consisting of one or more Operating Representatives, designated by each of the Parties to act as such Party's agent for investigation, consultation, and advice in all operating, engineering, and other matters pertaining to this Agreement. The Operating Committee shall meet not less than once per month at a time and place mutually agreed upon by the Operating Representatives. As of the date of this Agreement, the Operating Representatives shall be the plant manager for the IRRF and the plant manager for Perry K. Either Party at any time may, by written notice, change its Operating Representative, or withhold or withdraw from its Operating Representative, the authority to act for it in any matters specified in the notice, provided that it designates in such notice other representation with respect to such matters. The Operating Representatives, forming the Operating Committee, shall arrange for the exchange of routine operating records, shall have access to such other records to the extent necessary to assure compliance by each Party with its obligations under this Agreement, shall be responsible for establishing and implementing procedures for the dispatchability of the IRRF's output pursuant to Article VIII of this Agreement, and shall perform such other duties as are required under the terms of this Agreement.

## ARTICLE XI

### SALE OF PROJECT STEAM TO CTE AND THIRD PARTIES

The Parties agree that CTE has the right to permanently close the Steam System if CTE concludes in good faith that the Steam System should be abandoned because continued operation is economically unfeasible. CTE shall provide Covanta with at least thirty months prior written notice of any decision to close the Steam System. The Parties acknowledge and agree that in

such event, or in the event of any termination of this Agreement (except a termination by Covanta for convenience, unless such termination for convenience is exercised in order to sell steam to IPL for the generation of electricity), nothing in this Agreement shall be construed to prevent or impair Covanta's right or ability to seek authority from the Commission (to the extent required by applicable law) to make, and subsequently to make, sales of steam from the IRRF at retail, including sales to retail customers formerly served by the Steam System, subject to the requirements of then-applicable laws and regulations. The foregoing sentence shall not be construed as a representation by CTE that Covanta shall be entitled under current law and Commission rules to make such retail sales, but rather as a mutual acknowledgement that nothing in this Agreement, any other agreement between the Parties, or in the course of dealing of the parties, imposes or imposed on Covanta, whether express or implied, an obligation not to compete with CTE following termination of this Agreement.

## ARTICLE XII

### QUALITY REQUIREMENTS

A. Covanta agrees that the quality of the steam which the IRRF provides to the Steam System shall meet all applicable standards including Food and Drug Administration (FDA) requirements for direct contact with food and milk products, in addition to sterilization and for direct contact with pharmaceutical manufacturing. The steam shall not exceed 20 parts per billion (ppb) sodium (Na), 7.0 micromhos per square centimeter (umho/cm<sup>2</sup>) conductivity, 1,000 ppb chlorides, and 1,000 ppb total organic compounds (TOCs), and shall have a pH between 6.0 and 7.0 (collectively, the "Steam Quality Standards").

B. The names of each chemical supplier and the chemicals used by Covanta at the IRRF to treat steam and water as of the date of this Agreement are listed in Exhibit E. In the event that Covanta desires to change suppliers or change any of the chemicals to be used in water and steam treatment at the IRRF, Covanta will notify CTE in writing at least sixty (60) days prior to implementation of any such contemplated changes (the "Contemplated Chemical Changes"). Within thirty (30) days of receipt of such notice, CTE shall notify Covanta in writing that either (1) such proposed changes are acceptable, in which case Exhibit E shall be modified to reflect such changes and Covanta may implement such Contemplated Chemical Changes, or (2) such proposed changes are not acceptable, in which case CTE shall provide Covanta with a specific counterproposal stating what is acceptable to CTE and its steam customers (the "Alternative Proposal"). In response to the Alternative Proposal, Covanta may reject such Alternative Proposal and propose an alternative (which shall be subject to the foregoing process) or accept such Alternative Proposal. In the event that any Alternative Proposal results in an incremental increase in the cost to Covanta of chemicals used at the IRRF for steam and water treatment (or any incremental increase in Covanta's operating costs as a result thereof), the Monthly Steam Payment shall be increased by an amount equal to difference, if positive, between the monthly cost of implementing the Alternative Proposal and the monthly cost of implementing the Contemplated Chemical Changes (the "Incremental Chemical Costs").

C. Within 24 hours of its determination that steam from the IRRF fails to meet the Steam Quality Standards, CTE shall so notify Covanta in writing and provide written documentation substantiating such assertion in form and substance reasonably acceptable to Covanta. Covanta agrees to take all commercially reasonable measures to correct any failure to meet the Steam Quality Standards within 48 hours of receipt of such notice (or such longer period of time if such failure cannot be corrected within 48 hours) (the "Cure Period") and shall notify CTE when the steam from the IRRF again meets the Steam Quality Standards. CTE's sole remedy for the failure of Covanta's steam to meet the Steam Quality Standards shall be to suspend its acceptance of (and payment for) such steam during the Cure Period. In no event shall CTE reject the IRRF's Available Production under this Article XII, except as provided in Article XIII of this Agreement and as provided in the foregoing sentence. If for any reason the IRRF is required by applicable law to comply with more restrictive quality requirements for its Available Production, CTE and Covanta shall agree upon appropriate additional compensation for Available Production in accordance with the procedures set forth in Article XII.B. above and such additional compensation shall also constitute "Incremental Chemical Costs."

### ARTICLE XIII

#### FORCE MAJEURE

A. Excuse for Force Majeure Except as to payments of money for steam delivered to CTE pursuant to this Agreement, if either Party is rendered wholly or partly unable to perform its obligations under this Agreement because of Force Majeure, both Parties shall be excused from whatever obligations are affected by the Force Majeure, and shall not be liable or responsible for any delay in the performance of, or the inability to perform, any such obligations for so long as the Force Majeure continues. The Party claiming an occurrence of Force Majeure shall promptly give the other Party written notice describing the particulars of the occurrence. The notice of Force Majeure shall include an estimate of its expected duration, the probable impact on the performance of the Party's obligations, and satisfactory evidence of the existence of the condition of Force Majeure. The Party invoking Force Majeure shall take all reasonable efforts to remedy its inability to perform as soon as possible and, in the meantime, to continue to perform its obligations to the extent reasonable. The Party shall also take any reasonable measures to minimize damages to the other Party. The Party invoking Force Majeure will provide prompt notice to the other Party of the cessation of the Force Majeure condition.

B. Changes to the IRRF Necessitated by Change in Law.

1. Covanta Obligation to Address Change in Law. Covanta shall make or cause to be made any capital or operating changes to the IRRF required as a result of a Change in Law in order for it to perform its obligations under this Agreement in compliance with such Change in Law and other applicable law, including without limitation changes necessary to achieve or restore operating levels (including without limitation steam generation levels) of the IRRF to those in existence immediately prior to the Change in Law) (the "Change in Law Requirements").

2. Force Majeure Surcharge. As soon as practicable after the occurrence of a Change in Law and no later than ninety (90) days before commencing its compliance with any Change in Law Requirements, Covanta shall to the extent then feasible identify the Change in Law Requirements and shall, in consultation with the Independent Expert, develop a budget of the estimated costs and expenses to be incurred in connection with compliance with such Change in Law Requirements, which shall include (i) the reasonable direct capital costs (which shall include design, engineering, procurement, construction, labor, temporary increased operating costs, and related costs) incurred or to be incurred by Covanta to comply with the Change in Law Requirements to the IRRF (the "Force Majeure Capital Costs"); and/or (ii) any reasonable operating cost increases incurred in order to comply with the Change in Law Requirements ("Force Majeure Operating Costs"). Covanta shall disclose to CTE such budget and the projections for the Force Majeure Capital Costs. The aggregate amount of the Force Majeure Operating Costs required to be expended over the remainder of the term of this Agreement together with the Force Majeure Capital Costs may hereinafter be referred to as the "Aggregate Force Majeure Costs." The Force Majeure Capital Costs shall not include the first \$1 million to be expended to implement the Change in Law Requirements in the aggregate over the term of this Agreement, which first \$1 million shall be paid by Covanta without reimbursement from CTE. Covanta also shall calculate and disclose to CTE the per-Therm rate necessary for Covanta to recover from CTE its Force Majeure Capital Costs and Force Majeure Operating Costs (the "Force Majeure Surcharge") which shall equal, for each Contract Year (as prorated for partial Contract Years) the sum of (i) the actual or imputed monthly debt service on a loan, the initial principal amount of which is equal to the aggregate amount of Force Majeure Capital Costs, financed at a market rate of interest over a period of ten (10) years (regardless of whether the then-remaining term of this Agreement is less than or greater than ten years), divided by one-twelfth of the Minimum Annual Purchase Requirement; plus (ii) the aggregate amount of the Force Majeure Operating Costs projected to be incurred for such Contract Year divided by one-twelfth of the Minimum Annual Purchase Requirement. The Force Majeure Surcharge shall be added to the Base Rate and paid by CTE as part of its Monthly Steam Payment; provided, however, the Force Majeure Surcharge shall not be added to the Base Rate and Monthly Steam Payment until sixty days after CTE has been informed of the amount of the Force Majeure Surcharge as provided for above. The Force Majeure Surcharge shall be adjusted annually to reflect an increase or decrease in the Force Majeure Capital Costs or Force Majeure Operating Costs; provided, however, Covanta shall provide CTE with written notice and a detailed explanation of the basis for any such adjustment to the Force Majeure Surcharge at least thirty (30) days prior to including the adjusted Force Majeure Surcharge in CTE's Monthly Steam

Payment. In addition, if the amount of Base Steam purchased by CTE during any Contract Year exceeds the Minimum Annual Purchase Requirement applicable for such Contract Year, Covanta shall refund the excess Force Majeure Surcharge paid by CTE within sixty (60) days of the end of the Contract Year, and in the event that CTE purchases less than the Minimum Annual Purchase Requirement applicable for such Contract Year, then the Force Majeure Surcharge shall be included in the true-up payment payable by CTE pursuant to Article V.B.(i).

3. Termination Rights and Obligations upon a Change in Law. In connection with any Change in Law that triggers or is anticipated to trigger a Force Majeure Surcharge, CTE may terminate this Agreement by providing thirty (30) months prior written notice to Covanta to such effect within sixty (60) days of being informed of the amount of a contemplated Force Majeure Surcharge, or adjustment thereto. If CTE terminates this Agreement under this Article XIII.B.3 due to a contemplated Force Majeure Surcharge, or adjustment thereto, or exercises its right of termination for convenience pursuant to Article II.B at any time after (a) the occurrence of a Change in Law that triggers or is anticipated to trigger a Force Majeure Surcharge or (b) the imposition or adjustment to a Force Majeure Surcharge: (1) CTE shall be obligated to pay the Monthly Steam Payment provided herein, including the Force Majeure Surcharge, until this Agreement is terminated; and (2) on the date of termination under this Section, as a condition precedent to such termination, CTE shall make a lump-sum payment (the "Force Majeure Termination Payment") to Covanta equal to the following: The net present value (using a discount rate equal to the financing rate used to calculate the Force Majeure Surcharge pursuant to Article XIII.B.3) of the Force Majeure Capital Costs (i) that Covanta has actually incurred, or will incur as reasonably projected by the Independent Expert in connection with a Change in Law already reflected in a Force Majeure Surcharge being paid by CTE as of the time CTE exercises its right to terminate this Agreement and; (ii) which Covanta has not recovered through Force Majeure Surcharges as of the termination of this Agreement.

4. Special Termination Right. Within 90 days of receipt of a termination notice from CTE pursuant to Article XIII.B.3., Covanta shall have the right to specify an earlier termination date at its election, which shall be at least 90 days after the date of CTE's termination notice. Such election shall not relieve CTE from its obligations under Article XIII.B.3 to pay the Force Majeure Surcharge until the date this Agreement terminates, but shall relieve CTE from its obligation under Article XIII.B.3 to pay the Force Majeure Termination Payment.

5. Limitation on Aggregate Force Majeure Costs. If following a Change in Law in connection with which the sum of (a) the projected aggregate dollar amount of the Force Majeure Capital Costs plus (2) the net present value (using a 5% discount rate) of the projected Force Majeure Operating Costs that would be payable by CTE over the remaining term of the Agreement is greater than the total amount payable by CTE to Covanta hereunder for the Contract Year preceding the Contract Year during which the Change in Law triggering such Aggregate Force Majeure Costs occurred ("Total Contract Revenues"), then for purposes of calculating the Force Majeure Surcharge, such the Aggregate Force Majeure Costs shall be deemed to equal Total Contract Revenues. In the event of such election, Covanta shall have the right to terminate this Agreement on ninety days' prior written notice to CTE. Such election by Covanta to terminate this Agreement on ninety days' prior written notice pursuant to this Article

XIII.B.5 shall not relieve CTE from its obligations under Article XIII.B.3 to pay the Force Majeure Surcharge until the date this Agreement terminates, but shall relieve CTE from any obligation under Article XIII.B.3 to pay the Force Majeure Termination Payment.

ARTICLE XIV  
AVAILABILITY OF INFORMATION

A. Information CTE and Covanta will each make reasonably and promptly available to each other all documents, information or other data which is necessary to verify any of the payments or calculations contemplated by this Agreement and performance of the obligations of either Party hereunder.

B. Cooperation with IURC The Parties further agree that if the Indiana Utility Regulatory Commission (Commission) requests that any of the documents, information or other data furnished by one Party to the other Party under this Article XIV be furnished to said Commission, they will either furnish such documents, information or other data to the Commission or make such documents, information or other data available for inspection by members of the Commission's Staff, provided, however, that before the Party provides or makes available for inspection to the Commission any documents, information or other data which it received from the other Party, it will notify the other Party, and each party reserves the right to claim that any documents, information or other data provided to the other Party contains or is confidential or proprietary information and should not be made available to the Commission except upon such terms and conditions as are acceptable to the Party claiming that such documents, information or data is confidential or proprietary.

C. Covanta's Audit Rights CTE shall provide Covanta access upon reasonable notice to CTE's operating logs, customer invoices, accounts, and all other books, records and data necessary or desirable for Covanta to audit the fuel supplies, fuel costs, fuel usage, historical base steam usage, Material Steam Load Change, and other information necessary to establish the cost of fuel consumed at Perry K. where relevant to calculating the Coal Index or the Natural Gas Index, steam usage, production, allocation, and pricing, electric production and pricing and to calculate all other items to be determined hereunder.

D. CTE's Audit Rights Covanta shall provide CTE access upon reasonable notice to Covanta's operating logs, and all other books, records and data necessary or desirable for CTE to audit the Force Majeure Surcharge or any Incremental Chemical Cost, and historical base steam usage.

E. Documentation Supporting Rates Employed CTE shall provide Covanta with documentation supporting its invoices which demonstrate the amount of steam produced by the IRRF which is used as (or equitably allocated to be) Base Steam, Summer Steam, Secondary Steam, and Winter Incentive Steam. In the event CTE fails to or is unable to provide documentation to Covanta which demonstrates such information to Covanta's reasonable satisfaction, CTE shall be obligated to pay for all steam sold hereunder during the months of

March through October at the Base Rate and during the months of December, January and February at the Winter Incentive Premium.

## ARTICLE XV

### MEDIATION

A. Good Faith Effort to Resolve Disputes In the event that CTE and Covanta shall not agree with respect to the performance or interpretation of this Agreement, or if any other controversy, claim or dispute between CTE and Covanta shall arise regarding any other matter under this Agreement, the Parties shall first undertake in good faith to resolve the dispute by mutual agreement.

B. Mediation If CTE and Covanta are unable to resolve their disagreement with respect to any matter covered by paragraph (A) within a two week period after written notice from one Party to the other Party of the existence of such disagreement, such failure to agree shall be deemed a dispute which, except as to matters within the exclusive jurisdiction of the Commission or the Federal Energy Regulatory Commission, shall be submitted to non-binding mediation in accordance with the provisions of this Article XV within ten days of a written request for mediation from one Party to the other Party. Nothing herein shall be construed to prevent the Parties from pursuing the regular appeals process in matters within the exclusive jurisdiction of the Commission or the Federal Energy Regulatory Commission. The mediation shall be conducted in Indianapolis, Indiana. The compensation and expenses of the mediators shall be evenly shared between the Parties.

C. Continuation of Performance Unless otherwise agreed in writing, CTE and Covanta shall continue to perform their respective obligations under this Agreement during any mediation proceeding or any court proceeding on appeal from the decision of the mediators.

