



ONTARIO ENERGY BOARD

FILE NO.: EB-2017-0007

Planet Energy (Ontario) Corp.

VOLUME: Volume 2

DATE: November 16, 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 Thursday, November 16, 2017,
commencing at 9:37 a.m.

VOLUME 2

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 Thursday, November 16, 2017

2 --- On commencing at 9:37 a.m.

3 MS. LONG: Please be seated.

4 Good morning, everyone. The Panel continues to sit
5 today in EB-2017-0007. Before we begin with this witness,
6 are there any preliminary matters we need to deal with, Ms.
7 Gonsalves?

8 MS. GONSALVES: Good morning, Ms. Long and the Panel
9 members.

10 Just briefly -- and I have spoken to Mr. Zacher --
11 over the break that we had yesterday, I was able to follow
12 up with my client regarding the issue that arose at the end
13 of the day on Tuesday, and specifically the issue during
14 Ms. Armstrong's cross-examination about the existence of a
15 document dealing with the administrative monetary penalty
16 that was part of briefing the Board prior to the notice.

17 I have determined that such a document does exist.
18 Having considered the document -- I have now seen it -- and
19 looked at the law on it -- and we maintain the position
20 that my friend cannot establish that it is relevant to this
21 proceeding and that it is protected by privilege.

22 I have given my friend this morning written argument,
23 written submissions, explaining our position, along with a
24 set of cases that I think definitively support our
25 position. He hasn't had time to review them, but I have
26 suggested that he look at those materials and reconsider
27 whether he wants to proceed with this request.

28 If he does, I will be prepared to hand those materials

1 up and respond to his request accordingly. But we have
2 agreed that for the time being we will just proceed with
3 the evidence, and we may revisit the issue later.

4 MS. LONG: Okay, thank you. Mr. Zacher, you are in
5 agreement with that?

6 MR. ZACHER: That's fine.

7 MS. LONG: Okay.

8 MS. GONSALVES: So we have two witnesses that we hope
9 to get to today. They are both present. We are going to
10 begin with Mr. James MacArthur, and Mr. Safayeni will be
11 leading his evidence.

12 MR. ZACHER: Sorry, just one other thing that we
13 talked about beforehand, just maybe to flag for the Panel.

14 So you will have in the binders transcripts of various
15 telephone calls. What we have agreed between us is Ms.
16 Gonsalves said at the beginning that there is an agreement
17 with regards to authenticity of the underlying WAV files,
18 the audio files, but with regards to transcripts that's
19 subject to agreement as between the parties with regards to
20 accuracy.

21 So we have been going back and forth with some
22 corrections to transcripts. I don't think it's anything
23 substantive, but at some point later today or tomorrow it
24 may be that we will have to take new versions, sort of
25 sanitized versions, of these transcripts and provide them
26 to the Panel to be replaced at the appropriate tabs in your
27 binder.

28 MS. LONG: Are you saying, Mr. Zacher, that the

1 transcripts -- there's some question as to whether the
2 transcripts accurately reflect what's on the recording?

3 MR. ZACHER: I don't think it's in a substantive way.
4 It's little -- so what we have done is transcripts that
5 we've sought to rely upon, we have provided copies of the
6 transcriptions to my friend, they have provided some
7 corrective edits back to us. To my knowledge what they
8 have provided is fine, and vice versa, they have provided
9 transcripts to us and we have provided some corrections
10 back. So we will simply provide substitute copies of those
11 corrected transcripts at the appropriate time.

12 MS. LONG: All right, that's fine.

13 MS. LONG: Mr. Safayeni, if you introduce your first
14 witness we will have him sworn, and then we are going to go
15 off-air.

16 MR. SAFAYENI: Okay, thank you, Madam Chair. And just
17 a note before we get started that Mr. MacArthur has some
18 issues with his back, so I have just advised him to let us
19 know, and he may require brief breaks simply to stretch,
20 and then we can go back on, but just so that the Panel is
21 aware, we may need to accommodate that simply because of
22 his back condition.

23 MS. LONG: That's fine, Mr. MacArthur. If you feel
24 you need to take a break, you just indicate that to us,
25 please.

26 MR. MacARTHUR: Okay.

27 MR. SAFAYENI: So the enforcement staff's next witness
28 is James MacArthur.

1 ONTARIO ENERGY BOARD - ENFORCEMENT PANEL 2

2 James MacArthur; Affirmed.

3 MS. LONG: Thank you, we are going to go off air.

4 --- On commencing in camera at 9:43 a.m.

5 **EXAMINATION-IN-CHIEF BY MR. SAFAYENI:**

6 MR. SAFAYENI: Thank you, Madam Chair, good morning,
7 Mr. MacArthur.

8 MR. MacARTHUR: Good morning.

9 MR. SAFAYENI: Can you hear me okay?

10 MR. MacARTHUR: Yes.

11 MR. SAFAYENI: Okay. Can you state and spell your
12 full name for the record, please.

13 MR. MacARTHUR: James Duncan MacArthur, and that's J-
14 A-M-E-S, Duncan is D-U-N-C-A-N, MacArthur is M-A-C, capital
15 A-R-T-H-U-R.

16 MR. SAFAYENI: Thank you. And where do you currently
17 live, Mr. MacArthur?

18 MR. MacARTHUR: [REDACTED], Ontario.

19 MR. SAFAYENI: Okay, and it's not controversial, and
20 we know, in fact, from the agreed statement of facts in
21 this matter that from April 2012 to June 2015 you were
22 authorized to promote Planet Energy contracts in your
23 capacity of what's called an ACN independent business
24 owner; correct?

25 MR. MacARTHUR: Correct.

26 MR. SAFAYENI: And we are going to get into that. But
27 before you engaged in those activities, what did you do as
28 an occupation?

1 MR. MacARTHUR: I spent most of my working career as a
2 sales executive for several firms and then retired. That
3 was it.

4 MR. SAFAYENI: Okay, how long were you retired for
5 before you got involved with ACN?

6 MR. MacARTHUR: Uh... I think three years.

7 MR. SAFAYENI: Okay, and what -- you'd mentioned that
8 you were a sales executive. What industries were you
9 involved with, if I can put it that way?

10 MR. MacARTHUR: The majority of the time was in the
11 insurance business, and also in the point-of-purchase
12 business.

13 MR. SAFAYENI: Okay, and what was the last position
14 you held in the insurance business?

15 MR. MacARTHUR: I was a vice-president in charge of
16 mass merchandising.

17 MR. SAFAYENI: And what was the last job you held on a
18 payroll period?

19 MR. MacARTHUR: It would have been working for
20 Luminart in a point-of-purchase business.

21 MR. SAFAYENI: And what was your last position there?

22 MR. MacARTHUR: I was international sales manager.

23 MR. SAFAYENI: Okay. Do you have any background in
24 the energy industry of any kind?

25 MR. MacARTHUR: No, I do not.

26 MR. SAFAYENI: So can you take me through how you
27 first got introduced to ACN?

28 MR. MacARTHUR: Actually, a friend of mine called me

1 who I had known for many years and asked me if I would come
2 to a presentation of a particular new business that he was
3 involved in, and he asked me to come along to the meeting
4 and give my opinion of what I thought of that particular
5 business, which I had no knowledge of prior to going to the
6 meeting.

7 MR. SAFAYENI: Okay, and where was the meeting?

8 MR. MacARTHUR: It was at a residence in Newmarket.

9 MR. SAFAYENI: And how many people were there,
10 approximately?

11 MR. MacARTHUR: From recollection, I am going to say
12 ten, 11 people.

13 MR. SAFAYENI: Okay, and how long before you started
14 actually promoting Planet Energy contracts did you attend
15 -- how long before you actually started promoting Planet
16 Energy contracts did you attend this meeting? So when was
17 it, approximately?

18 MR. MacARTHUR: The meeting was in the summer of 2012,
19 and at that meeting I agreed to join ACN, and I did so that
20 night by filling out a form and paying my \$500 entry fee.

21 MR. SAFAYENI: Okay, and can I take you -- there's a
22 black binder next to you -- well, there is a series of
23 black binders next to you, but one of them says "Brief of
24 documents of OEB enforcement staff"; do you see that, sir?

25 MR. MacARTHUR: Yes.

26 MR. SAFAYENI: Okay. Can you turn to tab 18 of that
27 binder?

28 MR. MacARTHUR: Yes.

1 MR. SAFAYENI: Does this look familiar to you?

2 MR. MacARTHUR: Yes.

3 MR. SAFAYENI: Can you explain to me what this form
4 is?

5 MR. MacARTHUR: This is the document that I received
6 the night I joined ACN, which was at the home meeting
7 discussed previously.

8 MR. SAFAYENI: Okay. And did you have -- I think you
9 mentioned having to make a payment as well in order to
10 join?

11 MR. MacARTHUR: Yes, the cost to join was
12 approximately \$500.

13 MR. SAFAYENI: And did you make that payment that same
14 night?

15 MR. MacARTHUR: Yes.

16 MR. SAFAYENI: And, for the record, we are looking at
17 tab 18 from Exhibit KX1.2. Just to be clear, that's
18 Staff's book of documents.

19 What do you remember about what was -- about what
20 happened that night? Can you just take me through what you
21 remember about the meeting at the residence?

22 MR. MacARTHUR: Well, the -- we had the meeting.
23 There was a gentleman who was an ACN IBO, who started off
24 by showing a video which was kind of a rah-rah video, and
25 then the gentleman discussed basically the future in ACN
26 and how much money you could make, how much money he was
27 making, and that was about it.

28 MR. SAFAYENI: When you say a rah-rah video, can you

1 elaborate at all?

2 MR. MacARTHUR: Well, in any sales video -- I mean, if
3 you've got Donald Trump up there saying: "ACN is a good
4 company, I supported it a hundred percent. I tried to buy
5 it, but they wouldn't allow me to buy it," and you are
6 seeing people with Rolex watches and so on. It kind of
7 helps to entice people into joining ACN.

8 MR. SAFAYENI: Was there any discussion at that
9 meeting about the different products that ACN is involved
10 with?

11 MR. MacARTHUR: Yes. The gentleman that was doing the
12 presentation, he did go through the products by name only.

13 MR. SAFAYENI: Okay. What do you mean by name only?

14 MR. MacARTHUR: Well, there was -- the issue was
15 hydro, gas, security systems, phone systems, cellphone
16 systems, and so on.

17 So he reviewed the products, but that was also taken
18 care of in the video that they showed when it first
19 started.

20 MR. SAFAYENI: Did they get into the details of any of
21 the products, from your recollection?

22 MR. MacARTHUR: No.

23 MR. SAFAYENI: And how would you describe the overall
24 focus of that meeting?

25 MR. MacARTHUR: Well, in my opinion, the focus of the
26 meeting was to join ACN, pay your \$500 and go out and sign
27 up as many people as you can.

28 MR. SAFAYENI: Okay. And when you say sign up as many

1 people as you can, can you just explain to me what you mean
2 by that?

3 MR. MacARTHUR: Convincing another person that this is
4 a good company to be involved in, and pay your \$500, join
5 the club, and away we go.

6 MR. SAFAYENI: So are you talking about signing other
7 people up as --

8 MR. MacARTHUR: ACN IBOs.

9 MR. SAFAYENI: Okay. And was there also any
10 discussion of signing people up as customers for various
11 products?

12 MR. MacARTHUR: There was, but that was not the focus
13 at that particular meeting.

14 MR. SAFAYENI: Okay. And I am going to ask you to
15 turn to -- well, maybe I will just ask one more question
16 first. What was your understanding as to why it would be a
17 benefit to sign other people up as ACN IBOs? Why was that
18 a focus?

19 MR. MacARTHUR: Part of the -- without going into
20 great detail, but part of the business model was -- there
21 was two parts to it. Sign up people, because they would
22 sign up people and they would sign up people, and you get
23 paid on everybody below you. There was not a lot of focus
24 on selling the products initially. It was sign up people,
25 sign up people, sign up people which...

26 MR. SAFAYENI: Okay. So I am going to ask you to turn
27 to tab 19 in that same book, the next tab over. Does this
28 document look familiar to you?

1 MR. MacARTHUR: Yes.

2 MR. SAFAYENI: And can you explain to me what this
3 document is?

4 MR. MacARTHUR: Firstly, this is not the original
5 document that I received when I joined. There has been
6 some changes made, but the format is basically the same.
7 And this is, as it says, a business overview, and it talks
8 about residual income; that's the big focus in ACN. And
9 the overriding residual income. So people you sign up, the
10 customers they sell electricity to or security or whatever,
11 and then the compensation plan at the bottom and the
12 different levels of compensation that you achieve once you
13 have sold so much.

14 MR. SAFAYENI: Okay. So let's just take that kind of
15 piece by piece. So first of all, you say that this --
16 there's been some changes made to this document. But do
17 you remember receiving a document that looked similar to
18 this at some point in time?

19 MR. MacARTHUR: Yes, I did, pretty well in the
20 beginning. And when I say some changes, there's just minor
21 changes; the way it's laid out, for example.

22 MR. SAFAYENI: Okay. And you referred to a few
23 different places in the document, so let's just kind of go
24 through it piece by piece. So there's a panel number 5
25 there that says "personal residual income on your online
26 store customers, 1 percent to 10 percent." Do you see
27 that?

28 MR. MacARTHUR: Yes.

1 MR. SAFAYENI: Can you explain to me your
2 understanding of what that means?

3 MR. MacARTHUR: Well, personal residual income is a
4 fancy name for commissions you would earn when you signed
5 people up for the different products, whether it's hydro or
6 gas, or phone services, or high speed Internet. That
7 refers specifically to the commission I would make on the
8 people that I signed up.

9 MR. SAFAYENI: Okay. And if we move to the next
10 panel, it says "overriding residual income on other IBOs
11 online stores, a quarter of a percent to 8 percent", and
12 then it has a chart there with different levels and
13 different residuals with various percentages under it.

14 MR. MacARTHUR: Yes.

15 MR. SAFAYENI: Do you see that?

16 MR. MacARTHUR: Yes.

17 MR. SAFAYENI: Can you explain to me your
18 understanding of what that means?

19 MR. MacARTHUR: That is -- overriding residual income
20 is commission on people you have signed up and the people
21 they have signed up. So if that person down the ladder two
22 times, let's say, sells hydro or gas or whatever it is, I
23 would be paid residual income on those people.

24 MR. SAFAYENI: Okay. And if we see tab -- or box 8,
25 where it says "earned status and compensation plan" --

26 MR. MacARTHUR: Yes.

27 MR. SAFAYENI: -- and it has various different labels
28 there from qualified team trainer on one end of the

1 spectrum all the way to senior vice president at the other
2 end of the spectrum; do you see that?

3 MR. MacARTHUR: Yes.

4 MR. SAFAYENI: Can you just explain to me your
5 understanding of how one might progress from qualified team
6 trainer to senior vice president, at least at a broad
7 level.

8 MR. MacARTHUR: Initially -- these are different
9 levels based on the number of people you have signed up and
10 how you have grown your organization. So right under
11 number 8, qualified team trainer, there was conditions to
12 qualify as a team trainer, and I believe -- it's not shown
13 here, but I believe you had to have 50 to 60 points, points
14 being related to commissions. And then the executive team
15 trainer, as it shows there, then you have to have two
16 qualified team trainers under you. And there was
17 acquisition bonuses. And then it moves on to ETO, which
18 means you had to have three executive team trainers
19 underneath you. And then it continues on, team
20 coordinator, regional director, and there is acquisition
21 bonuses there.

22 So once you start getting into regional director or
23 regional vice-president you are making some serious money
24 here.

25 MR. SAFAYENI: Okay. And --

26 MR. MacARTHUR: So that just shows you the levels that
27 you have to achieve to earn certain amounts.

28 MR. SAFAYENI: And if you turn -- you referred to

1 points. Let's just turn the page over. You will see a
2 chart that says at the top "ACN customer point system
3 commissionable revenue"?

4 MR. MacARTHUR: Yes.

5 MR. SAFAYENI: And it says, if you look under "home
6 services" near the bottom of that chart, it says "energy
7 electricity one point energy natural gas, two points
8 British Columbia, Manitoba, one point Ontario". Do you see
9 that there?

10 MR. MacARTHUR: Yes, I do.

11 MR. SAFAYENI: So can you just explain to us again
12 what your understanding of the points associated with those
13 products, what that means?

14 MR. MacARTHUR: Okay. If I were to sell somebody on
15 buying the electrical product provided by ACN, those were
16 the points that you would get for each customer you signed
17 up. And there's different points for different products.
18 And those points equated to a monthly income or commission,
19 if you will.

20 MR. SAFAYENI: Okay. You told us that at that initial
21 meeting your understanding of the main focus was to have
22 other people sign up to be ACN IBOs. Did you ever do that?

23 MR. MacARTHUR: No, I did not.

24 MR. SAFAYENI: Throughout your time with ACN did you
25 feel any pressure to sign people up as IBOs?

26 MR. MacARTHUR: Oh, there was a lot of pressure, but I
27 was not interested at all in signing anybody up.

28 MR. SAFAYENI: And can you just describe to me a

1 little bit about what you mean when you say there was a lot
2 of pressure? What form did that pressure take?

3 MR. MacARTHUR: Well, when you join ACN, you join
4 what's called a leg, and whoever the top person in that
5 leg, there's a name to that organization. And in this
6 case, it was the Momentum Group. So at the top of that
7 there would be a vice-president, and then down flowing all
8 the people from there. And that's basically what happened.

9 MR. SAFAYENI: Sorry, but my question was, the -- if
10 you could provide any details when you say that you
11 received pressure to sign up other IBOs?

12 MR. MacARTHUR: Well, the people that were above me
13 were constantly on, not just me, but everybody who joined
14 ACN to sign up people, sign up people, sign up people,
15 because they had an obvious financial interest, because
16 every time I signed somebody up they were getting a
17 commission off the products that the people I sold.

18 MR. SAFAYENI: And I think you said you were part of
19 something called the Momentum Group. Did that group also
20 include the individual who invited you to that initial
21 meeting we talked about?

22 MR. MacARTHUR: Yes.

23 MR. SAFAYENI: And once you signed up and paid, I
24 think you said the \$500 fee, what did you get access to in
25 exchange for that?

26 MR. MacARTHUR: Well, you automatically had your own
27 online store on the Internet, and that was set up. You had
28 an entry code to get into it, but also you could refer

1 customers to your online store and they could read or see
2 all the different products and the pricing that was
3 available on those products.

4 MR. SAFAYENI: Was there a password required to access
5 the online store?

6 MR. MacARTHUR: Not for the public, no.

7 MR. SAFAYENI: All right. So there was the online
8 store. And was there anything else you got access to for
9 the \$500, or for the process of signing up?

10 MR. MacARTHUR: The other portion, which is also on
11 the Internet, was you have access to what is called your
12 back office. And the back office gives you information
13 about your customers, who signed it up, when did they sign
14 up, what the commissions were, that type of thing.

15 MR. SAFAYENI: And to access the back office did you
16 require a password?

17 MR. MacARTHUR: Yes.

18 MR. SAFAYENI: Now, at a certain point in 2012 did you
19 begin to sell Planet Energy contracts?

20 MR. MacARTHUR: Yes.

21 MR. SAFAYENI: And did you sell them to friends,
22 family, strangers?

23 MR. MacARTHUR: For the most part, friends.

24 MR. SAFAYENI: And would you say these were people who
25 trusted you?

26 MR. MacARTHUR: Yes.

27 MR. SAFAYENI: Were you ever told or did you ever
28 understand that you could sell these contracts only to

1 friends or family?

2 MR. MacARTHUR: No.

3 MR. SAFAYENI: So did you understand that you could
4 sell them to strangers?

5 MR. MacARTHUR: Yes.

6 MR. SAFAYENI: Between the point in time when you
7 attended the initial ACN -- or the initial meeting that we
8 talked about, and the time when you actually sold your
9 first Planet Energy contract, did you attend any other
10 meetings or sessions of any kind relating to ACN?

11 MR. MacARTHUR: Yes.

12 MR. SAFAYENI: Okay. Can you explain what those were?

13 MR. MacARTHUR: Well, you were -- every Saturday
14 morning in Don Mills in a church hall that holds about
15 3,000 people there was a -- and it still goes on, every
16 Saturday morning, nine o'clock, it's rah-rah-rah, people
17 who were senior vice-presidents of ACN were on the stage,
18 and they told how their life had changed and they are
19 making 25,000 a year and it was rah-rah-rah to try and get
20 everybody excited.

21 So one of the purposes of that was to, if I, for
22 example, had somebody that I wanted to join I would take
23 them to that Saturday morning meeting to get them enthused
24 about the product and so on, but I only went there for --
25 because the other members in my group went. I had no, as I
26 mentioned before, intention of signing anybody up.

27 MR. SAFAYENI: And just to clarify, when you say
28 "signing people up", do you mean signing people up as an

1 IBO?

2 MR. MacARTHUR: Yes.

3 MR. SAFAYENI: All right. And again, you use the term
4 "rah-rah-rah". Can you elaborate at all as to what you
5 remember people saying at those Saturday morning events?

6 MR. MacARTHUR: Yes.

7 MR. SAFAYENI: Can you describe to me what you
8 remember them saying?

9 MR. MacARTHUR: Well, each one came from a different
10 walk of life. There was the janitor that was making a
11 hundred grand a year, and then there was this lady who
12 started making 200,000 a year. And it was -- like when I
13 say rah-rah-rah, these are the kind of meetings in the
14 sales business that you use to get the people excited, and
15 the meetings are always the same.

16 They start off with that ACN video. There's Donald
17 Trump up there, you know, this is a good company and I
18 strongly recommend it to people, and I tried to buy it and
19 I couldn't. So everybody's, oh, wow, Donald Trump's
20 involved and ...

21 MR. SAFAYENI: Were these meetings required for ACN
22 IBOs, or people who wanted to become ACN IBOs?

23 MR. MacARTHUR: No.

24 MR. SAFAYENI: Beyond what you have described as the
25 rah-rah-rah aspect, was there anything else that was
26 discussed at these meetings?

27 MR. MacARTHUR: The meetings were set up in two parts.
28 Starting at nine in the morning going to approximately noon

1 was the rah-rah-rah. And then in the afternoon, it was
2 called a training session.

3 MR. SAFAYENI: And did you ever stay for the training
4 session?

5 MR. MacARTHUR: Once.

6 MR. SAFAYENI: Can you tell me everything you remember
7 about that?

8 MR. MacARTHUR: The people that were doing the
9 presentation went through each product that ACN sells, but
10 very briefly, no great detail, no -- no nothing.

11 MR. SAFAYENI: And how long did the training session
12 part take, approximately?

13 MR. MacARTHUR: An hour and a half.

14 MR. SAFAYENI: And what do you remember the discussion
15 being around the energy contract products at these training
16 sessions?

17 MR. MacARTHUR: Well, it was -- they went through each
18 product and, you know, we have electricity, we have gas
19 products, we have cell phones, security, everything else.
20 So there wasn't a lot of detail about any particular
21 product.

22 MR. SAFAYENI: Do you remember any discussion about
23 how energy pricing worked, or anything relating to energy
24 pricing at these training sessions?

25 MR. MacARTHUR: Are you saying did I learn anything
26 or --

27 MR. SAFAYENI: No, do you remember? Sorry, do you
28 remember any discussion about energy pricing at these

1 training sessions?

