

WASTE PROCESSING AGREEMENT

Processor: Trigen Energy Systems (Now PEI Energy Systems)

Term: 30 years - expiring August 8, 2025

Supply: Minimum Guarantee 30,617 Per Annum

Base Processing Fee: \$45 per Tonne Indexed to CPI Quarterly

Formula: $\$45 \times \text{CPI} / 129.2$

Scales: Responsibility of IWMC

Residual Waste:

Fly Ash:

Responsibility of IWMC

Bottom Ash/Other

Responsibility of Processor
(Tippage fee exempted)

Waste Processing Agreement

August 8, 1995

between: Government of PEI (Environmental Resources) and Trigen

Summary

This is the main agreement that outlines how Trigen will be paid for processing waste at the EFW Plant. It also outlines the obligations of the Province and Trigen pertaining to the handling of waste at the EFW Plant.

Acceptable Waste

Acceptable waste includes solid waste suitable for incineration, of the types historically accepted and disposed of at the EFW Plant, excluding:

- non-burnable waste from C&D
- wastes requiring special handling (radioactive, pathological, etc.)
- items larger than the plant's physical capacity
- machinery or equipment
- other materials (quality or quantity) that could impair operations.

Minimum Guaranteed Amount

During no month shall the total amount of acceptable waste delivered to the plant be less than the *minimum monthly guaranteed amount*, as shown below:

Month	4-Year Monthly Average (tonnes)	Minimum Monthly Guaranteed Amount (tonnes)
April	2,386	2,147
May	2,876	2,588
June	2,537	2,283
July	2,943	2,649
August	2,983	2,685
September	2,745	2,470
October	2,449	2,204
November	2,376	2,138
December	2,528	2,275
January	2,406	2,166
February	2,053	1,847
March	2,336	2,103
Minimum Annual Guaranteed Amount	30,617	

Although there is a monthly minimum guaranteed amount for each month (which totals 27,555 tonnes for the year) the yearly minimum guaranteed amount (which is based on the 4-year monthly average) is 30,617 tonnes. It is interesting to note that the total of the 4-year monthly averages is actually 30,622 tonnes, not 30,617 as reported in the agreement.

In addition to the minimum amount, the province must make all reasonable attempts to maximize the utilization of the plant's processing capacity by providing the EFW Plant with more acceptable waste.

Maximum Delivery Amount

There is also a maximum amount that can be delivered. Waste is not to be delivered in excess of the available waste storage capacity. Trigen will process up to 100 tonnes per day (based on a 365 day basis).

Penalties for not delivering minimum amount

If Trigen is not delivered 30,617 tonnes per year, the province must pay Trigen the processing fee for the minimum amount less:

- fees already paid to Trigen
- any processing fee that would have been payable on any unexcused diverted waste not accepted at the plant

Waste Diversion/Suspension

Trigen can suspend the receipt of waste during open hours for repairs, etc. This period shall not exceed 48 consecutive hours at any one time. The province must, whenever possible, be notified of the diversion at least 24 hours prior to the suspension.

Refusal to Process

Excused Diverted Waste:

- it is not acceptable waste
- it exceeds the maximum delivery amount
- it is delivered at times other than open hours

Unexcused Diverted Waste:

- if Trigen does not accept waste (besides mentioned above), the waste will be diverted to a landfill, and the Province's Minimum Guaranteed Amount will be reduced by that amount.

Force Majeure

- this cannot cause either party to default on any of the obligations in the agreement.

Scale House/Weigh Records

Trigen shall operate the scale house with the province re-imbursing the direct labour costs. *This is now a function of the IWMC.*

Trigen is required to maintain records of all tonnages accepted at the plant. These records must be delivered to the province monthly and be kept on file for a period of no less than 2 years by Trigen.

Manner of Delivery

Trigen has the right to reject waste that is not transported/loaded/un-loaded according to current practice.

Residual Disposal

Trigen will pay for the haulage costs of accepted (but unprocessed) waste to a landfill on PEI.

The province must permit Trigen to deliver residue (incinerator ash, fly ash sludge, etc) to a landfill without payment of fee, and shall continue to provide a suitable landfill site for this purpose.