## ARTICLE XVI

### ASSIGNMENT

A. Except as expressly provided in this Article, neither Party shall assign this Agreement without the prior consent in writing of the other Party. Such consent shall not be unreasonably withheld.

B. Notwithstanding the provisions of paragraph (A), Covanta may, without CTE's consent, assign its interest in the IRRF, this Agreement, or both, as the case may be, to (1) the Trustee under the trust indenture pursuant to which the Bonds financing the IRRF are issued; (2) the City; or (3) any affiliate of Covanta, i.e., any entity that controls, is controlled by or under common control with Covanta, or to any lender of an affiliate of Covanta, for example (and without limitation), to the lenders under a corporate credit agreement of Covanta Energy Corporation. In the event that Covanta assigns its interest in the IRRF, this Agreement or both

pursuant to this paragraph B, such assignment shall be effective only upon a showing that the assignee is willing and able to perform Covanta's obligations under this Agreement and has undertaken in writing to do so.

C. Notwithstanding the provisions of paragraph (A), CTE may, without Covanta's consent, assign this Agreement upon the sale of the Steam System by CTE, provided, however, that such assignment shall not operate to release CTE from any of its obligations under this Agreement unless CTE makes a showing that the assignee is willing and able to perform CTE's obligations under this Agreement and has undertaken in writing to do so.

## ARTICLE XVII

### CONDITIONS PRECEDENT

The Parties further recognize and agree that CTE requires reasonable advance assurances regarding recovery of the costs to be incurred by it under this Agreement. In order to satisfy these requirements, the Parties expressly agree that the Agreement shall not be effective, and the obligations of the Parties do not begin until (1) Covanta has entered into a valid, binding and enforceable service agreement with the City of Indianapolis on terms and conditions as least as favorable to Covanta as those contained in the existing service agreement, and (2) the Commission has issued a final order approving this Agreement as executed. CTE agrees to use its best efforts to obtain regulatory approval of this Agreement within 120 days of the execution hereof. If such approval is not obtained on or before May 1, 2006, Covanta shall have the right to terminate this Agreement on ten days' prior written notice without penalty or liability of any kind.

## ARTICLE XVIII

### INDEMNITY, INSURANCE AND LIMITATION ON DAMAGES

#### A. Indemnity.

To the extent and in the manner allowed by law, each Party shall indemnify, hold harmless and defend the other Party, its officers, agents and employees against any claims, demand, actions and causes of action because of any injury, damage, or loss to the person or property of the other Party or third persons arising out of the Party's negligent operation or maintenance of such Party's plant or facilities used in connection with this Agreement; provided, however, that neither Party, nor its agents, officers, directors or employees shall be liable to the other Party, its agents, officers, directors or employees for incidental, special, indirect or consequential damages of any nature connected with or resulting from such injury, damage, or loss to the Party or property of third persons, whether such incidental, special, indirect or consequential damages are incurred by such other Party, its agents, officers, directors or employees, or by third persons. The indemnifying Party shall, at the other Party's request,

defend any suit asserting a claim covered by this indemnity. The indemnifying Party shall pay all costs that may be incurred by the other Party in enforcing this indemnity.

B. Insurance.

(1) Each Party, at its own cost and expense, shall maintain and keep in full force and effect from the date hereof through the later of the date of expiration or termination hereof, the following insurance coverage:

(a) Workers' Compensation Insurance for statutory obligations imposed by applicable state laws, and Employer's Liability Insurance with a minimum limit of one million dollars (\$1,000,000) for disease and injury to employees; and

(b) Commercial General Liability Insurance, including premises and operations, bodily injury, broad form property damage, products/completed operations, and contractual liability with minimum limits of five million dollars (\$5,000,000) per occurrence and in the aggregate. Coverage may be provided in any combination of primary and excess insurance sufficient to meet the coverage requirements.

(2) Any insurance required by this Article XVIII.B to be maintained by either Party may be maintained in the form of self-insurance. All insurance policies required to be obtained hereunder shall be maintained throughout the contract term. All insurance coverage, other than self-insurance, required by this Agreement if not self-insurance shall be issued by an insurer with an A.M. Best's rating of not less than "A-" or such other insurer as is reasonably acceptable to both Parties.

(3) Each Party shall require its insurer(s) to notify the other Party of cancellation or non-renewal of the insurance required by this Article XVIII.B at least thirty (30) Days prior to the effective date of such cancellation or non-renewal. Within fifteen (15) Days after the date hereof, each Party shall provide to the other Party and thereafter maintain with the other Party a current certificate of insurance or evidence of self-insurance verifying the existence of the insurance coverage required by this Agreement.

C. DISCLAIMER.

EXCEPT AS SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, AND UNLESS OTHERWISE PROVIDED FOR IN THE PROVISION, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET

FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN OR IN A TRANSACTION, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

#### ARTICLE XIX

##### NONDEDICATION OF FACILITIES

No undertaking by one Party to the other under any provision of this Agreement shall constitute the dedication of that Party's system or facilities or any portion thereof to the other Party or to the public, nor affect the status of CTE as a political subdivision of the State of Indiana acting as successor trustee of a public charitable trust, or Covanta as an independent private corporation.

#### ARTICLE XX

##### REPRESENTATIONS AND WARRANTIES OF THE PARTIES

Each Party represents and warrants to the other Party as follows:

1. The Party is duly organized and existing in good standing under the laws of Indiana and has all requisite corporate or governmental power and authority to carry on the business and operations contemplated by this Agreement.
2. The Party has the power, authority and legal right to enter into and perform its obligations set forth in this Agreement, and the execution, delivery and performance hereof (a) have been duly authorized by all necessary corporate or governmental action; (b) will

not violate any judgment, order, law or regulation applicable to the Party; and (c) do not constitute a default under or result in the creation of any lien, charge, encumbrance or security interest upon any assets of the Party under any agreement or instrument to which it is a party or by which the Party or its assets may be bound or affected.

3. This Agreement has been duly entered into and delivered and constitutes a legal, valid and binding obligation of the Party, enforceable in accordance with its terms.

4. There is no action, suit or proceeding, at law or in equity, before or by any court or governmental authority, pending or, to the best of the Party's knowledge, threatened against the Party wherein an unfavorable decision, ruling or finding would materially adversely affect the performance by the Party of its obligations hereunder or the other transactions contemplated hereby, or which in any way would adversely affect the validity or enforceability of this Agreement.

## ARTICLE XXI

### RELATIONSHIP OF THE PARTIES

Except as otherwise explicitly provided herein, no Party to this Agreement shall have any responsibility whatsoever with respect to services provided or contractual obligations assumed by any other Party, and nothing in this Agreement shall be deemed to constitute any Party a partner, agent or legal representative of any other Party or to create any fiduciary relationship between or among the Parties.

## ARTICLE XXII

### NOTICES

Any notices or communications required or permitted hereunder shall be in writing and sufficiently given if delivered in person or sent by certified or registered mail, postage prepaid, as follows:

To Covanta: Covanta Indianapolis, Inc.  
2320 South Harding Street  
Indianapolis, IN 46221  
Attention: Business Manager

With a copy to: Covanta Energy  
40 Lane Road  
Fairfield, NJ 07007  
Attention: General Counsel

To CTE: Citizens Thermal Energy  
2020 North Meridian Street  
Indianapolis, Indiana 46202  
Attention: General Manager

Changes in the respective addresses to which such notices are to be directed may be made from time to time by any Party by written notice to the other Party.

### ARTICLE XXIII

#### WAIVER

The waiver by either Party or a default or a breach by the other Party of any provision of this Agreement shall not operate or be construed to operate as a waiver of any subsequent default or breach. The making or the acceptance of a payment by either Party with knowledge of the existence of a default or breach shall not operate or be construed to operate as a waiver of any subsequent default or breach.

### ARTICLE XXIV

#### ENTIRE AGREEMENT

This Agreement contains the entire agreement and understanding between the Parties, their agents, and employees as to the subject matter of this Agreement, and merges and supersedes all prior agreements, commitments, representations, and discussions between the Parties with respect to the subject matter of this Agreement. No Party shall be bound to any other obligations, conditions, or representations with respect to the subject matter of this Agreement. The Parties agree that the City shall have no obligations or responsibilities with respect to this Agreement.

### ARTICLE XXV

#### CAPTIONS

All captions, subject headings, paragraph titles and similar items are provided for the purpose of reference and convenience and are not intended to be inclusive, definitive or to affect the meaning of the contents or scope of this Agreement.

ARTICLE XXVI

GOVERNING LAW

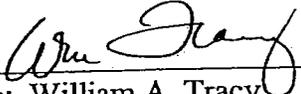
This Agreement and any questions concerning its validity, construction or performance shall be governed by the laws of the State of Indiana as if executed and to be performed wholly within the State of Indiana. Nothing in this Agreement shall constitute waiver, restriction or limitation of any rights the Parties may have under the Federal Public Utility Regulatory Policies Act, 16 U.S.C. §2601 et seq.; The Indiana Public Service Commission Act; Ind. Code 8-1-2-1 et seq.; the Indiana Alternate Energy Production Act, Ind. Code §8-1-2.4-1 et seq.; or the Law Respecting the Collection and Disposal of Waste in Indianapolis, Ind. Code 36-9-31-1 et seq., or any regulations or orders issued pursuant to such laws.

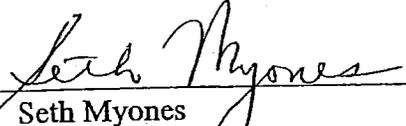
**[SIGNATURES APPEAR ON THE FOLLOWING PAGE]**

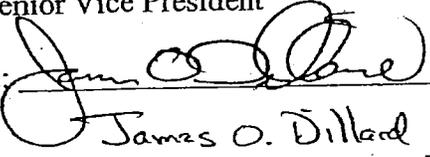
IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of this ninth day of December, 2005.

THE BOARD OF DIRECTORS FOR  
UTILITIES OF THE DEPARTMENT OF  
PUBLIC UTILITIES OF THE CITY OF  
INDIANAPOLIS, as successor trustee of a  
public charitable trust, d/b/a CITIZENS  
THERMAL ENERGY

COVANTA INDIANAPOLIS, INC.

By:   
Name: William A. Tracy  
Title: Senior Vice President

By:   
Name: Seth Myones  
Title: Senior Vice President

Witness:   
James O. Dillard  
General Manager 

Witness:   
Paul E. Stauder

EXHIBIT A

ESCALATED BASE RATE/WINTER INCENTIVE PREMIUM FORMULA

Calculation of Base/Winter Rate Escalator:

The Base/Winter Rate Escalator shall be calculated for each Contract Year by multiplying such amount as in effect for the previous Contract Year by the Rate Adjustor for the respective year.

The Rate Adjustor for each Contract Year shall be equal to the greater of (a) 0.95 times the previous Contract Year's Rate Adjustor and (b) a fraction the numerator of which is the Base/Winter Rate Escalator for such Contract Year, and the denominator of which is the Base/Winter Rate Escalator for the previous Contract Year.

The Base/Winter Rate Escalator for each Contract Year shall be an amount equal to the sum of:

- (i) The product of (A) 0.50, and (B) a fraction the numerator of which is the CPI Index for the Measurement Period for such Contract Year, and the denominator of which is the CPI Index for the Base Period, plus
- (ii) The product of (A) 0.39, and (B) the Coal Index. The "Coal Index" is the average of (1) the Platt's Coal Component and (2) the Perry K Coal Component. The "Platt's Coal Component" equals a fraction, the numerator of which is the Platt's Coal Index for the Measurement Period for such Contract Year, and the denominator of which is the Platt's Coal Index for the Base Period. The "Perry K Coal Component" equals a fraction, the numerator of which is the Perry K Coal Index for the Measurement Period for such Contract Year, and the denominator of which is the Perry K Coal Index for the Base Period; plus
- (iii) The product of (A) 0.11 and (B) the Natural Gas Index. The "Natural Gas Index" is the average of (1) the NYMEX Gas Component and (2) the Perry K Gas Component. The "NYMEX Gas Component" equals a fraction, the numerator of which is the NYMEX Gas Index for the Measurement Period for such Contract Year, and the denominator of which is the NYMEX Gas Index for the Base Period. The "Perry K Gas Component" equals a fraction, the numerator of which is the Perry K Gas Index for the Measurement Period for such Contract Year, and the denominator of which is the Perry K Gas Index for the Base Period.

EXHIBIT A, continued

For the purposes of calculating the Base/Winter Rate Escalator for a given Contract Year, "Measurement Period" shall mean:

- (1) with respect to the CPI Index, the last publication date of the CPI Index occurring immediately prior to the November 30 of the Contract Year then ending;
- (2) with respect to Platt's Coal Index and the NYMEX Gas Index, the month of November 30 of the Contract Year then ending, and
- (3) with respect to Perry K Coal Index and the Perry K Gas Index, the average of the twelve (12) month period ending November 30<sup>th</sup> of Contract Year then ending,

Provided, that, with respect to the initial year (2005) the Measurement Period would be calculated from each Index starting month or Base month to December 1, 2005.

For the purposes of calculating the Base/Winter Rate Escalator, the "Base Period" shall mean:

- (1) with respect to the CPI Index: Consumer Price Index (CPI) - The February 2005 index of 190.5. CPI Series: CPI - All Urban Consumers for Chicago-Gary-Kenosha" Base Year, all items, 1982-1984 = 100
- (2) with respect to Platt's Coal Index: February 2005 Index is \$43.15. Illinois Basin coal, 11,500 Btu/lb, 2.5 lb SO<sub>2</sub>.
- (3) with respect to Perry K Coal Index: The March 2005 is \$1.68. Weighted average price of coal purchased for consumption at its Perry K Plant.
- (4) with respect to the NYMEX Gas Index: The February Index is \$6.09. The price of natural gas delivered at Henry Hub as reported on NYMEX.
- (5) with respect to the Perry K Gas Index: The index for February 2005 is \$7.14. Weighted average price of natural gas purchased by CTE for consumption in its Perry K Plant.

**EXHIBIT A, continued**

**Escalated Base Rate/Winter Incentive Premium Formula**  
 Sample Calculation (Figures are only for example purposes and not actual values)

The Base Rate (For Each Year) = Base Rate (Previous Year) x Rate Adjustor

The Rate Adjustor for each Contract Year shall be equal to the greater of:

- a) 0.95 times Rate Adjustor (previous Contract Year)
- b) Base/Winter Rate Escalator for such Contract Year divided by the Base/Winter Escalator for previous Contract Year

The Base/Winter Rate Escalator for each Contract Year shall be an amount equal to the sum of:

- i) 0.50 multiplied by the quantity of the CPI Index for the Measurement Period for such Contract Year divided by the CPI Index for the Base Period.
- ii) 0.39 multiplied by the quantity of [(0.5 x the Platts Coal Index for the Measurement Period for such Contract Year divided by the Platts Coal Index for the Base Period) + (0.5 x the CTE Coal Index for the Measurement Period for such Contract Year divided by the CTE Coal Index for the Base Period)]
- iii) 0.11 multiplied by the quantity of [(0.5 x the NYMEX Natural Gas Index for the Measurement Period for such Contract Year divided by the NYMEX Natural Gas Index for the Base Period) + (0.5 x the CTE Natural Gas Index for the Measurement Period for such Contract Year divided by the CTE Natural Gas Index for the Base Period)].

