

**BY EMAIL AND RESS**

April 1, 2022

Ms. Nancy Marconi  
Registrar  
Ontario Energy Board  
Suite 2700, 2300 Yonge Street  
P.O. Box 2319  
Toronto, ON M4P 1E4

Dear Ms. Marconi,

**EB-2021-0110 – Custom IR Application (2023-2027) for Hydro One Networks Inc. Transmission and Distribution – Clearspring and PEG expert evidence**

Further to our letters dated February 7 and 11, 2022, we are writing regarding the exchange of expert evidence between Hydro One's econometric benchmarking expert Clearspring Energy Advisors (Clearspring) and OEB Staff's corresponding expert Pacific Economics Group (PEG), and proposed next steps in this regard.

**The exchange of evidence to date**

Consistent with the timetable under procedural order no 1<sup>1</sup>, the exchange of this expert evidence has so far consisted of the following.

1. As part of its pre-filed evidence in support of the application, Hydro One filed the report of Clearspring dated July 30, 2021 (the "Clearspring Report"). That report sets out Clearspring's econometric cost benchmarking and related studies, and resulting productivity factor recommendations.
2. OEB Staff's expert, PEG, then had an opportunity to review the Clearspring Report and working papers, to ask interrogatories of Clearspring, and to ask further questions of it at the technical conference. After doing so, PEG then considered and prepared its responding report dated January 12, 2022 (the "PEG Report"). Before delivery of this report, OEB Staff's letter of September 24, 2021 had indicated that, in addition to simply responding to Clearspring's work, PEG's evidence may also "include new analyses on Hydro One's cost performance"<sup>2</sup>. Consistent with that advance indication by OEB Staff, the PEG Report in fact does two things: (i) it provides PEG's responding views and comments on Clearspring's studies and recommendations, including raising some new points or issues regarding them; and also (ii) it describes new benchmarking analyses and studies done by

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<sup>1</sup> Procedural Order No. 1 timetable dated September 17, 2021.

<sup>2</sup> OEB Staff's letter to the OEB regarding PEG's anticipated evidence dated September 24, 2021, pg 1.

PEG, and PEG's resulting productivity factor recommendations based on its studies ("PEG's New Evidence").

Since PEG's New Evidence (including new analyses, studies, and resulting recommendations) were prepared *after* the delivery of the Clearspring Report, and were only disclosed for the first time in the PEG Report (close to 6 months later), Clearspring of course had no opportunity to consider or address PEG's new issues or its new analyses/studies and recommendations in the Clearspring Report. Therefore, while PEG has had a full opportunity to consider Clearspring's studies and recommendations, and respond to them in the PEG Report – on which OEB Staff is relying in its responding case – Clearspring has not yet had a similar opportunity to consider and respond to PEG's New Evidence, namely its new analyses/studies and recommendations, or other new issues it raised.

### **Clearspring's response to PEG's new analyses/studies/recommendations**

Now that Clearspring has received the PEG Report and has had a chance to consider PEG's New Evidence, along with various related interrogatory responses from PEG, Clearspring has advised that there are points of disagreement regarding PEG's new analyses/studies and recommendations in the PEG Report, and Clearspring has responses to them.

As indicated in Hydro One's prior submissions dated October 5, 2021 (filed in connection with procedural order no 1, a copy of which submissions on this point we attach here for ease of reference), the rules of procedural fairness entitle Hydro One to know the responding evidentiary case against it, and an opportunity to reply to it. Hydro One should be permitted to deliver and rely on evidence from Clearspring, responding to PEG's New Evidence (to the new issues/analyses/studies and recommendations of PEG) – this is necessary to ensure that Hydro One's and OEB Staff's experts are placed on an equal and fair footing (i.e. both of them being permitted to provide their views in response to the other expert's studies), and to ensure that the OEB will have a full evidentiary record on these issues.

