
XOOM ENERGY ONT, ULC

GAS MARKETER LICENCE APPLICATION

EB-2016-0226

ELECTRICITY RETAILER LICENCE APPLICATION

EB-2016-0227

SUBMISSIONS

October 14, 2016

Defined Terms: All references to “**XOOM**” used herein refer to XOOM Energy ONT, ULC, the applicant for the licences and all references to “**Planet**” refer to Planet Energy (Ontario) Corp. All references to the “**Board**” or the “**OEB**” refer to the Ontario Energy Board.

I. Overview of XOOM’s Submissions

1. In response to Planet’s submissions, XOOM’s submissions below assert the following:
 - i. Planet’s inquiry into XOOM’s commercial and corporate relationships are without basis and speculative as a contract between ACN and XOOM does not currently exist;
 - ii. XOOM’s marketing methods and enrollment process removes any possibility for customer confusion when enrolling with XOOM; and
 - iii. XOOM and Planet have successfully coexisted with little or no customer confusion while operating together in three different US states over a period of more than 3 years both with and without ACN as a common channel partner.

II. Planet’s inquiry into XOOM’s commercial and corporate relationships are without basis as a contract between ACN and XOOM does not yet exist

2. Planet continues to assert that there is a potential for customer confusion as a result of a potential overlap between Planet's engagement with All Communications Networks of Canada (“ACN”) and XOOM’s engagement with ACN. Planet’s entire argument is based on speculation that is not supported by evidence. Planet is assuming that ACN and XOOM already have a contractual relationship in Ontario. As a contract between ACN and XOOM does not exist, any argument that there would be customer confusion that should impact XOOM’s ability to obtain a license is rendered moot. Moreover, XOOM has made it clear that it plans to engage with many channel partners, including channel partners like ACN. Considering XOOM is not yet a licensed marketer in Ontario and does not have a legal right to market in Ontario, Planet’s arguments are premature.
3. In Planet’s Written Submissions dated October 7, 2016, Planet stated that “ACN notified Planet Energy that it intended to *terminate* its sales agency agreement with Planet Energy effective November 9, 2016. ACN is terminating the sales agency agreement due to the entry into Canada of Xoom Energy.” (See Planet’s Written Submissions, Paragraph 7) (emphasis added). As stated in Planet's letter dated July 21, 2016, “the Agreement between Planet Energy and ACN *expires* on November 9, 2016.” (emphasis added).
4. As Planet has already stated, its agreement with ACN *expires* on November 9th. Accordingly, Planet has to be prepared for competition for those customers by every potential supplier in the Ontario marketplace. It is curious, however, that Planet only seems to have taken issue with XOOM, an entity that is not even licensed yet. Planet’s concern for competition should not be a basis for OEB to consider when considering a license application, as it flies in the face of the retail choice program in Ontario.
5. Significantly, Planet is currently providing an entirely new characterization of its contractual relationship with ACN in its most recent Written Submissions—it is now asserting that its

agreement with ACN is *terminating* rather than *expiring*. This new distinction is alarming, especially considering that it is inconsistent with its previous assertion to the Board. (See Planet's letter dated July 21, 2016). Planet's new allegation that ACN is "terminating" its sales agency agreement due to XOOM's "entry into Canada" after originally stating to the Board that its agreement was "expiring" further shows that Planet is intending once again to stall this proceeding in order to delay the entry of a competitor into this market as well as air its commercial grievances in front of the Board.

