

# FIRST AMENDED ELECTRIC SUPPLY AGREEMENT

This First Amended Electric Supply Agreement ("ESA") is dated as of July 1, 2005 and is by and between Coventry Clean Energy Corporation, a Vermont corporation ("Seller") and Washington Electric Cooperative, Inc., a Vermont cooperative corporation ("WEC").

WHEREAS, Seller controls and operates a landfill gas to electricity project located in Coventry, Vermont (the "Project");

WHEREAS, WEC is a non-profit rural electric cooperative serving over 9,000 members;

WHEREAS, the Parties entered into an original Electric Supply Agreement on January 14, 2005, in order for WEC to purchase from Seller all of the electricity produced from the Electric Generating Plant (as defined below);

WHEREAS, the economics of operating the landfill gas to electricity project have changed;

WHEREAS, Seller and WEC have agreed to enter into this First Amended Electric Supply Agreement in order to address these economic changes; and

WHEREAS, Seller desires to sell and WEC desires to purchase such electricity subject to the terms and conditions set forth below.

NOW THEREFORE, in consideration of the promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, WEC and Seller agree as follows:

## SECTION 1 DEFINITIONS

When used in this ESA, the following terms shall have the meanings given, unless a different meaning is expressed or clearly indicated by the context. Words defined in this Section 1 which are capitalized shall be given their common and ordinary meanings when they appear without capitalization in the text. All capitalized terms not specifically defined in this ESA shall have the meanings ascribed thereto in the Equipment Lease (as defined herein), which definitions are incorporated by reference herein.

- 1.1 "Coventry Agreements" shall mean this ESA, as amended from time to time, the Equipment Lease, as amended from time to time and the Security Agreement (as such term is defined in the Equipment Lease), as amended from time to time.
- 1.2 "Electric Generating Plant" shall mean the new generating plant to be constructed by WEC pursuant to the EPC Contract.
- 1.3 "Environmental Attributes" shall have the meaning set forth in Section 3.1 herein.

- 1.4 "Equipment Lease" shall mean the Equipment and Facilities Lease between Seller and WEC, amended as of July 1<sup>st</sup>, 2005, and as further amended from time to time.
- 1.5 "ESA" shall mean this First Amended Electric Supply Agreement, as further amended from time to time.
- 1.6 "*Force Majeure*" shall mean acts of God; winds; hurricanes; tornadoes; fires; epidemics; landslides; earthquakes; floods; other natural catastrophes; strikes; lock-outs or other industrial disturbances; acts of public enemies; acts, failures to act or orders of any kind of any Governmental Authority (as such term is defined below) acting in its regulatory or judicial capacity (and beyond the reasonable ability of a party to foresee or to contest or prevent such acts, failures to act or orders), provided, however, that any such discretionary acts or failures to act by a party may not be asserted as an event of *Force Majeure* by such party; insurrections; military action; war, whether or not it is declared; sabotage; terrorist acts; riots; civil disturbances; explosions; or any other cause or event, not reasonably within the control of the party (and its subcontractors and suppliers) claiming *Force Majeure* (other than the financial inability of such party), which precludes that party from carrying out, in whole or in part, its obligations under this ESA.
- 1.7 "Good Engineering Practice" shall mean any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known, or which in the exercise of due diligence, should have been known, at the time the decision was made, would have been expected to accomplish the desired result in a manner consistent with reliability, safety, environmental protection, expedition, project economics and applicable laws, ordinances, rules and regulations for similar facilities. Good Engineering Practice is not intended to be limited to consideration of any one practice, method or act, to the exclusion of all others, but rather, is intended to require the consideration of a spectrum of possible practices, methods or acts.
- 1.8 "Governmental Authority" shall mean any national, state or local government, independent system operator, regional transmission owner or operator, any political subdivision thereof or any other governmental, judicial, regulatory, public or statutory instrumentality, authority, body, agency, department, bureau, or entity.
- 1.9 "Governmental Rule" shall mean any law, rule, regulation, ordinance, order, code, permit, interpretation, judgment, decree, or similar form of decision of any Governmental Authority having the effect and force of law.
- 1.10 "kWh" and "kW" shall mean kilowatt-hour and kilowatts, respectively.
- 1.11 "Parties" shall refer to WEC and Seller. In the singular, "Party" shall refer to any one of the preceding.

