

COMMENTS OF THE CONSUMERS COUNCIL OF CANADA

July 24, 2006

RE: BOARD STAFF DISCUSSION PAPER – DATED JULY 6, 2006

**“Regulatory Options for Setting Payments for the Output From
OPG’s Prescribed Assets”**

Introduction:

On March 21, 2006 the Ontario Energy Board (“Board”) issued a letter to interested parties describing the process it intends to use to establish a methodology for setting payments for the output from Ontario Power Generation Inc’s (“OPG”) prescribed generation assets. On July 6, the Board posted a final version of a Board Staff Discussion Paper (“Staff Paper”) setting out the pros and cons of various regulatory models that might be adopted in setting the payments related to the prescribed assets. The Staff Paper also included a staff recommendation regarding its views as to the preferred approach.

The Consumers Council of Canada (“the Council”) has reviewed the draft discussion papers, the comments submitted by stakeholders and the final Staff Paper issued on July 6. These are the comments of the Council on the Staff Paper and the ultimate recommendations, set out in that paper. Before setting out the Council views on specific issues we provide the following preliminary comments.

1. The Council agrees that the Board’s objectives with respect to electricity as set out in the Ontario Energy Board Act, 1998 are fundamentally important in determining the approach used to set out the payments for the output of OPG’s prescribed assets. Specifically, the Council accepts that there must be a balance struck that ensures the protection of the interests of consumers while maintaining the financial viability of the electricity industry.

2. The Council also accepts that the Board must ensure that it makes decisions through regulatory processes that are effective, fair and transparent. The Council agrees with the comment set out in the paper that an “open debate” over issues will lead to better decisions (p. 5).
3. This process, to date, has not been as open and transparent as it should be in order for the Board to make an informed decision. The various drafts of the Staff Paper have not fully addressed the submissions made by parties and set out why certain proposals have been rejected. The Staff has essentially maintained its position in support of an incentive regulation model and has rejected the alternative approaches put forward by other parties.
4. The Council proposes that in order to ensure that an open debate on these issues takes place, following the submissions of parties on the Staff Paper, the Board should hold a transcribed technical conference where there would be an opportunity for parties to discuss and potentially debate the issues and the various proposals. In addition, Board Staff can specifically address why it has maintained its position to recommend an incentive regulation approach in light of the fact that most stakeholders, have rejected it.
5. For the reasons set out below the Council supports a Cost of Service (“COS”) approach as the most appropriate approach for setting the payment amounts for OPG’s prescribed assets.

Preferred Approach:

The Council recognizes that the situation with OPG and the need to establish a regulatory model for setting the payments is unique. In addition, the Council submits there is no clear solution to address these unique circumstances. Each of the approaches identified by Board Staff has its merits and could likely be applied. However, the Board must choose the option that best suits its objectives to protect the interest of consumers,

maintain the financial viability of the electricity industry and proceed in a manner that is both transparent and results in regulatory efficiency.

The Council accepts that COS proceedings can be onerous, lengthy and costly. However, it should also be recognized that a COS approach allows for a rigorous examination of costs and is transparent. The Council submits that such a rigorous examination should always be a precursor to any incentive regulation model. In addition, given this is the first instance in which the Board is setting the payment amounts it is not clear whether an incentive approach would be any less onerous, lengthy and costly. The detailed elements of an incentive regulation model would have to be considered at length. Specifically, the “rules” around Z-factors and off-ramps would have to be established and there would likely be considerable debate regarding those parameters.

One of the merits of an incentive regulation approach is the potential for productivity improvements and sustainable efficiencies. As some stakeholders have pointed out it is not apparent whether an incentive regulation model is likely to generate productivity improvements that will ultimately benefit Ontario ratepayers. In the absence of a private shareholder the potential for those improvements may be limited.

One of the approaches set out in the Staff Paper envisions that the Board would, “following a comprehensive cost review, determine an appropriate initial base payment amount that would be in effect for a specific time, e.g. five years”. An initial COS approach followed by an incentive regulation approach would be acceptable to the Council and preferable to the approach advocated by Board Staff in which the existing payment levels are used as the base payment.

With respect to the “regulatory contract” approach the Council has not been convinced by the submissions by other parties that this approach will, at the end of the day, be the best approach for Ontario consumers. As Board Staff notes it is not clear as to whether the Board can cede its responsibility in determining the payment amounts for the prescribed assets.

Conclusions:

1. The Council supports a COS approach as the starting point for the setting of the payment amounts. The Council could accept OPG's approach for a COS proceeding that was scoped and focused thereby avoiding an extremely long and onerous proceeding. Following an initial COS review the Council would support an incentive regulation approach if there stakeholders have a full opportunity to make submissions on all of the parameters associated with an incentive model. Initiating an incentive approach without an appropriate starting point should be rejected.
2. The Board should hold a Technical Conference, following the filing of these submissions to allow stakeholders and Board Staff to fully debate and explain their various perspectives. Reply submissions should follow that discovery process. An opportunity for debate and clarification will give the Board a more balanced perspective prior to finalizing its decision on which approach will be adopted.
3. The Board should put considerable weight on the fact that a COS is the preferred approach, at least initially, of most stakeholders.

Weir Foulds LLP
Barristers and Solicitors
Suite 1600 Exchange Tower
130 King Street West
Toronto, Ontario M5X 1J5

Robert B. Warren
(416) 365-1110
(416) 365-1876 (fax)
rwarren@weirfoulds.com

Counsel to the Consumers Council of Canada