



ONTARIO ENERGY BOARD

FILE NO.: EB-2017-0007

Planet Energy (Ontario) Corp.

VOLUME: Volume 1

DATE: November 14, 2017

BEFORE:	Christine Long	Presiding Member
	Cathy Spoel	Member
	Michael Janigan	Member

THE 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).

Hearing held at 2300 Yonge Street,
25th Floor, Toronto, Ontario,
on Tuesday, November 14, 2017,
commencing at 9:39 a.m.

VOLUME 1

BEFORE:

CHRISTINE LONG	Presiding Member
CATHY SPOEL	Member
MICHAEL JANIGAN	Member

A P P E A R A N C E S

IAN RICHLER Board Counsel

MICHAEL BELL Board Staff

ANDREA GONSALVES Compliance Counsel
JUSTIN SAFAYENI

GLENN ZACHER Planet Energy (Ontario) Limited
GENNA WOOD

ALSO PRESENT:

NINO SILVESTRI Planet Energy
JORDAN SMALL
ELA MEMA

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1 Tuesday, November 14, 2017

2 --- On commencing at 9:39 a.m.

3 MS. LONG: Please be seated.

4 Good morning, everyone. My name is Christine Long,
5 and I am the presiding member today. I am joined by my
6 fellow Board members, Cathy Spoel and Michael Janigan. The
7 matter before us is Board file number EB-2017-0007, which
8 is an enforcement proceeding brought by the Ontario Energy
9 Board against Planet Energy (Ontario) Corporation.

10 The allegations against Planet Energy are set out in
11 the notice of intention issued on February the 9th, 2017.
12 By letter dated February 23rd, 2017, Planet Energy
13 requested that the OEB hold a hearing in this matter. A
14 pre-hearing conference was held on August 4th to deal with
15 some preliminary matters.

16 May I have appearances, please.

17 **APPEARANCES:**

18 MS. GONSALVES: Good morning. I am Andrea Gonsalves.
19 I am here with my co-counsel, Justin Safayeni, as counsel
20 for enforcement staff. At the table with us are Chris
21 Marijan and Birgit Armstrong.

22 MS. LONG: Ms. Gonsalves, thank you, good morning.

23 MR. ZACHER: Good morning, Madam Chair, Panel members.
24 My name is Glenn Zacher. I am appearing as counsel on
25 behalf of Planet Energy, and with me is my colleague, Jenna
26 Wood, and as well, Nino Silvestri. Mr. Silvestri is the
27 CEO of Planet Energy and will be -- is proposed as a
28 witness. He will be here throughout the hearing. And I

1 just would mention that behind Mr. Silvestri is Jordan
2 Small, who is a VP of regulatory affairs at Planet Energy,
3 and Ela Mema, who is a -- and an analyst with Planet
4 Energy, and they will be here sort of off and on as time
5 allows.

6 MS. LONG: Thank you, Mr. Zacher.

7 MR. RICHLER: Good morning, Madam Chair, members of
8 the Panel. Ian Richler. I am counsel to the Board Panel.
9 With me is Michael Bell, who is the case manager. And if I
10 might just say a very quick word about my role here at the
11 outset, I am here to assist you, the Panel, with any legal
12 or procedural questions you may have. I am non-partisan.
13 I was not involved in the enforcement team's preparation of
14 the case against Planet Energy, and for the purposes of
15 this proceeding I am completely separate and apart from the
16 enforcement team.

17 MS. LONG: Thank you, Mr. Richler.

18 Ms. Gonsalves, did you have an opening statement?

19 **PRELIMINARY MATTERS:**

20 MS. GONSALVES: I do. Before we get there, I'd like
21 to suggest -- we just have a couple of preliminary matters
22 to deal with, and I have discussed them with Mr. Zacher.
23 We wanted to begin by identifying some agreed documents
24 that we have already placed at or near where the Panel is
25 sitting, and so I would like to go through those, as well
26 as a couple other matters, if that suits the Panel.

27 MS. LONG: Yes, please.

28 MS. GONSALVES: So you should have there first an

1 agreed chronology. It's a single volume with white tabs
2 from 1 to 21. The parties have worked on this together,
3 and we agree that that should be made the first exhibit.
4 As a result of what's in the attachments, I do suggest it
5 be made a confidential exhibit.

6 MR. RICHLER: Madam Chair, we can mark that as exhibit
7 as KX1.1, the X denoting that it's confidential.

8 MS. LONG: That's fine, thank you.

9 **EXHIBIT NO. KX1.1: CONFIDENTIAL VOLUME OF DOCUMENTS**
10 **DESCRIBED AS "AGREED CHRONOLOGY" (21 TABS)**

11 MS. GONSALVES: Thank you. Now, at the very last tab
12 of the agreed chronology is a letter setting out an
13 agreement between the parties as to the authenticity of the
14 exhibits and documents to be marked in this hearing. The
15 parties have agreed, in short, that all of the documents
16 placed before the Panel are authentic as set out in that
17 letter, subject to raising an issue otherwise.

18 The agreement as to authenticity does not extend to
19 any admission or agreement as to the truth of the contents
20 of what's set out in the document, so I just note that for
21 the Panel's benefit, and issues as to truth of content may
22 be addressed in evidence and may be the subject of argument
23 at the end of the case.

24 So pursuant to that agreement as to authenticity, each
25 side has prepared their own book of documents that I
26 suggest we mark as the next exhibits, beginning with a one-
27 volume book of documents of OEB enforcement staff. It's
28 got a full-page white cover sheet like this. That should

1 also be in front of you, with tabs 1 through 41. And
2 again, I request that that be made a confidential exhibit.
3 We will be filing non-confidential versions of all of
4 these, but this is what we have for today.

5 MR. RICHLER: Madam Chair, we can mark that as KX1.2.

6 MS. LONG: Thank you.

7 **EXHIBIT NO. KX1.2: CONFIDENTIAL BOOK OF DOCUMENTS OF**
8 **OEB ENFORCEMENT STAFF (41 TABS).**

9 MS. GONSALVES: Thank you. Now, you should also have
10 at your table there, each of you, a small USB memory stick
11 that says "Stockwoods" on it. And on that are audio
12 recordings, six audio recordings, for which there are also
13 transcripts in the staff book of documents, Exhibit KX1.2,
14 so that's just the audio version of the same transcripts
15 that are at tabs 39A and B and tab 41A, B, C, and D. And
16 again I suggest we make that the next exhibit.

17 MR. RICHLER: Madam Chair, just before I mark this one
18 perhaps we could just clarify whether this needs to be
19 marked as a confidential exhibit?

20 MS. GONSALVES: I believe that in some of the
21 recordings there are reference to phone numbers and
22 addresses, and so I do suggest -- that one I don't think we
23 will be able to mark a public -- or file a public version
24 of but, yes, I do request that it be made confidential.

25 MR. RICHLER: So the USB stick is KX1.3.

26 **EXHIBIT NO. KX1.3: USB MEMORY STICK CONTAINING AUDIO**
27 **RECORDINGS WITH TRANSCRIPTS AT TAB 41 OF EXHIBIT**
28 **KX1.2.**

1 MS. GONSALVES: Next we have a four-volume book of
2 documents filed by Planet Energy. I think those may
3 actually be behind you just because there are so many of
4 them. And I will look to Mr. Zacher to confirm, but I
5 believe that should also be made a confidential exhibit for
6 the time being.

7 MR.ZACHER: I agree, and we will be doing the same
8 thing, so following the hearing we will make sure that all
9 of the documents are redacted, personal information, that
10 there is a public version that can be filed.

11 MS. LONG: Okay, thank you, Mr. Zacher.

12 MR. RICHLER: Madam Chair, Planet's book of documents
13 will be KX1.4.

14 **EXHIBIT NO. KX1.4: CONFIDENTIAL BOOK OF DOCUMENTS**
15 **FILED BY PLANET ENERGY (4 VOLUMES).**

16 MS. GONSALVES: I wanted to note for the Panel that
17 there are transcripts contained in each of the volumes that
18 both sides have been working on. We hope by the end of the
19 evidentiary portion of the hearing that we will be able to
20 say that those are agreed transcripts. At this time not
21 all of them are agreed, and that may be an issue that comes
22 up in the course of evidence. And as the days of the
23 hearing go on, we may be asking to replace the versions
24 that are in your binders with new versions that are agreed.

25 I do want to note that any descriptions of a document
26 in an index of these books of documents or any description
27 of a document that has been added to the document as
28 opposed to appearing there originally is not evidence and

1 it shouldn't be taken as such.

2 You should also have in front of you a brief of
3 legislation, not to be made an exhibit, but just to note
4 that it is there. It's something we likely won't make much
5 reference to until the end of the case, but we have tried
6 to excerpt in there all of the relevant portions of the
7 acts, regulations, and codes that may have a bearing on
8 this hearing.

9 So I believe that's it for the documents. The next
10 piece of business, the parties have discussed and are
11 consenting to or requesting on a consensual basis a witness
12 exclusion order that would begin from when the evidence
13 begins and would last until the evidence has concluded.
14 Mr. Zacher and I have both discussed that there would be an
15 exception on both sides for our instructing clients who are
16 also witnesses, so that would be Ms. Armstrong on
17 enforcement staff's side and Mr. Silvestri for Planet
18 Energy.

19 MS. LONG: Usually in circumstances where we exclude
20 witnesses, our preference is to go off air and not to
21 broadcast. Did you two discuss that?

22 MR. ZACHER: No objection to that.

23 MS. GONSALVES: I am comfortable with that as well.

24 MS. LONG: Okay, we are going to do that. So from the
25 moment that we swear the witnesses, we will go off-air.
26 The court reporter will continue to make notes and then
27 after the evidentiary portion of this is over, we will be
28 able to make that testimony public.

1 MS. GONSALVES: Thank you. For the third order of
2 business, I wanted to give the Panel just an indication of
3 how we expect the schedule to play out, at least for this
4 week, today, Thursday and Friday. After these
5 preliminaries, I will begin. I will do my opening, and I
6 understand Mr. Zacher intends to do his opening today. We
7 will then be calling Ms. Armstrong as our first witness.

8 And it's my expectation that she will -- if the
9 examination in-chief is not finished by lunch, it will be
10 finished shortly thereafter. I expect her cross-
11 examination will be completed today and we hope to get to
12 our next witness sometime this afternoon, which will be
13 James MacArthur.

14 Mr. MacArthur is unlikely to finish today, so he will
15 return on Thursday. His evidence should conclude at some
16 point on Thursday, at which point we will be calling our
17 third witness, Robert Hawkins. And we hope, we are
18 planning that Mr. Hawkins will be completed on Thursday,
19 somewhere towards the end of the day.

20 And on Friday, we will be calling Kayvan Nahid as our
21 next witness, followed by Roobinet Andrassin.

22 So if everything goes according to plan, enforcement's
23 case should be completed this week. And then over the
24 break that we have next week, we'll be in touch with Mr.
25 Zacher and get an indication of the order that he plans to
26 call his witnesses in.

27 MS. LONG: Okay, thank you for that.

28 MS. GONSALVES: The last issue I just wanted to raise

1 before we get into opening is an issue I have discussed
2 with my friend and we at this stage are not in agreement
3 on. We will be looking to the Panel for some direction,
4 although we don't need that today. And it's an issue of
5 whether it will be appropriate and helpful to bifurcate
6 argument on penalty from the argument on the contravention
7 findings.

8 As we see it, there shouldn't be a need for additional
9 evidence on the issue of penalty, subject to how things
10 play out, but we don't anticipate there being need for
11 further evidence on penalty. But it will be our position
12 that it's most appropriate to have argument on penalty only
13 after we have the benefit of the Panel's findings on
14 liability.

15 My friend takes a different position. It's something
16 that we would like to have sorted out before we reach the
17 argument stage, for obvious reasons. But we don't need
18 that to be determined today; I just wanted to flag it for
19 you.

20 MS. LONG: So if I understand you correctly, you are
21 going to ask anything that you need to to establish a
22 factual basis from these witnesses at the time that they
23 are up, and it's just an issue with respect to argument --

24 MS. GONSALVES: Correct, correct.

25 MS. LONG: -- on liability and penalty?

26 MS. GONSALVES: Yes. I think we'd like to avoid the
27 inconvenience and the inefficiency of calling the same
28 witnesses back again.

1 MS. LONG: As would we.

2 MS. GONSALVES: But I do think that the argument on
3 penalty is best informed with the benefit of the Panel's
4 findings on liability.

5 MS. LONG: Mr. Zacher, would you like to say anything
6 about that?

7 MR. ZACHER: I agree with my friend that it doesn't
8 have to be decided today. I can say that we did talk about
9 it. I know that it's the Board's practice in some cases to
10 bifurcate. Certainly that's not being done with the
11 evidentiary portion; we have never talked about that. It
12 wouldn't be efficient to do that.

13 My view, sitting here today, is that in this case the
14 issues of liability and remedy, both penalty and the
15 restitutionary order that my friends are asking for, are
16 very much wrapped up together and interrelated. And I
17 think it's going to be -- certainly you will hear that in
18 the evidence. And my view is that when it comes to
19 argument, it's going to be inefficient and not helpful to
20 bifurcate those two issues.

21 But I agree with my friend; it's not a determination
22 that needs to be made today.

23 MS. LONG: Okay. Well, we will ask for further
24 comment from you before argument. We'd appreciate hearing
25 the evidence first. I think it will inform us as to which
26 way we decide to go on that. So I will ask you for
27 submissions on that prior to us establishing a schedule for
28 argument.

1 MS. GONSALVES: Thank you.

2 MS. LONG: So if those are all the preliminary
3 matters, Ms. Gonsalves, you ready to start your opening?

4 MS. GONSALVES: I am.

5 MR. ZACHER: Sorry, just one -- I apologize.

6 MS. LONG: Oh, you have some as well?

7 MR. ZACHER: I should say, just with regards to
8 schedule, I agree with my friend that the schedule she
9 outlined is more or less what we've talked about. I think
10 it's going to have to be a little bit fluid. I am not sure
11 we will get through my friend's case this week, but we will
12 do our best.

13 The other thing I wanted to mention, and I perhaps
14 should have mentioned this to my friend before, but in the
15 notice -- and I don't know if the Panel has that before
16 them, but there are seven charges or allegations enumerated
17 1 through 8.

18 The first six, pursuant to the enforcement team's
19 theory of the case, relate to all of the underlying
20 transactions. There's 45 underlying transactions. Number
21 7 is an issue that solely relates to Ms. Andrassin, and it
22 simply has to do with the suggestion -- or the allegation
23 that she was given incorrect information about her rights
24 to cancel the contract during a telephone call.

25 My client does not contest that, and it may assist my
26 friend, in terms of the evidence that she needs to call.
27 We do not concede that that warrants any sort of a penalty
28 or restitutionary order. Her contract was cancelled. But

1 in terms of the actual suggestion that she was given
2 incorrect information, my client agrees that a mistake was
3 made on that call. And so we do not contest that point.

4 MS. LONG: Thank you, Mr. Zacher.

5 MS. GONSALVES: Thank you, and I thank my friend for
6 that very reasonable concession.

7 **OPENING STATEMENT BY MS. GONSALVES:**

8 Members of the Panel, this case scrutinizes the
9 training given to sales agents for Planet Energy, a Board
10 licensee, an electricity retailer and a gas marketer. And
11 it scrutinizes the conduct in particular of two of Planet
12 Energy's sales agents in selling Planet Energy contracts
13 and enrolling consumers with Planet Energy. The names of
14 those two agents -- I have given them to you already -- are
15 James MacArthur and Kayvan Nahid.

16 The evidence I expect will show a training program
17 that was deficient, a training program that allowed sales
18 agents to make the sale, to enroll consumers in Planet
19 Energy fixed-rate contracts using inaccurate information
20 and without following the rules.

21 The evidence will show two sales agents that did what
22 they needed to do to make the sale. And I will argue at
23 the end of the case that without adequate training or
24 oversight by Planet Energy of its sales agents it allowed
25 that conduct to occur.

26 You will hear evidence about the design and the
27 implementation of Planet Energy's training program; in
28 particular, the training that's given to sales agent

1 recruits and the testing they have to take in order to be
2 qualified to sell Planet Energy's contracts.

3 Now, Planet outsourced to another company -- you will
4 hear reference to it -- called ACN the job of hiring,
5 training, and testing salespeople. ACN is not licensed
6 with the Board.

7 You will hear in the evidence that ACN sells Planet
8 Energy contracts and other products through what they call
9 a multi-level marketing model. In more familiar terms,
10 it's a pyramid scheme. And that model has features that
11 entice sales agents to make the sale at any cost. The more
12 contracts you sell, the more money you make. But more than
13 that, as an ACN sales agent, if you can recruit other sales
14 agents, you make more money. And so sales agents have an
15 incentive to get other sales agents qualified.

16 You will hear from Mr. MacArthur and Mr. Nahid, these
17 two former Planet Energy sales agents, about the process
18 they each went through to become qualified to sell Planet
19 Energy contracts. To put it simply, the evidence will show
20 training that was almost non-existent.

21 You'll hear, I expect, that ACN held energetic rallies
22 to show sales agents how much money they could make, but it
23 did not give salespeople accurate or complete information
24 about the energy products they were selling or the
25 protections that the law gives to consumers.

26 Now, Planet Energy will say, I expect, that sales
27 agents were required to pass a test before they would be
28 qualified to sell these contracts. And maybe so, but

1 neither ACN nor Planet Energy had in place adequate
2 controls to ensure that recruits were answering the test
3 questions based on their own actual knowledge and
4 understanding of the energy industry and the products they
5 would be selling.

6 The test was an open-book test, and recruits were
7 encouraged to use the reference materials to help them
8 answer the questions. It was an online test, which created
9 a situation where agents could help their recruits
10 understand the questions and even answer them.

11 Again, I remind the Panel of ACN's multi-level
12 marketing model, where agents make more money if their
13 recruits become qualified and then sell contracts.

14 These features of the training and testing created a
15 risk that agents and their recruits will focus more on
16 passing the test than on learning what they need to know
17 about the energy contracts they were selling. And Planet
18 Energy and ACN took that risk despite, as I expect the
19 evidence will show, Planet Energy being warned more than
20 five years ago about the pitfalls of this testing program.

21 The evidence will show that Planet Energy played
22 little to no role in the training process, although it
23 could have. It had the right in its relationship with ACN
24 to provide training to agents. But it didn't. Planet
25 Energy washed its hands of the process, happy to leave the
26 training job to ACN. And in fact, there will be evidence
27 showing that sales agents were told, do not contact Planet
28 Energy directly.

1 After agents passed this online test, there's no
2 follow-up to ensure that their sales activities are
3 compliant with what they're told they should be doing or
4 what the law requires. Yes, there's yearly retesting, but
5 that didn't happen for either of the agents here.

6 There was no supervision of the sales process and no
7 systems put in place to ensure that sales agents were
8 providing accurate information and following the rules. At
9 the end of the case, it will be our argument that Planet
10 Energy's training program was inadequate and inaccurate.

11 After passing the test, Planet Energy sales agents
12 were free within the hour to start selling contracts. The
13 evidence will show that the two agents that are the focus
14 of this case were deemed to be active salespeople on the
15 same day they passed their test. And under ACN's business
16 model they were encouraged to market and sell these
17 contracts to their warm network of family and friends,
18 people with every reason to trust them.

19 You will hear from two consumers who enrolled in
20 Planet Energy contracts after meeting with these two Planet
21 Energy sales agents. Mr. Hawkins was a customer of Mr.
22 MacArthur and Ms. Andrassin was a customer of Mr. Nahid.
23 Both of those customers were enrolled in Planet Energy
24 contracts in the very early days after those two agents
25 were qualified to sell contracts. Mr. MacArthur sold
26 multiple contracts to Mr. Hawkins ten days after passing
27 his test and Mr. Nahid sold a contract to Ms. Andrassin 12
28 days after passing his test.

1 I anticipate these two consumers will testify about
2 what those agents told them and didn't tell them about the
3 contracts they were ultimately enrolled in. I expect the
4 evidence will be that they were told signing up with Planet
5 Energy would save them money. They were not told accurate
6 information about the global adjustment.

7 The agents, I expect, will testify that either they
8 told their consumers nothing about the global adjustment at
9 all, or they told them, in Mr. Nahid's case, that the
10 global adjustment would not go above 9.99 cents per
11 kilowatt-hour and, in Mr. MacArthur's case, that the global
12 adjustment would even out over time and average \$0.05 per
13 kilowatt-hour.

14 The consumers were not told accurate information or
15 any information about Planet Energy's cancellation policy,
16 or about their cancellation rights under the Energy
17 Consumers Protection Act.

18 I expect you will hear that the sales agents did not
19 wear identification badges, as required by law. And in the
20 case of Mr. Nahid, he did not give a Planet Energy business
21 card to his customers, as required by law.

22 The consumers never received or read a copy of their
23 contract with Planet Energy, a disclosure statement, or a
24 price comparison before enrolling.

25 Within their relationships with the sales agents,
26 relationships of trust, informed by and relying on what
27 they had been told and not told, the two consumers, I
28 expect, will testify that they gave the sales agents their

1 utility account numbers and their contact information, and
2 said that sounds great, sign me up.

3 Now, of course, under the Energy Consumers Protection
4 Act, the regulations, the codes of conduct, door-to-door
5 sales of retail energy contracts come with a whole host of
6 consumer protection obligations. But here's the rub. The
7 agents selling Planet Energy contracts enrolled their
8 customers online. That online system was set up by ACN for
9 Planet Energy's benefit, and the agents used it in a way
10 that circumvented consumer protection requirements.

11 The design of the online enrollment process is for
12 consumers to sign themselves up, to decide by themselves
13 and for themselves whether to enroll. The agent isn't even
14 allowed to be present when the consumer enrolls on the
15 website.

16 ACN's online enrollment process has a series of
17 questions that are supposed to be answered by the consumer.
18 On their face, those questions seek to confirm the
19 consumer's understanding of the contract and to have the
20 customer verify that the agent properly conducted himself.
21 But these Planet Energy agents, Mr. MacArthur and Mr.
22 Nahid, signed up for the customer themselves -- in many
23 cases, without the consumer even being present.

24 The agents answered the questions as necessary to
25 ensure that enrollment was completed. In doing so, they
26 negated any consumer protection those questions might have
27 been written to provide. And neither ACN nor Planet Energy
28 implemented any system to catch agents doing this sort of

1 thing.