Term

The initial term shall be for a 30 year period, and will be automatically renewed for successive 5 year periods after the initial term. Either party can provide a notice of non-renewal at least 3 years prior to the beginning of any renewal term, which would cancel the agreement.

Processing Fee

A monthly fee of \$45 per tonne will be paid by the province to Trigen.

The above fee will be adjusted quarterly according to the following formula:

Adjusted Fee per tonne = \$45 x (Price Index, most recent quarter/Price Index, Dec. 31, 1994)

Taxes

Added to the monthly bill to the Province is a surcharge equal to any license, occupation, or other similar fee or tax applicable to the processing service provided by Trigen to the Province, which fee or tax is imposed upon Trigen on the basis of the gross receipts, net receipts, or revenues (other than income taxes).

Termination of Agreement

By the Province:

- if Trigen becomes insolvent,
- if Trigen does not fulfil its obligations and does not remedy them in 60 days notice, or
- if the plant is stopped for a period of 60 days beyond Trigen's control (court order, etc).

By Trigen:

- the province fails to make payments, unremedied within 90 days notice,
- if the province does not fulfil its obligations, and does not remedy them in 60 days notice,
- if the plant is stopped for a period of 60 days beyond Trigen's control (court order, etc).

Renegotiation

Trigen can adjust its processing fee if a change in law causes additional costs.

Change in Composition of Acceptable Waste

In the event the composition of the acceptable waste changes as to materially affect the volume of waste processed or the energy recovered, either party may request by notice that the processing fee and or minimum guaranteed amounts, monthly and annually, be adjusted upwards or downwards.

Assignment of Agreement

The agreement can only be assigned by either party with the other's consent, but this consent cannot be unreasonably held.

(X)

WASTE PROCESSING AGREEMENT

Date: August 8, 1995

**Government of Prince Edward Island, as represented
by the Minister of Environmental Resources
and Trigen Energy Canada Inc.**

WASTE PROCESSING AGREEMENT

Made as of the 8th day of August, 1995, by and between the Government of Prince Edward Island, as represented by the Minister of Environmental Resources (the "*Province*") and Trigen Energy Canada, Inc. ("*Trigen*").

WHEREAS the Province and Trigen have entered into a Facility Purchase Agreement wherein Trigen is acquiring from the Province and/or the Prince Edward Island Energy Corporation ("*PEIEC*"), the Energy From Waste Plant (the "*Plant*") located on Riverside Drive, Charlottetown, Prince Edward Island, formerly operated by PEIEC; and

WHEREAS the Province, the University of Prince Edward Island ("*UPEI*"), and Queen's Region Health & Services Authority (QHA) have entered into Thermal Energy Service Agreements with Trigen (the "*Energy Agreements*") wherein Trigen will supply from its community energy system (the "*System*") the hot water and steam requirements of the Customers named therein; and

WHEREAS the agreement of Trigen to operate the Plant is predicated on the Plant receiving substantially the same quantity and quality of fuel as has been used in its operation over the past four years;

NOW THEREFORE in consideration of the mutual promises and covenants of each to the other contained herein and other good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto do hereby covenant and agree as follows:

I. DEFINITIONS

"*Acceptable Waste*" means solid waste suitable for incineration, of the types historically accepted and disposed of by the Province at the Plant including all ordinary household, municipal, commercial and industrial wastes but *excluding* (a) non-

burnable waste materials generated by construction or demolition (including buildings, roads and fences); (b) wastes requiring special handling or procedures (such as radioactive, pathological and explosive wastes) or prohibited by the Trigen permit; (c) items of a size in excess of the Plant's physical capacity, (d) machinery or equipment (such as tree trunks, motor vehicles and appliances); and (e) any other wastes of such quality or quantity or other nature as to materially impair operation or capacity of the Plant or the strength or durability of its structure, equipment or works.

