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BY EMAIL

April 28, 2022

Frank D'Andrea  
Vice President, Reliability Standards  
And Chief Regulatory Officer  
Hydro One Networks Inc.  
483 Bay Street,  
Toronto, Ontario, M5G 2P5

Dear Mr. D'Andrea:

**Re: Timetable under Procedural Order No.5  
Hydro One Networks Inc.'s 2023-2027 Application for Transmission and  
Distribution Rates (JRAP)  
Ontario Energy Board File (OEB) Number: EB-2021-0110**

On April 14, 2022, the OEB issued its Decision on Confidentiality Requests and Procedural Order No. 5 (PO#5). PO#5 re-established a timetable for this proceeding. Hydro One had advised the OEB on February 4, 2022 that it would not be able to proceed with the Settlement Conference originally scheduled to begin on February 7, 2022. The OEB placed this proceeding in abeyance on February 4, 2022 until Hydro One filed an inflation-related update to its application. Hydro One then filed two updates to the application, relating to inflation and its load forecast.

This letter is in response to Hydro One's letter of April 21, 2022 (the April 21 letter) regarding the timetable for next steps in this proceeding as established under PO#5, in which it expressed concerns about certain steps and their timing, particularly the expert conferral process under rule 13A.04 and related steps. Hydro One also made suggestions regarding the steps and deadlines set out in PO#5 which, in its view, would improve the efficiency of the process that was interrupted by Hydro One in February.

In summary, the OEB will not be altering the procedural schedule set out in PO#5, for the reasons set out below. Parties intending to file interrogatories on the new

Clearspring report filed on April 19, 2022 should not file them with the interrogatories on Hydro One's March 31, 2022 and April 8, 2022 evidence updates, due by May 2, 2022. They should be filed with any interrogatories on the experts' joint statement – those interrogatories are due by Thursday, July 7, 2022.

The specific steps outlined in PO#5 to which the concerns in the April 21 letter relate are summarized below:

- First, on April 19, 2022, Hydro One filed Clearspring Energy Advisors' report dated March 31, 2022 (the new Clearspring report) on the record.
- Second, in PO#5, among other matters, the OEB also established that OEB staff and intervenors were to request any relevant information and documentation from Hydro One with respect to its March 31, 2022 and April 8, 2022 application updates that is in addition to the evidence already filed, by written interrogatories filed with the OEB and served on all parties, by May 2, 2022.
- Finally, consistent with Hydro One's request in its April 1, 2022 letter, the OEB established a process under rule 13A.04 of the OEB's *Rules of Practice and Procedure* by which Pacific Economics Research LLC (PEG) and Clearspring were to confer with each other for the purposes of preparing a joint statement outlining the key issues and points of agreement and disagreement on those issues and identifying the portions of their respective reports on which they would continue to rely. This joint statement is to be filed by June 23, 2022. The OEB also provided that interrogatories on the joint statement could be asked by parties and responses provided by Hydro One.

Hydro One's concerns in the April 21 letter related to four areas:

1. The Timing of the Expert Conferral in relation to the Settlement Conference
2. The Length of Time Required for the Experts to Confer
3. Interrogatories on the Experts' Joint Statement
4. Settlement Conference Timing and Subsequent Steps

## General

The OEB will first make some general comments about the approach that was taken in establishing the procedural steps that were included in PO#5.

The OEB notes that the sequence of procedural steps leading to the settlement conference in PO#5 is generally the same as that set out in Procedural Order No. 1 (PO#1)<sup>1</sup> – discovery on the application through written interrogatories; technical conference; filing of expert evidence; discovery on expert evidence; and settlement conference. This proceeding was following the timeline set out in PO#1 until Hydro One advised that it would not be able to participate in the settlement conference because it needed to update its evidence.

The OEB will now comment on each of the specific concerns raised in the April 21<sup>st</sup> letter:

### The Timing of the Expert Conferral in relation to the Settlement Conference

Hydro One suggests that it is appropriate and efficient for the parties to attend the settlement conference prior to completing the rule 13A.04 process.