1.12 "Point of Delivery" shall mean the point of delivery designated on Exhibit A attached hereto.

1.13 "Power Supply" shall mean all electrical energy output and capacity produced by Seller and delivered to WEC at the Point of Delivery.

1.14 "Project" shall have the meaning set forth in the recitals of this ESA.

1.15 "RUS" shall mean the Rural Utilities Service, an agency of the United States Department of Agriculture.

1.16 "RUS Agreements" shall mean all documents that RUS may require to be executed in connection with its financing of the Project which may include a loan agreement, security agreement, promissory note, mortgage and other related documents.

1.17 "Sales Meter" shall mean the meter and measuring equipment installed pursuant to Section 4.2 for the purpose of measuring in accordance with Good Engineering Practice the Power Supply sold by Seller to WEC, and situated at the location designated on Exhibit A hereto.

1.18 "WEC" shall have the meaning set forth in the recitals of this ESA.

## **SECTION 2           TERM OF AGREEMENT AND TERMINATION**

2.1 Term. This ESA and the rights granted under it to Seller shall commence on the Commencement Date (as such term is defined in the Equipment Lease) and shall remain in force for thirty-three years, and may be extended for additional two year terms, if the Equipment Lease is extended for such additional two year terms, unless this ESA is sooner terminated as provided below:

2.2 Termination by WEC. This ESA may be terminated by WEC at any time upon written notice (i) if Seller fails to remedy or cure any breach or default of any material provision or condition of this ESA or the other Coventry Agreements within sixty (60) days following written notice to do so by WEC, (ii) if RUS exercises any of its foreclosure rights under the RUS Agreements, or (iii) if the Equipment Lease is terminated for any reason.

2.3 Limitation on Seller's Rights. Seller shall not have the right to terminate this ESA if WEC fails to remedy or cure any breach or default of any material provision or condition of this ESA; its only remedy shall be to seek specific performance of this ESA, provided it has first complied with the dispute resolution procedures as set forth in Section 12.6 of this ESA.

2.4 Obligations upon Termination. Following termination of this ESA, the Parties shall each discharge by performance all obligations due to any other Party that arose up to the date of termination of this Agreement.

### SECTION 3 SALE OF ELECTRICITY AND ENVIRONMENTAL ATTRIBUTES

3.1 Basic Agreement. Seller shall sell and deliver to WEC at the Point of Delivery, and WEC shall purchase and accept from Seller at the Point of Delivery, all of the Power Supply produced by Seller from the Electric Generating Plant commencing on the Commencement Date and in accordance with the terms and conditions herein. Seller shall also sell WEC all certificates or other units of production complying with or satisfying the Renewable Portfolio Standards of any New England state or the State of New York or similar renewable energy credits (whether determined by the New England Generation Information System or otherwise), offsets and environmental attributes associated with the Project that belong to Seller and that are not needed for Seller's environmental permitting or otherwise belong to the landfill owner under the Project Agreements (the "Environmental Attributes"). WEC shall have the right to re-sell, transfer, assign, mortgage, pledge or otherwise dispose of the Environmental Attributes in any manner it deems appropriate.

3.2 Price. WEC shall pay to Seller for the Environmental Attributes and the Power Supply delivered each month pursuant to this ESA, a price per kWh as provided in Exhibit B attached hereto and made a part hereof. Unless otherwise specified in an exhibit to this ESA, all billing under this ESA shall be based on volumes measured at the Sales Meter.

3.3 Other Charges. Seller shall be responsible for all other charges associated with the generation and transmission of electricity to WEC at the Point of Delivery.