"*Change in Law*" means (a) the adoption, promulgation, reinterpretation or modification after the date hereof of any Canadian or Provincial law, ordinance, code or regulation not adopted on or before the date of this Agreement (including but not limited to environmental or other requirements with reference to the nature, quality, composition or otherwise of Acceptable Waste and its delivery to the Plant), (b) the imposition of any conditions on the issuance or continuance of any permit, license or approval after the date of this Agreement, or (c) any change in the policies of the Province, the direct result of which is to establish requirements affecting the operation or capital costs of the Plant more burdensome than those now in effect or those agreed to in any pending applications of Trigen for permits, licenses or approvals.

"*Force Majeure*" shall mean the occurrence of any of the following events beyond the control of a party hereto, which results in the failure or delay by that party of some performance mandated by this Agreement: failure of facilities due to drought, flood, earthquake, storm, fire, lightning, epidemic, war, riot, civil disturbance, sabotage, strike or labor difficulty, accident or curtailment of supply or equipment, casualty to equipment or other unavailability of equipment or replacement equipment,

inability to obtain and maintain rights-of-way, permits, licenses, and other required authorizations from any Provincial or Canadian agency or person for any of the facilities or equipment necessary to provide or receive service hereunder, and restraint, order, or decree by court or public authority; provided that the party has exercised reasonable efforts to overcome any such cause with all reasonable dispatch, settlement of labor disputes and strikes being subject to the exercise of reasonable judgment by the affected party.

"Plant" means the Energy from Waste plant purchased by Trigen from PEIEC under the Facility Purchase Agreement dated the date hereof and located on Riverside Drive, Charlottetown.

"Price Index" means the Prince Edward Island Consumer Price Index as published monthly by Statistics Canada. In the event that the Index is discontinued by Statistics Canada, such comparable index as the parties may agree, and in the event the parties cannot agree, the Canadian Consumer Price Index shall be utilized.

II. DELIVERY AND PROCESSING OF ACCEPTABLE WASTE

2.1 *Minimum Guaranteed Amount.* The Province shall deliver or cause to be delivered to and unloaded at the Plant Acceptable Waste. The Province guarantees that in no month shall the total tonnage of Acceptable Waste delivered to the Plant be less than the minimum monthly guaranteed amount for the corresponding month as set out in Schedule "A" attached hereto (the "Minimum Monthly Guaranteed Amount"). If in any month, total deliveries do not equal the Minimum Monthly Guaranteed Amount, the Province shall pay to Trigen the Processing Fee for the Minimum Monthly Guaranteed Amount. Notwithstanding the Minimum Guaranteed

Amount, the Province shall make all reasonable attempts to deliver sufficient waste to maximize the utilization of the Energy From Waste Plant's processing capacity.

The Province also guarantees that the annual aggregate of Acceptable Waste delivered to the Plant will be an amount not less than 30,617 tonnes (the "Minimum Annual Guaranteed Amount"). If in any year total deliveries do not equal the Minimum Annual Guaranteed Amount, the Province shall pay to Trigen the Processing Fee for the Minimum Annual Guaranteed Amount less:

- (a) the fees paid to Trigen pursuant to this section 2.1; and
- (b) any processing fee that would have been payable on any unexcused diverted waste not accepted by the Plant pursuant to the provisions of paragraph 6.2 herein.

2.2 *Maximum Delivery Amount.* Trigen will process up to 100 tonnes per day of Acceptable Waste on a 365 day per year basis, which will be delivered not in excess of the available waste storage capacity at any time (the "*Maximum Delivery Amount*"), which waste storage capacity is not less than existing waste storage capacity.

2.3 *Open Hours.* The Plant shall be open to receive Acceptable Waste from 7 a.m. until 6 p.m., Monday through Saturday, except that the Plant need not be open on any day which is a legal holiday recognized by the Province. Trigen may suspend receipt of Acceptable Waste during Open Hours for any period, not to exceed 48 consecutive hours at any one time, as may be required for annual and safety inspections or to effect improvements or repairs to the Plant; *provided* that whenever possible, the Province shall be notified at least 24 hours prior to such suspensions.

