

ONTARIO ENERGY BOARD

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

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).

MOTION RECORD

June 7, 2017

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TAB 1

ONTARIO ENERGY BOARD

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

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).

NOTICE OF MOTION

Planet Energy (Ontario) Corp. (“**Planet Energy**”) will make a motion to the Ontario Energy Board (the “**Board**” or “**OEB**”) on a date to be determined by the Board at the Board’s office located at 2300 Yonge Street, Toronto, Ontario.

PROPOSED METHOD OF HEARING: Planet Energy proposes that this motion be heard orally.

THIS MOTION IS FOR:

1. An order that each of James MacArthur (“**MacArthur**”), Kayvan Nahid (“**Nahid**”), Roobinet Andrassin (“**Andrassin**”) and Robert Hawkins (“**Hawkins**”) (together, the “**OEB Expected Witnesses**”) produce to Planet Energy, without delay, all documents in their respective power, possession or control relevant to the issues in the subject enforcement proceeding (collectively, the “**Documents**”);
2. An order that MacArthur and Nahid provide to Planet Energy, without delay, the identities and contact information for individuals referenced in witness statements provided by MacArthur and Nahid to the OEB Enforcement Team; and
3. Such further and other relief as Planet Energy may request and the Board may grant.

THE GROUNDS FOR THE MOTION ARE:

Overview

1. There are reasonable grounds to believe that the OEB Expected Witnesses have Documents and knowledge of witnesses relevant to the subject enforcement proceeding;
2. Despite requests, the OEB Expected Witnesses have not produced relevant Documents in their power, possession or control or the identities of witnesses; in fact, to date, MacArthur, Nahid and Hawkins have not complied with requests by the OEB Enforcement Team to provide such information;
3. Information contained in the Documents and identities of the witnesses is relevant to Planet Energy's ability to know the case it has to meet and to prepare its defence;
4. It would be unfair to require Planet Energy to proceed to the hearing without disclosing the Documents and producing the identities of the witnesses;

Procedural History

5. On February 9, 2017, the Board served a Notice of Intention to make an Order for Compliance, Restitution and Payment of an Administrative Penalty (the "**Notice of Intention**") against Planet Energy;
6. The Notice of Intention makes allegations of non-compliance against Planet Energy in relation to 27 energy contracts alleged to have been sold by MacArthur and 18 energy contracts alleged to have been sold by Nahid;
7. The Notice of Intention alleges that MacArthur and Nahid were independent business operators [sic] ("**IBOs**") with ACN, a multi-level marketing company, and that ACN had an agreement with Planet Energy to market energy contracts on Planet Energy's behalf;
8. The Notice of Intention alleges, *inter alia*, that Planet Energy provided MacArthur and Nahid with inadequate training, provided false, misleading or incomplete information

to customers, failed to meet requirements for door-to-door sales and for contracts and disclosure statements, and imposed improper cancellation fees;

9. Planet Energy disputes the allegations made in the Notice of Intention;
10. On February 23, 2017, Planet Energy requested a hearing before the Board with respect to the allegations raised in the Notice of Intention;
11. On April 27, 2017, the Board issued a Notice of Hearing and Procedural Order No. 1, advising that the Board will hold an oral hearing ("**Hearing**") and ordering that a pre-hearing conference take place on July 11, 2017;
12. The OEB Enforcement Team provided initial disclosure to Planet Energy on February 13, 2017;
13. In response to disclosure requests from Planet Energy, counsel for the OEB Enforcement Team provided further disclosure on May 9, 2017 and June 2, 2017;

Background

MacArthur

14. According to disclosure from the OEB Enforcement Team, MacArthur was interviewed by OEB investigation staff and signed two witness statements, which the OEB Enforcement Team relies upon in this matter;
15. In his witness statements, MacArthur indicates, *inter alia*, that:
 - (a) "Another ACN IBO provided me with a type of 'script' that set out a sales approach to take when approaching consumers". MacArthur's witness statement says he followed this script in his interactions with potential customers.
 - (b) "I was provided with some materials and documents about various ACN products and referred to the website for additional information".

16. MacArthur also makes reference in his witness statements to various unnamed individuals with whom he communicated in regards to the matters at issue in this proceeding, including “my ACN trainer”, a “more experienced ACN IBO... who had signed me up for ACN”, “another more experienced IBO (but not the same person who signed me up for ACN)”, a “senior Vice-President at ACN”, “[a]nother ACN IBO [who] provided me with a type of script”, “other ACN IBO’s”, “someone also at ACN” and “other ACN IBOs”;

17. Further, OEB Staff noted during a November 4, 2016 interview that MacArthur: “will share file (hard copy)”;

18. The same notes also indicate “copies of emails” – suggesting that the note taker believed that MacArthur may have copies of relevant emails;

19. It is not clear whether these emails are included in the disclosure that OEB Enforcement Team has provided Planet Energy to date, but given that MacArthur has not responded to requests to produce Documents (see paras. 32 and 34 below) it should be assumed that he has not produced these emails and they are not included in OEB Enforcement Team’s disclosure;

Nahid

20. According to disclosure from the OEB Enforcement Team, Nahid was interviewed by OEB investigation staff and signed two witness statements, which the OEB Enforcement Team relies upon in this matter;

21. According to interview notes disclosed by the OEB Enforcement Team, Nahid advised that he has a folder containing documents about ACN and Planet Energy on his computer;

22. Nahid also makes reference in his witness statements to various unnamed individuals with whom he communicated in regards to the matters in issue, including ACN trainers/personnel;

Andrassin

23. Andrassin is alleged to have been a Planet Energy customer and the account holder for one of the energy contracts at issue in this matter and the account contact for a further four energy contracts at issue in this matter;

24. According to disclosure from the OEB Enforcement Team, Andrassin was interviewed by OEB investigations staff and signed a witness statement, which the OEB Enforcement Team relies upon in this matter;

25. In her witness statement, Andrassin refers to communications relating to the matters of issue in this proceeding that she had with Nahid, Planet Energy and Board Staff;

Hawkins

26. Hawkins is alleged to have been a Planet Energy customer and the account holder for five of the energy contracts at issue in this matter;

27. According to disclosure from the OEB Enforcement Team, Hawkins was interviewed by OEB investigations staff and signed a witness statement, which the OEB Enforcement Team relies upon in this matter;

28. In his witness statement, Hawkins refers to multiple communications in relation to the matters in issue that he had with MacArthur, Planet Energy, a collection agency and Board Staff, and he refers to receiving collection and penalty notices and lodging a complaint;

29. In an audio file provided by counsel for the OEB Enforcement Team containing a recording of a call between Hawkins and the OEB, Hawkins refers to an email that he sent to the OEB in or around January 2016 – this email has not been disclosed to Planet Energy;

30. Counsel for the OEB Enforcement Team has advised that they intend to call MacArthur, Nahid, Andrassin and Hawkins as witnesses at the Hearing;

Requests for Production and Identities of Witnesses

31. Planet Energy has requested that the OEB Enforcement Team request and disclose all relevant documents in the possession, power and control of any of the OEB Expected Witnesses;

32. Planet Energy also requested that the OEB Enforcement Team provide the identities and contact information for the unnamed individuals referenced in MacArthur's and Nahid's witness statement;

33. Counsel for the OEB Enforcement Team advised that it made requests for disclosure of the Documents to each of the OEB Expected Witnesses, but to date, only Andrassin has provided any Documents in response the OEB Enforcement Team's request;

34. Counsel for the OEB Enforcement Team has disclosed those Andrassin Documents to Planet Energy (however, despite requests, the OEB Enforcement Team has not confirmed that Andrassin has produced all Documents in her power, possession and control);

35. OEB Enforcement Team counsel stated that it has "no power to compel [the OEB Expected Witnesses] to produce the documents";

36. As at June 2, 2017, the OEB Enforcement Team, despite its requests, has not received any Documents from MacArthur, Nahid or Hawkins and it is not clear that any of them have even responded to the production request;

37. Likewise, the OEB Enforcement Team has not provided the identities and contact details for the individuals referenced in MacArthur's and Nahid's witness statements;

38. As of June 2, 2017 OEB Enforcement Team counsel, has advised Planet Energy that "OEB Staff will continue to make efforts to obtain that information but is not in a position to compel Mr. MacArthur and Mr. Nahid to divulge [it]";

39. There is good reason to believe that the Documents and identities of witnesses are relevant to matters at issue in the proceeding and it would be unfair to require Planet Energy to proceed to the Hearing without having discovery of the Documents;

40. The OEB *Rules of Practice and Procedure for Enforcement Proceedings* and the *Statutory Powers and Procedures Act*, RSO 1990, c. S22; and

41. Such further and other grounds as counsel may advise and the Board accept.

THE FOLLOWING DOCUMENTARY EVIDENCE AND SUBMISSIONS are relied upon:

1. Affidavit of Sofia Casinha sworn June 7, 2017; and
2. Written legal submissions which Planet Energy will serve and file in advance of the hearing of this motion, as directed by the Board; and
3. Such further and other grounds and materials as counsel may advise and the Board shall permit.

June 5, 2017

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AND TO: **Kayvan Nahid**

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AND TO: **Roobinet Andrassin**

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AND TO: **Robert Hawkins**

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TAB 2

EB-2017-0007

ONTARIO ENERGY BOARD

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).

AFFIDAVIT OF SOFIA CASINHA
(sworn June 7, 2017)

I, Sofia Casinha, of the City of Toronto, Province of Ontario, MAKE OATH AND SAY:

1. I am a litigation administrative assistant with Stikeman Elliott LLP in Toronto, lawyers for Planet Energy (Ontario) Corp. ("**Planet Energy**"). As such, I have personal knowledge of the matters deposed herein except where stated to be based on information and belief, in which case I verily believe such information to be true.
2. On February 9, 2017, the Ontario Energy Board ("**OEB**") issued a Notice of Intention to make an order for compliance, restitution and payment of an administrative penalty. The Notice of Intention makes allegations of non-compliance against Planet Energy in relation to 27 energy contracts alleged to have been sold by James MacArthur and 18 energy contracts alleged to have been sold by Kayvan Nahid. A copy of the Notice of Intention is attached hereto as Exhibit "A".
3. On February 13, 2017, Birgit Armstrong (Advisor, Investigations) of the OEB sent a Notice of Intention Letter to Jordan Small (Vice President, Regulatory Affairs and Compliance) of Planet Energy, attaching a USB flash drive with disclosure files that pertain

to the proceeding (collectively, the “**Disclosure**”). A copy of the letter is attached hereto as Exhibit “B”.