2 To be clear, I expect the evidence will be that the
3 contracts were never signed by the consumers and that the
4 consumers did not themselves review, print, check the boxes
5 on, or accept the contracts. And neither Planet Energy nor
6 ACN conducted the required verification calls that they
7 would have done in a door-to-door sales context.

8 Now, Mr. Hawkins and Ms. Andrassin eventually made
9 complaints to the Energy Board, which led to the notice of
10 intention and this hearing today. But I expect the
11 evidence will show that these two agents sales practices
12 were not isolated to those two consumers. I expect you
13 will hear from the two agents that they followed more or
14 less the same sales process for every consumer they
15 enrolled with Planet Energy, resulting in 18 contracts
16 under Mr. Nahid, and 27 contracts under Mr. MacArthur, the
17 45 contracts that fall within the scope of the notice.

18 Neither Planet Energy nor ACN had any system in place
19 to detect whether this was going on. Indeed, the training
20 and enrollment system through the website facilitated it.

21 Now, I expect Planet Energy will try and prove that
22 there will be evidence that the terms and conditions of the
23 Planet Energy contracts, the disclosure statements, the
24 price comparisons, those were all sent by e-mail to the
25 consumers enrolled by Mr. Nahid and Mr. MacArthur on the
26 same day that those consumers were signed up.

27 But what captures the consumer's attention is not that
28 welcome e-mail, or the fine-print terms and conditions that

1 they get on the day of the enrollment. In Ms. Andrassin's
2 case, what captures her attention is her first bill, which
3 she receives some five months after the date of enrollment.
4 When she gets that bill, she sees that it's nearly \$200
5 more than her previous bill that she received from her
6 utility. So she does what one might expect, and she calls
7 Planet Energy.

8 Again she is given inaccurate information, and this is
9 where the concession that my friend made today on
10 allegation Number 7 comes in.

11 The Planet Energy representative on the phone when she
12 called that day told her not to compare the total amount
13 charged on her Planet Energy bill with the amount of her
14 previous bill from the utility because, in his words, that
15 was the wrong calculation.

16 He contrasted the rate 4.99 cents per kilowatt-hour
17 that she was paying to Planet Energy, a rate for the
18 commodity alone, against the rate she had been paying
19 previously to her utility, a rate that combined the
20 commodity price and the global adjustment, not an apples-
21 to-apples comparison. And on that call, she was not
22 informed that that day she had the right to cancel under
23 the Energy Consumers Protection Act without penalty. She
24 was told she would have to pay \$250 plus taxes to cancel,
25 and the agent suggested that she simply wait until her next
26 bill, see what happens. And he even suggested that the
27 global adjustment could go down.

28 So not wanting to pay the cancellation charge, she did

1 wait, and her next bill was high again. I expect Ms.
2 Andrassin will testify that she called back after that next
3 bill and again two months after that, each time requesting
4 to cancel without charge, and each time Planet Energy
5 refusing to do it until ultimately she made a complaint to
6 the Energy Board, and only then did Planet Energy cancel
7 without penalty.

8 For Ms. Andrassin, I expect you will hear from her
9 that that was not satisfactory. I expect she will testify
10 that she has never been reimbursed for what she paid to
11 Planet Energy under the contract.

12 Turning to Mr. Hawkins, he had contracts flowing with
13 Planet Energy for five different properties that he owned,
14 all of them enrolled by Mr. MacArthur through the online
15 enrollment process. Mr. Hawkins sold one of those
16 properties, and what got his attention was when he received
17 a notice from Planet Energy that he would have to pay
18 cancellation fees of almost \$1,400 after selling the
19 property. That notice was quickly followed by demand
20 letters from collection agencies taking payment.

21 I expect Mr. Hawkins will testify that when he agreed
22 to have Mr. MacArthur enroll him he was not told about
23 these cancellation charges. In fact, his understanding was
24 that he would not have to pay cancellation fees.

25 Both Mr. Hawkins and Mr. MacArthur made various calls
26 to Planet Energy, various efforts to try and have those
27 cancellation fees waived. And even the Planet Energy
28 customer-service representatives were confused about Planet

1 Energy's cancellation policy, which has terms that are not
2 reflected in the Energy Consumers Protection Act.

3 Mr. Hawkins eventually made a complaint to the Energy
4 Board, and I expect you will hear evidence that the
5 cancellation penalty has to this day not been waived by
6 Planet Energy and that the collection agency continues to
7 hound him, sending letters, demanding payment as recently
8 as a few weeks ago.

9 At the end of this case, enforcement staff will ask
10 you to find on the basis of the evidence you hear that
11 Planet Energy has contravened various requirements under
12 the ECPA, the regulations, and the codes of conduct as
13 alleged in the notice of intention as a result of the
14 deficiencies in Planet Energy's training program, both in
15 its design and how it was carried out, through the conduct
16 of its agents, and through the manner in which consumers
17 were enrolled. And we will be asking you to impose a
18 penalty and make a restitution order.

19 With that overview, as I have mentioned, staff's first
20 witness will be Birgit Armstrong, a Board employee and lead
21 inspector in this matter, but before we get there I
22 understand Mr. Zacher would like to open.

23 MS. LONG: Thank you. Mr. Zacher.

24 **OPENING STATEMENT BY MR. ZACHER:**

25 MR. ZACHER: Madam Chair, Panel members.

26 So let me just provide a brief outline of my opening
27 submissions. I first want to make some general remarks
28 about the enforcement team's case. You of course have

1 their notice, and you are heard from my friend, you don't
2 have a response or a defence from Planet Energy, so I want
3 to articulate Planet's position with regards to the case.

4 I next want to highlight some of the evidence that I
5 expect you will hear that is counter to what my friend has
6 suggested. And third, I want to briefly address the
7 matters that you are going to have to consider and
8 determine.

9 So turning to the enforcement team's case. This case,
10 in my submission, is an extraordinary case. It began, as
11 my friend said, with complaints by two customers, Mr.
12 Hawkins and Ms. Andrassin. Those complaints centred on
13 post-contractual issues dealing with an early termination
14 fees, and as well with Ms. Andrassin with regards to the
15 global adjustment, which you know is not a charge -- is a
16 charge that everybody pays irrespective of whether they
17 contract with a retailer and is not part of retailer's
18 offering.

19 Those complaints didn't implicate any of the matters
20 that are central to this prosecution. Ms. Andrassin's
21 complaint was addressed. She asked that her cancellation
22 penalty -- rather, that she be allowed out of the contract
23 without a cancellation penalty. She was. And Planet
24 Energy rejected Mr. Hawkins' request to be let out without
25 cancellation, without a cancellation fee, and the Board
26 didn't disagree with that. That is not the subject of this
27 notice. The cancellation fee that Ms. Andrassin was to pay
28 is. Mr. Hawkins' wasn't.

1 But that was not the end of it. And what happened
2 after these two complaints was that this matter took on a
3 life of its own, and it transformed into what I would
4 characterize as this major compliance action, which is
5 based on very broad allegations of wrongdoing, a very
6 substantial administrative penalty and request for a
7 restitutionary order, and is really an indictment of Planet
8 Energy's business as a whole, the manner in which it trains
9 and tests salespeople, the way that it carries out its
10 multi-level marketing, the way that customers are enrolled,
11 and its customer care or quality assurance processes.

12 And you heard that from my friend. She said we are
13 going to establish through the evidence of these two
14 salespeople that there was a systemic failing in the way
15 that Planet Energy went about training and testing
16 salespeople and with regards to the design and
17 implementation of its training and testing system and the
18 manner in which it carries out marketing to low-volume
19 consumers.

20 But remarkably, the foundation for this case, the
21 evidence that you are going to hear, is not what you might
22 expect. It's not based on any kind of an investigation,
23 inspection, or audit of Planet Energy's business practices.
24 That's been done in the past by the Board. It was not done
25 here.

26 You are going to hear no evidence of any such broad
27 inspection in support of these allegations of systemic
28 problems. Nor, with the exception of Ms. Andrassin and Mr.

1 Hawkins, are you going hear any complaints from the
2 underlying customers.

3 So this is a notice in respect of 45 contracts, but
4 you will not hear evidence from any of the presumptive
5 victims of these alleged deficiencies. Unlike what you
6 would expect to hear and what you would invariably hear in
7 a case of this nature and magnitude, there will be no
8 evidence of actual consumer harm.

9 And consistent with that, the enforcement team has
10 framed this case, both with regards to the initial notice
11 of inspection that precipitated it and in the actual notice
12 of enforcement as a matter that is solely premised on the
13 alleged contraventions by these two salespeople. Planet
14 Energy's position is that the alleged contraventions were
15 not committed, or cannot be in the circumstances properly
16 attributed to the company. But even if there are some
17 contraventions that you find to have been committed by Mr.
18 Nahid and Mr. MacArthur, what is at issue hardly warrants
19 the compliance action that's been proposed by the
20 enforcement team which, as I said, is an indictment of
21 Planet Energy's practices generally, and which is
22 consistent with the large penalty and restitutionary order
23 that is being sought.

24 My second point, and this is turning to the evidence
25 that I anticipate you will hear, is that contrary to the
26 allegations in the notice, Planet Energy's business will be
27 shown to be compliant and have a history of being complaint
28 with applicable regulatory requirements.

1 You will hear from Mr. Silvestri that Planet has been
2 doing business in Ontario for over a decade, that it has
3 contracted with hundreds of thousands of low-volume
4 consumers; these 45 transactions are but a small fraction
5 of those. It has not and does not engage in door-to-door
6 sales or any kind of in-person sales, and that it has
7 exclusively marketed and enrolled low-volume consumers
8 through Internet transactions via multilevel marketing
9 outreach by the salespeople that my friend referred to.
10 And you will hear the term IBO or independent business
11 owner; those are the ACN representatives who Mr. MacArthur
12 and Mr. Nahid, who met with customers in this case and
13 introduced them to Planet Energy's products.

14 And what Mr. Silvestri -- what you will hear from Mr.
15 Silvestri is that Planet's model of marketing is a model
16 whereby independent business owner representatives -- and
17 these are people who some are full time, some are
18 professionals and do this to earn additional income -- have
19 a line of products that they represent under the ACN
20 banner. Those include Internet, long distance telephone,
21 home security and, as well, electricity and natural gas
22 products.

23 But Planet's approach requires that these
24 representatives simply introduce their friends, family or
25 acquaintances who they reached out to to the product, and
26 they are not allowed to consummate sales. And that's clear
27 in all of the training material, all of the testing
28 material, and that potential customers are referred to

1 Planet Energy's website and enrollment portal, which
2 includes all of the prescribed information required by
3 legislation by the Board Staff, all of necessary
4 disclaimers and acknowledgements, disclosure statements,
5 price comparison forms, and potential customers have an
6 opportunity to decide whether they want to enrol or whether
7 they don't want to enrol.

8 And contrary to what my friend said, you will hear
9 from Mr. Silvestri that Planet Energy designed the training
10 materials, which are compliant with all necessary
11 requirements. They designed the testing; it existed on an
12 ACN platform, but it was determined entirely by Planet
13 Energy to be in accordance with all necessary requirements.

14 You will hear from Mr. Silvestri that Planet has a
15 largely unblemished compliance record in Ontario, and it
16 has never over the past decade been prosecuted, let alone
17 found liable for any of the matters that are the subject of
18 this proceeding, that it has a low customer complaint ratio
19 as determined by the Board compared to other retailers and
20 marketers.

21 And notably, you are going to hear from Mr. Silvestri
22 that Planet has been subjected to the two Board
23 inspections, audits relating to its compliance with the
24 Energy Consumer Protection Act and applicable codes,
25 including scrutinizing and examining its salesperson
26 training, testing, enrolment, multilevel marketing, and
27 quality assurance processes, the very matters that are at
28 issue in this proceeding. And these comprehensive audits,

1 two of which have been done, one in 2011 and one in 2015,
2 and contrast greatly with what was done here, did not find
3 any non-compliance with the matters that are impugned by
4 the enforcement team in this notice.

5 With regards to the 45 transactions that are the
6 subject of this proceeding, you will hear that contract
7 terms and conditions, Board-prescribed disclosure
8 statements and price comparisons were sent to the personal
9 e-mail addresses of every single one of the customers.

10 My friend says that's not something that captures
11 consumer's attention, that the legislature and the Board
12 obviously disagree, because those documents are prescribed
13 by the legislation and the regulations and are required to
14 be sent upon enrolment. They also had welcome letters
15 containing the terms and conditions sent to their
16 individual service addresses. And you are going to hear
17 that Planet Energy had quality assurance measures, contrary
18 to what my friend says, to detect for any non-compliance
19 and to address it.

20 And notably, the notice suggests that there were no
21 verification calls in this case, there were no calls to any
22 of the underlying consumers. Planet Energy is not required
23 to undertake verification calls for Internet enrolments.
24 But what you are going to hear that in a substantial number
25 of these 45 transactions, Planet Energy placed random
26 quality assurance calls to the customers the day of or
27 shortly following their enrolment and asked: Did you enroll
28 in this contract? Yes. Did you do so on your own, in the

1 absence of an agent? Yes.

2 So it made those calls and without being told that --
3 of course, having not been told that there was any non-
4 compliance, that there was nothing to follow-up on.

5 You will also hear, and sort of leaving aside the
6 merits of this, but even by the enforcement team's own
7 theory of the case, the starting point isn't 45
8 transactions. There are contracts that are at issue that
9 do not attract liability under the Energy Consumer
10 Protection Act, and so simply the starting point is over-
11 broad.

12 My last point, and I will be brief, but with regards
13 to what the Panel will need to consider and decide at the
14 conclusion of this case, it's particularly important, in my
15 submission in this case, where the enforcement team is
16 putting all of its evidentiary eggs in one basket, relying
17 largely, if not entirely, on the evidence of Mr. Nahid and
18 Mr. MacArthur. It hasn't called any of the underlying
19 customers, with the exception of Ms. Andrassin and Mr.
20 Hawkins, who I said had different complaints when this was
21 initiated, to appreciate that the burden of proof is
22 squarely on the enforcement team, and you will have to
23 decide whether the evidence that has been called, the
24 investigation that was done by the enforcement team, and
25 the evidence they are relying on from Mr. Hawkins -- sorry,
26 Mr. MacArthur, Mr. Nahid and, to a lesser extent, Mr.
27 Hawkins -- is clear, cogent, and satisfies the threshold
28 that my friend has to satisfy, both for the purpose of

1 proving that the alleged infractions were committed and
2 importantly, that they evidence the sort of widespread and
3 systemic problems which lies at the heart of the
4 enforcement team's case, and our submission, of course, at
5 the end will be that they do not.

6 Those are my submissions, subject to any questions.
7 Thank you.

8 MS. LONG: Thank you, counsel, for those overviews.
9 That's very helpful for us.

10 I think what we will do is we will take our morning
11 break now for 20 minutes and then the enforcement team can
12 get their first witness up, thank you.

13 --- Recess taken at 10:40 a.m.

14 --- On resuming at 11:03 a.m.

15 MS. LONG: Please be seated. Ms. Gonsalves, are you
16 ready with your first witness?

17 MS. GONSALVES: I am, thank you. Ms. Birgit Armstrong
18 is in the witness chair. It would be appropriate to have
19 her affirmed at this time.

20 **ONARIO ENERGY BOARD - ENFORCEMENT PANEL 1**

21 **Birgit Armstrong; Affirmed**

22 MS. LONG: Thank you. At this point, Ms. Gonsalves,
23 we are going to go off-air for the remainder of Ms.
24 Armstrong's evidence.

25 MS. GONSALVES: Thank you.

26 --- On commencing in camera at 11:04 a.m.

27 **EXAMINATION-IN-CHIEF BY MS. GONSALVES:**

28 MS. GONSALVES: For the benefit of the court reporter,

1 could you please state your full name and spell it?

2 MS. ARMSTRONG: B-I-R-G-I-T A-R-M-S-T-R-O-N-G.

3 MS. GONSALVES: Ms. Armstrong, you are a current
4 employee of the Ontario Energy Board?

5 MS. ARMSTRONG: That's correct.

6 MS. GONSALVES: And you have been since November of
7 2008?

8 MS. ARMSTRONG: That's correct.

9 MS. GONSALVES: What is your current position with the
10 Board?

11 MS. ARMSTRONG: I am currently employed as a project
12 advisor in major applications.

13 MS. GONSALVES: When did you begin in that position?

14 MR. ARMSTRONG: That was July 10th, 2017.

15 MS. GONSALVES: I understand that prior to July 10,
16 2017, you were an advisor in the investigations group; is
17 that correct?

18 MS. ARMSTRONG: That is correct.

19 MS. GONSALVES: Is your current position connected to
20 compliance investigations, or inspections in any way?

21 MS. ARMSTRONG: No, my current role is in rates
22 applications. However, given the ongoing proceedings that
23 I worked on prior to taking my role in applications, I am
24 splitting my time 50-50 right now between enforcement and
25 between rates.

26 MS. GONSALVES: Prior to your change of position in
27 July, I understand you were the lead inspector on behalf of
28 the enforcement team in respect of this matter involving

1 Planet Energy. Is that right?

2 MS. ARMSTRONG: That is correct.

3 MS. GONSALVES: And so this is one of the matters that
4 has -- that you have continued to be involved in after
5 changing positions?

6 MS. ARMSTRONG: That's right.

7 MS. GONSALVES: When did you begin working as an
8 advisor in the investigations group?

9 MS. ARMSTRONG: I started June 20th, 2016.

10 MS. GONSALVES: That was a secondment?

11 MS. ARMSTRONG: It was a secondment. It was a
12 contract for a few months that was extended a few times.

13 MS. GONSALVES: Were you the original inspector in
14 this matter?

15 MS. ARMSTRONG: No, I was not. When I started in
16 Investigations, this case was transferred to me from Andy
17 Cheung, who started this inspection, but who is no longer
18 with the Board.

19 MS. GONSALVES: During your period as an advisor with
20 the investigations group, were you involved in other
21 inspections of Board licensees?

22 MS. ARMSTRONG: Yes. I inspected about 11 -- 10 or 11
23 licensees.

24 MS. GONSALVES: And in respect of those inspections,
25 did you follow a similar general process in carrying out
26 the inspections?

27 MS. ARMSTRONG: Generally, yes. Inspections can be
28 started through various inputs. We can start is an

1 inspection coming from a complaint. We can start it from
2 other departments noticing potential non-compliance,
3 whether it's the rates department, or the reporting
4 department, or the audit department, and it all can get
5 escalated through these various venues.

6 MS. GONSALVES: Do all inspections involve notices of
7 inspection and information requests, or can that vary from
8 one inspection to another?

9 MS. ARMSTRONG: No, there would always be a notice of
10 inspection, and any notice that I was involved in had a
11 request for information. But that could also be done at a
12 different time.

13 MS. GONSALVES: And in respect of each of these
14 investigations as a general matter -- we will get into the
15 specific investigation here, but as a general matter, who
16 decides on the basis of the information gathered whether to
17 first initiate an inspection, and then to escalate an
18 inspection to some other recourse?

19 MS. ARMSTRONG: That would be senior management.
20 There is some information gathering in this case through
21 the compliance process, and then some initial information
22 gathering. Senior management would then be briefed, and
23 then would give us instructions whether to proceed with an
24 inspection or not.

25 MS. GONSALVES: Now, it's common ground from the
26 agreed chronology, specifically paragraph 23 for the
27 Panel's benefit of Exhibit KX1.1, that on April 25, 2016, a
28 compliance inspection of Planet Energy was commenced under

1 part 7 of the Ontario Energy Board Act, and that a notice
2 of that inspection was sent on May 16th, 2016, to Andy
3 Cheung. Now that predated your involvement?

4 MS. ARMSTRONG: Yes, it did.

5 MS. GONSALVES: But as lead inspector from, I think
6 you said June 20th, 2016, forward, if you could describe
7 generally what was your responsibility in respect of the
8 investigation.

9 MS. ARMSTRONG: It would have been my responsibility
10 to review the file that was transferred to me, and to
11 gather any more information that I saw fit.

12 MS. GONSALVES: Starting at the beginning then, based
13 on your review of the file, how did the -- what initiated
14 the inspection of Planet Energy?

15 MS. ARMSTRONG: Based on my review of the complaints,
16 there were three complaints originally, the two that you
17 have in front of you and a third one that did not give us
18 permission to proceed. And in Mrs. Andrassin's case, the
19 complaint was about cancellation. The same in Mr. Hawkins'
20 case; it was about cancellation fees.

21 MS. GONSALVES: What are the various modes through
22 which a consumer can make a complaint to the Board?

23 MS. ARMSTRONG: The complaint process can be started
24 in various ways. You can call into our call centre. You
25 can go and send an e-mail. You can go online on the web
26 portal and lodge a complaint there, or you can go to the
27 Board in person.

28 The process then is pretty much the same when an

1 information -- a public information officer then takes, for
2 example, a phone call, puts together a synopsis of that
3 phone call, logs it into the system, and may ask a few
4 questions in order to clarify the complaint. What is then
5 generated is a CCR, or a compliance complaint response,
6 where there is a set of questions auto-generated by the
7 system, which is then sent to the licensee and there is
8 information requested through that.

9 The licensee then responds to these questions and
10 sends it back.

11 MS. GONSALVES: Okay. So let's just take that process
12 then one step at a time.

13 You have referred to the consumer complaint response
14 document, and if you open the binder in front of you there
15 -- that's the book of documents of OEB enforcement staff,
16 Exhibit KX1.2, and Mr. Safayeni will display the document
17 on the screen as well. So feel free to use whatever is
18 more convenient for you.

19 MS. ARMSTRONG: Actually, if I may -- I forgot my
20 glasses. May I just --

21 MS. GONSALVES: Certainly. We are going to start at
22 tab 1.

23 MS. ARMSTRONG: Yes.

24 MS. GONSALVES: Have you got that in front of you?

25 MS. ARMSTRONG: Yes.

26 MS. GONSALVES: To confirm, this is the CCR that you
27 referred to?

28 MS. ARMSTRONG: Yes.

1 MS. GONSALVES: And this is the CCR specifically for
2 Roobinet Andrassin's complaint. We see her name under
3 complaint details on the bottom half of the page; is that
4 correct?

5 MS. ARMSTRONG: That's correct.

6 MS. GONSALVES: At the top half of the page under
7 assignment, am I understanding correctly the date received
8 is the date that the complaint first came in to the Board?