2 MR. MacARTHUR: There really wasn't a lot, if any.

3 MR. SAFAYENI: Do you remember any discussion about
4 the energy market and how it worked?

5 MR. MacARTHUR: No.

6 MR. SAFAYENI: Do you remember any discussion about
7 the global adjustment?

8 MR. MacARTHUR: No.

9 MR. SAFAYENI: About cancellation charges?

10 MR. MacARTHUR: No.

11 MR. SAFAYENI: As best as you can remember, what was
12 told to you at these meetings about the energy contracts?

13 MR. MacARTHUR: At those particular meetings, they did
14 not go into any detail about the energy contracts. They
15 didn't go into pricing, in particular. It was more or less
16 an overview of each product. And on the electricity, they
17 would say that, you know, you can tell your customers that
18 electricity is going to continue to go up and that because
19 your ACN product in hydro, for example, was 4.99 cents per
20 kilowatt-hour is what the customer would be paying.

21 MR. SAFAYENI: Was there any discussion at these
22 training sessions about sales or marketing strategies?

23 MR. MacARTHUR: We are talking now about the Saturday
24 morning meetings --

25 MR. SAFAYENI: Correct.

26 MR. MacARTHUR: -- or afternoon?

27 MR. SAFAYENI: If you can remember.

28 MR. MacARTHUR: There was some -- I don't remember a

1 lot of it. Most of that came at a different time, a
2 different location.

3 MR. SAFAYENI: Okay. We will get into that. In
4 total, how many of these Saturday sessions did you attend?

5 MR. MacARTHUR: I think I went to three.

6 MR. SAFAYENI: And are you talking about both the
7 morning and the training, or...

8 MR. MacARTHUR: No, just the morning.

9 MR. SAFAYENI: And for the training, I think you've
10 told us it was only one.

11 MR. MacARTHUR: Once, that's right.

12 MR. SAFAYENI: And how many did you attend prior to
13 actually starting to sell Planet Energy contracts?

14 MR. MacARTHUR: I had not attended one until after I
15 started selling products.

16 MR. SAFAYENI: I am going to ask you to turn up
17 another document. It's in -- for the record, it's in
18 Exhibit KX1.4. It's in the binder, a different black
19 binder next to you, Mr. MacArthur, saying Planet Energy
20 documents volume 1, tabs 1 to 49. Do you see that?

21 MR. MacARTHUR: So you are saying it's volume 1?

22 MR. SAFAYENI: Yes, it says Planet Energy documents,
23 volume 1, tabs 1 to 49.

24 MR. MacARTHUR: I don't see that here.

25 MR. SAFAYENI: May I approach the witness just to see?

26 MS. LONG: Yes, please.

27 MR. SAFAYENI: All right. Mr. MacArthur, do you have
28 the binder in front of you now?

1 MR. MacARTHUR: Yes.

2 MR. SAFAYENI: Okay. Can I ask you to turn up tab 31,
3 please?

4 MR. MacARTHUR: Yes.

5 MR. SAFAYENI: And I want you to take a few minutes,
6 if you need it, to review the document at this tab. My
7 question for you is do you remember ever seeing this
8 document, or any of the slides associated with this
9 document, while you were an ACN IBO. And as I say, you can
10 take the time to review the document.

11 MR. MacARTHUR: Yes, I have seen a format of this
12 before. I believe this has -- since 2012 this has been
13 updated and modernized. There is some products here that
14 were not in the original. And exactly -- this is quite a
15 few -- I don't recall those documents being these many
16 pages. It was more -- it was a lot briefer, if that's the
17 right word.

18 MR. SAFAYENI: Okay, so do aspects of this document
19 look familiar to you?

20 MR. MacARTHUR: Yes.

21 MR. SAFAYENI: All right. And when do you remember
22 seeing this document before?

23 MR. MacARTHUR: It was about the time that -- shortly
24 after I signed up for ACN.

25 MR. SAFAYENI: Okay. Do you remember reviewing it in
26 any detail?

27 MR. MacARTHUR: No, I looked through it, but not in
28 detail.

1 MR. SAFAYENI: And were you provided with -- do you
2 remember being provided with a hard-copy version of this
3 document or a similar document?

4 MR. MacARTHUR: I'd say a similar format document, but
5 nowhere this detailed at all no matter what the product
6 was.

7 MR. SAFAYENI: I am going to -- just to make sure it's
8 clear, because I am not sure I totally understand the
9 answer, do you remember whether you were provided with this
10 document in hard copy or whether it was online, or do you
11 remember one way or the other?

12 MR. MacARTHUR: I'm not sure whether it was online or
13 how I got it.

14 MR. SAFAYENI: Okay. Staying in the same binder, can
15 you turn to tab 6E, please.

16 MR. MacARTHUR: So I am at 6E.

17 MR. SAFAYENI: You see it's a series of pages with
18 blue background and writing on it?

19 MR. MacARTHUR: You said section 6E?

20 MR. SAFAYENI: Correct.

21 MR. MacARTHUR: These are all just black and white,
22 actually.

23 MS. LONG: Sorry, Mr. MacArthur, you are looking at
24 black and white pages, are you, instead of blue pages with
25 yellow and red on them?

26 MR. MacARTHUR: Yes, this is 6, and then it started
27 out with 0110.

28 MS. SPOEL: It's 0170.

1 MS. LONG: Do you have it now, Mr. MacArthur?

2 MR. MacARTHUR: Yes, I do.

3 MS. LONG: Okay, good.

4 MR. SAFAYENI: So I am going to ask you the same
5 question, Mr. MacArthur. I would like you to take the time
6 you need to review the document at tab 6E, and my question
7 for you is whether you recognize this document from your
8 time as an ACN IBO.

9 MR. MacARTHUR: No, I don't believe I have seen these
10 documents. I believe it's -- the documents were different
11 in 2012 than they are now.

12 MR. SAFAYENI: And do you remember seeing anything
13 even similar to this, even if not this exact document,
14 anything even similar to this during your time as an ACN
15 IBO?

16 MR. MacARTHUR: Yes.

17 MR. SAFAYENI: And when do you believe you saw that
18 document?

19 MR. MacARTHUR: Well, this -- I never saw this
20 document the whole time I was with ACN. This may be
21 something that's given to people since 2012 as part of
22 their materials or sales materials.

23 MR. SAFAYENI: I don't want you to speculate, Mr.
24 MacArthur. My question is simply whether you remember
25 seeing this document while you were an ACN IBO?

26 MR. MacARTHUR: This document, no.

27 MR. SAFAYENI: All right. Okay, you can put that
28 binder away.

1 I'd ask you to turn back to Exhibit KX1.2, which is
2 the other binder that we were in before.

3 MR. MacARTHUR: What section, sorry?

4 MR. SAFAYENI: Tab 20.

5 MR. MacARTHUR: Yes.

6 MR. SAFAYENI: Does this document look familiar to
7 you?

8 MR. MacARTHUR: Yes.

9 MR. SAFAYENI: And can you explain to me where you
10 have seen this document before?

11 MR. MacARTHUR: I'm really not sure.

12 MR. SAFAYENI: Well, was it something that you
13 received through the ACN website?

14 MR. MacARTHUR: I really can't remember. But I do
15 recognize the title page of this document.

16 MR. SAFAYENI: And just to be clear, we are talking
17 about a document that says on it "certificate of
18 completion"; correct?

19 MR. MacARTHUR: Yes, yes, sir.

20 MR. SAFAYENI: All right. Do you remember what, if
21 anything, you had to do before receiving this document?

22 MR. MacARTHUR: No, I don't remember.

23 MR. SAFAYENI: At the bottom of that page you see a
24 comment that says:

25 "I did not read product training, none of us did,
26 Jim MacArthur."

27 Do you see that?

28 MR. MacARTHUR: Yes.

1 MR. SAFAYENI: Is that a comment that you wrote on
2 this page?

3 MR. MacARTHUR: Yes, that's my writing.

4 MR. SAFAYENI: And did you write that comment in the
5 course of preparing for this hearing?

6 MR. MacARTHUR: Yes.

7 MR. SAFAYENI: And can you explain to me what you mean
8 by that comment?

9 MR. MacARTHUR: That was in response to, I believe,
10 being shown this document and questioning whether I read
11 it, or the certificate of completion, what that was all
12 about, and I am simply saying I didn't read the product
13 training, none of us did, meaning the people I associated
14 with who were also ACN IBOs.

15 MR. SAFAYENI: Okay, and when you say "product
16 training", what exactly are you referring to?

17 MR. MacARTHUR: Well, there was -- whatever was with
18 this document, I think, and also in the back office there's
19 portals that you can select for training for the various
20 different products. I didn't really pay particular
21 attention to them at all.

22 MR. SAFAYENI: And when you say "none of us did", can
23 you just remind me again what you meant by that part of the
24 comment?

25 MR. ZACHER: I am going to object to that question. I
26 don't think my friend should be leading out of court
27 statement -- rather, I don't think my friend should be
28 leading testimony of out of court statements that Mr.

1 Hawkins says were made to him by people that are not here
2 -- Mr. MacArthur, rather.

3 MR. SAFAYENI: My friend knows this is a Statutory
4 Powers Procedure Act hearing. Hearsay is permissible. I
5 mean, it's a matter of argument how much weight it should
6 be given, but there is no rule against hearsay in SPPA
7 hearings; that's clear under section 15.

8 MR. ZACHER: I agree with that, that there is
9 discretion in the Panel to allow hearsay. My position is
10 the evidence is not relevant, in addition it's hearsay. I
11 think this is an important issue, and we should address it
12 and we should address it in the absence of Mr. MacArthur.

13 MS. LONG: Okay, Mr. MacArthur, we are going to ask
14 that you perhaps take a break now and stretch your back,
15 this might be a good time. If you could just leave the
16 room.

17 MR. MacARTHUR: Okay.

18 MS. LONG: And we will have someone come back and get
19 you.

20 MR. MacARTHUR: All right.

21 [Witness withdraws]

22 MS. LONG: Mr. Zacher, would you like to speak more
23 freely now?

24 MR. ZACHER: Yes, thank you. I agree with my friend
25 that this panel certainly has the discretion to allow
26 hearsay evidence, and it is governed by the SPPA.

27 But importantly, the evidence needs to meet a basic
28 threshold of relevance. And even if it meets that

1 threshold of relevancy, it's in the discretion of the Panel
2 whether to allow evidence that is hearsay based on whether
3 it's reliable, trustworthy, and would not be overly
4 prejudicial or unfair to allow it.

5 What I think my friend intends to do, and because they
6 have provided us, as required, with Board Staff's
7 disclosure, and in the witness statements that you will be
8 familiar with and that Mr. MacArthur signed, he has made
9 reference -- sorry, let me back up for a second.

10 The allegations, of course, in the notice are that Mr.
11 MacArthur committed a number of alleged contraventions. He
12 didn't provide business cards, he didn't wear an ID badge,
13 he represented savings, enrolled customers on his own et
14 cetera.

15 And what Mr. MacArthur -- the evidence that he
16 provided to Board Staff, and you will have heard this the
17 other day through Ms. Armstrong, is that he lays this all
18 -- he lays the blame all at the feet of other friends and
19 acquaintances of his who were, I gather, other IBOs.

20 He has not identified a single one, notwithstanding
21 that -- and as Ms. Armstrong said, Board Staff didn't
22 follow up to ask for the identities of any of these people
23 or to try to contact them, because this case, as framed in
24 the pleadings, in the notice, is about proving misconduct
25 and proving deficiencies in Planet Energy's processes
26 through the evidence of these two IBOs, Mr. MacArthur and
27 Mr. Nahid.

28 It is not relevant to my friend -- to what my friend

1 has to prove, which is that these alleged contraventions
2 occurred. Why Mr. MacArthur says he did these things,
3 that's not necessary. They just simply have to prove he
4 didn't hand out business cards, he didn't wear an ID badge,
5 et cetera.

6 The only -- so, the first point, not relevant; the
7 reason is not relevant. The only reason it might be
8 relevant is if what my friend's trying to do -- and this is
9 what I suspect the enforcement team's purpose of this is,
10 is to suggest that Planet Energy's processes were deficient
11 not simply because Mr. MacArthur and Mr. Nahid are going to
12 give evidence that they were deficient, but because and --
13 they are trying to do this through the back door,
14 indirectly -- but because apparently these other IBOs who
15 were friends and acquaintances of Mr. MacArthur, who also
16 didn't follow the rules and thought it was okay.

17 And if that's the purpose of the evidence, if that's
18 why it's relevant, which is the only reason it could be
19 relevant, then those people need to be here giving evidence
20 and being cross-examined. I say they can't because it's
21 not even relevant under the terms of the notice. As Ms.
22 Armstrong said, it's about these two IBOs. But even if you
23 were to stretch it beyond that, these folks need to be
24 here.

25 And it's particularly unfair and prejudicial when Mr.
26 MacArthur, in his witness statement upon which Board Staff
27 relies, has referenced somewhere between half a dozen and a
28 dozen of these unidentified people. And Board Staff, for

1 the purposes of the evidence they relied upon in issuing
2 the notice, decided it wasn't necessary to demand that Mr.
3 MacArthur identify these people. They decided it wasn't
4 necessary to contact these people and corroborate what Mr.
5 MacArthur was saying. And it was only after the notice was
6 issued and we had disclosure made to us that we demanded to
7 know who these people were, so that we could actually do
8 the job that properly should have been done by Board Staff,
9 and at that point got -- that was refused.

10 So you can't have it both ways. My friend can't
11 refuse to disclose the identities of these people, refuse
12 to allow their alleged out of court hearsay statements to
13 be tested, but then try to rely upon it. Those are my
14 submissions.

15 MS. LONG: Thank you Mr. Zacher. Mr. Safayeni?

16 MR. SAFAYENI: So what we have heard is a perhaps
17 compelling perhaps not explanation for the weight to be
18 attributed to this evidence at the end of the day, which of
19 course is entirely in this panel's discretion and is not a
20 matter, frankly, to be discussed now. It's a matter for
21 argument at the end of the case.

22 The reason why this particular piece of evidence is
23 being led is because whether you believe Mr. MacArthur at
24 the end of the day, his credibility and reliability will
25 depend in part on the circumstances surrounding what he
26 did. I have no doubt that my friend is going to get up at
27 the end of the day and say this witness is not reliable and
28 you shouldn't believe him. That's going to be a major

1 point of contention is the credibility of our witnesses, I
2 expect, and it's going to be a matter for argument.

3 The circumstances in which Mr. MacArthur, and the
4 other witnesses frankly, did what they did is directly to
5 the reliability and credibility of their story and whether
6 it has the ring of truth or not. We are not going to get
7 up here at the end of the day and make allegations based
8 on, you know, so-and-so said, unnamed-person said they
9 weren't trained so you should increase the penalty for lack
10 of training. I mean, the allegations are tied to the two
11 salespeople. We have been clear on that throughout and
12 there's -- my friend's reference to try and back-door the
13 evidence, with great respect, is misplaced. That's not the
14 reason for this, and we are not going to get up at the end
15 of the day and ask you to make findings based on an unnamed
16 IBOs hearsay testimony on lack of training.

17 So if that's the concern, I can offer my friend some
18 assurance in that regard. But the weight to be attributed
19 to the testimony of what Mr. MacArthur and Mr. Nahid say
20 others around them said and did and whether that increases
21 the reliability or credibility of their versions of events
22 on what they said and did is directly relevant and,
23 frankly, whether you consider it or not later on is
24 something we can argue about later on, but it certainly
25 doesn't meet the very high threshold for shutting the door
26 at the admissibility stage. And I haven't seen any case
27 law from my friend to the contrary. I mean, shutting the
28 door on hearsay under section 15, it's a very, very high

1 threshold, and I don't think it's even close to being met
2 in this case.

3 MS. LONG: Mr. Zacher, can you address that issue with
4 respect to whether this does go to the credibility of the
5 witness and therefore we should hear it?

6 MR. ZACHER: First of all, two points. Under section
7 15 the Panel has the discretion whether to allow hearsay
8 evidence or not, and there is no standard. It's in your
9 discretion as to whether it's reasonable and fair in the
10 circumstances whether the evidence is reliable,
11 trustworthy, et cetera.

12 Two, as I said, it is -- and my friend doesn't take
13 issue with this -- it's not relevant to what is alleged in
14 the notice. It is not -- the first threshold -- the first
15 threshold question my friend has to meet is, is it
16 relevant? Before we even talk about hearsay. And he
17 admits it's not relevant to proving the alleged
18 contraventions. It doesn't matter why Mr. MacArthur did
19 what he is alleged to have done. My friend says it's
20 relevant solely for the purpose of credibility, and in my
21 submission, weighing that need for it versus the extreme, I
22 say, prejudice and unfairness, because what this is about
23 is a case, as the notice says and as Ms. Armstrong very
24 candidly said in her examination, it's about proving this
25 through two IBOs. You heard her say we didn't follow up
26 and ask, call any customers or any other IBOs or sales
27 people, it's about these two people.

28 And the prejudice is that this is being called in

1 order to indirectly taint my client's training, testing,
2 and marketing processes. And it's particularly unfair when
3 we asked for this. The Board Staff didn't ask for it as
4 part of their investigation. We asked for it.

5 And the initial response from my friend was, we don't
6 have any control over witnesses. These are not Board
7 employees. We will make a request of Mr. MacArthur. A
8 request was made, the identities and contact information
9 were refused, we brought a motion, and we still didn't get
10 the information.

11 And it's just -- it's just a matter of fairness and
12 justice. You can't, having refused to offer any
13 information about these unnamed people, now allow my friend
14 to lead evidence as to what these people apparently said to
15 Mr. MacArthur.

16 And, you know, my friend acts for the enforcement
17 team, and their obligation is not to get a conviction no
18 matter what, it's to be fair and to put the evidence fairly
19 before this Panel. And I say this is not fair.

20 MS. LONG: Thank you. Okay. We are going to take our
21 morning break to consider this, so we will be back in 20
22 minutes, thank you.

23 --- Recess taken at 10:43 a.m.

24 --- On resuming at 11:06 a.m.

25 MS. LONG: Please be seated. We have considered your
26 submissions, and we will allow Mr. MacArthur to explain why
27 he made that comment, but only for the purpose of
28 establishing Mr. MacArthur's understanding and belief. But

1 the evidence will not be used for the purpose of
2 establishing the truth of that statement, so not to
3 establish that other agents did not, in fact, read the
4 materials. We would like to continue on that basis. So
5 could we bring Mr. MacArthur back in?

6 MR. SAFAYENI: Yes, we are in the course of bringing
7 him back in, Madam Chair, thank you.

8 MS. LONG: Is Mr. MacArthur coming back in?

9 MS. GONSALVES: Yes, Ms. Marijan has gone to get him.
10 He was just around the corner.

11 MS. LONG: Okay, thank you.

12 [Witness takes the stand]

13 MR. SAFAYENI: Okay, Mr. MacArthur. Do you still have
14 tab 20 of Exhibit KX1.2 open in front of you, the
15 certificate of completion?

16 MR. MacARTHUR: Yes.

17 MR. SAFAYENI: And so I will just ask you again. What
18 did you mean by that "none of us did" comment at the bottom
19 of that page?

20 MR. MacARTHUR: This was in reference to questions
21 about the training. And when I say I did not read the
22 product training, none of us did, meaning the people that I
23 was involved with, other ACN IBOs. It was exactly the same
24 for them; they didn't read it.

25 MR. SAFAYENI: Well, that -- anyway.

26 MS. LONG: Mr. MacArthur, that was your understanding?

27 MR. MacARTHUR: Yes.

28 MR. SAFAYENI: Okay. I am going to move on. So

1 before you were able to start selling energy contracts, did
2 you have to complete any kind of test?

3 MR. MacARTHUR: Yes. The only kind of test I had to
4 complete was a test in order to get my badge to sell energy
5 products.

6 MR. SAFAYENI: And was that a test taken online, or in
7 paper copy?

8 MR. MacARTHUR: That test was taken online.

9 MR. SAFAYENI: And can you describe to me the
10 circumstances in which that test was completed?

11 MR. MacARTHUR: It was in a coffee shop, and there was
12 another ACN IBO who answered all the questions and pushed a
13 button and I qualified.

14 MR. SAFAYENI: Was this other ACN IBO part of the
15 Momentum Group?

16 MR. MacARTHUR: Yes.

17 MR. SAFAYENI: Do you know whether they stood to
18 benefit financially from any products that you sold?

19 MR. MacARTHUR: Yes.

20 MR. SAFAYENI: Did he or she stand to gain financially
21 from products that you sold?

22 MR. MacARTHUR: Yes.

23 MR. SAFAYENI: Who completed the online test that
24 resulted in your badge?

25 MR. MacARTHUR: Who in position or name?

26 MR. SAFAYENI: Well, let's start with position.

27 MR. MacARTHUR: He was senior vice president of ACN.

28 MR. SAFAYENI: I know we talked about this earlier,

1 but just to be clear for the record, when you say senior
2 vice president of ACN, are you referring to an actual
3 employee or officer of the company?

4 MR. MacARTHUR: No.

5 MR. SAFAYENI: What are you referring to?

6 MR. MacARTHUR: In the IBO system we reviewed at a
7 previous page, as you move up through the ranks and have
8 sold more and signed up more people, you become a director,
9 then a regional director, then a regional vice president,
10 but they are not in any way connected to the corporation of
11 ACN.

12 MR. SAFAYENI: And just to be clear for the record, if
13 you have Exhibit KX 1.2 in front of you and turn to tab 19.

14 MR. MacARTHUR: Yes.

15 MR. SAFAYENI: The first page of that document, we
16 already looked at this, but panel 8, all the way to the far
17 end where it says senior vice president.

18 MR. MacARTHUR: Yes.

19 MR. SAFAYENI: Is that what you are talking about?

20 MR. MacARTHUR: Yes.

21 MR. SAFAYENI: What role, if any, did you play in
22 completing your online test?

23 MR. MacARTHUR: The only role I completed was I
24 actually had to print it off my computer so I had the
25 badge.

26 MR. SAFAYENI: At some point in time, did you take the
27 test again?

28 MR. MacARTHUR: Yes.

1 MR. SAFAYENI: And what were the circumstances
2 surrounding that test?

3 MR. MacARTHUR: Exactly the same.

4 MR. SAFAYENI: Okay. Can you just take me through it
5 again, for the sake of completeness?

6 MR. MacARTHUR: There was another ACN IBO who -- he
7 and I sat at a laptop, he answered the questions, and then
8 it was completed and I was able to get my badge, which I
9 had to print myself, actually.

10 MR. SAFAYENI: And was that ACN IBO also part of the
11 momentum group?

12 MR. MacARTHUR: Yes.

13 MR. SAFAYENI: And did he also stand to benefit
14 financially from sales of your contracts?

15 MR. MacARTHUR: Yes.

16 MS. LONG: Sorry, Mr. Safayeni, can I just clarify?
17 Mr. MacArthur, you were in the coffee shop with a laptop,
18 and when you say you had to print off your badge, did you
19 print the badge off at that time, or did you go home and
20 print it?

21 MR. MacARTHUR: No, I had to go home actually and use
22 my printer and print it out.

23 MS. LONG: Okay, thank you.

24 MR. SAFAYENI: Do you remember how long after taking
25 or completing the online test the first time, how much time
26 passed before you started approaching prospective consumers
27 about energy contracts?

28 MR. MacARTHUR: Right away.

1 MR. SAFAYENI: Okay. Can I take you to tab 21, same
2 binder, still in Exhibit KX1.2.

3 MR. MacARTHUR: Yes.

4 MR. SAFAYENI: And just to make sure we are looking at
5 the same document, it's a document that across the top
6 right-hand side says "Independent Business Owner
7 Agreement". Do you see that?