Hydro One is also mindful of (and supportive of) the direction in procedural order no. 2 that it would be useful for Clearspring and PEG to confer with each other under Rule 13A.04 – a process to try to narrow issues and identify points of agreement and disagreement between them. When this issue of providing for reply evidence in the timetable was previously raised at the time of procedural order no. 1, the registrar did not consider it "necessary" at that point to do so, and therefore stated in procedural order no. 2 that: "The OEB will not make provision for reply expert evidence at this time. The OEB may revisit this decision prior to the oral hearing if outstanding issues have not been addressed through the interrogatory process and the utilization of Rule 13A.04."<sup>3</sup>

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<sup>3</sup> Decision on Blue Page Update, Confidentiality Request and Reply on Expert Evidence and Procedural Order No. 2 dated October 25, 2021, p. 14.

In order for the experts to be able to confer in an effective and efficient manner under Rule 13A.04, we think it makes most sense for both experts to understand the points in issue between them and their respective views on them, going into the conference (so that they can consider each other's perspectives/points and be in a position to discuss them when they confer). Accordingly, and to ensure PEG knows what Clearspring's views and responses are to PEG's New Evidence, Clearspring has now prepared a relatively brief, 11 page report entitled "Responses to PEG's New Analyses and Studies" which specifically just outlines its responses to these new analyses/studies and recommendations, and to other new issues raised in the PEG Report. We therefore are sending a copy of the report to OEB Staff and all intervenors following the filing of this letter today. We propose to subsequently file the report so that it will be part of the evidentiary record and can be relied on at the hearing if/as need be, and in order to facilitate any interrogatory process in the meantime (as referred to below). The main objective in providing the report at this point is to facilitate the experts' conference, and also to assist in ensuring an efficient schedule and process going forward.

### **Proposed Next Steps**

Hydro One proposes that Clearspring and PEG confer at this stage. Subject to the experts' availability we suggest it take place in the coming weeks, perhaps by April 22<sup>nd</sup>.

As contemplated by Rule 13A.04, following the the experts conferring, they could then prepare a joint written statement identifying points of agreement, and disagreement. Both sides would be in a position to indicate which portions of their respective reports they will continue to rely on, depending on which points remain in issue between the experts, and this could perhaps be identified in the joint statement. We believe the reports exchanged (including the above referred to report by Clearspring) will be of use by the experts in preparing the joint statement.

An additional reason we are providing Clearspring's above report to the parties at this stage is to ensure they have timely disclosure of Clearspring's points of disagreement with and responses to PEG's New Evidence. When the issue of potential delivery of a reply report was previously raised at the time of procedural order no. 1, a number of intervenors indicated that they would have no objection to the delivery of a reply report from Clearspring, but they would want an opportunity to ask interrogatories in respect of any such report – a request to which Hydro One has no objection.<sup>4</sup>

Accordingly, and given the OEB will now be revisiting the timetable as a result of the application update, we believe it facilitates efficiency going forward to ensure the intervenors receive disclosure of the Clearspring's responding points now, rather than risking any further disruption to the timetable down the road closer to the hearing. If the OEB is inclined to provide for interrogatories in respect of Clearspring's responding points,

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<sup>4</sup> Hydro One previously suggested that the delivery of any reply evidence be included as a step in the initial timetable as part of procedural order no. 1. With the exception of VECC, none of the intervenors objected to this suggestion, though some requested conditions – notably, that they be permitted an opportunity to deliver interrogatories in respect of any such evidence. OEB Staff also indicated that if reply were to be delivered, permitting an opportunity for interrogatories would be appropriate. Hydro One has no objection to this.

intervenors could provide any such interrogatories at the same time as interrogatories in respect of the application update, and Clearspring could respond to them in the same timeframe.

We note again that the extent to which the points in Clearspring's latest brief report will ultimately need to be relied on by Hydro One and testified about at the hearing will depend on the outcome of the proposed expert conference under Rule 13A.04, and the scope of points of remaining disagreement between them (as will be identified in a joint statement).

We respectfully suggest it would be useful for the OEB to direct that Clearspring and PEG shall confer at this stage in the proceeding, and specify expected timing. We would also be content for the OEB to direct that, to the extent intervenors have interrogatories regarding the Clearspring report, they may ask them at the same time as interrogatories on the application update.

Sincerely,

A handwritten signature in black ink that reads "Frank D'Andrea". The signature is written in a cursive, slightly slanted style.

Frank D'Andrea

Encls: Extract from October 5, 2021 submissions  
cc: EB-2021-0110 parties

**IN THE MATTER OF** the *Ontario Energy Board Act, 1998*, S.O.  
1998, c. 15 (Sched. B) (the Act);

**AND IN THE MATTER OF** an application by Hydro One  
Networks Inc. for an order or orders made pursuant to section  
78 of the Act, approving or fixing just and reasonable rates for  
the transmission and distribution of electricity.

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**HYDRO ONE NETWORKS INC.**

**SUBMISSION**

**OEB File No. EB-2021-0110**

**October 5, 2021**

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1 in this application. On the other hand: if PWU’s counsel chooses to provide the affidavit, there is  
2 no suggestion that PWU has had or will have any difficulty finding other representation for its  
3 labour negotiations – PWU’s counsel has repeatedly indicated that the union typically uses other  
4 counsel in any event, and the OEB’s paramount concern here should be to ensure the protection  
5 of confidential information (not which choice of counsel the union will have for future  
6 negotiations). For these reasons, there is no material unfairness to the PWU if the OEB orders  
7 the requested protocols.

8  
9 The OEB should err on the side of ensuring the protection of the information in the Appendix  
10 and avoiding the risk of harm and prejudice, and should also avoid any perception that its  
11 processes do not provide adequate protection. The unions’ external counsel should therefore  
12 be required to provide an affidavit (or sworn declaration or other equivalent form of  
13 confirmation on the record) that it is arms length from the unions and is not, and will not be,  
14 involved in any way in collective bargaining activities on behalf of the union during the rate  
15 period covered by this application.

#### 16 17 **4.0 HYDRO ONE’S RIGHT TO DELIVER ANY NECESSARY REPLY EVIDENCE**

18 At the August 12, 2021 stakeholder session hosted by OEB staff and again in its correspondence  
19 to the OEB dated September 16, 2021<sup>12</sup>, Hydro One suggested that the timetable in this matter  
20 should contemplate and set the timing for delivery of any reply evidence by Hydro One,  
21 following receipt of OEB Staff’s (and any intervenors’) responding evidence. In Hydro One’s  
22 view it is appropriate and more efficient to raise this point and address it in the timetable at the  
23 outset of the proceeding, rather than waiting until after the receipt of responding evidence. An  
24 entitlement to deliver any necessary and proper reply evidence is an important element of the  
25 right to natural justice and procedural fairness, and is necessary to ensure that Hydro One’s and  
26 OEB Staff’s econometric experts are placed on equal and fair footing.

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<sup>12</sup> Hydro One letter to the OEB dated September 16, 2021.

1 In their submissions on this issue, with the exception of VECC, none of the intervenors has  
2 objected to Hydro One’s request to deliver reply evidence (though some intervenors have  
3 requested accompanying conditions, including an opportunity to deliver interrogatories in  
4 respect of any reply evidence):

- 5 • OFA: indicated it supports Hydro One’s request for reply evidence, including because it  
6 would allow other parties to properly prepare for cross-examination at the hearing;
- 7 • SEC and CCC: indicated that they do not object to the request for reply evidence,  
8 provided that there be an opportunity to ask interrogatories on any reply evidence –  
9 and SEC also requested the following two additional points or conditions: (i) that any  
10 reply evidence be limited to proper reply, and (ii) that there be an abeyance or “clock  
11 stopping” of the timetable to accommodate this step in the process;
- 12 • VECC: does not support reply evidence, suggesting it should be sufficient for Hydro One  
13 to be permitted to ask questions about OEB staff’s responding evidence and respond to  
14 it by way of argument at the end of the case; and
- 15 • the remaining intervenors made no submissions on, or objection to, Hydro One’s reply  
16 evidence request.