9 MS. ARMSTRONG: That's correct.

10 MS. GONSALVES: And in this case it was on January
11 27th, 2016?

12 MS. ARMSTRONG: That's right.

13 MS. GONSALVES: At the bottom of this page 1 we see
14 classification topic and sub-topic. Who fills in that
15 information?

16 MS. ARMSTRONG: That would be completed by the PIO.

17 MS. GONSALVES: The public information officer.

18 MS. ARMSTRONG: Public information officer.

19 MS. GONSALVES: Now, you explained, or you spoke about
20 the synopsis. Please turn to page 2.

21 MS. ARMSTRONG: Yes.

22 MS. GONSALVES: And we see at the top of page 2 a
23 heading, "synopsis". How did Ms. Andrassin's complaint
24 come in to the Board?

25 MS. ARMSTRONG: From the look of this complaint, it
26 would have been a phone call.

27 MS. GONSALVES: Why do you say that?

28 MS. ARMSTRONG: There is a synopsis that seems to have

1 been put together by the public information officer.

2 MS. GONSALVES: In putting together the synopsis does
3 the public information officer change the substance of the
4 complaint in any way or do they try and reflect what the
5 consumer has said on the phone?

6 MS. ARMSTRONG: No, they would reflect what the
7 consumer would have told them on the phone.

8 MS. GONSALVES: At the bottom of page 2 we see
9 "privacy consent". Can you explain what that portion of
10 the CCR is about?

11 MS. ARMSTRONG: The public information officer would
12 then request consent from the complainant, whether they can
13 share the information with the OEB, with the shareholder,
14 or with a third party. In this case consent was given for
15 sharing information with the Board or the stakeholder,
16 which would be the licensee.

17 MS. GONSALVES: In your overview of the complaints
18 process you explained that the CCR is sent to the licensee
19 and they are asked to answer certain questions. Is that
20 what we see on page 3 of this document?

21 MS. ARMSTRONG: That's right. Those are the questions
22 I am referring to, and then the answers would be completed
23 by the licensee.

24 MS. GONSALVES: Where do the questions come from?

25 MS. ARMSTRONG: They are auto-generated.

26 MS. GONSALVES: Is there any time frame for the
27 licensee to provide answers?

28 MS. ARMSTRONG: Yes, it's a 21-day time frame from the

1 time the questions are sent to when the answers should be
2 received.

3 MS. GONSALVES: So if we turn back to page 1 --

4 MS. ARMSTRONG: Yes.

5 MS. GONSALVES: -- under "assignment" we see date --
6 sent to licensee date of February 2, 2016 and licensee due
7 date of February 23, 2016, and that reflects the 21-day
8 response period?

9 MS. ARMSTRONG: That's right.

10 MS. GONSALVES: What is Board Staff's expectation of a
11 licensee in providing answers to the questions on the CCR
12 form?

13 MS. ARMSTRONG: When we ask questions we, in general,
14 and in particular here, expect that a licensee will give
15 accurate, honest, and complete responses. We also expect
16 in the complaint process that a licensee will contact the
17 consumer, get more detail on the complaint and, if
18 possible, resolve the complaint.

19 MS. GONSALVES: If we look at page 3 up on the screen,
20 or in the book in front of you, the first question asks the
21 licensee to review the consumer file and complaint,
22 including contract recorded tele-sales calls, reaffirmation
23 calls, correspondence with consumer and account history,
24 and asks for details.

25 The second paragraph of the response says:

26 "The consumer contacted Planet Energy on October 5, 2015
27 with regards to the global adjustment."

28 Do you see that paragraph?

1 MS. ARMSTRONG: Yes, that's right.

2 MS. GONSALVES: On that same call, had the consumer
3 asked about cancellation? Is that something that the Board
4 Staff would or would not expect to be mentioned in the
5 response?

6 MS. ARMSTRONG: Like I said, when we gather
7 information, we expect the licensee to give us as accurate
8 and complete of a response as possible, so we would, yes.

9 MS. GONSALVES: Under the next line, question 2, it
10 says:

11 "Call consumer to confirm receipt of complaint
12 details from OEB and discuss complaint details."

13 You referred to the expectation on licensees to
14 contact the consumer. Is it your understanding that it
15 would or would not be okay for a licensee to have another
16 party contact the consumer on its behalf?

17 MS. ARMSTRONG: Well, we expect a licensee to deal
18 with the complaint. So we would expect the licensee to
19 contact the consumer.

20 MS. GONSALVES: And I apologize for flipping around,
21 but if you could just go ahead to tab 40 in your binder.

22 MS. ARMSTRONG: Yes.

23 MS. GONSALVES: There is a bundle of documents there.
24 They are numbered in the top right-hand corner, and you
25 see, if you could turn to page 21.

26 MS. ARMSTRONG: Yes.

27 MS. GONSALVES: It's an e-mail dated February 5, 2016
28 to Roobinet Andrassin from [REDACTED] of ACN Inc.

1 MS. ARMSTRONG: Yes, I see that.

2 MS. GONSALVES: And the first sentence of the body of
3 that e-mail says:

4 "ACN's compliance department is requesting to
5 speak with you regarding your complaint with
6 Planet Energy."

7 Do you see that?

8 MS. ARMSTRONG: Yes.

9 MS. GONSALVES: From Board Staff's perspective would
10 that be an acceptable way for a licensee or in this case
11 Planet Energy to carry out its obligation to contact the
12 consumer?

13 MS. ARMSTRONG: Well, ACN is not licensed with the
14 Board. It would be Planet Energy that we would expect to
15 contact the consumer.

16 MS. GONSALVES: Okay. And again, apologies. Let's go
17 back to the CCR at tab 1, please. And now to page 4.

18 MS. ARMSTRONG: Yes.

19 MS. GONSALVES: There is -- the bottom half of the
20 page there is a section, a shaded gray section, that says
21 "agent tracking".

22 MS. ARMSTRONG: Yes.

23 MS. GONSALVES: And we have information provided
24 there, name of licensee, Kayvan Nahid, Sr., date of initial
25 training, April 17, 2015, we have the test score, date the
26 agent is active, April 17. All of the information in that
27 section, where does that come from?

28 MS. ARMSTRONG: This portion would have been filled

1 out by the licensee. And as you can see on page 5 the
2 licensee closure, it would have been -- the CCR would have
3 been completed by Jordan Small.

4 MS. GONSALVES: Okay. At the top half of page 4, the
5 second-to-last question says:

6 "Licensee to provide copies of material to
7 consumer."

8 And then there is certain documents that are listed,
9 and after that it says:

10 "Attach same copies as above to OEB."

11 So I understand that to be the PIO asking the licensee
12 to attach certain documents.

13 MS. ARMSTRONG: Yes.

14 MS. GONSALVES: And on page 5, above the line, in the
15 middle of the page, we see "confirmation e-mail dot PDF,
16 disclosure price", another PDF, and then "Ontario
17 residential commercial terms and conditions".

18 Am I understanding correctly that Planet Energy sent
19 those three attachments to the Board along with the
20 consumer complaint response form?

21 MS. ARMSTRONG: That's correct.

22 MS. GONSALVES: And just to identify them, turn over
23 tab A.

24 MS. ARMSTRONG: Yes.

25 MS. GONSALVES: It's an e-mail of April 29, 2015,
26 "congratulations", et cetera. Is that one of the documents
27 that was attached to the CCR?

28 MS. ARMSTRONG: Yes, it is.

1 MS. GONSALVES: Over tab B. "Terms and conditions of
2 electricity and natural gas supply customer agreement",
3 that was another attachment?

4 MS. ARMSTRONG: Yes, it would have been.

5 MS. GONSALVES: Tab C has a disclosure statement at
6 page 1.

7 MS. ARMSTRONG: Yes.

8 MS. GONSALVES: And then price comparison, tabs 2 and
9 3, are those Board-mandated documents?

10 MS. ARMSTRONG: Yes, they are.

11 MS. GONSALVES: And those were also included with the
12 CCR?

13 MS. ARMSTRONG: They were.

14 MS. GONSALVES: And behind tab D, there's a letter to
15 Roobinet Andrassin and [REDACTED], dated February 22,
16 2016, on Planet Energy letterhead. Was that as provided to
17 the Board at some point?

18 MS. ARMSTRONG: I can't recall when this was provided,
19 I'm sorry.

20 MS. GONSALVES: Okay. But in any event, if you turn
21 back to the CCR at tab 1, page 4 --

22 MS. ARMSTRONG: Yes.

23 MS. GONSALVES: -- at the very top, the question asks
24 for licensee resolution, including timing and method of
25 communication with consumer, and Planet Energy's response
26 is that it offered the consumer cancellation without early
27 termination charges.

28 MS. ARMSTRONG: That's right.

1 MS. GONSALVES: Okay. So what's done -- what's the
2 next step once a licensee provides the response in the CCR?

3 MS. ARMSTRONG: Once a response comes in, it would go
4 to an analyst to review the responses. And if an analyst
5 at that point has any more questions, there would be a
6 follow-up set of questions through an RAP or a resolution
7 action plan.

8 MS. GONSALVES: Okay. So let's just move forward in
9 the documents then. If you can go to tab 2 --

10 MS. ARMSTRONG: Yes.

11 MS. GONSALVES: -- and briefly explain to the Panel
12 what this document is. It says CDRS summary at the top.

13 MS. ARMSTRONG: That would be the internal note system
14 that is part of the compliant system. So this would be the
15 place where an analyst takes notes, puts the synopsis again
16 or the original complaint, and just uses it for managing
17 the case.

18 MS. GONSALVES: Who was the analyst in this case?

19 MS. ARMSTRONG: It looks like Andy Cheung.

20 MS. GONSALVES: And page 4 of 4 at the end of that
21 document, that would be -- well, we see one note under the
22 name of Andy Cheung on March 15, but also notes from Nancy
23 Mintz on March 8th and Charlotte Ellis Morgan on March 8th.
24 So all of the notes are kept in one place, is that right?

25 MS. ARMSTRONG: Yes.

26 MS. GONSALVES: Turning over to tab 3, you spoke about
27 the RAP or the resolution action plan.

28 MS. ARMSTRONG: Yes.

1 MS. GONSALVES: And just to confirm, this is the RAP
2 for the Andrassin complaint?

3 MS. ARMSTRONG: Yes.

4 MS. GONSALVES: Under assignment, it shows a date
5 assigned of March 1, 2016, and a due date of March 4, 2016.
6 Is that a mandated response deadline?

7 MS. ARMSTRONG: No. There's no metrics for the RAP;
8 it is up to the analyst. However, we generally do expect a
9 quicker response time than in the CCR, because the licensee
10 at this point should be familiar with the complaint.

11 MS. GONSALVES: Turning over to page 2, we see a
12 synopsis. Is there anything new or different in that from
13 the CCR, or is that simply carried over?

14 MS. ARMSTRONG: That would have been carried over.

15 MS. GONSALVES: On page 3, we see three columns:
16 question, response and previous response. In respect of
17 the CCR, you told us the questions were auto populated by
18 the system.

19 MS. ARMSTRONG: Yes.

20 MS. GONSALVES: How are the questions generated in an
21 RAP?

22 MS. ARMSTRONG: In an RAP, an analyst will look at the
23 CCR response and then ask follow-up questions, depending
24 what they notice in the original responses.

25 MS. GONSALVES: So the questions, to clarify, would be
26 or could be unique to a specific case?

27 MS. ARMSTRONG: Yes, they would be.

28 MS. GONSALVES: In this case, the Panel can certainly

1 read the questions at their leisure. But the analyst is
2 asking for a copy of certain calls, as well as a copy of
3 the letter mailed to the consumer regarding cancellation.
4 And the response indicates that those are attached, is that
5 right?

6 MS. ARMSTRONG: That's right. Yes, the supporting
7 materials is at the bottom of the page.

8 MS. GONSALVES: Over on to page 4, we see consumer
9 complaint response. Again, is there anything new or
10 different from the original CCR, or is all of that simply
11 carried over?

12 MS. ARMSTRONG: It's carried over.

13 MS. GONSALVES: All right. We will come back to the
14 Andrassin complaint, but let's turn briefly to the Hawkins
15 complaint and just note the documentation that exists for
16 that one.

17 If you now look at tab 4.

18 MS. ARMSTRONG: Yes.

19 MS. GONSALVES: That's the CCR for the Hawkins
20 complaint?

21 MS. ARMSTRONG: That's right.

22 MS. GONSALVES: On page 2, under synopsis, it's
23 written in the first person: "I purchased a hydro
24 contract." Can you explain how Mr. Hawkins complaint came
25 into the Board?

26 MS. ARMSTRONG: That indicates to me that this would
27 have been sent in via an e-mail, and then the body of the
28 e-mail gets copied into the synopsis.

1 MS. GONSALVES: So those are Mr. Hawkins own words?

2 MS. ARMSTRONG: Yes, and they are signed by him.

3 MS. GONSALVES: On pages 3 and 4, we see the same
4 questions and, confirming again, Planet Energy provided the
5 responses?

6 MS. ARMSTRONG: That's correct.

7 MS. GONSALVES: Under the agent tracking section on
8 page 4, all of that was supplied by Planet Energy?

9 MS. ARMSTRONG: Yes, as in the complaint before that
10 would have been completed by the licensee. On page 5, it
11 states that it was again Mr. Jordan Small who completed the
12 CCR.

13 MS. GONSALVES: And once again on page 5, there is an
14 indication of three PDF files being attached. And if you
15 could look at tabs A, B and C, and confirm whether those
16 are the documents attached to Planet Energy's response,
17 please.

18 MS. ARMSTRONG: Yes, those would have been the
19 attachments that are listed here.

20 MS. GONSALVES: Thank you. Tab 5, again with the
21 Hawkins complaint, that's the CDRS summary, or the note
22 tracking by the analyst; is that right?

23 MS. ARMSTRONG: That's right.

24 MS. GONSALVES: Again, in this case was Mr. Chung the
25 analyst?

26 MS. ARMSTRONG: The notes are from Mr. Chung and the
27 manager of consumer protection.

28 MS. GONSALVES: Who is that?

1 MS. ARMSTRONG: That would have been Charlotte Ellis-
2 Morgan.

3 MS. GONSALVES: At tab 6, again if you could just
4 please confirm this is the resolution action plan in the
5 Hawkins complaint, with responses supplied by Planet
6 Energy?

7 MS. ARMSTRONG: Yes, it is.

8 MS. GONSALVES: In general terms, what was Mr.
9 Hawkins' complaint about?

10 MS. ARMSTRONG: If you go to this, as well as the
11 notes sections, Mr. Hawkins' complaint originated from a
12 rather high cancellation penalty that he received after he
13 sold a property that he had a contract, a retail contract,
14 with.

15 MS. GONSALVES: Again, I will let the Panel read the
16 specific questions and answers in their own time, but I
17 think it would be fair to say that Mr. Chung was asking
18 certain questions to get clarification of Planet Energy's
19 view or position on the cancellation; is that right?

20 MS. ARMSTRONG: That's correct.

21 MS. GONSALVES: Okay. And at tab 7A and B --

22 MS. ARMSTRONG: Yes.

23 MS. GONSALVES: -- we see some e-mail exchanges. Can
24 you, again, just explain generally -- we can all read them,
25 but explain what's going on in those e-mails?

26 MS. ARMSTRONG: Well, there's e-mails from Charlotte,
27 again, who was the manager at the time, as well as Andy,
28 with some questions that were responded to by Mr. Small.

1 MS. GONSALVES: Those e-mails, at least some of them,
2 post-date the response to the RAP. Explain how that comes
3 to be, that questions are being asked after a RAP?

4 MS. ARMSTRONG: Well, in this case the information-
5 gathering exercise would have carried on. It was felt that
6 there was more information required with Charlotte being
7 involved. I was not there at the time, but I would assume
8 that there was interest from the consumer protection group
9 at the time in gathering more information.

10 MS. GONSALVES: As part of that information-gathering,
11 we saw that for both complaints Planet Energy identified
12 the agent involved. Was there any communication on your
13 review of the file between Board Staff and those two
14 agents?

15 MS. ARMSTRONG: I was not conducting the inspection at
16 that time. Based on my review of the complaint, I am aware
17 that it was Mrs. Andrassin who noted her agent to Andy.
18 Other than that, I would have no knowledge of that.

19 MS. GONSALVES: From your review of the file, are you
20 aware whether there was any contact between Mr. Chung and
21 either of the agents before the date of the notice of
22 inspection?

23 MS. ARMSTRONG: Yes, when I took the file over, the
24 material that I reviewed already included witness
25 statements from the agents that would have been conducted,
26 I believe, in March -- no -- yeah, March, that would have
27 been conducted by Andy Chung, accompanied by Chris Marijan,
28 who was the senior project advisor at the time. And that

1 was part of this information-gathering process that I
2 talked about.

3 MS. GONSALVES: As we know, the inspection was
4 commenced on April 25, 2016. Again, prior to your
5 involvement but from reviewing the file, are you aware of
6 whether there was any further contact with the two
7 complainants between Mr. Chung and either of the
8 complainants?

9 MS. ARMSTRONG: I am sorry, I am not understanding. I
10 know that Andy was in contact with the witnesses, both the
11 complainants as well as the agents --

12 MS. GONSALVES: Was there --

13 MS. ARMSTRONG: -- and there was witness statements,
14 there was interviews, and then witness statements done
15 prior to the inspection being commenced.

16 MS. LONG: Ms. Gonsalves, is your question further to
17 April 26th?

18 MS. GONSALVES: It was after --

19 MS. LONG: I am just a bit confused.

20 MS. GONSALVES: Yes, I apologize. And I don't think
21 there is any dispute. It's in the disclosure that there
22 were interviews with both complainants on April 29th, 2016.

23 MS. LONG: Thank you.

24 MS. GONSALVES: Ms. Armstrong, what is an inspection?

25 MS. ARMSTRONG: An inspection, it is given to us
26 through the act, the power of an inspect (sic) is given to
27 us through the act, section 107, and it is meant to gather
28 information and inspect potential non-compliance through

1 review of documents, interviews, any information we are
2 required.

3 MS. GONSALVES: What, if anything, are the obligations
4 of those who are -- those from whom information is sought
5 in the course of an inspection?

6 MS. ARMSTRONG: Once an inspection is commenced a
7 licensee has a duty to assist under section 108 of the act,
8 which requires a licensee to provide information to assist
9 the inspector with whether it's documents or the
10 information.

11 Again, the Board relies on this information in
12 enforcement proceedings, and we expect that information to
13 be accurate, complete, honest.

14 MS. GONSALVES: What is the role of an inspector when
15 they are carrying out their duties under the act?

16 MS. ARMSTRONG: An inspector in an unbiased and
17 neutral manner is expected to gather all relevant
18 information in regards to the potential breach or non-
19 compliance.

20 MS. GONSALVES: If we turn back to the documents at
21 tab 8A.

22 MS. ARMSTRONG: Yes.

23 MS. GONSALVES: It's common ground in the agreed
24 chronology that this document dated May 16, 2016 went to
25 Jordan Small at Planet Energy from Andy Chung and provided
26 notice of the inspection with an information request. Is
27 that something you reviewed in the file when you --

28 MS. ARMSTRONG: Yes, when I reviewed the file I saw

1 the request for information.

2 MS. GONSALVES: At tab 8B there is another letter.
3 This one is now dated May 27. Again, this is also an
4 exhibit to the agreed statement of -- excuse me, the agreed
5 chronology. And in the first line it says that:

6 "This request for information and notice of
7 inspection is intended to replace our previous
8 correspondence sent to Planet Energy (Ontario)
9 Corp. on May 16, 2016."

10 So I will refer to this one. Is that okay?

11 MS. ARMSTRONG: Yeah, that's the one that I was
12 working from.

13 MS. GONSALVES: Okay. The next paragraph and the four
14 numbered bullet points below it states that:

15 "On April 25, 2016 the Ontario Energy Board
16 commenced a compliance inspection regarding two
17 salespersons acting on behalf of Planet Energy.
18 These salespersons have alleged the following."

19 And then there is four points enumerated. And there
20 is a specific information request tied to those four
21 questions that we see over on page 3. Am I understanding
22 the document correctly?

23 MS. ARMSTRONG: That's right.

24 MS. GONSALVES: And the information request has four
25 specific requests. The first question asks Planet Energy
26 to provide the total number of contract enrollments for gas
27 and electricity consumers for each of ACN/Planet Energy
28 salesperson listed in Appendix B. And we see over the page

1 that that refers to Mr. Nahid and Mr. MacArthur.

2 MS. ARMSTRONG: That's right.

3 MS. GONSALVES: And it specifically requests an Excel
4 spreadsheet setting out a variety of information,
5 including, at the very end, IP address where the contracts
6 were signed.

7 What is your understanding of why was Mr. Chung was
8 asking for that information?

9 MS. ARMSTRONG: Prior to this information request,
10 like I mentioned, Andy conducted witness interviews. From
11 my review of the file, it's my understanding that in those
12 witness interviews the agent noted that they had enrolled
13 customers on their own computers. Now, an IP address,
14 although I understand an IP address is dynamic, it was
15 indicative --

16 MR. ZACHER: Sorry, I am going to object to that. Ms.
17 Armstrong is a fact witness and she can't give any sort of
18 evidence that addresses matters of expertise, or that
19 requires an inference to be drawn from a matter of
20 expertise.

21 So I am okay with the question as to why did Mr.
22 Cheung request this. But anything beyond that, I object
23 to.

24 MS. LONG: Ms. Gonsalves?

25 MS. GONSALVES: It's my submission that it's fair for
26 Ms. Armstrong, as the inspector in this matter, to explain
27 what her understanding was of the utility, if any, that an
28 IP address might provide to the inspectors during the

1 course of the inspection.

2 We are not seeking to tender Ms. Armstrong as an
3 expert in respect of IP addresses. But simply as the
4 inspector in this case, it's my submission that it's
5 appropriate for her to speak about what inferences she may
6 have drawn from the IP addresses, or how, if at all, they
7 may have assisted her or influenced her in the course of
8 the inspection.

9 It's limited to her own knowledge and her own use of
10 that information.

11 MR. ZACHER: My friend is suggesting that there is
12 some relevance to this, that there is some utility, and
13 there is only relevance and utility if the witness can
14 speak to that relevance and utility, and it's a matter of
15 opinion evidence.