8 MR. MacARTHUR: Yes, I do.

9 MR. SAFAYENI: Does this document look familiar to
10 you? MR. MacARTHUR: Yes.

11 MR. SAFAYENI: Can you explain to me what it is?

12 MR. MacARTHUR: Well, as the title suggests, it's an
13 Independent Business Owner Agreement. It is familiar to
14 me, but I don't recall signing it and I don't believe I
15 have a signed copy.

16 MR. SAFAYENI: Sorry, so you don't remember -- whether
17 it was this particular document or one that looked similar
18 to it, you don't remember whether you signed one or not?

19 MR. MacARTHUR: That's right.

20 MR. SAFAYENI: Okay. Do you remember seeing it at
21 some point in time while you were an ACN IBO?

22 MR. MacARTHUR: It looks familiar, but it was not
23 something I paid attention to.

24 MR. SAFAYENI: I want to take you, if I could, to a
25 couple of statements in the document. If you look under,
26 about a third of the way down the first page, under where
27 it says "credit card number" -- are you with me?

28 MR. MacARTHUR: Yes.

1 MR. SAFAYENI: It says:

2 "I understand that there is no requirement beyond
3 the completion of this application and no
4 purchase of sales or training materials are
5 required to become an independent business
6 owner."

7 Does that accord with your experience at ACN?

8 MR. MacARTHUR: Yes.

9 MR. SAFAYENI: And then it says:

10 "My advancement to higher levels in the
11 compensation plan is based upon the acquisition
12 of customers and their telecommunications,
13 Internet usage."

14 And then it says:

15 "I acknowledge that any purchase of sales aids,
16 training materials, or training is strictly
17 voluntary."

18 That last sentence I just read, does that accord with
19 your experience at ACN?

20 MR. MacARTHUR: Yes.

21 MR. SAFAYENI: I'd ask you to turn to the back of the
22 page.

23 MR. MacARTHUR: Yes.

24 MR. SAFAYENI: And I ask you to go to the bottom of
25 the first column, point 18.

26 MR. MacARTHUR: Mm-hmm.

27 MR. SAFAYENI: It says:

28 "I acknowledge that attendance at the training is

1 entirely optional. If I decide not to attend the
2 training this in no way affects my eligibility
3 for commissions."

4 Does that accord with your experience at ACN?

5 MR. MacARTHUR: Yes.

6 MR. SAFAYENI: And finally, the next point, point 19:

7 "ACN shall periodically make available sales
8 literature, promotion materials, training, and
9 other products or services available. I,
10 however, am under no obligation to purchase any
11 quantities of those materials or services at any
12 time. Rather, I will have the option to order
13 and purchase any materials or services which I
14 may choose."

15 And does that accord with your experience at ACN?

16 MR. MacARTHUR: Yes.

17 MR. SAFAYENI: Apart from the material that we have
18 discussed already today, do you remember looking at any
19 other material relating to energy contracts before you
20 started selling energy contracts?

21 MR. MacARTHUR: No.

22 MR. SAFAYENI: And once you printed your badge, were
23 there any further steps you had to complete before you
24 could start selling energy contracts?

25 MR. MacARTHUR: I had to order business cards.

26 MR. SAFAYENI: And apart from that? Any other steps
27 that you can remember?

28 MR. MacARTHUR: No.

1 MR. SAFAYENI: Did you have discussions with anyone
2 else at ACN about strategies for selling energy contracts?

3 MR. MacARTHUR: Yes.

4 MR. SAFAYENI: Can you tell me about that, please?

5 MR. MacARTHUR: It was from -- it was a guide,
6 actually, or a guideline for me to follow when you're
7 selling electricity contracts. The process was you ask the
8 customer to see their hydro bill, you looked at the hydro
9 bill, and you determined that you could point out to them
10 what they were paying in cents per kilowatt-hour, and then
11 you would go and draw their attention to the fact that you
12 could sign up for five years for 4.99 cents per kilowatt-
13 hour with ACN.

14 MS. LONG: I am sorry, Mr. MacArthur, I missed what
15 you said. Did you say this was from a guy or a guide?

16 MR. MacARTHUR: It was a guide.

17 MS. LONG: Guide, thank you.

18 MR. SAFAYENI: And --

19 MR. ZACHER: Madam Chair, sorry. I am reluctant to
20 interject again. But you had indicated in your ruling that
21 Mr. MacArthur could give evidence on that particular
22 document with regards to his understanding for the comment
23 he made, but I think we are getting into an area, again,
24 where he is being asked about statements that were made to
25 him by other friends, acquaintances, who were ACN IBOs. He
26 said that these people were not part of the ACN
27 organization, let alone Planet Energy, and these are the
28 sorts of statements, again, that I would object to. They

1 are hearsay, and they relate to people whose identities Mr.
2 MacArthur refused to disclose.

3 MR. SAFAYENI: I am not sure if we need to excuse the
4 witness or not. I can try and make my point briefly and
5 then if we have to do a more elaborate argument perhaps we
6 could excuse him at that time.

7 MR. JANIGAN: Can I have a clarification question
8 before that? I mean, it looks as if, that you're
9 referencing a guide and not conversations with other
10 people. Am I mistaken on that?

11 MR. SAFAYENI: I mean, to be fair, I think this issue
12 is going to come up, so I think --

13 MS. LONG: I am going to ask Mr. MacArthur -- I am
14 sorry, Mr. MacArthur, can we have you leave the room again?
15 We need to discuss a point of evidence here.

16 [Witness withdraws]

17 MS. LONG: Mr. Safayeni, can you address Mr. Janigan's
18 question?

19 MR. SAFAYENI: Yes, I mean, I did hear the witness say
20 "guide", but I think we should explore this point, because
21 I expect he will discuss what he was told by other IBOs in
22 terms of a sales approach, so I don't want to play cute
23 with that, I expect that's going to be part of his
24 evidence.

25 It is not hearsay. It is not being tendered for the
26 truth of its contents. This is unlike the "none of us did"
27 comment in that respect. The "none of us did" comment was
28 something he wrote, and I asked him to explain. But it

1 wasn't a comment that was said to him.

2 This evidence is being led so that this Panel has the
3 benefit of understanding what Mr. MacArthur was told; he of
4 course can speak to what he was told from people. It's
5 critical to understanding and evaluating his reliability
6 and credibility, whether you believe he engaged in the
7 actions he is going to describe; it's directly relevant to
8 that.

9 And I think we have to tease out two different issues
10 which my friend, with respect, is conflating. There is a
11 hearsay concern, which does not arise here at all. I can
12 -- any witness can testify as to what they were told by
13 somebody and as long as it's not being tendered for the
14 truth of its contents, but the fact that it was said,
15 that's not hearsay.

16 And there is a separate second issue, which is
17 relevance. And in my submission, at the risk of being
18 redundant, it's directly relevant to whether Mr.
19 MacArthur's overall story about what he did here is to be
20 believed, and the circumstances that led him to do it. I
21 don't understand how we can close the door on that.

22 So I don't want to keep having this argument every
23 time I ask Mr. MacArthur what were you told by other
24 people. It's going to be a major part of his evidence.
25 It's part of his story, it's why he did what he did, and
26 it's directly relevant. If we want to have a fight about
27 weight later, of course that's for another day.

28 MS. LONG: Mr. Zacher?

1 MR. ZACHER: Well, again, there's two issues,
2 relevance and then whether it's hearsay.

3 Whether it's hearsay, as my friend said, in large part
4 depends upon the purpose for which it's being tendered. It
5 certainly -- my friend intends to lead evidence to have --
6 sorry, to lead questions to have Mr. MacArthur talk about
7 out of court statements that were made to him by people who
8 were not -- who were just friends and acquaintances who
9 happened to be IBOs, as Mr. MacArthur made very clear that
10 they are not part of the ACN organization, let alone Planet
11 Energy.

12 And as I indicated earlier, the reason for why Mr.
13 MacArthur did what he did is not relevant to the matters
14 that are at issue in this proceeding.

15 And an example that's frequently used is an impaired
16 driving case where a police officer gives evidence about
17 what somebody told him, you know, at a bar about the
18 condition of the accused who is subsequently pulled over.
19 And that statement can't be used as proof of whether the
20 person was impaired. But it's relevant because it goes to
21 whether there was reasonable cause to pull -- for the
22 police officer to pull the person over.

23 And that's what's completely missing here. There's no
24 reason to adduce this evidence in order to sustain the
25 matters that are at issue in this proceeding, that is
26 the allegations that are made in the notice. You don't
27 need to have this evidence; my friend doesn't need this
28 evidence to prove them.

1 And what he -- and the danger in this is that, as I
2 said earlier, it is really being put forward in order to
3 supplement a case which is based on two people, and to
4 suggest that it was more widespread. And that's just
5 unfair. And if that was the enforcement team's case,
6 then the notice should have been based not on two IBOs, but
7 on a whole bunch. And there should be evidence from those
8 people, if that was the case.

9 MR. SAFAYENI: If I can just respond briefly. First
10 of all, I have heard my friend say a few times now that
11 this is evidence from people who were not part of the ACN
12 organization. I think that's a little bit too broad. I
13 mean, they are ACN IBOs, they are not officers; that was
14 Mr. MacArthur's evidence.

15 But anyway, that doesn't impact whether it's hearsay
16 or not, and frankly didn't affect whether it's hearsay or
17 not. So that should be put off to one side entirely.

18 I don't know how much clearer I can be about the use
19 or intended use, and why this is relevant. I think I
20 should have addressed my friends concerns about the use,
21 the limited use to which it will be put. We're not dealing
22 with a jury here. We are dealing with three experienced
23 Panel members. I think even in this room can understand
24 the limitations to which this evidence can be put.

25 The idea that this is so prejudicial that it can't
26 even enter your ears, I think, with respect, is a stretch,
27 and the relevance -- again, I think my friend has basically
28 given up on the hearsay argument. But the relevance again,

1 is it's relevant to whether you believe the story.
2 Somebody saying I did this, and somebody saying I did this
3 because somebody came up to me and told me to do it, those
4 are two different stories.

5 And as I said before, my friend is going to come at
6 the end of the day and make a spirited attack on the
7 credibility of our witnesses, as he is entitled to do. But
8 for this Panel to have the benefit of a full assessment of
9 whether the witnesses are credible, you should be able to
10 hear their story. And how much weight you give it at the
11 end of the day, of course, is up to you.

12 But it's extremely -- it does a disservice, frankly,
13 to the credibility assessment this Panel will have to make
14 to shut the door at the front end and not let the witness
15 explain why he did what he did.

16 MR. ZACHER: I will make one last point. Even if --
17 my friend says the purpose of it is it's relevant to
18 credibility and that's sufficient for you to allow it, it
19 is extraordinarily unfair to allow my friend to lead this
20 evidence to establish the credibility and the
21 reasonableness of Mr. MacArthur's story in circumstances
22 where Mr. MacArthur has alluded to these unnamed people in
23 his witness statements, but refused to give the information
24 to us -- or to Board Staff, for that matter -- in advance
25 of the hearing, so that we could assess that credibility.
26 And frankly, if that information had been provided, we
27 could have those people here to counter this. You can't,
28 you can't rely --

1 MS. LONG: So help me with this, Mr. Zacher. So the
2 first thing, that it doesn't go to the truth of the
3 statements -- I guess I am having difficulty here, the fact
4 -- I mean, on one hand, we do want to hear the story that
5 Mr. MacArthur has to say, but it doesn't necessarily mean
6 that we are going to accept that those things happened.
7 And you have the opportunity to cross-examine him on who
8 these people are, and we have the opportunity to hear that
9 evidence and make our determination as to whether or not we
10 can rely on it, full knowing that those people are not in
11 this room, that they haven't come forward that we have no
12 evidence from them, and make a determination on that basis.

13 I understand your concern, but I also understand that
14 you have the ability to put these questions to him in
15 cross-examination and ask him.

16 MR. ZACHER: I do. And I should have added I don't
17 disagree with my friend that certainly the Panel is
18 equipped to decide what's relevant and what deserves weight
19 and no weight, or limited weight.

20 MS. LONG: Yes, we understand that.

21 MR. ZACHER: But it's a little empty to suggest that,
22 in my submission, that we get the opportunity -- we are
23 solely limited to testing Mr. MacArthur's story on cross-
24 examination, because we haven't been given the opportunity
25 in advance to contact these people, to ask if what he is
26 saying is correct, to call them as witnesses.

27 I'd like to suggest that, you know, I wish my cross-
28 examination skills were more advanced than they are, but it

1 is difficult to cross-examine a witness who says somebody
2 told me something, they haven't provided who that person
3 is, anything about them, their identities, in advance and,
4 you know, you are supposed to deal with that on the day of
5 the hearing. I mean, that's why we brought a motion,
6 that's why we requested this information. And there is
7 just a -- there is just a threshold unfairness to allow my
8 friend to lead this evidence to establish Mr.
9 -- for Mr. MacArthur to give the ring of truth to his
10 story, having not provided it in advance. So I will keep
11 it at that.

12 MS. LONG: Give us a moment, please.

13 Sorry, Mr. Zacher?

14 MR. ZACHER: I mean, let me -- no, that's fine.

15 MS. LONG: Thank you. We are going to allow the
16 evidence in, and we are going to consider the caveats and
17 the things that have been put forward to us when we make a
18 determination as to what weight we will give this evidence.
19 So Mr. MacArthur can come back in.

20 MR. JANIGAN: Is there any indication for the time
21 schedule for the rest of this day?

22 MR. SAFAYENI: I expect to be perhaps another hour to
23 hour and a half with Mr. MacArthur. And we have our -- I
24 am not sure how long my friend will be in cross-
25 examination, and then we have a second witness, Mr.
26 Hawkins, who is also here today and prepared to begin if we
27 get there.

28 MS. LONG: Do you have an estimate for what your

1 direct will be for Mr. Hawkins, how many hours?

2 MR. SAFAYENI: Much shorter, I expect it will be 45
3 minutes to an hour.

4 [Witness takes the stand]

5 MS. LONG: Mr. Zacher, is it too soon to tell what
6 your estimated cross-examination of this witness -- how
7 long it will be? And I am not going to hold you to it --

8 MR. ZACHER: Yeah, I am going to -- I am going to -- I
9 think it will be somewhere between an hour and an hour and
10 a half. It may not be that long --

11 MS. LONG: Okay. Thank you.

12 MR. ZACHER: -- probably, I hope closer to the one
13 hour.

14 MS. LONG: Okay, thank you.

15 Thank you, Mr. MacArthur.

16 MR. SAFAYENI: So I think just before you left the
17 room you had said something about a guide with a D-E at the
18 end. Do you remember that answer?

19 MR. MacARTHUR: No.

20 MR. SAFAYENI: Okay. What did you say -- you were
21 talking about whether you had received any information from
22 other IBOs in terms of selling energy contracts, and I
23 asked what information you had received, so maybe I will
24 just ask the question again.

25 MR. MacARTHUR: I received a fair bit of information
26 from ACN IBOs that were in the same position as me, being
27 new, and it wouldn't be a guide, it would be more like
28 information from guys.

1 MR. SAFAYENI: Okay. I am going to show you -- well,
2 I think another thing you said, actually, as I look at my
3 notes, is that -- well, were you told anything about asking
4 for a prospective consumer's bill by other ACN IBOs or by
5 anyone?

6 MR. MacARTHUR: You mean about how to ask for the
7 bills, or...

8 MR. SAFAYENI: Anything relating to a prospective
9 consumer's bill.

10 MR. MacARTHUR: Well, it would be standard practice
11 to, with a new customer, to ask to see their gas bills,
12 hydro bills, phone bills, whatever.

13 MR. SAFAYENI: Okay, so let's stick with gas or hydro.
14 What were you told, if anything, in respect of gas or hydro
15 bills?

16 MR. MacARTHUR: Well, we would look at the rate that
17 they were paying, and then we would show them the
18 comparison between that and what the five-year locked-in
19 rate was for ACN, which is 4.99 cents per kilowatt-hour.

20 MR. SAFAYENI: Okay, can I ask you to turn in the
21 binder, still KX1.2, for the record, can I ask you to turn
22 to tab 40, please.

23 MR. MacARTHUR: Yes.

24 MR. SAFAYENI: And this is a tab with several pages,
25 but if you follow the pages along the top, can you go to
26 page 13.

27 MR. MacARTHUR: Yes.

28 MR. SAFAYENI: This is not one of your consumers, but

1 I am just using this bill as -- for the purposes of our
2 discussion. So could you take me through what you would
3 say, if anything, once a consumer had produced a bill,
4 using this bill as an example?

5 MR. MacARTHUR: Okay, it was normal practice to, if
6 the customer gave me this bill, I would look at their
7 electricity charges, specifically the charges for the
8 energy product, nothing to do with anything else on the
9 bill. And here you can see it's -- there is summer on-
10 peak, summer mid-peak, summer off-peak, and I would simply
11 add those up and average them. So you are taking 23.13,
12 47.22, 114.74, divide it by three, and compare that against
13 the five-year locked-in rate of ACN of 4.99 cents.

14 So I would simply say to a customer, five cents
15 versus, if I do the math here, it's...

16 MR. SAFAYENI: I don't think you have to do the math
17 on the spot.

18 MR. MacARTHUR: Okay.

19 MR. SAFAYENI: Was there ever a situation where the
20 comparison against the rates in the bill that you reviewed
21 from a prospective consumer came out to be less than the
22 Planet Energy fixed rate?

23 MR. MacARTHUR: Umm, no.

24 MR. SAFAYENI: And in your view is it a fair
25 comparison to be comparing the fixed rate to the average of
26 the rates you just talked about, the summer on-peak, summer
27 mid-peak, summer off-peak?

28 MR. MacARTHUR: No, that's really not a fair

1 comparison.

2 MR. SAFAYENI: Why do you say that?

3 MR. MacARTHUR: Because the math just doesn't work
4 out. You're -- what's the right word? You are trying to
5 convince somebody at the least line of resistance. So, you
6 know, 17 cents versus 4.99 cents, so we would just go over
7 that peripherally with the new customer sitting there and
8 say, Oh, well, I am going to save X cents. That was it.

9 MR. SAFAYENI: And do the summer on-peak, summer mid-
10 peak, summer off-peak rates include the global adjustment?

11 MR. MacARTHUR: Yes, they are included in those rates.
12 The global adjustment is included in those rates. But at
13 that time when I first started, I did not know that, I was
14 not aware of it.

15 MR. SAFAYENI: And was the global adjustment -- is the
16 global adjustment included in the 4.99 or the fixed rate
17 that you were quoting --

18 MR. MacARTHUR: No.

19 MR. SAFAYENI: -- for Planet Energy. Can I take you
20 to tab 22, please, in the same volume, Exhibit KX1.2?

21 MR. MacARTHUR: Yes.

22 MR. SAFAYENI: Does this document look familiar to
23 you?

24 MR. MacARTHUR: Yes.

25 MR. SAFAYENI: Where did you get it from?

26 MR. MacARTHUR: I actually got it from the name on
27 this hydro account, [REDACTED].

28 MR. SAFAYENI: Who is [REDACTED]?

1 MR. MacARTHUR: He is an ACN IBO.

2 MR. SAFAYENI: Was he part of the Momentum Group?

3 MR. MacARTHUR: Yes.

4 MR. SAFAYENI: Did he stand to benefit financially
5 from any sales that you made?

6 MR. MacARTHUR: Yes.

7 MR. SAFAYENI: And what, if anything, did [REDACTED]
8 tell you with respect to this document?

9 MR. MacARTHUR: It was given to me to be part of my
10 sales binder that we would show customers and briefly
11 showing a customer, okay, here is the before rate and a
12 typical residence, and you flip it over and there's the
13 after rate.

14 MR. SAFAYENI: And just for the record, can you tell
15 me what figures you would draw a perspective consumers
16 attention to on each side of the bill? Let's start with
17 the before page first.

18 MR. MacARTHUR: I would look at simply basically the
19 amount due.

20 MR. SAFAYENI: That's the 196.36?

21 MR. MacARTHUR: 196 on the before page, and 108 on the
22 second page.

23 MR. SAFAYENI: Okay. So what did Mr. Jones tell you
24 with respect to this document?

25 MR. MacARTHUR: He said it was an important document
26 to show people when I am trying to sell them hydro. It was
27 in my sales binder, so it was one of many items in the
28 sales binder that would enforce or bring to potential

1 customers' attention that there is savings in this
2 particular product.

3 MR. SAFAYENI: And did you show it to all of your
4 prospective consumers?

5 MR. MacARTHUR: Pretty well, yes.

6 MR. SAFAYENI: And what would you tell prospective
7 consumers when you showed them this bill?

8 MR. MacARTHUR: That here is an example of a typical
9 residence, the hydro bill, and there is 196 compared to
10 108.

11 MR. SAFAYENI: Looking at this document now, do you
12 think the before and after is a fair comparison?

13 MR. MacARTHUR: No.

14 MR. SAFAYENI: And why do you say that?

15 MR. MacARTHUR: Well, first of all, the before page is
16 dated November 2011, and the back page, the after back page
17 is dated March 7th, 2012.

18 MR. SAFAYENI: Sorry, Mr. MacArthur, just to be clear
19 for the record, you are looking at the due dates, I
20 believe, on the documents, correct?

21 MR. MacARTHUR: Yes.

22 MR. SAFAYENI: Okay.

23 MR. MacARTHUR: Yes.

24 MR. SAFAYENI: Okay. And why is that relevant?

25 MR. MacARTHUR: Well, at the time it wasn't. But, you
26 know, some years later, even now because of what we are
27 going through, it did -- I had a good look at these
28 documents and it did stand out to my attention. Whereas in

1 originally I would say, you are going to save \$80 or, what
2 is it -- yeah, about 78 or \$80 a month if you switch.

3 MR. SAFAYENI: Okay. Is there any other aspect of the
4 comparison that leads you to say that it wasn't fair?

5 MR. MacARTHUR: Well, the global adjustment is shown
6 in the after, which I wasn't even aware of at the time what
7 the global adjustment was. But what I now know is that
8 would make it an unfair comparison.

9 MR. SAFAYENI: Mr. MacArthur, did you, if you look at
10 the after bill and where it says "description and amount",
11 do you see that about halfway down the page on the right-
12 hand side?

13 MR. MacARTHUR: Yes, yes.

14 MR. SAFAYENI: The fourth line down it says "balance
15 forward 66.26 credit". Do you see that?

16 MR. MacARTHUR: Yes.

17 MR. SAFAYENI: Did you bring that line to any
18 prospective consumer's attention?

19 MR. MacARTHUR: No, because I never even thought about
20 it.

21 MR. SAFAYENI: Okay. Can you turn the page, please,
22 behind tab 23?

23 MR. MacARTHUR: Yes.

24 MR. SAFAYENI: Do you recognize this document?

25 MR. MacARTHUR: Yes.

26 MR. SAFAYENI: And can you explain to me what it is?
27 There's actually two documents. There's two letters, one
28 that says [REDACTED] at the top, and one that says [REDACTED]

1 [REDACTED].

2 MR. MacARTHUR: Yes, they're both -- actually, they
3 are actually the same. [REDACTED], for example, and [REDACTED]
4 [REDACTED] are saying -- The [REDACTED], first of all, they've saved
5 almost \$25,000 a year on their energy costs, and they
6 related to 26.6 percent savings on their electricity rates
7 under the [REDACTED] name.