17  
18 OEB Staff, in its submissions, noted that the OEB has the power to determine its own procedure  
19 and practices and submitted that it is “not necessary” for the OEB to provide for any reply  
20 evidence. OEB Staff pointed to rule 13A.04 which provides that the OEB may require experts to  
21 confer in advance of a hearing or to testify together as a joint panel at a hearing. However,  
22 those potential processes leading up to, or at, the oral hearing are not substitutes for the right  
23 to deliver any necessary reply evidence.

24  
25 Further and importantly, as a matter of law, the OEB is required to ensure that its processes  
26 comply with the rules of natural justice and procedural fairness – the OEB cannot deny an  
27 applicant procedural fairness, or any fundamental elements of it (regardless of which specific  
28 processes may or may not be expressly provided for in the OEB’s own rules). OEB Staff further  
29 submitted that if reply evidence is permitted, it and intervenors should at a minimum be

1 permitted to ask interrogatories on any reply evidence.<sup>13</sup> We will further address OEB Staff's  
2 (and also VECC's) submissions below.

3  
4 A fundamental element of the rules of natural justice and procedural fairness – to which the  
5 OEB is subject – is the right of a party to know an opposing party's case/evidence against it and  
6 be given a fair opportunity to respond to it. Accordingly, when an opposing party (in this  
7 context, OEB Staff or an intervenor) delivers responding evidence that raises any new points or  
8 issues (that could not reasonably have been anticipated and dealt with in the applicant's initial  
9 evidence), the applicant is entitled to deliver reply evidence responding to the new points or  
10 issues raised by the other party. This includes delivery of a reply expert report responding to  
11 new points or issues raised by the responding report of the opposing expert.<sup>14</sup> This is particularly  
12 important in respect of expert evidence because experts are required to set out all of their  
13 opinions on which they intend to testify in a report, so that the tribunal and other parties have  
14 advance disclosure of their intended testimony and can properly prepare for cross-examination  
15 at the hearing.

16  
17 In the context of this application, Hydro One needs to be given an opportunity, as a matter of  
18 basic fairness, to deliver any necessary and proper reply report from its econometric expert,  
19 Clearspring Energy Advisors (Clearspring) in response to the report that is expected to be  
20 delivered by OEB Staff's econometric expert, Pacific Economics Group (PEG). The opportunity to  
21 deliver a reply report is required because of the staggered exchange of expert reports in this  
22 application:

- 23 • Clearspring has already delivered its Benchmarking and Productivity Research report,  
24 dated July 30, 2021, as part of Hydro One's pre-filed evidence. When it delivered its

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<sup>13</sup> OEB Staff also submitted that, in addition to interrogatories, the OEB should also consider whether the timetable should provide for any sur-reply evidence from its expert. In our submission there is no need to do so, certainly not at this stage of the process. We further address this point below.

<sup>14</sup> Robert W. Macaulay and James L. H. Sprague, *Practice and Procedure Before Administrative Tribunals* (Toronto: Carswell, 2004) (loose leaf updated 2021, release 9), Appendix WP; *Tsleil-Waututh Nation v. Canada (Attorney General)*, 2018 FCA 153 at paras. 318-320; *Tomagatick v. Ontario (Ministry of the Environment)*, 2009 O.E.R.T.D. No. 3 at paras. 37-39; *Brand v. Workers' Compensation Board of British Columbia* (1993), 32 Admin. L.R. (2d) 89 at paras. 8-10 (B.C. Sup. Ct.); *Kane v. Bd. of Governors of U.B.C.*, [1980] 1 S.C.R. 1105, pp. 1113-1114, 1116; *C.N. Railway v. R.*, 2002 BCSC 1669 at paras. 25-26.