### SECTION 4 TERMS AND CONDITIONS OF SALES

4.1 Billings and Payments. By the 5th day of each month, Seller shall furnish or cause to be furnished to WEC a monthly statement setting forth the total amount of Power Supply in kWh sold by Seller to WEC at the Point of Delivery during the preceding month as measured according to Section 4.2 below, along with the relevant calculations as to the price of such Power Supply set forth in Exhibit B hereto. By the 20th day of each month, WEC shall remit to Seller payment in respect to the preceding month for the Power Supply sold by Seller to WEC during the preceding month based on the formulas set forth in Exhibit B hereto. Any statement or payment shall be final as to both Parties unless questioned within two years after payment has been made thereon. If full payment for any month is not received by Seller on or prior to the 20th day of the next month, Seller shall be entitled to interest on such deficiency from such 20th day at the rate of one percent (1%) per month. WEC shall have the right to offset any payments it is owed under the Equipment Lease from any payments it owes Seller under this ESA.

4.2 Measurement of Power Supply; Testing and Correction of Sales Meter. WEC shall maintain and operate the Sales Meter and shall maintain all charts and records for the term of this ESA. Both Parties and their representatives shall have access at all reasonable times to inspect, test and repair the Sales Meter, and to inspect or copy such charts and records. WEC shall conduct a test of the Sales Meter which is/are used for the billing of Power Supply sold by Seller

to WEC at least once every twelve months at WEC's expense. Such test shall be carried out by WEC in accordance with the recommendations and guidelines of the manufacturer of the Sales Meter and Good Engineering Practice. WEC shall give Seller notice of the times of all tests of the Sales Meter sufficiently in advance so that Seller may conveniently have its representative(s) ready to observe such tests, if desired. WEC shall have the right to conduct tests of the Sales Meter, at its expense, at all reasonable times. If, upon the completion of any test of the Sales Meter, the Sales Meter is/are determined to be recording outside the normal range of accuracy according to the manufacturer's specifications, records thereof shall be corrected for a period extending back to the time such inaccuracy occurred, if such time is ascertainable by Good Engineering Practice, or if not ascertainable or if the amount of Power Supply in kWh cannot be ascertained because a Sales Meter or device is out of service or being repaired, WEC and Seller shall estimate in good faith the volume and quality delivered based upon WEC's and Seller's other operating records for the period in question. Following any test, any measuring equipment found to be inaccurate to any significant degree shall be adjusted or replaced immediately to measure accurately. In addition, WEC shall provide Seller with immediate notice of any repair to the Sales Meter and the reason for such repair.

## **SECTION 5 TITLE**

Seller represents that it has the right to convey and sell the Power Supply and Environmental Attributes sold hereunder. Seller shall be deemed to be in exclusive control and possession of the Power Supply, and fully responsible and liable therefor, until it is delivered to WEC at the Point of Delivery. After the delivery of the Power Supply to WEC at the Point of Delivery, WEC shall be deemed to be in exclusive control and possession of the Power Supply and fully responsible and liable therefor. Seller shall take all appropriate actions to transfer the Environmental Attributes sold hereunder to WEC or its assignees or repurchasers, including, without limitation, so instructing the Administrator of the New England Generation Information System of WEC's purchase of the same or WEC's subsequent resale or assignment thereof.

## **SECTION 6 REPRESENTATIONS AND WARRANTIES**

6.1 Representations of WEC. WEC hereby represents to Seller that:

A. Organization, Good Standing, and Power. WEC is a Vermont cooperative corporation organized under the laws of the State of Vermont and has all requisite corporate power and authority to own and lease its properties as they are currently owned, leased or operated, to carry on its business as now being conducted, to enter into this ESA, to perform its obligations hereunder, and to consummate the transactions contemplated hereby, and is in good standing in the State of Vermont.

B. Authority; No Violations, etc. The execution and delivery of this ESA and the consummation of the transactions contemplated hereby will be duly and validly authorized by all necessary corporate action on the part of WEC by the Commencement Date. This ESA is a valid

and binding obligation of WEC, enforceable in accordance with its terms, except insofar as enforceability may be affected by applicable bankruptcy, insolvency, reorganization, moratorium, or similar laws affecting creditor's rights generally or by principles governing the availability of equitable remedies.

C. Litigation. There are no actions, suits, claims, complaints, investigations or legal or administrative or arbitration proceedings pending or, to WEC's knowledge, threatened, whether at law or in equity, whether civil or criminal in nature or whether before any court or before any federal, state or local governmental department, agency or instrumentality, against or affecting WEC or any of its properties or affiliates, which, if decided adversely to WEC or its affiliates, would have a materially adverse effect on the consummation of the transactions under this ESA and WEC's performance hereunder.