8 MR. SAFAYENI: Who provided you with these letters?

9 MR. MacARTHUR: [REDACTED].

10 MR. SAFAYENI: And what did he tell you, if anything,
11 about the letters?

12 MR. MacARTHUR: There was discussion about, you know,
13 how you use them. You show the customer these letters and
14 you flip through, and there was other letters from other
15 corporations, too, in terms of the prospect understanding
16 that big companies, or large companies were buying the
17 product.

18 MR. SAFAYENI: And how, if at all, would you use these
19 letters when you were approaching prospective consumers?

20 MR. MacARTHUR: Well, it was in my sales binder and as
21 I was going through the binder, I would say, you know, here
22 are some confirmations that further, further show the -- I
23 don't know what the right word is, the idea being actually
24 that since large companies were buying it, if it's good for
25 Mikey then it's good for -- so these people would recognize
26 these names and recognize, well, if these people are saving
27 money, then I must be able to save money.

28 MR. SAFAYENI: Do you have any personal or direct

1 knowledge as to whether The [REDACTED] did
2 receive the savings described in the letters?

3 MR. MacARTHUR: No, I had no idea. I just took it as
4 -- at face value.

5 MR. SAFAYENI: Can you turn the tab again? Now we are
6 at tab 24, still in Exhibit KX1.2.

7 MR. MacARTHUR: Yes.

8 MR. SAFAYENI: Do you recognize this document?

9 MR. MacARTHUR: Yes.

10 MR. SAFAYENI: Who provided this to you?

11 MR. MacARTHUR: That came from another ACN IBO, and I
12 believe it was [REDACTED], again, that provided that
13 document.

14 MR. SAFAYENI: And what, if anything, did Mr. Jones
15 tell you about this document?

16 MR. MacARTHUR: Nothing other than the fact it's just
17 another document or something you should show your
18 prospective customers to emphasize the fact that in this
19 case it says the hydro rates are going up 42 percent.
20 Well, at this point in the presentation I would simply give
21 a brief explanation of how and why the hydro rates are
22 going to go up and they are never going to come down. So
23 it was a tool, actually, in the sales binder.

24 MR. SAFAYENI: And so was this a document that you
25 showed to all of your prospective consumers?

26 MR. MacARTHUR: Yes.

27 MR. SAFAYENI: And I apologize if I asked you this
28 already, but the letters that we looked at in tab 23 from

1 The [REDACTED], was that a document that you
2 showed to all of your prospective consumers?

3 MR. MacARTHUR: Yes.

4 MR. SAFAYENI: You have referenced a few times in your
5 answers something that you called a sales binder; correct?

6 MR. MacARTHUR: Correct.

7 MR. SAFAYENI: And these three documents I have taken
8 you to, the before and after, the testimonials, and the
9 picture of the hydro rates billboard, were those part of
10 the sales binder then?

11 MR. MacARTHUR: Yes, they were.

12 MR. SAFAYENI: There were other documents -- were
13 there other documents in the sales binder as well?

14 MR. MacARTHUR: Yes, and they are missing here.

15 MR. SAFAYENI: But you provided that sales binder to
16 us in the course of these proceedings?

17 MR. MacARTHUR: Yes.

18 MR. SAFAYENI: Would you take customers to every tab
19 in the sales binder?

20 MR. MacARTHUR: No.

21 MR. SAFAYENI: Did you ever accompany another ACN IBO
22 to a meeting with one of their prospective consumers?

23 MR. MacARTHUR: Okay, so that I understand, did I
24 accompany another ACN IBO to one of their customers?

25 MR. SAFAYENI: To meeting with one of their
26 prospective consumers.

27 MR. MacARTHUR: No.

28 MR. SAFAYENI: And did any ACN IBO or anyone else from

1 ACN or Planet Energy ever accompany you to a meeting with
2 someone who you eventually enrolled into a contract?

3 MR. MacARTHUR: Not prior to the sale, but there was
4 some meetings with the customers where I would bring
5 another person from an ACN IBO to some meetings, and that
6 was after they had been enrolled.

7 MR. SAFAYENI: Okay. And we will get to that. But on
8 average how long would you speak to prospective consumers
9 before they agreed to be enrolled with Planet Energy?

10 MR. MacARTHUR: Not very long. Since the customers
11 were largely friends of mine who I had done business with
12 in the past, there was an element of trust there. So, you
13 know, here is how you can save money in your electricity
14 and on your gas, and that was it.

15 MR. SAFAYENI: So I won't hold you to an -- I won't
16 require an exact number, but can you tell me if we are
17 talking -- ballpark length of time of the discussion, can
18 you give me some idea?

19 MR. MacARTHUR: Of how long the discussion was?

20 MR. SAFAYENI: Correct.

21 MR. MacARTHUR: I think on the average it would be 15
22 minutes for me doing my presentation, and the customer says
23 yes, and then we go from there.

24 MR. SAFAYENI: Did you generally follow the same
25 routine when you were selling Planet Energy contracts?

26 MR. MacARTHUR: Yes.

27 MR. SAFAYENI: Did you meet with consumers face-to-
28 face?

1 MR. MacARTHUR: Yes.

2 MR. SAFAYENI: Were there any exceptions where you did
3 not meet the consumer whose name is on the contract face-
4 to-face?

5 MR. MacARTHUR: Yes.

6 MR. SAFAYENI: How many exceptions?

7 MR. MacARTHUR: From memory, I would say three.

8 MR. SAFAYENI: And can you tell me, at least
9 generally, what led to those consumers being enrolled, the
10 ones that you didn't meet face-to-face?

11 MR. MacARTHUR: Well, in each case I was meeting with
12 somebody that -- who was a customer of mine in another
13 business, and in their position for these different
14 accounts, and I think there was three or four, they
15 actually ran the business, even though the business would
16 be registered in somebody else's name or numbered company.

17 MR. SAFAYENI: So in those cases who would you meet
18 with face-to-face, if anyone?

19 MR. MacARTHUR: By name, or...

20 MR. SAFAYENI: Let's say position with the company.

21 MR. MacARTHUR: Okay, basically the owner of the
22 company or -- let me rephrase that. The person that was
23 like the president of the company, although in one of them
24 they would show an address which happens to be an address
25 where there was a different person that the name of the
26 lease was in. And they were the actual decision-makers.
27 Like I said, the company could have been in somebody else's
28 name or a numbered company.

1 MR. SAFAYENI: What was the main focus point in your
2 discussions with prospective consumers when you were
3 talking to them about energy contracts?

4 MR. MacARTHUR: Say that again? What was the --

5 MR. SAFAYENI: What was the main focus in your
6 discussions with prospective consumers when you were
7 talking to them about energy contracts? What was --

8 MR. MacARTHUR: Very simple. "I can save you a lot of
9 money by switching to the ACN products."

10 MR. SAFAYENI: And did you honestly believe that to be
11 true at the time?

12 MR. MacARTHUR: Yes, I did.

13 MR. SAFAYENI: And when you said "ACN products", does
14 that include Planet Energy contracts?

15 MR. MacARTHUR: Yes, it does.

16 MR. SAFAYENI: And did you yourself, at least for a
17 time, enroll in Planet Energy contracts?

18 MR. MacARTHUR: Yes, I believe I did on one occasion.

19 MR. SAFAYENI: Did you speak with prospective
20 consumers -- and I am talking now before anybody agreed to
21 be enrolled -- about the global adjustment.

22 MR. MacARTHUR: No.

23 MR. SAFAYENI: When did you first become aware of the
24 global adjustment?

25 MR. MacARTHUR: It was sometime after joining ACN, and
26 I am thinking it really came to a head maybe during 2015.

27 MR. SAFAYENI: Okay. And what led to you becoming
28 aware of it?

1 MR. MacARTHUR: I had a customer, or customers plural,
2 that were questioning their bills because there was quite a
3 hike. And I didn't understand what the global adjustment
4 was, so I made it my business to find out what it is and
5 how it affects the rates. And that's how it went.

6 MR. SAFAYENI: Did you have discussions with the
7 consumers who raised this issue, after they raised it?

8 MR. MacARTHUR: Yes.

9 MR. SAFAYENI: Was anybody else present for those
10 discussions?

11 MR. MacARTHUR: On one occasion -- or two occasions,
12 rather, with the same customer, I had made two calls at
13 separate times, many months apart, regarding a huge
14 increase in rates, and this was for one particular
15 customer. And the reason the rates went up so dramatically
16 was because of the global adjustment.

17 MR. SAFAYENI: So I asked you whether anyone else
18 associated with ACN was involved in your discussions with
19 the consumer who raised this issue.

20 MR. MacARTHUR: Yes, there was two, two people on two
21 different occasions from -- they were ACN IBOs.

22 MR. SAFAYENI: Okay. And did they accompany you to a
23 meeting with this particular consumer?

24 MR. MacARTHUR: Yes.

25 MR. SAFAYENI: And what occurred at that meeting?

26 MR. MacARTHUR: Well, the discussion was the global
27 adjustment and these two individuals -- it was kind of like
28 a smoke and mirrors and in each case, the customer was told

1 that the global adjustment fluctuates on a monthly basis
2 and that on average, the global adjustment would be \$0.05.
3 So over a period of time, the rates -- global adjustment
4 would come down.

5 MR. SAFAYENI: And did you believe that to be true at
6 the time?

7 MR. MacARTHUR: Yes, I had no reason to doubt it.

8 MR. SAFAYENI: And, sorry, did you say there was one
9 meeting, or more than one meeting with this consumer?

10 MR. MacARTHUR: There was two separate meetings, and
11 two separate individuals from ACN that attended.

12 MR. SAFAYENI: Okay. And the message that you just
13 described, was it any different at the second meeting?

14 MR. MacARTHUR: No.

15 MR. SAFAYENI: So the message you described -- I
16 should have been clearer perhaps in my question. Was the
17 message you described from the first meeting or the second
18 meeting? I guess it doesn't matter -- sorry, not a good
19 question; let me move on.

20 MR. MacARTHUR: I am not exactly sure what you mean.

21 MR. SAFAYENI: That's okay. That's my fault, not
22 yours.

23 I want you to turn if you could to tab -- it's another
24 big black binder. For the record, it's marked as KX1.4.
25 Do you have that there? It's volume 2, tabs 50 to 122; it
26 says Planet Energy documents volume 2.

27 MR. MacARTHUR: I have volume 1, volume 4, volume 3,
28 and that's it -- okay, I have it now.

1 MR. SAFAYENI: So you are looking at tab 88?

2 MR. MacARTHUR: Yes.

3 MR. SAFAYENI: And if you take a look through this tab

4 -- its contents may be not organized exactly as you

5 provided it, but is this the sales binder that you were

6 talking about earlier?

7 MR. MacARTHUR: Yes.

8 MR. SAFAYENI: And if you turn to page 818, going by

9 the pages at the very top.

10 MR. MacARTHUR: Yes.

11 MR. SAFAYENI: You see a document called "frequently

12 asked questions"?

13 MR. MacARTHUR: Yes.

14 MR. SAFAYENI: Do you see that?

15 MR. MacARTHUR: Yes, I've got it.

16 MR. SAFAYENI: Okay. So how did you come across this

17 document, if you can remember?

18 MR. MacARTHUR: I can't remember, but I -- I certainly

19 didn't go through this with customers.

20 MR. SAFAYENI: Do you remember whether you read it

21 carefully?

22 MR. MacARTHUR: Probably not.

23 MR. SAFAYENI: Well, I don't want you to guess.

24 MR. MacARTHUR: Okay. No.

25 MR. SAFAYENI: Did you speak to any prospective

26 consumers about the issue of cancellation fees?

27 MR. MacARTHUR: No.

28 MR. SAFAYENI: And I should be clear. I am talking

1 about -- I used the term prospective consumer because I
2 mean before they were enrolled in any kind of energy
3 contract.

4 MR. MacARTHUR: No.

5 MR. SAFAYENI: During the time you were selling energy
6 contracts, were you aware that ending a Planet Energy
7 contract could result in cancellation fees?

8 MR. MacARTHUR: No.

9 MR. SAFAYENI: And when did you first become aware of
10 this?

11 MR. MacARTHUR: I believe it would have been late
12 2015.

13 MR. SAFAYENI: And what brought it to your attention?

14 MR. MacARTHUR: Customer complaint.

15 MR. SAFAYENI: And who was that customer?

16 MR. MacARTHUR: The first one was [REDACTED]
17 [REDACTED] and secondly, Mr. Hawkins, Robert Hawkins.

18 MR. SAFAYENI: Did you ever discuss with any
19 prospective consumers their cancellation rights under the
20 ECPA -- under the Energy Consumer Protection Act, or under
21 any other law, regulation, or code?

22 MR. MacARTHUR: No, no.

23 MR. SAFAYENI: Sorry to be jumping around between
24 books here, Mr. MacArthur, but can I get you to go back to
25 the binder marked "Staff's book of documents". It's
26 Exhibit KX1.2. It says "Book of documents of OEB
27 enforcement staff".

28 MR. MacARTHUR: I have Volume 4, I have got volume

1 3...

2 MR. SAFAYENI: This doesn't have --

3 MR. MacARTHUR: This one says "book of documents".

4 MR. SAFAYENI: This doesn't have any reference to a
5 volume. It just says "Book of documents of OEB enforcement
6 staff".

7 MR. MacARTHUR: Yes, I see that binder.

8 MR. SAFAYENI: Could you turn to page -- or tab 4B.

9 MR. MacARTHUR: Yes.

10 MR. SAFAYENI: If you -- you see there it says at the
11 top "Terms and conditions of electricity"?

12 MR. MacARTHUR: Yes.

13 MR. SAFAYENI: Okay. So if you turn to page 2, and if
14 you look near the bottom of that page, I am going to start
15 reading from the fourth line from the bottom. Do you see
16 that? It's -- I am going to start -- the sentence starts
17 "The energy balancing amount".

18 MR. MacARTHUR: Yes.

19 MR. SAFAYENI: So it says:

20 "The energy balancing amount payable by or to the
21 customer will be charged or credited on
22 customers' bills and the energy balancing amount
23 will not exceed on average a debit or credit of
24 0.015 per kilowatt-hour or 0.05 per metre cubed
25 in any contract year."

26 Did you ever discuss the energy balancing amount or
27 any of those charges with any prospective consumer?

28 MR. MacARTHUR: No.

1 MR. SAFAYENI: The next sentence:

2 "Planet will charge an administrative fee of
3 0.0005 per kilowatt-hour or 0.005 per metre cubed
4 to customer's account for amounts attributable to
5 such variances."

6 Did you ever raise the issue -- did you ever bring the
7 issue of an administrative fee to any prospective
8 consumer's attention?

9 MR. MacARTHUR: No. In fact, this is the first time I
10 have seen that.

11 MR. SAFAYENI: Next sentence:

12 "Further, customer agrees to pay any amounts
13 charged or billed to Planet or customer by the
14 customer's utility, the OEB, or any other
15 regulatory or government entity, including any
16 taxes, delivery, regulated transmission..."

17 And it goes on and on and on. It defines that as
18 regulatory charges. And then it says:

19 "In respect of any such regulatory charges billed
20 to Planet, Planet shall pass them through to the
21 consumer."

22 Did you ever discuss the issue of regulatory charges
23 with any prospective consumer?

24 MR. MacARTHUR: No, I did not.

25 MR. SAFAYENI: Then it says:

26 "Customer also agrees to pay any regulatory
27 charges and fees charged to Planet by customer's
28 utility and/or Planet service providers for low-

1 volume consumers in respect of electricity
2 supplies. This is currently 4.45 per month, in
3 respect to gas supplies 4.40 per month, and a
4 one-time enrollment and de-enrollment charge of
5 \$2, all of which may be subject to change at any
6 time."

7 Did you discuss any of the fees described in the --

8 MR. MacARTHUR: No.

9 MR. SAFAYENI: -- sentence I just read with any
10 prospective consumer?

11 MR. MacARTHUR: No, I did not.

12 MR. SAFAYENI: Did you discuss any fees with any
13 prospective consumer apart from the fixed rate for gas or
14 hydro, which you have already -- for electricity or --
15 hydro or gas, which you have already referred to?

16 MR. MacARTHUR: That question again was, please?

17 MR. SAFAYENI: Yes. Did you discuss any fee with any
18 prospective consumer -- this is prior to the point of
19 enrollment -- apart from the fixed rate for the purchase of
20 electricity or gas?

21 MR. MacARTHUR: No.

22 MR. SAFAYENI: Staying in that same volume, could you
23 please go to tab 10B.

24 MR. MacARTHUR: Yes.

25 MR. SAFAYENI: Have you seen this document before?

26 MR. MacARTHUR: Yes.

27 MR. SAFAYENI: You have had a chance to review this
28 document before coming here today?

1 MR. MacARTHUR: Yes.

2 MR. SAFAYENI: And for -- you will see that starting
3 about 40 percent the way down the page, in the column that
4 says "representative name", which is the fifth column from
5 the left, there are a number of entries, all of which have
6 your name in it, James D. MacArthur; right?

7 MR. MacARTHUR: Yes.

8 MR. SAFAYENI: And can you confirm that the customers
9 listed in the third column associated with you as their
10 representative, can you confirm whether that is a list of
11 the people that you enrolled in energy contracts with
12 Planet Energy?

13 MR. MacARTHUR: That is an accurate list, with the
14 exception of one person who I have never heard of. That
15 one is about halfway down the page. The name is [REDACTED]

16 [REDACTED] No idea who that person is.

17 MR. SAFAYENI: Okay. So with the exception of [REDACTED]
18 [REDACTED], the other customer names -- and you have had a
19 chance to review -- do correspond -- do the other customer
20 names correspond to people that you sold energy contracts
21 to?

22 MR. MacARTHUR: Yes.

23 MR. SAFAYENI: And to the best of your knowledge is
24 the information associated with those customers as
25 reflected on this form accurate?

26 MR. MacARTHUR: Yes, I believe so.

27 MR. SAFAYENI: Sticking in the same volume, still in
28 Exhibit KX1.2, if we turn to tab 25.

1 MR. MacARTHUR: Yes.

2 MR. SAFAYENI: You recognize this document?

3 MR. MacARTHUR: Yes, I do.

4 MR. SAFAYENI: And can you just describe briefly for
5 me what it is?

6 MR. MacARTHUR: It's shown in my ACN IBO back office,
7 and it is a list of active customers, and there should be a
8 total of 25 energy customers. And I believe -- just from
9 glancing at it without checking my records, I would say
10 this is pretty well an accurate listing of my customers.

11 MR. SAFAYENI: And when you say "active customers",
12 are you referring to the last column on the page, where it
13 says "status"?

14 MR. MacARTHUR: Yes.

15 MR. SAFAYENI: What do you understand "active
16 customers" to mean in this context?

17 MR. MacARTHUR: It means in this particular case
18 electricity or gas. When it shows "active" it means that
19 the account is an active account, and the, whatever it is,
20 hydro or gas, is still being -- it's being paid for every
21 month and it's an active account.

22 MR. SAFAYENI: To the extent there are some
23 discrepancies -- I am not going to take you through them,
24 but to the extent there are some discrepancies between this
25 document and the document at tab 10B which I took you to
26 earlier, are you in any position to explain those?

27 MR. MacARTHUR: I am not so sure I understand the
28 question. But comparing the two, there is some changes

1 that have happened since. In fact, at the bottom of that
2 page, or the back of the page at the bottom, is a customer
3 Perry Coats, and it shows status cancelled. In fact that
4 gentleman --

5 MR. SAFAYENI: Mr. MacArthur, I am just going to stop
6 you there because that looks to be a product other than
7 energy, correct?

8 MR. MacARTHUR: Yes, sorry.

9 MR. SAFAYENI: Okay. That's fine, I don't think we
10 need to get into that.

11 MR. MacARTHUR: Okay. I think the others, that's
12 pretty close to what it should be.

13 MR. SAFAYENI: Okay, in terms of -- well, you told us
14 earlier that you printed a badge after completing the
15 online test. Did you ever wear that badge when you were
16 interacting with consumers?

17 MR. MacARTHUR: No.

18 MR. SAFAYENI: What, if anything, did you do with that
19 badge after you printed it?

20 MR. MacARTHUR: It was in my sales binder, but it was
21 not something I was in the habit of showing people.

22 MR. SAFAYENI: When you say you weren't in the habit
23 of showing people, did you draw any prospective consumer's
24 attention to your badge during the presentation?

25 MR. MacARTHUR: No.

26 MR. SAFAYENI: Did you provide any consumer,
27 prospective consumers with your -- with a business card?

28 MR. MacARTHUR: Yes.

1 MR. SAFAYENI: Do you remember completing or reviewing
2 previous witness statements as part of this proceeding
3 before coming here today?

4 MR. MacARTHUR: Yes.

5 MR. SAFAYENI: And do you remember what your previous
6 witness statement said on the issue of business cards?

7 MR. MacARTHUR: I really -- to be honest with you, I
8 can't remember.

9 MR. SAFAYENI: Okay. So, for the Panel, it's been
10 previously marked as Exhibit KA .3, and it's Mr.
11 MacArthur's witness statement dated January 11, 2017.

12 Mr. MacArthur, I believe somewhere in front of you
13 should be copies of your previous witness statement. Can
14 you look on your desk? It will be a loose two-page...

15 MR. MacARTHUR: Oh, yes, I have it. Yes, I have it.

16 MR. SAFAYENI: Okay. I will ask you to turn to
17 paragraph 12.

18 MS. LONG: Ms. Gonsalves, are those marked for the
19 witness so he knows which one he is looking at?

20 MS. GONSALVES: I don't think they are. I will do it
21 on a break perhaps.

22 MS. LONG: Mr. MacArthur, there are different witness
23 statements that you have. Does he have all of them?

24 MR. SAFAYENI: I believe I only left the one up there,
25 because I don't anticipate taking him to the others.

26 MS. LONG: Okay. So he won't be confused by paragraph
27 references?

28 MR. SAFAYENI: I hope not.

1 MS. LONG: Sorry, you were referring him to paragraph
2 12?

3 MR. SAFAYENI: Paragraph 12, that's right. Mr.
4 MacArthur, are you with me?

5 MR. MacARTHUR: Yes.

6 MR. SAFAYENI: And do you see it says,
7 "I did not wear any form of ID badge, or provide
8 consumers with any kind of business card during
9 our meetings."

10 Do you see that there?

11 MR. MacARTHUR: I see it.

12 MR. SAFAYENI: And so is that accurate? As you sit
13 here today and review that statement, is it accurate?

14 MR. MacARTHUR: No. Reviewing it today, it's not
15 accurate.

16 MR. SAFAYENI: Okay. And in fact, what was your
17 practice when it came to business cards?

18 MR. MacARTHUR: It was kind of hit and miss. Most of
19 my customers knew me from other businesses, and I did not
20 really hand out business cards to everybody. But looking
21 at this now, you know, I did hand out some business cards
22 to some people.

23 MR. SAFAYENI: And why -- do you have any explanation
24 as to why the witness statement says otherwise?

25 MR. MacARTHUR: I really can't -- it's not something
26 that you think about during the sales process; you either
27 give them a business card or you don't. As I said, most of
28 them were my friends. But I -- and I don't recall saying

1 that I did not give out business cards, so I might have --
2 I don't have an explanation for that.

3 MR. SAFAYENI: Okay. And going back to -- you can put
4 the witness statement away, Mr. MacArthur, thank you.

5 Going back to Planet Energy documents volume 2,
6 Exhibit KX 1.4, if we turn to tab 109 near the end of that
7 volume...