1 report, Clearspring did not know (and had no way of knowing) what analyses PEG would  
2 do, or what PEG’s opinions would be in this matter in respect of Hydro One’s cost  
3 performance or total factor productivity, or what additional issues PEG might raise in its  
4 report. So Clearspring had no opportunity to address those points, and will not have  
5 any such opportunity until after it gets PEG’s report.

6 • PEG, on the other hand, has now received Clearspring’s report. So PEG has a full  
7 opportunity to consider Clearspring’s work (including its working papers) and opinions,  
8 and to respond to them by way of a responding report. In addition, PEG can also do its  
9 own analyses and provide its own opinions regarding Hydro One’s cost performance and  
10 total factor productivity, and PEG may also in its responding report raise other new  
11 issues not addressed by Clearspring. In fact, in its letter to the OEB dated September 24,  
12 2021, OEB Staff has expressly indicated that PEG will provide “one or more reports” and  
13 in its report(s) besides responding to Clearspring’s work, PEG’s work:

14  
15 “may include new analyses on Hydro One’s cost performance. PEG will also  
16 review Hydro One’s proposed custom plan designs and parameters for both  
17 Transmission and Distribution, and include comparisons with other incentive  
18 rate-setting plan designs approved in Ontario and some other North American  
19 jurisdictions.”

20  
21 In other words, OEB staff has confirmed that PEG may in its report(s) raise new points or issues  
22 beyond simply responding to Clearspring’s work (as PEG has also done in certain other recent  
23 rate application proceedings).<sup>15</sup>

24 • Clearspring will for the first time see PEG’s analyses and opinions and working papers,  
25 and any new points and issues and comparisons raised by PEG -- including on cost  
26 benchmarking, TFP analyses and any other issues in respect of Hydro One’s plan design  
27 – when PEG delivers its responding report. Therefore, the only opportunity Clearspring

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<sup>15</sup> OEB Staff’s letter to the OEB dated September 24, 2021, pgs 1-2

1 would have to respond to any such new points or issues raised by PEG is by way of a  
2 reply report.

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4 Thus, in order to ensure that both sides' experts are on an equal and fair footing, meaning that  
5 they both are given an opportunity to see the other's analyses and opinions (and working  
6 papers) and respond to them, there must be an opportunity for Clearspring to deliver a reply  
7 report (if necessary) responding to any new points or issues raised by PEG. If Clearspring were  
8 not permitted to do so, the process would be unfair in PEG's and OEB Staff's favour – something  
9 the OEB should ensure is avoided.

10

11 Not only should Clearspring be permitted to deliver any necessary reply report as a matter of  
12 basic procedural fairness to which Hydro One is entitled as an element of fully presenting its  
13 case and being heard by the OEB, but also as a practical matter it is useful to the process and fair  
14 to other parties to receive any reply report. A reply report provides advance disclosure (prior to  
15 the oral hearing) of Clearspring's views in response to the new points or issues raised by PEG.  
16 This enables other parties to properly prepare to cross-examine Clearspring, and helps the oral  
17 hearing proceed most efficiently. Any reply report is available to the OEB when it is considering  
18 the evidence in this matter and deliberating.

19

20 Also, the potential delivery of a reply report by Clearspring is not something new in this  
21 application. In other recent rate applications it has similarly done so. In those cases of which  
22 Hydro One is aware – i.e. the last Toronto Hydro application (EB-2018-0165) and the last Hydro  
23 One Transmission application (EB-2019-0082) -- the reply report was admitted in evidence by  
24 the OEB, and parties had the opportunity to cross-examine on it at the oral hearing. In those  
25 cases, the reply report was available for consideration by the OEB in its deliberations and  
26 analysis of the issues.

