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Ontario Energy Board
P.O. Box 2319
2300 Young Street
Toronto, ON M4P 1E4

Re: Regulatory Options for Setting Payments for the Output from OPG's Prescribed Generation Assets – Board File No. EB-2006-0064

TransAlta writes in response to Staff Discussion Paper Regulatory Options for Setting Payments for the Output from OPG's Prescribed Generation Assets dated July 6, 2006. We are pleased that Board Staff has chosen to issue these various discussion papers and we appreciate the opportunity to provide comments on those papers. The various papers have provided for a good discussion on the various regulatory methods for setting payments; however we believe there are still a large number of outstanding issues and questions that need to be further explored before a methodology can be chosen. TransAlta commented on the previous draft and offers the following comments on the final draft.

We see that the Board Staff continues to recommend the Incentive Regulation (IR) option as the preferred regulatory methodology for setting payments. We also note that *Appendix A – Setting Payments for OPG's Prescribed Assets: Timelines*, seems to indicate that IR is in fact the path forward and no further discussion is to take place regarding alternative methodologies. TransAlta feels very strongly that at this juncture further consultation is required in order to make an informed decision that will not only achieve the regulatory objectives set forth by the Board Staff, but also to assess the impacts of any methodology on the market itself. Firstly, TransAlta notes that none of the interested parties who have made submissions on earlier Board Staff papers, nor London Economics International, LLC, have supported the IR methodology as their first choice. With virtually no support for this methodology, we are concerned that the Board Staff continues to put this forward as their recommendation.

Secondly, in reading the discussion paper, we find little grounding for the Board Staff's choice of IR. There is no consistent evaluation and comparison of the various methodologies, including the current treatment of the prescribed assets, against a standard set of criteria. In *Section 5.2 The Value of the Regulatory Process and Board Staff's Regulatory Criteria*, the Board Staff has listed the following regulatory criteria against which each of the options should be considered:

- Transparency
- Fairness

- Regulatory Efficiency
- Consistency

In Section 5.3 Board Staff Evaluation, the Board staff then adds a list of additional criteria. "Based on the above (regulatory criteria) and consideration of the Board's statutory objectives, Board staff believes that the task before the Board is to determine payment amounts that can continue to limit exposure to price volatility, provide price stability for consumers and contribute to the mitigation of OPG"s market power while maintaining OPG's financial integrity and maximizing opportunities for efficiencies and cost containment in OPG's operations." Even though the Board Staff provides these criteria in their paper, their discussion of the various options provides no comparative analysis against any of these criteria. To the contrary, the comments regarding Cost of Service focus simply on the time and resources required. The Incentive Regulation analysis follows on that theme, with discussion on the options for dealing with resourcing and data issues, but again does not evaluate against all of the criteria presented by the Board Staff. Finally, the Regulatory Contract option explores other issues such as the difficulty of negotiating and developing contracts in a policy vacuum, but again, does not compare or contrast these points with the other options presented, or evaluate against the Board Staff's criteria.

We understand that the Board feels that the criteria they must be concerned with are regulatory in nature; however, we believe it is imperative that these various options are also examined in light of the broader hybrid market design issues. Given that OPG is the dominant generator in the market, the choice that is made regarding the treatment of their prescribed assets has the potential to have a huge impact on the hybrid market. We would request that the following market design criteria also need to be considered in this analysis.

- Impact on market price/response to market price signals
- Mitigation of OPG's Market Power
- System impact (e.g.: ancillary services, peaking services)
- Market neutrality
- Level Playing Field

Ultimately, the market criteria should try to incent the proper behavior in order to support the hybrid market.

Ultimately, TransAlta believes that to proceed with IR as the methodology of choice at this juncture will create more investor uncertainty in the market. The options need to be fully evaluated and discussed against a clearly defined set of criteria that include market criteria. To proceed without this evaluation is detrimental to the stability of the hybrid market.

In its last submission, TransAlta suggested the Regulated Contract methodology would be the most appropriate methodology. While we still believe this is the best methodology, we recognize that all methodologies, including this one, haven't been fully explored in the context of the OPG assets. We are open for further discussion on the various methodologies, and we hope that Board Staff and others are open as well.

Given the timeline of April 2008, we feel there is sufficient time to properly explore all options present so that we can choose what is best for the electricity sector as a whole.

In Shell Trading's submission of June 28, 2006 they suggested that the Board should actively solicit comments on the final Staff report from bodies that would include the Market Surveillance Panel of the Board, the Independent Electricity System Operator and the Ontario Power Authority. We support that recommendation. As well, given the breadth and complexity of the issues, we feel there is a need to further educate, understand, and refine before any final decisions are made. We would suggest a Technical Panel of Board members that would facilitate a fulsome discussion on the various options. We would recommend that this panel session would allow for the following:

a) Presentation by Board Staff comparing the options, including the current treatment of the prescribed assets, against a standard set of criteria. The criteria should include market criteria.
b) Presentation by London Economics on their analysis of the various methodologies
c) Opportunity for any interested parties to make presentations if desired.

We thank you for the opportunity to provide comments on the discussion papers and hope that these comments have proven useful. We look forward to further conversation on this important issue for the electricity sector.

Yours truly,

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cc. Peter Smith