2.4 Weighing; Records. Trigen shall operate the motor truck scales owned by the Province and situate at the Plant, and Trigen and the Province shall jointly establish reasonable written procedures to ensure proper vehicle identification and procedures to be followed in weighing all Acceptable Waste being delivered to the Plant. The Province may, at its own expense, have a representative present at the scales whenever they are being operated, and furthermore shall have access to the scales at all reasonable times.

Trigen shall be re-imbursed for all reasonable direct labour costs incurred by it in operating the scales.

The Province may from time to time require certification of the accuracy of the scales by a recognized and approved outside testing laboratory. Copies of all current weight records shall be delivered to the Province on a monthly basis. Trigen shall maintain records of the tonnage accepted at the Plant each day, each week and each month and copies of all weight records will be retained for a period of no less than two years, and these records shall be available to the Province for inspection at all reasonable times.

2.5 Manner of Delivery. Trigen shall have the right to reject waste which is not transported in trucks and containers designed to meet loading and unloading specifications for the Plant operations and comply with the weighing and movement regulations and procedures of the Plant as directed by a Trigen representative which shall not be unreasonably inconsistent with current practice.

2.6 Residue Disposal. Trigen shall at its expense provide for the haulage of all residue and accepted but unprocessed Acceptable Waste to such Landfill on Prince Edward Island as directed by the Province. The Province shall permit Trigen to deliver residue (including incinerator waste, wood waste, wood ash, incinerator ash, fly ash, sludge and other residue from district energy operations) to a Landfill without payment of fee, and shall continue to provide a suitable landfill site for this purpose. The waste water shall be discharged as per the existing practice followed by PEIEC, and in accordance with section 2.7 herein.

2.7 Operation and Maintenance of Plant. Trigen shall operate and maintain the Plant (a) in such manner as to enable the Plant to receive and process Acceptable Waste in accordance with this Agreement and to generate energy for sale on a basis consistent with good operating practice and (b) in compliance with all applicable Canadian, Provincial and Municipal laws, rules, codes, ordinances and regulations.

2.8 Processing of Additional Waste. The Province shall make reasonable good faith efforts to secure additional tonnage commitments for processable waste as needed in order to fully utilize the Plant.

III. TERM

3.1 Term. This Agreement shall be in full force and effect, be legally binding upon the parties, their successors and assigns and enforceable in accordance with its terms, upon its execution and delivery by the parties hereto. The initial term shall be for a period of thirty (30) years. Thereafter, the term shall be automatically renewed for successive five (5) year renewal terms, unless either party shall give the other written

notice of non-renewal at least three (3) years prior to the beginning of any such renewal term.

The Province may, upon termination or suspension of this Agreement for any default by Trigen, appoint agents to assume operation of the Plant. Trigen will take all reasonable actions to facilitate such operation.

IV. TERMINATION ON EVENTS OF DEFAULT

4.1 *Termination by the Province.* The Province may terminate this Agreement:

- (a) In the event Trigen shall become insolvent, make a general assignment for the benefit of creditors, become subject to the appointment of a receiver with respect to its business, or a substantial portion thereof or be declared bankrupt; or
- (b) In the event that Trigen has failed to perform any of its obligations hereunder and such default shall remain unremedied after sixty (60) days' notice thereof by the Province; or
- (c) In the event that the Plant is stopped for a period of six (6) months under a court order or by order of any other public authority beyond the control of Trigen.

4.2 *Termination by Trigen.* Trigen may terminate this Agreement:

- (a) In the event that the province shall fail to make any payment required to be made hereunder and such default shall remain unremedied after ninety (90) days' notice thereof by Trigen;
- (b) In the event that the Province shall fail to perform any of its obligations hereunder and such default shall remain unremedied after sixty (60) days' notice thereof by Trigen; or

- (c) In the event that the Plant is stopped for a period of six (6) months under a court order or order of any other public authority through no fault of Trigen.

V. PROCESSING FEE; PAYMENTS

5.1 *Processing Fee.* A monthly Processing Fee of \$45 per tonne of delivered Acceptable Waste (to be adjusted as provided below) will be payable monthly during the term of this Agreement.