4. On February 23, 2017, Planet Energy requested a hearing before the Board with respect to the allegations raised in the Notice of Intention. A copy of Planet Energy’s letter requesting a hearing is attached hereto as Exhibit “C”.

5. On April 27, 2017, the Board issued a Notice of Hearing and Procedural Order No. 1, advising that the Board will hold an oral hearing and ordering that a pre-hearing conference take place on July 11, 2017. A copy of the Notice of Hearing and Procedural Order No. 1 is attached hereto as Exhibit “D”.

6. In response to disclosure requests from Planet Energy, counsel for the OEB Enforcement Team provided further disclosure on May 9, 2017 and June 2, 2017. Copies of the May 9, 2017 and June 2, 2017 letters from counsel for the OEB Enforcement Team providing the further disclosure are attached hereto as Exhibits “E” and “F”, respectively.

7. James MacArthur is alleged to have been an independent business operator (“**IBO**”) with ACN and is the ACN IBO alleged to be associated with 27 of the energy contracts at issue in this matter. According to Disclosure from the OEB Enforcement Team, MacArthur was interviewed by OEB investigation staff and signed two witness statements. The second witness statement contains references to documents about various ACN products as well as a Planet Energy sales “script” that he alleges he was provided by another IBO. A copy of MacArthur’s witness statements are attached hereto as Exhibit “G”.

8. In his witness statements, MacArthur also makes reference to various unnamed individuals with whom he communicated in regards to the matters at issue in this proceeding, including “my ACN trainer”, and “more experienced ACN IBO... who had signed me up for ACN”, “another more experienced IBO (but not the same person who signed me up for ACN)”, a “senior Vice-President at ACN”, “[a]nother ACN IBO [who] provide me with a type of script”, “other ACN IBO’s”, “someone also at ACN” and “other ACN IBOs”.

9. Kayvan Nahid is alleged to have been an IBO with ACN and is the ACN IBO alleged to be associated with 18 of the energy contracts at issue in this matter. According to Disclosure from the OEB Enforcement Team, Nahid was interviewed by OEB investigation staff and signed two witness statements. A copy of Nahid's witness statements are attached hereto as Exhibit "H".

10. According to interview notes contained in Disclosure from the OEB Enforcement Team, Nahid also advised that he has a folder containing documents about ACN and Planet Energy on his computer. A copy of the interview notes are attached hereto as Exhibit "I".

11. In his witness statement, Nahid also makes reference to various unnamed individuals with whom he communicated in regards to the matters in issue, including ACN trainers/personnel.

12. Roobinet Andrassin is alleged to have been a Planet Energy customer, the account holder for one of the energy contracts at issue in this matter and the account contact for a further four energy contracts at issue in this matter. According to Disclosure from the OEB Enforcement Team, Andrassin was interviewed by OEB investigations staff and signed a witness statement. A copy of Andrassin's witness statement is attached hereto as Exhibit "J".

13. Robert Hawkins is alleged to have been a Planet Energy customer and the account holder for five of the energy contracts at issue in this matter. According to Disclosure from the OEB Enforcement Team, Hawkins was interviewed by OEB investigations staff and signed a witness statement. A copy of Hawkins' witness statement is attached hereto as Exhibit "K".

14. According to Disclosure from the OEB Enforcement Team, Hawkins called the OEB on January 25, 2016. A copy of an audio file of Hawkins' call to the OEB was produced by the OEB Enforcement Team and a transcript of that audio file is attached hereto as Exhibit "L". In the call, Hawkins refers to an email that he previously sent to the OEB.

15. Counsel for the OEB Enforcement Team stated in letters dated May 9 and June 2, 2017 that they intend to call MacArthur, Nahid, Andrassin and Hawkins as witnesses at the

hearing. Attached at Exhibits E and F are copies of the OEB Enforcement Team's counsel's May 9 and June 2, 2017 letters.

16. On April 17, 2017, Planet Energy requested that the OEB Enforcement Team request and disclose all relevant documents in the possession, power and control of MacArthur, Nahid, Andrassin and Hawkins, as well as identify all contact information for individuals referenced in MacArthur and Nahid's witness statements. A copy of Planet Energy's counsel's April 17, 2017 letter is attached hereto as Exhibit "M".

17. On May 9, 2017, counsel for the OEB Enforcement Team advised that it made requests for Disclosure of documents to each of MacArthur, Nahid, Andrassin and Hawkins, and had no authority to compel them to produce documents. A copy of the OEB Enforcement Team's counsel's May 9, 2017 letter is attached at Exhibit E.

18. On May 19, 2017, Planet Energy sent a letter to counsel for the OEB Enforcement Team, advising that it would bring a motion seeking an order to compel production of documents and identifies and contact information for witnesses if they did not receive all relevant documents and witness identities and contact information by May 31, 2017. A copy of Planet Energy's counsel's May 19, 2017 letter is attached hereto as Exhibit "N".

19. Counsel for the OEB Enforcement Team advised Planet Energy on June 2, 2017 that it had not received any additional documents from the OEB Expected Witnesses and also did not have the identities and contact information for the witnesses referenced in MacArthur's and Nahid's witness statements. A copy of the OEB Enforcement Team's counsel's June 2, 2017 letter is attached at Exhibit F.

20. As of June 4, 2017, the OEB Enforcement Team has not received any documents from MacArthur, Nahid or Hawkins, nor the identities and contact information for the individuals referenced in Nahid's or MacArthur's witness statements.

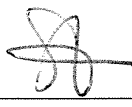
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SWORN BEFORE ME at the City of
Toronto, Ontario on June 7, 2017.



Commissioner for Taking Affidavits

MEL HOGG
LSUC No. 48076E



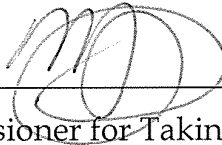
Sofia Casinha

EXHIBIT "A"

referred to in the Affidavit of

SOFIA CASINHA

Sworn June 7, 2017



Commissioner for Taking Affidavits

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)

**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 and gas market operates, or the rules and regulations governing the sale of energy 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 adjustment, 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 27 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 and gas market operates, or on energy 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 adjustment 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 18 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 and gas 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.M. (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 a 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 \$450,000, 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, 2017

ONTARIO ENERGY BOARD

Original signed by

Rosemarie T. Leclair
Chair and CEO

APPENDIX A
LIST OF CONTRACTS
J.M.
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
K.N.
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

EXHIBIT "B"

referred to in the Affidavit of

SOFIA CASINHA

Sworn June 7, 2017



Commissioner for Taking Affidavits

**Ontario Energy
Board**

P.O. Box 2319
2300 Yonge Street
27th Floor
Toronto ON M4P 1E4
Telephone: 416-481-1967
Facsimile: 416-440-7656
Toll free: 1-888-632-6273

Direct Line: 416-544-5162

**Commission de l'énergie
de l'Ontario**

C.P. 2319
2300, rue Yonge
27^e étage
Toronto ON M4P 1E4
Téléphone: 416-481-1967
Télécopieur: 416-440-7656
Numéro sans frais: 1-888-632-6273



Reference #: EB-2017-0007

RECEIVED FEB 13 2017

BY COURIER

February 13, 2017

Jordan Small
Vice President, Regulatory Affairs and Compliance
Planet Energy (Ontario) Corp.
5255 Yonge Street
Suite 1500
Toronto, ON M2N 6P4

Dear Mr. Small:

Re: Enforcement Proceeding, EB-2017-0007

On February 9, 2017 the OEB issued a Notice of Intention to make an order for compliance, restitution and payment of an administrative penalty against Planet Energy. The attached USB flash drive contains the disclosure files that pertain to this proceeding.

Any questions relating to this letter should be directed to Birgit Armstrong at birgit.armstrong@ontarioenergyboard.ca or at 416-544-5162 or Justin Safayeni JustinS@stockwoods.ca or (416) 593-3494. The Board's toll-free number is 1-888-632-6273.

Yours truly,

Birgit Armstrong
Advisor, Investigations

Attachments: SanDisk USB flash drive

EXHIBIT "C"

referred to in the Affidavit of

SOFIA CASINHA

Sworn June 7, 2017



Commissioner for Taking Affidavits

STIKEMAN ELLIOTT

Stikeman Elliott LLP Barristers & Solicitors

5300 Commerce Court West, 199 Bay Street, Toronto, Canada M5L 1B9
Tel: (416) 869-5500 Fax: (416) 947-0866 www.stikeman.com

Glenn Zacher
Direct: (416) 869- 5688
E-mail: gzacher@stikeman.com

BY EMAIL & OVERNIGHT COURIER

February 23, 2017
File No.: 127353.1011

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

Dear Ms. Walli:

**Re: EB-2017-0007 - Notice of Intention to Make an Order for
Compliance and Payment of an Administrative Penalty
against Planet Energy (Ontario) Corp.**

We are counsel to Planet Energy (Ontario) Corp. ("Planet Energy") in the captioned proceeding.

Planet Energy intends to vigorously contest the alleged breaches and imposition of administrative sanctions. Please accept this letter as Planet Energy's request for a hearing.

Planet Energy is investigating the circumstances of the alleged breaches which date back as far as 5 years, including gathering relevant documents and reviewing Board Staff's disclosure. It will take Planet Energy a number of weeks to complete this process.

We propose that a pre-hearing conference be scheduled for early to mid-April to address the matters set out in Rule 18.01 of the Board's *Rules of Practice and Procedures from Enforcement Proceedings*. In advance of a pre-hearing conference, we will speak and coordinate with Board Staff's counsel about the specific matters that should be addressed at a pre-hearing conference.

TORONTO
MONTRÉAL
OTTAWA
CALGARY
VANCOUVER
NEW YORK
LONDON
SYDNEY

Please address all further communications to the undersigned.