8 MR. MacARTHUR: Yes.

9 MR. SAFAYENI: So at the top there, is that the badge
10 we have been talking about?

11 MR. MacARTHUR: It's not a very good picture of me,
12 but that's the badge.

13 MR. SAFAYENI: And at the bottom, the printouts of the
14 six boxes that we see, are those the business cards?

15 MR. MacARTHUR: Yes.

16 MR. SAFAYENI: Madam Chair, I am entirely in your
17 hands or the Panel's hands as to scheduling. I probably
18 have half hour or less remaining. So we can either forge
19 ahead or, if the Panel would like to take lunch, we can
20 wrap up.

21 MS. LONG: I think we will take lunch now.

22 MR. SAFAYENI: Okay.

23 MS. LONG: So we will take a break and be back at
24 1:30.

25 MR. SAFAYENI: Thank you.

26 MS. LONG: Okay, thanks.

27 --- Luncheon recess taken at 12:34 p.m.

28 --- On resuming at 1:34 p.m.

1 MS. LONG: Please be seated. Mr. Safayeni, are you
2 ready to continue with this witness?

3 MR. SAFAYENI: I am, thank you, Madam Chair.

4 So Mr. MacArthur, before the break we spoke about the
5 online test you had to complete before selling Planet
6 Energy contracts. Do you remember that?

7 MR. MacARTHUR: Yes.

8 MR. SAFAYENI: Did you have to take any kind of test
9 in order to sell any other product on behalf of ACN?

10 MR. MacARTHUR: No.

11 MR. SAFAYENI: And I think you told us before the
12 break, and you will correct me if I am wrong, but I think
13 you told us before the break that there were three or four
14 contracts where you did not actually meet the customer
15 whose name appears on the contract; is that -- do I have
16 that right?

17 MR. MacARTHUR: That's right.

18 MR. SAFAYENI: And are they all in respect of the same
19 customer, or is it different customers?

20 MR. MacARTHUR: Different customers.

21 MR. SAFAYENI: Okay. And apart from those situations,
22 if we consider the customers that you did enroll in Planet
23 Energy contracts, did you meet -- I think you told us that
24 -- well, let me ask the question, sorry. Apart from those
25 three or four people, you met with everybody else that you
26 -- apart from those three or four contracts, you met with
27 everybody else who you enrolled into a contract?

28 MR. MacARTHUR: Correct.

1 MR. SAFAYENI: Do I have that right? And where did
2 you meet with those people, generally speaking? Was it at
3 their home or their business?

4 MR. MacARTHUR: Well, some of the ones which are
5 residential I met at their homes. But anything to do with
6 the business, it would have been in their offices.

7 MR. SAFAYENI: And for the consumers that you did meet
8 with and who agreed to sign up for energy contracts, did
9 they agree to sign up during your meeting with them?

10 MR. MacARTHUR: Yes.

11 MR. SAFAYENI: And after they agreed, can you describe
12 to me what you did?

13 MR. MacARTHUR: Basically, what I did is ask for a
14 copy of their hydro bill and/or their gas bill, and then
15 for the most part I would go away and I would sign them up.

16 MR. SAFAYENI: Did any consumer who you sold an energy
17 contract to sign themselves up?

18 MR. MacARTHUR: No.

19 MR. SAFAYENI: So who signed up the consumers who you
20 enrolled in energy contracts?

21 MR. MacARTHUR: It was, for the most part, me
22 personally.

23 MR. SAFAYENI: Well, when you say "for the most part",
24 were there any exceptions?

25 MR. MacARTHUR: No.

26 MR. SAFAYENI: And how did you enroll them?

27 MR. MacARTHUR: I would go on my own computer and go
28 through the exercise as if I was them buying the products.

1 And sometimes it occurred in their offices or boardroom,
2 and they weren't necessarily present when I was doing it,
3 but authorized by them to do it.

4 MR. SAFAYENI: Was any consumer that you enrolled into
5 a contract present with you at the computer while you were
6 enrolling?

7 MR. MacARTHUR: No.

8 MR. SAFAYENI: Did you use any other computers apart
9 from those that you mentioned that may have been at a
10 consumer's business to do the enrollments?

11 MR. MacARTHUR: Yes, I would have used my own
12 computer, my laptop, and/or the customer's computer.

13 MR. SAFAYENI: And is what you have told us about your
14 process for enrolling people into Planet Energy contracts
15 true for every single customer that you enrolled?

16 MR. MacARTHUR: I would say yes.

17 MR. SAFAYENI: Before you enrolled a consumer into a
18 Planet Energy contract, did you ever have a consumer review
19 a copy of the contract's terms and conditions?

20 MR. MacARTHUR: No.

21 MR. SAFAYENI: Did you ever have a consumer review a
22 disclosure statement before you enrolled them into a Planet
23 Energy contract?

24 MR. MacARTHUR: No.

25 MR. SAFAYENI: Did you ever have them physically sign
26 any document before you enrolled a consumer into a Planet
27 Energy contract?

28 MR. MacARTHUR: Yes.

1 MR. SAFAYENI: Okay, what did you have them sign?

2 MR. MacARTHUR: There was an agreement that needed to
3 be signed. In some cases I would have them sign it, in
4 other cases just left it blank.

5 MR. SAFAYENI: And what was that agreement, if you
6 remember?

7 MR. MacARTHUR: Well, it was terms and conditions, was
8 basically it, and disclosure statements.

9 MR. SAFAYENI: Mr. MacArthur, can you turn to our --
10 book of documents of OEB enforcement staff, tab 1B. And
11 for the record, that's Exhibit KX1.2.

12 MR. MacARTHUR: 1B, you said?

13 MR. SAFAYENI: 1B, yes.

14 MR. MacARTHUR: Yes, I see it.

15 MR. SAFAYENI: You say there it says:

16 "Terms and conditions of electricity and natural
17 gas supply customer agreement."

18 MR. MacARTHUR: Yes.

19 MR. SAFAYENI: So I just want to be clear, is this a
20 document that you ever showed to a consumer before they
21 were enrolled into a contract?

22 MR. MacARTHUR: No.

23 MR. SAFAYENI: Can you turn to tab C, the next tab
24 over, where it says "disclosure statement" at the top.

25 MR. MacARTHUR: Um-hmm.

26 MR. SAFAYENI: Was this document or anything similar
27 to this document something that you showed consumers before
28 they were enrolled --

1 MR. MacARTHUR: No.

2 MR. SAFAYENI: -- into an energy contract?

3 MR. MacARTHUR: No.

4 MR. SAFAYENI: And, sorry, just to be clear, if you
5 turn to page 2 within that same tab, still at tab 1C where
6 it says at the top "price comparison for residential
7 electricity consumers" -- do you see that?

8 MR. MacARTHUR: Yes.

9 MR. SAFAYENI: Still in tab 1C. Is this a document
10 you ever showed to any consumer before they were enrolled
11 into an energy contract?

12 MR. MacARTHUR: No.

13 MR. SAFAYENI: Did you ever have consumers make any
14 sort of electronic acknowledgements, by checking boxes or
15 anything similar to that, before they were enrolled into an
16 energy contract?

17 MR. MacARTHUR: No.

18 MR. SAFAYENI: Could I ask you to turn to tab 26 in
19 the same binder, please?

20 MR. MacARTHUR: Yes.

21 MR. SAFAYENI: And using the numbers in the top right-
22 hand corner of the page, can I ask you to turn to page 29?

23 MR. MacARTHUR: Yes.

24 MR. SAFAYENI: Now, in fairness to you, this document
25 looks to have been created sometime on or after June 2016,
26 which is after you stopped selling contracts. But I just
27 want to ask you a few questions on it with that in mind.

28 First of all, does this document -- flipping through

1 the pages at 29 and following, does this document look at
2 least somewhat familiar to you?

3 MR. MacARTHUR: Yes.

4 MR. SAFAYENI: And what do you recognize it from?

5 MR. MacARTHUR: Well, again, this document was created
6 after I stopped selling. But it is familiar because it
7 explains the options the consumer would have to select a
8 rate example of electricity stability, or bundle stability,
9 or green stability. The same thing with gas.

10 MR. SAFAYENI: So does this -- is this document
11 familiar to you as part of the online enrolment process?

12 MR. MacARTHUR: Well, I would have to go through it.
13 If I was enrolling people on my computer, I would have to
14 go through it and tick off which level or bundle that was
15 required --

16 MR. SAFAYENI: So let's try -- sorry, go ahead, Mr.
17 MacArthur.

18 MR. MacARTHUR: For instance on hydro, I would go to
19 straight stability at 4.99 cents and also on the gas, I
20 would go to the 19.9 cents.

21 MR. SAFAYENI: Just so the Panel members and everybody
22 can follow along, on page 29 we have a choice between
23 natural gas and electricity on the page. And then at page
24 30 where it says available plans, you referenced bundle
25 stability; is that where you are reading that from?

26 MR. MacARTHUR: Yes.

27 MR. SAFAYENI: And are these the various different
28 plans that were available to prospective consumers?

1 MR. MacARTHUR: Yes.

2 MR. SAFAYENI: And if we turn to page 36, where it
3 says "disclosure statements and price comparisons
4 acceptance", do you see that?

5 MR. MacARTHUR: Yes.

6 MR. SAFAYENI: What is your recollection of what would
7 happen at this stage?

8 MR. MacARTHUR: Well, I would produce those documents
9 on behalf of the customer. In other words, I was doing the
10 exercise here by ticking off which ones it is, and I would
11 print them out for the customer.

12 MR. SAFAYENI: And would you provide the hard copies
13 of those documents to the customers?

14 MR. MacARTHUR: Yes.

15 MR. SAFAYENI: In every case?

16 MR. MacARTHUR: Yes.

17 MR. SAFAYENI: And would you provide it to them before
18 the online enrolment was complete, or after?

19 MR. MacARTHUR: After.

20 MR. SAFAYENI: Page 37 --

21 MR. MacARTHUR: Yes.

22 MR. SAFAYENI: -- where it says "Customer contact
23 information", what would happen at this stage?

24 MR. MacARTHUR: I would fill it out.

25 MR. SAFAYENI: What information would you use to fill
26 it out?

27 MR. MacARTHUR: Well, I can go from the customer's
28 hydro or gas bill, and obviously I knew the company name, I

1 knew the contact name, I knew the address, the phone
2 numbers, the e-mails of the customer, so I would fill that
3 out.

4 MR. SAFAYENI: If we go to page -- turn the page to
5 pages 38 and 39 where it says "Service address
6 information" --

7 MR. MacARTHUR: Yes.

8 MR. SAFAYENI: What would happen at this stage?

9 MR. MacARTHUR: I would complete it the same way I did
10 the other.

11 MR. SAFAYENI: And how would you have all of this
12 information?

13 MR. MacARTHUR: It was all usually contained on the
14 customers utility bills either for gas or for electricity.

15 MR. SAFAYENI: And if we turn to page 40, where it
16 says "Agreement and signature", do you see that?

17 MR. MacARTHUR: Yes.

18 MR. SAFAYENI: And on page 40, it says: "I have read
19 the terms and conditions." And then on page 41, there is a
20 series of further tick boxes.

21 MR. MacARTHUR: Yes.

22 MR. SAFAYENI: What would happen at this stage?

23 MR. MacARTHUR: I would fill it out.

24 MR. SAFAYENI: What do you mean by "I would fill it
25 out"?

26 MR. MacARTHUR: Well, I would tick off the boxes that
27 were necessary and then I would print that out, in some
28 cases, and give a copy to the customer.

1 MR. SAFAYENI: And whatever you printed out and gave
2 to the customer, at that point, was it after enrolment or
3 before enrolment?

4 MR. MacARTHUR: After.

5 MR. SAFAYENI: Did you have -- let me back up for a
6 moment. The ability to enrol in an energy contract online,
7 what website would a consumer have to visit in order to do
8 that?

9 MR. MacARTHUR: They'd have to go to my online store.

10 MR. SAFAYENI: And could they access that process
11 without a password or log-in?

12 MR. MacARTHUR: No password, no log-in.

13 MR. SAFAYENI: Did you have any knowledge as to
14 whether or not you should be enrolling consumers on your
15 own?

16 MR. MacARTHUR: I think I realized that it should have
17 been the people. However, on the other hand, the way I was
18 taught was to just go ahead and do it myself and sign
19 everything and then deliver it to the customer in a file
20 when it was all done.

21 MR. SAFAYENI: When you say "the way I was taught",
22 can you explain to me what you mean by that?

23 MR. MacARTHUR: That's what the ACN IBOs told me as to
24 how to handle that.

25 MR. SAFAYENI: And were those other IBOs part of the
26 Momentum Group?

27 MR. MacARTHUR: Yes.

28 MR. SAFAYENI: I want to move now after enrollment was

1 complete. Did you have any discussions with consumers
2 about whether they might receive a call from Planet Energy?

3 MR. MacARTHUR: Yes.

4 MR. SAFAYENI: Can you tell me about those
5 discussions, please.

6 MR. MacARTHUR: We were coached by ACN IBOs, again, to
7 tell the customer, and I quote, "You will probably get a
8 phone call from Planet Energy asking to confirm all the
9 details," and the response I was to tell the customer was,
10 "Just say yes to everything."

11 MR. SAFAYENI: What, if anything, were you told to
12 tell the customer if they were asked whether an ACN IBO was
13 in the room when they signed?

14 MR. MacARTHUR: I think the answer to that is, yes, we
15 would -- we would actually coax them and tell them that one
16 of those questions would be, in fact, was your ACN IBO in
17 the room when you signed up. And Mr. Customer, just say,
18 yes -- or, no, he was not in the room.

19 MR. SAFAYENI: And what, if anything, were you told to
20 tell customers if they were asked by Planet Energy whether
21 they signed up on their own into the energy contracts?

22 MR. MacARTHUR: Say that again, I am sorry.

23 MR. SAFAYENI: What, if anything, were you told to
24 tell consumers if the consumer was asked by Planet Energy
25 on a call whether they signed up on their own?

26 MR. MacARTHUR: I would tell -- I would coach the
27 customer and say yes.

28 MR. SAFAYENI: And what, if anything, did you tell

1 consumers to say if they were asked whether the ACN IBO had
2 a badge and a business card?

3 MR. MacARTHUR: I would tell them to say yes. Again,
4 it's part of that "say yes to everything".

5 MR. SAFAYENI: And is this something that you told all
6 the consumers that you enrolled into energy contracts?

7 MR. MacARTHUR: Yes.

8 MR. SAFAYENI: Mr. MacArthur, do you know a man named
9 Robert Hawkins?

10 MR. MacARTHUR: Yes.

11 MR. SAFAYENI: Is he a friend of yours?

12 MR. MacARTHUR: Yes.

13 MR. SAFAYENI: How did you come to know him?

14 MR. MacARTHUR: I met him through a residence
15 situation, where I was actually renting living space from
16 him at one of his five houses that he owned.

17 MR. SAFAYENI: And at some point did you enroll Mr.
18 Hawkins in energy contracts?

19 MR. MacARTHUR: Yes.

20 MR. SAFAYENI: Okay, and, in fact, it's in the agreed
21 statement, and I don't think it's controversial, that you
22 enrolled him into five energy contracts for five different
23 properties in May 2015.

24 MR. MacARTHUR: Yes.

25 MR. SAFAYENI: Does that sound right to you?

26 MR. MacARTHUR: Yes.

27 MR. SAFAYENI: And did you follow the same routine you
28 have described to us earlier in terms of what you told Mr.

1 Hawkins, the documents you showed him, and enrolling him on
2 your own?

3 MR. MacARTHUR: Yes.

4 MR. SAFAYENI: At some point did you become aware that
5 Mr. Hawkins was being charged a cancellation fee?

6 MR. MacARTHUR: Yes.

7 MR. SAFAYENI: And when did that happen,
8 approximately? MR. MacARTHUR: December of 2015.

9 MR. SAFAYENI: And do you recall the approximate
10 amount of that cancellation fee?

11 MR. MacARTHUR: It was in the area of \$1,400. He sold
12 the first property.

13 MR. SAFAYENI: And prior to this did you have any
14 awareness of the fact that the Planet Energy contracts you
15 were selling could result in cancellation fees?

16 MR. MacARTHUR: No.

17 MR. SAFAYENI: And once you became aware of Mr.
18 Hawkins' cancellation fee, what was your reaction?

19 MR. MacARTHUR: Well, I was surprised. I had not
20 dealt with a cancellation like that before. I assumed when
21 -- at the time, if he sold the house, that the energy
22 contract on that house would either go to the new owner if
23 they wanted it or it would be cancelled. And I was not
24 aware of a cancellation penalty.

25 MR. SAFAYENI: And did you take steps to try and
26 assist Mr. Hawkins?

27 MR. MacARTHUR: Yes.

28 MR. SAFAYENI: And can you tell me, not in exhaustive

1 detail, but at least generally what those steps involved?

2 MR. MacARTHUR: Well, over the period of time, and I
3 think it was a year at least, Mr. Hawkins, as we discussed,
4 sold one property, then the cancellation penalty was
5 \$1,400, and he bought the house in December 2015, and in
6 that same month he received a collection letter from the
7 collection agency that I understand is Planet Energy's
8 collection agency, and the house didn't close until
9 sometime in January, and --

10 MR. SAFAYENI: Can I take -- sorry, go ahead.

11 MR. MacARTHUR: There was -- and I can't count them,
12 but there has to be 50 e-mails back and forth between me
13 and ACN and Planet Energy. It was my attempt to help him
14 get the cancellation penalty waived, and that involved a
15 long process including, at one point, Planet Energy wanted
16 a copy of his driver's license to prove that he lived at
17 that house, then in that house he also had his office for
18 his business. Then they wanted an affidavit witnessed by
19 the lawyer confirming about that house. And so it was a
20 long, exhaustive -- it's ongoing right now, by the way.

21 MR. SAFAYENI: Can I take you to tab 32 of KX1.2?

22 MR. MacARTHUR: Yes.

23 MR. SAFAYENI: Is this a document that you have seen
24 before?

25 MR. MacARTHUR: Yes.

26 MR. SAFAYENI: Can you explain to me what it is?

27 MR. MacARTHUR: It's a collection letter to collect
28 the cancellation penalty, and as you can see -- two things.

1 One is the date; it's December 21st, 2015. So Mr. Hawkins
2 sold the house in December of 2015; it didn't close until
3 January of 2016. The ink wasn't even wet, and he gets a
4 collection letter.

5 And the amount, as you can see here -- previously I
6 said approximately 1,400, so there it is \$1,340.79.

7 MR. SAFAYENI: Just to be clear, the property listed
8 at the top left-hand side of the letter, is that the
9 property you understand Mr. Hawkins sold?

10 MR. MacARTHUR: Yes, that was the property he sold and
11 it was used -- there was, I think, three apartments in the
12 house that were rented out, and also he had an office for
13 his business in that house.

14 MR. SAFAYENI: You mentioned -- when I asked you what
15 efforts you made to assist Mr. Hawkins, you mentioned
16 communication directly with Planet Energy.

17 MR. MacARTHUR: Yes.

18 MR. SAFAYENI: Had you ever had direct contact with
19 anyone at Planet Energy, apart from your own energy
20 contract enrolment calls, before you had communications
21 with them in respect of Mr. Hawkins?

22 MR. MacARTHUR: No, my first communication would have
23 been regarding the Hawkins case.

24 MR. SAFAYENI: And at the -- you described to us
25 earlier this morning your first meeting at somebody's house
26 with other people considering becoming ACN IBOs, and then
27 you described some Saturday morning sessions.

28 At any of those meetings, did you ever see anybody

1 from Planet Energy attend?

2 MR. MacARTHUR: No. I did not know anybody from
3 Planet Energy. And usually when you call there, you get
4 one of their telephone customer service people.

5 MR. SAFAYENI: Eventually, you stopped selling Planet
6 Energy contracts, correct?

7 MR. MacARTHUR: Yes. If I can back up one thing.
8 There was a gentleman that I had contact with in the head
9 office of Planet Energy, and he referred me to somebody
10 else, but nothing happened.

11 MR. SAFAYENI: Sorry, Mr. MacArthur, are you talking
12 now in respect of the Mr. Hawkins matter?

13 MR. MacARTHUR: Yes.

14 MR. SAFAYENI: This is sometime in or after the
15 December 2015, correct?

16 MR. MacARTHUR: It was after December 2015.

17 MR. SAFAYENI: Okay. So at some point, you stopped
18 selling Planet Energy contracts, correct?

19 MR. MacARTHUR: Yes.

20 MR. SAFAYENI: I don't know if you still have it in
21 front of you, but if you look at that tab 10B spreadsheet
22 in Exhibit KX1.2 ...

23 MR. MacARTHUR: Okay, whereabouts is that?

24 MR. SAFAYENI: You have that chart open?

25 MR. MacARTHUR: Which is where, what tab?

26 MR. SAFAYENI: Sorry, it's tab 10B.

27 MR. MacARTHUR: Yes.

28 MR. SAFAYENI: The very bottom, the latest date is

1 June 3rd, 2015.

2 MR. MacARTHUR: Yes.

3 MR. SAFAYENI: Do you see that? Do you remember
4 selling any contracts past that date?

5 MR. MacARTHUR: No.

6 MR. SAFAYENI: Why did you stop selling Planet Energy
7 contracts?

8 MR. MacARTHUR: The main reason is I couldn't make any
9 money at it, as had been promised.

10 MR. SAFAYENI: Were you ever disciplined by ACN?

11 MR. MacARTHUR: No.

12 MR. SAFAYENI: Were you ever disciplined by Planet
13 Energy?

14 MR. MacARTHUR: No.

15 MR. SAFAYENI: Do you stand to gain at all financially
16 by testifying in this proceeding?

17 MR. MacARTHUR: Absolutely not.

18 MR. SAFAYENI: Do you stand to gain at all
19 financially, depending on the outcome of this proceeding?

20 MR. MacARTHUR: No, absolutely not.

21 MR. SAFAYENI: Do you still receive commissions from
22 ACN in respect of your Planet Energy products that you
23 sold?

24 MR. MacARTHUR: Yes.

25 MR. SAFAYENI: This is the last document I am going to
26 make you turn to. Can you turn in the same binder to tab
27 28, still in Exhibit KX1.2?

28 MR. MacARTHUR: Okay.

1 MR. SAFAYENI: Can you explain to me what we are
2 looking at here behind tab 28?

3 MR. MacARTHUR: That's a commission statement from my
4 back office.

5 MR. SAFAYENI: So the amounts listed, did you actually
6 receive those amounts in the --

7 MR. MacARTHUR: Yes.

8 MR. SAFAYENI: And you continue to receive commissions
9 on a monthly basis?

10 MR. MacARTHUR: Yes.

11 MR. SAFAYENI: And are most of these commissions
12 relating to energy contracts that you sold?

13 MR. MacARTHUR: Well, they are spread over -- the only
14 things that I really sold were -- the energy contracts and
15 some security systems were the only products, I believe,
16 that I sold.

17 MR. SAFAYENI: And what were the majority of the
18 products that you sold?

19 MR. MacARTHUR: Energy contracts.

20 MR. SAFAYENI: And do you have sense, at least at a
21 general level, on how these monthly commissions are
22 calculated?

23 MR. MacARTHUR: No. On the cheque stub they would
24 just give a general statement. I think it was relating to
25 energy. I never paid attention to it; I just cashed the
26 cheques.

27 MR. SAFAYENI: If an energy contract comes to an end
28 and there are no more payments being made under that energy

1 contract, do you continue to receive commissions in respect
2 of that contract on a monthly basis?