D. Governmental Approvals. Except as set forth in Exhibit C, to the knowledge of WEC, no consent, approval or other action by, or filing with any Governmental Authority, is required in connection with the execution and delivery by WEC of this ESA or the consummation by WEC of the transactions contemplated hereby.

6.2 Representations of Seller. Seller represents to WEC that:

A. Organization; Good Standing and Power. Seller is a corporation duly organized and validly existing under the laws of the State of Vermont, has all requisite power and authority to own, lease and operate the Leased Property, to carry on its business as now being conducted, to enter into this ESA, to perform its obligations hereunder, and to consummate the transactions contemplated hereby and is in good standing in the State of Vermont.

B. Authority; No Violations, etc. The execution and delivery of this ESA and the consummation of the transactions contemplated hereby will be duly and validly authorized by all necessary corporate action on the part of Seller by the Commencement Date. This ESA is a valid and binding obligation of Seller, enforceable in accordance with its terms, except insofar as enforceability may be affected by applicable bankruptcy, insolvency, reorganization, moratorium, or similar laws affecting creditor's rights generally or by principles governing the availability of equitable remedies.

C. Litigation. There are no actions, suits, claims, complaints, investigations or legal or administrative or arbitration proceedings pending or, to Seller's knowledge, threatened, whether at law or in equity, whether civil or criminal in nature or whether before any court or before any federal, state or local governmental department, agency or instrumentality, against or affecting Seller or any of its properties or affiliates, which, if decided adversely to Seller or its affiliates, would have a materially adverse effect on the consummation of the transactions under this ESA and Seller's performance hereunder.

D. Governmental Approvals. Except as set forth in Exhibit C, to the knowledge of Seller, no consent, approval or other action by, or filing with any Governmental Authority, is required, in connection with the execution and delivery by Seller of this ESA to which it is a party or the consummation by Seller of the transactions contemplated hereby.

## **SECTION 7 CONTINUING COVENANTS**

7.1 Operating Standards. Seller shall use its best reasonable efforts to operate the Electric Generating Plant in accordance with Good Engineering Practice so as to deliver the maximum quantity of Power Supply to WEC. Seller shall have no obligation to compensate WEC or any other person or entity for a reduction in the amount of Power Supply resulting from the aging of the Landfill or any other reason beyond the reasonable control of Seller, or to purchase any other type of fuel from any third party to supply the Electric Generating Plant. Seller shall use its best efforts to cause the Electric Generating Plant and the Transmission Interconnection and all related equipment to be operated in accordance with Good Engineering Practice and in good working order, repair and condition.

7.2 Compliance with Laws. The Parties shall promptly and fully comply with all existing and future Governmental Rules of all Governmental Authorities having jurisdiction over the activities covered by this ESA.

7.3 Consent. Whenever performance of an obligation of any Party hereto requires the consent or approval of any Governmental Authority, such Party shall make commercially reasonable efforts to obtain such consent or approval.

7.4 Permits. Seller shall use all commercially reasonable efforts to maintain (or cause the maintenance of) all existing and subsequently acquired permits in full force and effect, without interruption, and not take or omit to take (or permit the taking or omission of) any action which would result in any restriction on, or material violation of, any such permit.

## **SECTION 8 FORCE MAJEURE**

If by reason of *Force Majeure* either Party hereto is unable to carry out, either in whole or in part, its obligations herein contained, such Party shall not be deemed to be in default during the continuation of such inability, provided that: (i) the non-performing Party, within two (2) weeks after the occurrence of the *Force Majeure*, gives the other Party written notice describing in reasonable detail the event of *Force Majeure*; (ii) the suspension of performance shall be of no greater scope and of no longer duration than is required by the event of *Force Majeure*; (iii) no obligations of either Party which arose prior to the occurrence causing the suspension of performance shall be excused as a result of the occurrence; and (iv) the non-performing Party shall use commercially reasonable efforts to remedy the cause or causes preventing it from carrying out its obligations hereunder. In the event of *Force Majeure*, WEC shall not be excused from its obligation to pay the capacity payment set forth in Exhibit B, but shall be excused from