Yours truly,

A handwritten signature in black ink, appearing to read 'Glenn Zacher', with a long horizontal flourish extending to the right.

Glenn Zacher

/GZ

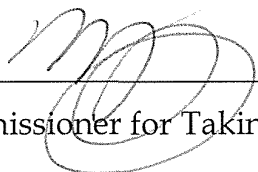
cc: Justin Safeyeni, Stockwoods LLP

EXHIBIT "D"

referred to in the Affidavit of

SOFIA CASINHA

Sworn June 7, 2017



Commissioner for Taking Affidavits

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).

**NOTICE OF HEARING
AND
PROCEDURAL ORDER NO. 1**

April 27, 2017

On February 9, 2017, the Ontario Energy Board (OEB), on its own motion under section 112.2 of the *Ontario Energy Board Act, 1998* (Act) issued a Notice of Intention 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 of the Act, to refund monies to affected consumers, and to pay an administrative penalty in the amount of \$450,000.

Allegations of non-compliance are set out in the Notice of Intention.

By way of letter dated February 23, 2017, Planet Energy requested that the OEB hold a hearing in this matter.

The OEB will hold an oral hearing.

Parties to this Proceeding

The parties to the proceeding are Planet Energy and the members of OEB staff assigned to bring these matters forward (the Enforcement Team).

Pre-Hearing Conference

In its letter dated February 23, 2017, Planet Energy proposed that a pre-hearing conference be scheduled to address the matters set out in Rule 18.01¹ of the OEB's *Rules of Practice and Procedure for Enforcement Proceedings* (the Enforcement Rules). The Enforcement Team subsequently confirmed that it agreed that a pre-hearing conference would be appropriate.

As both parties are in favour of a pre-hearing conference, the OEB will make provision for one.

Pre-Hearing Conference Memorandum

Pursuant to Rule 18.03 of the Enforcement Rules, the Enforcement Team is required to file a pre-hearing conference memorandum in advance. Although not required, Planet Energy may also file a pre-hearing conference memorandum in accordance with Rule 18.03. Rule 18.03 states the following:

Where a pre-hearing conference is directed in the context of an enforcement proceeding, the enforcement team shall, and other parties may, serve on all other parties a pre-hearing conference memorandum that contains the following:

- (a) a brief statement of facts and allegations;*
- (b) a description of the legal issues to be determined in the enforcement proceeding; and*
- (c) a copy of any document(s) that would assist in making the prehearing conference more effective or efficient.*

A pre-hearing memorandum shall be served at least seven days before the date of the pre-hearing conference.

¹ Rules of Practice and Procedure for Enforcement Proceedings

Notice of Hearing and Procedural Order No. 1
April 27, 2017

The OEB considers it necessary to make provision for the following procedural matters related to this proceeding. The OEB may issue further procedural orders from time to time.

THE ONTARIO ENERGY BOARD ORDERS THAT:

1. The OEB Enforcement Team must file with the OEB a copy of the pre-hearing conference memorandum and serve a copy on Planet Energy, on or before **June 8, 2017**.
2. Planet Energy may also file with the OEB a copy of the pre-hearing conference memorandum and serve a copy on the OEB Enforcement Team's Counsel (Mr. Justin Safeyeni), on or before **June 22, 2017**. Mr. Safeyeni's contact information is set out below:

Stockwoods LLP Barristers
TD North Tower
77 King Street West, Suite 4130
P.O. Box 140
Toronto-Dominion Centre
Toronto, ON M5K 1H1
Tel: 416-593-3494
E-mail: justins@stockwoods.ca

3. The pre-hearing conference will take place in the OEB's North Hearing Room beginning at **9:30 a.m. on July 11, 2017** at 2300 Yonge Street on the 25th Floor.

All filings to the OEB must quote file number EB-2017-0007 and be made electronically through the OEB's web portal at <https://www.pes.ontarioenergyboard.ca/eservice/> in searchable/unrestricted PDF format. Two paper copies must also be filed. Filings must clearly state the sender's name, postal address and telephone number, fax number and e-mail address. Parties must use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at <http://www.oeb.ca/Industry>. If the web portal is not available parties may email their documents to the address below. Those who do not have internet access are required to submit all filings on a CD in PDF format, along with two paper copies. Those who do not have computer access are required to file 7 paper copies.

All communications should be directed to the attention of the Board Secretary at the address below, and be received no later than 4:45 p.m. on the required date.

With respect to distribution lists for all electronic correspondence and materials related to this proceeding, parties must include the Case Manager, Michael Bell at Michael.Bell@oeb.ca and OEB Counsel, Ian Richler at Ian.Richler@oeb.ca.

ADDRESS

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

Tel: 1-888-632-6273 (toll free)
Fax: 416-440-7656
E-mail: Boardsec@oeb.ca

ISSUED at Toronto, April 27, 2017

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary

EXHIBIT "E"

referred to in the Affidavit of

SOFIA CASINHA

Sworn June 7, 2017



Commissioner for Taking Affidavits

STOCKWOODS

— barristers

Justin Safayeni
 Direct Line: 416-593-3494
 Direct Fax: 416-593-9345
 justins@stockwoods.ca

May 9, 2017

Delivered by Courier

Glenn Zacher
 Stikeman Elliott LLP
 5300 Commerce Court West,
 199 Bay Street, Toronto M5L 1B9
 Email: gzacher@stikeman.com

Dear Mr. Zacher:

Re: In the Matter of a Notice of Intention to Make an Order for Compliance *et al* against Planet Energy

File No. EB-2017-0007

I am in receipt of your letter dated April 17, 2017. As I have advised you, it has taken Board staff some time to review and collect documents internally in response to the production requests set out in your letter. Board staff's response to those requests, and to the other issues raised in your letter, is as follows:

- a) **Witnesses** – Board staff has already provided Planet Energy (“**Planet**”) with witness statements disclosing the substance of the evidence of four individuals we anticipate calling at the enforcement hearing: James MacArthur, Kayvan Nahid, Roobinet Andrassin and Robert Hawkins. (In your letter, you state that you have not been provided with a statement or summary from Mr. Hawkins. My understanding is that such a statement was provided in the disclosure you received on or about February 13, 2017. Please double check your files, and if you cannot locate the Hawkins statement, we will provide it to you right away.)

Depending on whether or not the parties can reach an agreement on certain documents and basic facts, Board staff may call an investigator and/or other additional witnesses to give evidence .

In the event we anticipate calling an investigator, or further evidence from the current expected witnesses, or any additional witnesses, Board staff will make best efforts to provide Planet with witness statements – if agreed on a reciprocal basis – at least 20 days

STOCKWOODS LLP

TD NORTH TOWER, 77 KING STREET WEST, SUITE 4130, P.O. BOX 140, TORONTO, ONTARIO M5K 1H1 • PH: 416-593-7200 • FAX: 416-593-9345

prior to the commencement of the enforcement hearing. This is more than the two weeks required under Rule 16.04 of the *Rules of Practice and Procedure for Enforcement Proceedings* (“*Rules*”). Failing agreement, Board staff will comply with its obligations under the *Rules*.

- b) **Document production** – Board staff has produced all relevant documents within the Board’s possession, power or control. If other relevant documents should come to light, they will be disclosed in accordance with the *Rules*.

You have requested production of “documents relating to the 27 energy contracts (and associated customers) alleged to have been sold by Mr. MacArthur and the 18 energy contracts (and associated customers) alleged to have been sold by Mr. Nahid (other than Hawkins and Andrassin).” As can be seen in the enclosed “Question #1 – updated” PDF document provided by Planet in the course of a compliance inspection, contracts and associated documents for Planet customers are exclusively in Planet’s possession, power and control, including those customers enrolled by Mr. MacArthur and Mr. Nahid (apart from Mr. Hawkins and Ms. Andrassin). They are not in the Board’s possession. We would expect Planet to produce those documents if it deems them necessary for the hearing.

Board staff has not had communications with Mr. MacArthur’s customers or Mr. Nahid’s customers, beyond Mr. Hawkins and Ms. Andrassin. (In the case of one of Mr. Kayvan’s customers who launched a complaint with the Board, Board staff attempted to contact that customer on September 27, 2016 and left a voicemail message that was never returned.)

If agreed to on a reciprocal basis, Board staff will provide Planet with a list of the documents it intends to enter into evidence at least 20 days prior to the commencement of the enforcement hearing. Failing agreement, Board staff will comply with its obligations under the *Rules*.

- c) **Staff interview notes** – On the enclosed USB key, you will find copies of the interview notes with the investigators’ identities marked thereon (Tab 6).
- d) **Production from MacArthur, Nahid, Andrassin and Hawkins (“Expected Witnesses”)** – On the enclosed USB key, you will find copies of all emails exchanged Board staff and the Expected Witnesses (Tab 5).

In addition, we can advise that on March 13, 2017, Birgit Armstrong (Advisor, Investigations) had a phone conversation with Mr. MacArthur. Her notes of that conversation (as recorded on the OEB’s electronic case management system) are as follows:

Phone call with Mr. MacArthur regarding the enforcement proceeding against Planet Energy. Staff informed Mr. MacArthur that Planet Energy has requested

an oral hearing and the hearing process is being commenced.

Staff re-confirmed that all contracts listed on the notice are subject to this proceeding. Staff also confirmed that the Notice of Intention includes request for restitution under bullet point #8.

Any further procedural steps will be communicated by the case manager, to be appointed by the OEB.

As you know, the Expected Witnesses are not employees of the OEB and Board staff has no power to compel them to produce the documents you have requested. Nevertheless, we have communicated your request for further documents to these four individuals and will keep you apprised of their responses. Thus far, we have only received documentation from Ms. Andrassin, which is included on the enclosed USB key (Tab 7).

- e) **Administrative penalty** – The determination of an administrative penalty has been made based on the factors set out in Ontario Regulation 51/16, made pursuant to the *Ontario Energy Board Act, 1998*.