Sample Calculation:  
 MP = Measurement Period  
 BP = Base Period

Year	50% CPI Index			39% Coal Index					11% Natural Gas Index					(a)	(b)	Rate Adjustor	Rate Escalator	Base Rate
	MP	BP	(i)	MP	BP	MP	BP	(ii)	MP	BP	MP	BP	(iii)					
				Platts (\$/ton)		CTE (\$/mmbtu)			NYMEX (\$/mbtu)		CTE (\$/mmbtu)							
2005		\$190.5	1		\$43.15		\$1.68	0.39		\$6.09		\$7.14			1.0000	1.0000	1.0000	\$0.305
2006	\$195.0	\$190.5	0.5118	\$45.00	\$43.15	\$1.80	\$1.68	0.4123	\$10.00	\$6.09	\$8.00	\$7.14	0.1519	0.9500	1.0760	1.0760	1.0760	\$0.328
2007	\$200.0	\$190.5	0.5249	\$45.50	\$43.15	\$1.90	\$1.68	0.4262	\$10.00	\$6.09	\$8.00	\$7.14	0.1519	1.0222	1.0251	1.0251	1.1030	\$0.336
2008	\$205.0	\$190.5	0.5381	\$46.00	\$43.15	\$2.00	\$1.68	0.4400	\$10.50	\$6.09	\$8.00	\$7.14	0.1565	0.9738	1.0286	1.0286	1.1346	\$0.346
2009	\$210.0	\$190.5	0.5512	\$46.50	\$43.15	\$2.05	\$1.68	0.4481	\$11.00	\$6.09	\$8.00	\$7.14	0.1610	0.9772	1.0227	1.0227	1.1603	\$0.354

ESCALATED SUMMER RATE  
FORMULA

The escalated Summer Rate is expressed by the formula:

$$\text{ESR} = \text{ISR} \times \frac{\text{AEC}}{\text{BEC}}$$

where

ESR = Escalated Summer Rate in effect for a given determination calendar month

ISR = The initial Summer Rate for the base year ending February 1, 2005, which equals \$0.20 per Therm

AEC = Weighted Electric Cost during month preceding the determination month, in dollars per MWh, for a typical electric customer with the usage characteristics shown below

BEC = Weighted Average Base Electric Cost for the base year ending February 1, 2005, which equals \$51.32 per MWh for a typical electric customer with the usage characteristics shown below

Rider #6 = \$.001266/kWh  
Rider #20 = \$.002359/kWh

EXHIBIT B, continued

Typical Electric Customer Monthly Reference Calculations, based on IPL's Rate SL, steam customer (large) in effect during the Base Year

Base Monthly Customer Usage:	5,000 kW-2,190,000 kWh
Customer Charge:	\$ 103.33
Demand Charge:	
First 500 kW	\$ 5,275 (500 kW x \$10.55/kW)
Remaining Demand	\$ 45,810 (4,500 kW x \$10.18/kW)
Energy Charge	\$ 58,692 (2,190,000 kWh x \$0.0268/kWh)
Rider No. 6 Fuel Adjustment Cost	\$ 2,684 (2,190,000 kWh x \$0.001226/kWh)
Rider No. 20 Environmental Compliance Cost Recovery Adjustment	\$ 5,166 (2,190,000 kWh x \$0.002359 /kWh)
Power Factor Adjustment	none
Other Adjustments	(actual, as appropriate)
Total Base Electric Cost	\$ 112,388
Average Base Electric Cost	\$ 51.32 per MWh

**EXHIBIT C**

**Anticipated Monthly Base Steam Take by CTE**

<b>MONTH</b>	<b>THERMS</b>
January	3,094,000
February	3,370,000
March	2,955,000
April	2,885,000
May	2,410,000
June	2,540,000
July	1,717,000
August	1,511,000
September	1,511,000
October	1,717,000
November	2,540,000
December	2,750,000
<b>TOTAL</b>	<b>29,000,000</b>

**EXHIBIT D**

**Maximum and Minimum Loads on Perry K boilers**

	<u>Maximum Load</u>	<u>Minimum Load</u>
Boiler #11	3,228 Therms	1,396 Therms
Boiler #12	3,228 Therms	1,763 Therms
Boiler #13	3,376 Therms	937 Therms
Boiler #14	3,376 Therms	937 Therms
Boiler #15	2,612 Therms	1,444 Therms
Boiler #16	2,612 Therms	1,444 Therms
Boiler #17	1,930 Therms	883 Therms
Boiler #18	1,930 Therms	883 Therms

EXHIBIT E

**Chemicals Used at IRRF for Water and Steam Treatment**

All chemicals and services provided by ChemTreat, Inc. Chemicals used by ChemTreat, Inc. for boiler water and steam treatment include:

Sodium Sulfite

Tripolyphosphate

Polyacrylamide

Organic Surfactant

Sodium Hydroxide

Erythorbic Acid

O&M ESCALATOR FORMULA

Calculation of O&M Escalator:

The O&M Escalator shall be calculated for each Contract Year by multiplying such amount as in effect for the previous Contract Year by the O&M Adjustor for the respective year.

The O&M Adjustor for each Contract Year shall be equal to the greater of (a) one (1.0) or (b) a fraction the numerator of which is the O&M Escalator for such Contract Year, and the denominator of which is the O&M Escalator for the previous Contract Year.

The O&M Escalator for each Contract Year shall be an amount equal to the sum of:

- (i) The product of (A) 0.50, and (B) a fraction the numerator of which is the CPI Index for the Measurement Period for such Contract Year, and the denominator of which is the CPI Index for the Base Period, and
- (ii) The product of (A) 0.50, and (B) a fraction the numerator of which is the Labor Index for the Measurement Period for such Contract Year, and the denominator of which is the Labor Index for the Base Period.

For the purposes of calculating the O&M Escalator, "Measurement Period": shall mean the last publication date of each of the two components of the O&M Escalator, described above, immediately prior to November 30 of that Contract Year.

For the purposes of calculating the O&M Escalator, Base Period shall mean February 2005 for each of the CPI Index and the Labor Index.

Consumer Price Index (CPI) - The February 2005 index of 190.5. CPI Series: CPI - All Urban Consumers for Chicago-Gary-Kenosha" Base Year, all items, 1982-1984 = 100

National Employment, Hours and Earnings Index (NEHEI) - The February 2005 index (25.98) of the NEHEI, Series CEU4422000006, Utilities, Utilities - Average Hourly Earnings of Production workers.

**O&M Escalator Formula**

Sample Calculation (Figures are only for example purposes and not actual values)

O&M Escalator (Current Year) = O&M Escalator (Previous Year) x O&M Adjustor (Current Year)

The O&M Adjustor for each Contract Year shall be equal to the greater of:

- a) 1.0
- b) O&M Escalator for such Contract Year divided by the O&M Escalator for the Previous Contract Year.

The O&M Escalator for each Contract Year shall be an amount equal to the sum of:

- i) 0.50 times the quantity of the CPI Index for the Measurement Period for such Contract Year divided by the CPI Index for the Base Period.
- ii) 0.50 times the quantity of the Labor Index for the Measurement Period for such Contract Year divided by the Labor Index for the Base Period.

Sample Calculation:

MP = Measurement Period  
 BP = Base Period

Year	CPI Index			Labor Index			(a)	(b)	O&M Adjustor	O&M Escalator	Annual O&M Charge
	MP	BP	(i)	MP	BP	(ii)					
2005		\$190.5			\$25.98		1.0000	1.0000	1.0000	1.0000	\$1,000,000
2006	\$195.0	\$190.5	0.5118	\$27.00	\$25.98	0.5196	1.0000	1.0314	1.0314	1.0314	\$1,031,400
2007	\$200.0	\$190.5	0.5249	\$28.00	\$25.98	0.5389	1.0000	1.0314	1.0314	1.0638	\$1,063,800
2008	\$205.0	\$190.5	0.5381	\$29.00	\$25.98	0.5581	1.0000	1.0305	1.0305	1.0962	\$1,096,200
2009	\$210.0	\$190.5	0.5512	\$30.00	\$25.98	0.5774	1.0000	1.0296	1.0296	1.1286	\$1,128,600

- (i) = 0.5 times CPI Index (MP) / CPI Index (BP)
- (ii) = 0.5 times Labor Index (MP) / Labor Index (BP)
- (a) = 1.000
- (b) = [(i) + (ii)] / (b:Previous Year)
- O&M Adjustor = greater of (a) and (b)
- O&M Escalator = O&M Escalator (Previous Year) times O&M Adjustor (Current Year)
- O&M Charge = O&M Charge (February 2005) times O&M Escalator (Current Year) – paid monthly

**SAMPLE REPORT SHOWING**  
**Non-Rate 3 Annual Steam Sales**

**THERM SALES BY RATE CLASS**

	A	B	C	D	E	F	G	H
			Summer Sales				Total Sales Excluding Rate 3A	Total Sales Excluding Rate 3A
	Rate 1 Include in FAC	Rate 2 Include in FAC	Rate 3A not Fac related sales	Rate 3B Include in FAC	Special Contract Not FAC related sales	Total Sales	Total used to develop average cost of fuel	And Special Contract FAC related sales
Feb-04	483,788	4,359,865	7,697	43,732	2,815,805	7,710,887	7,703,190	4,887,385
Mar-04	381,653	3,522,976	231,694	94,399	2,187,910	6,418,632	6,186,938	3,999,028
Apr-04	193,863	2,625,499	439,913	373,762	1,951,331	5,584,368	5,144,455	3,193,124
May-04	68,567	1,967,601	1,644,063	270,594	1,530,570	5,481,395	3,837,332	2,306,762
Jun-04	73,717	1,789,668	1,722,097	388,836	1,477,206	5,451,524	3,729,427	2,252,221
Jul-04	46,252	1,804,259	1,510,160	1,114,411	1,420,877	5,895,959	4,385,799	2,964,922
Aug-04	64,067	1,786,434	1,299,496	790,642	1,512,988	5,453,627	4,154,131	2,641,143
Sep-04	44,120	1,776,846	1,592,038	312,481	1,461,831	5,187,316	3,595,278	2,133,447
Oct-04	163,229	2,353,879	638,035	502,943	1,576,808	5,234,894	4,596,859	3,020,051
Nov-04	292,075	2,889,548	312,582	226,243	2,106,628	5,827,076	5,514,494	3,407,866
Dec-04	652,511	4,279,673	8,033	116,652	3,043,889	8,100,758	8,092,725	5,048,836
Jan-05	<u>594,607</u>	<u>4,349,170</u>	<u>664</u>	<u>142,835</u>	<u>3,241,869</u>	<u>8,329,144</u>	<u>8,328,480</u>	<u>5,086,611</u>
	3,058,449	33,505,418	9,406,473	4,377,529	24,327,712	74,675,581	65,269,108	40,941,396

**EXHIBIT A-1, continued**

(i) = 0.5 times CPI Index (MP)/CPI Index (BP)  
(ii) = 0.39 times Coal Index (MP) / Coal Index (BP)  
(iii) = 0.11 times Natural Gas Index (MP) / Natural Gas Index (BP)  
(a) = 0.95 times previous year's Rate Adjustor  
(b) = [ (i) + (ii) + (iii) ]  
Rate Adjustor (Current Year) = greater of (a) and (b)  
Rate Escalator = (b)  
Base Rate (Current Year) = initial Base Rate of \$0.305/Therm (February 2005) times Rate Adjustor (Current Year)

EXHIBIT A, continued

(i) = 0.5 times CPI Index (MP)/CPI Index (BP)  
(ii) = 0.39 times Coal Index (MP) / Coal Index (BP)  
(iii) = 0.11 times Natural Gas Index (MP) / Natural Gas Index (BP)  
(a) = 0.95 times Rate Adjustor (Previous Year)  
(b) = [ (i) + (ii) + (iii) ] / (b:Previous Year)  
Rate Adjustor = greater of (a) and (b)  
Rate Escalator = Rate Escalator (Previous Year) times Rate Adjustor (Current Year)  
Base Rate = Base Rate (February 2005) times Rate Escalator (Current Year)

ORIGINAL  
STATE OF INDIANA

**INDIANA UTILITY REGULATORY COMMISSION**

**PETITION OF THE BOARD OF DIRECTORS )  
FOR UTILITIES OF THE DEPARTMENT OF )  
PUBLIC UTILITIES OF THE CITY OF )  
INDIANAPOLIS, AS SUCCESSOR TRUSTEE OF )  
A PUBLIC CHARITABLE TRUST, D/B/A )  
CITIZENS THERMAL ENERGY, FOR )  
APPROVAL OF A STEAM PURCHASE )  
AGREEMENT WITH COVANTA )  
INDIANAPOLIS, INC. AND AUTHORITY TO )  
RECOVER THE RETAIL JURISDICTIONAL )  
COSTS INCURRED UNDER SAID AGREEMENT )  
THROUGH PETITIONER'S STANDARD )  
CONTRACT RIDER NO. 1, FUEL COST )  
ADJUSTMENT )**

**CAUSE NO. 43025**

**APPROVED:**

**DEC 28 2006**

**BY THE COMMISSION:**

**Gregory D. Server, Commissioner  
Abby R. Gray, Administrative Law Judge**

On April 26, 2006, the Board of Directors for Utilities of the Department of Public Utilities of the City of Indianapolis, as Successor Trustee of a Public Charitable Trust, D/B/A Citizens Thermal Energy ("Petitioner" or "Citizens") filed with the Indiana Utility Regulatory Commission ("Commission") its Petition in this Cause requesting the Commission to (i) find reasonable and approve a Steam Purchase Agreement dated December 9, 2005 (the "Proposed Agreement"), that Petitioner entered into with Covanta Indianapolis, Inc. ("Covanta") and (ii) authorize Citizens to recover the retail jurisdictional costs incurred under the Proposed Agreement through its Standard Contract Rider No. 1, Fuel Cost Adjustment ("FAC Rider"). The Proposed Agreement is a replacement agreement to an existing agreement between Petitioner and Covanta that originated in 1986 (the "Existing Agreement").

On May 4, 2006, Eli Lilly & Company and National Starch & Chemical Company, designated collectively as Citizens Thermal Energy Large Volume Customers ("Large Volume Customers"), filed a *Petition to Intervene* in this Cause. The Large Volume Customers' petition to intervene was granted by the Presiding Officers in a docket entry issued on May 12, 2006.

On June 5, 2006, Petitioner filed a *Motion to Waive Prehearing Conference and Establish Procedural Schedule*. In that motion, Petitioner requested that a prehearing conference be waived and proposed a procedural schedule that had been agreed to by the Large Volume Customers and the Indiana Office of Utility Consumer Counselor ("OUCC"). The Presiding Officers granted Petitioner's *Motion to Waive Prehearing*

*Conference and Establish Procedural Schedule* in a docket entry issued on June 8, 2006, which established a procedural schedule for this Cause, including a public evidentiary hearing to commence on August 18, 2006.

On May 12, 2006, Petitioner prefiled its prepared case-in-chief testimony and exhibits. On July 7, 2006, and July 11, 2006, respectively, the Large Volume Customers and the OUCC prefiled their prepared case-in-chief testimony. On July 28, 2006, the OUCC prefiled an inadvertently omitted portion of its prepared case-in-chief testimony. On August 8, 2006, and August 17, 2006, respectively, Petitioner prefiled its prepared rebuttal testimony and prepared supplemental rebuttal testimony.

Pursuant to notice as provided by law, proof of which was incorporated into the record and placed in the Commission's official files, a public evidentiary hearing was commenced on August 18, 2006, at 9:30 a.m. in Room E306, Indiana Government Center South, Indianapolis, Indiana. At the hearing, the prefiled testimony and exhibits described above were admitted into the record and certain witnesses were cross examined.

On September 20, 2006, the Commission entered an Order on Less Than All Issues in this Cause approving a Stipulation and Settlement Agreement entered into by the parties. The Stipulation and Settlement Agreement resolved all issues raised by Petitioner's *Motion for Relief Conditional on Outcome of Proceeding and for Leave to File Supplemental Testimony in Support Thereof* and the Large Volume Customers' *Verified Motion for Mediation in Response to Citizens' Motion for Relief Conditional on Outcome of Proceeding* filed on July 24, 2006, and July 31, 2006, respectively. A public evidentiary hearing on those matters was held on August 31, 2006.

Based on the applicable law and the evidence of record, the Commission now finds:

1. **Notice and Jurisdiction.** Notice of the public evidentiary hearing held on August 18, 2006, was given as required by law. Petitioner is a municipal steam utility subject to the jurisdiction of this Commission in the manner and to the extent provided by the laws of the State of Indiana, including certain sections of the Public Service Commission Act, as amended. Therefore, the Commission has jurisdiction over the parties and the subject matter of this proceeding.

2. **Petitioner's Steam Business.** Citizens is a municipal steam utility that maintains its principal offices and provides steam service in Marion County, Indiana. It owns, operates, manages and controls plant and equipment used for the production, distribution and furnishing of steam utility service to the public. Citizens provides steam service to approximately 220 customers in the City of Indianapolis through steam production and distribution facilities purchased in November 2000 from Indianapolis Power & Light Company ("IPL"). Citizens' purchase of those facilities from IPL was approved by this Commission in its October 4, 2000, Order in Cause No. 41716.

### 3. Petitioner's Case-in-Chief Testimony.

**A. Overview of Citizens' Steam Supply Resources, Experience with Covanta and the Proposed Agreement.** Mr. William A. Tracy, Petitioner's Senior Vice President of Operations, provided an overview of Citizens' steam supply resources, past experience with Covanta and the Proposed Agreement. He testified that eight steam boilers and related facilities housed at Petitioner's Perry K steam production plant are the primary sources of the steam Petitioner distributes to the public. Citizens also purchases steam produced at the Indianapolis Resource Recovery Facility (the "IRRF"), which is a waste-to-energy facility owned and operated by Covanta. Pursuant to the Existing Agreement, which originated in 1986 and was assigned to Citizens by IPL, the IRRF supplies over 40 percent of the steam required for Citizens to meet its customers' annual steam requirements. The Commission approved the Existing Agreement on March 19, 1986, pursuant to the Commission's 30-day filing procedure and Indiana Code Section 8-1-2.4-4. Various modifications to the Existing Agreement have also been approved pursuant to the Commission's 30-day filing procedure. Pursuant to its FAC Rider, Citizens periodically adjusts its rates and charges for steam service to reflect, among other things, changes in the cost of fuel and the cost of purchases from Covanta incurred to supply steam to Petitioner's retail customers. (Pet. Exh. A at 4-5; Pet. Exh. A-1 at 2-4)

The Existing Agreement, as amended, expires on November 30, 2008. Pursuant to a provision in the Existing Agreement requiring the negotiation of a replacement agreement, Petitioner and Covanta began discussions in early 2005 to negotiate a new steam purchase agreement. The Proposed Agreement is the result of those negotiations. Subject to Commission approval, the effective date of the Proposed Agreement is December 1, 2008. (Pet. Exh. A-1 at 3) Citizens met with several of its large steam customers to discuss the Proposed Agreement, prior to seeking its approval and initiating this proceeding. (Tr. at A-55, A-56)

Mr. Tracy testified that the steam purchased from Covanta is one of the least expensive resources used to supply steam to Citizens' customers. As a result, Citizens purchases as much steam as possible from Covanta to displace steam using coal, natural gas and No. 2 Fuel Oil as a fuel source. Relative to other fuel supplies (*i.e.*, coal, natural gas, coke oven gas and No. 2 Fuel Oil), steam purchased from Covanta accounted for 46% of the steam delivered to customers during 2005. (Pet. Exh. A at 5-6)

Mr. Tracy stated that under the Proposed Agreement, steam produced at the IRRF by Covanta will remain one of Citizens' least expensive supply resources. Mr. Tracy also described other benefits that Citizens and its customers realize as a result of making purchases from Covanta. He testified that the IRRF is a reliable source of steam operated by an experienced and proven company. Covanta and its affiliates operate over 30 large-scale waste-to-energy facilities predominantly located in the United States. Mr. Tracy emphasized that Citizens' purchases of steam from Covanta provide Citizens a diversified portfolio, lower Citizens' operating and maintenance costs by reducing the amount of steam produced at the Perry K plant and further the policy of the State to

encourage the development of cost-effective alternate energy production facilities, including waste-to-energy facilities such as the IRRF. Mr. Tracy explained that Citizens' resource planning strategy is to maintain existing resources and, to the extent possible, avoid expensive capital investments that would lead to higher rates for customers. Mr. Tracy stated that approval of the Proposed Agreement and continued purchases of steam produced at the IRRF are necessary for Citizens to execute that strategy. (*Id.* at 7-8)

At the hearing, Mr. Tracy was cross-examined about Covanta's reliability and supply obligations under the Proposed Agreement. Mr. Tracy emphasized that Covanta has been and is expected to continue to be a reliable supplier of steam.

Mr. Tracy next testified regarding the negotiation of the Proposed Agreement. He explained that the Proposed Agreement is an arms-length agreement negotiated by two unaffiliated commercial entities. Mr. Tracy stated that because the costs of steam purchased from Covanta are passed through directly to customers through Citizens' FAC Rider, Citizens negotiated the Proposed Agreement with its customers' interests in mind. He testified that Citizens' objectives during the negotiations were focused on price (pricing and other terms that would result in the lowest overall cost to customers), providing Covanta an incentive to maximize the output of the IRRF during the winter heating season, reliability and quality. (*Id.* at 8-9)

Mr. Tracy opined that Citizens achieved its objectives and negotiated a very favorable agreement that will provide benefits for Citizens' customers for years to come. As an example, Mr. Tracy pointed out the inclusion of a Winter Incentive Premium in the Proposed Agreement, which is designed to provide Covanta an incentive to produce more steam during the winter months when steam usage is at its highest. With respect to quality and reliability, Mr. Tracy explained that the Proposed Agreement sets forth obligations that will ensure Citizens and Covanta work together regarding maintenance of the IRRF and coordinate operations during planned and unplanned outages. He also discussed specific quality requirements that are set forth in the Proposed Agreement to ensure Citizens meets its customers' steam quality needs related to food and milk products and pharmaceutical manufacturing. (*Id.* at 9-10)

Mr. Tracy testified that the Proposed Agreement recognizes this Commission's oversight role regarding Citizens' steam purchases from Covanta. He pointed out that Commission approval is a condition precedent to the Proposed Agreement's effectiveness. He also explained that the Proposed Agreement obligates the parties to furnish each other information necessary to verify payments or other obligations under the Proposed Agreement and, subject to the ability to seek protection of confidential information, to make such information available to the Commission. (*Id.* at 10)

Finally, Mr. Tracy explained that the term of the Proposed Agreement, which begins on December 1, 2008, is 20 years. However, either party can terminate the Proposed Agreement by providing written notice 30 months in advance of such termination. Thus, Mr. Tracy explained, if technological or other developments cause

another resource option to become more economical than the Proposed Agreement, Citizens will be able to take advantage of that option. (*Id.* at 11-12)

**B. Citizens' Steam Supply Resources and Operational and Pricing Provisions of the Proposed Agreement.** Mr. James O. Dillard, General Manager, Facilities and Engineering, for Citizens' thermal energy division testified regarding the supply resources Citizens utilizes to serve its steam customers. Mr. Dillard also described the operational and pricing features of the Proposed Agreement. Finally, Mr. Dillard discussed the alternatives to purchasing steam from Covanta that Citizens considered.

(1) Steam Supply Resources. Mr. Dillard testified that Citizens sends out approximately 81,000,000 therms of steam per year. On the peak winter day, Citizens needs approximately 1,500,000 lbs/hour of steam to meet its system demand. He explained that Citizens produces the majority of its steam requirements with the eight steam boilers at its Perry K plant, which include three coal-fired boilers, two boilers that burn No. 2 Fuel Oil and three that burn coke oven gas or natural gas. The balance of Citizens' steam supply is produced at the IRRF and purchased from Covanta. Mr. Dillard stated that Citizens purchases approximately 42,000,000 therms per year of steam from Covanta, representing approximately one-half of Citizens' annual steam send-out. (Pet. Exh. B at 3-4)

Mr. Dillard explained that Citizens dispatches its steam supply resources on a least cost basis. Typically, steam purchases from Covanta and Citizens' coke oven gas boilers are dispatched first because they are the lowest cost resources. Steam produced with coal, natural gas and No. 2 Fuel Oil are dispatched next in that order. During most of the year, steam purchased from Covanta and produced with coke oven gas is sufficient to meet Citizens' requirements. During the winter heating season, however, significant amounts of natural gas are often required to supplement the lower cost fuels. (*Id.* at 4)

Mr. Dillard next discussed how the cost of the various steam supply resources Citizens utilizes compare to each other. He emphasized that to make a valid comparison of steam purchased from Covanta to steam produced at the Perry K plant, it must be recognized that steam purchased from Covanta is a finished product. Thus, the cost of that finished product cannot be compared directly to the cost of any of the various fuels used to produce steam at the Perry K plant, because Citizens incurs other costs to produce that steam, such as operating and maintenance costs. Furthermore, Mr. Dillard stated that the cost to produce steam at the Perry K plant is affected by boiler and plant efficiencies. Taking those additional costs into account, Mr. Dillard provided a comparison of the cost to produce steam at the Perry K plant to the cost of purchasing steam from Covanta under the Existing Agreement based on the 12 months ending September 30, 2005:

	<u>Existing Agreement</u>	<u>Proposed Agreement</u>
Covanta Primary <sup>1</sup>	\$2.80/Dth	\$4.14/Dth
Coke oven gas	\$3.90/Dth	\$3.90/Dth

<sup>1</sup> Covanta Primary refers to steam used to serve customers under Rate 1, Rate 2 and Rate 3B of Citizens' tariff.

Coal	\$4.50/Dth	\$4.50/Dth
Natural Gas	\$12.80/Dth	\$12.80/Dth
No. 2 Fuel Oil	\$14.40/Dth	\$14.40/Dth

(*Id.* at 5, 16)

(2) Operational Features of the Proposed Agreement. Mr. Dillard next testified regarding the operational features of the Proposed Agreement. Under the Proposed Agreement, the parties generally have reciprocal obligations to sell and buy the IRRF's available production in an amount at least equal to 29 million therms annually. Mr. Dillard explained that Citizens' and Covanta's operations will be coordinated by an Operating Committee. The Operating Committee will coordinate all maintenance activities at the IRRF and the Perry K plant in order to minimize disruptions to their respective operations. The Operating Committee also will be responsible for facilitating communications and information exchanges as well as establishing and implementing procedures governing dispatch of the IRRF. Although Citizens' dispatch procedures may be adjusted slightly to ensure compliance with the minimum annual purchase requirement established in the Proposed Agreement, Mr. Dillard stated that any such changes will not affect the overall cost of steam because steam purchased from Covanta pursuant to the Proposed Agreement will remain one of Citizens' lowest cost supply resources. (*Id.* at 5-8)

On redirect examination at the hearing, Mr. Dillard explained why Citizens chose to negotiate an annual minimum supply obligation as opposed to monthly minimum supply obligations.

(3) Pricing Features of the Proposed Agreement. Mr. Dillard discussed in detail the pricing established in the Proposed Agreement. Mr. Dillard testified that under the Proposed Agreement, Citizens will make a Monthly Steam Payment to Covanta, which will include the following components: Base Steam Payment, Summer Steam Payment, Secondary Steam Payment, Demand Charge, O&M Charge, Force Majeure Charge and a charge for Incremental Chemical Costs. The Proposed Agreement also contains provisions for true up payments under certain circumstances. (*Id.* at 8-9)

Mr. Dillard stated that the Base Steam Payment is the sum of three separate components multiplied by the amount of steam purchased during the month: (1) the Base Rate initially set to \$0.305/therm; (2) the Winter Incentive Premium initially set to \$0.10/therm; and (3) the Force Majeure Charge provided for in Article XIII of the Proposed Agreement. Both the Base Rate and the Winter Incentive Premium are subject to adjustment in accordance with Exhibit A of the Proposed Agreement. (*Id.* at 9)

Mr. Dillard explained that the Winter Incentive Premium will be applicable during the months of December through February. The amount of the Winter Incentive Premium is subject to a downward adjustment if output from the IRRF is not available at least 85% of the time during those months. In the event the IRRF's output is available

less than 70% of the time during those months, no Winter Incentive Premium will be paid. (*Id.* at 9-10)

Mr. Dillard testified that the Summer Steam Payment is applicable to steam produced by the IRRF that exceeds the amount of steam Citizens distributes to the public and is used to produce chilled water or another warm weather application during the months of April through October. The rate for Summer Steam is initially set to \$0.20/therm and is subject to escalation by a factor reflecting the cost of electricity used to produce chilled water. (*Id.* at 10)

Mr. Dillard stated that the Secondary Steam Payment relates to output from the IRRF purchased by Citizens, other than Base Steam and Summer Steam, which is used by Citizens to generate electricity at the Perry K Plant. Costs incurred for the Secondary Steam Payment are not recovered through the FAC Rider. (*Id.* at 10-11)

Mr. Dillard next discussed the Demand Charge, O&M Charge and charges for Incremental Chemical Costs. The Demand Charge equals \$133,330 per month and will not escalate during the 20-year term of the Proposed Agreement. The Demand Charge is subject to reduction in the event Covanta fails to meet its requirement to produce and make available for sale 29,000,000 therms of steam annually. In that event, Citizens will receive a rebate of the Demand Charge equal to the amount of the shortfall multiplied by \$0.055/therm. The O&M Charge is initially set to \$83,333 per month and subject to an escalator formula to reflect increases in labor costs. The charge for Incremental Chemical Costs will only become applicable if Covanta proposes a chemical change that is unacceptable to Citizens, and Citizens proposes an alternative. If Covanta accepts an alternative proposed by Citizens, Citizens only will be responsible for the difference between the cost incurred as a result of Citizens' alternative proposal and the costs that would have been incurred under Covanta's proposal. (*Id.* at 11-12)

Finally, Mr. Dillard described the Force Majeure Surcharge established in the Proposed Agreement. Basically, the Force Majeure Surcharge is a per therm charge that, if it ever becomes applicable, will allow Covanta to recover a portion of capital and operating costs incurred as a result of changes in law. The first \$1 million of any capital costs necessitated by a change in law are borne by Covanta and the total remaining costs (capital and operating) to be included in a Force Majeure Surcharge will be amortized over ten years, with interest. However, the total costs imposed on Citizens under a Force Majeure Surcharge cannot exceed the total amount payable by Citizens to Covanta during the year immediately preceding the year in which the change in law necessitating the Force Majeure Surcharge occurred. Moreover, if Citizens disagrees with the appropriateness of a Force Majeure Surcharge proposed by Covanta, it may terminate the Proposed Agreement upon providing Covanta 30 months' prior written notice and, if applicable, making a lump sum payment to reimburse Covanta for certain capital costs incurred or committed to prior to such notice of termination. (*Id.* at 12; Pet. Exh. A-2 at 18)

Mr. Dillard then discussed the pricing differences between the Existing Agreement and the Proposed Agreement that he considers most significant. Mr. Dillard opined that the most significant pricing differences between the two agreements are:

- Base steam price adjustment: The mechanism used to adjust the Base Steam Rate is significantly different than the corresponding mechanism in the Existing Agreement and is intended to mitigate the volatility of energy prices.<sup>2</sup>
- Demand charge: A Demand Charge was added to the Proposed Agreement, which, among other things, will provide Covanta a steady level of funds to use to maintain the steam line used to deliver steam from the IRRF and other IRRF facilities. As noted above, Mr. Dillard explained that Covanta is obligated to refund a portion or all of the Demand Charge if it fails to maintain certain availability targets.
- Summer Steam price adjustment: The index used to adjust the Summer Steam charge also is changed in the Proposed Agreement and is intended to maintain consistency between the cost of steam energy and the energy alternative for chilled water producers that purchase Summer Steam.
- Winter Incentive Premium: The Winter Incentive Premium was added to encourage Covanta to schedule outages outside of and develop alternative sources of trash during the winter heating season.

In sum, Mr. Dillard explained that the Proposed Agreement's pricing, like its other provisions, was the product of arms length negotiations between two unaffiliated parties, based on the Indianapolis energy market in late 2004 and early 2005. He stated that Citizens evaluated all of the charges that Covanta proposed for inclusion in the Proposed Agreement and agreed only to those charges that Citizens considered reasonable. Mr. Dillard emphasized that the various charges set forth in the Proposed Agreement were not negotiated in isolation from each other. For example, attempts to lower or eliminate one charge had to be balanced against Covanta's counter proposals to raise other charges. Citizens attempted to obtain an optimal package of charges and assessed the total cost of the package against the costs it would incur if it pursued alternative sources of steam supply. (*Id.* at 13-15)

(4) Alternative Steam Supply Resources. Mr. Dillard then discussed the alternatives to purchasing steam from Covanta that Citizens considered. He testified that Citizens considered several alternatives with the simplest, and most likely, being an increased utilization of existing boilers at the Perry K plant. Mr. Dillard stated that although the Perry K plant has adequate capacity to supply Citizens' steam requirement, the existing boilers that would replace steam purchases from Covanta would not burn the lowest cost fuels used to produce steam at the plant, which are coke oven gas and coal. Instead, if Citizens were to replace steam purchases from Covanta with additional output from the Perry K plant's existing boilers, additional natural gas would have to be burned,

<sup>2</sup> Petitioner's witness Mr. Craig A. Jones testified that a large increase in the weighted average cost of coal in the month of August 2005 resulted in a large increase in costs incurred in September 2005 for steam purchased from Covanta. He stated that the Proposed Agreement's adjustment mechanism would have mitigated the effect of that increase. (Pet. Exh. C at 11-12)

which would cost significantly more than purchasing steam from Covanta under the Proposed Agreement. Citizens also evaluated other options, including the installation of a circulating fluidized bed boiler, converting one of the gas-fired boilers to a coal-fired boiler and coal gasification. Citizens concluded that based on the capital costs, permitting requirements and other considerations associated with any of the other options it evaluated, the Proposed Agreement clearly is the least cost option. (*Id.* at 17-18)

**C. Rate Impacts of Proposed Agreement.** Mr. Craig A. Jones, Citizens' Manager – Rates and Regulatory Affairs, testified regarding the customer bill impact of the Proposed Agreement as well as the potential impact to customers if Covanta stopped supplying steam to Citizens.

