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BY ELECTRONIC MAIL

Ms. Elena Guilfoil
Washington Department of Ecology
PO Box 47600
Olympia, WA 98504-7600

**Re: TransAlta Centralia Generation LLC's Comments on Ecology's August
2007 Draft Mercury Rule for Electric Generating Units**

Dear Ms. Guilfoil:

This letter summarizes TransAlta's Expedited Mercury Reduction Proposal and provides comments on additional issues raised by Ecology's August 2007 draft. We have attached a redlined version of Ecology's draft that incorporates TransAlta's proposed revisions.

TransAlta's Expedited Mercury Reduction Proposal

To enable the Centralia Plant to economically reduce mercury emissions before the 2013 deadline proposed by the Department of Ecology, TransAlta proposes the following changes to Ecology's proposed rule:

1. The Centralia Plant would meet an emission rate 0.016 lb/GWhr (approximately 80% of inlet) by 2011 and 0.008 lb/GWhr (approximately 90% of inlet) by 2015. Temporary alternate standard would be available through 2017 (see attached WAC 173-406-120).
2. The Centralia Plant would be allocated 356 lbs./yr. allowances through 2017, 19.8 lbs/yr (5% of the state's total allocation) would be allocated to new sources, and 19.8 lbs/yr. would be retired as a public health benefit. Allowances remaining in the new source account would be available for allocation to new sources for excess emissions. (**Note:** The EPA CAMR provides for 5% to new sources through 2014, but only 3% to new sources for 2015 – 2017.) (See attached WAC 173-406-060).

3. Trading of allowances on EPA's national market would be allowed through 2017. Revenues from Plant's trading would be dedicated to air emission controls, including O&M (see attached WAC 173-406-060(1)).

4. For the period from 2010 through 2017, the Centralia Plant would sell allowances transferred from the Supplemental Account and use revenue for state-approved pollution control projects ("Emission Reduction Technology Fund") (see attached WAC 173-406-060(4)(c)). At a possible market value of \$30,000/lb., the annual revenue could be as much as \$600,000.00.

5. After 2017, the Centralia Plant's allocations would be based on Ecology's proposed rule and emission rate of 0.008 lb/GWhr (i.e., 98.5 lbs/yr allocated to Plant, permanent allocation, in-state trading, etc.) (see attached WAC 173-406-090, et seq.). 19.8 lbs./yr. would continue to be retired as a public health benefit. The remaining 38 lbs. would be available for new sources and excess emissions requests.

Comments on Ecology's Draft

1. WAC 173-406-030(3): Reconsideration of Rule Based on Centralia Plant CEM Data: This section provides that within two years of the effective date of the rule, Ecology will "review any available mercury emissions monitoring data," "reassess the emission standard and compliance date," and publish notice of its decision to either "take no action or begin the rule-making process to revise the emission standard and/or compliance date if appropriate to allow for construction of controls to comply with the emission standard."

Comment: There are two concerns with this rule. First, it sets no standard for triggering reconsideration of the Mercury Rule. CEM data that shows emissions from the Centralia Plant are significantly higher than the assumptions underlying the proposed rule should trigger reconsideration. Second, the rule provides that Ecology may reconsider only the "emission standard" and "compliance date." If the Plant's mercury emissions are higher than currently anticipated, it may be appropriate to consider other revisions, such as increasing the Mercury Emissions Budget during the period after the Plant installs controls. TransAlta proposes language that would allow reconsideration of any requirement.

2. WAC 173-406-050(17): Definition of "Excess Emissions": The proposed definition defines "excess emissions" as emissions in excess of the "mercury budget emission limitation allocated to the source."

Comment: The definition should consider trading and other adjustments that may be made to the tradable unit account.

3. WAC 173-406-050(34): Definition of "New Mercury Budget Unit or Source" Includes "Modifications" to Existing Plants: This draft adds units that are

“reconstructed,” “repowered,” and “modified” to the “new mercury budget unit” definition.

Comment: The result of this rule would be to apply the 0.0066 lb/GWh emission standard and the allowance allocation formula for new units to the “reconstruction,” “repowering,” or “modification” of either of the Centralia Plant’s boilers. The 0.0066 lb/GWh standard is considered attainable by new IGCC units, so it may be reasonable for “repowering” of the Centralia Plant to burn a gaseous fuel. However, a “modification” or a “reconstruction” of the Plant would not change the Plant’s basic technology or reduce its mercury emissions. There are no add-on controls for the Centralia Plant’s boilers that have been demonstrated to achieve such a low standard on a continuous basis. By comparison, EPA’s NSPS mercury standard adopted in 2005 for reconstructed or modified units is 0.066 lb/GWh – an order of magnitude higher.

To address these concerns, TransAlta proposes that repowered units would be subject to the 0.0066 lb/GWh standard, but modifications and reconstructions of the Centralia Plant would be subject to the proposed 0.008 lbs/GWh standard.

4. WAC 173-406-090(2)(b): Permanent 10 Percent Public Health Deduction of Tradable Units Returned to the State Mercury Emissions Budget: Ecology’s proposal is to establish a step-down provision for reducing the size of the state mercury emissions cap. Beginning in 2013, 10% of mercury credits that return to Ecology after distribution to a plant or reservation will be permanently set-aside as a public health measure. These credits will be unavailable for distribution or use by a power plant.

Comment: This provision is unclear but could be interpreted to mean, for example, that if the Centralia Plant is allocated 98 lbs. for a year but emits only 71 lbs., the difference of 27 lbs. is removed from the pool available for future allocation. Because all plants will comply by emitting less than their annual allocation, the result over time would be to reduce available tradable units to zero. TransAlta proposes to limit this deduction to reserved units that are returned.