The OEB does not agree. Starting with PO#1, the OEB has consistently scheduled the discovery process on the expert evidence after the technical conference and prior to the settlement conference. This was based on the OEB's determination that understanding the outcome of this discovery process would be beneficial in attempting to attain a settlement.

In its April 1, 2022 letter, Hydro One proposed placing a new report from Clearspring on the record of this proceeding; allowing the experts to discuss their respective reports; and having them produce a joint statement. In PO#5, the OEB accommodated this proposal, and directed Hydro One to place the new Clearspring report on the record, which has been done. Given the new evidence from Clearspring, the OEB provided for a discovery process on the joint statement when it is filed and, as noted below, that discovery process will also allow for interrogatories on the new Clearspring report.

As discussed earlier, it was determined that the outcome of this discovery process would provide helpful input to the settlement discussions. The suggestion in Hydro One's April 21 letter that the settlement conference take place in the absence of the joint statement implies that it sees little value in the joint statement, notwithstanding that Hydro One recommended its preparation and filing. The result would be that Hydro One will have placed new Clearspring evidence on the record, but the participants in the settlement conference will not have a report that sets out the areas on which

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<sup>1</sup> September 17, 2021

Clearspring and PEG agree and disagree (including with regard to the new Clearspring evidence). The OEB finds the notion that the joint statement only has merit if there is no settlement on the matters addressed by Clearspring and PEG to be unhelpful, and notes that this potentially impairs the settlement process in respect of those matters. The OEB will not convene the settlement conference in advance of the filing of the joint statement and discovery on that report.

#### The Length of Time Required for the Experts to Confer

The April 21 letter noted that PO#5 gives Clearspring and PEG ten weeks to confer and prepare the joint statement under rule 13A.04. This period ran from April 14 to June 23, 2022. The April 21 letter expressed the view that this process could be completed in less time, specifically within 4 to 6 weeks from the date of PO#5 or by May 27, 2022, regardless of whether this step happens before or after the settlement conference. The April 21 letter asked the OEB to consider reducing the timing for this step in this way, submitting that this would be helpful in ensuring that the timetable and remaining steps can proceed as efficiently as possible.

The OEB notes that the joint statement was purposely scheduled to be filed after the completion of the technical conference undertakings, which would be June 16, 2022. The OEB established this schedule because issues related to the expert evidence are likely to come up during the technical conference which may influence the content of the joint statement.

#### Interrogatories on the Experts' Joint Statement

Hydro One's April 21 letter observed that PO#5 provided for interrogatories on the Clearspring / PEG joint statement, which was a new step not included in the prior procedural orders. The letter noted that the Decision on Blue Page Update, Confidentiality Request and Reply on Expert Evidence and Procedural Order No. 2 (PO#2)<sup>2</sup> and the prior timetable did not provide for an interrogatory process in connection with the rule 13A.04 conference. The letter stated that this was consistent with the fact that the joint statement is not expected to comprise new substantive evidence by either of the experts.

The April 21 letter further noted that the two experts had already exchanged detailed reports setting out their respective evidence on the issues and stated that, after conferring, the joint statement is expected to simply identify any points of agreement and remaining points of disagreement on the issues and identify the portions of their reports on which the experts continue to rely for purposes of the hearing. The April 21

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<sup>2</sup> October 25, 2021

letter took the position that the joint statement itself will not be new substantive evidence that would require further interrogatories.

The April 21 letter stated that the only new substantive expert evidence that has been placed on the record is the new Clearspring report and recognized that it would be appropriate and useful for parties to have the opportunity to ask interrogatories on this report.

The April 21 letter suggested that since the parties have had this report since April 1, 2022, any interrogatories on it could be asked at the same time as interrogatories on the application amendment evidence. The April 21 letter added that if a few additional days were needed to prepare any such interrogatories, Hydro One would have no objection to that timing.