Mr. Jones presented an analysis that quantifies the difference in the pricing provisions of the Existing Agreement and the pricing established in the Proposed Agreement. His analysis involved utilizing the same data submitted in Citizens' most recent FAC filing, with the exception that the Covanta prices were changed to reflect those in the Proposed Agreement. To conduct his analysis, Mr. Jones used the methodology approved by the Commission in Cause No. 41969 – FAC05. Based on Mr. Jones's analysis, the Proposed Agreement would result in an approximately \$3.0 million increase of costs to be recovered through the FAC Rider. Mr. Jones estimated that the FAC rate would be \$0.04687 per therm higher than the per therm FAC rate Citizens proposed in its most recent FAC filing. This would result in an estimated increase of 3.48% and 5.35% for Rate 1 and Rate 2 customer bills, respectively. (Pet. Exh. C at 3-5)

Mr. Jones explained that there are three rates reflected in Citizens' steam tariff, with one additional customer being served under a customer-specific contract. Rate 1 is for small retail customers and Rate 2 is for large retail customers. The FAC rider is applicable to both Rate 1 and Rate 2. Rate 3 is further divided into Rate 3A and Rate 3B. Mr. Jones explained that during the summer months the IRRF generally produces more steam than Citizens needs. Rate 3A was created to allow customers who could make use of that excess steam to purchase it at a reduced rate. The costs of that steam are charged directly to those customers and, therefore, the FAC Rider is not applicable to Rate 3A. Rate 3B applies to those same customers in the event the steam available for sale under Rate 3A is not sufficient to meet their steam needs. Since steam provided under Rate 3B is produced at the Perry K plant, the FAC Rider is applicable to Rate 3B. Mr. Jones also stated that Citizens serves one customer under a customer-specific contract. Because this customer's contract rate is adjusted by the FAC factor, Mr. Jones included it in the analysis of the difference between the Existing Agreement and Proposed Agreement described above. (*Id.* at 5-7)

Mr. Jones next discussed the impact on customer bills if Covanta stopped supplying steam to Citizens. Consistent with Mr. Dillard's testimony regarding alternatives to steam purchases from Covanta, Mr. Jones's analysis in this regard was based on replacing the steam purchased from Covanta with an increase in the amount of steam produced at the Perry K plant using natural gas as a fuel source. Mr. Jones again based his analysis of replacing steam purchases from Covanta with natural gas on the

data submitted in Citizens' most recent FAC filing. Based on Mr. Jones's analysis, replacing steam purchases from Covanta with natural gas would result in an FAC rate that is \$0.46359 per therm higher than the per therm FAC rate Citizens proposed in its most recent FAC filing. This would result in an estimated increase of 34.63% and 53.17% for Rate 1 and Rate 2 customer bills, respectively. (*Id.* at 8-11)

4. Large Volume Customers' Case-in-Chief Testimony. Mr. Nicholas Phillips, Jr. testified on behalf of the Large Volume Customers. Mr. Phillips had a number of concerns about the Proposed Agreement.

Mr. Phillips stated that Citizens has sufficient capacity to supply steam from coal and coke oven gas during many months of the year. (IG Ex. NP 1 at 6) He testified that during the winter period, however, Citizens operates most efficiently by purchasing steam to minimize its peak load generation requirements that use natural gas as a fuel source. (*Id.*) He testified that Citizens and ratepayers would be best served by having requirements for steam that obligate Covanta to supply minimum amounts during the winter period of November through March. Mr. Phillips stated that under the Proposed Agreement, Covanta can choose to provide virtually its entire annual obligation during the non-crucial months of the year. (*Id.*)

Mr. Phillips testified that the Proposed Agreement obligated Citizens to an annual take-or-pay provision, without a requirement for Covanta to supply minimum amounts of steam during the crucial winter period. (*Id.*) He stated that with a take-or-pay obligation, Citizens should require more safeguards and require the take-or-pay obligation be in accord with its needs, which are for purchased steam during the winter period. (*Id.* at 5) Mr. Phillips testified that Citizens' current contract requires Covanta to provide a certain quantity of steam during the months of November through March. (*Id.* at 5-6) He testified that the Proposed Agreement has no such explicit minimum winter obligations. (*Id.* at 6) Mr. Phillips stated that the introduction of a take-or-pay obligation likely caused Citizens to minimize the obligation to take steam. (*Id.*)

Mr. Phillips testified that the Winter Incentive Premium provides Covanta with an incentive to provide therms during winter months but not an obligation to provide steam during the crucial winter period. (*Id.* at 7) He stated that Citizens must pay a premium to Covanta for all usage during the winter period and Covanta may be obligated to refund all or part of the premium after application of the availability formula. Mr. Phillips had concerns regarding the incentive mechanism. He stated there is no explicit example showing a tested capacity rating of the units used to calculate the availability factor. He further testified that the Proposed Agreement provides that the formula can be adjusted due to the unavailability of waste-to-fuel to the Covanta facility as well as other reasons. In other words, Mr. Phillips testified that the availability factor could be adjusted to provide an incentive payment even if the availability criteria are not met by Covanta. (*Id.*)

Mr. Phillips testified that a more direct way to ensure winter deliverability would be to establish a winter minimum requirement with an incentive payment for amounts above that requirement. (*Id.* at 8) He testified that if a take-or-pay obligation is part of

the Proposed Agreement, it is crucial that a requirement be established for the steam to be provided during the winter months with minimum obligations for those months. (*Id.*)

Mr. Phillips testified that take-or-pay obligations can lead to problems associated with payments without delivery of the product. He stated paying a demand payment in exchange for having the ability to dispatch a certain amount of reserved capacity was a better mechanism. Under the Proposed Agreement, however, Mr. Phillips stated Citizens would make a demand payment and also would have an annual take-or-pay obligation, but would receive no firm commitment on the volumes of steam it requires to displace natural gas during the winter period. Mr. Phillips testified that the proposed take-or-pay provision imposes a business risk for contracting for too much purchased steam. He testified that this risk must be balanced against the risk to ratepayers of not having adequate purchased steam in the winter period causing the production of steam with natural gas. He testified that the risk to ratepayers should not be subordinate to the business risk imposed by the proposed take-or-pay obligation in the Proposed Agreement. (*Id.*)

Mr. Phillips testified that the Proposed Agreement contains escalators for the price of Base Steam, the Winter Incentive Premium and the O&M charge. (*Id.* at 9) He testified that the escalator provisions have a base point of February, 2005, and escalate after that date. Mr. Phillips observed that the definition for the Base/Winter rate escalator indicates that the escalator can only increase. (*Id.*) He further testified that if the example on Exhibit A controls instead of the Proposed Agreement's definition, that the escalator can only decrease 5% from the previous year. (*Id.* at 10) Mr. Phillips also noted that Citizens had failed to provide a calculation of how the escalators would have adjusted the price since February 2005. (*Id.*) Mr. Phillips was also concerned that the escalation factors in the Proposed Agreement could keep the price of purchased steam at high levels, even if coal prices decrease. In this situation, Mr. Phillips testified Citizens could be faced with purchasing steam at a higher price rather than operating its system on a least cost dispatch basis. (*Id.*)

Mr. Phillips testified that Citizens' estimates of the costs of the Proposed Agreement had changed significantly between its 30-day filing and its testimony in this proceeding. (*Id.* at 11) Mr. Phillips testified that Citizens' 30-day filing indicated that the FAC would be increased by 8.495 cents per therm as a result of the Proposed Agreement's costs; whereas in testimony in this case, Citizens projected the increase would be 4.687 cents per therm. Mr. Phillips found it troubling that Citizens had been unable to provide a clear cost estimate of the expected cost increases and that it had failed to provide any calculation of the expected increases as a result of the escalators. (*Id.*)

Mr. Phillips then addressed Mr. Jones' example of displacing the entire Covanta steam purchases by natural gas. (*Id.* at 12) Mr. Phillips testified that Citizens should be using coal as a replacement cost instead of natural gas. Mr. Phillips testified that because Covanta has no explicit obligation to provide steam in the winter, Mr. Jones' testimony illustrates a scenario which could occur even if the Commission were to approve the Proposed Agreement. Because the Proposed Agreement has a thirty month termination provision, Mr. Phillips testified that Citizens should have a plan in place to produce steam

on an economic basis if Covanta exercises its option to terminate the contract. (*Id.* at 12-13) He also stated that currently Citizens has indicated that it has no plan developed to replace purchased steam from Covanta. (*Id.* at 13)

Mr. Phillips testified that he also had concerns regarding the Force Majeure Surcharge and Change in Law provisions in the Proposed Agreement. He stated that Change in Law is broadly defined and that Covanta may charge Citizens its aggregate capital costs over one million dollars and any operating cost increases associated with any Change in Law. He testified that the Force Majeure Surcharge assumes that Covanta borrows all of its estimated Change in Law costs on day one and applies an undefined rate of interest to them. (*Id.*)

Mr. Phillips testified that the Change in Law provisions in the Proposed Agreement were at odds with sound ratemaking principles. Mr. Phillips testified that steam ratepayers should not be obligated to pay for changes in laws concerning trash handling, trash storage, or other items that have to do with the responsibilities of Covanta. (*Id.* at 13-14) He also testified that surcharges should not be based on estimates but actual expenses from a plan that requires an approval from an agency such as the Commission. (*Id.* at 14) Mr. Phillips concluded that the Proposed Agreement shifts the risks of the waste-to-steam operation to ratepayers and subjects ratepayers to surcharges based on estimates of compliance. He also testified that the recovery mechanism should not be based on the assumption that Covanta borrows all of the capital and increased operating costs it will incur over a twenty year term on day one and that an undefined interest rate should not be applied to this imaginary loan. He stated that the recovery mechanism should not be more favorable than the standard regulated utilities have to follow under Indiana law, which at least require the Commission to find substantial documentation that the expected costs and that schedule for incurring those costs are reasonable and necessary. (*Id.*)

Mr. Phillips testified that the Agreement is also contingent on Covanta reaching an agreement with the City of Indianapolis, which is not in place. (*Id.* at 2) He testified that if early approval of the contract by the IURC provides benefits to Covanta, those benefits should be considered by the Commission in a review of the Proposed Agreement. (*Id.*)

Mr. Phillips testified that many of the costs related to charges to be imposed under the Proposed Agreement are not appropriate for recovery through an FAC rider. (*Id.* at 14) Mr. Phillips stated that cost related to demand charges, O&M charges, Changes in Law, or take or pay charges are more suitable for recovery in base rates after Commission investigation, deliberation and approval. (*Id.*)

Mr. Phillips recommended that the Proposed Agreement not be approved unless the problems enumerated in his testimony were resolved, including: (1) the take or pay provision and implications involving operating in a least cost manner; (2) lack of winter supply obligations; (3) poorly designed winter incentive mechanism; (4) one-way escalators; (5) pass-through of Change in Law costs in a manner that is at odds with

sound ratemaking principles; (6) Covanta's option not to enter into the contract unless it reaches an agreement with the City of Indianapolis. (*Id.* at 15) Mr. Phillips further recommended that Citizens should not be allowed to include charges in the FAC that are normally a part of base rates. (*Id.*) In the alternative, if the Proposed Agreement is approved without resolving these issues, Mr. Phillips recommended that the Commission not provide for the recovery of costs in Citizens' FAC. (*Id.* at 16) Mr. Phillips' final recommendation was that the Commission require that Citizens develop a viable alternative plan to replace the steam supply from Covanta. (*Id.*)

**5. OUCC's Case-in-Chief Testimony.** Ms. Joan M. Soller, Director of the OUCC's Electric Division, testified on behalf of the OUCC.

Ms. Soller stated that the OUCC believes that cost-effective, nonsubsidized renewable energy sources, such as the IRRF, favorably enhance the environment and indicate responsible stewardship. She further stated that the OUCC believes that long-term contracts can be an effective way to mitigate risks due to price and supply volatility if risks are equitably shared between buyers and sellers. However, Ms. Soller opined that the price adjustment mechanisms and force majeure provision in the Proposed Agreement unduly expose Citizens and its ratepayers to potentially volatile increasing costs. She also expressed her belief that many of the costs to be incurred under the Proposed Agreement should more appropriately be recovered in base rates. She recommended that a review to separate costs to be recovered in base rates from those to be recovered through the FAC Rider and to determine cost allocations should occur before the Proposed Agreement is implemented in 2008. (Public's Exh. 1 at 3-4)

In response to questions from the Presiding Officers at the hearing, Ms. Soller clarified her ultimate recommendation regarding approval of the Proposed Agreement, stating, "Given the testimony that was presented today by Mr. Tracy, if the OUCC is able to review the costs with subsequent FACs, then, I believe the contract should be approved." (Tr. at A-97, lines 14-17) She reiterated the OUCC's position that certain costs to be incurred under the Proposed Agreement should be recovered through base rates. (*Id.* at A-98, lines 1-2)

Ms. Soller also testified regarding Citizens' long-range planning. She suggested that Citizens complete an Integrated Resource Plan ("IRP") similar to those used by electric utilities pursuant to the Commission's rules governing IRPs. (Public's Exh. 1 at 5).

**6. Petitioner's Rebuttal Testimony.** In its rebuttal testimony, Citizens responded to Mr. Phillips's criticisms of the Proposed Agreement. Citizens' rebuttal testimony also addressed the Large Volume Customers' and the OUCC's suggestions regarding resource planning. Mr. Jones's rebuttal testimony addressed issues raised by the Large Volume Customers regarding the comparisons presented in his case-in-chief testimony quantifying the projected impact of the Proposed Agreement. Mr. Jones also responded to the Large Volume Customers' and OUCC's suggestion that certain charges

imposed under the Proposed Agreement should not be recovered through Citizens' FAC Rider.

