

K4.1

Ontario Energy Board

Commission de l'énergie de l'Ontario



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)

AMENDED NOTICE OF INTENTION TO MAKE AN ORDER FOR COMPLIANCE, RESTITUTION AND PAYMENT OF AN ADMINISTRATIVE PENALTY (Notice)

The Ontario Energy Board (OEB), on its own motion under section 112.2 of the *Ontario Energy Board Act, 1998* (Act) intends to make an Order under sections 112.3 and 112.5 of the Act against Planet Energy (Ontario) Corp. (Planet Energy) for compliance with a number of enforceable provisions as defined in section 3 of the Act, including requiring Planet Energy to take immediate and appropriate measures to ensure its salespersons comply with enforceable provisions as defined in section 3 of the Act, to refund monies to affected consumers, and to pay an administrative penalty in the amount of \$450,000.

BACKGROUND

Salesperson J.M.

From approximately 2012-2015, J.M. was an "independent business operator" (IBO) at a multi-level marketing company called ACN. During the relevant period, Planet Energy had an agreement with ACN, whereby ACN's IBOs would sell energy contracts on behalf of Planet Energy. Accordingly all acts, conduct and omissions of ACN and its IBOs, relating in any way to Planet Energy contracts (including the marketing, sale and ability to sell those contracts) are acts, conduct and omissions attributable to Planet Energy.

While an ACN IBO, J.M. sold energy contracts to consumers as a salesperson on behalf of, and made representations to consumers on behalf of, Planet Energy.

J.M. met with consumers in person. If consumers agreed to be enrolled into contracts with Planet Energy, J.M. enrolled consumers into contracts with Planet Energy himself,

using a computer, without the consumers being present. J.M. did not provide consumers with copies of the contract before enrollment.

J.M. completed his online course and testing to become an energy salesperson with another, more experienced ACN IBO assisting him throughout the process, including telling him the correct answers for test questions.

J.M. received no training from Planet Energy or ACN on how the electricity market operates, or the rules and regulations governing the sale of electricity contracts.

J.M. was advised by other ACN IBOs that the energy contracts he would sell on behalf of Planet Energy would save consumers money on their energy bills, and that in his discussions with consumers, he should focus on the savings they would receive. While selling energy contracts on behalf of Planet Energy, J.M. made a representation on behalf of Planet Energy that consumers would save money by switching to Planet Energy.

J.M. was not provided accurate information about the impact of the global adjustment. J.M. normally did not provide consumers with any information on charges such as global adjustments, and if the subject did come up, he relayed false information that he was told by other ACN IBOs about the minimal impact of the global adjustment (and which J.M. believed at the time to be true).

J.M. did not wear ID badges or provide consumers with business cards during his meetings with consumers.

In total, J.M. sold approximately 257 energy contracts as a salesperson on behalf of Planet Energy. A list of all contracts that J.M. entered into is attached to this Notice as Appendix "A".

Salesperson K.N.

For several months in 2015, K.N. was an IBO at ACN who sold energy contracts to consumers as a salesperson on behalf of, and made representations to consumers on behalf of, Planet Energy.

K.N. met with consumers in person. If consumers agreed to be enrolled into contracts with Planet Energy, K.N. entered consumers into contracts with Planet Energy himself, using a computer, without the consumer being present. K.N. did not provide consumers with copies of the contract before enrollment.

K.N. completed his online course and testing to become an energy salesperson with another ACN IBO by his side, assisting him in understanding questions on the test.

K.N. received no training from Planet Energy or ACN on how the electricity market

operates, or on electricity contracts.

K.N. was advised by other ACN IBOs that the energy contracts he would sell on behalf of Planet Energy would save consumers money on their energy bills, and that in his discussions with consumers, he should focus on the savings they would receive. While selling energy contracts on behalf of Planet Energy, K.N. followed this advice and made representations on behalf of Planet Energy that consumers would save money by switching to Planet Energy.

K.N. did not provide consumers with information on charges such as global adjustments beyond telling them it would not go over 9.99 cents per kWh (which he was told by other ACN IBOs, but was not accurate.)

K.N. did not wear ID badges or provide consumers with business cards during his meetings with consumers.

In total, K.N. sold approximately 168 energy contracts as a salesperson on behalf of Planet Energy. A list of all contracts that K.N. entered into is attached to this Notice as Appendix "B".