5. WAC 173-406-110(3): Projected Allocations of Tradable Units for Upcoming Year/Removing Tradable Units in Excess of Formula Allocation: By December 1 of each year, Ecology will record allocations for the coming year in the following order: (1) the formula based on Net MW Rating and emission standard; (2) deductions for excess emissions; (3) in-state transfers in order of date submitted; and (4) removal of each tradable unit in excess of allocation under formula.

Comment: The “removal of each tradable unit in excess of” the formula allocation appears to be inconsistent with the in-state trading program concept that tradable units are freely tradable in-state. This suggests that if a plant purchases tradable units on the intrastate trading market and owns more tradable units than the formula amount, it will forfeit the excess units. This rule also does not appear to allow for the situation in which a plant is operating under a temporary alternate standard and

anticipates a need for additional tradable units. TransAlta recommends deletion of the reference to “removal of each tradable unit in excess of” the formula allocation.

6. WAC 173-406-110(3)(e) and 173-406-150(1)(b): Permanent Transfer of Future Tradable Units Upon Shutdown: Ecology’s proposal states that a “transferred tradable unit with a future year delivery date becomes part of the mercury budget source’s baseline allocation once the seller has shut down . . . so that the seller no longer receives tradable units.”

Comment: These rules should allow a plant to reduce mercury emissions (short of shutdown) with an enforceable limit and sell only part of its future tradable units. It should also clarify that a plant may shut down and sell future tradable units without waiting until the end of the five year period.

7. WAC 173-406-120(2): Emission Standard Compliance Determination: This rule incorporates the EPA requirements for monitoring, reporting and recordkeeping, but also provides for a report within 30 days of exceeding the emission standard on a “monthly average basis.”

Comment: Reporting should only be required if there is an exceedance based on the 12-month rolling average. An exceedance on a “monthly average basis” is not necessarily a good indicator of whether the 12-month average will be exceeded.

8. WAC 173-406-130: Temporary Alternate Emission Standards: This rule sets the conditions for an alternative emission standard and avoiding an enforcement action when the emission standard is exceeded.

Comments: The proposed rule does not incorporate economic or cost considerations into the evaluation of a temporary alternate emission standard. For example, it is possible that achieving the emission standard may be technologically feasible but the cost would force a plant to shut down. TransAlta proposes to incorporate such considerations into the decision on alternate emission standards.

9. WAC 173-406-130(4): Conditions for Avoiding Enforcement for Excess Emissions Before an Alternate Standard Compliance Order Has Been Issued: Proposed rule sets conditions for avoiding enforcement due to exceedance of emission standard in first two compliance years.

Comments: Rule should clarify: (a) that a plant meeting these conditions will not be subject to any type of enforcement action, e.g., civil penalties, and (b) that “failure of the new control equipment” means “failure under normal operation.”

10. WAC 173-406-140(4): Deductions for Excess Emissions: Ecology’s proposed rule deducts two tradable units from the subsequent calendar year for every ounce of excess emissions.

Comments: This proposal is loosely modeled on EPA's CAMR, which provides a 3-for-1 allowance penalty for excess emissions. However, the difference is that under CAMR, a source may purchase the penalty allowances on the national trading market so that excess emissions have an economic impact, but do not force a shutdown of future operations. Under Ecology's proposal, if the Centralia Plant emitted 110 lbs. of mercury in 2018 resulting in 12 lbs. of excess emissions, in 2019 the Plant's allocation would be reduced from 98 lbs. to 62 lbs. and it would be forced to shut down for one-third of the year. The penalty bears no rational relationship to the violation. This provision should be deleted. Ecology's authority to assess civil penalties provides sufficient deterrence to such violations.

11. WAC 173-406-150(3)(c)(iii): Intrastate Trading - Ecology Recording of Future Year Tradable Units: This rule provides that Ecology will hold future calendar year transfers until December 1 of the "applicable following calendar year."

Comments: This rule should be clarified as follows: "A recorded transfer with a future calendar year transfer date will be held in the tradable unit account until Ecology makes the deduction for compliance between March 1 and June 1 of the year following the year in which the tradable unit is effective."

12. WAC 173-406-150(4)(d): Mercury Budget Owner's Liability for Excess Emissions: Proposed rule provides that an owner must surrender tradable units required for deduction due to excess emissions and that Ecology may bring an enforcement action. Rule further provides that "each ounce of excess emissions and each day constitutes a separate violation" for enforcement purposes.

Comments: Ecology's civil penalty authority allows a civil penalty of up to \$10,000.00 per day per day for each violation and: "Each violation shall be a separate and distinct offense, and in case of a continuing violation, each day's continuance shall be a separate and distinct violation." The better interpretation of the Act is that an exceedance of the annual allocation is a single violation.

If this rule is retained, to meet due process requirements the rule should provide that deductions for excess emissions will be made in accordance with the procedures for a corrective action order pursuant to RCW 70.94.332 to allow an opportunity for to appeal to the Pollution Control Hearings Board.

13. Ecology's Authority to Adopt Mercury Trading Program:

Comment: Ecology appears to be relying on RCW 70.94.850 for authority to adopt its in-state trading program. However, RCW 70.94.850 authorizes a banking and trading program only for criteria pollutants, not hazardous or toxic pollutants.

Please contact me if you any questions.

Sincerely,

A handwritten signature in cursive script that reads "Richard L. Griffith". The signature is written in black ink and is positioned above the printed name.

Richard L. Griffith

cc: Sarah Rees, Ecology
Richard DeBolt, TransAlta
Wayne Wooster, TransAlta