3 MR. MacARTHUR: No.

4 MR. SAFAYENI: Do you know a man by the name of Kayvan
5 Nahid?

6 MR. MacARTHUR: No.

7 MR. SAFAYENI: I have no further questions for you as
8 part of my examination-in-chief, thank you, Mr. MacArthur.

9 MS. LONG: Thank you, Mr. Safayeni. Mr. MacArthur,
10 Mr. Zacher is going to ask you some questions now on behalf
11 of Planet Energy.

12 MR. ZACHER: Madam Chair, just before we get started,
13 I thought to make it a little bit easier so that we don't
14 have to navigate amongst all sorts of document briefs, I
15 have prepared sort of a half-inch binder of cross-
16 examination exhibits. I have referenced in the table of
17 contents where they come from in the record.

18 MS. LONG: Okay.

19 MR. ZACHER: And I have indicated that it's both for
20 Mr. MacArthur and Mr. Hawkins, so if I could file that and
21 hand it out to my friend. I should say that, based on my
22 friend's direct examination, I probably -- I am going to
23 have to refer to some additional documents in the binders,
24 but I hope to keep it largely confined to this.

25 MS. LONG: Okay. Mr. Safayeni, have you seen this?

26 MR. SAFAYENI: No, we haven't --

27 MS. LONG: Okay.

28 MR. SAFAYENI: -- even heard of this before.

1 MS. LONG: Any concerns.

2 MR. SAFAYENI: Not with the concept of it, if there --
3 I mean, we'll review, and if there are any concerns,
4 we'll --

5 MS. LONG: These documents have all been filed or
6 they're in these materials?

7 MR. ZACHER: What I've done is -- and I'm sorry,
8 I'm -- the table of contents --

9 MS. LONG: Cross-references where it is in the
10 materials --

11 MR. ZACHER: -- cross-references Planet Energy
12 document X.

13 MS. LONG: Okay, all right, can we pass those up,
14 please, and we will mark it. This needs confidential file
15 number, I assume, Mr. Zacher?

16 MR. ZACHER: Yes, it should.

17 MS. LONG: Okay.

18 MR. RICHLER: Madam Chair, in that case we can mark
19 this as Exhibit KX2.1.

20 **EXHIBIT NO. KX2.1: MR. ZACHER'S CROSS-EXAMINATION**
21 **MATERIALS FOR MR. MACARTHUR.**

22 MS. LONG: Mr. MacArthur, if you are at all confused
23 if you see these documents and you want to refer them into
24 documents you have already seen, perhaps you could just let
25 us know, but I don't think that should be a problem. Mr.
26 Zacher will be able to explain to you where the documents
27 are.

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

1 MR. ZACHER: Good afternoon, Mr. MacArthur. My name
2 is Glenn Zacher. I am counsel for Planet Energy. And if
3 you have a little trouble hearing me, I don't know if it's
4 the mic, but if you have any difficulty, please just ask me
5 to speak a little louder, okay?

6 MR. MacARTHUR: Yeah, you can speak a little louder or
7 turn the mic up.

8 MR. ZACHER: Mr. MacArthur, you have got a cross -- a
9 sort of a compendium of documents, but I am actually going
10 to ask you to start off by looking at one of the documents
11 that my friend provided to you. It's in the Board's
12 document brief, and that can be found at a tab 18.

13 So let me ask you as you are turning that up, you
14 joined or you started as an IBO, as you said, in or about
15 April 2012?

16 MR. MacARTHUR: Yes.

17 MR. ZACHER: And you appreciated at the time that ACN
18 was a company that marketed a range of products.

19 MR. MacARTHUR: Yes.

20 MR. ZACHER: And if you look at the document there,
21 tab 18, that's a document that you said was provided to you
22 when you first became an IBO in 2012?

23 MR. MacARTHUR: Yes.

24 MR. ZACHER: And it identifies there, sort of midway
25 down the page, step 4, all of the products, at least at the
26 time, video phone, home phone service, wireless, satellite
27 TV, home security, energy, et cetera?

28 MR. MacARTHUR: It's not on this page.

1 MR. ZACHER: The middle of the page, under -- it says
2 "get qualified and acquire customers".

3 MR. MacARTHUR: No, if I am on the correct page.

4 MR. ZACHER: I am sorry, can you look, Mr.

5 MacArthur --

6 MR. MacARTHUR: You said tab 18?

7 MR. ZACHER: Yes, but it's at the enforcement team's
8 book of documents, so that is Exhibit KX1.2.

9 MS. LONG: It's a binder, Mr. MacArthur. Do you have
10 it?

11 MR. MacARTHUR: Okay, thank you.

12 MR. ZACHER: So Mr. MacArthur, if you look in the
13 middle of the page you'll see there is a little picture
14 depicting each of the products?

15 MR. MacARTHUR: Yes.

16 MR. ZACHER: And you'd indicated to Mr. Safayeni
17 earlier that there was no required product training for the
18 ACN products. I believe he referred you to the ACN
19 agreement. That's your recollection?

20 MR. MacARTHUR: Yes.

21 MR. ZACHER: But if you look at the document I've just
22 showed to you, you will see the picture. It says "energy",
23 underneath which it says "print badge and complete online
24 training"?

25 MR. MacARTHUR: Yes.

26 MR. ZACHER: So you appreciated that energy distinct
27 from the other products did require training?

28 MR. MacARTHUR: Yes.

1 MR. ZACHER: And there was no required test for the
2 other products that ACN marketed; is that right?

3 MR. MacARTHUR: Yes, not that I am aware of. I didn't
4 sell --

5 MR. ZACHER: Right. But again, energy was
6 distinctive. You needed to, as you said, complete training
7 and then write a test and pass it in order to be authorized
8 to sell ACN Planet Energy products?

9 MR. MacARTHUR: Correct.

10 MR. ZACHER: And, in fact, the system was set up such
11 that if you did not take testing, pass it, you would not
12 receive the necessary ID authorization to enroll customers;
13 right?

14 MR. MacARTHUR: That's right.

15 MR. ZACHER: And Mr. MacArthur, you indicated that all
16 ACN IBOs were provided with a back office.

17 MR. MacARTHUR: Yes.

18 MR. ZACHER: That's an online website?

19 MR. MacARTHUR: Yes.

20 MR. ZACHER: Okay. And if I could ask you to refer to
21 the cerloxed compendium that I have provided to you which
22 has been marked as Exhibit KX2.1. If I can ask you to turn
23 to tab 7.

24 MR. MacARTHUR: Yes.

25 MR. ZACHER: And so this would be the log-in page or
26 what looks -- you recognize this document?

27 MR. MacARTHUR: Yes.

28 MR. ZACHER: So this is sort of what your log-in page

1 would look like for an ACN IBO; right?

2 MR. MacARTHUR: Yes, correct.

3 MR. ZACHER: And you would have to enter your ID and
4 your password, and once you did that it would take you into
5 your personal back office?

6 MR. MacARTHUR: Yes.

7 MR. ZACHER: Okay. And that same brief, if you could
8 turn to tab 4, and Mr. MacArthur --

9 MR. MacARTHUR: Yes.

10 MR. ZACHER: -- this is a witness statement that you
11 provided to OEB staff; is that right?

12 MR. MacARTHUR: Yes.

13 MR. ZACHER: And you've appended to it at tab A a
14 document that says "ACN IBO back office."

15 MR. MacARTHUR: Yes.

16 MR. ZACHER: Okay, and so that's what it would look
17 like when you went through the log-in page and got into
18 your back office?

19 MR. MacARTHUR: Yes.

20 MR. ZACHER: And so you have tabs or links at the top
21 that -- and in this case you have clicked on "My business",
22 so this shows at the time your -- the customers who have
23 enrolled through you?

24 MR. MacARTHUR: Yes.

25 MR. ZACHER: Okay. At that same brief, if I could ask
26 you to turn up tab 14.

27 MR. MacARTHUR: Yes.

28 MR. ZACHER: I am sorry, I apologize, tab 8.

1 MR. MacARTHUR: Yes.

2 MR. ZACHER: So this is, again, a picture -- a screen
3 shot of the back office, and this time the "products" tab
4 has been clicked on; right?

5 MR. MacARTHUR: Yes.

6 MR. ZACHER: And this would be the product tab for the
7 Planet ACN energy products?

8 MR. MacARTHUR: Yes.

9 MR. ZACHER: And you recognize that?

10 MR. MacARTHUR: Yes.

11 MR. ZACHER: And you will see there, Mr. MacArthur,
12 there's separate sub tabs where it says "Canada energy
13 training".

14 MR. MacARTHUR: Yes.

15 MR. ZACHER: And below that, "create/print badge", and
16 then "Planet Energy test".

17 MR. MacARTHUR: Yes.

18 MR. ZACHER: And you'd agree that initially in 2012,
19 you would have had to click on those links, print your
20 badge, take the test?

21 MR. MacARTHUR: Yes.

22 MR. ZACHER: And likewise let me ask you to turn, Mr.
23 MacArthur, to tab 9 of that binder.

24 MR. MacARTHUR: Yes.

25 MR. ZACHER: And so this depicts -- this is a
26 screenshot of the page you would have had to go through in
27 order to print your badge?

28 MR. MacARTHUR: Yes.

1 MR. ZACHER: And you see the check boxes at the
2 bottom?

3 MR. MacARTHUR: Yes.

4 MR. ZACHER: In order to print your badge, you would
5 are had to click "I agree only customers can complete the
6 online ordering process".

7 MR. MacARTHUR: Yes.

8 MR. ZACHER: And second, "I agree I have completed and
9 understood the training materials for selling energy,
10 including the codes of conduct, electricity and natural
11 gas, applicable to my jurisdiction".

12 MR. MacARTHUR: Yes.

13 MR. ZACHER: And lastly, "I agree I will not mislead,
14 make false statements," et cetera?

15 MR. MacARTHUR: Yes.

16 MR. ZACHER: And you would have had to agree to all of
17 those things before you printed your badge?

18 MR. MacARTHUR: That's correct.

19 MR. ZACHER: And you would have had to do that at
20 least a few times between 2012 and 2015, because you had to
21 annually update your badge, your business card and testing?

22 MR. MacARTHUR: That's not exactly correct. I wrote
23 the test twice and I believe it was not an annual
24 requirement. And I wrote the second test because my status
25 with ACN had lapsed; in other words, I didn't pay -- every
26 year you are supposed to pay \$120, and I didn't do it. So
27 when I finally got back to it, I had to re-do the test.

28 MR. ZACHER: Okay. But in any event, if you are not

1 selling products, obviously you don't have to be tested.
2 But if you continue to sell Planet Energy products, there
3 is an annual testing requirement.

4 MR. MacARTHUR: Not annual.

5 MR. ZACHER: There is a requirement that if you
6 haven't been selling Planet Energy products for a period of
7 time, you get locked out and you have to -- you have to
8 retest?

9 MR. MacARTHUR: Yes, but that was not an annual
10 situation.

11 MR. ZACHER: It was less than that; it was every 60
12 days.

13 MR. MacARTHUR: Every 60 days? This is the first time
14 I've heard that.

15 MR. ZACHER: Okay. Mr. MacArthur, if I could ask you
16 to -- apologies, flip to tab 10 of that binder. Do you
17 have that?

18 MR. MacARTHUR: In this one, I've got ten?

19 MR. ZACHER: Yes.

20 MR. MacARTHUR: Okay.

21 MR. ZACHER: You'll see it says "Planet Energy
22 official examination."

23 MR. MacARTHUR: Yes.

24 MR. ZACHER: So this is what you would -- had you
25 clicked on -- when you click on the Canada energy testing
26 link, this is what you would -- this is the sub page you
27 would land on?

28 MR. MacARTHUR: Okay.

1 MR. ZACHER: You recall that?

2 MR. MacARTHUR: Not really. I don't recall it.

3 MR. ZACHER: Before you took your test, as in the case
4 of printing your badge, Mr. MacArthur, you would have had
5 to go through and confirm these things?

6 MR. MacARTHUR: But as I told you previously, there
7 was an ACN IBO that completed the test in order for me to
8 get the badge. So that would have been part of what they
9 agreed to on my behalf.

10 MR. ZACHER: Just to be clear, the person you are
11 referring to provided you with the answers, but you are the
12 one who entered the information on your computer. I think
13 you had said, in response to a question from the Chair,
14 that you went home and did this on your own computer.

15 MR. MacARTHUR: I can't be sure.

16 MR. ZACHER: You don't recall?

17 MR. MacARTHUR: No.

18 MR. SAFAYENI: I think Mr. MacArthur's evidence was
19 that he went home and printed the badge off his computer.
20 I think that was with the specific question and the
21 specific answer. It wasn't with respect to the test.

22 MR. ZACHER: Mr. MacArthur, can I ask you to -- I
23 apologize, but I am going to have to ask you to pick up
24 another binder now. This is volume 1 of Planet Energy's
25 book of documents, KX 1.4.

26 MR. MacARTHUR: They are all marked KX 1 -- okay.

27 MR. ZACHER: Actually, sorry, Mr. MacArthur, just hang
28 on to that binder for one moment, but take the one I was

1 just referring you to, the slender one, and can I ask
2 you -- no, stick with the big binder, okay.

3 Can I ask you to go to tab 31, Mr. MacArthur?

4 MR. MacARTHUR: Yes.

5 MR. ZACHER: So this is an ACN webinar and I believe
6 Mr. Safayeni referred you to that earlier, and you said you
7 were familiar with that.

8 MR. MacARTHUR: Yes.

9 MR. ZACHER: So is this is a document, I believe you
10 said you would have seen in or about April or May of 2012,
11 after you became an IBO?

12 MR. MacARTHUR: Yes.

13 MR. ZACHER: Okay. And if I can ask you to turn to
14 the page numbers are -- there's page numbers at the top,
15 582.

16 MR. MacARTHUR: Yes.

17 MR. ZACHER: And do you see slide 31 there at the
18 bottom of the page?

19 MR. MacARTHUR: Yes.

20 MR. ZACHER: So these are the slides that start to
21 describe Planet ACN energy products.

22 MR. MacARTHUR: Okay.

23 MR. ZACHER: You see that?

24 MR. MacARTHUR: Yes.

25 MR. ZACHER: And if you flip over the page, you will
26 see slide 32, which enumerates the steps that are required
27 to become authorized to sell Planet Energy products; do you
28 see that?

1 MR. MacARTHUR: I see that.

2 MR. ZACHER: And that mirrors the Planet Energy ACN
3 web page that we just earlier looked at, that talked about
4 doing the training, printing a badge, and taking the test?

5 MR. MacARTHUR: Yes.

6 MR. ZACHER: And you would have appreciated in 2012
7 when you looked at this document that it was necessary to
8 go through these steps to be accredited to sell Planet
9 Energy products?

10 MR. MacARTHUR: Yes. But firstly, I am not familiar
11 with this set-up. I think this may have come after 2012.
12 And I didn't go through any of this, and I was told that,
13 you know, don't bother with this stuff, just take the test
14 and you're done.

15 MR. ZACHER: Okay, and I appreciate that. But you're
16 aware of it. You were simply, you've said, told by other
17 friends that you didn't need to do it?

18 MR. MacARTHUR: Right.

19 MR. ZACHER: Okay. So if I can ask you, Mr. Hawkins,
20 in that same binder to look at tab 6E.

21 MR. MacARTHUR: I am now Mr. Hawkins?

22 MR. ZACHER: Sorry, Mr. MacArthur. Do you have that
23 document?

24 MR. MacARTHUR: Which binder are you referring to?

25 MR. ZACHER: The same big binder.

26 MR. MacARTHUR: Okay, what page?

27 MR. ZACHER: And if you can go to tab 6E.

28 MR. MacARTHUR: 6B?

1 MR. ZACHER: E, as in Edward. Do you have that?

2 MR. MacARTHUR: Okay, schedule E.

3 MR. ZACHER: So I believe you said to Mr. Safayeni
4 that this is a document that you were familiar with at the
5 time that you became an IBO, or at least a similar
6 document?

7 MR. SAFAYENI: That was not Mr. MacArthur's evidence.

8 MR. ZACHER: Mr. MacArthur, you told Mr. Safayeni that
9 you were familiar with this document?

10 MR. SAFAYENI: Objection. That was not the evidence,
11 and it's a mischaracterization to put it that way. His
12 evidence was that he doesn't believe he has seen it and he
13 never saw it the whole time he was an ACN IBO.

14 MR. ZACHER: I don't believe that's correct, but
15 rather than read back, is this a document, Mr. MacArthur,
16 that you were familiar with in or about the time that you
17 became an IBO? And I don't mean this precise document, but
18 something like it?

19 MR. MacARTHUR: This was not something that was used
20 in 2012 when I joined. So it doesn't really look familiar,
21 because I didn't have it, I didn't print it out in my sales
22 binder.

23 MR. ZACHER: And I am not asking whether you printed
24 it out or whether you used it, but you were ware that it
25 was -- you said you appreciate that you were required to do
26 training in order to sell Planet Energy products; right?

27 MR. MacARTHUR: Yes.

28 MR. ZACHER: And you were aware that there was -- that

1 this document existed, this training manual existed, even
2 though I appreciate you may have been told you didn't need
3 to --

4 MR. MacARTHUR: Yes.

5 MR. ZACHER: -- look at it. That's correct; right?

6 MR. MacARTHUR: Yes.

7 MR. ZACHER: Okay. And so while you may not have gone
8 through this document, you were certainly aware -- you were
9 aware of it?

10 MR. MacARTHUR: Yes, but at the time I didn't even pay
11 attention, didn't even know what it was.

12 MR. ZACHER: And did you skim through it, did you
13 review it?

14 MR. MacARTHUR: No.

15 MR. ZACHER: Okay. Mr. MacArthur, in addition to the
16 -- well, let me ask you to turn back, please, sir, to tab 8
17 in the compendium document.

18 MR. MacARTHUR: Okay.

19 MR. ZACHER: And, sir, you will see there in addition
20 to the link for printing your badge, taking the test and
21 the training, there is other information referenced,
22 marketing materials, business support documents, ACN energy
23 for large businesses?

24 MR. MacARTHUR: Yes.

25 MR. ZACHER: Okay, and so there was other information
26 on the IBO energy page relating to electricity pricing,
27 Planet Energy products, terms and conditions of contracts,
28 and so on; right?

1 MR. MacARTHUR: Yes.

2 MR. ZACHER: And if I could ask you, Mr. MacArthur, to
3 turn to tab 15 of the compendium.

4 MR. MacARTHUR: Yes.

5 MR. ZACHER: And this is information from -- this tab
6 contains information from your sales binder. At tab 761
7 you will see the index -- or, sorry, at page 761 you will
8 see the index?

9 MR. MacARTHUR: Yes.

10 MR. ZACHER: And as you indicated, this is information
11 that you would share with prospective customers?

12 MR. MacARTHUR: Yes.

13 MR. ZACHER: And if you go, sir, to page 777 -- sorry,
14 776.

15 MR. MacARTHUR: Yes.

16 MR. ZACHER: And you look at the bottom of the page
17 there, you will see it's from the ACN Canada energy product
18 guide.

19 MR. MacARTHUR: Yes.

20 MR. ZACHER: So this is the kind of information that
21 existed in your back office?

22 MR. MacARTHUR: Yes.

23 MR. ZACHER: Right. And in this case it's a -- it
24 relates to the product guide from the drop-down menu at the
25 top?

26 MR. MacARTHUR: Okay.

27 MR. ZACHER: Right? That's your understanding?

28 MR. MacARTHUR: Can you repeat that question, please?

1 MR. ZACHER: Well, if you just look there is a drop-
2 down menu at the top that says "product guide", and then
3 this document is headed "product guide"; right?

4 MR. MacARTHUR: Yes.

5 MR. ZACHER: Okay. And this goes through the various
6 Planet Energy products. And if you turn over the next
7 page, 777, you see there's information about --

8 MR. MacARTHUR: Yes.

9 MR. ZACHER: -- the products. And then a third bullet
10 point from the bottom there's information on the global
11 adjustment, including a link to frequently asked questions?
12 Yes?

13 MR. MacARTHUR: I see it.

14 MR. ZACHER: Yeah. And you were aware of this at the
15 time, and this is information you included in your sales
16 binder and shared with customers?

17 MR. MacARTHUR: I didn't share it with customers, and
18 again, the global adjustment, I wouldn't have paid any
19 attention to it, because I didn't know what it was. In my
20 sales process a lot of these things were not done.

21 MR. ZACHER: And if you turn, Mr. Hawkins, to page 818
22 at that same tab.

23 MR. MacARTHUR: Hawkins?

24 MR. ZACHER: Sorry, Mr. MacArthur, I apologize. So if
25 you go to page 818 at the same tab.

26 MR. MacARTHUR: Okay.

27 MR. ZACHER: And Mr. MacArthur, this is something you
28 have printed out. It's from September of 2012?

1 MR. MacARTHUR: Okay.

2 MR. ZACHER: Is that right? Frequently asked
3 questions. This is also from your ACN back office?

4 MR. MacARTHUR: Yes, but I don't recall printing it
5 out.

6 MR. ZACHER: And again, sir, this is information you
7 have included in your sales binder; right?

8 MR. MacARTHUR: But everything in my sales binder I
9 wouldn't necessarily show to a customer.

10 MR. ZACHER: And if you didn't show it to a customer
11 it was there for your own information, to inform yourself;
12 right?

13 MR. MacARTHUR: Yeah, I would presume so.

14 MR. ZACHER: Right. And if you look under the
15 frequently asked questions at paragraph 7 there you will
16 see on page 818 --

17 MR. MacARTHUR: Yes.

18 MR. ZACHER: -- "Can I cancel the program if I don't
19 like it?" Do you see that?

20 MR. MacARTHUR: I see it.

21 MR. ZACHER: And you'll see that it explains early
22 termination charges in the event of cancellation?

23 MR. MacARTHUR: Okay.

24 MR. ZACHER: And, sir, this is something you
25 presumably would have read and been aware of in 2012 when
26 you printed it out?

27 MR. MacARTHUR: Not necessarily. I didn't read
28 everything that I printed out. I was just dealing with the

1 main issues to get the sale done.

2 MR. ZACHER: Right. And cancellation and cancellation
3 charges would be an important issue?

4 MR. MacARTHUR: It would be an important issue, but I
5 was not made aware of that until the episode began with Mr.
6 Hawkins.

7 MR. ZACHER: So you are saying that you were not aware
8 of that in 2012 or before the issue was raised with Mr.
9 Hawkins in, I think you said December of 2015?

10 MR. MacARTHUR: No.

11 MR. ZACHER: You agree with me?

12 MR. MacARTHUR: Yes.

13 MR. ZACHER: Mr. MacArthur, you enrolled yourself
14 shortly after becoming an IBO; is that correct?

15 MR. MacARTHUR: Yes.

16 MR. ZACHER: And maybe if I can just refer you to the
17 enforcement team's documents. Do you have that binder?

18 MR. MacARTHUR: What's the number on the binder,
19 please?

20 MR. ZACHER: The exhibit is KX1.2.

21 MR. MacARTHUR: So what page would you like now?

22 MR. ZACHER: If I can ask you to look at tab 11B.

23 This is a document that Mr. Safayeni asked you to look at
24 earlier.

25 MR. MacARTHUR: Okay, yes.

26 MR. ZACHER: Right. This is a document that you said
27 you had looked at.

28 MR. MacARTHUR: That's in 12, correct? Tab 12?

1 MR. ZACHER: 10B.

2 MR. MacARTHUR: Okay.

3 MR. ZACHER: I appreciate it's small font, but if you
4 go about a third of the way down the page, you will see the
5 contracts that relate to you as IBO.