ALLEGATIONS OF NON-COMPLIANCE

Providing false, misleading or incomplete information to consumers

1. Planet Energy has engaged in an unfair practice and breached section 10 of the *Energy Consumer Protection Act, 2010*, S.O. 2010, c. 8 (ECPA), sections 5(1)(i), 5(1)(v), 5(1)(viii), 5(4), 5(5), and 5(14) of the Ontario Regulation 389/10 (Regulation), and sections 1.1(d), (f) and (h) of the *Electricity Retailer Code of Conduct* and the *Code of Conduct for Gas Marketers, Part B (Codes)*, as a result of the actions of its salespersons, J.M. and K.N., acting on behalf of Planet Energy as described above, including by:
 - a) misleading consumers into believing that they will save money on their electricity or gas bill by entering into a contract with Planet Energy; and
 - b) failing to discuss or explain all of the charges to be paid under the contract, including the global adjustment.

Inadequate training for salespersons

2. Planet Energy engaged in an unfair practice, breached the conditions of its licences under section 7 of Ontario Regulation 90/99, and breached section 10 of the ECPA, section 5(14) of the Regulation and sections 5.1 to 5.4 of the Codes by failing to ensure that the training for its salespersons, J.M. and K.N., included:
- a) training in relation to all of the legal and regulatory requirements applicable to the sales process, contract verification, consumer cancellation rights and the renewal or extension process, in each case as they pertain to low volume consumers; and
 - b) adequate and accurate material covering the following areas as they pertain to low volume consumers:
 - i. electricity market structure;
 - ii. how to complete a contract application;
 - iii. behaviour that constitutes an unfair practice;
 - iv. use of business cards;
 - v. use of identification badges;
 - vi. disclosure statements;
 - vii. price comparisons;
 - viii. verification;
 - ix. consumer cancellation rights;
 - x. renewals and extensions;
 - xi. how electricity pricing works, including the pricing of electricity supplied by electricity distributors;
 - xii. persons with whom a retailer may enter into, verify, renew or extend a contract; and
 - xiii. all relevant Board regulatory requirements not already covered above.
3. Planet Energy engaged in an unfair practice, breached the conditions of its licences under section 7 of Ontario Regulation 90/99, and breached section 10 of the ECPA, section 5(14) of the Regulation and sections 5.6(a) and (e) of the Codes, by failing to ensure that that the training test taken by its salespersons, J.M. and K.N., assessed their knowledge of the required elements, and was conducted in a manner that would ensure persons taking the training test would not be able to share questions and answers with one another while taking the training test.

Failure to meet requirements for door-to-door sales

4. Planet Energy engaged in an unfair practice, breached the conditions of its licences under sections 5 and 6 of Ontario Regulation 90/99, and breached sections 10 and 15 of the ECPA, sections 5(6), 5(7) and 10 of the Regulation, and section 2 of the Codes as a result of the actions of its salespersons, J.M. and K.N., acting on behalf of Planet Energy, because these salespersons enrolled consumers into contracts while retailing to consumers at a place of business other than Planet Energy's place of business, including by physically meeting with consumers during the time they agreed to be enrolled, without:
- a) offering a business card in the proper form (or at all), contrary to section 10 of the ECPA, section 5(6)(ii) of the Regulation and section 1.1(b) of the Codes;
 - b) prominently displaying an identification badge in the proper form (or at all), contrary to section 10 of the ECPA, section 5(6)(i) of the Regulation and section 1.1(c) of the Codes;
 - c) providing a text-based copy of the contract, disclosure statement and price comparison at the time the contract was entered into or immediately thereafter, contrary to sections 11 and 12(1)(a) of the ECPA, and sections 5(7) and 10(1) of the Regulation; and
 - d) verifying the contracts, contrary to section 15 of the ECPA.