Other issues

- **Planet's documents and witness statements.** Please advise us as to whether you agree to produce Planet's documents, witness list and witness statements 20 days prior to the beginning of the enforcement hearing, on our agreement to do the same. In our view, Board staff has disclosed the essence of its case (and more), and Planet is certainly in a position to make at least initial disclosure of the documents it intends to produce or enter into evidence, the witnesses it intends to call, and the anticipated evidence of those witnesses.
- **Authenticity and accuracy of documents.** We ask Planet to confirm that it admits the authenticity of the documents that Planet provided to Board staff during the compliance inspection process (as included in the disclosure). In addition, we would also ask Planet to confirm that it admits both (a) the authenticity of the enclosed PDF document titled "Question #1 – updated", which Planet provided to Board staff during the compliance inspection process, and (b) the accuracy of the document's content.
- **Preliminary motions.** If Planet intends to bring any preliminary motions in advance of the hearing, please let us know.
- **Discussions on an agreed statement of facts.** We believe it would be useful for the parties to discuss an agreed statement of facts, which could assist in reducing the time required for the hearing and truncating (or even eliminating) the need for certain witnesses. If you are open to such discussions, please let us know and we will circulate a draft for your consideration.

- 4 -

We look forward to hearing from you.

Yours truly,

A handwritten signature in black ink, appearing to read "Justin Safayeni".

Justin Safayeni
Encl.

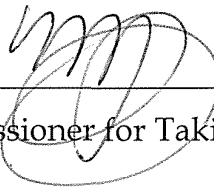
c: Chris Marijan, Birgit Armstrong (*via email*)
Andrea Gonsalves (*via email*)

EXHIBIT "F"

referred to in the Affidavit of

SOFIA CASINHA

Sworn June 7, 2017



Commissioner for Taking Affidavits



Andrea Gonsalves
 Direct Line: 416-593-3494
 andreag@stockwoods.ca

June 2, 2017

Delivered by overnight courier

Glenn Zacher
 Stikeman Elliott LLP
 5300 Commerce Court West,
 199 Bay Street, Toronto M5L 1B9
 Email: gzacher@stikeman.com

Dear Mr. Zacher:

Re: In the Matter of a Notice of Intention to Make an Order for Compliance *et al* against Planet Energy

File No. EB-2017-0007

Thank you for your letter of May 19, 2017. It appears only a few matters remain unresolved. I can advise as follows, using the same lettering as your May 19, 2017 letter:

- (a) Attached please find a PDF of the witness statement of Robert Hawkins.
- (b) You have requested recordings of telephone calls between MacArthur, Nahid, Andrassin and/or Hawkins, or any other relevant consumer and the OEB". Enclosed are audio files responsive to this request. OEB Staff have not located any other recordings responsive to your request.
- (c) Resolved.
- (d) The Ontario Energy Board has not to date received any additional documents from the OEB Expected Witnesses.
- (e) OEB Staff cannot speak to the particulars of the quantum of the penalty set out in the Notice of Intention insofar as it reflects the Board's intentions and reasoning behind any order it might make. However, I can convey the position of OEB Staff on the appropriate penalty amount based on the information it currently has. With respect to the latter, it is Staff's position, based on the facts known to it at this time, that a \$450,000 administrative penalty is appropriate as a calculation of \$10,000 per contract, times 45 contracts and

STOCKWOODS LLP
 TD NORTH TOWER, 77 KING STREET WEST, SUITE 4130, P.O. BOX 140, TORONTO, ONTARIO M5K 1H1 • PH: 416-593-7200 • FAX: 416-593-9345

- 2 -

having regard to the factors set out in Ontario Regulation 51/16, made pursuant to the *Ontario Energy Board Act, 1998*. We also note, on a without prejudice basis, that Staff's position on this may change as additional facts and evidence become known to it.

- (f) OEB Staff does not have the identities and contact information "for other witnesses referenced in MacArthur's and Nahid's witness statements". OEB Staff will continue to make efforts to obtain that information, but is not in a position to compel Mr MacArthur and Mr Nahid to divulge the identities and contact information.

Regarding the additional issues raised in our May 9 letter and your response to them:

- We had communications with you since your May 19 letter regarding an agreement on authenticity of documents. We expect to continue to make progress toward an agreement with you in the near future and well in advance of the hearing.
- We are working on a draft agreed statement of facts and will provide it to you for review as soon as possible.
- OEB staff does not currently anticipate bringing any preliminary motions in advance of the hearing.
- Regarding the timing of exchange of final witness and document lists, we agree that much depends on the ultimate contents of any agreed statement of facts. Therefore we think it makes the most sense to await the outcome of that process before many any commitments with respect to timing, beyond what is required in the OEB's *Rules*.

Yours truly,



Andrea Gonsalves
Encl.

c: Mel Hogg (*via email*)
Justin Safayeni (*via email*)

EXHIBIT "G"

referred to in the Affidavit of

SOFIA CASINHA

Sworn June 7, 2017



Commissioner for Taking Affidavits

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

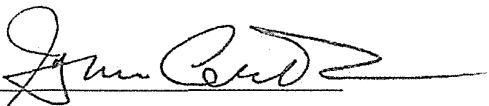
AND IN THE MATTER OF Planet Energy (Ontario) Corp. (Planet Energy)
Licence Numbers ER-2011-0409 and GM-2013-0269

WITNESS STATEMENT OF James MacArthur

My name is James MacArthur and I reside in the [REDACTED] in the Province of Ontario.

1. I attended an ACN rally in 2013 where representatives were rallying to get other interested people into the business. They explained that representatives could make a lot of money working for ACN. I was interested in making more money and paid \$500 to become a part of this.
2. I was required to pay an annual fee to keep my ACN account active in October 2015, but I did not pay the annual fee. However, my ACN account is still currently active. I was actively selling different services for ACN from 2013-2015. One of the products sold were energy contracts on behalf of Planet Energy. In total, I sold approximately 13 energy contracts while representing ACN and Planet Energy.
3. I do not remember receiving any training documents from Planet Energy or ACN about the energy industry.
4. My online course and testing to become an energy salesperson was completed at a coffee shop with my ACN trainer by my side during the online course and testing. My trainer helped me with the test.
5. I was told by my ACN trainer that the energy contracts would save consumers money on their energy bills.
6. I was not given any specific information on other charges such as global adjustments but was told to not talk about anything but savings. I was told to focus on the contract price because consumer will save money on their electricity bill.
7. I started to sell contracts because I wanted to help my friends save money and make some money on the side. I feel that ACN/Planet Energy made some misrepresentations as part of their business practices.

8. In May 2015 I recall that I was speaking to my friend, Robert Hawkins (Robert) about signing 5 electricity contracts through ACN/Planet Energy.
9. Based on my training, I told Robert that the electricity program would save him money and that he could cancel at any time since he was not under any obligations.
10. I asked Robert for a copy of this bill and his email address. While on my own, I signed Robert into an electricity contract online. I knew that I was not allowed to enrol customers into an energy contract, even with their permission, but I understood from other ACN representatives that this was normal business practice.
11. I signed Robert into an electricity contract because I wanted to help others save money and for me to make some money in the process.
12. Later, when Robert started to receive collection notices from Planet Energy, I tried to help him cancel the contract because Robert was very upset. I contacted Planet Energy on his behalf.
13. I now realize that I was giving wrong information. I should have told consumers that I could price protect them but not that I would save them money.
14. I have come to the Ontario Energy Board (OEB) because I feel that I was provided with incorrect information during my training with my ACN/Planet Energy trainer.


Signature


Date

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

**AND IN THE MATTER OF Planet Energy (Ontario) Corp. (Planet Energy)
Licence Numbers ER-2011-0409 and GM-2013-0269**

WITNESS STATEMENT OF James MacArthur

My name is James MacArthur and I reside in the [REDACTED] in the Province of Ontario.

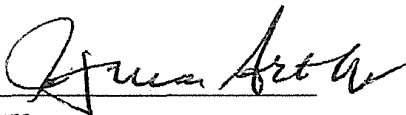
1. I attended an ACN meeting at a private residence with a number of other interested people in 2012. I paid \$500 to become an independent business owner (IBO). This fee included access to a designated website that enabled me to sell ACN products. I was actively selling different services for ACN, on and off, from 2012-2015.
2. I was provided with some materials and documents about various ACN products and referred to the website for additional information. One of the products sold were energy contracts on behalf of Planet Energy.
3. In terms of information about these energy contracts, all that I received from ACN was an example of an electricity contract and gas contract. I did not receive any further information or training about energy contracts or the energy industry from ACN.
4. I attended a few ACN rallies, but the focus at those events was growing your business, making money and signing others up for ACN. There was some discussion about the products ACN was offering, but there was no training about the details of those products (including energy contracts).
5. I was required to take a test before I could start selling energy contracts. My online course and testing was completed with another, more experienced ACN IBO by my side (who had signed me up for ACN, and who stood to benefit financially from my sales). That IBO told me the correct answers for the test questions, which I then marked on the online form.
6. At some point in time, I took the online test again. At that point, another more experienced ACN IBO (but not the same person who signed me up for ACN) provided me with the correct answers.

7. In my initial witness statement, I referred to “training” by ACN/Planet Energy. I wish to be clear that I did not recall receiving any training from Planet Energy or ACN, including on:
 - a. the structure or operation of the electricity market;
 - b. charges associated with energy contracts (including cancellation fees);
 - c. rules and regulations of energy market; and
 - d. rules and regulations governing how to sign consumers up for energy contracts; or
 - e. anything else to do with the energy industry.
8. What I did receive in terms of “training” or information came after I asked questions about the Global Adjustment, from both the person who signed me up for ACN and from a “Senior Vice-President” at ACN (who I believe was just another IBO). The message I received from both of them was not to worry about the Global Adjustment, that it would even itself out over time and that the average cost would be around 5 cents per kWh. During the time I was selling contracts on behalf of Planet Energy, I did not receive any other information about the Global Adjustment, from any other source at ACN. I now understand that the information I was given about the Global Adjustment was not true.
9. In total, I enrolled approximately 12 – 15 consumers into energy contracts on behalf of Planet Energy, for their personal residences and/or for commercial accounts. All of these consumers were my friends or family.
10. I met with and spoke to consumers about how much they could save on their energy contracts. Another ACN IBO provided me with a type of ‘script’ that set out a sales approach to take when approaching consumers, which I largely followed. I would have consumers pull out their own electricity bills, and then I would then advise them that a Planet Energy contract could offer them a fixed rate of 4.99 cents per kWh for five years (except for larger commercial accounts, where the rate might be less). I normally did not tell these consumers anything about the Global Adjustment, and if the subject came up, I told them what I was told by other ACN IBOs and believed to be true (i.e. not to worry about it, that it would even itself out over time and that the average cost would be around 5 cents per kWh.)