For the above reasons, the April 21 letter argued that it would enhance and streamline the process for the timetable to be adjusted by removing the step for interrogatories on the rule 13A.04 joint statement, and instead providing for interrogatories on the new Clearspring report filed by May 2, 2022, or possibly shortly after, and responses by May 16, 2022. The April 21 letter expressed the view that if this adjustment to the timetable is made, it would mean that the rule 13A.04(a) expert conferral process could be completed with the filing of the joint statement in late May.

The OEB agrees that the new Clearspring report should be subject to appropriate discovery, but as the new Clearspring report is new evidence, it would also be fair to subject the joint statement, which the OEB anticipates will include areas of agreement and disagreement in relation to the new Clearspring report, to appropriate discovery at the same time.

The OEB does not agree that the time for parties to ask interrogatories on the new Clearspring report is as part of the interrogatory process established for Hydro One's application updates. The OEB believes that it is instead more appropriate, and more efficient from a process perspective, for parties to ask any interrogatories they may have on the new Clearspring report, which represents new evidence, as part of the interrogatory process established for the joint statement. Therefore, the OEB directs the parties to this proceeding to submit any interrogatories related to the new Clearspring report as part of the discovery process on the joint statement, and not (as Hydro One has suggested) as part of the discovery process on Hydro One's updated evidence. This is expected to streamline the process and avoid duplication. The OEB expects that any interrogatories on the new Clearspring report will be filed by Thursday, July 7, 2022, in conjunction with interrogatories on the joint statement.

### Settlement Conference Timing and Subsequent Steps

In the April 21 letter, Hydro One suggests that based on its proposed changes to the schedule, the settlement conference could proceed in late June 2022. Furthermore, the April 21 letter suggests that based on the timing and depending on the outcome of the settlement conference, the subsequent steps in the process could be adjusted accordingly based on the OEB's metric with completion earlier than under the illustrative timetable in PO#5. The April 21 letter concludes that such an approach would be consistent with and in furtherance of the OEB's objective, emphasized in previous procedural orders, of ensuring efficiency as much as possible and a streamlined process for the remaining steps in the circumstances.

The OEB reminds Hydro One that the steps that the OEB has taken since Hydro One advised, on the eve of the settlement conference, that it would not participate in the settlement conference, including the modifications the OEB has made to the procedural steps in this application, have come about as a direct result of the actions and requests of Hydro One. Hydro One advised on Friday, February 4, 2022, that it was unable to proceed with the settlement conference that was to begin on Monday, February 7, 2022, and requested that the conference be postponed due to the need to update its application to reflect material changes in capital and OM&A expenses. The OEB granted Hydro One's request and postponed the settlement conference indefinitely, placing the application in abeyance, effective February 4, 2022. Hydro One filed the amended application on March 31, 2022, almost two months later, and added an update to its load forecast.

The second modification was related to Hydro One's request of April 1, 2022 that it be provided the opportunity to reply to PEG's evidence. As part of this request, Hydro One proposed the joint meeting and joint statement as contemplated under Rule 13A.04.

In establishing the schedule outlined in PO#5, the OEB accommodated the above requests by Hydro One, while also establishing a new procedural timeline that was both efficient and fair to all parties. The schedule set out in PO#5 provides a reasonable balance between efficiently accommodating the requests of Hydro One and completing the record of this proceeding in a manner that is fair to all parties and provides them with material that will be of use to them in the rescheduled settlement conference.

The OEB also notes that in addition to the reasons for the sequence of steps described in the previous sections, the start date of the settlement conference was also impacted by the fact that some parties participating in this proceeding are also involved in other previously scheduled OEB proceedings occurring in the same timeframe.

The OEB will not alter the procedural steps set out in PO#5. The direction that OEB staff and parties file any interrogatories on the updated Clearspring report concurrently

with interrogatories on the Clearspring / PEG joint statement does not alter the timeline set out in P.O. #5.

**DATED** at Toronto, April 28, 2022

**ONTARIO ENERGY BOARD**

Nancy Marconi  
Registrar