Failure to meet requirements for contracts and disclosure statements

5. Planet Energy breached sections 11 and 12(2) of the ECPA, and sections 7(1)17, 7(1)18, 8(1)(d), 8(3)(d) of the Regulation as a result of the actions of its salespersons, J.M. and K.N., acting on behalf of Planet Energy, because these salespersons enrolled consumers using contracts, disclosure statements and price comparisons that did not require signatures by consumers and that were not, in fact, signed by consumers.
6. In the alternative, even if the consumers enrolled by J.M. and K.N. are considered to have entered into contracts over the internet (which is denied), Planet Energy breached sections 11 and 12(2) of the ECPA, and sections 9(c), 9(e), 9(f), and 9(h) of the Regulation, as a result of the actions of its salespersons, J.M. and K.N., acting on behalf of Planet Energy, because these internet contracts did not include any opportunities for consumers to review, print, check-off boxes on, or accept the contracts.

Seeking to impose an improper cancellation fee

7. Planet Energy engaged in an unfair practice, breached section 19(4) of the ECPA and sections 5(1)(xi) and 21(d) of the Regulation when, on or about October 5, 2015, a Planet Energy representative advised consumer R.A. that she would have to pay a cancellation fee of \$250 plus tax, when in fact R.A. was entitled to cancel her contract with Planet Energy without any penalty within 30 days of receiving her first bill (which was on September 11, 2015).

Restitution appropriate

8. For the reasons set out above, and pursuant to sections 16(1)(a), (b), (e), (f) of the ECPA and section 14(1)(b) of the Regulation, the contracts entered into by J.A. (as set out in Appendix "A") and K.N. (as set out in Appendix "B"), acting on behalf of Planet Energy, are deemed to be void and, pursuant to section 16(3) of the ECPA and section 14(2) of the Regulation, the monies paid under those contracts must be refunded to consumers.

THEREFORE TAKE NOTICE that Planet Energy may request, within fifteen days after receiving this Notice, that the OEB hold a hearing on these matters. If no request for hearing is made within this time period, the OEB may proceed to make an Order for the payment of an administrative penalty in the amount of \$150,000, for the refund of amounts paid by consumers under the contracts identified in the Appendices to this Notice, and make an Order remedying the contraventions that occurred and preventing any further contraventions from occurring.

FURTHER TAKE NOTICE that if a hearing is requested, the OEB is not bound by the above noted penalty and has discretion, upon finding a contravention(s) of the Act, to make any order it deems appropriate under sections 112.3 and/or 112.5 of the Act. Planet Energy is entitled to be present at the hearing with or without counsel and to adduce evidence and make submissions. Should Planet Energy fail to attend, the hearing may be conducted in its absence and Planet Energy will not be entitled to any further notice in the proceeding.

In order to respond to this Notice and request a hearing, Planet Energy must file 3 copies of this request with the office of the Board Secretary at the following address:

Ontario Energy Board
P.O. Box 2319
2300 Yonge Street, 27th Floor
Toronto ON M4P 1E4
Attention: Board Secretary
Email: Boardsec@ontarioenergyboard.ca

Tel: 1-888-632-6273
Fax: 416-440-7656

If a hearing is requested it will proceed before a Panel of the OEB at the offices of the Ontario Energy Board, 2300 Yonge Street, Toronto, Ontario, on a date to be set by the OEB.

DATED at Toronto, ~~February 9~~November 27, 2017.

ONTARIO ENERGY BOARD

Christine Long
Vice-Chair

APPENDIX A
LIST OF CONTRACTS
JAMES MACARTHUR
EB-2017-0007
FEBRUARY 9, 2017

APPENDIX A

<u>Sales Person</u>	<u>Contract Numbers:</u>
JM	93207762G
JM	10033622
JM	10033621
JM	10007170
JM	10020676
JM	93236169E
JM	93235468E
JM	93226841E
JM	93212198E
JM	10024559
JM	10020679
JM	10020668
JM	10020679
JM	10024558
JM	10020662
JM	10034420
JM	10009187
JM	10033272
JM	10033268
JM	10033317
JM	10033208
JM	10033273
JM	10032906
JM	10033779
JM	10033269
JM	10033781
JM	10033212

APPENDIX B
LIST OF CONTRACTS
KAYVAN NAHID
EB-2017-0007
FEBRUARY 9, 2017

APPENDIX B

<u>Sales Person</u>	<u>Contract Numbers:</u>
KN	10032584
KN	10032586
KN	10032586
KN	10032673
KN	10032584
KN	10029998
KN	10029998
KN	10030038
KN	10030038
KN	10031772
KN	10031791
KN	10031820
KN	10031789
KN	10033874
KN	10035220
KN	10033874
KN	10032661
KN	10031872