making energy payments during the period of *Force Majeure* to the extent that it is not receiving energy. If an event of *Force Majeure* continues for a period of 180 days or longer or Seller is not using commercially reasonable efforts to remedy the cause or causes preventing it from carrying out its obligations hereunder, WEC may terminate this ESA or seek any other remedies available to it at law or equity. If an event of *Force Majeure* continues for a period of 180 days or longer or WEC is not using commercially reasonable efforts to remedy the cause or causes preventing it from carrying out its obligations hereunder, Seller may seek specific performance of this ESA, provided it has first complied with the dispute resolution procedures as set forth in Section 12.6 of this ESA.

## **SECTION 9                    INDEMNIFICATION**

9.1     Indemnification by Seller. Seller shall indemnify, defend and hold harmless WEC and WEC's officers, employees, agents, representatives and independent contractors, from and against any and all costs, claims, liabilities, damages, expenses (including reasonable attorneys' fees), causes of action, suits or judgments, incurred by, on behalf of or involving any one of the foregoing parties to the extent arising, directly or indirectly, from or in connection with (i) any material breach by Seller of its obligations, covenants, representations or warranties contained in this ESA and not resulting from the actions of WEC, and/or (ii) Seller's actions or omissions taken or made in connection with Seller's performance of this ESA. Seller further agrees, if requested by WEC, to investigate, handle, respond to, and defend any such claim, demand, or suit at its own expense arising under this Section 9.1. Should Seller defend any such claim against WEC hereunder, it shall have full control of such defense, in its reasonable discretion.

9.2     Indemnification by WEC. WEC shall indemnify, defend and hold harmless Seller and Seller's officers, employees, agents, representatives and independent contractors, from and against any and all costs, claims, liabilities, damages, expenses (including reasonable attorneys' fees), causes of action, suits or judgments, incurred by, on behalf of or involving any one of the foregoing parties to the extent arising, directly or indirectly, from or in connection with (i) any material breach by WEC of its obligations, covenants, representations or warranties contained in this ESA and not resulting from the actions of Seller, and/or (ii) WEC's actions or omissions taken or made in connection with WEC's performance of this ESA. WEC further agrees, if requested by Seller, to investigate, handle, respond to, and defend any such claim, demand, or suit at its own expense arising under this Section 9.2. Should WEC defend any such claim against Seller hereunder, it shall have full control of such defense, in its reasonable discretion.

9.3     Survival. The provisions of this Section 9 shall survive the termination of this ESA for a period of three (3) years with respect to (a) any claims which occurred or arose prior to such termination and (b) any losses occurring as a result of the termination.



**SECTION 10            INSURANCE**

If requested by WEC at any time, Seller shall secure and maintain, at its own expense, throughout the term of this ESA, comprehensive commercial general liability insurance of at least \$1,000,000 combined single limit and excess liability coverage of at least \$5,000,000, with insurers, coverages and special provisions reasonably satisfactory to WEC. WEC shall secure and maintain, at its own expense, throughout the term of this ESA, comprehensive commercial general liability insurance of at least \$1,000,000 combined single limit and excess liability coverage of at least \$5,000,000, with insurers, coverages and special provisions reasonably satisfactory to Seller. Each Party shall provide the other with evidence, reasonably satisfactory to the other, of such Party's insurance hereunder upon the other Party's reasonable request therefor, from time to time.

**SECTION 11            ASSIGNMENT**

11.1 Assignment by WEC. WEC may assign this ESA to any person or entity, without the prior written consent of Seller. WEC shall give Seller notice of the existence of any such assignment, together with the name and address of the assignee, and a copy of the assignment document within ten (10) days of the execution of such assignment.

11.2 Assignment by Seller. This ESA may not be assigned by Seller to any person or entity, without the prior written consent of WEC, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, WEC specifically agrees, without any further request for prior consent, to permit Seller to assign, in whole or in part, Seller's interest in this ESA to an entity that is owned or controlled, in whole or part by Seller.

**SECTION 12            MISCELLANEOUS**

12.1 Notices. All notices, demands, requests, consents or other communications required or permitted to be given or made under this ESA shall be in writing and

if to Seller to:

Coventry Clean Energy Corporation  
P.O. Box 8  
75 Vermont Route 14N  
East Montpelier, Vermont 05651  
Tel: (802) 223-5245  
Fax: (802) 223-6780

with a copy to:

M. Jerome Diamond, Esq.  
Diamond & Robinson, P.C.  
15 East State Street, Suite 201  
P.O. Box 1460  
Montpelier, Vermont 05601  
Tel: (802) 223-6166  
Fax: (802) 229-4457

if to WEC to:

Washington Electric Cooperative, Inc.  
P.O. Box 8  
75 Vermont Route 14N  
East Montpelier, Vermont 05651  
Tel: (802) 223-5245  
Fax: (802) 223-6780

with a copy to:

M. Jerome Diamond, Esq.  
Diamond & Robinson, P.C.  
15 East State Street, Suite 201  
P.O. Box 1460  
Montpelier, Vermont 05601  
Tel: (802) 223-6166  
Fax: (802) 229-4457

Notices hereunder shall be deemed properly served: (i) by hand delivery, on the day and at the time on which delivered to the intended recipient at the address set forth in this ESA; (ii) if sent by mail, on the third business day after the day on which deposited in the United States certified or registered mail, postage prepaid, return receipt requested, addressed to the intended recipient at its address set forth in this ESA; or (iii) if by Federal Express or other reputable express mail service, on the next business day after delivery to such express mail service, addressed to the intended recipient at its address set forth in this ESA. Either Party may change its address for the purpose of this Section 12.1 by giving the other Party prior notice thereof in accordance with this provision.

12.2 Successors and Assigns. Subject to the restrictions on assignment herein contained, the terms and provisions of this ESA shall be binding upon, and shall inure to the benefit of, the successors, assigns and personal representatives of the respective Parties. This ESA shall not (directly, indirectly, contingently or otherwise) confer or be construed as conferring any rights or benefits on any person or entity not named as a party hereto, except as otherwise expressly provided herein.

12.3 Severability. If any term or provision of this ESA or the application thereof to any Party or circumstance be invalid or unenforceable to any extent, the remainder of this ESA and the application of such term or provision to persons and circumstances other than those to which it has been held invalid or unenforceable shall not be affected thereby and each provision of this ESA shall be valid and enforceable to the fullest extent permitted by law.

12.4 Headings. The headings appearing in this ESA are intended for convenience and reference only, and are not to be considered in construing this ESA.

12.5 No Joint Venture. The relationship between the Parties shall be that of buyer and seller alone and nothing herein contained shall be deemed to constitute either Party hereto a partner, agent or legal representative of the other Party or to create a joint venture, agency or any other relationship between the Parties.

12.6 Applicable Law and Dispute Resolution. This ESA and the rights and obligations of the Parties hereunder shall be construed in accordance with and governed by the internal laws of the State of Vermont without giving effect to the conflict of law principles thereof. Unless otherwise expressly provided for in this ESA, the dispute resolution procedures of this Section 12.6 shall be the exclusive mechanism to resolve disputes arising under this ESA. The Parties agree to use their respective best efforts to resolve any dispute(s) that may arise regarding this ESA. Any dispute that arises under or with respect to this ESA that cannot be resolved shall in the first instance be the subject of informal negotiations between the Parties. The dispute shall be considered to have arisen when one Party sends the other Party a written notice of dispute. The period for informal negotiations shall be fourteen (14) days from receipt of the written notice of dispute unless such time period is modified by written agreement of the Parties. In the event that the Parties cannot resolve a dispute by informal negotiations, the Parties agree to submit the dispute to mediation. Within fourteen (14) days following the expiration of the time period for informal negotiations, the Parties shall propose and agree upon a neutral and otherwise qualified mediator. In the event that the Parties fail to agree upon a mediator, the Parties shall request that the American Arbitration Association, Boston, Massachusetts, appoint a mediator. The period for mediation shall commence upon the appointment of the mediator and shall not exceed sixty (60) days, unless such time period is modified by written agreement of the Parties. The decision to continue mediation shall be in the sole discretion of each Party. The Parties will bear their own costs of the mediation. In the event that the Parties cannot resolve a dispute by informal negotiations or mediation, venue for judicial enforcement shall be Washington Superior Court, Montpelier, Vermont. Notwithstanding the foregoing, injunctive relief may be sought without resorting to alternative dispute resolution to prevent irreparable harm that would be caused by a breach of this ESA. In any judicial action, the "Prevailing Party" shall be entitled to payment from the opposing Party of its reasonable costs and fees, including but not limited to attorneys' fees and travel expenses, arising from the civil action. As used herein, the phrase "Prevailing Party" shall mean the Party who, in the reasonable discretion of the finder of fact, most substantially prevails in its claims or defenses in the civil action.