11. In every case (except one), these consumers agreed to sign up for energy contracts with Planet Energy during our physical meeting together, after I explained to them the benefits of the contract (e.g. saving money).
12. I did not wear any form of ID badge or provide consumers with any kind of business card during our meetings. Although someone else at ACN advised me that I should technically wear a badge and hand out business cards, I never witnessed anyone else at ACN doing so – and instead witnessed other ACN IBOs signing up consumers without wearing badges or handing out business cards.
13. After the consumers agreed to sign up, I would request to see their utility bill and contact information. Based on that information, I enrolled them on my own, using my IBO website. I used my laptop for most enrollments. For further clarity, in all cases, I signed consumers up on my own, without them being present.
14. I did not receive any information from ACN or Planet Energy advising me that I could not enroll consumers on my own, without the consumer being present. Although I was aware that I should not be enrolling consumers on my own, I did hear from other ACN IBOs working on behalf of Planet Energy that this was being done as common practice.
15. The day after enrollment, I would print out the contract documents and deliver them to the consumers I enrolled. However, I did not provide consumers with a copy of the contract at any point before they were enrolled, nor did I have the consumers sign any kind of acknowledgment. Again, I was never instructed to do so.
16. At no point did any of the consumers I enrolled with Planet Energy provide their physical or electronic signatures (or check off any boxes) on any contract, disclosure statement or price comparison having to do with the contract with Planet Energy. At no point was I told their signatures were necessary, or that they had to check off any boxes.
17. After I enrolled consumers with Planet Energy, I advised them that they might receive a call from Planet Energy asking them questions, and also advised them of the answers they should give if they receive such a call. In particular, I advised them that they may be asked if they realized they signed a five year

contract (answer "yes"); that they signed up on their own (answer "yes"); whether an agent was in the room when they signed up (answer "no"); and whether the agent had a badge and business card (answer "yes").

18. One day, I was speaking to my friend, Robert Hawkins (Robert) about signing electricity contracts with Planet Energy for his five properties. As per the 'script' I was provided, I told Robert he could save money by signing up with Planet Energy.
19. After securing Robert's agreement to sign energy contracts with Planet Energy, I enrolled Robert into five electricity contracts covering all his properties. Robert was not with me during the enrollment.
20. Robert sold one property in December of 2015. Robert started to receive collection notices from Planet Energy right after he informed Planet Energy of the sale. I tried to help him cancel the contract because Robert was very upset. I had not told him (or any other consumer) about the cancellation fees at the time of enrollment. Up until Robert raised the issue, I was not even aware that the Planet Energy contracts could result in cancellation fees, and nobody had ever brought this to my attention.
21. I contacted Planet Energy on Robert's behalf. Over several months, I spoke to several people at Planet Energy to try and get the cancellation fees waived. Eventually, after much back and forth, it appears that the fees were waived.
22. Robert sold a second property and again received a notice advising him that he must pay cancellation fees. This matter remains outstanding.
23. I prefer not to provide the names of any other consumers I enrolled on my own.
24. Eventually, after receiving questions from consumers that I had signed up for energy contracts with Planet Energy, I noticed that I was not correct about energy savings and started to research the impact of the Global Adjustment on my own. This is when I discovered that the information I had been provided about the Global Adjustment was inaccurate. I stopped selling energy contracts about one year ago in 2015.


Signature

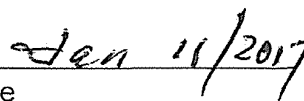
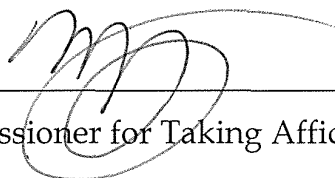

Date

EXHIBIT "H"

referred to in the Affidavit of

SOFIA CASINHA

Sworn June 7, 2017



Commissioner for Taking Affidavits

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

**AND IN THE MATTER OF Planet Energy (Ontario) Corp. (Planet Energy)
Licence Numbers ER-2011-0409 and GM-2013-0269**

WITNESS STATEMENT OF KAYVAN NAHID

My name is Kayvan Nahid and I reside in the Town of [REDACTED] in the Province of Ontario.

1. I meet a lot of people and build relationships through my job of selling and installing home theater systems. My relationships with my customers and friends are built on trust.
2. In 2014, a friend [REDACTED] who worked at ACN at the time told me about ACN. She told me that I could make a lot of money working with ACN. ACN looks for agents that have a lot of contacts with other friends and family, since an ACN agent sells energy contracts, internet and telephone service to friends and family only. I would get money from ACN for any contracts I sold. After reaching 60 points (based on the point value of the contracts sold: electricity 1, gas 1, internet 2-3, phone long-distance 3), my understanding was that an ACN agent would get 10% of the bill that customers pay to ACN. I never reached 60 points. I was an ACN agent for several months in 2015.
3. With regards to energy contracts, I was told by Clair at ACN that I would save my friends money. I was also told by Clair (after I asked her about pricing) that Planet Energy sells energy cheaper than a distributor because Planet Energy buys energy in bulk.
4. There was no formal training, but I attended a few rallies, where ACN introduced other ACN agents that were making a lot of money. The focus of these rallies was on sales techniques and how to grow your business; it was not on providing any training specific to the energy industry.
5. I was not provided with any material, but was given instructions to go to the ACN website for training. Every ACN agent gets an ID number and a designated webpage.

6. I went to the webpage to look at ACN's material for each of the products they were selling. I do not recall seeing any training material for energy contracts. All I recall seeing is a link to the online test that I understood energy salespeople had to complete in order to start selling contracts.
7. I did the online test at home with Clair present. She helped me in understanding certain questions. I never retrained or recertified with ACN.
8. Apart from that online test, I was not provided with any other training materials having to do with the energy industry or energy contracts.
9. I enrolled about 15 people in energy contracts. All contracts were with friends or family.
10. When I asked Clair about the "Global Adjustment", all she told me was that the Global Adjustment would not go over 9.99 cents per kWh, which I now understand to be false. Based on that information, I calculated that the combined price (fixed contract price and Global Adjustment) for Planet Energy contracts could not go over 15 cents per kWh during "on-peak" periods, which is less than PowerStream's time-of-use prices. This is what I believed at the time and this is what I communicated to consumers. Again, however, I now understand that my calculation was based on faulty information.
11. Apart from the information set out above, I did not receive any information or material from ACN about the Global Adjustment. I was simply told by Clair to focus my discussion with consumers on the cost savings they would receive if they enrolled with Planet Energy, because Planet Energy's prices are fixed while PowerStream's price increase several times a year.
12. I followed this advice and I told my customers that they would save money if they enrolled in an energy contract with Planet Energy. I showed them a hardcopy of my own Planet Energy contract, which shows a contract price of 4.99 cents per kWh for electricity. Compared to PowerStream's time-of-use price of 14.99 cents per kWh on-peak (at that time), it looks like I saved 10 cents per kWh. I explained to my friends how they could save money with a fixed price contract by showing them this comparison, especially since the price with PowerStream goes up several times a year, while Planet Energy's remains fixed for five years. However, the contract I showed them does not show the impact of the Global Adjustment on the overall bill, and I did not discuss the Global Adjustment with them, other than to say it would not go over 9.99 cents per kWh.

13. My customers trusted me, so they would provide me with their information and tell me to go ahead with enrolling them in a Planet Energy contract. For further clarity, in the case of every energy contract I sold while at ACN, I had face-to-face discussions with the consumer in question where I explained that they would save money if they enrolled with Planet Energy, and they agreed to do so. I did not wear any form of ID badge or provide consumers with any kind of business card during our meetings, nor do I recall anyone at ACN telling me that I had to do this.
14. As for the actual enrollment, I enrolled some energy contracts on my own, in my home, without the consumer being present. I enrolled other friends into energy contracts either at their home or at their business, but they did not sit beside me and review the contract while I did so. My friends did not enroll themselves; I enrolled each energy contract myself. I would log on to the IBO office page of the website and go through the steps to enroll consumers for electricity, gas and/or other contracts.
15. Clair told me that I was not supposed to enroll consumers on my own, and I believe that the issue was also covered in the online test.
16. I did not provide any consumers with a text-based copy of the Planet Energy contract (or any version of the contract) at any point before they were enrolled, nor did I have the consumers sign any kind of acknowledgment. No consumer that I enrolled read any version of the contract before they agreed to be enrolled. Again, I was never instructed to go through any of these steps prior to enrollment.
17. I confirm that I enrolled the following consumers into one or more energy contracts (electricity and/or gas) at my house, without them being present. I asked these consumers for their contact information and utility bill. Based on this information I enrolled these people into energy contracts:

- [REDACTED]
- Roobinet Andrassin ([REDACTED])
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

18. I enrolled [REDACTED]. He and his [REDACTED] [REDACTED] were very busy. They did not have time to read the contract online while I was there. I enrolled a contract for their home under [REDACTED]'s name and their dental clinic [REDACTED] under his [REDACTED] name [REDACTED]). She later filed a complaint with the OEB.

19. I spoke to [REDACTED] after attending an event and told him that he could save money on an energy contract. He trusted me and agreed to enroll. He provided the information and I enrolled him into two electricity and two gas contracts (for his clinic) at my home without him being present. I did it at my house since it would have taken too long for me to enroll this contract at the clinic.

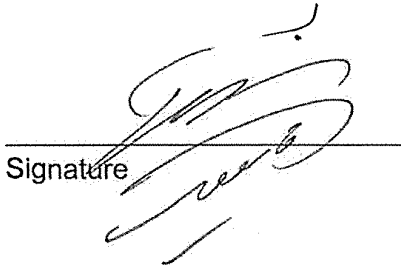
20. I also enrolled Roobinet Andrassin into an electricity contract. She worked at the [REDACTED]. I showed her my own contract and my bill and told her she could save money.