Mr. Tracy first responded to Mr. Phillips's recommendation that the Proposed Agreement not be approved until the "significant problems" enumerated in his testimony are resolved. Mr. Tracy rejected Mr. Phillips's recommendation that the Proposed Agreement be disapproved because, in Mr. Tracy's opinion, the Proposed Agreement has no significant problems. Rather, Mr. Tracy testified that Mr. Phillips had simply substituted his judgment for the judgment exercised by the Citizens employees who were involved in the arms-length negotiations that led to the Proposed Agreement. (Pet. Exh. F at 2)

Mr. Tracy emphasized that during the negotiations with Covanta, Citizens was represented by a highly competent team of employees and attorneys. He stated that the Citizens employees principally involved in the negotiation have approximately 100 years of combined experience in the steam utility business and were supported by other employees with another 45 years of combined experience. Mr. Tracy pointed out that Mr. Dillard has been involved in managing the steam business's relationship with Covanta since its inception in 1986 and that Mr. Tracy himself has had overall responsibility for that relationship since 1998. (*Id.* at 2-3)

Mr. Tracy testified that the negotiation of the Proposed Agreement was a very lengthy negotiation between two unaffiliated commercial entities. He stated that at times the negotiations were very tense and, at one point, broke down completely. In the end, Mr. Tracy reiterated his belief that Citizens was successful in achieving its objectives, which were focused on price, reliability, quality and optimizing Citizens' utilization of the Covanta steam supply to meet its customers' needs at the lowest cost reasonably possible. (*Id.* at 3)

Mr. Tracy cited Mr. Phillips's criticism of the minimum annual supply and purchase obligation the parties negotiated as an example of Mr. Phillips's substituting his judgment for that of the employees who negotiated on behalf of Citizens. Mr. Tracy pointed out that Mr. Phillips stated in his testimony that he is "not in favor of take-or-pay obligations"; demonstrating a personal bias against the manner in which Citizens chose to address that issue. Mr. Tracy also disagreed with Mr. Phillips's opinion that Citizens should have agreed to minimum monthly purchase obligations during certain months. Mr. Tracy testified that, in Citizens' judgment, agreeing to minimum monthly purchase obligations as suggested by Mr. Phillips would not be in the best interests of Citizens' customers because it would be more likely to lead to a requirement to purchase more steam in a given month than Citizens may need. Instead, during the negotiations, Citizens chose to negotiate for flexibility regarding how its annual purchase obligation will be utilized throughout the year based on its operational needs and the weather-sensitive needs of its customers. (*Id.* at 6)

Mr. Tracy further testified that he does not believe a renegotiation of the aspects of the Proposed Agreement criticized by Mr. Phillips would result in a more favorable

agreement to Citizens and its customers. That is true, according to Mr. Tracy, because Citizens does not agree that all of the changes proposed by Mr. Phillips would benefit Citizens and its customers. As an example, Mr. Tracy noted his disagreement that the minimum monthly purchase requirements suggested by Mr. Phillips would be in the best interests of Citizens and its customers. (*Id.* at 4)

Moreover, Mr. Tracy explained that he does not believe Covanta will be willing to make any changes it perceives as significant concessions without insisting on equally significant corresponding changes that it perceives as favorable to Covanta, including the very favorable prices Citizens was able to negotiate. Mr. Tracy opined that Mr. Phillips did not appear to appreciate the fact that the various aspects of the Proposed Agreement were not negotiated in isolation from one another and that Covanta will evaluate the effect any proposed changes will have on the overall economics of the Proposed Agreement, as written. (*Id.*)

Mr. Tracy expressed his concern that if the Proposed Agreement is disapproved, that Covanta may terminate it and convert the IRRF to an electric generating plant used to produce electricity to be sold in the Midwest ISO's wholesale electricity markets. He testified that if that happened, Citizens and its steam customers will lose a very economic and reliable source of steam. Mr. Tracy explained that the vast majority of Covanta's waste to energy facilities in other states generate electricity and that he is convinced that Covanta has the capability and expertise to convert the IRRF to an electric plant if it concludes a steam supply agreement on acceptable terms is not possible. (*Id.* at 5) During cross examination of Mr. Tracy, the OUCC introduced into evidence a letter Covanta sent Citizens in June 2006 that states:

As you know, we have always maintained the position that if we can not reach a steam sale agreement, our alternative use of the steam would be to sell power into the MISO market. Since our initial assessment of the local power market and the development of the associated economic analysis for the electricity sale option, our estimated MISO rates have changed from \$36/MWh to a current estimated assessment of \$50 to \$60/MWh.

(Public CX Exh. CX-1)

Mr. Tracy also addressed the concerns raised by Mr. Phillips regarding the Proposed Agreement's condition precedent requiring Covanta to negotiate an acceptable service agreement with the City of Indianapolis. In his initial rebuttal testimony, Mr. Tracy stated that he was not concerned about Covanta's ability to satisfy that condition. In his supplemental rebuttal testimony, Mr. Tracy testified that, in fact, Covanta sent Citizens a letter stating that the Proposed Agreement's condition precedent regarding Covanta's agreement with the City will be deleted in its entirety upon Commission approval of the Proposed Agreement. Thus, upon Commission approval, the Proposed Agreement will be effective with a term commencing on December 1, 2008. (Pet. Exh. I at 2; Pet. Exh. I-1)

In response to Mr. Phillips's criticism of the annual 29 million therm purchase and sale obligation Citizens and Covanta negotiated, Mr. Dillard testified that the obligation is reciprocal. He reiterated that if Covanta fails to satisfy its annual delivery obligation, it will have to refund a portion of the Demand Charge that Citizens has paid for that year. Mr. Dillard also pointed out that the 29 million therm minimum obligation is well below the annual amount Citizens has historically purchased from Covanta. Mr. Dillard testified that for the last five years, Citizens has purchased an annual average of 42 million therms of steam, 32 million of which would qualify as Base Steam under the Proposed Agreement. Thus, Citizens' minimum purchase requirement under the Proposed Agreement is approximately 90% of its average annual purchases of Base Steam during the past five years. (Pet. Exh. G at 3)

Mr. Dillard also took issue with Mr. Phillips's criticism of Citizens' decision to avoid monthly minimum purchase requirements, agreeing with Mr. Tracy that such monthly minimums were not in Citizens' or its customers' best interest. Mr. Dillard testified that Citizens could not have insisted that Covanta agree to a minimum supply obligation without itself agreeing to a minimum monthly purchase requirement. Based on its judgment and experience with Covanta, Citizens did not consider it advisable to agree to minimum monthly purchases. Rather, Mr. Dillard stated that Citizens considered it more important, and had as a major goal in its negotiation with Covanta, to maintain flexibility regarding its utilization of its annual steam purchases from Covanta. Mr. Dillard emphasized the importance of that flexibility, explaining that a minimum monthly purchase obligation would diminish Citizens' ability to match its purchases with its weather-sensitive load and increase the risk of purchasing steam it does not need. (*Id.* at 4)

Mr. Dillard also disagreed with Mr. Phillips's testimony that without a minimum monthly supply obligation during the winter period, Covanta may satisfy its 29 million therm annual supply obligation without delivering steam in the winter months. Mr. Dillard testified that during his eighteen years of experience in dealing with Covanta and its predecessor, neither has attempted to limit steam deliveries to the warmer months of the year. Mr. Dillard presented testimony that showed that Covanta's deliveries during the winter months have been substantial, approximately 40% of the total annual volumes of steam delivered from the years 2001 to 2005. Furthermore, Mr. Dillard stated, the Winter Incentive Premium established in the Proposed Agreement gives Covanta a significant incentive to increase steam deliveries during the winter months. (*Id.* at 6)

Mr. Dillard next took issue with Mr. Phillips's criticisms of the Winter Incentive Premium negotiated by Citizens and Covanta. Mr. Dillard first pointed out that there is no need for the Proposed Agreement to provide an example showing the tested capacity rating of the Covanta units used to calculate the Winter Incentive Premium, as suggested by Mr. Phillips. This is because the availability factor is based on the amount of time the Covanta units are available for use, not their output capacity. Mr. Dillard also disagreed with Mr. Phillips's objection to the fact that the availability factor used to determine whether Covanta must refund a portion of the Demand Charge can be adjusted when circumstances beyond Covanta's control have affected its ability to supply steam. Mr.

Dillard testified that Citizens found it reasonable and consistent with the concept of the Winter Incentive Premium to provide Covanta relief when circumstances beyond its control have affected the IRRF's availability. Additionally, Mr. Dillard pointed out that such adjustments, the likelihood of which Mr. Dillard believes are remote, cannot be made without Citizens' involvement. (*Id.* at 7)

Mr. Dillard then addressed Mr. Phillips's conclusion that the Demand Charge Citizens and Covanta negotiated is unreasonable. Mr. Dillard first pointed out that the Demand Charge, which is \$1.6 million per year, will not increase during the 20-year term of the Proposed Agreement. Mr. Dillard explained that, during its negotiation with Covanta, Citizens initially argued against inclusion of the Demand Charge in the Proposed Agreement, but that Covanta would only agree to eliminate it if Citizens agreed to a substantial increase to the Base Rate. Based on its expected purchases of more than 29 million therms annually, Citizens concluded that a substantial increase to the volumetric Base Rate charge would have caused it to incur more than the annual \$1.6 million Demand Charge. Finally, Mr. Dillard pointed out that, contrary to Mr. Phillips's testimony, there are performance requirements associated with the Demand Charge and that if Covanta fails to meet its annual supply obligation, it must refund a portion of the Demand Charge paid by Citizens. (*Id.* at 8-9)

Mr. Dillard also disagreed with Mr. Phillips's testimony regarding the price adjustment mechanism that Citizens and Covanta negotiated. First, he testified that contrary to Mr. Phillips's testimony, adjustments to the Base Rate and Winter Incentive Premium can be reduced as well as increased based on the formula set forth in Exhibit A of the Proposed Agreement. (*Id.* at 9-10). At the hearing, Mr. Tracy stated that Covanta had confirmed its agreement with Citizens' interpretation of the price adjustment mechanisms, and that the Base Rate and Winter Incentive Premium can be reduced by as much as five percent annually. (Tr. at A-26, lines 23-26, A-27, lines 1- 8)

Mr. Dillard also addressed Mr. Phillips's concerns regarding the time period used to establish the baseline costs that the price adjustment mechanisms will be applied to. He explained that the February and March 2005 time period was a compromise between the parties reflecting the fact that energy costs were steadily rising during the time period the Proposed Agreement was being negotiated. Finally, Mr. Dillard responded to Mr. Phillips's concern that the prices Citizens will pay when the Proposed Agreement becomes effective are not "explicitly" known. Mr. Dillard explained that rather than speculating about what price would be reasonable three years into the future, Citizens and Covanta instead agreed to a baseline price that would be adjusted throughout the Proposed Agreement's twenty-year term. In Mr. Dillard's view, that aspect of the Proposed Agreement is no different than any long-term supply arrangement where the prices to be charged in the future are not "explicitly" known. Mr. Dillard did provide an exhibit showing the possible cost of steam under the Proposed Agreement during 2009, the first full year that the Proposed Agreement will be in effect, assuming a hypothetical price escalation of three percent annually. (Pet. Exh. G at 10 - 11; Pet. Exh. G-3)

Mr. Dillard also took issue with Mr. Phillips's testimony regarding the Proposed Agreement's change in law provisions. He disagreed that changes in law affecting the processing of the fuel (*i.e.*, trash) Covanta uses to produce steam cannot legitimately be reflected in the price Citizens pays for steam. Furthermore, Mr. Dillard explained that Covanta will be responsible for the first \$1 million of costs incurred to comply with any change in law and that Citizens' maximum aggregate exposure to any change in law costs is the total amounts paid by Citizens under the Proposed Agreement during the year proceeding the year in which the change in law occurred. Mr. Dillard also testified that Citizens' exposure to any change in law costs is further limited by its ability to terminate the Proposed Agreement with 30 months prior written notice. He also addressed Mr. Phillips's concern regarding the use of estimates to determine the charges Citizens will incur as the result of a change in law, stating that the Proposed Agreement provides for a true up mechanism. (Pet. Exh. G at 13 - 15)

Citizens also presented rebuttal testimony in response to the Large Volume Customers' and OUCC's testimony suggesting that Citizens' resource planning is inadequate.

Mr. Tracy opined that Mr. Phillips's and the OUCC's recommendations regarding resource planning are beyond the scope of this proceeding. Nevertheless, Mr. Tracy addressed the Large Volume Customers' and OUCC's testimony regarding resource planning. Mr. Tracy testified that Citizens has conducted analysis in consideration of several alternatives to the IRRF and that any analysis beyond that already completed would be premature at this point. Mr. Tracy did state that Citizens would be willing to discuss its long-term resource plan with the OUCC and Large Volume Customers and incorporate suggested improvements into its planning process. (Pet. Exh. F at 6-10)

Mr. Dillard responded in more detail to the Large Volume Customers' and the OUCC's testimony regarding resource planning. Mr. Dillard described the various alternatives to steam purchases that Citizens has considered and agreed with Mr. Tracy that it would be premature to plan for pursuing one of those options while Citizens expects to continue steam purchases from Covanta. (*Id.* at 16) Mr. Dillard also took issue with Ms. Soller's recommendation that Citizens complete every five years an Integrated Resource Plan similar to the IRPs filed by electric utilities. He testified that requiring Citizens to complete an IRP similar to electric utilities would be unnecessary, costly and potentially wasteful. (*Id.* at 18-19)

Mr. Jones responded to issues raised in Mr. Phillips's testimony regarding the comparisons presented in Mr. Jones's case-in-chief testimony to quantify the projected impact of the Proposed Agreement. He also discussed why it is appropriate for Citizens to recover through its FAC Rider costs related to the Demand Charge and O&M Charge.

Mr. Jones first explained the differences between the projections Citizens provided in its original 30-day filing requesting approval of the Proposed Agreement and the analysis presented in Mr. Jones's case-in-chief testimony. Mr. Jones stated that the first and most obvious difference is the different time periods and assumptions upon

which the different projections are based. The primary difference relates to the use of data from Citizens' FAC05 filing for the first projection and the use of data from Citizens' FAC06 filing for the projection shown in Mr. Jones's case-in-chief testimony. Mr. Jones then explained other differences between the two projections, concluding that the projections presented in his case-in-chief testimony are correct and reasonable. (Pet. Exh. H at 1, 2-4)

Citizens also took issue with Mr. Phillips's and Ms. Soller's contentions that certain charges that will be imposed under the Proposed Agreement should not be recovered through the FAC Rider. Mr. Jones emphasized that all costs incurred to purchase steam from Covanta that is supplied to Citizens' Rate 1, Rate 2 and Rate 3B customers currently are recovered through the FAC Rider. Mr. Jones testified that, in his view, simply because certain costs have been categorized differently or renamed in the Proposed Agreement is not a reason to now exclude them from recovery under the FAC Rider. Indeed, Mr. Jones pointed out, such a result would be contrary to the FAC Rider, which provides that the "average cost of purchases from the Indianapolis Resource Recovery Project of displaced net steam to mains" (without excluding any particular charge or category of costs) will be included in the estimated cost of fuel for a particular FAC period. Mr. Jones stated that costs related to the Demand Charge, O&M Charge and other charges established in the Proposed Agreement are directly attributable to the purchase of steam from Covanta. Mr. Jones further testified that any fuel purchased by a utility has a certain level of O&M (as well as other costs) included in the price. As an example, Mr. Jones testified that demand costs, capacity costs and reservation fees are all considered gas costs that are recoverable through Indiana gas utilities' gas cost adjustment mechanisms.

Mr. Jones also pointed out that the Commission has long allowed the recovery of certain wholesale electricity purchases through electric utilities' fuel cost adjustments, while recognizing that those purchases are priced on a commodity basis with no unbundling of the various components (including O&M) that make up the price. Finally, Mr. Jones explained that the Demand Charge will not increase over the life of the Proposed Agreement. Therefore, if Citizens purchases more than 29 million therms annually (which Citizens expects to do) the Demand Charge will save customers money. Mr. Jones provided an example of this savings based on Citizens' average annual purchases, which showed the proposed annual Demand Charge would be \$764,500 less than the increased cost resulting from applying a volumetric per therm rate designed to spread the \$1.6 million Demand Charge over the 29 million therm minimum obligation. Mr. Jones opined that it would be unfair to exclude the Demand Charge from the FAC Rider when it was negotiated for the very purpose of reducing the amount of costs that would be passed through to customers under that rider. (*Id.* at 5-7)

**7. Discussion and Findings.** The Petitioner has requested that the Commission (i) find reasonable and approve a Steam Purchase Agreement between Citizens and Covanta and (ii) authorize Citizens to recover the retail Jurisdictional costs incurred under the Agreement through Petitioner's Standard Contract Rider No. 1, Fuel Cost Adjustment.

**A. Reasonableness of Proposed Agreement.** The standard by which we review the reasonableness of the Proposed Agreement has been established by the Indiana General Assembly, which has declared, "It is the policy of this state to encourage the development of alternate energy production facilities . . . in order to conserve our finite and expensive energy resources and to provide for their most efficient utilization." Ind. Code § 8-1-2.4-1. Citizens is a "steam utility" and the IRRF is an "alternate energy production facility" within the meaning of Indiana's laws governing steam utility purchases from alternate energy production facilities. *See* Ind. Code §§ 8-1-2.4-2(f), 8-1-2.4-2(b)

Pursuant to Ind. Code § 8-1-2.4-4(f), a steam utility and the owner of an alternate energy production facility "may enter into a long term contract in accordance with [Ind. Code § 8-1-2.4-4(a)] and may agree to rates for purchase and sale transactions." Under Ind. Code § 8-1-2.4-4(a) the Commission must find that the terms and conditions of such a contract:

(A) Are just and economically reasonable to the corporation's ratepayers;

(B) Are nondiscriminatory to alternate energy producers, cogenerators, and small hydro producers; and

(C) Will further the policy stated in Ind. Code § 8-1-2.4-1.