6 MR. MacARTHUR: Yes.

7 MR. ZACHER: And the first couple, it says [REDACTED]

8 [REDACTED] and then Jim MacArthur, April of 2012.

9 MR. MacARTHUR: Yes.

10 MR. ZACHER: And then if you go down another five
11 lines or so, you'll see another Jim MacArthur, July of
12 2012?

13 MR. MacARTHUR: Okay.

14 MR. ZACHER: So, Mr. MacArthur, I take it these are
15 contracts that you self-enrolled as an IBO on behalf of
16 yourself and your wife, at the time [REDACTED]?

17 MR. MacARTHUR: Yes.

18 MR. ZACHER: And that was with regards to your joint
19 residence at [REDACTED]?

20 MR. MacARTHUR: Yes.

21 MR. ZACHER: You did that enrolment on your own?

22 MR. MacARTHUR: Yes.

23 MR. ZACHER: You did it online?

24 MR. MacARTHUR: Yes.

25 MR. ZACHER: And you would have had to go through the
26 enrolment portal that Mr. Safayeni referred you to earlier?

27 MR. MacARTHUR: Yes.

28 MR. ZACHER: If I can ask you, Mr. MacArthur, to go

1 back to the other binder, the compendium.

2 MR. MacARTHUR: Yes, this one, okay.

3 MR. ZACHER: And if you look at tabs 26 and 27 -- why
4 don't you look at tab 26 first?

5 MR. MacARTHUR: Yes.

6 MR. ZACHER: This is a transcription of a call that
7 Planet Energy, I gather, made to you in April 2012 to
8 confirm one of these enrolments. Do you recall that?

9 MR. MacARTHUR: I don't recall the exact conversation,
10 but I do see it here. I mean, I agree that it took place.

11 MR. ZACHER: Okay. And if you just look at page 1522
12 in the top right corner --

13 MR. MacARTHUR: Yes.

14 MR. ZACHER: -- you will see that the Planet Energy
15 CSR goes through a series of questions with you, including
16 asking you to confirm that you completed the agreement on
17 your own, the enrolment on your own, and that there was no
18 other IBO present when you did that, correct?

19 MR. MacARTHUR: I am trying to recall. And I think at
20 the time, because I was new at it, I believe the ACN IBO
21 that signed me up was there at that time.

22 MR. ZACHER: But you agree that you have said here
23 that that person wasn't present?

24 MR. MacARTHUR: To be honest with you, I can't be sure
25 and I can't remember exactly.

26 MR. ZACHER: Let me ask you just to turn to the next
27 tab, tab 27.

28 MR. MacARTHUR: Yes.

1 MR. ZACHER: And this is another call, it's dated July
2 17, 2012, and again it's from a Planet Energy customer
3 service representative to you, to confirm another one of
4 these self-enrolments. Do you see that?

5 MR. MacARTHUR: Yes.

6 MR. ZACHER: And if you look at page 1526 in the top
7 right corner --

8 MR. MacARTHUR: Yes.

9 MR. ZACHER: -- and a few lines down, you will see
10 that the customer service rep says:

11 "Now in your internet agreement, you made
12 important representations to us. In order to
13 continue processing your agreement, we need to
14 re-confirm some of these representations. Please
15 respond with a yes or no."

16 MR. MacARTHUR: Yes, I see that.

17 MR. ZACHER: You were asked:

18 "Okay, so to confirm, Jim, your name was provided
19 on the agreement and you were the account holder
20 spouse of the account holder, is that correct?

21 "I am the account holder.

22 "Okay, you completed the internet agreement
23 yourself, is that correct?

24 "That's correct."

25 "Other than yourself, there was no ACN
26 independent business owner on the premises while
27 you completed the internet agreement, correct?

28 Okay -- sorry, "Correct, because I am an IBO

1 anyway; it's my house."

2 "Okay, all right, and no ACN independent business
3 owner representative -- they would immediately
4 returning to you after you completed the internet
5 agreement, correct?

6 "Correct." "You understand that making a false
7 representation in this regard is a fraudulent
8 misrepresentation, and you agree to indemnify
9 Planet Energy for any damages suffered as a
10 result of you making a false statement in this
11 regard."

12 "Yes, I agree."

13 Do you recall that, Mr. MacArthur?

14 MR. MacARTHUR: I don't recall it exactly.

15 MR. ZACHER: You don't have any reason to doubt that
16 that call was made to you, and that you gave those answers?
17 We have the recording, so we can play it if you have any
18 doubt that it was you and --

19 MR. MacARTHUR: No, no, I see it here and I understand
20 it, and I have no doubt.

21 MR. ZACHER: And so it was brought home to you on this
22 call very early on that you were not to enrol customers on
23 your own; customers had to enrol on their own in the
24 absence of an IBO.

25 You knew that. Based on these two calls, that was
26 crystal clear, right?

27 MR. MacARTHUR: That's not the way I understand it,
28 but -- again, I didn't pay attention to the questions or

1 anything else. I just went through it. It was an
2 exercise, get it over with, done. I didn't concentrate on
3 it.

4 MR. ZACHER: And you were cautioned that making --
5 providing a false statement was fraud and that didn't bring
6 home the gravity of it to you?

7 MR. MacARTHUR: No.

8 MR. ZACHER: Okay. Madam Chair, I am in your hands.
9 We could take a break now, but I am happy to continue.

10 MS. LONG: We can break now and be back at 3:05.

11 MR. ZACHER: Thank you.

12 MS. LONG: Thank you.

13 --- Recess taken at 2:53 p.m.

14 --- On resuming at 3:09 p.m.

15 MS. LONG: Please be seated. Mr. Zacher.

16 MR. ZACHER: Thank you, Madam Chair.

17 Mr. Hawkins, I gather that -- sorry, Mr. MacArthur, I
18 apologize. I gather that you didn't make any -- you
19 weren't dissatisfied with the contracts that you enrolled
20 with Planet Energy on your own behalf in 2012; is that
21 right? You never complained?

22 MR. MacARTHUR: No.

23 MR. ZACHER: And you didn't -- strike that.

24 And let me just -- can I ask you to go to the
25 compendium and turn up tab 6. This is a printout of the
26 online enrollment portal similar to the one -- well, it's
27 the same as Mr. Safayeni referred you to earlier, it's just
28 in colour; do you have that?

1 MR. MacARTHUR: Yes.

2 MR. ZACHER: Okay, and if you go to page 7, at the top
3 you will see there's the screen shot where I gather you
4 enter your ACN business ID?

5 MR. MacARTHUR: Yes.

6 MR. ZACHER: And on the next page, you'll see the
7 note:

8 "The ACN business ID is not currently shown as
9 qualified to sell electricity or gas."

10 And so that just -- in the event you haven't satisfied
11 your regular testing to be accredited you wouldn't be able
12 to proceed with the enrollment; is that right?

13 MR. MacARTHUR: Yes.

14 MR. ZACHER: And over on to the next page, page 9, you
15 will see along the top there, there is the seven-step
16 process for enrolling?

17 MR. MacARTHUR: Yes.

18 MR. ZACHER: And just to be clear, you did this on
19 your own behalf in 2012? Right? Sir, you did this on your
20 own behalf in 2012?

21 MR. MacARTHUR: Yes, and I may have had some help
22 doing it.

23 MR. ZACHER: Okay. And your evidence is that you did
24 it another 25 times or so on behalf of prospective
25 customers?

26 MR. MacARTHUR: Yes.

27 MR. ZACHER: So you are well familiar with this
28 process? You have done it a lot?

1 MR. MacARTHUR: Yes.

2 MR. ZACHER: And you will see that on page 10, under
3 "residential property", you have to affirm that you are the
4 utility account holder or the spouse; correct?

5 MR. MacARTHUR: Yes.

6 MR. ZACHER: And then under (b) you have to confirm
7 that Planet Energy does not represent a gas distributor or
8 electricity distributor or -- nor the Ontario Energy Board
9 or the Government of Ontario?

10 MR. MacARTHUR: Yes.

11 MR. ZACHER: And that you understand and acknowledge
12 that the pricing offered by Planet Energy is for the
13 commodity only, and it does not include other electricity
14 charges that the customer will still have to pay?

15 MR. MacARTHUR: Yes.

16 MR. ZACHER: And you will see below that there is an
17 explanation of those charges, including the global
18 adjustment, as well as transmission, delivery, and other
19 charges?

20 MR. MacARTHUR: Yes.

21 MR. ZACHER: So again, this is something you would
22 have had to click 25-plus times; correct?

23 MR. MacARTHUR: Yes.

24 MR. ZACHER: And if you flip to page 14, you will see
25 the heading "sales representative conduct."

26 MR. MacARTHUR: Yes.

27 MR. ZACHER: And you have to confirm that your ACN
28 independent business owner immediately identified himself

1 or herself as such; do you see that?

2 MR. MacARTHUR: Yes.

3 MR. ZACHER: And you have to click that if you met
4 with your ACN independent business owner, over on to the
5 next page, page 15, you have to confirm that that person
6 immediately provided a business card, that they were
7 wearing an ID badge, and then there is a caution, including
8 a portion that is bolded, which says that the guidelines
9 require that your ACN IBO not be present when you are
10 completing this online Internet electricity and/or natural
11 gas process. Do you see that?

12 MR. MacARTHUR: Yes.

13 MR. ZACHER: And then there is a link to an OEB Staff
14 compliance bulletin?

15 MR. MacARTHUR: Yes.

16 MR. ZACHER: And all of these steps that I have gone
17 through, Mr. MacArthur, you would have gone through 25-plus
18 times and appreciated these requirements?

19 MR. MacARTHUR: Yes, but the way I was taught to do it
20 was just to go through it quickly, tick off all the boxes,
21 and save the customer as much time or bother as we could.

22 MR. ZACHER: And on to page 27, Mr. MacArthur, there
23 is step 3, and this is a requirement that you confirm that
24 you've read, understood, and downloaded the requisite
25 disclosure statements and price comparisons?

26 MR. MacARTHUR: Yeah, I see them.

27 MR. ZACHER: And you said that in every instance you
28 did do that.

1 MR. MacARTHUR: Well, I did tick it off and I did
2 print them out.

3 MR. ZACHER: Right. And you are familiar with those
4 documents?

5 MR. MacARTHUR: Yes.

6 MR. ZACHER: And Mr. MacArthur, if I could just ask
7 you to, at that same binder, flip to tab 29. Actually, I
8 am sorry, tab 31.

9 MR. MacARTHUR: Yes.

10 MR. ZACHER: And this is a copy of a disclosure
11 statement?

12 MR. MacARTHUR: Yes.

13 MR. ZACHER: You recognize it as such?

14 MR. MacARTHUR: Yes.

15 MR. ZACHER: And you will see that, the first bullet
16 in bold, there's no guarantee of savings if you sign a
17 contract?

18 MR. MacARTHUR: Yes.

19 MR. ZACHER: And the box halfway down the page
20 explains the global adjustment?

21 MR. MacARTHUR: Yes.

22 MR. ZACHER: And under step 4 on the right side of the
23 page are the bullets that talk about cancellation?

24 MR. MacARTHUR: Yes.

25 MR. ZACHER: Including the last bullet, if you cancel
26 after the requisite or prescribed number of days you may
27 have to pay a cancellation fee?

28 MR. MacARTHUR: Yes.

1 MR. ZACHER: You would have been aware of that, Mr.
2 MacArthur, having gone through this process 25 times?

3 MR. MacARTHUR: Well, gone through it 25 times doesn't
4 mean that I have read it 25 times. I've printed it 25
5 times, and I didn't pay attention to necessarily anything
6 that's in here.

7 MR. ZACHER: And if you go back to tab 6, this is the
8 enrollment portal. And if I could ask you to go to page
9 43. This is step 6 of the process. There's a requirement
10 that you have to confirm that you have read the terms and
11 conditions? Yes?

12 MR. MacARTHUR: That's 43; right?

13 MR. ZACHER: Yes.

14 MR. MacARTHUR: Yes.

15 MR. ZACHER: And on page 44, a number of agreements
16 and acknowledgements that you have to tick before
17 finalizing the contract, including "I understand that
18 entering a contract with Planet Energy does not guarantee
19 savings over the term of my contract versus other
20 alternatives."

21 "I confirm," third bullet, "I was provided sufficient
22 time to read all of the materials surrounding the product."

23 Fourth bullet: "I confirm that my ACN independent
24 business owner made no representations that were
25 inconsistent with the material in the website and that my
26 decision to enter the contract with Planet Energy has been
27 made solely on the basis of the information provided in
28 this website."

1 You would have ticked all of those?

2 MR. MacARTHUR: Yes.

3 MR. ZACHER: And finally, the last one: "I confirm
4 that I was not subject to any undue pressure by my ACN
5 independent business owner."

6 MR. MacARTHUR: Yes.

7 MR. ZACHER: And over on to page 45, you were required
8 to confirm that you have read, understood and agree to be
9 bound by the terms and conditions if you elect to enrol,
10 correct?

11 MR. MacARTHUR: Yes.

12 MR. ZACHER: Mr. MacArthur, I understand that the two
13 or three energy contracts you enrolled with are no longer
14 flowing. Is that right?

15 MR. MacARTHUR: I am not sure of the exact number, but
16 a couple of them have changed.

17 MR. ZACHER: The contracts that we talked about that
18 you entered into in 2012 are not active anymore, is that
19 correct?

20 MR. MacARTHUR: Oh, no, they are not.

21 MR. ZACHER: And that's because a couple of years
22 after you enrolled them, you and your then-wife, Ms.

23 [REDACTED] moved, correct?

24 MR. MacARTHUR: Yes.

25 MR. ZACHER: And you had to provide Planet Energy at
26 the time with confirmation and evidence of the fact that
27 you had moved your permanent residence, so that you would
28 not have to pay early termination fees, correct?

1 MR. MacARTHUR: As I recall, yes.

2 MR. ZACHER: So you were aware at that time, in 2013
3 or 2014, that there could be early termination charges?

4 MR. MacARTHUR: Yes.

5 MR. ZACHER: So the evidence you earlier gave that you
6 were unaware that there could be any early termination
7 charges until December 2015 when Mr. Hawkins raised it with
8 you is not correct. Do you agree?

9 MR. MacARTHUR: Sorry, can you repeat the question?

10 MR. ZACHER: Well, the evidence that you earlier gave
11 in response to Mr. Safayeni's questions that you were
12 unaware that early termination charges could even apply
13 until this issue arose with Mr. Hawkins in December 2015,
14 that's not correct because you knew yourself through your
15 own enrolment that there was the potential for early
16 termination charges, right?

17 MR. MacARTHUR: I don't think the answer is right. My
18 answer would be I didn't pay attention to this whatsoever.
19 It was just a piece of paper. I went through it, there was
20 no discussion on the global adjustment, or the penalty;
21 that was it.

22 MR. ZACHER: Mr. MacArthur, you have been aware since
23 2012 -- notwithstanding whatever decision you made to
24 ignore this, you were aware that you were not allowed as an
25 ACN IBO to enrol consumers on your own. You knew that,
26 correct?

27 MR. MacARTHUR: Yes. But I was told at the time don't
28 worry about it, just do it, sign them up yourself. So I

1 didn't pay much attention to it.

2 MR. ZACHER: And that was based on the advice you had
3 from friends and acquaintances who were ACN IBOs?

4 MR. MacARTHUR: Yes, that's correct.

5 MR. ZACHER: And the same goes for testing. You knew
6 that you were required to take a test, pass the test and
7 answer the questions on your own?

8 MR. MacARTHUR: Yes.

9 MR. ZACHER: You ignored that based on what your
10 friends and acquaintances told you?

11 MR. MacARTHUR: Yes.

12 MR. ZACHER: And you understood that there was no
13 guarantee of savings that came along with purchasing a
14 Planet Energy product. But based on advice from your
15 friends and acquaintances, you made the determination to
16 make those representations?

17 MR. MacARTHUR: I would have to say yes.

18 MR. ZACHER: And you were aware, of course, that you
19 were required to wear a badge?

20 MR. MacARTHUR: Yes.

21 MR. ZACHER: And provide customers with business
22 cards?

23 MR. MacARTHUR: Yes.

24 MR. ZACHER: Again, and you knew all this from the
25 information that was posted in your ACN back office, and
26 based on the Planet Energy enrolment process that you
27 yourself had gone through, correct?

28 MR. MacARTHUR: Yes.

1 MR. ZACHER: You first spoke to Mr. Hawkins about
2 whether he might be interested in a Planet Energy contract
3 in May of 2015.

4 MR. MacARTHUR: Yes, I believe that's the date, or May
5 that he signed up, I think.

6 MR. ZACHER: And your discussions with him were with
7 regards to five properties.

8 MR. MacARTHUR: Correct.

9 MR. ZACHER: You didn't have individual discussions
10 about those properties. You talked to him generally about
11 whether he might be interested in enrolling with Planet
12 Energy for all of those properties?

13 MR. MacARTHUR: Basically, his only interest was
14 saving money, and so I went through the 4.99 cents review,
15 and then he gave me, or I asked for copies of all his hydro
16 bills at the different locations.

17 MR. ZACHER: Okay. And at the time, Mr. Hawkins was
18 your landlord?

19 MR. MacARTHUR: Yes.

20 MR. ZACHER: You rented a room in a rooming house that
21 Mr. Hawkins owned and operated?

22 MR. MacARTHUR: Yes.

23 MR. ZACHER: And that was at [REDACTED]
24 [REDACTED]?

25 MR. MacARTHUR: [REDACTED].

26 MR. ZACHER: [REDACTED], and that's one of the
27 properties that you spoke to Mr. Hawkins about with regard
28 to Planet Energy?

1 MR. MacARTHUR: Yes.

2 MR. ZACHER: And he ended up enrolling four contracts
3 with Planet Energy for all five of these properties?

4 MR. MacARTHUR: Yes.

5 MR. ZACHER: All of them were rental or investment
6 properties?

7 MR. MacARTHUR: Yes.

8 MR. ZACHER: And I understand the -- let me back up.
9 The spreadsheet that Mr. Safayeni asked you to look at with
10 all of your contracts indicates that Mr. Hawkins' five
11 properties were enrolled May 3, 2015. Is that your
12 recollection?

13 MR. MacARTHUR: That's my recollection, yes.

14 MR. ZACHER: You have no reason to dispute the
15 information that's in that document, correct?

16 MR. MacARTHUR: Correct.

17 MR. ZACHER: And I understand that within a couple of
18 days, and that was at -- sorry, those contracts were
19 enrolled over the internet, yes?

20 MR. MacARTHUR: Yes.

21 MR. ZACHER: And within a couple of days of those
22 enrolments, Mr. Hawkins received a quality assurance or
23 verification call from Planet Energy, and you were present
24 when he took that call?

25 MR. MacARTHUR: He got a number of calls, and I don't
26 think -- I may be wrong, I don't think I was present when
27 he got one of the calls.

28 MR. ZACHER: Can I ask you to look at the compendium

1 of documents, Mr. MacArthur, and if you could turn up tab
2 25.

3 MR. MacARTHUR: Yes.

4 MR. ZACHER: And this is a quality-assurance call from
5 Planet Energy to Mr. Hawkins --

6 MR. MacARTHUR: Yes.

7 MR. ZACHER: -- on May 5, 2015, so that was within a
8 couple days of his enrollment. Do you see that?

9 MR. MacARTHUR: Yes.

10 MR. ZACHER: And it says at the first line:

11 "Robert Hawkins: Can I help you?"

12 "Customer Service Representative: Hi, is this
13 Robert Hawkins?"

14 "Who's calling?"

15 "This is Sabrina. I am calling from Planet
16 Energy."

17 "Oh, yeah?"

18 "This is with regards to your ACN enrollment you
19 did with us."

20 "Yes."

21 "For quality-control purposes I am required to
22 confirm a few things with you and advise you that
23 this is being recorded. Is that okay?"

24 "Hold on, please. Jim, come here."

25 That was a reference to you. You were there when the
26 call was received and you came over and listened in with
27 Mr. Hawkins?

28 MR. MacARTHUR: Yes. At the time I was working for

1 Mr. Hawkins or doing a project for him in relation to his
2 business that he owned. So we were in the same office.
3 And I can't remember if he said, "Hey, Jim," or whatever,
4 but -- I just can't remember.

5 MR. ZACHER: But you recall being there when the call
6 came in. He said, "Come on over," and then you and he
7 together listened, went through the call that lasted a
8 minute or two?

9 MR. MacARTHUR: I don't recall that, to be honest.

10 MR. ZACHER: The reference there, "Hold on, please.
11 Jim, come here", that's a reference, you agree, Mr.
12 MacArthur, to you?

13 MR. MacARTHUR: Yes.

14 MR. ZACHER: And so before Mr. Hawkins proceeded with
15 the balance of the call, he wanted to call you over so that
16 you could listen in with him?

17 MR. MacARTHUR: I am trying to think. I think he
18 called me over, and I think he put the young lady on hold
19 and asked me, "They are calling me, and they are going to
20 be asking me some questions," so I said, "Yes, go ahead and
21 answer the questions, and it's yes to everything."

22 MR. ZACHER: And so you were there as he went through
23 the call and answered the questions?

24 MR. MacARTHUR: Yes.

25 MR. ZACHER: And if you look over on to page 1479 of
26 the transcript, do you see that? Top right corner, page
27 1479? No, I am sorry.

28 MR. MacARTHUR: Yes, I see that on the screen here.

1 MR. ZACHER: Okay, so at the first line:

2 "Okay. And you completed the Internet agreement
3 yourself, right?"

4 "Yes."

5 "Okay. Other than yourself, there was no ACN
6 independent business owner on the premises when
7 you pressed the placement order buttons to
8 complete the Internet agreement; correct?"

9 "Answer: Correct."

10 "And no ACN independent business owner
11 represented that they would be immediately
12 returning after you completed this Internet
13 agreement, correct?"

14 "Answer: Correct."

15 So you were there when those questions were asked and
16 Mr. Hawkins gave those answers?

17 MR. MacARTHUR: Yes, and that would have been for just
18 one property.

19 MR. ZACHER: And that was consistent with what you had
20 coached Mr. Hawkins and others to answer if they received
21 these sorts of calls?

22 MR. MacARTHUR: Yes.

23 MR. ZACHER: And then it says:

24 "All right. Now we have sent a confirmation of
25 your agreement and terms and conditions by e-
26 mail. May I please ask you to confirm your e-
27 mail address to ensure you receive them?"

28 "Answer: [REDACTED]"

1 That's Mr. Hawkins' e-mail?

2 MR. MacARTHUR: Yes.

3 MR. ZACHER: And then it says:

4 "Okay. So you have more than one account and I
5 am just going to list off the programs that you
6 selected, okay?"

7 "Answer: Yup."

8 And I won't read it out, the rest of it, Mr.

9 MacArthur, but then this Customer service representative
10 goes through and confirms enrollment for [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED] Ontario, so those were the -- you
14 agree with me those were the five properties that he
15 enrolled in respect of?

16 MR. MacARTHUR: They were the five properties, yes.

17 MR. ZACHER: Okay. And then you will see further down
18 that page, about two-thirds of the way down, Mr. Hawkins
19 says:

20 "What's the cancellation policy?"

21 "Answer: So for electric it's \$50 per year or
22 partial year remaining on the contract if you
23 stay within the 15,000 kilowatts per year.

24 "And if I decide to sell a place, what's the
25 program?"

26 "So if it's your permanent residence, you would
27 just have to show us a proof of move."

28 "So what if it's not a permanent residence?"