21. At no point did any of the consumers I enrolled with Planet Energy provide their physical or electronic signatures (or check off any boxes) on any contract, disclosure statement or price comparison having to do with Planet Energy.

22. My contract is still flowing with Planet Energy.

23. I have not been contacted by Planet Energy about any complaints or disciplinary action. I no longer work with ACN; I went online and cancelled my IBO status.

Signature



Date

Dec 20, 2016

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

**AND IN THE MATTER OF Planet Energy (Ontario) Corp. (Planet Energy)
Licence Numbers ER-2011-0409 and GM-2013-0269**

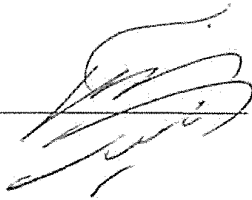
WITNESS STATEMENT OF KAYVAN NAHID

My name is Kayvan Nahid and I reside in the [REDACTED] in the Province of Ontario.

1. I was an ACN employee from 2014 – 2016 and I sold different services for ACN, one of which were energy contracts on behalf of Planet Energy. I wanted to work for ACN because I was told I could make a lot of money. In a presentation, we were told that some representatives make over \$100,000 per month. In total, I sold approximately 20 energy contracts while representing ACN and Planet Energy.
2. Through my training about energy contracts, I understood that:
 - i) By selling Planet Energy contracts, I would help consumers save money on their electricity and gas bills.
 - ii) ACN purchased gas and electricity commodities in bulk from the utilities at a cheaper rate and thereby being able to resell it to consumers at a lower rate.
 - iii) I could enrol consumers into energy contracts on my own computer without the consumer being present.
3. I completed my course and test to become an energy salesperson with my ACN trainer's assisting me through the entire process. There was very little training about the energy industry in Ontario.
4. In April 2015 I recall that I had several discussions about an electricity contract through ACN/Planet Energy with Roobinet Andrassin (Roobinet) in the medical office where she worked.
5. I was under the impression that the electricity program would save Roobinet money on her electricity bill. I entered into a contract with Planet Energy as well for electricity because I thought I would save money.
6. I showed her my contract as part of my own sales strategy to show that I was also expecting to save money on my Planet Energy contract.

7. Once Roobinet agreed to enroll into a contract I asked her to provide me with a copy of her bill and her email address. Using the information she provided I went home and signed her into an energy contract without her being present.
8. I have come to the Ontario Energy Board (OEB) because I feel that I was not trained properly and therefore, provided incorrect information and expectations to electricity account holders. I feel bad that I encouraged people to enrol in contracts without having all the proper information.
9. I called Planet Energy on behalf of the consumer and requested cancellation based on the misinformation I provided. I was informed by Planet Energy that the consumer would have to call them directly. Shortly after, I was reprimanded for calling Planet Energy to try to cancel a customer's contract.
10. I have gone to the Ontario Energy Board with this information because I feel that ACN/Planet Energy is not conducting business in a proper and honest way. I also feel that I have provided misleading information to the people who I sold energy contracts to because I was not trained properly and did not have a good understanding of the energy industry.

Signature



Date

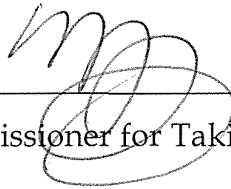
Jan 07, 2016

EXHIBIT "I"

referred to in the Affidavit of

SOFIA CASINHA

Sworn June 7, 2017



Commissioner for Taking Affidavits

Date March 24/16

Planned Interview

Kayvan Naria

4 or 10 later

which be good.

11:00 am

- Agent for PE - worked for ACN

- interviewed with agent

- checked company - both ACN & PE

- friends & family - someone offered job to [redacted],
thought free money, easy to sell because
people will believe you.

- presentation - \$100,000 income a month, sell ACN
ACN buys contracts from Powerstream & sell to
cust - Enbridge too.

- no, no longer working with ACN

- started 1 year ago Nov ~~2014~~ ^{not sure} 2014 (approx year)- ~~one~~ account closed this year Jan/Feb 2016

- one cust wanted to cancel contract - Kayvan called
PE to cancel - PE said that cust has to call.

ACN was upset as to why agent called PE - got in
trouble

PE - have to pay cancellation fee.

How did you become agent?

- online training →

- test was done together with another ACN person

- he has folder for ACN/PE on computer

Page

Date

- sold about 15 contracts - not just energy - maybe 10 ~~etc~~ contracts energy
- all not cancelled within 2 months.

Mr Robins - cust of Kayvan

- ⇒ he showed her his own contract which he signed
- used his own email address
- how did cust sign up?
- he signed everything himself - used their email addresses

- he wants to stop AEN & PE

- ⇒ would be willing to be a witness - yes
- ⇒ if it goes to a hearing, would you participate - yes

- no additional documents - back order page was closed by AEN.

Page

Kayvan

Agent wants to stop ACN / PLANET ENERGY.

Working around family & friends. Job offered to [REDACTED] → to ppl as \$ income.

little money → presentation \$100.00 w/ ACN.

1st Question from Kayvan - why Power Stream leave job w/ ACN?

∴ ACN Buy packages of power from Power Stream.

on time 5 million worth of electricity then resale.

Same w/ Enbridge.

ACN - no longer works for ACN → by Nov 2015 start

stop → ACN closed → JAN 2016 due to getting into

ACN's closed issue → another customer doesn't know email addresses.

Agent called PE - to cancel customer's account.

PE - informed that the agent can't cancel the account.

Got in trouble w/ ACN.

Shake for
canceling
other customer's
Account.

Agent
Test online → online test & training

- Agent did the test with his trainer. → online

- no training on Energy market → or what electricity market is like.

□ Client to send info on training material.

Contracts sold 2 months 15 contracts. phone, internet, biz phone.

all customers ~~cancel~~ cancelled their accounts.

10 Energy Contracts. → Agent's house under Planet.

Understand → showed ~~consumer~~ ^{customer} his own contract and explained that he was saving it so she should sign too.

Consumer thought product was beneficial to himself and clients.

- Consumer signed the consumer up on his own using his computer.
- Was not told that he could not sign other clients up for contract on his own.
- other contracts signed up on his own. he got email, sent # etc to sign his clients up.

Came to Brown to stop them - not right way to make it

Yes to Affidavit and witness.

Yes to attend hearing.

Back office page for Agent is cloud is misleading.

Nov. 7/16

Keyvan Nalid

Willing to testify.

- 2014 - 2016
- Meet ACN agent
- Earning money with ACN
- After 60 points - request from ACN
10% of bill
- ACN agent friend of ~~ACN~~ [REDACTED]
- Claim

TRAINING:

- ACN Trainer selling money cheaper
how - ACN buying bulk licenses
- 28x training presented
- In hotel in Arlington
- Some documents
- ACN website - training
material
- loaded it up on line
- Passed the test
- At home to do test - Trainer present

- Start as agent
- 2 customers - friends
- Work for 5-6 months Nov. 2014
- Quit after 7-8 months June 2015
- How many contracts: 35 - 45 (approx. 15-20)
- How did you approach them:
 - Trust by clients
 - Told about savings.
- Customers go ahead
- Enrollment:
 - IBO - go to website IBO office
 - step to go to enrollment
 - energy fixed / or var.
 - address
 - contract # w. distributor
 - e-mail
 - telephone
- Agent enrolled customers himself.
- He asked for info
- few people he did by himself.
- others he sat with customers.
- 2 [REDACTED]
- 10 person
- contract points assigned.

- Bigger points plan & network.
- Rule - just friends & family
- Ridgmont Health Centre - Glouce
- [REDACTED] - enrolled over here

(Claire)

Agent told him about GA but said never goes higher than 9.99 c/hour so never higher than 15 c/hour.

- Global Adjustment higher not fixed
- Planet Energy does not mention GA

Rayan cancelled his 180 status

Can have you contacted Planet Energy

- Called PE a couple of times
- Did not get help.
- Tried to call on customer's behalf.

Dec. 20/2016

Meeting w. Justin (legal) + Kayvan Nalid
10:20

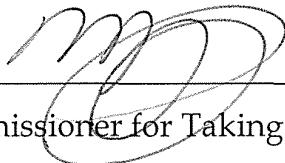
- Comfortable w. testifying
- Justin is going over witness statement.
- Still in the home heater business
- ~~the~~ ACN agent can only sell to friends & family
- ACN agent several months in 2015
- Confirmed Claire's last name - ACN trainer
- At Nalid's agents were told about how to use the Internet for on-line contracts set-up. &
- Focus at ~~the~~ the Nalid's was how to grow business: pyramid scheme
- All training documents are available on the ACN website. Every agent gets a back office (ID# + website)

EXHIBIT "J"

referred to in the Affidavit of

SOFIA CASINHA

Sworn June 7, 2017



Commissioner for Taking Affidavits

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

**AND IN THE MATTER OF Planet Energy (Ontario) Corp. (Planet Energy)
Licence Numbers ER-2011-0409 and GM-2013-0269**

WITNESS STATEMENT OF Roobinet Andrassin

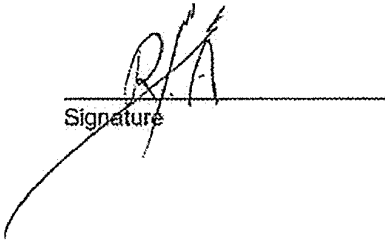
My name is Roobinet Andrassin and I reside in the [REDACTED] in the Province of Ontario.

1. I am the account holder of the electricity account with PowerStream Inc. (PowerStream).
2. In April 2015 I recall that salesperson Kayvan Nahid (Kayvan), came into my work place. I am the office manager at a doctor's office that Kayvan attends. He asked me to sign an electricity contract for my personal residence through ACN/Planet Energy (collectively, Planet Energy) because the electricity program would save me money.
3. Kayvan informed me that he could enter me into a contract without any hassle. He asked me to provide him with a copy of my electricity bill and my email address. My understanding was that he would be able to enroll me into a contract on my behalf, without me being present. Kayvan took a picture of my bill with his phone.
4. I do not recall whether Kayvan was wearing a badge or uniform when selling the energy contract to me because he was wearing a jacket.
5. I felt comfortable entering into a contract with Kayvan because I have known him for a long time. I believed him when he said the Planet Energy contract would save me money.
6. On April 29, 2015, I received an email confirmation from Planet Energy informing me that I was enrolled into their agreement. I only reviewed the terms and conditions, but not the price comparison attachment. Prior to this, I was never given (and had never reviewed) any of the contract's terms (or the disclosure statement and price comparison).