16 It's absolutely a matter of opinion evidence. There's
17 lots of cases that deal with this. As Ms. Armstrong
18 herself has admitted, IP addresses are dynamic.

19 My friend has witnesses who are going to be called.
20 They are going to say I enrolled people on my own Computer.
21 Those witnesses can say that, and they can be cross-
22 examined. But to have Ms. Armstrong comment on the
23 relevance or applicability of IP addresses is entirely
24 beyond her capability.

25 MS. LONG: Ms. Gonsalves, we are just struggling with
26 the relevance of what Ms. Armstrong's view was of what an
27 IP address -- what that leads to.

28 MS. GONSALVES: May I suggest, Madam Chair -- I will

1 leave it for now. There will be more documents that we
2 come to that reflect Ms. Armstrong's own work product, and
3 I would suggest that we park it until we get to those
4 documents, and the Panel -- my friend may object, and the
5 Panel may be required to rule. But at that point, it may
6 be that the IP addresses do have relevance to her
7 explaining the narrative of the inspection that she
8 conducted.

9 So I am content to at least leave it until we get
10 there.

11 MS. LONG: Okay, let's move on.

12 MS. GONSALVES: Let's turn to tab 9, if we could,
13 please, Ms. Armstrong, 9A.

14 MS. ARMSTRONG: Yes.

15 MS. GONSALVES: Again, not controversial. We've got
16 in the agreed chronology that Planet Energy responded to
17 Mr. Cheung's request for information on June 6, 2016, and
18 the response had a number of parts.

19 So if you could just confirm that Tab 9A, we see on
20 the first page, question number 1, and then over the page,
21 question number 2 and question number 3; was this Planet
22 Energy's response to the first three questions in the
23 request for information?

24 MS. ARMSTRONG: Based on my review of the file, that's
25 my understanding, that this was the first response.

26 MS. GONSALVES: Okay. Over tab B, there's a letter
27 there, also with a date on it of June 6, 2016.

28 MS. ARMSTRONG: Yes.

1 MS. GONSALVES: And this letter also accompanied
2 Planet Energy's response to the request for information?

3 MS. ARMSTRONG: Yes, that's right.

4 MS. GONSALVES: And it's not in this binder, but is it
5 your understanding that they also provided certain wave
6 files as part of their response, audio files?

7 MS. ARMSTRONG: Yes, they did.

8 MS. GONSALVES: We will come back to the spreadsheet,
9 the question 1 response. But just sticking with the letter
10 for a moment, on page 1 of the letter there is a subheading
11 "allegations by IBOs".

12 MS. ARMSTRONG: Yes, I see that.

13 MS. GONSALVES: In the second paragraph, the author,
14 Mr. Small, writes:

15 "We were not informed of these allegations during
16 the entire CCR process or during any other
17 communications with Board Staff."

18 And then the next paragraph begins:

19 "I understand our counsel has communicated to
20 Staff counsel it would be helpful in the future
21 if the particulars of complaints are communicated
22 to Planet during the CCR or other investigatory
23 process."

24 The specific allegations by the agent set out in Mr.
25 Cheung's notice of inspection and request for allegation
26 set out in the CCRs.

27 And my question to you is: From Staff's perspective,
28 does the fact that allegations -- how does the fact that

1 allegations are not raised in a consumer complaint, how
2 does that affect the scope of the inspection, if at all?

3 MS. ARMSTRONG: Once an inspection commences, or even
4 a bit prior in the information-gathering stage, sometimes
5 an inspector comes across information in a CCR that seems
6 odd or a little bit off, and we start asking more
7 questions. We sort of keep digging a little bit further.

8 Oftentimes, when a consumer calls in a complaint, it's
9 what affects them directly. Consumers generally do not
10 have the in-depth knowledge of the legislation, or the
11 applicable codes or regulation in order to go and capture
12 every single detail of what would be in a reg.

13 But as an inspector, once you read a complaint and you
14 start looking at things that are a little bit off and you
15 start a question or two, it might lead to a potential
16 breach or non-compliance that a consumer wouldn't have been
17 aware of at the time they launched the complaint.

18 MS. GONSALVES: Mr. Small's letter refers to IBOs.
19 Again, I don't think this is controversial that that refers
20 to independent business owners.

21 MS. ARMSTRONG: Operators.

22 MS. GONSALVES: Operators, thank you. From Board
23 Staff's perspective, is there a difference between an IBO,
24 as you understand that term, and a sales agent on behalf of
25 a licensee?

26 MS. ARMSTRONG: No. That information came up during
27 the implementation of the ECPA, and Board Staff issued a
28 bulletin to clarify our understanding of a sales agent

1 within that multilevel marketing scheme.

2 MS. GONSALVES: Okay. We will come to that bulletin.
3 On page 3 of Mr. Small's letter, he provides a response to
4 Ms. Andrassin's complaint on behalf of Planet Energy.

5 In the last paragraph of that page, in the middle of
6 the paragraph, if you are able to see the sentence after
7 the second dash, Planet agreed to cancel Ms. Andrassin's
8 agreement without a termination charge, a resolution which
9 Ms. Andrassin agreed was complete resolution to her
10 complaint.

11 Without commenting, you are not in a position to do
12 so, on whether or not Ms. Andrassin agreed that the
13 cancellation without charge was a complete resolution to
14 her complaint, from an inspector's perspective, is the fact
15 that a consumer might consider their complaint resolved
16 determinative? Does the inspection stop if a consumer says
17 I'm satisfied?

18 MS. ARMSTRONG: No, if an inspector will have noticed
19 a potential non-compliance in any other matter, whether the
20 complaint was resolved at that point or not, once there is
21 an allegation or a suspicion of a non-compliance like agent
22 misconduct, as an inspector we would have a duty to follow-
23 up and investigate that potential non-compliance.

24 MS. GONSALVES: If you turn over -- I think we can
25 skip tab 10A, which simply explains why Planet Energy is
26 providing an updated response to question 1 -- behind tab B
27 we see a spreadsheet here, question 1, updated.

28 MS. ARMSTRONG: Yes.

1 MS. GONSALVES: Is this a document that you reviewed
2 once you took over as the lead inspector in this case?

3 MS. ARMSTRONG: Yes, I would have seen this document.
4 I believe the difference between the original document that
5 was sent and this document were the IP addresses which were
6 left off the original.

7 MS. GONSALVES: Did the information provided in this
8 updated document about the IP addresses play any role in
9 your work as inspector in the case? That's just a yes or
10 no question.

11 MR. ZACHER: Same objection. I don't know what the
12 relevance is, unless my friend wants the Panel to draw some
13 kind of an inference from it. Either it's irrelevant, in
14 which the question shouldn't be asked, or it has relevance,
15 in which case she needs an expert.

16 MS. LONG: But if she is asking, if I understand the
17 evidence correctly, Ms. Armstrong is saying the only
18 difference between the spreadsheet that was provided prior
19 to this one is the IP address, and the question is to Ms.
20 Armstrong, did that affect -- I mean, what did you do next,
21 or did you draw an inference from that, did you do anything
22 differently because there is an IP address there. How is
23 that not a fair question for her to answer? She is not
24 going to give opinion evidence, because, I mean, there will
25 be no weight to it, but did she take a next step? Is that
26 not a fair question, Mr. Zacher?

27 MR. ZACHER: Well, I think the question as to what's
28 the difference between the original spreadsheet and the new

1 spreadsheet is fine. I have a problem with asking any
2 question that addresses what the relevance is of that
3 information, because it's irrelevant in the absence of
4 somebody who has expertise to explain why it's relevant. I
5 mean --

6 MS. LONG: No, I am trying to go back to what the
7 question was. I mean, I guess what the Panel is wondering
8 is, now there's updated information, what did Ms. Armstrong
9 do next. I think that's -- that's the question, and I am
10 not sure -- I guess based on what the answer is, I might
11 rule differently, but I just, I don't know, this seems to
12 me like a process question. Planet has updated its
13 information, there's a new cell on this spreadsheet, forget
14 that it's the IP address, there is a new cell on this
15 spreadsheet, what did you do next.

16 MR. ZACHER: I think that's a fine question, what did
17 you do next.

18 MS. LONG: Okay. I think that's what you are trying
19 to ask.

20 MS. GONSALVES: Yes, that is what I am trying to ask.
21 What did you do next, Ms. Armstrong?

22 MS. ARMSTRONG: I have to mention this also came in
23 before my involvement, and Mr. Chung already did some
24 original evaluation of these spreadsheets. But when I
25 reviewed the file and I looked at the process of the
26 inspection up to that time, I looked at the IP addresses
27 because they were missing prior, and I noticed that in a
28 whole bunch of these contracts that would have been signed

1 up by consumers in different cities the IP addresses was
2 the same.

3 That, to me, comparing it to the witness statement
4 verified the witness statement of the agent, saying that
5 they enrolled people on their own computers.

6 MR. ZACHER: And therein is the problem.

7 MS. LONG: Well --

8 MR. ZACHER: I think that that question and answer
9 should be struck.

10 MS. LONG: I don't think that you can -- I mean, I
11 don't think that -- I think that's drawing a conclusion
12 that goes a bit too far.

13 MS. GONSALVES: My submission, Madam Chair, would be
14 that the enforcement team does not intend at the end of
15 this case to take Ms. Armstrong's answer there and say
16 therefore you, the Panel, should draw an inference that the
17 agents enrolled these customers from their own computers.
18 It's simply explaining her thought process, and if -- the
19 next documents I want to take you to, tab 11 and tab 12,
20 reflect the process that Ms. Armstrong followed as the
21 inspector. And I can't see how she can explain her process
22 without giving the answer she just gave. It's about how
23 that answer is used at the end of the case, and it isn't my
24 intention to take Ms. Armstrong's answer there and say,
25 therefore, we have proven that because of what she said
26 about IP addresses all of these consumers were enrolled
27 online. We're going to get -- or, excuse me, by the
28 customers from their -- the agents from their own

1 computers. We are going to hear other evidence on that. I
2 am going to rely on the other evidence.

3 But Ms. Armstrong as inspector in this case can't
4 fairly explain to the Panel the process she followed
5 without explaining the significance that she as inspector
6 drew from the information about the IP addresses. That is
7 all I want to use it for.

8 MS. LONG: Does that address your concern, Mr. Zacher?

9 MR. ZACHER: I mean, Ms. Armstrong's -- the
10 investigation as a whole is relevant. Ms. Armstrong's
11 thought process is not particularly relevant. The issue
12 for your determination as to whether there were certain
13 things that were breached or not breached...

14 I think my friend wants to put this evidence before
15 the Panel for obvious reasons and wants conclusions to be
16 drawn from it. No conclusion should be drawn from it.

17 You have my point, and I won't belabour it further.

18 MS. LONG: Okay, we understand your position.

19 MS. GONSALVES: Ms. Armstrong, could you then turn to
20 tab 11 in your binder, please.

21 MS. ARMSTRONG: Yes.

22 MS. GONSALVES: Did you prepare this document?

23 MS. ARMSTRONG: As I mentioned, the original sorting
24 of the documents would have been done by Andy Chung. I
25 then took the Excel spreadsheets, we colour-coded it, we
26 block -- like, we colour-blocked it, again based on IP
27 addresses in this case. We sorted the contracts for each
28 of the agents and compared witness statements to the

1 information that came before us in order to verify what the
2 witnesses had said.

3 MS. GONSALVES: The tab 11 document we see
4 representative name Kayvan Nahid, so these are the -- this
5 is the information you got from Planet Energy about
6 consumers enrolled -- or contracts enrolled under Mr.
7 Nahid's name?

8 MS. ARMSTRONG: Yes, that's right.

9 MS. GONSALVES: And tab 12 would be the list of
10 consumers and contracts enrolled under Mr. MacArthur?

11 MS. ARMSTRONG: That's right.

12 MS. GONSALVES: In both of these spreadsheets, as well
13 as the original response at tab 9B, there's a column --
14 excuse me, 10B -- there's a column for verification call.

15 MS. ARMSTRONG: That's right.

16 MS. GONSALVES: And under all of them, the information
17 provided from Planet Energy is N/A. What did you take from
18 that information?

19 MS. ARMSTRONG: That made me think that Planet Energy
20 considered those contracts as Internet enrollment where a
21 verification call would be not applicable since there was
22 no requirement at that time to verify Internet enrollments.
23 The verification process would have been built into the
24 actual Internet contract.

25 MS. GONSALVES: And just -- I apologize to everybody
26 for jumping around -- looking at tab 11, the consumers
27 unrolled under Mr. Nahid, looking down the names of those,
28 during the course of the inspection did you come to learn

1 about any complaints made to the Board by anyone else
2 listed there?

3 MS. ARMSTRONG: Yes, we had -- while the inspection
4 was ongoing we had another complaint come in from a [REDACTED]
5 [REDACTED], and she was one of, I believe, two doctors for
6 the [REDACTED].

7 MS. GONSALVES: Do you have any understanding of what
8 became of that complaint?

9 MS. ARMSTRONG: I believe that was settled on the
10 complaint level. I also tried to contact [REDACTED],
11 but I was not successful; she would not return my calls.

12 MS. GONSALVES: Madam Chair, I will just pause there.
13 I note it's slightly after 12, and I am in the Panel's hand
14 as to whether you want to break for lunch. I probably have
15 another half hour or so with Ms. Armstrong in-chief.

16 MS. LONG: Ms. Armstrong, are you okay to continue?

17 MS. ARMSTRONG: Yes.

18 MS. LONG: All right. Well, let 's do another half
19 hour.

20 MS. GONSALVES: Thank you. After conducting the
21 analysis and the manipulation of the spreadsheets that you
22 explained for tabs 11 and 12, what if anything was your
23 next step in the inspection, Ms. Armstrong?

24 MS. ARMSTRONG: I then briefed my senior management,
25 provided them with sort of the facts that had come out of
26 the inspection, and received instructions to proceed.

27 MS. GONSALVES: Did you yourself, proceed with either
28 of the agents?

1 MS. ARMSTRONG: Yes -- oh, I am sorry. Yes, we --
2 since the witness interviews were done prior to my
3 involvement, I reviewed the witness statements, but felt
4 that some time had passed, I wasn't involved and it would
5 be beneficial to speak to those witnesses again.

6 So we set up interviews with the both agents, Mr.
7 MacArthur via phone. Mr. Nahid came in in person, and we
8 spoke to him, and we also spoke to Bob Hawkins.

9 MS. GONSALVES: Did you take notes or otherwise record
10 what transpired in those interviews?

11 MS. ARMSTRONG: I recorded Mr. Nahid's interview. I
12 took notes during the phone call with Mr. MacArthur, and
13 Bob Hawkins was done in the presence of external counsel.

14 I also want to note that at all these interviews, my
15 manager and/or legal counsel were present -- my internal
16 legal counsel, not external.

17 MS. GONSALVES: Following those interviews, did you do
18 anything with respect to the information you had received?

19 MS. ARMSTRONG: Yes, immediately after -- not
20 immediately, but shortly after the interviews were
21 conducted, I put together a witness statement to reflect
22 what the witnesses had said. Those were eventually sent to
23 the witnesses.

24 We had another follow-up interview with them to make
25 sure that their witness statement reflected what they were
26 actually saying. After that, the witness statements were
27 sent to the witnesses and eventually signed.

28 MS. GONSALVES: After those witness statements were

1 prepared and signed, did you take -- or did you collect any
2 additional information within this inspection before the
3 notice of intention was issued?

4 MS. ARMSTRONG: Not after the signing of the witness
5 statements, no.

6 MS. GONSALVES: And we know from the Agreed Statement
7 of Fact that the agreed chronology is that the notice of
8 intention was issued on February 9, 2017.

9 MS. ARMSTRONG: I believe that's correct, not having
10 it in front of me.

11 MS. GONSALVES: I just want to ask you about a few
12 additional matters before we conclude your examination in-
13 chief. Ms. Armstrong, what is the global adjustment?

14 MS. ARMSTRONG: The global adjustment is one of two
15 parts to the commodity -- electricity commodity charge. It
16 is the difference between the contracted price of energy
17 and the market price which is set by the hourly Ontario
18 energy price, or HOEP.

19 Generally, when HOEP is low, the global adjustment is
20 higher. If the market price goes higher, the global
21 adjustment is lower. Things that would be included in the
22 contracted price would be the cost of building new
23 infrastructure, maintaining existing infrastructure,
24 conservation and demand management programs, fit, microFIT
25 contracts, things like that.

26 MS. GONSALVES: Does the global adjustment fluctuate,
27 or is it a fixed amount?

28 MS. ARMSTRONG: The global adjustment, like I

1 mentioned, will fluctuate based on where the market price
2 is in any given month.

3 MS. GONSALVES: Is there any cap or limit to the
4 global adjustment amount?

5 MS. ARMSTRONG: No. The global adjustment will make
6 up the difference between the market price and the
7 contracted price.

8 MS. GONSALVES: Are you able to say generally whether
9 there has been any trend in the global adjustment price
10 over time?

11 MS. ARMSTRONG: I reviewed the IESO website, and from
12 the IESO website, the average global adjustment has been
13 steadily rising since 2008.

14 MS. GONSALVES: Sorry, IESO being the independent
15 energy --

16 MS. ARMSTRONG: Electricity system operator.

17 MS. GONSALVES: Thank you. Who is required to pay the
18 global adjustment?

19 MS. ARMSTRONG: Every consumer pays the global
20 adjustment. Customers are either RPP customers which is
21 for regulated -- I am sorry.

22 MS. GONSALVES: Regulated price plan.

23 MS. ARMSTRONG: Regulated price plan. A non-RPP
24 customer, a retail customer, would fall under the non-RPP
25 customer category. For non-RPP customers, the global
26 adjustment, like for a retail customers will be showing up
27 as a separate line item on the bill. It will be charged by
28 the utility for an RPP customer. The commodity portion of

1 that bill would be a blended rate between the actual
2 commodity, the market price and the global adjustment.

3 MS. GONSALVES: Just to help make this a little bit
4 more concrete, if you could turn in your binder to tab 1C,
5 we will use the price comparison for Ms. Andrassin as an
6 illustration.

7 MS. ARMSTRONG: Right. So in a price comparison, what
8 you have on page 2 here would be a typical customer, and
9 what a typical customer would be paying under the RPP
10 pricing. This would include the global adjustment portion
11 as well as the commodity portion, and it assumes a certain
12 consumption pattern between off-peak, mid-peak and on-peak.

13 On the other side of the price comparison, you see the
14 retail price, you see the fixed commodity price which is
15 only the -- what will be compared to the market price for
16 an RPP customer, and then you see a forecast of the global
17 adjustment.

18 MS. GONSALVES: So to ensure we are all understanding
19 correctly, on page 3 on the right-hand side, the Planet
20 Energy fixed price at 4.99 cents per kilowatt-hour is in
21 addition to the global adjustment which, in this example,
22 is set at 7.49 cents per kilowatt-hour.

23 MS. ARMSTRONG: That's correct.

24 MS. GONSALVES: And on the left-hand side, page 2, is
25 an example of how pricing is presented under the RPP or
26 through -- directly from the utility, and the rates there
27 7.7 cents per kilowatt-hour, off-peak, 11.4 cents mid-peak,
28 and 14.0 cents on-peak, the global adjustment, the 7.49 in

1 this example, is built into these rates.

2 MS. ARMSTRONG: Yes, it would be.

3 MS. GONSALVES: Based on your understanding of the
4 global adjustment, would it be accurate or not to say that
5 the global adjustment would not go above 9.99 cents per
6 kilowatt-hour?

7 MS. ARMSTRONG: No, that would not be accurate since
8 nobody can tell us where the market price goes at any given
9 time. The global adjustment, like I said, it makes up the
10 difference between contracted price and market price, so it
11 depends on where the market price is. Global adjustment
12 can go definitely over -- I believe it was 9.99 cents.

13 MS. GONSALVES: Would it be correct or incorrect to
14 say that the global adjustment would even out over time,
15 and that the average would be around \$0.05 per kilowatt-
16 hour?

17 MS. ARMSTRONG: No, that is an incorrect statement.
18 While the global adjustment can fluctuate, nobody can say
19 if it evens out. Based on the IESO website the average
20 global adjustment has been rising.

21 MS. GONSALVES: I would like to turn to verification
22 calls. These are, as I understand it, required in the --
23 under the ECPA regulation and the regulation.

24 MS. ARMSTRONG: What tab?

25 MS. GONSALVES: Let's go to tab 13. And explain to us
26 what these are.

27 MS. ARMSTRONG: This would be a verification script
28 for electricity. This is a mandated script that an in-

1 person sales contract with a retailer, the retailer would
2 then have to go and verify as per the ECPA.

3 MS. GONSALVES: If you just turn ahead in that same
4 tab, the first five pages show electricity down at the
5 bottom.

6 MS. ARMSTRONG: Yes.

7 MS. GONSALVES: And then goes back to page 1, and it
8 now says "verification call script natural gas"?

9 MS. ARMSTRONG: Yes.

10 MS. GONSALVES: Is there a certain time period in
11 which these verification calls occur?

12 MS. ARMSTRONG: Yes, that would be within the first 30
13 days, I believe.

14 MS. GONSALVES: And what is your understanding of when
15 a verification call, according to this script -- excuse me,
16 in what circumstances is a verification call, according to
17 these scripts, required?

18 MS. ARMSTRONG: At the time of the contracts that we
19 are talking about it would have been in the case of an in-
20 person sale. As I mentioned earlier, Internet enrollments
21 would have been exempt from this obligation.

22 MS. GONSALVES: Is a verification call the same as a
23 quality-assurance call, or is that something different?

24 MS. ARMSTRONG: No, the Board provides a script for a
25 verification call. Quality-assurance calls we make we do
26 not. We don't proscribe what needs to be in a quality-
27 assurance call.

28 MS. GONSALVES: Okay. One question about licensee

1 testing of its agents. Does the Board mandate test
2 questions for licensee agents?

3 MS. ARMSTRONG: There is requirements of the training,
4 but not the test questions itself, no.

5 MS. GONSALVES: Two questions. Specifically in this
6 case, to your knowledge, has the Board reviewed Planet
7 Energy's test questions or approved them?

8 MS. ARMSTRONG: I am aware, although I was not
9 involved, but I am aware that there was an inspection on
10 Planet Energy's marketing materials and training materials,
11 I believe.