Mr. Tracy testified that the IRRF offers an environmentally sound solution to the waste disposal needs of the Indianapolis community and that Citizens' purchases of steam produced at the IRRF furthers the policy of the State to encourage the development of alternate energy production facilities, including waste management and refuse derived facilities. (Pet. Exh. A at 7) No party disputed that testimony or raised any issue that the Proposed Agreement's terms and conditions are discriminatory to other alternate energy producers, cogenerators or small hydro producers. Consequently, we find that the Proposed Agreement satisfies the requirements of Ind. Code § 8-1-2.4-4(a)(1)(B)-(C)

Thus, the remaining determination to be made is whether the Proposed Agreement is "just and economically reasonable" to Citizens' ratepayers within the meaning of Ind. Code § 8-1-2.4-4(a)(1)(A). In making that determination we strive to avoid second-guessing Citizens' negotiating strategy or speculating regarding the myriad possibilities that Citizens and Covanta could have agreed to. *See, e.g., Public Serv. Co. of Ind., Inc.*, 1990 Ind. PUC LEXIS 108, \*250 (Cause No. 37414-S2, Apr. 4, 1990) ("we reject [the] invitation to link these agreements together and second guess the terms of the agreements based upon speculation.") Rather, our charge under the statute is to determine whether the agreement that has been presented to us is just and economically reasonable to Citizens' ratepayers.

Ind. Code § 8-1-2.4-4(c) identifies factors to be considered in setting the rates for purchase from a facility such as IRRF. It is therefore informative to consider the

Proposed Agreement in terms of how it might compare to such pricing absent an agreement as Citizens could conceivably have been statutorily required to make purchases under such rates. The evidence shows that if Citizens is no longer able to purchase steam from Covanta it will need to pursue other more costly sources of steam in the short-term and, in the long-term, likely need to make significant capital investments. The general avoided cost basis of rate setting embodied in Ind. Code § 8-1-2.4-4(c) would reflect consideration of such other sources of steam.

The evidence supports that the Proposed Agreement is the result of arms length negotiation between two unaffiliated parties. We take note of Citizens' testimony that the various aspects of the Proposed Agreement were not negotiated in isolation from one another. Similarly, although we discuss individual provisions separately below, we will consider the evidence presented and review the justness and economic reasonableness of the Proposed Agreement as a whole.

There were fundamental disagreements between the Large Volume Customers and Citizens regarding how purchase and supply obligations under the Proposed Agreement should be structured. Large Volume Customer witness Mr. Phillips testified that Citizens should have insisted that Covanta agree to minimum monthly supply obligations for the winter months, which Mr. Phillips defined as November through March. Mr. Dillard explained that Covanta would not have agreed to a minimum monthly supply obligation unless Citizens agreed to a reciprocal purchase obligation. In order to maintain flexibility regarding its use of steam purchased from Covanta, Citizens instead chose to negotiate an annual purchase and supply obligation that would allow it to better match purchases with its weather-sensitive load. We note that the 29 million therm annual supply obligation that Citizens agreed to is well below the annual volume of steam that Covanta has historically delivered to Citizens. With respect to Mr. Phillips's concern that Covanta supply an adequate amount of steam during the winter months, the Proposed Agreement's Winter Incentive Premium is a reasonable approach to addressing that concern. Additionally, both Mr. Dillard and Mr. Tracy stated it would be difficult for Covanta to meet its annual supply obligation if it limited steam deliveries to non-winter months.

The Proposed Agreement contains a Demand Charge to which Mr. Phillips objected. Citizens concluded that a substantial increase to the volumetric Base Rate charge would have caused it to incur annual costs that exceed the annual \$1.6 million Demand Charge, which will not increase during 20-year term of the Proposed Agreement. The constant Demand Charge also serves to levelize a portion of Citizens' payments to Covanta, which provides for the additional benefit of reducing price volatility for Citizens' customers.

The Proposed Agreement's price adjustment mechanisms used to adjust the Base Rate and Winter Incentive Premium is different than the price adjustment mechanism in the existing agreement between Citizens and Covanta. The new mechanism should reduce price volatility by adding other indices, including CPI, to the methodology used to adjust the price of steam. Moreover, we note that the pricing Citizens negotiated is

favorable relative to the prices Covanta's affiliates charge for steam at other facilities. In the June 2006 letter Covanta sent to Citizens, which the OUCC introduced at the hearing, Covanta stated that it "currently sells steam at other Covanta facility locations across the country" and the "typical contractual rates for those facilities ranges between \$9 - \$20/M-lb." (Public CX Exh. C-X-1) By comparison, based on the various charges initially established in the Proposed Agreement, the overall rate initially set in the Proposed Agreement for steam purchases is \$5.37/M-lb.

Mr. Phillips raised a number of objections to the change in law provision and Citizens' willingness to accept some of the risk that the IRRF's costs could increase as a result of a change in law. The change in law provision appears to provide an illustration of Citizens' efforts to balance the costs and risks of one aspect of the Proposed Agreement against the costs and risks of other aspects of the Proposed Agreement. On redirect examination at the hearing, Mr. Tracy was asked how the base price of steam would have been affected if Citizens had not agreed to bear some of the risk for future changes in law. He answered:

It would be my opinion that the base price would have been higher than it is now. [The change in law provision] was negotiated in the contract because throughout the entire contract, you're constantly trading off risk for price, and that is a risk that Covanta felt was real. They established a very significant price at the beginning of the negotiations. So, my opinion would be that the base price, if didn't have that, would be higher than it is today.

(Tr. at A-62-A-63)

Moreover, as Mr. Dillard testified, Citizens was able to limit its exposure under the change in law provision and still achieve the base price concessions Mr. Tracy discussed. Covanta is responsible for the first \$1 million of costs incurred to comply with any change in law affecting the IRRF. Additionally, Citizens' maximum exposure to costs incurred as a result of a change in law is the total amounts paid by Citizens under the Proposed Agreement during the year preceding the year in which the change in law occurred. Since the change in law costs will be amortized over ten years, Citizens' and its customers' maximum exposure to an increase in the price paid to Covanta as a result of a change in law is a ten percent increase. Also, as Mr. Dillard explained at the hearing, the potential impact to customers is further mitigated because Covanta steam purchases represent less than half of Citizens' steam supply. Finally, Citizens' exposure is further limited by its ability to terminate the Proposed Agreement with 30 months prior written notice.

Mr. Phillips suggested that we consider any benefit that this Commission provides Covanta regarding its negotiation of a contract with the City of Indianapolis. At the hearing, Mr. Tracy testified that Covanta has agreed to waive the condition precedent regarding its negotiation of a contract with the City, upon Commission approval of the

Proposed Agreement. Accordingly, our approval of the Proposed Agreement is the only condition precedent to its effectiveness.

Based on the evidence presented and in reviewing the justness and economic reasonableness of the Proposed Agreement as a whole we find that the Proposed Agreement is just and economically reasonable to Citizens' steam customers. Therefore, we find that the Proposed Agreement should be and hereby is approved.

**B. Recovery of Costs of the Proposed Agreement.** Having found the Proposed Agreement just and economically reasonable to Citizens' ratepayers, we now address Citizens request for cost recovery authorization for costs incurred under the Proposed Agreement from those ratepayers.

In its Petition, Citizens requested authority to recover the retail jurisdictional costs incurred under the Proposed Agreement through its FAC Rider. During cross-examination, Mr. Tracy emphasized that the Proposed Agreement is an extension of the Existing Agreement "under which all of the fuel costs associated with the Covanta contract are recovered under a fuel rider." (Tr. at A-10 lines 14-17) However, the Commission does not agree that the Proposed Agreement is an extension of the Existing Agreement. The Proposed Agreement is a newly negotiated vehicle to secure a steam supply for Citizens. Notwithstanding, the historical treatment of sufficiently similar terms under the Existing Agreement certainly provides experience to inform the decisions we make today.

The Monthly Steam Payment of the Proposed Agreement includes charges identified as Base Steam Payment, Summer Steam Payment, Secondary Steam Payment, Demand Charge, O&M Charge, Force Majeure Surcharge, and Incremental Chemical Costs. The charge amounts are assessed based on various mechanisms within the Proposed Agreement. OUCC witness Ms. Soller testified that "[m]any of these costs do not constitute fuel (e.g. O&M expenses, demand charges, force majeure components) and should be more appropriately recovered in base rates." (Public's Exh. 1 at 4) Citizens' witness Mr. Jones explained, demand costs, capacity costs and reservation fees are all considered gas costs that are recoverable through Indiana gas utilities' gas cost adjustment mechanisms. Additionally, Mr. Jones noted the Commission has long allowed the recovery of certain wholesale electricity purchases through electric utilities' fuel cost adjustments, while recognizing that the prices for those purchases include various cost components, including O&M.

The Commission authorized Citizens in Cause No. 41969-FAC 1 to use the methodology and follow procedures approved by the Commission in connection with the fuel cost adjustments requested in the past by the prior owner of the steam plant, Indianapolis Power & Light Company. We consider Citizens' steam supply fuel cost recovery request herein such that authorized treatment would be consistent with that reasonably afforded an electric generating utility for its fuel cost, therefore our treatment of the cost of fuel included in the cost of wholesale purchases of electricity is instructive.

The Commission specifically addressed the cost of fuel included in the cost of purchased electricity to be included in cost of fuel proceedings in Cause No. 33735-S1 [March 24, 1976]:

*We find, therefore, that the only costs that should be included in the FAC are those costs allowed by Accounts 151 and 518 for generated and purchased power with identifiable fuel costs of the USOA, and the net energy costs of purchased power without identifiable Accounts 151 and 518 cost. [pg.9]*

A distinction was established between purchased power contracts with a single energy price and those with explicit non-fuel related charges, primarily demand and capacity but also non-fuel operation and maintenance. This distinction exists because of the inherent differences between the products; one has value as an energy product while the other has both energy and capacity components. Explicit non-fuel related costs are not ordinarily included in fuel costs in the FAC. The proposition that if implicit non-fuel related costs are contained in energy-only contracts which are included as a cost of fuel, then any explicit non-fuel related costs in purchase power contracts should also be included is contrary to ordinary Commission practice. Notwithstanding, a case-by-case consideration may warrant such non-standard treatment.

A primary characteristic of a cost we authorize herein as a fuel cost recoverable in the FAC is the connection between the charge amount and the product volume supplied. The Base Steam Payment, Summer Steam Payment and Secondary Steam Payment of the Proposed Agreement as described in Article V are each calculated by multiplying some charge rate by an "amount tendered". Conversely, the Proposed Agreement's Demand Charge and the O&M Charge contain no "amount tendered" component. In fact the Demand Charge is a set amount for the term of the Proposed Agreement. The O&M Charge escalates from a base amount based upon changes in the CPI Index and the Labor index. The Incremental Chemical Costs as described in Article XII(B) of the Proposed Agreement are based on the "monthly costs" of agreed to chemical changes. The amount of chemicals and therefore the related charge amount will likely change with the product amount tendered. Additionally, we recognize the chemical treatment required to maintain the quality of the steam energy product creates distinction from our electricity energy product comparison. The above charges differentiated by the noted primary characteristic provides for distinction among them. We note the Secondary Steam Payment of the Proposed Agreement relates to output from the IRRF purchased by Citizens which is used to generate electricity at the Perry K Plant and not to supply steam to its ratepayers. Citizens did not seek FAC Rider inclusion for this cost.

Upon considering the evidence in this proceeding and the Commission's ordinary treatment of similar costs we find that the retail steam Jurisdictional portion of the Base Steam Payment, Summer Steam Payment and Incremental Chemical Costs as described in Article V of the Proposed Agreement are eligible for recovery through Citizens FAC Rider. This finding does not limit or modify Citizens' requirement to demonstrate in future FAC proceedings that it has made every reasonable effort to acquire fuel and

generate or purchase steam or both so as to provide steam to its retail customers at the lowest fuel cost reasonably possible. The remaining charges of the Proposed Agreement are not eligible for recovery through this mechanism. Furthermore, we find that Citizens should make a compliance filing under this Cause which updates its Standard Contract Rider No.1 to reflect the specific findings herein, namely the language of item A(1)(b).

The Commission notes that Citizens agreed in a settlement agreement approved in Cause No. 41969-FAC03-S1 (January 23, 2004) to file a base rate case no later than January 1, 2007. The anticipated base rate case filing and timing of the implementation of the Proposed Agreement provides an opportunity for Citizens to update its base rates to include costs which are found to be known and measurable.

**C. Resource Planning.** The Commission recognizes that the steam supply from Covanta is a significant portion of Citizens supply portfolio. The Large Volume Customers and the OUCC testified that Petitioner has not done adequate planning to replace the Covanta steam supply and requested the Commission to order Citizens to conduct such planning. Additionally, the Large Volume Customers recommended that Citizens be required to explain whether it could buy coal at a lower price if it partnered with IPL.

In rebuttal testimony, both Mr. Tracy and Mr. Dillard testified that Citizens has done a sufficient amount of planning to prepare for the possibility of losing Covanta as a steam supplier. Mr. Dillard provided a discussion of the various alternatives to steam purchases that Citizens has considered. In addition, Mr. Dillard addressed coal partnering by testifying that Citizens and IPL did collaborate in connection with coal purchases, but when that arrangement expired in 2005, IPL was not interested in continuing it, despite Citizens interest in doing so. (Pet. Exh. G at 17)

Resource planning is a critical component to the long term financial health of a utility and the goal of lowest reasonable fuel costs for ratepayers. In particular, the fact that Citizens' steam supply relies heavily on a single external source heightens the need for reasonable evaluation of alternatives in long range planning. The specific planning needs of a steam utility differ from that of an electric utility in part because of the supply resources to be considered. The Proposed Agreement contains terms that would allow either party to terminate it with generally 30-months' notice. The aforementioned reliance on Covanta for economical steam supply demands that Citizens be proactive in assessing alternative supply options.

At the hearing, the OUCC introduced into evidence a document listing 11 areas pertaining to a long-term work plan for steam resource planning. Mr. Tracy stated at the hearing that Citizens would be willing to discuss any of those areas with the OUCC and the Commission. (Tr. at B-13, lines 16-18; B-14, line 14) Mr. Tracy also expressed Citizens' willingness to discuss resource planning in his prepared rebuttal testimony, stating:

We would be happy to work with the Commission, the OUCC and our customers to make sure they understand our plans to meet the needs of our customers in the future. Of course, we are willing to listen and incorporate suggested improvements into our planning.

(Pet. Exh. F at 7)

The OUCC, as well as individual Citizens ratepayers, should have a reasonable opportunity to analyze and comment on the long range resource plan of the utility. Inclusion in the early stages of the planning process certainly fosters such opportunity and serves to both increase understanding and perhaps even options to be evaluated. The absence of Commission steam utility specific resource planning rules and the fact that Citizens is the lone steam utility regulated by this Commission lead us to conclude the interests of all parties would be reasonably and efficiently served by such an inclusive effort. Furthermore, such process should at least initially be an informal process. Therefore, we find that Citizens and the interested parties in this case should begin an informal process to address the long range resource portfolio of the utility. We decline at this time to order a formal process of reviewing Citizens resource planning. Nonetheless, the importance of the process dictates that the Commission stand ready should the informal process become unproductive.

**IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION that:**

1. The Proposed Agreement, which we find to be just and economically reasonable to Citizens' retail steam ratepayers, is hereby approved.
2. Citizens is authorized to include costs incurred under the Proposed Agreement as discussed in Finding No. 7 above for consideration of recovery through its FAC Rider.
3. This Order shall be effective on and after the date of its approval.

**LANDIS, SERVER AND ZIEGNER CONCUR; HARDY ABSENT:**

**APPROVED: DEC 2 8 2006**

**I hereby certify that the above is a true and correct copy of the Order as approved.**



**Brenda A. Howe,  
Secretary to the Commission**

B. Obligation to Sell. Except as otherwise provided in Articles XII and XIII of this Agreement, Covanta shall produce and sell to CTE its Available Production in an amount at least equal to the Minimum Annual Purchase Requirement, subject to Article XIII.A. In the event that Covanta breaches its obligation under this Article III.B. to produce and sell to CTE its Available Production in an amount at least equal to the Minimum Annual Purchase Requirement, subject to Article XIII.A, and except as provided for in Article II.D., CTE's sole and exclusive remedy for such breach shall be the following: Covanta shall be obligated to rebate to CTE a portion of the Demand Charge paid by CTE for such Contract Year. Such rebate shall equal the product of (x) the difference between the Minimum Annual Purchase Requirement minus the actual amount of steam from the IRRF tendered to CTE by Covanta during such Contract Year times (y) \$0.055/Therm (the "Demand Charge Rebate").