12.7 Joint Workproduct. This ESA shall be considered the workproduct of both Parties, and, therefore, no rule of strict construction shall be applied against either Party.

12.8 Expenses. Each Party hereto shall pay all expenses incurred by it in connection with its entering into this ESA, including without limitation, all attorneys' fees and expenses.

12.9 Waiver. No waiver by either Party hereto of any one or more defaults by the other Party in the performance of any provision of this ESA shall operate or be construed as a waiver of any future default, whether of a like or different character. No failure on the part of either Party hereto to complain of any action or non-action on the part of the other Party, no matter how long the same may continue, shall be deemed to be a waiver of any right hereunder by the Party so failing. A waiver of any of the provisions of this ESA shall only be effective if made in writing and signed by the Party who is making such waiver.

12.10 Entire Agreement; Amendments. This ESA (including, without limitation, the Exhibits hereto) constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior oral or written agreements and understandings between the Parties relating to the subject matter hereof. This ESA may only be amended or modified by a written instrument signed by both Parties.

12.11 Interpretation Matters. Except to the extent expressly provided herein, the provisions of this ESA, and the rights and obligations of the Parties, shall be construed so as to be consistent with the provisions of the other Coventry Agreements and the Project Agreements and the applicable rights and obligations of the parties thereunder.

12.12 Counterparts. This ESA may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute a single agreement.

IN WITNESS WHEREOF, the Parties have executed this ESA as of the date first above written.