12 MS. GONSALVES: You spoke earlier in your evidence,
13 Ms. Armstrong, about a staff bulletin. Please turn to tab
14 14 in your binder.

15 MS. ARMSTRONG: Yes.

16 MS. GONSALVES: Explain what this is?

17 MS. ARMSTRONG: This is the staff bulletin that I
18 mentioned that was issued in 2012 addressing specifically
19 pyramid schemes or multi-level marketing schemes and the
20 Board's expectations of a salesperson, who a salesperson
21 is, under what context Internet transactions, what's
22 expected of a salesperson. If a salesperson is present,
23 the bulletin made clear that we would consider that an in-
24 person sale, not an Internet enrollment. Even if a sales
25 agent leaves the room or leaves the house and comes back,
26 would fall under that category.

27 The bulletin did not speak to agents enrolling
28 themselves. The clients based on information that they had

1 received, I don't think we contemplated that. But we did
2 contemplate an agent being in the room when the Internet
3 enrollment happened.

4 MS. GONSALVES: How was this bulletin communicated to
5 the industry?

6 MS. ARMSTRONG: This would have been sent to all
7 licensees, all licensed -- not all licensees. All licensed
8 electricity retailers and all licensed gas marketers.

9 MS. GONSALVES: Over on page 2, heading 2 refers to
10 "network or multi-level business models". You see that?

11 MS. ARMSTRONG: Yes.

12 MS. GONSALVES: How, if at all, during the course of
13 your inspection did you understand Planet Energy's business
14 to relate to this idea of network or multi-level business
15 models?

16 MS. ARMSTRONG: Well, it was clear from the responses
17 that they gave, I believe it's the letter of June 6th,
18 where they explained the ACN model.

19 MS. GONSALVES: Over to tab 15, please.

20 MS. ARMSTRONG: Yes.

21 MS. GONSALVES: It's "Ontario Energy Board regulatory
22 compliance inspection report, inspections and
23 investigations of electricity retailers and gas marketers,
24 Planet Energy (Ontario) Corp., 8 June 2011", and it's got
25 "Ernst & Young" at the bottom.

26 MS. ARMSTRONG: That's right.

27 MS. GONSALVES: Do you understand where this document
28 -- the genesis of this document?

1 MS. ARMSTRONG: This would have been an audit --
2 inspection and audit that would have been done following
3 the implementation of the ECPA in 2011. This portion
4 pertains to Planet Energy and the findings made by Ernst &
5 Young.

6 MS. GONSALVES: Was this document obtained through the
7 Board's files?

8 MS. ARMSTRONG: Yes.

9 MS. GONSALVES: Did you have any involvement in the
10 compliance inspection in 2011?

11 MS. ARMSTRONG: No, I did not. That was before me.

12 MS. GONSALVES: Okay, over to tab 16, please.

13 MS. ARMSTRONG: Yes.

14 MS. GONSALVES: Can you identify this document,
15 please?

16 MS. ARMSTRONG: Based on my review of the files, this
17 would have been the notice of intention following the
18 audit. It set out some of the irregularities that were
19 found and addressed some of the findings --

20 MS. GONSALVES: And specifically in respect of Planet
21 Energy.

22 MS. ARMSTRONG: This was specific to Planet Energy,
23 yes.

24 MS. GONSALVES: Over tab 17, please.

25 MS. ARMSTRONG: That would be an assurance of
26 voluntary compliance in response to this enforcement
27 proceeding by Planet Energy.

28 MS. GONSALVES: In respect of the notice of intention

1 and the assurance of voluntary compliance, were those both
2 obtained from the Board's records?

3 MS. ARMSTRONG: Yes.

4 MS. GONSALVES: Did you have any involvement at the
5 time in the notice of intention or Planet's assurance of
6 voluntary compliance?

7 MS. ARMSTRONG: No, I did not.

8 MS. GONSALVES: Are you aware of other compliance
9 inspections -- in fact, I think you have referred to them
10 -- that the Board conducted of Planet Energy's operations
11 over the years?

12 MS. ARMSTRONG: Like I said, I am vaguely aware of the
13 marketing material inspection.

14 MS. GONSALVES: Did those inspections have any bearing
15 on the inspection in this case, at least in respect of your
16 involvement?

17 MS. ARMSTRONG: My understanding was that that was
18 inspection of marketing materials and training materials.
19 The compliance -- the inspection in front of me was in
20 respect to how the marketing material or training material
21 would have been implemented, not the actual materials
22 itself.

23 MS. GONSALVES: Thank you, Ms. Armstrong. That's the
24 conclusion of my examination-in-chief. So I suggest we
25 take the lunch break now.

26 MS. LONG: Yes, let's take it. We will be back at
27 1:25, and Mr. Zacher, you can commence your cross-
28 examination of this witness.

1 MS. GONSALVES: And Madam Chair, I have already
2 cautioned Ms. Armstrong but will do it on the record. Ms.
3 Armstrong is aware that she is not to discuss her evidence
4 with our team or with anybody else over the break.

5 MS. LONG: Very good.

6 --- Luncheon recess taken at 12:23 p.m.

7 --- On resuming at 1:32 p.m.

8 MS. LONG: Please be seated. Mr. Zacher, are there
9 any preliminary items that, Ms. Gonsalves or Mr. Zacher,
10 you need to deal with before we go into cross?

11 No? Okay. Now we are going off air.

12 **CROSS-EXAMINATION BY MR. ZACHER:**

13 MR. ZACHER: Good afternoon, Ms. Armstrong. I am
14 Glenn Zacher, counsel for Planet Energy. I will just ask
15 you a bit about your background.

16 So I understand that you were appointed lead inspector
17 in June 2016 in respect of this case, is that right?

18 MS. ARMSTRONG: I started my position in June. I
19 believe I took the file over in early July.

20 MR. ZACHER: Okay. And you'd be at the Board prior to
21 that, is that right?

22 MS. ARMSTRONG: I have been at the Board since 2008.

23 MR. ZACHER: But prior to June 2016 when you took
24 over, you'd had no previous experiences as an investigator
25 or in compliance?

26 MS. ARMSTRONG: No, I did not. Mr. Zacher, if I may
27 interrupt? I have a bit of a hard time hearing. I was
28 wondering if it's possible to turn on the mic on the next

1 desk.

2 MR. ZACHER: I will try and speak up, okay.

3 MS. ARMSTRONG: Yeah.

4 MR. ZACHER: So no prior investigative or compliance
5 experience before you took over as lead inspector in this
6 case, is that right?

7 MS. ARMSTRONG: Not compliance experience, no. But I
8 review rates applications.

9 MR. ZACHER: No experience in compliance and
10 enforcement?

11 MS. ARMSTRONG: No.

12 MR. ZACHER: And I gather that you came into this
13 position because Mr. Chung, the lead inspector, had
14 departed?

15 MS. ARMSTRONG: No, he was still at the Board at the
16 time.

17 MR. ZACHER: He departed very shortly after that?

18 MS. ARMSTRONG: Yes.

19 MR. ZACHER: And it was a secondment position?

20 MS. ARMSTRONG: For me, yes.

21 MR. ZACHER: And before that, you'd had no prior
22 experience with Planet Energy?

23 MS. ARMSTRONG: No, I did not.

24 MR. ZACHER: And I understand that as lead inspector,
25 you had primary responsibility for evaluating the
26 information that had been compiled as part of the
27 inspection, either through requests from Planet Energy or
28 that had come in through the various witnesses?

1 MS. ARMSTRONG: Yes.

2 MR. ZACHER: And you had principal responsibility for
3 determining -- for making a recommendation with regards to
4 compliance action?

5 MS. ARMSTRONG: We don't make recommendations; we
6 simply put the facts before senior management.

7 MR. ZACHER: You are the person who is responsible for
8 deciding when you had sufficient information to provide it
9 to senior management, correct?

10 MS. ARMSTRONG: Me and my manager, yes.

11 MR. ZACHER: And I understand that the inspection was
12 started on April 24th of 2016, is that right?

13 MS. ARMSTRONG: I believe so, yes -- the 25th, I
14 believe.

15 MR. ZACHER: And what's -- how did the inspection
16 start? What's the -- Planet was notified in May, but why
17 is April 24th the start date?

18 MS. ARMSTRONG: I don't know.

19 MR. ZACHER: And the inspection was precipitated, I
20 gather, initially by these complaints from Mr. Hawkins and
21 Ms. Andrassin that had come in in January of 2016?

22 MS. ARMSTRONG: I believe so.

23 MR. ZACHER: And if I could ask you to have a look at
24 the CCR relating to Mr. Hawkins' complaint that we looked
25 at earlier --

26 MS. ARMSTRONG: Mr. Hawkins? I am sorry, did you say
27 Mr. Hawkins?

28 MR. ZACHER: Mr. Hawkins, yes. And I believe it's tab

1 1 -- I apologize, tab 4 in the enforcement team's
2 documents.

3 MS. ARMSTRONG: Yes.

4 MR. ZACHER: And you indicated that the synopsis here
5 -- which is completed by Board Staff, correct?

6 MS. ARMSTRONG: No, in this case I believe that this
7 was an e-mail that was received and pasted into the
8 synopsis.

9 MR. ZACHER: Okay, that's what I meant. So the
10 document is actually prepared by Board Staff, but it's
11 simply taking the e-mail that Mr. Hawkins had provided and
12 copying it into the synopsis, right?

13 MS. ARMSTRONG: Yes.

14 MR. ZACHER: And you agree with me, Ms. Armstrong,
15 that Mr. Hawkins' complaint at that time was simply with
16 regards to cancellation charges that -- early cancellation
17 charges that he was being required to pay in respect of one
18 of his properties?

19 MS. ARMSTRONG: That's what it seems like from the
20 complaint.

21 MR. ZACHER: Right. And if you look at the synopsis
22 -- do you have that in front of you?

23 MS. ARMSTRONG: Yes.

24 MR. ZACHER: Mr. Hawkins says:

25 "I was not aware of the cancellation penalty. It
26 is my understanding by moving my business where I
27 am unable to transfer the contract there would be
28 no cancellation fee."

1 MS. ARMSTRONG: That's what it seems -- that's what's
2 in the complaint here, yes.

3 MR. ZACHER: And that's consistent -- let me back up.
4 As part of your investigation, you had the witnesses sign
5 witness statements.

6 MS. ARMSTRONG: That's right.

7 MR. ZACHER: And that statement that Mr. Hawkins makes
8 there in the CCR, that's consistent with his witness
9 statement, correct?

10 MS. ARMSTRONG: Mr. Hawkins? I believe so. Do you
11 have the witness statement there? I would need to refer to
12 it.

13 MR. ZACHER: Sure. So if Ms. Wood can just pass a
14 copy of the witness statement to the witness, and we will
15 provide copies for the Panel as well.

16 MS. LONG: Okay, thank you.

17 MS. GONSALVES: I apologize for interrupting my
18 friend's examination. I am just wondering about the status
19 of the witness statement. If it's going to the Panel, is
20 it my friend's intention to make that an exhibit? If it's
21 simply to refresh Ms. Armstrong's recollection, I am not
22 sure that it would be appropriate for it to go to the Panel
23 and be made an exhibit. So I am just wondering about the
24 purpose of it before we proceed.

25 MR. ZACHER: Perhaps Ms. Wood could just hand copies
26 to the Panel, and they can give it back if -- okay.

27 MS. ARMSTRONG: Yes.

28 MR. ZACHER: So let me ask you to go back. As part of

1 your investigation, you, as you said -- Mr. Chung met with
2 witnesses and he had them sign witness statements, correct?

3 MS. ARMSTRONG: That is correct.

4 MR. ZACHER: And you conducted follow-up interviews
5 with some of the witnesses.

6 MS. ARMSTRONG: That's correct.

7 MR. ZACHER: And you had some of them sign additional
8 witness statements?

9 MS. ARMSTRONG: Some of them, yes.

10 MR. ZACHER: And the witness statements are the
11 foundation for the notice, right? They are the evidence
12 that you gathered in support of the notice?

13 MS. ARMSTRONG: Yes.

14 MR. ZACHER: I don't think we need to mark the witness
15 statements, but we can mark them for identification
16 purposes. I am in your hands.

17 MS. LONG: Ms. Gonsalves, presumably, we are going to
18 get a copy of this?

19 MS. GONSALVES: It wouldn't be in the ordinary course.
20 Mr. Hawkins is going to come and testify and in the
21 ordinary course a witness statement, although it's prepared
22 for the purpose of disclosure and informing the respondent
23 of what the case will be made against them. It's not
24 typically made an exhibit because the evidence will come
25 directly from the witness in the witness chair.

26 I am okay marking it for identification purposes only,
27 but it would be my position that it's not appropriate
28 evidence for the truth of its content.

1 MR. ZACHER: I agree.

2 MS. LONG: Okay. Well, let's mark it for
3 identification purposes only. And to be clear, this is the
4 witness statement that you, Ms. Armstrong --

5 MS. ARMSTRONG: No, this would not have been done by
6 me.

7 MS. LONG: This was done by Mr. Chung?

8 MS. ARMSTRONG: Yes, this was done in May of 2016.

9 MS. LONG: And did Mr. Hawkins -- was there a further
10 witness statement from Mr. Hawkins?

11 MS. ARMSTRONG: I believe not, no.

12 MS. GONSALVES: We don't believe there was, no.

13 MR. ZACHER: So, in any event, back to my question,
14 Ms. Armstrong. Mr. Hawkins says in the witness statement
15 that Mr. Chung had him sign paragraph 3 -- I am sorry.
16 Sorry, just give me a moment.

17 MR. RICHLER: Pardon me, Madam Chair, but it might be
18 a good time to mark that as K1.5, the witness statement of
19 Mr. Hawkins.

20 MS. LONG: Thank you. And we are operating on the
21 basis that this is the only witness statement prepared by
22 Mr. Hawkins, and you will advise us if you find that there
23 is something else?

24 MS. GONSALVES: We will double-check the disclosure on
25 the break.

26 I might request or suggest -- it's common practice to
27 use a separate exhibit tracking system for documents marked
28 only for identification purposes. I am wondering if we

1 could use lettered exhibits that way, so Exhibit KA.1 or
2 something like that to simply differentiate.

3 MS. LONG: That's fine. KA.1.

4 MR. RICHLER: Very well.

5 **EXHIBIT NO. KA.1: WITNESS STATEMENT OF MR. HAWKINS.**

6 MR. ZACHER: So Ms. Armstrong, if you turn to
7 paragraph 9 you will see that Mr. Hawkins states in his
8 witness statement that when he received the penalty notice
9 he felt he was lied to by Jim because he told me he could
10 cancel my contract at any time; do you see that?

11 MS. ARMSTRONG: Yes.

12 MR. ZACHER: So that's consistent with Mr. Hawkins' e-
13 mail and what's recorded in the CCR, that he was unaware of
14 any cancellation policy?

15 MS. ARMSTRONG: That's what it seems from the
16 document.

17 MR. ZACHER: And if you look at the enforcement team's
18 document, tab --

19 MS. ARMSTRONG: I really have a hard time hearing you,
20 Mr. Zacher. I apologize. I am not sure if those mics are
21 working.

22 MR. ZACHER: Okay, if I can ask you to turn to the
23 enforcement team's document number 6, which is the RAP
24 relating to Mr. Hawkins.

25 MS. ARMSTRONG: Yes.

26 MR. ZACHER: You have that in front of you?

27 MS. ARMSTRONG: Yes.

28 MR. ZACHER: And on page 2 of that, top of the page,

1 under "resolution action plan", this is follow-up document
2 that was prepared by a Board analyst?

3 MS. ARMSTRONG: Yes.

4 MR. ZACHER: And there is a request for a quality-
5 assurance call that was referenced in the earlier CCR?

6 MS. ARMSTRONG: That's right.

7 MR. ZACHER: And that was provided by Planet?

8 MS. ARMSTRONG: Yes.

9 MR. ZACHER: And if I could ask you to turn that up,
10 which can be found at Planet's document 139, which is in
11 Planet's binder, I think it's 3.

12 MS. ARMSTRONG: I don't believe I have that binder.

13 MS. WOOD: I will pass it to you.

14 MS. ARMSTRONG: Thank you. Yes.

15 MR. ZACHER: And you are familiar with this quality-
16 assurance call that was provided to Staff?

17 MS. ARMSTRONG: Yes.

18 MR. ZACHER: And so this is a call that's dated May 5,
19 2015. So this is in or about the time that Mr. Hawkins'
20 contract was initially signed up?

21 MS. ARMSTRONG: Yes.

22 MR. ZACHER: And if you refer to, it's -- the
23 documents are page-numbered at the top corner, page 1064?

24 MS. ARMSTRONG: Yes.

25 MR. ZACHER: And you go midway down the page, Ms.
26 Armstrong.

27 MS. ARMSTRONG: Yes.

28 MR. ZACHER: You will see that the Planet customer-

1 service rep says:

2 "Thank you, Robert, for calling in to confirm

3 your enrollment. Were these the only accounts

4 you have with us, the electricity?

5 "Mr. Hawkins: Yeah, what's the cancellation

6 policy?"

7 MS. ARMSTRONG: I see that.

8 MR. ZACHER: "And if I decide -- so for electricity

9 it's \$50 per year or partial a year remaining on

10 the contract if you stay within the \$15,000

11 kilowatt per year.

12 "Hawkins: And if I decide to sell a place,

13 what's the program?

14 "Customer-service rep: So if it's your permanent

15 residence, you would just have to show us proof

16 of a move.

17 "Mr. Hawkins: So what if it's not a permanent

18 residence?

19 "Customer-service rep: So if it's an investment

20 property, the termination charge will always

21 apply.

22 "Mr. Hawkins: You can't just assign it to new

23 people.

24 "Customer-service rep: You can if they want to

25 take over the contract.

26 "Mr. Hawkins: That's not automatic?

27 "Exactly.

28 "Thank you very much."

1 MS. ARMSTRONG: Right.

2 MR. ZACHER: So you are aware that Mr. Hawkins, at the
3 time he made his complaint, was aware of the cancellation
4 policy?

5 MS. ARMSTRONG: Yes.

6 MR. ZACHER: And Mr. Hawkins also stated in his
7 witness statement, Ms. Armstrong, if I ask you to look at
8 paragraph 3 -- and I will just summarize it. But he
9 alleges that his representative, Mr. MacArthur, had
10 enrolled Mr. Hawkins on his own over the Internet; correct?

11 MS. ARMSTRONG: That's my understanding.

12 MR. ZACHER: And that's what the -- that's one of the
13 bases upon which the Board's notice is premised, that these
14 representatives, IBOs, were enrolling customers on their
15 own and not having the customers enroll?

16 MS. ARMSTRONG: Yes, as it was verified by Mr.
17 MacArthur.

18 MR. ZACHER: Right.

19 MS. ARMSTRONG: Because we were relying heavily on Mr.
20 MacArthur's testimony for that, or witness statement.

21 MR. ZACHER: And if you look at the telephone call
22 that I just brought to your attention, the verification
23 call, which you had -- which you were aware of at the time;
24 right?

25 MS. ARMSTRONG: Yes.

26 MR. ZACHER: You will see that page 1 of the call,
27 1062 of the document brief --

28 MS. ARMSTRONG: Yes.

1 MR. ZACHER: -- four lines down:
2 "This is Sabrina. I am calling from Planet Energy.
3 "Mr. Hawkins: Oh, yeah.
4 "This is with regard to your AC enrollment you did with us.
5 "Yes.
6 "For quality-control purposes I'm required to confirm a few
7 things."
8 Do you see that?
9 MS. ARMSTRONG: Yes.
10 MR. ZACHER: And then over on to the top of the next
11 page the rep says:
12 "Okay. And you've completed the Internet
13 agreement yourself; right?"
14 Do you see that?
15 MS. ARMSTRONG: On what page are we on? Because I am
16 seeing "hold on, please, Jim, come here". Where are we
17 going?
18 MR. ZACHER: The top of the -- it's page 1063 in the
19 document brief.
20 MS. ARMSTRONG: Yes.
21 MR. ZACHER: You will see the customer-service rep
22 says:
23 "You've completed the Internet agreement
24 yourself; right?"
25 "Answer: Yes."
26 MS. ARMSTRONG: Yes.
27 MR. ZACHER: "Okay. Other than yourself there was no
28 ACN independent business owner on the premises

1 when you pressed the placement order buttons to
2 complete the Internet agreement; correct?

3 "Answer: Correct.

4 "And no ACN independent business owner
5 represented that they would be immediately
6 returning after you completed this agreement;
7 correct?

8 "Answer: Correct."

9 And then it goes on to confirm Mr. Hawkins' e-mail.

10 So you agree with me that that telephone call that Mr.
11 Hawkins had with Planet Energy at the time he signed the
12 contract is inconsistent with his witness statement and
13 complaint to the Board?

14 MS. ARMSTRONG: "Inconsistent" is your word. Like I
15 said, there's also a line here that says "please hold --
16 hold on, please, Jim, come here", which would be consistent
17 with the agent conducting some of the enrollment.

18 MR. ZACHER: You didn't ask Mr. MacArthur that
19 question at the time?

20 MS. ARMSTRONG: No, I did not.

21 MR. ZACHER: This is a supposition you're making now
22 after having seen this document?

23 MS. ARMSTRONG: Yes.

24 MR. ZACHER: And again, if you look at Mr. Hawkins'
25 witness statement, Ms. Armstrong, paragraph 7.

26 MS. ARMSTRONG: Yes.

27 MR. ZACHER: "Before I had even begun to sell one of
28 my rental properties I had already been receiving

1 collection notices. Collection notices were
2 first received from Planet Energy and later from
3 a collection agency. This is the first time that
4 I discovered that I was enrolled in a contract
5 with Planet Energy for one of my properties."

6 Do you see that?

7 MS. ARMSTRONG: Yes.

8 MR. ZACHER: And you are aware from Planet Energy's
9 response to the CCR that confirmation e-mails enclosing the
10 terms and conditions, price disclosure, and disclosure
11 statement were sent to Mr. Hawkins?

12 MS. ARMSTRONG: Yes, I was aware of that.

13 MR. ZACHER: And so, again, the information that
14 you're having Mr. Hawkins attest to in his witness
15 statement is entirely inconsistent with the information
16 that you have at the time?

17 MS. GONSALVES: Excuse me, sorry, I just want to
18 object to the phrasing of that question. Ms. Armstrong has
19 already been clear that she wasn't involved in the
20 preparation of this witness statement.