7. For further clarity, I did not enrol myself into a contract with Planet Energy, was not present when Kayvan enrolled me, and did not review any documents prior to enrolling.
8. When I received my first bill with Planet Energy's name on it, dated September 11, 2015, I found the cost of electricity to be higher with Planet Energy compared to what I was previously paying to PowerStream. I called Planet Energy and the telephone agent informed me that the Global Adjustment was high. He suggested that I stay on my contract for another month (when I get my next bill) and that I should see savings on the following month's electricity bill because the global adjustment would go down.
9. I called Planet Energy approximately a month later after I received my next bill because I did not see any savings. I was told that I had to pay \$250 plus tax to cancel my electricity contract with Planet Energy.
10. I confronted Kayvan and asked why he did not provide me information on the Global Adjustment. Kayvan could not explain the Global Adjustment. He did not appear to understand anything about Global Adjustment. He reiterated to me that I was supposed to be saving money and could not explain why my electricity bill went up higher. Kayvan told me that he felt bad about signing me up because he understood that consumers would be saving money. He also told me that he signed his friends and relatives into a contract as well.
11. I called Planet Energy again and wanted to speak with the manager, but no one was available. I continued to call to request to speak to a manager because I wanted to have the contract cancelled with no penalty. A couple of days later, a Planet Energy Manager called me at 7:30 pm and repeated the same information, that it would cost me \$250 + tax to cancel the contract.
12. Following that, on or around January 26, 2016, I called PowerStream a couple of times to get an explanation about the Global Adjustment on my electricity bills. I was not getting a satisfactory answer and staff at PowerStream provided me with the telephone number of the Ontario Energy Board's (OEB) for assistance.
13. On January 27, 2016, I called the OEB and lodged a complaint. Following that call, on Feb 22, 2016, I received a confirmation that my contract was cancelled although in reality it was cancelled on May 30, 2016.

14. This situation has caused me and my family a lot of stress. My family was very upset with me because we did not save any money while our electricity was being supplied by Planet Energy. I feel that I was tricked into agreeing to this contract because I didn't have the whole picture and Kayvan should have provided me with all the information related to the contract. I don't want this same situation to happen to other people, especially those who have a language barrier.

15. On May 9, 2016, after speaking to Andy Chung at the Ontario Energy Board, I looked for the email provided by Planet Energy on April 29, 2015 and forwarded a copy to Andy.


Signature2016-12-29
Date

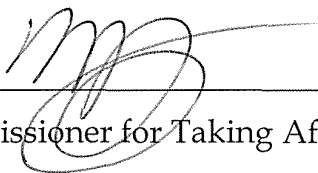
Faxed DEC 7 9 2016
416-440-7656

EXHIBIT "K"

referred to in the Affidavit of

SOFIA CASINHA

Sworn June 7, 2017



Commissioner for Taking Affidavits

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

**AND IN THE MATTER OF Planet Energy (Ontario) Corp. (Planet Energy)
Licence Numbers ER-2011-0409 and GM-2013-0269**

WITNESS STATEMENT OF ROBERT HAWKINS

My name is Robert Hawkins and I reside in the [REDACTED] in the Province of Ontario.

1. I am the account holder of the electricity account with Hydro One Networks Inc. (Hydro One). I am the owner of several other rental properties as well.
2. In May 2015 I met with James D. MacArthur (Jim) and we had multiple conversations about an energy contract for my electricity accounts. He asked me to sign an electricity contract through ACN/Planet Energy because the electricity program would save me money. Jim also informed me that I could cancel my contract at any time without penalty.

At no time did Jim wear a badge or uniform when selling the energy contracts to me nor did I receive a copy of Jim's business card.

3. At the time, I was content with paying my hydro bills through Hydro One and Newmarket Hydro so I was not looking to get enrolled into a contract.

I was reluctant with providing Jim my information but was reassured that I would be saving money on my energy bills. I told Jim that I did not have time to enter into a contract myself. Jim explained that he could sign me into a contract and all that was required was a copy of my hydro bill and my email address. Since I was under the impression that my hydro would be cheaper and that there would be no obligations to cancel afterwards, I provided my personal information to Jim.

4. I did not review any documents that were related to the energy contracts prior to being entered into each of the contracts because Jim told me that I did not need to. I believed him because he is a friend.
5. Since I do not use my email regularly, I was not looking for any communication from Planet Energy at the time of enrolment and am not able to confirm that I received a confirmation email from ACN/Planet Energy.

6. I do not typically review my electricity bill so I did not notice Planet Energy's name on my bill.
7. Before I had even begun to sell one of my rental properties I had already been receiving collection notices. Collection notices were first received from Planet Energy and later from a collection agency. This is the first time that I discovered that I was enrolled in a contract with Planet Energy for one of my properties.
8. At one time I had 5 properties that were under Planet Energy contracts. 2 properties have since been sold and a collection agency has contacted me for breaking the two contracts. I still have 3 other properties that are still under Planet Energy contracts.
9. When I received the penalty notice, I felt that I was lied to by Jim because he told me that I could cancel my contract at any time. He said that there would be no consequences. I contacted Jim and he informed me that he would contact Planet Energy to have my contract cancelled. I have not discussed this issue with Planet Energy myself.
10. When I approached Jim he was very remorseful and wanted to fix this situation for me. However Jim was unable to resolve my issue. On January 23, 2016 I called the Ontario Energy Board and lodged a complaint regarding the penalties associated with my contract cancellation.



Signature

11-05-16
Date

EXHIBIT "L"

referred to in the Affidavit of

SOFIA CASINHA

Sworn June 7, 2017



Commissioner for Taking Affidavits

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)

Do Not Print or Copy Without Attorney Authorization

Date of Voice Recording: Jan. 25, 2016	Document Name: 2016-0000729 First Contact – January 26 2016
Time:	Duration of Call: 04:57.00
CSR Name: Natalia	
Caller Name: Robert Hawkins	
Transcriber: Erik Rozenbergs	

Date of Call:

Time of Call:

Doc. Name: A_3_10009187_CUS235297_164400_20150615025730166

Page 2

[CSR - Natalia]: Good morning. Thank you for calling the Ontario Energy Board. My name is Natalia. May I start with your first and last name please.

[Robert Hawkins]: Robert Hawkins.

[CSR - Natalia]: And can I get your phone number in case we get disconnected?

[Robert Hawkins]: [REDACTED]

[CSR - Natalia]: Alright and how can I help you today, Robert?

[Robert Hawkins]: Well we have a, I have a number here for... I signed up the Planet Energy for discount Hydro.

[CSR - Natalia]: Ok.

[Robert Hawkins]: I know it wasn't very smart but they made it sound so good. They didn't really explain the penalties in great length for cancelation. Now what happened was I moved my office. I started the process (*Loud noise*)

[CSR - Natalia]: Ok.

[Robert Hawkins]: ...and when I did I cancelled, of course I cancelled the hydro with Newmarket Hydro and the next thing I know I'm getting a collections notices from this Planet Energy.

[CSR - Natalia]: Oh were you the one who emailed us not too long ago?

[Robert Hawkins]: Yeah, that's me.

[CSR - Natalia]: Alright. Not a problem. Thank you so much for taking the time to give us a call. I just needed, I see that I already put in the note for you in regards to submitting a complaint on behalf of Planet Energy.

[Robert Hawkins]: Uh-huh.

[CSR - Natalia]: Now have you already, I'm assuming you've already contacted Planet Energy. Correct?

Date of Call:

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[Robert Hawkins]: Yeah. I have a person, James MacArthur, he's like, we've spoke, I've spoke to them myself. He's contacted them. They're just relentless. I mean they didn't go into great detail on the cancellation policy and all of a sudden they sent you a bill for, they ask for \$1,400. I mean, that's ridiculous.

[CSR - Natalia]: Typically, when it comes to consumer rights and disclosures. If you're moving properties, if you're transferring, you shouldn't need to be pay the penalty. If you're moving premises and they're not offering it where you're transferring the contract. So what we can do is that I will have that complaint submitted on your behalf.

[Robert Hawkins]: Mm-hmm.

[CSR - Natalia]: Planet Energy will be giving you a call within about a week I would say. Maybe even sooner than a week, maybe by the end of this week. They will be giving you a call just to reiterate what the problem is, what the complaint is.

[Robert Hawkins]: Right.

[CSR - Natalia]: Now just because they call you doesn't mean that the complaint on our end is closed. We are still going to be doing an investigation on our end. And the investigation typically takes 21 days or less.

[Robert Hawkins]: Ok.

[CSR - Natalia]: So you have a maximum of 21 days and you will be definitely be hearing back from us before the 21 days is up just to reiterate what happened with Planet Energy and what your rights are and what it comes to the cancellation.

[Robert Hawkins]: What I don't understand is, you know, they go through all the bells and all the advantages of taking the program but at no time do they highlight the cancellation policy in print or verbally. That seems to be an area they try to avoid.

[CSR - Natalia]: Ok.

Date of Call:

Time of Call:

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[Robert Hawkins]: So, that should be number one on their list. Like, hey it's a good policy but they don't do that. That upsets me when I don't even realize when came time to move when I started getting these notices.

[CSR - Natalia]: Yeah I see. So, so we'll definitely have that looked into for you. Definitely don't want you to have to pay any penalties or anything. We'll investigate this. We'll have to go through the legislation just to see what your rights are, of course. We'll definitely, you will hear back from us.

[Robert Hawkins]: Ok.

[CSR - Natalia]: So, you know, you have 21 days maximum but typically it's about a lot sooner.

[Robert Hawkins]: Ok. That's great. This call will be on my record, will it?

[CSR - Natalia]: Yes. Absolutely. So I can provide to you your reference number just in case you need to phone back in the future.

[Robert Hawkins]: Sure. What is it?

[CSR - Natalia]: Your reference number is going to be 2016.

[Robert Hawkins]: Yep.

[CSR - Natalia]: -0000729.