**FOR SELLER:**

COVENTRY CLEAN ENERGY CORPORATION,  
a Vermont corporation

*Barry Bernstein President*

Name/Title: Barry Bernstein

P.O. Box 8, Route 14

East Montpelier, Vermont 05651

Tel: (802) 223-5245

Fax: (802) 223-6780

**FOR WEC:**

WASHINGTON ELECTRIC COOPERATIVE, INC.,  
a Vermont cooperative corporation

*Avram Patt*

Name/Title: Avram Patt, General Manager

P.O. Box 8, Route 14

East Montpelier, Vermont 05651

Tel: (802) 223-5245

Fax: (802) 223-6780

## **EXHIBIT LIST**

Exhibit A - Point of Delivery and Sales Meter

Exhibit B - Pricing

Exhibit C - Governmental Approvals

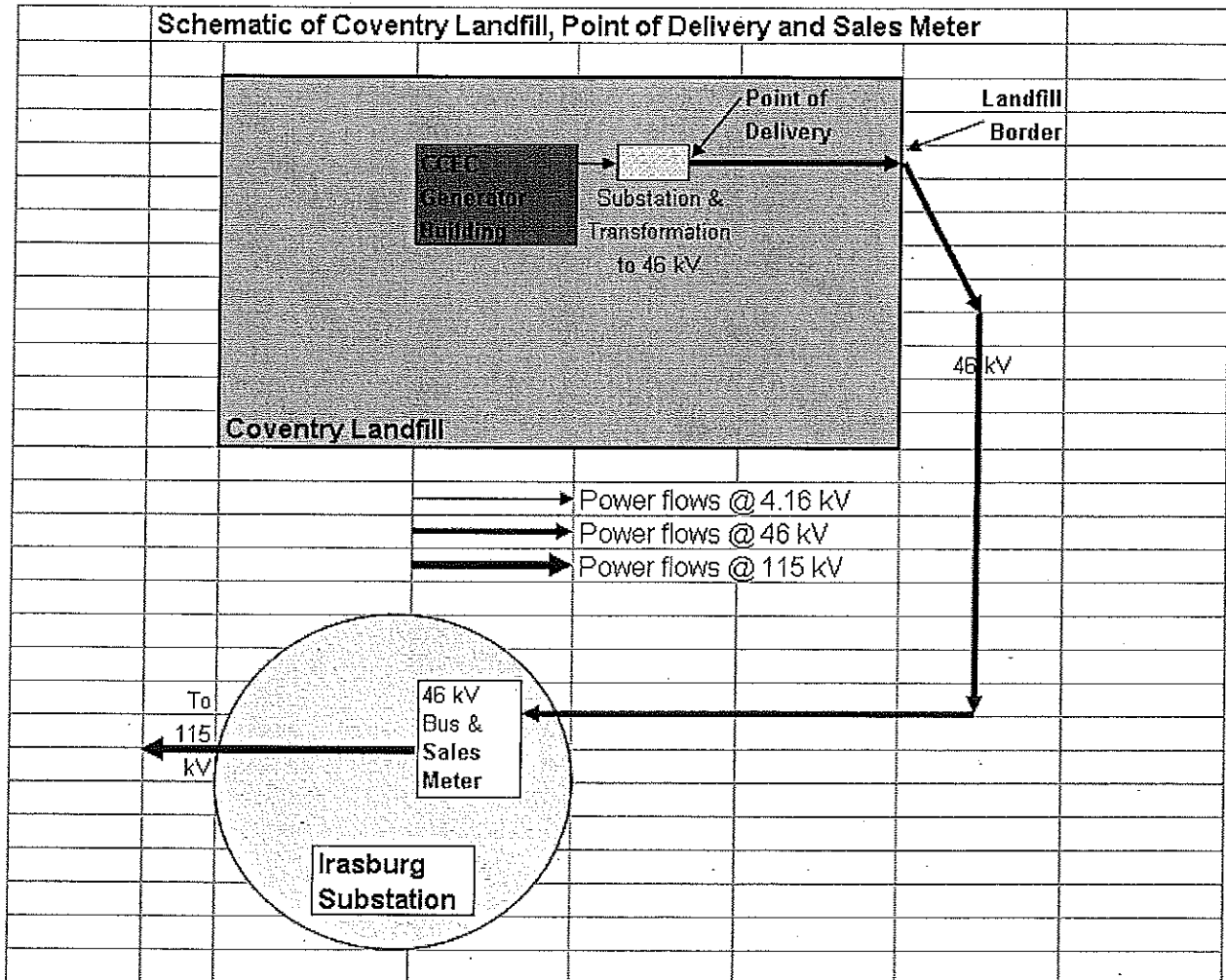
# EXHIBIT A

## Point of Delivery and Sales Meter

The Point of Delivery shall be the high side of the 4.16 kV to 46 kV transformer at Seller's Substation on the Coventry Landfill.

The Sales Meter shall be located at the Irasburg Substation at the 46 kV bus.

A schematic of this relationship is shown below:



## EXHIBIT B

### Pricing

A. Energy Price: The energy price paid by WEC for power delivered to WEC by Seller and for Environmental Attributes, for the first year following the Commencement Date, shall be as follows:

1. On-Peak Production (Monday – Friday, 7:00 am to 11 pm, except NERC Holidays): \$33.40 per MWh
2. Off-Peak Production (all hours except on-peak): \$23.85 per MWh

On the first anniversary of the Commencement Date and thereafter, these energy prices shall escalate by applying the percentage change in the U.S. Department of Commerce Bureau of Labor Statistics *Gross Domestic Product Implicit Price Deflator*, to the previous year energy prices.

B. Additional Charges or Credits: From time to time, Seller may invoice WEC with additional charges or credits, as the case may be, for 1) material unanticipated operating, maintenance or other such costs reasonably incurred by Seller and not recovered from WEC in the Energy Price above, 2) revenue received by Seller in excess of Seller's costs of production, or 3) both.



**EXHIBIT C**

Governmental Approvals to be Obtained by WEC:

Section 248 Approval

Approval of the Administrator of RUS

Governmental Approvals to be Obtained by Seller:

PSB Approval