



February 28, 2014

Ms. Kirsten Walli
Attention: Board Secretary
Ontario Energy Board
P.O Box 2319
27th Floor
2300 Yonge Street
Toronto, ON M4P 1E4

Sent via EMAIL & COURIER

Re: **Ontario Energy Board File Number EB-2014-0018**
The Corporation of the City of Kitchener – Utilities Division Application for Gas Marketers Licence

Dear Ms. Walli,

Please accept the following submission for the above noted licence application on behalf of Planet Energy (Ontario) Corp. ["Planet Energy"]. Planet Energy would like to raise the following matters with respect to the application by The Corporation of the City of Kitchener – Utilities Division ["Kitchener Utilities"].

Planet Energy believes that by allowing Kitchener Utilities to hold a Gas Marketers Licence ["Licence"] under the aforementioned name, is in violation of the Affiliate Relationships Code ["Affiliate Code"]¹. It is Planet Energy's belief that the intent and spirit of the Affiliate Code is to, among other things, not permit a utility to directly benefit from the use of its name while marketing to consumers. As such, Planet Energy is of the view that Kitchener Utilities should not be permitted a natural gas Marketers license under the name Kitchener Utilities².

Further, it can be presumed that Kitchener Utilities intends to use the same staff, resources, equipment, materials, location and so forth, to operate under its potential Licence and as such, Planet Energy believes this to also be in direct violation of the Affiliate Code. Further, this would in effect permit Kitchener Utilities to use rate payer and/or tax payer revenues to fund and support its private enterprise and endeavors. This would permit an unfair competitive advantage in the Ontario gas market, and as

¹ Reference Section 2.5.3

² Section 1.1 states "The principal objectives of the Code are to enhance a competitive market while, at a minimum, keeping ratepayers unharmed by the actions of gas distributors, transmitters and storage companies with respect to dealing with their affiliates. The standards established in the Code are intended to: (a) minimize the potential for a utility to cross-subsidize competitive or non-monopoly activities; (b) protect the confidentiality of consumer information collected by a transmitter, distributor or storage company in the course of provision of utility services; and (c) ensure there is no preferential access to regulated utility services.

such, it is Planet Energy's belief that granting a Licence to Kitchener Utilities would not be in the best interests of the industry.

In addition, Kitchener Utilities has held the view and belief that the Ontario Energy Board Act, 1998 ["OEB Act"] does not apply to them, as they are instead governed by the Municipal Freedom of Information and Protection of Privacy Act ["MFIPPA"]. As such, it is Planet Energy's belief that granting a Licence to Kitchener Utilities would not be in the best interests of the industry based on its long standing record of actions which support the aforementioned statement.

Based on Kitchener Utilities standpoint that the OEB Act does not apply to them as they are governed by the MFIPPA, it can be reasonably extrapolated that Kitchener Utilities is of the view and belief that the Code of Conduct for Gas Marketers ["Code of Conduct"] would also not apply to them. As such, it is Planet Energy's belief that granting a Licence to Kitchener Utilities would not be in the best interests of the industry.

Further, based on Kitchener Utilities standpoint that the OEB Act does not apply to them as they are governed by the MFIPPA, it can be reasonably extrapolated that Kitchener Utilities is of the view and belief that the Energy Consumer Protection Act, 2010 ["ECPA"] would also not be applicable to them. As such, it is Planet Energy's belief that granting a Licence to Kitchener Utilities would not be in the best interests of the industry.

Overall, based on Kitchener Utilities standpoint that the OEB Act does not apply to them as they are governed by the MFIPPA, it is worth noting that this application appears to be an act of cherry picking which of the rules and regulations apply to Kitchener Utilities. As a result, a general concern is raised should Kitchener Utilities be granted a Licence. Based on their actions to date, the question must be asked, will Kitchener Utilities believe that the full scope and obligation of the Licence be applicable to them? As such, it is Planet Energy's belief that granting a Licence to Kitchener Utilities would not be in the best interests of the industry.

It is also in the experience of the industry, with respect to natural gas Marketers that Kitchener Utilities has historically not adhered to the rules and guidelines of the Gas Distribution Access Rule ["GDAR"]. This can be supported and confirmed by Kitchener Utilities historical and present day enrollment practices, which make it virtually impossible for natural gas Marketers to enroll Kitchener Utility consumers into alternative natural gas supply agreements, or for consumers to choose an alternative natural gas supplier instead of standard system supply from Kitchener Utilities. All of which is in spite of the fact that Kitchener Utilities natural gas supply rates have for the past number of years been significantly higher than various natural gas Marketers rates, or the rates charged by Enbridge and Union Gas. Based on these actions and Kitchener Utilities actions to date, which have precluded any competition within its service territory, it is Planet Energy's belief that granting a Licence to Kitchener Utilities would not be in the best interests of the industry.

An additional consideration which must be factored in is Kitchener Utilities current market practices. It is well known and established that Kitchener Utilities has and continues to enter into long term supply agreements for natural gas supply. It is also well known that these contracts have been above the current market rates for natural gas supply. Should Kitchener Utilities be granted a licence under this application, it is possible for Kitchener Utilities to effectively back-to-back, or in other terms, hedge their current supply agreements for customers on system supply against those on a fixed rate gas Marketers

agreement. For example this would provide Kitchener Utilities with the ability and licence to solicit customers within its service territory and offer products which are at the same rates currently being provided to them via standard system supply. However instead of the consumer being on standard system supply, they would be solicited for a fixed rate agreement. This could lead to a large amount of confusion for consumers, including but not limited to not knowing and/or understanding who is supplying their natural gas supply (given that the names are identical), but also on what rate they should otherwise be provided. All of which raises two concerns, the first of which is, what measures are in place that will prevent this from occurring and secondly, how does this foster competition in the Ontario natural gas market? Based on these considerations, it is Planet Energy's belief that granting a Licence to Kitchener Utilities would not be in the best interests of the industry.

It is equally important to note that the very first principle of the OEB Act with respect to natural gas is *"To facilitate competition in the sale of gas to users"* (Section 2.1), and while this is a responsibility of the Board, it is however Planet Energy's belief that Kitchener Utilities has previously and to present day, taken extreme steps and measures to eliminate, limit and render otherwise impossible, any and all competition for the sale of gas to users, within its service territory. Should Kitchener Utilities be granted the Licence, it is Planet Energy's view that this would be a direct contradiction to the guidelines and principles of the OEB Act and a direct contradiction of Section 2.1. As such, and based on these prior and present day actions, it is Planet Energy's belief that granting a Licence to Kitchener Utilities would not be in the best interests of consumers and the industry.

In conclusion, should Kitchener Utilities be granted a Licence, in the alternative, Planet Energy would recommend that the licence be conditional so that Kitchener Utilities may only market and serve customers outside of its service territory and be restricted from marketing and/or enrolling any customers within its service territory, for natural gas supply.

All of which is respectfully submitted.

Sincerely,

[Original signed by]

Jordan Small
Planet Energy (Ontario) Corp.
Telephone: 416-250-7117
Fax: 416-250-0220
Email: jsmall@planetenergy.ca
Address: 5255 Yonge Street, Suite 1500, Toronto, ON M2N 6P4

cc. The Corporation of the City of Kitchener – Utilities Division