21 MR. ZACHER: Let me correct it, then. The information
22 that OEB Staff is having Mr. Hawkins attest to in his
23 witness statement is entirely inconsistent with the
24 information that the Board has at the time?

25 MS. ARMSTRONG: Like I said, I was not part of
26 preparing this witness statement, nor was I part of this
27 interview in particular. When I reviewed the file, I took
28 all the witness statements together.

1 MR. ZACHER: And you carefully reviewed everything?

2 MS. ARMSTRONG: I reviewed them, yes.

3 MR. ZACHER: You made sure you had all of the relevant
4 information?

5 MS. ARMSTRONG: Yes.

6 MR. ZACHER: You told me that the job of the inspector
7 under the act is to make sure that you gather all the
8 relevant information?

9 MS. ARMSTRONG: Yes.

10 MR. ZACHER: And you assess it?

11 MS. ARMSTRONG: Yes, I do.

12 MR. ZACHER: And you did that?

13 MS. ARMSTRONG: I did.

14 MR. ZACHER: And you have Mr. Hawkins saying in his
15 witness statement that he never received a confirmation e-
16 mail with the terms and conditions, and you know these not
17 correct?

18 MS. ARMSTRONG: Like I said, I was not part of doing
19 this witness statement.

20 MR. ZACHER: Having reviewed the file, you know what
21 Mr. Hawkins said in his witness statement is inconsistent
22 with the information that you had when you made the
23 determination to issue a notice?

24 MS. ARMSTRONG: Yes.

25 MR. ZACHER: Cause any alarm bells?

26 MS. ARMSTRONG: That's why we did follow-up interviews
27 specifically with the agents.

28 MR. ZACHER: Right and --

1 MS. ARMSTRONG: In this case, it was the agent's
2 misconduct, so we heavily relied on the agents' statements,
3 which is why we conducted secondary interviews with the
4 agents.

5 MR. ZACHER: And you have disclosed all of the notes
6 of conversations or interviews that you had with the
7 agents, or any of the other witnesses?

8 MS. ARMSTRONG: Yes, we did.

9 MR. ZACHER: And you agree there is nothing in any of
10 those notes to suggest that you put these inconsistencies
11 to either Mr. Hawkins or Mr. MacArthur, correct?

12 MS. ARMSTRONG: I am trying to remember. I can't
13 remember exactly the interview questions for Mr. MacArthur.
14 There were --

15 MR. ZACHER: You conducted that second interview with
16 Mr. MacArthur?

17 MS. ARMSTRONG: Yes.

18 MR. ZACHER: And you don't recall putting any of these
19 inconsistencies to Mr. MacArthur, right?

20 MS. ARMSTRONG: I took his witness statement and
21 confirmed the statements that he made. And we did ask him
22 about whether he was present at the computer he enrolled
23 Mr. Hawkins in.

24 MR. ZACHER: So you are saying that at the end of the
25 day, you discounted what Mr. Hawkins said, any
26 inconsistencies, and you relied on Mr. MacArthur?

27 MS. ARMSTRONG: Discount would be a very strong word;
28 that's your word. We weighed the evidence, and I

1 considered the evidence strong enough to go forward.

2 MR. ZACHER: I want to understand. You agree with me
3 you didn't do anything to test the veracity of what Mr.
4 Hawkins was telling you, having become aware of these
5 inconsistencies?

6 MS. ARMSTRONG: We tried to confirm his witness
7 statement, but Mr. Hawkins, I believe, is testifying here
8 himself. So am I speaking to Mr. Hawkins testimony?

9 MR. ZACHER: I am sorry; were you asking a question?

10 MS. ARMSTRONG: No, am I -- I am trying to understand
11 your question, because I believe that you are going to have
12 the witness in front of you.

13 MR. ZACHER: No. I am just trying to ask you. I am
14 asking you, Ms. Armstrong. You were the lead inspector?

15 MS. ARMSTRONG: Yes.

16 MR. ZACHER: It was your job to make sure that you had
17 complete and accurate information before you proceeded with
18 the notice, right?

19 MS. ARMSTRONG: Yes.

20 MR. ZACHER: And so I will ask you again. Was there
21 anything that you did to address the fact that Mr. Hawkins
22 told you in his witness statement that he never received an
23 e-mail confirmation with the terms and conditions,
24 notwithstanding that you had information confirming that he
25 did? You did nothing to address that with him?

26 MS. ARMSTRONG: We did follow-up interviews with the
27 agents, like I said. We also spoke to him again.

28 MR. ZACHER: Nothing with Mr. Hawkins?

1 MS. ARMSTRONG: No.

2 MR. ZACHER: And nothing to address with Mr. Hawkins
3 the fact that he told you Mr. MacArthur enrolled him,
4 notwithstanding that there is a recorded telephone call
5 saying that he did it himself?

6 MS. ARMSTRONG: That's what he stated. He also states
7 in that phone call that there is Jim present.

8 MR. ZACHER: Again, you didn't do anything to address
9 that with Mr. Hawkins?

10 MS. ARMSTRONG: Like I said, we did secondary
11 interviews with the agents.

12 MR. ZACHER: Mr. MacArthur was initially interviewed
13 by Andy Chung in March of 2016?

14 MS. ARMSTRONG: If you have the interview notes in
15 front --

16 MR. ZACHER: Let me ask you to turn to Planet Energy
17 document 272, volume 4.

18 MS. ARMSTRONG: Yes.

19 MR. ZACHER: Is this the -- to your knowledge, this
20 was the initial interview of Mr. Hawkins?

21 MS. ARMSTRONG: Yes -- no, Mr. MacArthur, the one I am
22 looking at.

23 MR. ZACHER: I apologize. Mr. MacArthur.

24 MS. ARMSTRONG: Yes.

25 MR. ZACHER: To your knowledge, these two pages of
26 handwritten notes are an accurate and complete recitation
27 of the contents of that interview?

28 MS. ARMSTRONG: They are interview notes, yes.

1 MR. ZACHER: And on page 2 -- and I apologize, they
2 are copied upside down. But you will see halfway or two-
3 thirds of the way down the page that Mr. MacArthur says
4 "Mr. Hawkins is vengeful, yells and screams, complains."
5 Do you see that?

6 MS. ARMSTRONG: Where is it?

7 MS. SPOEL: If you don't mind, Mr. Zacher, I am
8 missing those pages from my binder. There is nothing
9 behind tab 272 in my binder. I don't know if somebody has
10 an extra copy. Pages 1579 and 1580 are missing.

11 MR. ZACHER: I apologize. I am not sure how that
12 happened, perhaps we could --

13 MS. SPOEL: I think Mr. Bell has an extra copy I could
14 just borrow for now, thank you.

15 MR. ZACHER: Do the other Panel members have --

16 MS. LONG: I have it. Sorry, Mr. Zacher, can you just
17 back up? These are Mr. Chung's notes, and you are
18 referring us to a section is on the first page or the
19 second page?

20 MS. GONSALVES: Just for the record, I believe they
21 have been identified in the disclosure as Ms. Marijan's
22 notes, just to clarify that. They weren't Mr. Chung's
23 notes.

24 MS. LONG: Okay, thank you.

25 MR. ZACHER: Ms. Armstrong, to your understanding this
26 was an interview conducted by Mr. Chung and Ms. Marijan?

27 MS. ARMSTRONG: Yes.

28 MS. LONG: So on the second page, two-thirds of the

1 way down, you'll see where it says Mr. Hawkins is vengeful,
2 yells and screams; do you see that?

3 MS. ARMSTRONG: Yes.

4 MR. ZACHER: And you appreciate, having looked at the
5 earlier CCR and e-mail relating to Mr. Hawkins, that Mr.
6 Hawkins is trying to avoid paying early termination fees?

7 MS. ARMSTRONG: Yes.

8 MR. ZACHER: And you will be aware and will have known
9 that Mr. MacArthur was trying to assist Mr. Hawkins in
10 avoiding those early cancellation fees?

11 MS. ARMSTRONG: I believe he called on his behalf,
12 yes.

13 MR. ZACHER: And you will have seen in the record --

14 MS. ARMSTRONG: Again, I cannot hear.

15 MR. ZACHER: You will have seen in the record, and I
16 assume you were aware that Mr. Hawkins was Mr. MacArthur's
17 landlord.

18 MS. ARMSTRONG: I was not aware of that.

19 MR. ZACHER: Not at the time?

20 MS. ARMSTRONG: No.

21 MR. ZACHER: You are aware of that now?

22 MS. ARMSTRONG: No.

23 MR. ZACHER: Have you looked at the disclosure for Mr.
24 Hawkins and Mr. MacArthur?

25 MS. ARMSTRONG: Yes, but I don't remember that.

26 MR. ZACHER: Are you aware, or were you aware at the
27 time that Mr. Hawkins was threatening Mr. MacArthur with
28 paying the early cancellation fees unless he resolved the

1 problem?

2 MS. ARMSTRONG: No, I was not.

3 MR. ZACHER: Can I ask you to look -- I would like to
4 refer you to Mr. MacArthur's witness statements, and
5 perhaps we could get those marked. There's four of them, I
6 believe.

7 Madam Chair, there are four witness statements from
8 Mr. MacArthur. I think a couple of them have been added
9 since the notice was issued, but I would just suggest that
10 we mark them all now.

11 MS. LONG: So we will mark them for identification.
12 But I would like to mark them based on the dates so I can
13 just keep track of them once I see them, please.

14 MR. ZACHER: I can help you with that. So there was
15 an initial witness statement, June 8, 2016.

16 MS. LONG: So we will mark that KA.2.

17 MS. ARMSTRONG: Yes.

18 **EXHIBIT NO. KA.2: INITIAL WITNESS STATEMENT OF MR.**
19 **MACARTHUR DATED JUNE 8, 2016.**

20 MR. ZACHER: A second witness statement dated January
21 11, 2017.

22 MS. ARMSTRONG: Yes.

23 MS. LONG: KA.3.

24 **EXHIBIT NO. KA.3: WITNESS STATEMENT OF MR. MACARTHUR**
25 **DATED JANUARY 11, 2017.**

26 MR. ZACHER: A third witness statement dated September
27 18, 2017.

28 MS. ARMSTRONG: Yes.

1 MS. LONG: KA.4.

2 EXHIBIT NO. KA.4: WITNESS STATEMENT OF MR. MACARTHUR
3 DATED SEPTEMBER 18, 2017.

4 MR. ZACHER: And a final witness statement dated
5 November 2, 2017.

6 MS. ARMSTRONG: Yes.

7 MS. LONG: KA.5.

8 EXHIBIT NO. KA.5: WITNESS STATEMENT OF MR. MACARTHUR
9 DATED NOVEMBER 2, 2017.

10 MS. LONG: Does everybody have all of those? Ms.
11 Armstrong, you have them?

12 MS. ARMSTRONG: Yes.

13 MS. LONG: Ms. Gonsalves, you have them?

14 MS. GONSALVES: Thank you, yes.

15 MR. ZACHER: So Ms. Armstrong -- and I will take you
16 to the paragraphs if you need, if you don't recall, but Mr.
17 MacArthur has stated in his witness statements and in
18 particular the statements that he provided in advance of
19 the notice that he cheated on the Planet Energy test that
20 he wrote in order to get his approval to sell Planet Energy
21 products.

22 MS. ARMSTRONG: I don't see the word "cheat", but if
23 -- are you referring to paragraph 6?

24 MR. ZACHER: I am sorry, maybe -- I shouldn't
25 characterize it that way. He told you that he had obtained
26 answers to the test questions from other fellow IBOs?

27 MS. ARMSTRONG: Yeah, that's correct.

28 MR. ZACHER: And he said that he was aware that he was

1 not allowed to enroll customers on his own but he did it
2 anyway.

3 MS. ARMSTRONG: Yes.

4 MR. ZACHER: And he was aware that he was required to
5 provide a business card to prospective customers and wear
6 an identification badge, but he didn't -- but he ignored
7 that requirement?

8 MS. ARMSTRONG: Yes.

9 MR. ZACHER: And if I can ask you to look at his
10 second witness statement, which is dated January 11, 2017.

11 MS. ARMSTRONG: Yes.

12 MR. ZACHER: Paragraph 17, he says:

13 "After I enrolled consumers with Planet Energy, I
14 advised them that they might receive a call from
15 Planet Energy asking them questions and also
16 advised them of the answers they should give if
17 they received such a call. In particular I
18 advised them that they may be asked if they
19 realized they signed a five-year contract, answer
20 'yes', that they signed up on their own, answer
21 'yes', whether an agent was in the room when they
22 signed up, answer 'no', and whether the agent had
23 a badge and business card, answer 'yes'."

24 Do you see that?

25 MS. ARMSTRONG: Yes.

26 MR. ZACHER: So Mr. MacArthur, whose witness statement
27 you are relying upon, is telling you that he encouraged his
28 own prospective customers to lie?

1 MS. ARMSTRONG: Yes. And it makes me think that going
2 back to the enrollment, when he said he enrolled customers
3 on their own even though he knew not to do that, that he
4 would do that.

5 MR. ZACHER: So you told me that you were principally
6 -- when I asked you about the potential inconsistencies in
7 Mr. Hawkins' statement you said, Yes, but we were primarily
8 relying upon the agents, their evidence, correct?

9 MS. ARMSTRONG: Yes.

10 MR. ZACHER: And so Mr. MacArthur is one of those two
11 agents who you are primarily relying upon?

12 MS. ARMSTRONG: Yes.

13 MR. ZACHER: And he has told you in his witness
14 statement that he has lied and he has encouraged
15 prospective customers to lie?

16 MS. ARMSTRONG: Yes.

17 MR. ZACHER: And you agree with me that there is
18 nothing in any of the interview notes, including your
19 second interview of Mr. MacArthur, where you confronted him
20 with these issues?

21 MS. ARMSTRONG: It's not in the notes, no.

22 MR. ZACHER: And you didn't do it?

23 MS. ARMSTRONG: We have asked him about the enrollment
24 process. He went over the enrollment process, and I took
25 his word for that.

26 MR. ZACHER: And I gather that if Mr. MacArthur has
27 encouraged his customers to lie when Planet Energy makes
28 quality-assurance or verification calls, there's no ability

1 for Planet Energy to detect this issue.

2 MS. GONSALVES: I have to object to that question. I
3 can't see how this witness would be able to know what
4 Planet Energy's abilities are.

5 MR. ZACHER: Ms. Armstrong, you have seen the -- we
6 looked at the verification call earlier with Mr. Hawkins;
7 correct?

8 MS. GONSALVES: Again, I think that the
9 characterization built into the question is, I think that's
10 not accurate, and I would ask my friend to rephrase that
11 question.

12 MR. ZACHER: You saw -- you are familiar in early 2016
13 when this investigation started with the call that Planet
14 Energy made to Mr. Hawkins where they asked him whether he
15 had enrolled on his own and he said he had.

16 MS. ARMSTRONG: Yes.

17 MR. ZACHER: And no doubt that was a relevant factor
18 in consideration in your investigation and assessment?

19 MS. ARMSTRONG: We looked at that. Like I said, we
20 did secondary interviews with the agents. We went over the
21 enrollment process again. Andy went over the enrollment
22 process. We had other agents going over the same
23 enrollment process, similar process.

24 MR. ZACHER: But you agree with me that practically
25 speaking if Planet Energy has telephoned customers at or
26 about the time that they enroll and asked them if they have
27 enrolled on their own in the absence of an agent and the
28 customer answers affirmatively, there's not much more

1 Planet Energy can do; do you agree with that?

2 MS. GONSALVES: Again, I have to object to that
3 question. It's beyond the scope of this witness's
4 knowledge. If my friend wants to argue that at the end of
5 the case he can, but it's not a proper question for this
6 witness.

7 MR. ZACHER: Ms. Armstrong was the lead investigator.
8 She was the one who was assessing compliance by Planet
9 Energy and whether Planet Energy acted appropriately.
10 Verification -- the issue of whether Planet Energy
11 conducted verifications is specifically articulated in the
12 notice.

13 MS. LONG: I think, Mr. Zacher, you can rephrase your
14 question based on the facts that she would consider, but I
15 don't know if she can speak globally as to measures that
16 Planet Energy could take. I think that might go beyond her
17 scope of knowledge.

18 MR. ZACHER: Thank you, Madam Chair. Just give me a
19 moment, and I can...

20 You'd agree with me, Ms. Armstrong, that having called
21 Mr. Hawkins and called other customers and asked them
22 whether they enrolled on their own and having received the
23 answer yes, it was reasonable and fair for Planet Energy to
24 rely upon that answer?

25 MS. GONSALVES: Again, Madam Chair, I don't want to
26 interrupt my friend's cross unnecessarily, but it's not for
27 this witness to be determining whether what Planet did or
28 didn't do was reasonable or fair.

1 She has testified that as the inspector, she was there
2 to collect the facts. She said she didn't make any
3 recommendations. I think this goes beyond what her role
4 was in this case.

5 MR. ZACHER: Ms. Armstrong, Mr. Chung or Ms. Marijan
6 conducted an initial interview of Mr. Nahid in March, is
7 that right?

8 MS. ARMSTRONG: Yes.

9 MR. ZACHER: And there was not any further interview
10 of Mr. Nahid until your follow-up interview in November of
11 2016, is that right?

12 MS. ARMSTRONG: That's correct, not that I am aware
13 of.

14 MR. ZACHER: Now, in the intervening time, I
15 understand that you are aware that Mr. Nahid made a call to
16 Board Staff in which he impersonated a customer, is that
17 right?

18 MS. ARMSTRONG: I became aware of that call after the
19 notice.

20 MR. ZACHER: And you may not have been aware of it,
21 but it was certainly within the knowledge of Board Staff as
22 an institution, correct?

23 MS. ARMSTRONG: It would have been in a different
24 department. It would not have been with the investigations
25 team.

26 MR. ZACHER: And this was a call that he made in which
27 he impersonated [REDACTED]

28 MS. ARMSTRONG: That's correct.

1 MR. ZACHER: And this was the person who you said was
2 one of the other customers, that is one of the other
3 customers of Mr. Nahid, who made a complaint but then
4 didn't pursue it.

5 MS. ARMSTRONG: That's right. She did not speak to
6 me. She made a complaint and it was resolved.

7 MR. ZACHER: You called her back and she didn't return
8 your call?

9 MS. ARMSTRONG: No.

10 MR. ZACHER: And to your knowledge, she never made a
11 complaint. It was a complaint by Mr. Nahid impersonating
12 her.

13 MS. ARMSTRONG: Reviewing the wave files, I believe
14 she did speak to the Board and gave consent at least.

15 MR. ZACHER: And Mr. Nahid also, in the intervening
16 time, made a complaint on his own behalf with regards to
17 his own Planet Energy electricity and gas enrolments?

18 MS. ARMSTRONG: That's correct.

19 MR. ZACHER: He did that in June of 2016.

20 MS. ARMSTRONG: Yes.

21 MR. ZACHER: This would have been, of course,
22 following his meeting with Mr. Chung and Ms. Marijan.

23 MS. ARMSTRONG: Yes, that would be the chronology.

24 MR. ZACHER: And Mr. Nahid alleged that -- let me back
25 up. These were with regards to enrolments by Mr. Nahid
26 dating back to 2012?

27 MS. ARMSTRONG: I don't have the complaint in front of
28 me and since my inspection was agent misconduct, I did not

1 include that complaint. I believe Mr. Nahid enrolled
2 himself via the Internet, which I did not see a problem
3 with.

4 MR. ZACHER: Can I ask you, Ms. Armstrong, to turn up
5 Planet Energy document 165?

6 MS. ARMSTRONG: Which volume would that be?

7 MR. ZACHER: I'm sorry, it's volume 3.

8 MS. ARMSTRONG: Yes.

9 MR. ZACHER: So this is a CCR that relates to Mr.
10 Nahid?

11 MS. ARMSTRONG: Right.

12 MR. ZACHER: You see that?

13 MS. ARMSTRONG: Yes.

14 MR. ZACHER: And on the synopsis page, the second
15 page, he says that he's a former ACN rep who was tricked
16 into signing up a contract.

17 MS. ARMSTRONG: Yes.

18 MR. ZACHER: And that he enrolled, but was told it was
19 a prerequisite for being an ACN agent.

20 MS. ARMSTRONG: Yes.

21 MR. ZACHER: And that he immediately realized he made
22 a mistake when he noticed his bills from Power Stream and
23 Enbridge were much higher?

24 MS. ARMSTRONG: Yes.

25 MR. ZACHER: And I gather that as it turned out, the
26 Board didn't pursue any sort of RAP, any follow-up RAP or
27 pursue an investigation after this CCR, is that correct?

28 MS. ARMSTRONG: That's correct.

1 MR. ZACHER: And that's because in the answer to the
2 CCR, which you see on page 3, it turns out that what Mr.
3 Nahid was alleging was not quite correct. He hadn't
4 immediately taken action after receiving his bill. He had
5 taken action well over a year later --

6 MS. ARMSTRONG: Yes.

7 MR. ZACHER: -- after he met with Mr. Chung?

8 MS. ARMSTRONG: Yes.

9 MR. ZACHER: And you would agree with me, Ms.
10 Armstrong, that if this contract that's the subject of this
11 CCR is one of the contracts that is the subject of the
12 notice, that would -- that should be eliminated?

13 MS. GONSALVES: I have to object to that question.
14 It's going beyond Ms. Armstrong's involvement here. She
15 was not the one who issued the notice, and she can't speak
16 to what should or should not be in the notice.

17 MR. ZACHER: To your knowledge, is the contract that
18 is the subject of this CCR part of the notice?

19 MS. ARMSTRONG: It actually is one of the contracts, I
20 believe.

21 MR. ZACHER: But you said that you don't have a
22 problem with IBOs self-enrolling themselves?

23 MS. ARMSTRONG: When a customer enrolls himself on the
24 Internet, I would consider that compliant.

25 MR. ZACHER: So any self-enrolment by Mr. Nahid, that
26 is enrolling himself, is not a matter in respect of which
27 you are alleging non-compliance and should not be the
28 subject of the notice; do you agree?

1 MS. GONSALVES: Again, Ms. Armstrong is not the one
2 who is alleging non-compliance. She is simply an
3 inspector.

4 MR. ZACHER: You agree that self-enrolments, any self-
5 enrolments by Mr. Nahid are not subject to the notice?

6 MS. GONSALVES: Again, my friend is asking the same
7 question multiple different ways. He can ask this witness
8 about the facts.