[Robert Hawkins]: That's 4 zero's and 729.

[CSR - Natalia]: Exactly. The last thing I need from you is, I need your consent to release information per your utilities so that would be Planet Energy to the Ontario Energy Board.

[Robert Hawkins]: Yup. You got it.

[CSR - Natalia]: Perfect. Ok, thank you so much for phoning in and we'll be handling this from now on.

[Robert Hawkins]: Ok. Great. Thank you.

[CSR - Natalia]: Alright. Take care Robert.

Date of Call:

Time of Call:

Doc. Name: A_3_10009187_CUS235297_164400_20150615025730166

Page 5

[Robert Hawkins]: You too. Bye bye.

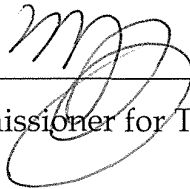
[CSR - Natalia]: Bye bye.

EXHIBIT "M"

referred to in the Affidavit of

SOFIA CASINHA

Sworn June 7, 2017



Commissioner for Taking Affidavits

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Glenn Zacher
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BY E-MAIL

April 17, 2017
File No.: 127353.1011

Justin Safayeni
Stockwoods LLP
TD North Tower, Box 140
77 King Street West, Suite 4130
Toronto ON M5K 1H1

Dear Justin:

**Re: Notice of Intention to Make an Order for Compliance et al
Against Planet Energy – EB – 2017 – 0007**

I am writing to follow-up on our telephone call from earlier last week wherein we discussed various pre-hearing matters.

As discussed, our client requests the following pre-hearing particulars and production:

- a) Witnesses - I understand from our discussion that you intend to call as witnesses James MacArthur, Kayvan Nahid, Roobinet Andrassin, Robert Hawkins and possibly a Board staff investigator. If you intend to adduce evidence from Mr. MacArthur, Mr. Nahid or Ms. Andrassin beyond the scope of the witness statements provided to us as part of the staff's disclosure, please let us know when you will be delivering further witness statements or summaries. Also we have not been provided with witness statements or summaries for Mr. Hawkins or a staff investigator; please let us know when you will be delivering these statements or summaries.
- b) Document production - Please let us know if Board staff has disclosed all relevant documents and, if not, when it will be providing further disclosure. We note that staff's disclosure did not include documents relating to the 27 energy contracts (and associated customers) alleged to have been sold by Mr. MacArthur and the 18 energy contracts (and associated customers) alleged to have been sold by Mr. Nahid (other than Hawkins and Andrassin); any such documents (including recorded telephone calls, interview notes, emails, CCRs, etc.) should be produced. There may be additional relevant documents that have not been disclosed by staff; if so, please advise and produce.

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LONDON
SYDNEY

Please also identify which specific documents from staff's disclosure (and otherwise) you intend to rely upon at the hearing.

- c) Staff interview notes - Please provide the identities of the authors of the various staff interview notes contained in staff's disclosure. It would be helpful if you would resend to us the staff interview notes with the names of the applicable staff investigator marked thereon.
- d) Production from MacArthur, Nahid, Andrassin and Hawkins - Please have Messrs. MacArthur and Nahid produce all relevant documents. This should include, among other things, all documents relating to Messrs. MacArthur and Nahid's training and engagement by ACN/Planet; their activities as IBOs on behalf of ACN/Planet; their communications with ACN/Planet and customers; and, their communications with Board staff. We note that, among other things, staff's interview notes of Mr. Nahid reference a folder for ACN/Planet on Mr. Nahid's computer. Mr. MacArthur's witness statement references materials and documents about various ACN products that were provided to him and a sales script he was provided by another IBO.

Please also have Mr. Hawkins and Ms. Andrassin produce all relevant documents including, but not limited to, their dealings with Messrs. MacArthur and Nahid; their dealings with ACN/Planet; and their dealings with Board staff.

- e) Administrative penalty - Please provide particulars of how Board staff calculated the proposed \$450,000 administrative penalty by reference to the 27 energy contracts alleged to have been sold by Mr. MacArthur and the 18 energy contracts alleged to have been sold by Mr. Nahid.
- f) Identities of other witnesses - In his witness statements, Mr. MacArthur variously refers to an ACN trainer, numerous ACN IBOs, an ACN Senior Vice President, other unidentified ACN personnel. Please provide the names and contact details for all persons referenced by Mr. MacArthur in his witness statements/interview notes; include references to the paragraph numbers in his statements (or page numbers in the interview notes) where the references are made.

In Mr. Nahid's second witness statement, he makes reference to Clair St. Laurent. Please provide contact information for Ms. Laurent. Mr. Nahid also references other ACN trainers/personnel. Please provide the names and contact details for all persons referenced in witness statement/interview notes for Mr. Nahid.

Please provide us with your position on the requested particulars and production; and when specifically you will provide us with the requested information. The sooner you provide us with the requested information, the sooner we will be able to

determine and advise you of the witnesses and documents we intend to call and rely upon. This should also facilitate matters at the pre-hearing conference.

Yours truly,

A handwritten signature in black ink, appearing to read 'Glenn Zacher', with a stylized, flowing script.

Glenn Zacher

GZ/mp

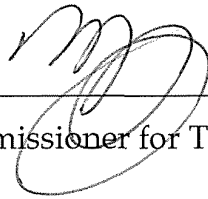
cc. Mel Hogg, *Stikeman Elliott LLP*

EXHIBIT "N"

referred to in the Affidavit of

SOFIA CASINHA

Sworn June 7, 2017



Commissioner for Taking Affidavits

STIKEMAN ELLIOTT

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May 19, 2017

Justin Safayeni
Stockwoods LLP
TD North Tower, Box 140
77 King Street West, Suite 4130
Toronto, ON M5K 1H1

Dear Justin:

**Re: Notice of Intention to Make an Order for Compliance
Against Planet Energy - EB - 2017 -0007**

We acknowledge receipt of your letter of May 9, 2017 and the documents provided therewith.

With respect to the issues raised in your letter:

- a) **Witnesses:** We confirm that we had not previously received the witness statement of Robert Hawkins. However, Board staff's recent Tab 5 Productions contained an email with two .jpg files, each containing a page of the Hawkins statement. If the complete document is available as a .pdf, please provide a copy in that format.
- b) **Document Production:** Thank you for confirming that Board staff has produced all relevant documents within its possession, power or control. However, we would ask that you further confirm that there are no recordings of telephone calls between MacArthur, Nahid, Andrassin, Hawkins or any other relevant consumers and the OEB. We understand that calls to the OEB's customer call centre/public information department are recorded, as are further calls that may subsequently have been elevated to staff investigators. To the extent that the OEB has recordings of any calls related in any way to MacArthur or Nahid, or the 27 energy contracts alleged to have been sold by MacArthur and the 18 energy contracts alleged to have been sold by Nahid, please produce such recordings.
- c) **Staff interview notes:** Thank you for providing the identities of the relevant investigators.

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- d) **Production from MacArthur, Nahid, Andrassin and Hawkins ("OEB Expected Witnesses"):** Thank you for requesting documents from the OEB Expected Witnesses. Please pass along any further documents you receive in response to these requests. If the OEB Expected Witnesses do not provide all relevant documents in their power, possession or control by May 31, 2017, we intend to bring a motion to the Board seeking an order compelling production.
- e) **Administrative Penalty:** Staff's answer to this inquiry is not responsive nor satisfactory. Planet is entitled to particulars of how Board staff calculated the proposed \$450,000 administrative penalty by reference to each of the 27 energy contracts alleged to have been sold by Mr. MacArthur and the 18 energy contracts alleged to have been sold by Mr. Nahid: see *OEB v Summitt Energy*, EB-2011-0316. Please provide such particulars by May 31, 2017, failing which we will bring a motion to compel production of such particulars.
- f) **Identities of other witnesses:** You did not respond to our request for the identities and contact information for other witnesses referenced in MacArthur's and Nahid's witness statements. Please provide this information by May 31, 2017, failing which we will bring the appropriate motion.

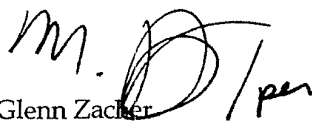
With respect to the other issues identified in your letter:

- **Authenticity and accuracy of documents:** We agree that it is a good idea to discuss making reasonable admissions with respect to the authenticity of particular categories of documents. We suggest having a call to discuss this issue. Let us know what times would work for you later next week.
- **Discussions on an agreed statement of facts:** We also agree that an agreed statement of facts could assist in streamlining the proceeding. Please circulate a draft for our consideration.
- **Preliminary Motions:** As set out above, we may bring preliminary motions for document production, particulars of the administrative penalty calculation and identity/contact information for witnesses referenced in MacArthur's and Nahid's witness statements. Please advise whether Board staff intend to bring any preliminary motions in advance of the hearing.
- **Exchange of witness lists/documents:** You have provided us with your proposed list of witnesses, but have indicated that whether you call additional witnesses, including a staff investigator, will depend on whether the parties can reach agreement on certain documents/facts. You have also proposed providing us with a list of the documents that Staff intend to rely upon at the hearing 20 days in advance of the hearing in exchange for Planet Energy agreeing to the same.

Our client will not be in a position to notify you of the witnesses or documents that we intend to call and rely upon at the hearing until we know which witnesses and documents you will be calling and relying upon. We understand that the finalization of your witnesses/documents will depend on what agreements the parties can reach on basic facts and document authenticity. In the circumstances, I suggest that we make prompt efforts to try to agree upon an agreed statement of facts and to address matters of document authenticity. Once that is done, you can presumably finalize your witnesses and documents. Following that, we will be able to provide you with our list of witnesses (and witness summaries) and the documents we intend to rely upon at the hearing. If we make efforts to work on this over the next few weeks, I do not anticipate any problem providing you with our list of witnesses/witness summaries and documents 20 days in advance of the hearing. Let us know if you agree with this proposed approach.

We look forward to your response.

Yours truly,


Glenn Zacher

MH/

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

EB-2017-0007

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).

AFFIDAVIT OF SOFIA CASINHA
(June 7, 2017)

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Lawyers for Planet Energy

∞
∞

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

EB-2017-0007

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).

ONTARIO ENERGY BOARD

MOTION RECORD

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