5.2 *Adjustments.* The Processing Fee shall be adjusted quarterly by the following formula: Adjusted Processing Fee = Processing Fee per above x (CPI_1 / CPI_0) , Where:

CPI_1 = The Price Index for the most recent quarter for which such Price Index has been published.

CPI_0 = The Price Index for that base period which shall be the year ending December 31, 1994.

5.3 *Taxes.* There shall be added to the monthly bill to the Province, as separate items, a surcharge equal to any license, occupation, or other similar fee or tax applicable to the processing service provided by Trigen to the Province, which fee or tax is imposed upon Trigen on the basis of the gross receipts, net receipts, or revenues (other than income taxes).

5.4 *Payments.* Bills are due and payable when received by the Province, and in the event that these bills are not paid within thirty (30) days after receipt, an

administrative late charge of one and one-half percent per month on outstanding balances shall be charged commencing thirty (30) days after they become payable. All bills shall be deemed to have been received three (3) days after they are mailed.

VI. REFUSAL TO PROCESS; FORCE MAJEURE

6.1 *Excused Diverted Waste.* Trigen will have the right to refuse delivery of waste (a) if in the good faith judgement of Trigen's representative it is not Acceptable Waste, (b) if it exceeds the Maximum Delivery Amount, and (c) if it is delivered at times other than Open Hours or in any manner not conforming with this Agreement; and any such waste will not be included in determining whether the Province has delivered the Minimum Guaranteed Amount.

Trigen will have the right to refuse Acceptable Waste delivered to the Plant during any event of Force Majeure that prevents operation of the Plant, and the obligation of the Province to deliver the Minimum Guaranteed Amount will be reduced by the amount of such Excused Diverted Waste.

6.2 *Unexcused Diverted Waste.* If at any time Trigen is unwilling or unable to accept waste for reasons other than those discussed in the preceding section, then Trigen will promptly notify the Province. Unexcused diverted waste will be delivered to the Landfill and the obligation of the Province to deliver the Minimum Guaranteed Amount shall be reduced by the amount of unexcused diverted waste. In addition, no processing fee shall be payable on any amounts of unexcused diverted waste.

6.3 *Force Majeure.* Neither party shall be considered to be in default in respect of any obligation hereunder, other than the obligation of a party to make payment of

amounts then due and payable to the other party under or pursuant to this Agreement, if failure of performance shall be due to Force Majeure. If either party is affected by a Force Majeure event, such party shall, within twenty-four (24) hours of its occurrence, give notice to the other party stating the nature of the event, its anticipated duration and any action being taken to avoid or minimize its affect. The suspension of performance shall be of no greater scope and no longer duration than is required and the non-performing party shall use its best efforts to remedy its inability to perform.

VII. RENEGOTIATION; DISPUTES

7.1 *Change in Law.* In the event of Change in Law the parties agree that Trigen shall adjust the Processing Fee by an amount equal to all additional costs incurred to own or operate the Plant as a result of such Change in Law.

7.2 *Change in Composition of Acceptable Waste.* In the event the composition of the Acceptable Waste changes so as to materially affect the volume of waste processed or the energy recovered, either party may request by notice that the Processing Fee and/or the Minimum Guaranteed Amounts, monthly and annually, be adjusted upwards or downwards as the case may be. Both parties agree to negotiate such amendments to the Processing Fee and/or the Minimum Guaranteed Amounts, as the case may be, to equitably reflect the change in composition of the waste. If the other party agrees as to such adjustment, this Agreement shall be amended accordingly. If not, any dispute shall be resolved in accordance with Section 7.3. A notice to adjust made pursuant to this section may only be made by a party once during any twelve-month period.

7.3 *Disputes.* Any failure to agree where consultation, negotiation and agreement between the parties is called for (a "Dispute") which is not resolved by good faith negotiations between the parties, shall be settled as follows: The Dispute shall be referred to three arbitrators, one to be appointed by Trigen and one to be appointed by the Province, and a third to be appointed by the first two named arbitrators in writing. If either party shall refuse or neglect to appoint an arbitrator within twenty (20) days after the other party has appointed an arbitrator in writing, then the arbitrator first appointed shall, at the request of the appointing party, proceed to hear and determine the dispute as a single arbitrator appointed by both parties for that purpose. If two arbitrators are so named as prescribed and they do not agree within a period of fourteen (14) days upon the appointment of the third arbitrator, then upon the application of either party pursuant to an application made under section 8 of the Arbitration Act, R.S.P.E.I. 1988, Cap. A-16, a third arbitrator shall be appointed by a Judge of the Supreme Court of Prince Edward Island. The determination which shall be made by the arbitrator or the majority of the arbitrators, as the case may be, shall be final and binding upon the parties. The cost of the arbitration and remuneration of the third or a single arbitrator shall be borne equally between the parties. If each party appoints an arbitrators, each shall bear the remuneration of its arbitrator. The provision this paragraph shall be deemed to be submission to arbitration within the provisions of the Arbitration Act, supra, and any statutory modification or re-enactment thereof; provided that any limitation on the remuneration of arbitrators imposed by such legislation shall not have application to any arbitration proceeding commenced pursuant to this Agreement.

VIII. MISCELLANEOUS

8.1 *Representations and Warranties.* Trigen represents and warrants that it is a corporation duly organized, validly subsisting and in good standing under the laws of Ontario, and having the corporate power and authority to own and operate the Plant as contemplated by this Agreement.

8.2 *Assignment.* This Agreement shall not be assigned by either party without the consent of the other party, which consent shall not be unreasonably withheld; *provided* that Trigen may at any time, or from time to time, assign or pledge for the benefit and security of its parent corporation, any lender, mortgagee, and/or bond trustee of Trigen, any or all of its rights hereunder, including its rights to receive payments hereunder, (but Trigen shall not be thereby relieved of any of its duties and obligations hereunder).

8.3 *Governing Law.* Subject to Article 7.3, this Agreement shall be construed in accordance with and shall be enforceable under the laws of the Province of Prince Edward Island and the laws of Canada applicable therein, and shall be treated in all respects as a Prince Edward Island contract. The parties attorn to the jurisdiction of the courts of the Province of Prince Edward Island, and the same shall have exclusive jurisdiction to adjudicate upon any action arising out of this Agreement.

8.4 *Notices.* All notices hereunder shall be sufficient if delivered personally, or if sent by registered or certified mail postage prepaid, or sent by telecopier (confirmed on the same day or the following day by prepaid mail) addressed, if to Trigen: Trigen Energy Canada Inc., 246 Waterloo Street, London, Canada - Attention: President, with a copy to Trigen Energy Corporation, One Water Street, White Plains, New York 10601 - Attention: General Counsel; and if to the Province: Department of Environmental Resources, P.O. Box 2000, Charlottetown, Prince Edward Island, Canada, C1A 7N8 -

Attention: Deputy Minister. Trigen and the Province by like notice may designate any further or different address or addresses to which notices shall be sent.

8.5 *Binding Effect; Severability.* This Agreement shall enure to the benefit of and be binding upon the parties hereto and their successors and assigns. If any clause, provision or section of this Agreement be ruled invalid by any court of competent jurisdiction, the invalidity of such clause, provision or section shall not affect any of the remaining provisions hereof.

8.6 *Entire Agreement; Counterparts.* This Agreement constitutes the entire agreement between the parties with respect to the matters contained herein and all prior agreements with respect thereto are superseded hereby and each party confirms that it is not relying on any representations or warranties of the other party except as specifically set forth herein. No amendment or modification hereof shall be binding unless duly executed in writing by both parties. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF this Agreement has been duly executed by the parties hereto.

TRIGEN ENERGY CANADA, INC.

By: _____
President

GOVERNMENT OF PRINCE EDWARD ISLAND, as
represented by the Minister of Environmental
Resources

By: _____

SCHEDULE "A"
ENERGY FROM WASTE PLANT

WASTE AVERAGES (TONNES)

MONTH	4-YEAR MONTHLY AVERAGE	MINIMUM MONTHLY GUARANTEED AVERAGE
April	2,386	2,147
May	2,876	2,588
June	2,537	2,283
July	2,943	2,649
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September	2,745	2,470
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AMOUNT