9 Anything to do with the notice and what should or
10 shouldn't be in there goes beyond the facts that are within
11 her knowledge.

12 MR. ZACHER: You agree that this contract is
13 compliant?

14 MS. GONSALVES: That's asking for a legal
15 characterization of the contract, which she is not in a
16 position to give.

17 MR. ZACHER: I think Ms. Armstrong's role is to
18 determine compliance with the regulations.

19 MS. GONSALVES: It would be my submission that it's
20 the role of this Panel to determine compliance with the
21 regulations.

22 MR. ZACHER: Ms. Armstrong, you determined as lead
23 Investigator, or you had input into determining what
24 contracts that related to Mr. Nahid as an IBO should be
25 included in the notice, correct?

26 MS. ARMSTRONG: Correct.

27 MR. ZACHER: And it would be your -- it's your view
28 that self-enrollments by Mr. Nahid would not have

1 appropriately been included in the notice; correct?

2 MS. GONSALVES: This witness's view is not relevant
3 evidence. I object to this entire line of questioning. I
4 think this is argument, and I would ask for a ruling that
5 my friend move on.

6 MS. LONG: Well, let's consider that. Her view is not
7 germane because?

8 MS. GONSALVES: Because it's a matter of opinion. He
9 is asking her opinion. She is here as a fact witness, not
10 as an opinion expert on what is and is not compliant. The
11 witness's opinion is irrelevant. It's her knowledge of the
12 facts that matter.

13 MR. ZACHER: Madam Chair, I am struggling to
14 understand this. Ms. Armstrong as the lead investigator
15 had input into the decision, what went into the notice.
16 And I am simply asking her if, in her view, there are
17 certain contracts, certain of the 45 contracts, that ought
18 not be included in the notice.

19 MS. LONG: And I think Ms. Gonsalves' point is that
20 she does not make a determination as an inspector as to
21 what goes in the notice. That is an OEB management
22 decision. So I think you have to frame it in -- I mean,
23 you are trying to get at whether it was her recommendation
24 or whether it is her view whether this was properly within
25 the notice? I mean, she doesn't issue the notice, so I
26 think that's where we find ourselves.

27 MR. ZACHER: It appears we are in a Catch-22, because
28 the Board, the Panel -- it's for the Panel to determine

1 whether the contracts that are included in the notice are
2 appropriately included in the notice. Helpful evidence in
3 making that determination will be Ms. Armstrong's view as
4 the lead inspector, given the fact that we don't have
5 anybody here from OEB management. So...

6 MS. LONG: Are you able to rephrase it in a way that
7 she's able to answer with respect to her factual
8 determination?

9 MR. ZACHER: Ms. Armstrong, is it your position that
10 someone who self-enrolls, be that an IBO or anyone else, on
11 their own over the Internet is compliant?

12 MS. ARMSTRONG: Internet enrollment is done by the
13 consumer without an agent present, without an agent
14 returning shortly thereafter as per the bulletin, then,
15 yes.

16 MR. ZACHER: So the allegations in this notice are
17 that the contracts were not valid Internet enrollments
18 because either Mr. Nahid or Mr. MacArthur did them or were
19 present; correct?

20 MS. ARMSTRONG: That's correct.

21 MR. ZACHER: So to the extent Mr. Nahid self-enrolled,
22 that wouldn't be objectionable; right?

23 MS. ARMSTRONG: No.

24 MR. ZACHER: And to the extent that Mr. MacArthur
25 self-enrolled, that also wouldn't be non-compliant?

26 MS. ARMSTRONG: Depending if there was an agent
27 present at their enrollment, no.

28 MR. ZACHER: To your knowledge the notice doesn't

1 allege that someone other than Mr. Nahid or Mr. MacArthur,
2 the IBOs who enrolled or were present, correct?

3 MS. ARMSTRONG: Specially with this complaint, no.

4 MR. ZACHER: Can I ask you to, Ms. Armstrong, to turn
5 to Mr. MacArthur's -- sorry. Can I ask you to turn to the
6 interview notes of Mr. MacArthur.

7 MS. ARMSTRONG: Which tab?

8 MR. ZACHER: Which can be found in the enforcement
9 team's binder -- sorry, I am sorry, I apologize, in Planet
10 Energy's binder 4.

11 MS. ARMSTRONG: Tab?

12 MR. ZACHER: Tab 271. I am sorry, 273.

13 MS. ARMSTRONG: Yes.

14 MR. ZACHER: And these are notes of the interview that
15 you conducted of Mr. MacArthur?

16 MS. ARMSTRONG: Yes.

17 MR. ZACHER: If you look at the second page of those
18 interview notes.

19 MS. ARMSTRONG: Yes.

20 MR. ZACHER: About three-quarters of the way down the
21 page you will see that you asked him questions about the
22 customers that he helped enroll. And he said that he had
23 four commercial accounts?

24 MS. ARMSTRONG: Yes.

25 MR. ZACHER: And you understand commercial accounts to
26 be with regards to electricity over 150,000 kilowatt-hours?

27 MS. ARMSTRONG: Yes.

28 MR. ZACHER: And with respect to gas to be over 50,000

1 cubic metres?

2 MS. ARMSTRONG: Yes.

3 MR. ZACHER: And you agree that the Energy Consumer
4 Protection Act does not apply to consumers above those
5 thresholds?

6 MS. ARMSTRONG: That's right.

7 MR. ZACHER: And did you make sure that when you
8 assessed the contracts that were referable to each of Mr.
9 MacArthur and Mr. Nahid that they did not include any
10 commercial customers?

11 MS. ARMSTRONG: No, I did not.

12 MR. ZACHER: And that is because?

13 MS. ARMSTRONG: That was an oversight on my part.

14 MR. ZACHER: So if there are any -- again, if there
15 are any commercial customers that are included in the
16 notice, those should be eliminated?

17 MS. ARMSTRONG: If it's over 150,000 kilowatt-hours
18 annually it would be outside of the ECPA.

19 MR. ZACHER: And having been an oversight, you have
20 taken steps to rectify that?

21 MS. ARMSTRONG: It's an oversight. No, I was not
22 aware of it until just now.

23 MR. ZACHER: Until just now?

24 MS. ARMSTRONG: Yeah.

25 MR. ZACHER: Madam Chair, I am in your hands for a
26 break. I can keep going. This might be a natural spot,
27 but I am happy to continue.

28 MS. LONG: That's fine. We can take a break now for

1 15 minutes, thank you.

2 --- Recess taken at 2:31 p.m.

3 --- On resuming at 2:56 p.m.

4 MS. LONG: Please be seated.

5 MS. GONSALVES: Just before my friend resumes his
6 cross, I did check the disclosure and there was no further
7 witness statement from Mr. Hawkins beyond the one in May
8 2016.

9 MS. LONG: Thank you. Mr. Zacher, are you ready to
10 continue?

11 MR. ZACHER: Thank you. Ms. Armstrong, you referred
12 earlier to the initial notice of inspection that went to
13 Planet Energy in May of 2016 that was sent by Mr. Chung.

14 MS. ARMSTRONG: Yes.

15 MR. ZACHER: And that elicited a response from Planet
16 Energy; it was a letter responding to the information
17 requests?

18 MS. ARMSTRONG: Are you referring to the June 6th
19 letter, or are you referring to something else?

20 MR. ZACHER: Correct, correct.

21 MS. ARMSTRONG: Yes.

22 MR. ZACHER: And in addition to that June 6th letter,
23 there was then an updated spreadsheet that was provided
24 shortly thereafter?

25 MS. ARMSTRONG: Question number 1?

26 MR. ZACHER: Yes.

27 MS. ARMSTRONG: Yes.

28 MR. ZACHER: And I take it that after that response,

1 no further inquiries or information requests were made of
2 Planet Energy before the notice was issued approximately
3 eight months later?

4 MS. ARMSTRONG: Not by me, that's right.

5 MR. ZACHER: And not by anyone else at the Board?

6 MS. ARMSTRONG: Not that I am aware of.

7 MR. ZACHER: And having received the spreadsheet with
8 the identities of all of the contracts relating to Mr.
9 Nahid and Mr. MacArthur, you didn't make any attempts to --
10 you didn't ask Planet Energy whether they'd received
11 complaints of the nature that are the subject of this
12 notice from any of those customers?

13 MS. ARMSTRONG: Like I said, I did not communicate
14 with Planet Energy.

15 MR. ZACHER: You didn't ask Planet Energy whether they
16 had received complaints of any kind in respect of those 45
17 contracts from anyone, other than Mr. Hawkins and Ms.
18 Andrassin?

19 MS. ARMSTRONG: Well, the CCR for [REDACTED] would
20 have gone to them.

21 MR. ZACHER: That's the person you contacted who never
22 returned your call?

23 MS. ARMSTRONG: That's right.

24 MR. ZACHER: So you didn't ask Planet Energy whether
25 anyone else had complained about these contracts?

26 MS. ARMSTRONG: No, there was no communication from
27 me.

28 MR. ZACHER: And you had, at that time, the quality

1 assurance call from Planet Energy with Mr. Hawkins. You
2 did not make any inquiries as to whether there were any
3 other such quality assurance calls to any of the customers
4 in respect of the 45 contracts?

5 MS. ARMSTRONG: As I said, I did not communicate with
6 Planet Energy.

7 MR. ZACHER: Because you didn't determine -- you
8 determined that such inquiries would be irrelevant?

9 MS. ARMSTRONG: Like I said, I was basing my analysis
10 on the information I had, and the further witness
11 statements that I had.

12 MR. ZACHER: You decided you didn't need any more
13 information from Planet Energy?

14 MS. ARMSTRONG: As I have mentioned a number of times
15 now, I did not communicate with Planet Energy after we
16 received the information that was received by Andy Chung.
17 I did not.

18 MR. ZACHER: Just to be clear, there was nothing
19 precluding you from contacting Planet Energy and asking any
20 follow-up questions?

21 MS. ARMSTRONG: If there would have been anything
22 unclear, yes. But there wasn't.

23 MR. ZACHER: Or if there was any other relevant
24 information, right?

25 MS. ARMSTRONG: I did not contact Planet Energy. I am
26 not quite sure what else you would like me to say.

27 MR. ZACHER: When you spoke to -- when you had your
28 second meeting with Mr. MacArthur -- or, rather, your first

1 meeting, the second meeting conducted by the Board in
2 November of 2016, Mr. MacArthur told you that he had a file
3 of relevant materials, is that right?

4 MS. ARMSTRONG: That's right.

5 MR. ZACHER: Information relating to training
6 materials, compensation structure, and e-mails between ACN
7 and Planet Energy with regards to the contracts?

8 MS. ARMSTRONG: That's what he said.

9 MR. ZACHER: And you sent him an e-mail shortly after
10 that meeting, asking him to provide you with that
11 information.

12 MS. ARMSTRONG: That's correct.

13 MR. ZACHER: And he didn't provide it, and you didn't
14 follow-up?

15 MS. ARMSTRONG: I have sent him a number of e-mails; I
16 believe that's in the disclosure.

17 MR. ZACHER: All of the e-mails that you would have
18 sent to Mr. MacArthur following up on that would be
19 contained in the disclosure?

20 MS. ARMSTRONG: I believe so.

21 MR. ZACHER: I have seen a single e-mail. Is there
22 more?

23 MS. ARMSTRONG: I would have to go through the record.
24 I believe there was more than one e-mail asking him. There
25 was also a phone call that I believe is disclosed to you.

26 MR. ZACHER: You didn't demand that he provide you
27 with this information in order to review before you
28 completed your assessment?

1 MS. ARMSTRONG: No, that was part of the disclosure.
2 Well, I also sent an e-mail following the interview.

3 MR. ZACHER: Sorry, the information that Mr. MacArthur
4 told you he had, you asked for it, but never received it?

5 MS. ARMSTRONG: That's right.

6 MR. ZACHER: And you didn't make any follow-up
7 requests asking for it?

8 MS. ARMSTRONG: Yes, we did. There was also a phone
9 call with him. I am not quite sure about the timing
10 anymore because it was a long time.

11 MR. ZACHER: I didn't think it was that difficult a
12 question, Ms. Armstrong. But if you look at tab 144 of
13 Planet Energy's documents, and this is in binder volume 3.

14 MS. ARMSTRONG: Yes.

15 MR. ZACHER: Is this your e-mail to Mr. MacArthur
16 requesting the information that he had referenced in his
17 meeting with you that same day?

18 MS. ARMSTRONG: Yes.

19 MR. ZACHER: And this is the information he did not
20 provide to you?

21 MS. ARMSTRONG: That's right.

22 MR. ZACHER: And there's no other follow-up request
23 that you made with Mr. MacArthur between this e-mail and
24 the date of the notice?

25 MS. ARMSTRONG: I believe that's correct.

26 MR. ZACHER: And Mr. MacArthur has made reference in
27 his various witness statements to fellow IBOs, who he says
28 provided him with misinformation about Planet Energy's

1 products about the electricity sector, correct?

2 MS. ARMSTRONG: That's correct.

3 MR. ZACHER: Who told him to ignore requirements to
4 provide business cards and to wear a badge?

5 MS. ARMSTRONG: Can I have the witness statement or
6 the documentation just to refresh myself? But I believe
7 that's correct.

8 MR. ZACHER: Okay, and that he understood from these
9 other IBOs that even though it was wrong, he could enrol
10 customers on his own?

11 MS. ARMSTRONG: Again, do you have the witness
12 statement that I can refer to, the documents that you are
13 referring to?

14 MR. ZACHER: His first witness statement is Exhibit
15 KA.2, paragraph 10.

16 MS. ARMSTRONG: I asked Robert for a copy of his bill?

17 MR. ZACHER: Yes, second sentence:

18 "I knew that I was not allowed to enrol customers
19 into energy contracts even with their permission,
20 but understood from other ACN representatives
21 that this was normal business practice."

22 MS. ARMSTRONG: Right.

23 MR. ZACHER: And he makes reference in the witness
24 statement and other witness statements about these other
25 ACN representatives and IBOs, right?

26 MS. ARMSTRONG: That's correct.

27 MR. ZACHER: And he doesn't identify any of these
28 people.

1 MS. ARMSTRONG: He was very reluctant to identify
2 people.

3 MR. ZACHER: And you didn't ask for their identities,
4 or make any efforts to contact him?

5 MS. ARMSTRONG: Yes, we did, and he notified us that
6 he was being threatened, and that he was afraid.

7 MR. ZACHER: And that was after the notice was issued,
8 and after I requested their identities, correct.

9 MS. ARMSTRONG: Even prior, he was very reluctant to
10 identify witnesses.

11 MR. ZACHER: You'll agree with me there is nothing in
12 any of your interview notes, or in any e-mails to suggest
13 that?

14 MS. ARMSTRONG: I would have to go through my
15 interview notes, but subject to that...

16 MR. ZACHER: So you didn't require him to provide the
17 names of any of these people so that you could talk to them
18 and corroborate what he was telling you?

19 MS. ARMSTRONG: No, I did not.

20 MR. ZACHER: And Mr. Nahid told you when he met with
21 you that he had information, relevant information, stored
22 on his computer?

23 MS. ARMSTRONG: That's right. Again, do you have the
24 witness statement that I can refer to?

25 MR. ZACHER: If you look at Planet Energy document
26 181, tab -- it's in Volume 3. These are the March 24, 2016
27 interview notes of Mr. Nahid.

28 MS. ARMSTRONG: Okay. Right.

1 MR. ZACHER: These are the notes of his interview with
2 Mr. Chung and/or Ms. Marijan?

3 MS. ARMSTRONG: Yes.

4 MR. ZACHER: And these are the notes that you would
5 have reviewed when you took over the investigation?

6 MS. ARMSTRONG: That's correct.

7 MR. ZACHER: Midway down the first page it says "he
8 has folder for ACN/Planet Energy on his computer"? I am
9 sorry, it's at the bottom of that page.

10 MS. ARMSTRONG: "He has a folder for ACN/Planet Energy
11 on computer."

12 MR. ZACHER: And you didn't request that information
13 from Mr. Nahid before the notice was issued?

14 MS. ARMSTRONG: I did confirm with him what he was
15 talking about, and he was in a subsequent interview
16 referring to the back office that I understand ACN has.

17 MR. ZACHER: And you didn't ask Ms. Andrassin or Mr.
18 Hawkins for any relevant documents they had before the
19 notice was issued?

20 MS. ARMSTRONG: I did not speak to Ms. Andrassin or
21 Mr. Hawkins. Those were done -- those interviews were done
22 prior to me taking over that case.

23 MR. ZACHER: You decided it wasn't necessary to do
24 follow-up interviews.

25 MS. ARMSTRONG: Since this was agent misconduct and
26 the agent alleged that they were doing that...

27 MR. ZACHER: You took the agents at their word?

28 MS. ARMSTRONG: Yes, I had their word.

1 MR. ZACHER: Apart from the initial interviews done by
2 Mr. Chung and Ms. Marijan of Mr. Hawkins and Ms. Andrassin,
3 you didn't attempt to contact any of the customers relating
4 to these 45 contracts?

5 MS. ARMSTRONG: With the exception of Mrs. Agha-Amiri.

6 MR. ZACHER: Who didn't return your call?

7 MS. ARMSTRONG: Yes.

8 MR. ZACHER: You didn't ask any customers whether they
9 were, in fact, misled?

10 MS. ARMSTRONG: We worked off the two complaints that
11 you have in front of you and the two agents' witness
12 statement --

13 MR. ZACHER: You appreciate that the allegation is
14 that savings were represented to these customers.

15 MS. ARMSTRONG: Yes.

16 MR. ZACHER: All of them. That's your premise.

17 MS. ARMSTRONG: Yes.

18 MR. ZACHER: And that they were provided with
19 misinformation about other energy charges.

20 MS. ARMSTRONG: Yes.

21 MR. ZACHER: You didn't contact a single customer to
22 ask them whether, in fact, this was their experience?

23 MS. ARMSTRONG: Our inspection was working with the
24 two witness -- the two complaints we have and the two
25 agents.

26 MR. ZACHER: You didn't ask -- you didn't contact any
27 customer to ask whether they were in fact provided with
28 business cards, whether Mr. Nahid and Mr. MacArthur wore

1 badges, or whether Mr. Nahid and Mr. MacArthur in fact
2 enrolled them on their own over the Internet.

3 MS. ARMSTRONG: No. The inspection was based on the
4 two complaints and the two agents.

5 MR. ZACHER: That's not the question I asked.

6 MS. ARMSTRONG: No, we did not contact any of the
7 other consumers.

8 MR. ZACHER: And you haven't asked any consumers
9 relating to these 45 contracts what authority they gave Mr.
10 Nahid and Mr. MacArthur.

11 MS. ARMSTRONG: Since I did not contact any of the
12 other consumers, that follows.

13 MR. ZACHER: You don't know whether -- sorry, let me
14 back up. You appreciate that these customers were friends
15 and family, largely, of Mr. Nahid and Mr. MacArthur?

16 MS. ARMSTRONG: That's my understanding from the
17 business model that was used.

18 MR. ZACHER: And you don't know whether any of these
19 friends and family members provided Mr. Nahid or Mr.
20 MacArthur with broad authority to enter into energy
21 contracts or anything else for that matter; you don't know.

22 MS. ARMSTRONG: What I know is that Mr. MacArthur or
23 Mr. Nahid would have received the account numbers, usually
24 a bill --

25 MR. ZACHER: The answer to that question --

26 MS. ARMSTRONG: -- and the e-mail address.

27 MR. ZACHER: The answer to that question is you don't
28 know because you didn't ask.

1 MS. ARMSTRONG: I don't know.

2 MR. ZACHER: And in the notice, Ms. Armstrong, the
3 Board is proposing to void all of these contracts; do you
4 agree?

5 MS. ARMSTRONG: That's what the notice says. That's
6 what's in the legislation.

7 MR. ZACHER: So to cancel these contracts between
8 Planet Energy and these 45 contract holders?

9 MS. ARMSTRONG: Yes.

10 MR. ZACHER: And you haven't asked or enquired with
11 any customer whether they're happy or not happy with the
12 contracts and whether they want them voided? You haven't
13 asked.

14 MS. ARMSTRONG: I did not ask, but the question was
15 around enrollment and whether they were enrolled
16 appropriately. And from the agents' witness statements --

17 MR. ZACHER: But you're --

18 MS. ARMSTRONG: -- it was apparent that they were not
19 enrolled appropriately.

20 MR. ZACHER: But you are proposing to void somebody's
21 contract, and you haven't asked that somebody whether they
22 want their contract voided; correct?

23 MS. ARMSTRONG: That's correct.

24 MR. ZACHER: Ms. Armstrong, your counsel said in her
25 opening remarks that there would be evidence about
26 scrutinizing, training, and testing that would show
27 deficiencies in that training and testing. Do you recall
28 those remarks?

1 MS. ARMSTRONG: Yes.

2 MR. ZACHER: I take it that the extent of your
3 investigation into Planet Energy's training and testing are
4 your interviews with Mr. Nahid and Mr. MacArthur; is that
5 right?

6 MS. ARMSTRONG: Yes.

7 MR. ZACHER: Didn't make any inquiries of Planet
8 Energy about its training and testing and about protocols
9 and quality-assurance measures, et cetera? You didn't ask
10 those questions?

11 MS. ARMSTRONG: I was aware of their training
12 materials from the previous inspections and also from their
13 letter. I mean, they told me what their protocol is. My
14 inspection revolved around the implementation of the
15 training materials and that I relied on the witness
16 statements of the agents.

17 MR. ZACHER: So you limited -- your enquiry was
18 limited to your discussions with the agents and what the
19 questions that were asked and the answers that were
20 provided by Planet in its June 2016 letter?

21 MS. ARMSTRONG: That's correct.

22 MR. ZACHER: Did you make any effort, Ms. Armstrong,
23 as part of this investigation to assess whether what Mr.
24 Nahid and Mr. MacArthur were telling you about Planet's
25 systems were systemic problems or were anomalous or
26 isolated issues?

27 MS. ARMSTRONG: I focused on the two complaints and
28 the two agents. I did not inspect Planet Energy on a

1 broader scale.