C. Applicability of Base, Summer Rate, Secondary Rate, and Winter Incentive Premiums The Base Rate shall apply to Base Steam, the Summer Rate shall apply to Summer Steam, the Secondary Rate shall apply to Secondary Steam and the Winter Incentive Premium shall apply shall apply to all Base Steam provided during the Winter Period, subject to the limitations set forth in Article IV.E. CTE agrees to use its best efforts, consistent with the safe and reliable operation of the Steam System, to operate the Steam System in a manner, which maximizes the quantity of Available Production that CTE can purchase at the Base Rate.

D. Title and Risk of Loss. Title to and risk of loss related to steam shall transfer from Covanta to CTE at the Point of Delivery. Covanta warrants that it will deliver to CTE the steam from the IRRF free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person arising prior to the Point of Delivery .

#### ARTICLE IV

##### COMPUTATION OF RATES FOR STEAM FROM IRRF

A. Base Rate The Base Rate for Base Steam shall be \$0.305/Therm (in February 2005 dollars) and shall escalate as provided in Article IV.B.

B. Escalated Base Rate for Base Steam and Winter Incentive Steam. Commencing with the calendar month which includes the Effective Date, the Base Rate and the Winter Incentive Premium shall be adjusted annually and calculated for each Contract Year by multiplying the initial Base Rate of \$0.305 per Therm or initial Winter Incentive Premium of \$0.10 per Therm, respectively, in effect on the date hereof, times by the Rate Adjustor. The escalated Base Rate and escalated Winter Incentive Premium ~~are~~ expressed by a formula attached hereto as Exhibit A-1 and incorporated herein.

C. Summer Rate Commencing with the calendar month which includes the Effective Date, the Summer Rate for Summer Steam shall be \$0.20/Therm (in 2005 dollars) and shall escalate as provided in Article IV.D.

D. Escalated Summer Rate for Summer Steam Commencing with the calendar month which includes the Effective Date, the Summer Rate for Summer Steam shall be adjusted

**EXHIBIT A**

**ESCALATED BASE RATE/WINTER INCENTIVE PREMIUM FORMULA**

Calculation of Base/Winter Rate Escalator:

The Base Rate and /Winter Incentive Premium Rate Escalator shall be adjusted annually and be calculated for each Contract Year by multiplying such amount as in effect for the previous Contract Year the initial Base Rate of \$0.305 per Therm or initial Winter Incentive Premium of \$0.10 per Therm, respectively, by the Rate Adjustor for the respective year.

The Rate Adjustor for each Contract Year shall be equal to the greater of (a) 0.95 times the previous Contract Year's Rate Adjustor and (b) ~~a fraction the numerator of which is the Base/Winter Rate Escalator for such Contract Year, and the denominator of which is the Base/Winter Rate Escalator for the previous Contract Year.~~

The Base/Winter Rate Escalator for each Contract Year shall be an amount equal to the sum of:

- (i) The product of (A) 0.50, and (B) a fraction the numerator of which is the CPI Index for the Measurement Period for such Contract Year, and the denominator of which is the CPI Index for the Base Period, plus
- (ii) The product of (A) 0.39, and (B) the Coal Index. The "Coal Index" is the average of (1) the Platt's Coal Component and (2) the Perry K Coal Component. The "Platt's Coal Component" equals a fraction, the numerator of which is the Platt's Coal Index for the Measurement Period for such Contract Year, and the denominator of which is the Platt's Coal Index for the Base Period. The "Perry K Coal Component" equals a fraction, the numerator of which is the Perry K Coal Index for the Measurement Period for such Contract Year, and the denominator of which is the Perry K Coal Index for the Base Period; plus
- (iii) The product of (A) 0.11 and (B) the Natural Gas Index. The "Natural Gas Index" is the average of (1) the NYMEX Gas Component and (2) the Perry K Gas Component. The "NYMEX Gas Component" equals a fraction, the numerator of which is the NYMEX Gas Index for the Measurement Period for such Contract Year, and the denominator of which is the NYMEX Gas Index for the Base Period. The "Perry K Gas Component" equals a fraction, the numerator of which is the Perry K Gas Index for the Measurement Period for such Contract Year, and the denominator of which is the Perry K Gas Index for the Base Period.

**EXHIBIT A, continued**

For the purposes of calculating the Base/Winter Rate Escalator for a given Contract Year, "Measurement Period" shall mean:

- (1) with respect to the CPI Index, the last publication date of the CPI Index occurring immediately prior to the November 30 of the Contract Year then ending;
- (2) with respect to Platt's Coal Index and the NYMEX Gas Index, the month of November 30 of the Contract Year then ending, and
- (3) with respect to Perry K Coal Index and the Perry K Gas Index, the average of the twelve (12) month period ending November 30<sup>th</sup> of Contract Year then ending,

Provided, that, with respect to the initial year (2005) the Measurement Period would be calculated from each Index starting month or Base month to December 1, 2005.

For the purposes of calculating the Base/Winter Rate Escalator, the "Base Period" shall mean:

- (1) with respect to the CPI Index: Consumer Price Index (CPI) - The February 2005 index of 190.5. CPI Series: CPI - All Urban Consumers for Chicago-Gary-Kenosha" Base Year, all items, 1982-1984 = 100
- (2) with respect to Platt's Coal Index: February 2005 Index is \$43.15. Illinois Basin coal, 11,500 Btu/lb, 2.5 lb SO<sub>2</sub>.
- (3) with respect to Perry K Coal Index: The March 2005 is \$1.68. Weighted average price of coal purchased for consumption at its Perry K Plant.
- (4) with respect to the NYMEX Gas Index: The February Index is \$6.09. The price of natural gas delivered at Henry Hub as reported on NYMEX.
- (5) with respect to the Perry K Gas Index: The index for February 2005 is \$7.14. Weighted average price of natural gas purchased by CTE for consumption in its Perry K Plant.

**EXHIBIT A, continued**

**Escalated Base Rate/Winter Incentive Premium Formula**

Sample Calculation for Escalated Base Rate (Figures are only for example purposes and not actual values)

The Base Rate (For Each Year) = initial Base Rate of \$0.305/Therm (Previous Year) x Rate Adjustor for current Contract Year

The Rate Adjustor for each Contract Year shall be equal to the greater of:

- a) 0.95 times previous Contract Year's Rate Adjustor (previous Contract Year); and
- b) Base/Winter Rate Escalator for such Contract Year divided by the Base/Winter Escalator for previous Contract Year

The Base/Winter Rate Escalator for each Contract Year shall be an amount equal to the sum of:

- i) 0.50 multiplied by the quantity of the CPI Index for the Measurement Period for such Contract Year divided by the CPI Index for the Base Period.
- ii) 0.39 multiplied by the quantity of [(0.5 x the Platts Coal Index for the Measurement Period for such Contract Year divided by the Platts Coal Index for the Base Period) + (0.5 x the CTE Coal Index for the Measurement Period for such Contract Year divided by the CTE Coal Index for the Base Period)]
- iii) 0.11 multiplied by the quantity of [(0.5 x the NYMEX Natural Gas Index for the Measurement Period for such Contract Year divided by the NYMEX Natural Gas Index for the Base Period) + (0.5 x the CTE Natural Gas Index for the Measurement Period for such Contract Year divided by the CTE Natural Gas Index for the Base Period)].

Sample Calculation:  
 MP = Measurement Period  
 BP = Base Period

Year	50% CPI Index			39% Coal Index				11% Natural Gas Index					(a)	(b)	Rate Adjustor	Rate Escalator	Base Rate	
	MP	BP	(i)	MP	BP	MP	BP	(ii)	MP	BP	MP	BP						(iii)
2005		\$190.5				\$43.15	\$1.68				\$6.09	\$7.14		1.0000	1.0000	1.0000	\$0.305	
2006	\$195.0	\$190.5	0.5118	\$45.00	\$43.15	\$1.80	\$1.68	0.4123	\$10.00	\$6.09	\$8.00	\$7.14	0.1519	0.9500	1.0760	1.0760	\$0.328	
2007	\$200.0	\$190.5	0.5249	\$45.50	\$43.15	\$1.90	\$1.68	0.4262	\$10.00	\$6.09	\$8.00	\$7.14	0.1519	1.0222	<del>1.0254</del> 1.030	<del>1.0254</del> 1.030	1.1030	\$0.336
2008	\$205.0	\$190.5	0.5381	\$46.00	\$43.15	\$2.00	\$1.68	0.4400	\$10.50	\$6.09	\$8.00	\$7.14	0.1565	<del>0.9738</del> 1.0478	<del>1.0286</del> 1.346	<del>1.0286</del> 1.346	1.1346	\$0.346
2009	\$210.0	\$190.5	0.5512	\$46.50	\$43.15	\$2.05	\$1.68	0.4481	\$11.00	\$6.09	\$8.00	\$7.14	0.1610	<del>0.9772</del> 1.0778	<del>1.0227</del> 1.603	<del>1.0227</del> 1.603	1.1603	\$0.354

**EXHIBIT A, continued**

(i) = 0.5 times CPI Index (MP)/CPI Index (BP)  
(ii) = 0.39 times Coal Index (MP) / Coal Index (BP)  
(iii) = 0.11 times Natural Gas Index (MP) / Natural Gas Index (BP)  
(a) = 0.95 times ~~previous year's~~ Rate Adjustor (~~Previous Year~~)  
(b) = [ (i) + (ii) + (iii) ] / ~~(b: Previous Year)~~  
Rate Adjustor (Current Year) = greater of (a) and (b)  
Rate Escalator = ~~(b)Rate Escalator (Previous Year)~~ times Rate Adjustor (Current Year)  
Base Rate (Current Year) = initial Base Rate of \$0.305/Therm. (February 2005) times Rate ~~Adjustor~~ Escalator (Current Year)

**Possible Base Rate Adjustment under Original Agreement**

Year	CPI Index (50%)			Coal Index (39%)					Natural Gas Index (11%)					Index Total (i+ii+iii)	Rate Adjustor		Adjusted Base Rate *	
	MP	BP	(i)	Platts		CTE			NYMEX		CTE				(a)	(b)		
	MP	BP	(i)	MP	BP	MP	BP	(ii)	MP	BP	MP	BP	(iii)					
2005		190.5			43.15		1.68			6.09		7.14		0.0000		1.0000	0.3050	
2009	212.4	190.5	0.5575	104	43.15	2.320	1.68	0.7393	6.470	6.09	8.92	7.14	0.1271	1.4240	0.9500	1.4240	0.4343	
2010	212.2	190.5	0.5570	46	43.15	2.279	1.68	0.4724	4.290	6.09	6.81	7.14	0.0912	1.1206	1.3528	0.7869	1.3528	0.5875
2011	213.1	190.5	0.5593	52.5	43.15	2.451	1.68	0.5217	3.292	6.09	5.96	7.14	0.0756	1.1567	1.2851	1.0322	1.2851	0.7550

\* Rate Adjustor from Original Agreement's Exh. A (i.e., greater of (a) and (b)) multiplied by previous year's Base Rate

**Base Rate Adjustment under First Amendment**

Year	CPI Index (50%)			Coal Index (39%)					Natural Gas Index (11%)					Index Total (i+ii+iii)	Rate Adjustor		Adjusted Base Rate *	
	MP	BP	(i)	Platts		CTE			NYMEX		CTE				(a)	(b)		
	MP	BP	(i)	MP	BP	MP	BP	(ii)	MP	BP	MP	BP	(iii)					
2005		190.5			43.15		1.68			6.09		7.14		0.0000		1.0000	0.3050	
2009	212.4	190.5	0.5575	104	43.15	2.320	1.68	0.7393	6.470	6.09	8.92	7.14	0.1271	1.4240	0.9500	1.4240	0.4343	
2010	212.2	190.5	0.5570	46	43.15	2.279	1.68	0.4724	4.290	6.09	6.81	7.14	0.0912	1.1206	1.3528	1.1206	1.3528	0.4126
2011	213.1	190.5	0.5593	52.5	43.15	2.451	1.68	0.5217	3.292	6.09	5.96	7.14	0.0756	1.1567	1.2851	1.1567	1.2851	0.3920

\* Rate Adjustor from First Amendment's Exh. A - 1 (i.e., greater of (a) and (b)) multiplied by 0.305

VERIFICATION

STATE OF INDIANA                    )  
                                          )  
COUNTY OF MARION                )            ss:

The undersigned, LaTona S. Prentice, under penalties of perjury and being first duly sworn on his oath, says that the representations set forth below are true and correct to the best of his knowledge, information and belief.

1. I am the Executive Director of Regulatory Affairs for the Board of Directors for Utilities of the Department of Public Utilities of the City of Indianapolis. The City of Indianapolis is the successor trustee of a public charitable trust and, acting through the Board of Directors for Utilities doing business as "Citizens Energy Group," manages and controls a number of businesses, including the municipally-owned steam utility doing business as Citizens Thermal Energy ("CTE"). I am responsible for the development, implementation, and administration of Citizens Energy Group's regulated utilities' rates and charges and Terms and Conditions for Service.

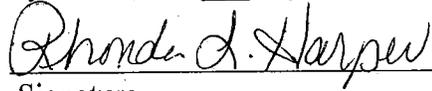
2. I am familiar with CTE's intention to file with the Indiana Utility Regulatory Commission pursuant to 170 IAC 1-6 of a request to approve the *First Amendment to Steam Purchase Agreement between Citizens Thermal Energy and Covanta Indianapolis, Inc.* (the "30-Day Filing").

3. Customers of CTE have been notified of CTE's intention to make the 30-Day Filing by posting notice of the same in a public place at CTE's customer service office in Marion County, Indiana and in an obvious place on CTE's website. CTE also has published notice of its intention to make the 30-Day Filing in at least one (1)

newspaper of general circulation in Marion County, Indiana. Attached is a copy of the notice provided by CTE and related to of the 30-Day Filing.

  
LaTona S. Prentice  
Executive Director of Regulatory Affairs  
Citizens Energy Group

Subscribed and sworn to before me, a Notary Public, this 23<sup>rd</sup> day of March, 2011.

  
Signature

Rhonda L. Harper  
Printed Name

My Commission Expires: 9/2/11

My County of Residence: Johnson



**Notice of Request by Citizens Thermal Energy  
for Approval of Amendment to Steam Purchase Agreement**

On or about March 25, 2011, Citizens Thermal Energy ("CTE") will file a request with the Indiana Utility Regulatory Commission (the "Commission") for approval of the *First Amendment to Steam Purchase Agreement between Citizens Thermal Energy and Covanta Indianapolis, Inc.* ("First Amendment"). The First Amendment, if approved by the Commission, will modify the terms of the *Steam Purchase Agreement between Citizens Thermal Energy and Covanta, Inc.* dated December 9, 2005 (the "Original Agreement"). The Commission approved the Original Agreement by its December 28, 2006 Order in Cause No. 43025.

The Original Agreement includes provisions for annually adjusting certain pricing components established by the Original Agreement. The language of the Original Agreement, however, creates ambiguities that could result in an unreasonable adjustment to the pricing components. While no such unreasonable adjustment has yet occurred, the parties to the Original Agreement desire to amend it to correct its language to more accurately reflect their intent and how they actually adjust the pricing components. Approval of the First Amendment will not modify the rates and charges, or the terms and conditions of service, for the steam services CTE provides to the public.

CTE will make its request to approve the First Amendment under the Commission's rules appearing at 170 IAC 1-6. Objections to CTE's request must be submitted to the Secretary, Indiana Utility Regulatory Commission, 101 W. Washington Street, Suite 1500E, Indianapolis, Indiana 46204, with a copy sent to the Indiana Office of Utility Consumer Counselor, 115 W. Washington Street, Suite 1500S, Indianapolis, Indiana 46204. Under 170 IAC 1-6-7, the objection must be:

- (1) In writing in:
  - (A) paper; or
  - (B) electronic format.
- (2) Based on a statement that at least one (1) of the following applies to CTE's filing:
  - (A) It is a violation of:
    - (i) applicable law;
    - (ii) a prior Commission order; or
    - (iii) a Commission rule.
  - (B) Information in the filing is inaccurate.
  - (C) The filing is:
    - (i) incomplete; or
    - (ii) prohibited under 170 IAC 1-6-4

The Commission will notify CTE of any objections it receives in connection with the filing.