III. XOOM's marketing methods and enrollment process removes any possibility for customer confusion when enrolling with XOOM

6. ACN IBO's do not engage in selling electricity or gas to the public; the IBO's only refer potential customers to the XOOM website where the customer can review the offering, learn about XOOM's products, and enroll if they so choose. It is entirely within the customer's control as to whether he or she ultimately enrolls with XOOM. As it is the customer who enrolls, XOOM's enrollment process removes even the remote possibility of any customer confusion. XOOM believes that the Board has adequately considered and addressed these type of relationships and the application of Ontario regulations in its April 13, 2012 Bulletin on the subject of multilevel marketing. (See Planet's Written Submissions, Tab 1C).
7. Planet cites a Maryland Public Service Commission ("**Maryland PSC**") case involving a XOOM affiliate, namely, XOOM Energy Maryland, LLC ("**XOOM Energy Maryland**"). By referencing this case, it appears that Planet is attempting to smear XOOM's reputation in Ontario before XOOM even receives its license. This appears to be the only case that Planet can find and this case does not even support Planet's position as the XOOM affiliates have been operating for years across 18 US states, the District of Columbia, and, more recently, the Province of Alberta. In total, the XOOM affiliates are doing business in nearly 90 markets and have consistently maintained an A+ Better Business Bureau rating, including during the 2014 Polar Vortex weather phenomenon. A closer reading of the Maryland PSC case reveals that the majority of the allegations were dismissed outright as being invalid or unsubstantiated. Most importantly, the Maryland PSC applauded XOOM Energy Maryland's enrollment process and marketing method, and found that XOOM Energy Maryland did not engage in any "unfair, misleading, false or deceptive trade practice." (See Tab 2# of Planet's Submissions, page 31). Moreover, the Maryland PSC concluded that XOOM Energy Maryland had safeguards in place to identify possible misconduct of an IBO as it found that "[XOOM Energy Maryland's] enrollment process has not resulted in a significant number of unauthorized enrollments." (Show Cause Order, 19).
8. The safeguards applauded by the Maryland PSC highlight the many tools used by XOOM Energy Maryland to remove the possibility of any confusion a customer may have when choosing to enroll. XOOM would use the same safeguards to avoid customer confusion in Ontario and these safeguards include, by way of example:
 - i. XOOM Energy Maryland requires a customer to self-enroll in a XOOM energy product through its website. (Show Cause Order, 5).

- ii. While on XOOM Energy Maryland’s website, the customer is able to access various links which are designed to educate the consumer about XOOM Energy Maryland’s products, including frequently asked questions and informational videos for specific types of products. (Show Cause Order, 5).
- iii. XOOM Energy Maryland also makes the terms and conditions of all applicable products accessible to the customer without the customer providing any personal information. In addition, prior to completing the enrollment for a XOOM Energy Maryland energy product, the customer must affirm that he/she has read the terms and conditions for the selected rate plan. (Show Cause Order, 5-6).

III. XOOM and Planet have successfully coexisted with little or no customer confusion while operating together in three different US states over a period of more than 3 years both with and without ACN as a common channel partner

9. Although absent from the information provided by Planet in its Written Submissions, Planet and XOOM have been successfully coexisting within the marketplace in three US states for nearly four years. Despite Planet’s assertion that “the potential for confusion and harm to Ontario consumers is readily apparent and ‘highly unusual’”, at one point ACN was marketing on behalf of one party (Planet or XOOM), and then subsequently marketed on behalf of the other party (Planet or XOOM)—and there was little or no customer confusion during those times. (See Planet’s Written Submissions, Paragraph 10, 11).
10. XOOM is only asking for an opportunity to be licensed. To this end, XOOM would expect that it would be given the same commercial opportunities as any other potential supplier seeking a Gas Marketer License and/or Electricity Retail License.

IV. Conclusion

1. Planet has offered no basis for the OEB to deny XOOM its licenses. Moreover, Planet’s claim for potential confusions falls short due to the following:
 - i. A contract between ACN and XOOM does not yet exist;
 - ii. Both XOOM’s marketing method and enrollment process include established and effective safeguards to ensure that there is no customer confusion when enrolling with XOOM; and
 - iii. Both XOOM and Planet have successfully coexisted while operating together with and without ACN supporting the customer contracts without any customer confusion.
2. XOOM respectfully requests that the Board issue its Gas Marketer License and Electricity Retailer License licences immediately.