2 MR. ZACHER: So you didn't enquire into how many
3 contracts with low-volume consumers Planet Energy had
4 enrolled?

5 MS. ARMSTRONG: In total?

6 MR. ZACHER: Correct.

7 MS. ARMSTRONG: No, I did not.

8 MR. ZACHER: Or how many IBOs out of -- that Mr. Nahid
9 and Mr. MacArthur represented amongst all of the IBOs who
10 had marketed Planet Energy products to low-volume
11 consumers?

12 MS. ARMSTRONG: Like I said, we had three agents come
13 forward, but I did not ask how many agents Planet Energy
14 had.

15 MR. ZACHER: You didn't enquire into whether there
16 were similar complaints in the past as part of Planet
17 Energy's compliance history?

18 MS. ARMSTRONG: No, I looked at the complaints in
19 front of me.

20 MR. ZACHER: Ms. Armstrong, can I ask you to turn to
21 the Ernst & Young report that Ms. Gonsalves had you look at
22 earlier? This is tab 15 of the enforcement team's
23 documents.

24 MS. ARMSTRONG: Yes.

25 MR. ZACHER: And you had no involvement with the
26 inspection that this report related to?

27 MS. ARMSTRONG: No, I did not.

28 MR. ZACHER: Not with respect to Planet Energy or

1 retailers, marketers generally?

2 MS. ARMSTRONG: No, I was not working in that
3 department, so I wouldn't.

4 MR. ZACHER: But your understanding is this report --
5 or rather there was an audit at this time of all Ontario
6 energy retailers and marketers to determine the extent to
7 which they had become compliant with the recently-enacted
8 Energy Consumer Protection Act.

9 MS. ARMSTRONG: That's my understanding.

10 MR. ZACHER: And this was a comprehensive review of
11 all of the requirements under the Energy Consumer
12 Protection Act; that's your understanding?

13 MS. ARMSTRONG: I know that it was, yes, an audit of
14 compliance with the ECPA.

15 MR. ZACHER: And it looked at the form of contracts,
16 right? Why don't you turn to page 4 of that report?

17 MS. ARMSTRONG: Yes. The scope was whatever is
18 written on this page.

19 MR. ZACHER: Right. So right under scope is marketing
20 activities, salesperson and verification representatives,
21 contracts, text-based contracts, Internet sales, contractor
22 applications, renewals, extensions, amendments,
23 cancellations, complaint handling, correct?

24 MS. ARMSTRONG: That's what's written here.

25 MR. ZACHER: And as the document indicates, there was
26 a phase 1 in which Ernst & Young inquired into these
27 practices, and then a phase 2 that entailed performance
28 testing?

1 MS. ARMSTRONG: I was not involved in that inspection,
2 as you pointed out, so it's whatever is in the document.

3 MR. ZACHER: And it's your understanding that Ernst &
4 Young provided its report to the Board or Board Staff, and
5 then the Board made a determination as to what, if any,
6 compliance action was necessary.

7 MS. ARMSTRONG: That is my understanding.

8 MR. ZACHER: And you appreciate from this report that
9 Ernst & Young examined Planet Energy's online -- sorry,
10 that it examined Planet Energy's recruitment of
11 salespeople, it's ACN, MLM marketing and its online
12 testing?

13 MS. ARMSTRONG: Like I said, I was not involved.
14 Whatever is in the report is what -- and I did not study
15 the report thoroughly. That came to my attention late.

16 MR. ZACHER: You'd agree with me your counsel referred
17 you to the notice of intention that was issued by the
18 Board, and the subsequent assurance of voluntary
19 compliance.

20 MS. ARMSTRONG: That's right.

21 MR. ZACHER: And you understand that there was
22 compliance action against every single energy retailer and
23 marketer that was audited.

24 MS. ARMSTRONG: I don't know.

25 MR. ZACHER: And that based on the Ernst & Young
26 report, the only matters of non-compliance that were
27 identified with respect to Planet Energy are those
28 particularized in the notice at pages 2 and 3?

1 MS. ARMSTRONG: Again, that's what I see in the notice
2 here.

3 MR. ZACHER: And the assurance of voluntary compliance
4 that was subsequently entered into would have been endorsed
5 by an order of the Board?

6 MS. ARMSTRONG: That would be the process. Again, I
7 was not involved in the assurance at that point.

8 MR. ZACHER: And so again, the only issues were Planet
9 Energy was complying with identification badge and business
10 card requirements, but some of the proscribed information
11 was missing.

12 MS. ARMSTRONG: That's what the assurance says; it's
13 what's written here, yes.

14 MR. ZACHER: Ms. Armstrong, can I refer you to the
15 notice in this case, if you don't mind turning that up?

16 MS. ARMSTRONG: In this case?

17 MR. ZACHER: Yes.

18 MS. ARMSTRONG: The notice EB-2011-0315?

19 MR. ZACHER: Oh, I am sorry, no. I am talking in this
20 -- the case that's before us right now.

21 MS. ARMSTRONG: Oh, okay.

22 MS. GONSALVES: Just to assist, the most convenient
23 way to find it may be to go to the agreed chronology, tab
24 17.

25 MR. ZACHER: Apologies and thank you, Ms. Gonsalves.

26 MS. ARMSTRONG: I am not sure I have the chronology.
27 Do I? Yes.

28 MR. ZACHER: I just want to ask you some questions

1 about the -- I will call them the counts in the notice, so
2 the alleged instances of non-compliance.

3 If you can just turn to paragraph 1 with regards to
4 the allegation to providing false, misleading or incomplete
5 Information?

6 MS. ARMSTRONG: Paragraph 1 on page 1?

7 MR. ZACHER: Page 3.

8 MS. ARMSTRONG: Yes.

9 MR. ZACHER: And you see there is paragraph sub (a)
10 and sub (b)?

11 MS. ARMSTRONG: Are you talking about allegations of
12 non-compliance?

13 MR. ZACHER: Yes.

14 MS. ARMSTRONG: Yes.

15 MR. ZACHER: So paragraph sub (b) is failing to
16 discuss or explain all of the charges to be paid under the
17 contract. You reference global adjustment.

18 MS. ARMSTRONG: Yes.

19 MR. ZACHER: Are there any other charges that have
20 been alleged are not adequately explained?

21 MS. GONSALVES: I am going to object at this stage.
22 The notice says what it says, and everybody can read it. I
23 am not sure that asking this witness what is or isn't in
24 the notice is particularly relevant or helpful.

25 MR. ZACHER: I think it's just the particulars. I am
26 not sure how we can know the case against us unless we know
27 what's being alleged.

28 MS. LONG: Are you proposing another witness, Ms.

1 Gonsalves, who can speak to this?

2 MS. GONSALVES: I am not.

3 MS. LONG: As I read it, failing to discuss or explain
4 all of the charges to be paid under the contract including
5 global adjustment. So the question may be are there other
6 charges?

7 MS. GONSALVES: There was a process, Madam Chair,
8 prior to this where particulars were sought at least in
9 respect of the various contracts; that was dealt with.
10 It's my submission is that's something as between counsel
11 we can speak about. It's a matter of allegations; it's not
12 a matter of evidence.

13 You know, I would certainly be happy to speak to Mr.
14 Zacher to answer those questions as to what Board Staff --
15 what our positions are alleging. But asking this fact
16 witness what is or is not alleged goes beyond her role in
17 this proceeding; it's not a matter of evidence.

18 MS. LONG: Mr. Zacher, if Ms. Gonsalves makes that
19 commitment to you to explain what is meant by that, does
20 that -- I just don't know that Ms. Armstrong the proper
21 witness to do that. So I expect that in the event that you
22 don't get the answer to that question, you will let me know
23 and we will see how best to deal with that?

24 MR. ZACHER: That's fine, thank you.

25 MS. LONG: Okay.

26 MR. ZACHER: Ms. Armstrong, you agree that there is no
27 obligation under the ECPA or any of the other applicable
28 codes that obligate retailers to address the global

1 adjustment with prospective customers?

2 MS. GONSALVES: Again, I apologize for continuing to
3 interrupt, but there has been a pattern of asking this
4 witness to comment on things that go beyond her knowledge.
5 What the obligations are under the ECPA are a matter of
6 law, it's a matter of legal argument, it's not for this
7 witness to testify about what obligations exist under the
8 legislation.

9 MR. ZACHER: Ms. Armstrong, do you say that retailers
10 or marketers have an obligation, a positive obligation,
11 to --

12 MS. ARMSTRONG: I am sorry, I can't hear anymore.

13 MR. ZACHER: I am sorry. Do you say that marketers or
14 retailers have a positive obligation to discuss the global
15 adjustment with prospective customers?

16 MS. GONSALVES: I don't think, with due respect, that
17 that addresses the problem or the basis for my objection.
18 Again, obligation is a matter of law, and we will be making
19 argument at the end of the case as to what Planet Energy's
20 legal obligations are under the ECPA. It includes unfair
21 practices, which has a broader meaning, and it will be our
22 argument that making proper disclosure and accurate
23 disclosure about the global adjustment falls within the
24 scope of not engaging in an unfair practice. That's a
25 matter of law. That's not a matter of evidence, and it's
26 not appropriate, in my submission, for this witness.

27 MS. LONG: Mr. Zacher?

28 MR. ZACHER: Yeah, I mean, again, I won't belabour it,

1 and I agree with my friend in the typical case that that's
2 correct, but Ms. Armstrong is a senior member of Board
3 Staff that's charged with assessing compliance with very
4 detailed code, and in my view she should be answering these
5 questions. We had Ms. Gonsalves put to her in direct
6 earlier this morning questions that had her commenting on
7 interpretation bulletins and what constitutes door-to-door
8 sales and Internet sales under the regulations and
9 legislation, so I don't think you can in one breath ask
10 those questions and then in another say I can't cross-
11 examine on it.

12 MS. GONSALVES: If I could briefly reply to that. I
13 did take Ms. Armstrong to the bulletin which was issued by
14 Board Staff that was a document that went out to the
15 industry that provided Board Staff's position on a
16 particular aspect of the ECPA. That's not Ms. Armstrong's
17 own personal view or her own personal understanding. That
18 was simply identifying that bulletin which was work product
19 issued by Board Staff. It's there for all of us to read.
20 That's as far as her evidence went, is simply to say, this
21 is the bulletin and this is Staff's position as explained
22 in that bulletin.

23 I didn't seek from her her own understanding of what
24 the obligations are or are not, again, and, you know, I
25 thank my friend for agreeing with me that that is a matter
26 for legal argument.

27 MR. ZACHER: I will move on. Thank you.

28 Ms. Armstrong, I understand in this case that the

1 proposed administrative penalty of \$450,000 is based on the
2 formula of \$10,000 per each of the alleged 45 contracts
3 infractions; is that right?

4 MS. ARMSTRONG: That's right.

5 MR. ZACHER: And the premise for the administrative
6 penalty is that the alleged contraventions in the notice
7 occurred across all 45 contracts; is that right?

8 MS. ARMSTRONG: I don't know. Whether it's contract
9 by contract or across, I am not sure I am understanding
10 your question to mean that if it doesn't apply to one
11 contract it wouldn't apply to any? Is that -- am I
12 understanding you correctly on that?

13 MR. ZACHER: Sorry, it's my understanding that the
14 assumption underlying the \$450,000 penalty and \$10,000 per
15 contract is that the alleged contraventions in the notice
16 occurred for all 45 of these contracts.

17 MS. ARMSTRONG: Across the contracts, yes.

18 MR. ZACHER: Okay. You have no knowledge of whether
19 those contraventions occurred across all 45 contracts. You
20 are relying upon Mr. Nahid and Mr. MacArthur.

21 MS. ARMSTRONG: I have the agents telling me that they
22 engaged in the same practices for all of their customers.

23 MR. ZACHER: So for instance, one of the alleged
24 infractions is that Mr. MacArthur and Mr. Nahid did not
25 provide business cards.

26 MS. ARMSTRONG: That was their statement to me at the
27 time.

28 MR. ZACHER: Right, and Mr. MacArthur, having been

1 confronted with his own sales binder that was produced
2 pursuant to a Board order has now at least recanted that
3 part of his statement and says that he did, in fact,
4 provide business cards; right?

5 MS. ARMSTRONG: I have no knowledge of that. I
6 believe that's a question for Mr. MacArthur.

7 MR. ZACHER: You agree that Mr. MacArthur has provided
8 a witness statement in which he says that.

9 MS. ARMSTRONG: I have not seen those two witness
10 statements, the two latest ones, so I cannot speak to them.

11 MR. ZACHER: Ms. Armstrong, there's no document or
12 worksheet that Staff have prepared that explains how the
13 \$10,000 per contract penalty was determined?

14 MS. ARMSTRONG: You mean, there is no document?

15 MR. ZACHER: Yes. We haven't been provided with one.

16 MS. ARMSTRONG: That would be part of a brief to
17 senior management.

18 MR. ZACHER: Is that a brief that you prepared?

19 MS. ARMSTRONG: It's a brief that I prepared with the
20 assistance of my manager, yes.

21 MR. ZACHER: Will you please disclose that?

22 MS. GONSALVES: Sorry, I am just confused as to where
23 we are heading. Mr. Zacher had requested at an earlier
24 stage in this proceeding information or an explanation of
25 how the monetary penalty in the notice was calculated. I
26 responded to him explaining that the monetary penalty is
27 determined by the Board, that that's not anything we are
28 involved in and we are not in a position to say that, but

1 that Board Staff's position was that a \$10,000 amount per
2 infraction is the appropriate amount.

3 It's a position, it's something we will argue, but
4 what actually went into the notice is not, again, a matter
5 for Ms. Armstrong or anyone to speak to, because the notice
6 is issued at the Board level. And to the extent that the
7 Board in issuing that notice received any recommendations
8 or any input, that would be a matter of privilege, and it's
9 not appropriate subject matter for disclosure.

10 MR. ZACHER: It's not privileged. Ms. Armstrong just
11 said that she prepared it to her senior manager or with her
12 senior manager. And my friend, I am sure, at the end of
13 this case in closing argument is going to submit a legal
14 argument explaining why this \$10,000 per contract is
15 reasonable. But we should have disclosed to us the
16 documents that Staff prepared as part of determining to
17 recommend the issuance of the notice in part and in
18 determining what an appropriate administrative penalty is.

19 MS. GONSALVES: To my knowledge, I have never seen a
20 document -- I have never seen a document explaining the
21 \$10,000 amount. Again, I am not -- if one exists, it's my
22 position that it would be privileged. I am not sure it's
23 something we would have access to. I would want an
24 opportunity to review it and to make any appropriate
25 arguments. But, again, as far as I am aware on the
26 calculation of the penalty, it's as simple as I have laid
27 out, that the Board put an amount or approved an amount in
28 the notice, Board Staff has a position, and the basis for

1 that position has already been provided to my friend. It's
2 my position there is nothing further to disclose. There
3 isn't, to my knowledge, any memo that Ms. Armstrong would
4 have prepared saying here is why I think this is an
5 appropriate penalty, and if there is, it would not be
6 relevant or it would be subject to privilege.

7 Given the hour, you know, I am not sure; I am in the
8 Panel's hands. I can take a look and see what exists, I
9 haven't been able to speak to Ms. Armstrong about this
10 issue specifically, and I am not able to now that she's in
11 cross. But I don't think it's appropriate for any
12 disclosure orders to be made at this point when I don't
13 know what, if any, document exists and whether it would be
14 protected by litigation privilege, or some other form of
15 privilege.

16 MS. LONG: How much time did you think you were going
17 to spend on this, Mr. Zacher? Is this the end of your
18 cross-examination, or have you got -

19 MR. ZACHER: I am very close to being finished.

20 MS. LONG: I guess the question that I have, Ms.
21 Gonsalves, is at the end of the day, if this Panel decides
22 that all 45 contracts are not affected, how do we break
23 down what a penalty would be?

24 So I think it's one issue for staff to come up with a
25 recommendation. Ultimately the Board came up with an
26 amount, but I don't know how -- obviously, Mr. Zacher
27 wouldn't know what submissions he could make and I don't
28 know that the Panel would be in a very good position to

1 understand the breakdown of that.

2 So I am going to suggest that given the hour, we will
3 let you finish your cross-examination, Mr. Zacher, and then
4 Ms. Gonsalves can make some inquiries and seek some
5 instruction. And I guess, to the extent that we find that
6 there is something that needs to be disclosed, we can deal
7 with that. Does that work?

8 MR. ZACHER: Sure, that's fine. And just the context
9 for this is -- this is something that we did request as
10 part of the pre-hearing disclosure. I asked for an
11 explanation as to how this \$450,000 was determined, whether
12 it was picked out of thin air or whether there was some
13 rationale to it.

14 My request for information was initially rejected. I
15 made a second request and said I would include that request
16 as part of a motion that I was bringing. I was then
17 provided simply with the detail that we say 45 contracts/
18 contraventions \$10,000 per, and that was the end of it.

19 But my submission, Madam Chair, is it's very relevant
20 to know, at the time that this assessment was concluded and
21 the notice was issued, what the rationale was for \$10,000
22 per transaction, even assuming that the merits are
23 established, which of course we contest. But that would be
24 relevant to your determination at the end of the day.

25 As you know, my friend made a very clear in her
26 opening submissions that this was really a case about the
27 acts of these two IBOs being demonstrative of some kind of
28 systemic problem. And we -- I would like to know how they

1 came up with that \$450,000 proposed penalty, \$10,000 per
2 contravention. I think it would be very helpful and
3 relevant to the Panel in making its determination.

4 MS. GONSALVES: I just wanted to respond to that and
5 to address your own comments, Madam Chair.

6 Yes, at the end of this case, if contravention
7 findings are made, the Panel will be required address the
8 issue of penalty. But, you know, my reaction to your
9 comments is really exactly, it will be up to this Panel,
10 the three of you to decide what the appropriate penalty is.
11 At the time that the notice was issued, the Board put in
12 place a -- or put in the notice a proposed penalty amount.

13 But once Planet requests a hearing, it comes before
14 the three of you to make that decision. Both sides are
15 going to make arguments based on the law, based on the
16 regulations, based on other cases, and based on the
17 evidence you hear as to what the appropriate penalty is.
18 And this Panel's determination of that will not be
19 constrained or affected in any way by what anyone prior to
20 the three of you may have thought was appropriate for that
21 penalty amount.

22 So I don't see how it's relevant. We have given my
23 friend a complete answer as to Board Staff's position. Our
24 position is \$10,000 being appropriate for each
25 contravention. It flows from the earlier regulation which
26 set a grid as to severe, moderate and minimal infractions,
27 something like that. We said we see these as being middle
28 of the road; that's all a matter for argument, and my

1 friend will have no surprise at the end of the case that
2 our argument will be here's the amount that we think is
3 appropriate.

4 What may have happened leading up to the notice is in
5 the past. That notice, the amount in the notice is not
6 what's going to govern what the three of you decide is the
7 appropriate penalty. So in my submission, this is all
8 irrelevant.

9 MR. ZACHER: I won't say anything more, other than to
10 say Ms. Gonsalves will do her investigation. If the
11 document's not privileged, it has to be disclosed.

12 MS. LONG: All right, we will leave it at that. Mr.
13 Zacher, can you continue?

14 MR. ZACHER: Madam Chair, if you just give me one
15 moment to caucus, I can then be more efficient, and I may
16 in fact be concluded.

17 MS. ARMSTRONG: Excuse me, Ken, but is it possible to
18 take a quick break?

19 MS. LONG: Absolutely. Do you need a five-minute
20 break?

21 MS. ARMSTRONG: Two minutes is good enough.

22 MS. LONG: All right, we will take a five or ten-
23 minute break. We will wait until Ms. Armstrong gets back,
24 thank you.

25 --- Recess taken at 3:43 p.m.

26 --- On resuming at 3:49 p.m.

27 MS. LONG: Please be seated. We will just wait for
28 counsel to return.

1 MR. ZACHER: I was hoping that I could proceed in
2 their absence.

3 MS. LONG: Sorry about this, Ms. Gonsalves. We came
4 back a bit early.

5 Mr. Zacher?

6 MR. ZACHER: Madam Chair, I am concluded. Ms.
7 Armstrong, I don't have any other questions. Thank you
8 very much.

9 MS. LONG: Ms. Gonsalves, do you have any redirect?

10 **RE-EXAMINATION BY MS. GONSALVES:**

11 MS. GONSALVES: Just in two areas. I expect to be
12 brief.

13 Can you hear me all right, Ms. Armstrong?

14 MS. ARMSTRONG: Yes.

15 MS. GONSALVES: Thank you.

16 You will recall that Mr. Zacher asked you a couple of
17 questions about the complaint that came into the Board on
18 behalf of [REDACTED]

19 MS. ARMSTRONG: Yes.

20 MS. GONSALVES: And he put to you -- and these are his
21 words -- that Mr. Nahid had "impersonated" [REDACTED]
22 Do you recall that?

23 MS. ARMSTRONG: Yes. In your understanding of the
24 Board's complaint process, can a complainant authorize
25 another person to make a complaint on their behalf and deal
26 with that complaint or must they do it all personally?

27 MS. ARMSTRONG: No, they can appoint somebody or
28 authorize somebody.

1 MS. GONSALVES: And do you have any knowledge as to
2 whether [REDACTED] provided that authorization with
3 respect to Mr. Nahid?

4 MS. ARMSTRONG: She did.

5 MS. GONSALVES: For my second question I am going to
6 take you back to Document 273 in Planet Energy's Volume 4.

7 MS. ARMSTRONG: Yes.

8 MS. GONSALVES: You'll recall that Mr. Zacher took you
9 to this document on the second page?

10 MS. ARMSTRONG: Yes.

11 MS. GONSALVES: Down at the bottom. And he asked you
12 about your notes there, "four commercial accounts". Do you
13 recall those questions and the answers you gave?

14 MS. ARMSTRONG: Yes.

15 MS. GONSALVES: Ms. Armstrong, do you have any direct
16 knowledge as to whether Mr. MacArthur's clients had four
17 commercial accounts? His customers?

18 MS. ARMSTRONG: No, I don't recall.

19 MS. GONSALVES: Did you have any direct knowledge
20 about which, if any, of his customers may have had
21 commercial accounts?

22 MS. ARMSTRONG: No, I do not.

23 MS. GONSALVES: Okay, thank you. That's all I have by
24 way of re-examination.

25 MS. LONG: Thank you, Ms. Armstrong, for your
26 evidence. You are excused. That concludes our hearing for
27 today. We will resume on Thursday, thank you.

28 --- Whereupon the hearing adjourned at 3:53 p.m.