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October 7, 2014

Reply To: Thomas Brett  
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Our File No. 134380

**VIA RESS, EMAIL AND COURIER**

Ontario Energy Board  
2300 Yonge Street  
Suite 2700  
Toronto Ontario  
M4P 1E4

Attention: Kirsten Walli,  
Board Secretary

Dear Ms. Walli:

**Re: Suncor Energy Products Inc. ("Suncor") – Supplemental Argument-in-Chief  
Board File No. EB-2014-0022**

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Pursuant to Procedural Order No. 7, please find enclosed Suncor's Supplemental Argument-in-Chief.

Yours sincerely,

**FOGLER, RUBINOFF LLP**

A handwritten signature in dark ink, appearing to read "Tom Brett", written over the printed name.

Thomas Brett

TB/dd

Encls.

CC: All Parties



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Ontario Energy Board  
2300 Yonge Street  
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Attention: Kirsten Walli,  
Board Secretary

Dear Ms. Walli:

**Re: Addendum to Suncor's Argument-in-Chief, filed August 25, 2014  
Board File No. EB-2014-0022**

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Suncor is of the view that HONI did not file any new evidence in response to Board Staff IRs other than perhaps the draft of the Perpendicular Crossing Operational Agreement, including Schedule B, a Form of Emergency Services Agreement.

The remainder of the reply was submissions, not evidence.

As for the two Agreements, as HONI noted at line 36 of page 4 of its IR response to Board Staff, the only issue remaining between the parties is the indemnity clause between the parties. HONI insists that Suncor agree to its proposed indemnity clause, set out at page 7 of its proposed Emergency Services Agreement, which reads as follows:

"Except with respect to any damages not caused by the Services Recipient and directly incurred by the Services Provider while the Services Provider is en route to the Assets of the Services Recipient requiring the Emergency Services, the Services Recipient shall be liable for and shall indemnify the Services Provider and the Services Provider's successors and assigns, shareholder, directors, officers, employees, contractors and agents (collectively, the "Indemnitees") from and against any and all any loss, damage or injury (including death) to persons or property and any and all actions, manner of actions, causes of actions, damages, suits, proceedings, claims, debts, obligations, liabilities,

expenses, demands, penalties, fines and costs arising therefrom and connected therewith, of any nature or kind whatsoever (including, without limitation, any economic loss, loss of goodwill, loss of profit or for any special, indirect or consequential damages), which are attributable to, based upon or related to, any actions or omissions of the Services Provider including, without limitation, the Services Provider's performance and/or non-performance of its obligations under this Agreement (and any amendments or additions thereto that are mutually agreed to in writing), whether arising from or based on breach of contract, tort, negligence, strict liability or otherwise and the Services Recipient does hereby for itself and its successors and assigns release and forever discharge the Indemnitees from and against any and all such aforementioned liability" (our emphasis).

This indemnity agreement is not fair and balanced, in that, it requires Suncor to indemnify HONI even in circumstances where HONI is in breach of the Agreement, or is negligent or commits another tort in performing its obligations under the Agreement, or does something where it is held liable because of the doctrine of strict liability. HONI refuses to consider any change to those provisions.

This clause is unacceptable to Suncor, and would not be found in any reasonable commercial agreement.

By asking the Board to condition Suncor's right to commence construction, or to defer approving the Leave to Construct until HONI and Suncor have signed the two Agreements, when the only issue outstanding, by HONI's own admission is the indemnity clause, HONI appears to be using its quasi-monopoly status to force Suncor to sign a blatantly unfair agreement. That is inappropriate.

Suncor urges the Board not to do as HONI asks, but rather, to allow the proceeding and, if Leave to Construct is granted, the project, to continue to their normal conclusions.

Yours sincerely,

**FOGLER, RUBINOFF LLP**

Thomas Brett  
TB/dd

CC: All Parties