



EB-2017-0007

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

AND IN THE MATTER OF a Notice of Intention to Make an Order for Compliance and Payment of an Administrative Penalty against Planet Energy (Ontario) Corp. (ER-2011-0409) (GM-2013-0269).

PRE-HEARING CONFERENCE MEMORANDUM

August 4, 2017

A pre-hearing conference in this matter was held at the Ontario Energy Board (OEB) on July 11, 2017. Vice-Chair Ken Quesnelle presided. The two parties – Planet Energy (Ontario) Corp. (Planet Energy) and the OEB Enforcement Team – attended, as did OEB counsel and OEB case management staff. This pre-hearing conference memorandum is being filed in accordance with Rule 18.06 of the OEB's *Rules of Practice and Procedure for Enforcement Proceedings*.

The following was agreed by the parties and accepted by the OEB:

1. The motion for third party disclosure brought by Planet Energy will be heard orally on **August 14, 2017 at 10:00 a.m.**, at the OEB's offices at 2300 Yonge Street on the 25th Floor.
2. The main legal issues to be determined in the enforcement proceeding are:
 - a. Are J.M. and K.N. "salespersons" for Planet Energy, within the meaning of the *Energy Consumer Protection Act, 2010* (ECPA)?
 - b. Is Planet Energy liable under the ECPA, Ontario Regulation 389/10 (the Regulation), the *Electricity Retailer Code of Conduct* and the *Code of Conduct for Gas Marketers* (the Codes) for the acts and omissions of J.M.

- and K.N. acting on its behalf?
- c. Do the circumstances under which J.M. and K.N. enrolled consumers into energy contracts with Planet Energy constitute “door-to-door” sales for the purposes of the ECPA, the Regulation and the Codes?
 - d. Do the circumstances under which J.M. and K.N. enrolled consumers into energy contracts with Planet Energy constitute contracts entered into over the internet for the purposes of the ECPA, the Regulation and the Codes?
 - e. Did Planet Energy breach the ECPA, the Regulation and/or the Codes or any part thereof? No further particularization of this question is required based on the advice of the OEB Enforcement Team that all of the breaches alleged in paragraphs 1 through 6 and 8 of the Notice of Intention are alleged with respect to each of the 45 contracts at issue.
 - f. If the OEB determines that Planet Energy breached the ECPA, the Regulation and/or the Codes or any part thereof, are the remedies sought by the OEB Enforcement Team, including an administrative penalty in the amount of \$450,000 and restitution, appropriate?
3. The OEB Enforcement Team provided further disclosure to Planet Energy on the date of the pre-hearing conference and advises that it has now produced all documents and communications in the possession and control of OEB Staff and Enforcement Team dated between January 1st and June 1st, 2016, between OEB Staff and Enforcement Team, Staff’s four anticipated witnesses, and Planet Energy, which relate to:
- the complaints of R.A. or R.H.;
 - K.N. or J.M.; or
 - any of the 45 contracts listed in the Notice of Intention in this matter.
4. The OEB Enforcement Team shall deliver to Planet Energy by **September 18, 2017**, and Planet Energy shall deliver to the OEB Enforcement Team by **October 20, 2017**, the following materials:
- a. a copy of every document that the party intends to produce or enter into evidence in the enforcement proceeding
 - b. a list of the witnesses that the party intends to call
 - c. for each witness that the party intends to call, a witness statement or a summary of the anticipated oral evidence of the witness, prepared in accordance with Rule 17.01

With respect to the documents that are the subject of the pending third party

records motion, OEB Enforcement Team will indicate which (if any) of those documents Staff intends to rely on by September 18, 2017, or within 7 days after they are ordered to be produced by the third parties (if such an order is made), whichever is later. In the event that the OEB Enforcement Team is not able to advise Planet Energy of Enforcement Team's position concerning reliance on the third party documents by October 13, 2017, Planet Energy may advise the OEB Enforcement Team of any supplemental documents and/or witness statements (in response to Staff's position) within 7 days of receiving the Enforcement Team's position on the third party documents.

The OEB Enforcement Team may deliver additional documents and/or witness statements, in reply to the materials delivered by Planet Energy. These additional documents shall be delivered in accordance with the timelines set out in the *Rules*.

5. In advance of the hearing on the merits, the parties will discuss whether the evidence-in-chief of some or all witnesses will be tendered in writing rather than orally, with brief examinations-in-chief and cross-examination to take place at the hearing. The OEB will permit that approach if both parties agree.
6. In advance of the hearing on the merits, the parties will discuss whether to file a joint book of documents with the OEB.
7. In accordance with Rule 10, documents containing personal information will not be placed on the public record. The parties may seek further directions from the OEB in respect of the treatment of such documents at the hearing of Planet Energy's motion or at the hearing on the merits.
8. The parties consent, under Rule 18.07, to have Vice-Chair Quesnelle hear the merits of the proceeding, alone or as part of a panel of OEB Members.
9. The hearing on the merits will commence on **November 14, 2017 at 9:30 a.m.**, at the OEB's offices at 2300 Yonge Street on the 25th Floor. The hearing on the merits will continue, as necessary, on November 16, 17, 27, 28 and 30.
10. The OEB Enforcement Team believes that the public interest favours having an expeditious hearing, but there is no extraordinary urgency in this matter, and so a hearing in November is appropriate in light of the remaining steps to be completed in advance of the hearing.

ISSUED at Toronto, August 4, 2017

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary