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<b>Our File No.</b>	235486
<b>Date</b>	October 18, 2016

**SUBMITTED BY RESS, EMAIL & COURIER**

Ontario Energy Board  
P.O Box 2319  
27<sup>th</sup> Floor  
2300 Yonge Street  
Toronto, ON M4P 1E4

Attention: Ms. Kirsten Walli, Board Secretary

Dear Ms. Walli:

**Re: XOOM Energy ONT, ULC Applications for Electricity Retailer and Natural Gas Marketer Licenses**

**EB-2016-0226 / EB-2016-0227**

On September 30, 2016, the Board issued Procedural Order No. 1 in this matter (the “**Order**”). The Order ordered as follows:

1. If any parties wish to make a submission they must file this submission with the OEB and deliver it to the applicant by **October 7, 2016**.
2. If the applicant wishes to file a response to a submission, this must be filed with the OEB and any parties in the proceeding by **October 14, 2016**.

Planet Energy (Ontario) Corp. (“**Planet**”) filed its submissions on October 7, 2016, in accordance with the Order.

The applicant XOOM Energy ONT, ULC (“**XOOM**”) filed its reply on October 14, 2016, in accordance with the Order.

No further steps are contemplated by the Order.

Earlier today, on October 18, 2016, Planet filed further submissions, which they entitled Planet’s “Reply Submissions” – a reply to the reply, so to speak. Such further submissions even purported to include further documentary evidence.

**Such further submissions are outside of the scope of the Order and contrary to the procedural decision of the Board as set down in the Order. They should be rejected, expunged from the record of this proceeding, and disregarded by the Board.**

The Order does not contemplate reply upon reply upon reply. A process which continually allows parties to reply back and forth to each other would never end. The Board quite rightly invited Planet to make all of its submissions, including the submission of all of its documentary evidence, at one time on October 7, and invited the applicant to provide all of its responding submissions, if any, on October 14.

In making these additional submissions in defiance of the Order, Planet and its counsel have quite strategically, deliberately and effectively placed XOOM in the difficult position of having to either:

- a) abide by the original Order, refrain from replying to Planet's reply to XOOM's reply, and allow these latest submissions of Planet, which are factually incorrect and misleading, to stand; or
- b) ask the Board's permission to file a further reply to Planet's out of scope reply to XOOM's reply – a process which would result in the very delay that XOOM has maintained all along is Planet's primary goal, allowing Planet to avoid additional competition as long as possible.

Frankly, neither of these options is fair or reasonable, and the Board should not condone XOOM being put in such position by Planet's outright defiance of the Board's Order.

At the most basic level, Planet's latest submissions are invalid and must not be accepted because they were filed 11 days after the clear deadline set by the Board for intervenor submissions. They were even filed 4 days after the clear deadline set by the Board for the *applicant's* submissions. **Pursuant to the Order, the Record in this matter closed on October 14, 2016.** No further submissions should be accepted.

At a more cynical level, Planet's latest submissions can not be allowed to stand without an opportunity for challenge by the applicant. However, re-opening the record at this point for a further round of back and forth submissions will unavoidably prevent the Board from being able to render a decision before November 9, 2016. Even if the Board's ultimate decision were completely in XOOM's favour, Planet will have succeeded in its mission of using the regulatory process to defer competition and delay a competitor's planned entry into this market.

We respectfully request that the October 18 submissions from Planet be stricken from the record and disregarded by the Board for being in direct contravention of an Order of the Board. Further, we ask the Board to consider any avenues available to it to reprimand Planet's counsel for violating an Order of the Board under the law firm's own letterhead. Although intervenors can sometimes try to push the envelope of what is permissible and proper, Mr. Zacher knows better and should not have agreed to participate in his client's plan to disregard a Board Order.

Yours truly,



Mike Richmond

cc. Glen Zacher, Stikeman Elliott LLP (by email)