27

28 In its submissions, OEB Staff has not specifically objected to Hydro One's request but has  
29 submitted that permitting reply evidence is "not necessary in order to effectively and  
30 completely adjudicate" the matters in this application. Hydro One disagrees. For the reasons

1 noted above, an opportunity to deliver reply evidence – a reply report from ClearSpring (or any  
2 other proper and necessary reply evidence in the event OEB Staff or intervenors were to deliver  
3 any other new evidence) – is necessary to ensure Hydro One has a fair opportunity to fully  
4 present its case, and thus to ensure the OEB can fully and completely adjudicate the matters at  
5 issue on this application. If Hydro One and its expert ClearSpring were deprived of this  
6 opportunity, the OEB would not have all relevant evidence before it. And OEB Staff and its  
7 expert should not be given an unfair advantage in this regard, nor should OEB Staff be seeking to  
8 obtain any such advantage.

9  
10 OEB Staff referred in its submissions to rule 13A.04. Although the OEB has the power under that  
11 rule to require experts to confer with each other prior to a hearing, or to present their oral  
12 testimony as part of a joint panel at a hearing, these potential processes are not substitutes for  
13 the right to deliver reply evidence, and that rule cannot permit the OEB to abrogate or deny  
14 Hydro One the right to natural justice and procedural fairness (including the right to fully  
15 present its case).

16  
17 Further, as a practical matter, the potential processes contemplated by that rule (conferring, or  
18 testifying as one panel), would only potentially make sense or be useful *after* ClearSpring had  
19 delivered any reply report. It is only after both sides' experts have had an opportunity to view  
20 the other's work and opinions and respond to them, that it could potentially be useful for them  
21 to confer to see if they might then narrow the points of difference between them. We submit  
22 there is no need at this stage of the proceeding to decide whether it may or may not ultimately  
23 be useful to have the two experts confer or potentially testify as a joint expert panel (which is  
24 not the normal order of testimony in rate applications). Those points could be further  
25 considered and discussed later in the proceeding, leading up to the oral hearing, if the OEB or  
26 parties think it useful to do so.

27  
28 In VECC's submissions, they assert that it should be sufficient for Hydro One to have an  
29 opportunity to ask questions of PEG in respect of its report and make closing argument on it at  
30 the end of the case. Respectfully, that submission by VECC's consultant misses the important

1 procedural fairness point here, and fails to appreciate the significance of the difference between  
2 evidence and argument. For the same reason that there is a right to deliver reply argument,  
3 there is also a right to deliver reply evidence during the evidence phase of the proceeding.  
4 VECC's submissions are an invitation to the OEB to improperly deny Hydro One natural justice  
5 and procedural fairness.

6  
7 While Hydro One appreciates it will have an opportunity to ask PEG questions about its evidence  
8 and opinions, such questions would only elicit further evidence from PEG in response to the  
9 questions. That is, of course, very different than *Clearspring* providing its views/evidence in  
10 response to PEG. And the ability of Hydro One to make closing argument about PEG's evidence  
11 is also very different than, and is not a replacement for, having Clearspring's responding  
12 evidence. Hydro One cannot deliver any new commentary or evidence from Clearspring as part  
13 of its closing argument – in argument, Hydro One can only refer to and make submissions on the  
14 evidence that is in the record, and the OEB can only take into account evidence in the record in  
15 reaching its decision. This highlights why Hydro One needs to be given the opportunity to  
16 deliver reply evidence in order to fully make its case, and to give the OEB a full evidentiary  
17 record on which to decide the matters at issue.

18  
19 VECC's consultant also suggests that Clearspring might not deliver proper reply evidence. There  
20 is no basis for that submission. If VECC ends up being of the view that any reply report does not  
21 constitute proper reply, VECC (or any other party) will of course be free to raise any objection to  
22 the report and its admissibility at the appropriate time, and the OEB can deal with any such  
23 objection at that point. That is not a reason to deprive Hydro One and Clearspring of the  
24 entitlement to deliver proper reply evidence.

25  
26 In respect of the request from OEB Staff and a number of the intervenors that they be given an  
27 opportunity to deliver interrogatories on any reply evidence: Hydro One has no objection to that  
28 request, provided any such interrogatories are limited to questions on the reply evidence. In EB-  
29 2018-0165, the OEB did provide an opportunity for interrogatories on the reply report

1 Clearspring<sup>16</sup> delivered in response to the PEG report. Those interrogatories were asked shortly  
2 after delivery of the reply report and were answered in a short amount of time -- the same  
3 could be done in this case.

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5 For all of the above reasons, including Hydro One's fundamental right to procedural fairness –  
6 and having regard to the fact that most of the parties have raised no objection to Hydro One's  
7 request – Hydro One respectfully requests that it be permitted to deliver any necessary reply  
8 evidence, and suggests it would make most sense and be efficient to provide for this step in the  
9 timetable at this stage.

10

11 In response to SEC's other requested terms or conditions relating to this issue: (i) Hydro One  
12 agrees that any reply evidence would be limited to proper reply, i.e. evidence in response to  
13 new points or issues raised in the responding evidence; (ii) we submit that the various schedules  
14 being considered by the OEB should provide sufficient time for delivery of a reply report, and  
15 there should be no need for the proceeding to be held in abeyance (or for any "clock stopping")  
16 to accommodate this step. Hydro One should not be penalized in any way for requesting and  
17 being given an opportunity to fully present its case.

18

19 In particular in respect of the schedule: assuming a blue page update will be required, the  
20 potential hearing schedules proposed by the OEB in that scenario should permit plenty of time  
21 for the delivery of reply evidence and a brief opportunity for interrogatories on it – those steps  
22 could be completed well in advance of the start of the oral hearing. Alternatively, in the event a  
23 blue page update were not required, reply evidence could still be worked into the timetable in  
24 advance of the oral hearing, and in this scenario Hydro One would request that PEG deliver its  
25 responding report by the time of the technical conference and that PEG deliver its working  
26 papers simultaneously with its report so that Clearspring can start considering and be in a  
27 position to deliver any necessary reply in a timely way. In either scenario, Clearspring's reply

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<sup>16</sup> The Clearspring principal, Mr. Fenrick, was at that point at a different firm, PSE, and so his report was delivered by PSE.

1 should be delivered sometime after PEG delivers its interrogatory responses (so that Clearspring  
2 can take them into account in preparing any reply report).

3  
4 Finally on this issue, while OEB Staff submitted that at a minimum parties should be given an  
5 opportunity to ask interrogatories on any reply report – to which Hydro One does not object – it  
6 also suggested that the OEB should provide for the delivery of a further sur-reply report by PEG.  
7 Hydro One disagrees with that suggestion. It is only in rare cases where sur-reply evidence can  
8 ever become necessary or appropriate. That is because sur-reply can only be required and  
9 proper in the unlikely event that the reply report itself raises new points or issues that were not  
10 previously raised and that could not have been reasonably anticipated and dealt with. That is  
11 highly unusual, especially in this context when Clearspring has already delivered its initial report  
12 and PEG has a full opportunity to consider and respond to it. In other administrative tribunal  
13 and court proceedings, timetables do not typically provide for sur-reply evidence (unlike reply  
14 evidence) – just like how they do not (and there is no need to) provide for sur-reply argument.  
15 If, and in the unlikely event, OEB Staff is subsequently of the view, after receiving any  
16 Clearspring reply report, that it actually raises new issues (as opposed to simply responding to  
17 the issues raised by PEG) and that a sur-reply report is appropriate and necessary, OEB Staff can  
18 always raise that request at that stage and Hydro One (and other parties) – and the OEB – could  
19 consider and address it at that point.

## 20 21 **5.0 CONCLUSION**

22 In summary, for all the reasons discussed above, Hydro One submits that:

- 23 • a blue page update is appropriate and should be provided;
- 24 • the Appendix meets the requirements to be granted confidential treatment, and the  
25 protocols described in Section 3.0 above are warranted; and
- 26 • it is entitled to deliver any necessary reply evidence as a matter of basic procedural  
27 fairness, and that the delivery of any such evidence should be incorporated into the  
28 timetable.