1 "So if it's an investment property, the
2 termination charge will always apply."

3 "You can't just assign it to the new people?"

4 "Answer: You can if they want to take over the
5 contract."

6 "That's not automatic."

7 "Exactly."

8 Do you recall that, Mr. --

9 MR. MacARTHUR: Yes.

10 MR. ZACHER: So Mr. Hawkins was aware when this
11 contract was entered into and at a time when he could still
12 cancel it that termination charges would apply to the sale
13 or move of an investment property; correct?

14 MR. SAFAYENI: I am going to object to that question.
15 That would be an appropriate question perhaps for Mr.
16 Hawkins, but this witness can't speak to another person's
17 state of mind or awareness.

18 MR. ZACHER: You were aware, Mr. MacArthur, from this
19 call that -- you yourself were aware that if Mr. Hawkins
20 sold one of these investment properties he could be subject
21 to early termination charges; correct?

22 MR. MacARTHUR: No, I did not realize that at the
23 time. That did not come up until that first property was
24 sold, and I was not aware of any particular rules or
25 combinations in regard to rental properties. It just never
26 came up or I never thought of it.

27 MR. ZACHER: So it's not -- you agree with me, Mr.
28 MacArthur, that it's clear from the questions that Mr.

1 Hawkins asked and the answers that had been provided that
2 he understood that early termination charges could apply if
3 it was an investment property.

4 MR. SAFAYENI: It's the same objection. He's asking
5 -- my friend is asking about Mr. Hawkins's understanding,
6 and that's not an appropriate question for this witness.

7 MR. ZACHER: In any event, Mr. MacArthur, you were
8 there and present when these questions were asked of Mr.
9 Hawkins and the answers were provided; correct?

10 MR. MacARTHUR: Yes.

11 MR. ZACHER: Okay.

12 MR. MacARTHUR: There's one issue there with that, and
13 when the CSR is explaining the cancellation policy as being
14 if it's under 15,000 kilowatt-hours, I now know that to be
15 true, but the CSR did not in that phone conversation or
16 here in the transcript explain to Mr. Hawkins what the
17 penalty was if it was over 15,000 kilowatt-hours.

18 MR. ZACHER: Mr. Hawkins received a confirmation e-
19 mail from Planet Energy in respect of these properties
20 immediately after he enrolled? You're aware of that?

21 MR. MacARTHUR: I think that -- okay. He would
22 receive an e-mail for each property.

23 MR. ZACHER: You are aware that he did receive e-mails
24 for each property with the terms and conditions, price
25 disclosure, and price comparison?

26 MR. MacARTHUR: Price disclosure and price comparison
27 have nothing to do with what we are discussing here now.

28 MR. ZACHER: I am not asking you that question. You

1 are aware of the that upon enrolment, he received a
2 confirmation e-mail enclosing those documents?

3 MR. MacARTHUR: I can only assume.

4 MR. ZACHER: Let me ask you to turn to tab 16 in the
5 compendium.

6 MR. MacARTHUR: Okay.

7 MR. ZACHER: A few pages in, on page 833, you will see
8 that there are e-mails between Mr. Hawkins and Planet
9 Energy relating to his contracts, on which you were copied?

10 MR. MacARTHUR: I am not understanding exactly what
11 you are saying.

12 MR. ZACHER: I am saying that you --

13 MR. MacARTHUR: I see some e-mails here, or copies of
14 e-mails.

15 MR. ZACHER: Yes, and you were -- you see the e-mail
16 between customer relations and Mr. Hawkins, [REDACTED]
17 [REDACTED]?

18 MR. MacARTHUR: Okay.

19 MR. ZACHER: So you were copied on these e-mails?
20 This was in May 2015, in or about the time Mr. Hawkins
21 enrolled?

22 MR. MacARTHUR: Okay.

23 MR. ZACHER: And if you go to tab 18 of the same
24 binder, you will see Mr. Hawkins has sent you an e-mail on
25 June 30:

26 "Jim, is Planet Energy stupid or incompetent?

27 Another welcome letter was sent to [REDACTED]

28 from Planet Energy. If one more piece of e-mail

1 is sent to my rental properties, I will be
2 cancelling out of all my properties." Do you see
3 that?

4 MR. MacARTHUR: Yes.

5 MR. ZACHER: Do you recall getting that e-mail --

6 MR. MacARTHUR: Yes, and I know why.

7 MR. ZACHER: -- confirming that Mr. Hawkins had
8 received welcome letters, yes?

9 MR. MacARTHUR: Yes, and the reason he was concerned
10 about that he is he's running a business, he has a business
11 address, he didn't want the tenants getting the
12 information, or the bills, or anything. That's why he
13 wrote that.

14 MR. ZACHER: I gather that Mr. Hawkins did not cancel
15 any of the contracts, and they did flow and --

16 MR. MacARTHUR: Yes.

17 MR. ZACHER: And there were no complaints you heard
18 from Mr. Hawkins about any of the contracts until the issue
19 of early termination fees was raised in December of 2015?

20 MR. MacARTHUR: Yes.

21 MR. ZACHER: Is that right?

22 MR. MacARTHUR: Yes, that's right.

23 MR. ZACHER: And if you could go to tab 16 of that
24 same compendium, let me just -- sorry, before you turn it
25 up, I gather that Mr. Hawkins contacted you, told you that
26 he wanted to sell one of his properties and wanted to get
27 the contract cancelled, the Planet Energy contract for that
28 property cancelled, is that correct?

1 MR. MacARTHUR: That's correct.

2 MR. ZACHER: And so at tab 16, Mr. MacArthur, if you
3 could go to -- I think it should be in the top right
4 corner, document 856.041. It's an e-mail dated December 2,
5 2015, from you to Mr. Hawkins.

6 MR. MacARTHUR: Yes. That's December 2nd?

7 MR. ZACHER: Yes.

8 MR. MacARTHUR: Yes.

9 MR. ZACHER: And it says:

10 "I have been talking to Planet Energy today, I am
11 also meeting with a vice president of ACN.
12 Please allow me this time to come up with a
13 satisfactory resolution. Note there is a clause
14 in the contract about termination when a property
15 is sold. Normally what happens is the purchaser
16 transfers the hydro into their own name. Also if
17 the owner moves out and goes to an address where
18 the hydro is in someone else's name, Planet
19 Energy simply cancels the original contract. I
20 know you said last night to cancel everything,
21 but before we go off half-cocked, please allow me
22 until Friday to come up with a solution".

23 So you had cautioned Mr. Hawkins not to cancel until
24 you had tried to address this issue?

25 MR. MacARTHUR: Yes.

26 MR. ZACHER: And he did not wait until you addressed
27 the issue. He cancelled the contract and was assessed
28 early termination fees?

1 MR. MacARTHUR: Well, he didn't cancel the contract.
2 What happened was he bought the house in December of 2015.
3 The sale of the house didn't close until January 2016. So
4 I believe what happened was the lawyer or somebody had to
5 contact whichever hydro company -- I can't remember, Hydro
6 One or whatever it was there, and said the property's being
7 sold, and then Mr. Hawkins was not given an opportunity to
8 do anything, but gets one of the famous collection letters
9 from -- originating from Planet Energy through their
10 collection agency.

11 MR. ZACHER: And I guess what happened at this point,
12 Mr. MacArthur, is that Mr. Hawkins got pretty upset.

13 MR. MacARTHUR: To say the least.

14 MR. ZACHER: And notwithstanding the call that he had
15 with Planet Energy, the quality assurance call on May 5th
16 where he was told about early termination charges, he
17 blamed you?

18 MR. MacARTHUR: Right.

19 MR. ZACHER: And he told you, and there's -- I won't
20 go through the e-mails unless I think it's necessary, but
21 safe to say a lot of communications between Mr. Hawkins and
22 you, where he said if you don't fix this problem, you're
23 paying for it.

24 MR. MacARTHUR: That's right.

25 MR. ZACHER: And Mr. Hawkins had a fair bit of
26 leverage being your landlord, and having threatened to
27 evict you on previous occasions for various things, right?

28 MR. MacARTHUR: I was never threatened to be evicted.

1 MR. ZACHER: There's all sorts of e-mails, you'll
2 agree with me, from Mr. Hawkins to you, Mr. MacArthur,
3 saying if you loiter in the rooming house during the day,
4 you have to leave?

5 MR. MacARTHUR: There was a rule in the house -- the
6 reason I lived there because I was recently divorced --
7 that if you don't work, you can't live there and you cannot
8 be in the house during the day, which had nothing to do
9 with this.

10 MR. ZACHER: And at this point, Mr. Hawkins is saying
11 if you don't get me out of the \$1,400 cancellation fee, you
12 can add that amount to your rent, correct?

13 MR. MacARTHUR: That's what he was trying to do, yes.

14 MR. ZACHER: And was saying start putting \$100 in the
15 rent box every month to cover this?

16 MR. MacARTHUR: Yes.

17 MR. ZACHER: And he enforced that? You did start
18 paying --

19 MR. MacARTHUR: No, I did not --

20 MR. ZACHER: -- some amount.

21 MR. MacARTHUR: There was no payment from me.

22 MR. ZACHER: He continued to hold you responsible for
23 that amount --

24 MR. MacARTHUR: Yes.

25 MR. ZACHER: -- which is the reason you commenced
26 efforts to try to get Mr. Hawkins out of these early
27 termination charges?

28 MR. MacARTHUR: That's right.

1 MR. ZACHER: And that included complaints to the
2 Ontario Energy Board, yes?

3 MR. MacARTHUR: Yes.

4 MR. ZACHER: A proposal that you complain to the
5 Better Business Bureau, yes?

6 MR. MacARTHUR: Yes.

7 MR. ZACHER: Letters to Ellen Roseman at the Toronto
8 Star?

9 MR. MacARTHUR: Yes.

10 MR. ZACHER: And of course the 50-plus e-mails you
11 talked about writing to ACN and Planet Energy?

12 MR. MacARTHUR: Correct.

13 MR. ZACHER: And Planet Energy, you've said, in the
14 course of these communications asked for information about
15 whether this was permanent residence of Mr. Hawkins as
16 opposed to an investment property, they asked for
17 information in relation to that; correct?

18 MR. MacARTHUR: Yes.

19 MR. ZACHER: And you responded to various requests for
20 information from Planet Energy?

21 MR. MacARTHUR: Yes.

22 MR. ZACHER: And if you can turn up tab 16 in the
23 compendium, and if you can go, sir, to page 824 -- I am
24 sorry, 838.

25 MR. MacARTHUR: Yes.

26 MR. ZACHER: There is an e-mail from you to Planet
27 Energy?

28 MR. MacARTHUR: Um-hmm.

1 MR. ZACHER: "Mr. Hawkins does not plan on selling the
2 three units. I live in one of the houses at
3 [REDACTED]. Mr. Hawkins did use
4 my online store to enroll in Planet Energy
5 himself. I was not there when he enrolled."

6 Is that a correct statement?

7 MR. MacARTHUR: No.

8 MR. ZACHER: You were being untruthful in your e-mail
9 to Planet Energy because you thought that might assist in
10 getting Mr. Hawkins out of the cancellation charges?

11 MR. MacARTHUR: Well, that was --

12 MR. ZACHER: That was your objective.

13 MR. MacARTHUR: Yeah, that was my objective, and that
14 was a true statement at the top of the e-mail on 838.

15 MR. ZACHER: It was a true statement that Mr. Hawkins
16 used your online store and enrolled himself? I appreciate,
17 Mr. MacArthur, that a lot of time has passed since these
18 transactions were entered into. Do you now recollect,
19 having read this e-mail, that, in fact, in respect of this
20 property Mr. Hawkins did enroll himself?

21 MR. MacARTHUR: No, he did not enroll himself.

22 MR. ZACHER: So you were being untruthful in your e-
23 mail to Planet Energy?

24 MR. MacARTHUR: Yes.

25 MR. ZACHER: And you helped Mr. Hawkins draft a
26 complaint to the OEB?

27 MR. MacARTHUR: Yes, he asked me for how he should go
28 about it and what information he should put in there, so I

1 helped him, because I felt partially responsible.

2 MR. ZACHER: And in the complaint that you helped Mr.
3 Hawkins draft to the OEB, you alleged something different
4 than you alleged in this e-mail to Planet Energy. This
5 time you alleged that Mr. Hawkins -- or rather, that you
6 enrolled Mr. Hawkins in his contracts. Is that right?

7 MR. MacARTHUR: I don't see the e-mail you are
8 referring to.

9 MR. ZACHER: Can you go to tab 16, which I think you
10 are at, and go to page 856.047.

11 MR. MacARTHUR: Yes, I see that.

12 MR. ZACHER: This an e-mail from you to somebody named
13 Tony Baggetta.

14 MR. ZACHER: Yes.

15 MR. MacARTHUR: And in it you are summarizing the
16 issue, the problem that you are having with Mr. Hawkins?

17 MR. MacARTHUR: Yes.

18 MR. ZACHER: And in the middle of that e-mail it says:
19 "Bottom line is the customer is pissed. He filed
20 a complaint with the OEB claiming I did not
21 explain the clause to him and the -- I signed up
22 all five rental properties when he was not in the
23 room. I did not show my badge or business card,
24 et cetera."

25 And then the last paragraph:

26 "I am being thrown under the bus here, and nobody
27 at ACN or Planet Energy are prepared to help.
28 The client expects me to pay the \$1,400 and is

1 holding me personally responsible."

2 You wrote that e-mail.

3 MR. MacARTHUR: Yes.

4 MR. ZACHER: You indicated that in the complaint to
5 the OEB that you helped Mr. Hawkins draft that it was being
6 alleged that you enrolled him; correct?

7 MR. MacARTHUR: Yes.

8 MR. ZACHER: Which is different than the e-mail you
9 sent to Planet wherein you said Mr. Hawkins had enrolled
10 himself, correct?

11 MR. MacARTHUR: Yes.

12 MR. ZACHER: And you helped Mr. Hawkins lodge a
13 complaint with the Better Business Bureau?

14 MR. MacARTHUR: Yes, I told him to do it.

15 MR. ZACHER: And if you can go to tab 12 in the
16 compendium. There is an e-mail from you to Mr. Hawkins.

17 MR. MacARTHUR: Yes.

18 MR. ZACHER: I take it this is the complaint, and it's
19 entitled "BBB draft." That means -- that refers to Better
20 Business Bureau?

21 MR. MacARTHUR: Yes.

22 MR. ZACHER: And this is the complaint you drafted on
23 Mr. Hawkins' behalf for submission to the Better Business
24 Bureau.

25 MR. MacARTHUR: Yes, because I was the only one, other
26 than Mr. Hawkins, I had the information that had to go into
27 that complaint, and I was merely giving him the information
28 that he needed to file a complaint.

1 MR. ZACHER: Okay. And this e-mail is dated April
2 19th?

3 MR. MacARTHUR: Um-hmm.

4 MR. ZACHER: And if you go to tab 21 -- sorry, not tab
5 21, tab 20. I gather this is the Better Business Bureau
6 complaint and the Better Business Bureau's response?

7 MR. MacARTHUR: Yes.

8 MR. ZACHER: And three-quarters of the way down the
9 page:

10 "The consumer's statement that it is his
11 residency appears to be non-factual, as the
12 consumer was not a resident of the address. The
13 consumer has been notified of the obligation of
14 the agreement. In addition, the consumer was
15 provided with a large amount of documentation of
16 which the consumer's early termination
17 obligations are outlined in detail. The consumer
18 was also provided with a disclosure statement
19 which outlines in brief the consumer's rights and
20 obligations under the agreement, including
21 termination of the agreement. The consumer was
22 provided with all the necessary and proper
23 information, which included termination options
24 and obligations of the agreement."

25 MR. SAFAYENI: I am sorry to interrupt my friend, but
26 if I heard him correctly I think he was presenting this as
27 the Better Business Bureau's response, when as I read the
28 document that's actually Planet Energy's response from the

1 business. I am not sure this witness can speak to it one
2 way or another, but I don't want the document to be put in
3 with a certain characterization that on the face of it
4 appears to be inaccurate.

5 MR. ZACHER: That's fair, and I may have misread it.

6 In any event, that's the response, whether it's from
7 Planet Energy or the Better Business Bureau, that's what
8 you received -- you and Mr. Hawkins received back; is that
9 right?

10 MR. MacARTHUR: Yes.

11 MR. ZACHER: And then at tab 21, so this looks to be a
12 day later, May 11th, Mr. MacArthur, you have counselled Mr.
13 Hawkins on how to respond; is that right?

14 MR. MacARTHUR: Yes.

15 MR. ZACHER: And it says under "other info":

16 "They claim you were given a lot of info,
17 including contract copy of terms and conditions,
18 et cetera. Your response needs to be at no time
19 were you given or did you see a contract copy of
20 terms and conditions, you still don't have
21 copies. Your ACN rep signed you up with Planet
22 Energy without you being there".

23 That's what you are proposing Mr. Hawkins needs to
24 respond with; correct?

25 MR. MacARTHUR: Yes, what you need to understand is
26 when I signed up Mr. Hawkins I filled out all the
27 documents. I did everything, got him all signed up, I put
28 the disclosure statements and the terms and conditions, I

1 did print them out and put them in a file. Those files are
2 in my possession, not his.

3 MR. ZACHER: You agree -- and when you signed Mr.
4 Hawkins up, you provided his e-mail address; correct?

5 MR. MacARTHUR: I don't get it.

6 MR. ZACHER: Well, when you enrolled Mr. Hawkins
7 online, you provided Mr. Hawkins' personal information,
8 including his e-mail address; right?

9 MR. MacARTHUR: Yes.

10 MR. ZACHER: And Mr. Hawkins received a confirmation
11 e-mail enclosing the terms and conditions, disclosure
12 statement, and price comparison; right?

13 MR. MacARTHUR: If you say so. I don't recall it.

14 MR. ZACHER: And you're well aware that Mr. Hawkins
15 was receiving welcome letters enclosing the terms and
16 conditions at his properties. In fact, he was complaining
17 to you about getting too many of them, right?

18 MR. MacARTHUR: Right.

19 MR. ZACHER: So when you drafted this e-mail, you knew
20 this was untrue. He had received the contract
21 documentation, right?

22 MR. MacARTHUR: I don't know that to be right, because
23 I don't remember exactly how that worked out or how it
24 went.

25 MR. ZACHER: And you knew when you drafted this e-mail
26 that Mr. Hawkins was aware when he entered into the
27 contract of the early termination provisions, right?

28 MR. MacARTHUR: No. As I recall, he was not aware of

1 the cancellation until the first property was sold. Then
2 he was aware obviously then of the cancellation fees.

3 MR. ZACHER: Just a last document on this, Mr.
4 MacArthur. If you turn to tab 22, this would appear to be
5 the Better Business Bureau's response to Mr. Hawkins. Do
6 you see that?

7 MR. MacARTHUR: Yes.

8 MR. ZACHER: And Mr. Hawkins has forwarded it to you,
9 to your e-mail, right?

10 MR. MacARTHUR: Yes.

11 MR. ZACHER: And it looks like the response that you
12 had proposed, that Mr. Hawkins provide to the Better
13 Business Bureau have in fact been provided. You see there
14 the two paragraphs under residency and other info that
15 appear to be copied and pasted from your earlier e-mail.
16 Do you see that?

17 MR. MacARTHUR: Yes, I see what it's saying.

18 MR. ZACHER: And in the final paragraph, the Better
19 Business Bureau says:

20 "In addition, the other info appears not to be a
21 response from you, but an advisement of what you
22 should be saying."

23 MR. MacARTHUR: That's right.

24 MR. ZACHER: Is that the end of the Better Business
25 Bureau complaint?

26 MR. MacARTHUR: Yes, it is.

27 MR. ZACHER: So, Mr. MacArthur, and I appreciate at
28 this time you were under a lot of financial pressure, it's

1 safe to say Mr. Hawkins was threatening to make you liable
2 for the \$1,400 cancellation fee.

3 MR. SAFAYENI: Maybe my friend can help by saying at
4 what time he is talking about. I am not sure at what time
5 period we are talking about here.

6 MR. ZACHER: In the period when these complaints are
7 being made to the Ontario Energy Board, the Better Business
8 Bureau. So January --

9 MR. MacARTHUR: No, when he was threatening to, you
10 know, put the \$100 in the box or whatever that meant, I had
11 no intention of paying it and it was not a financial issue
12 for me.

13 MR. ZACHER: And Mr. MacArthur, I understand you had
14 some health issues at the time?

15 MR. MacARTHUR: Yes.

16 MR. ZACHER: And, sir, it would appear that you and
17 Mr. Hawkins are providing whatever information to the
18 Ontario Energy Board, or to Planet Energy, or to the Better
19 Business Bureau that you think they need in order to assist
20 you and Mr. Hawkins?

21 MR. MacARTHUR: Yes.

22 MR. ZACHER: And the OEB is interested in knowing
23 about whether you provided business cards or had an ID
24 badge, and whether you represented savings, and you
25 provided answers to those questions that you knew would
26 assist in a prosecution of Planet Energy and relief for Mr.
27 Hawkins of early termination charges?

28 MR. MacARTHUR: Yes, I was only trying to assist him

1 because I felt partially responsible.

2 MR. ZACHER: And you are saying white one day and
3 black the next to these different agencies, based on what
4 you think they need to hear?

5 MR. MacARTHUR: Well, I am no expert in filing
6 complaints and I was just doing what was necessary to get,
7 first of all, Mr. Hawkins off my back, while at the same
8 time, as you can see from everything here, spending a
9 considerable amount of time and effort with Planet Energy
10 and ACN to get those charges removed.

11 MR. ZACHER: Right. Charges that Mr. Hawkins knew
12 about through his call with Planet Energy in early May, but
13 was blaming you for?

14 MR. SAFAYENI: Again we are going to Mr. Hawkins
15 knowledge. This is the third time my friend has asked
16 essentially the same question.

17 MR. ZACHER: Madam Chair, if you just give me a couple
18 Minutes, I will just go through my notes.

19 MS. LONG: That's fine.

20 MR. ZACHER: I may be close to being finished.

21 Mr. MacArthur, if I could just ask you to turn up the
22 enforcement team's binder of documents, and that's KX1.2.

23 MR. MacARTHUR: Yes.

24 MR. ZACHER: If I could just ask you to turn tab 22.
25 Mr. MacArthur, this is a document that Mr. Safayeni took
26 you to, and you indicated that this was a document you
27 included in your sales binder.

28 MR. MacARTHUR: Yes.

1 MR. ZACHER: And this is a document that another one
2 of your friends who was an ACN IBO provided to you?

3 MR. MacARTHUR: Yes.

4 MR. ZACHER: And this person's name is [REDACTED] ?

5 MR. MacARTHUR: Yes.

6 MR. ZACHER: So this is one of the unidentified ACN
7 IBOs that are referenced in your various witness
8 statements?

9 MR. MacARTHUR: Yes.

10 MR. ZACHER: And this would be one of the people that,
11 until today, you have refused to disclose their identities?

12 MR. MacARTHUR: Yes.

13 MR. ZACHER: And you agree that I, on behalf of Planet
14 Energy, earlier requested you to disclose the identities of
15 these unnamed IBOs in your various witness statements, and
16 you refused?

17 MR. MacARTHUR: Is that a statement or you are asking
18 me a question?

19 MR. ZACHER: I am putting the proposition to you. Do
20 you agree?

21 MR. MacARTHUR: Yes.

22 MR. ZACHER: And just to be clear, if we look at this
23 document, this is this before and after document?

24 MR. MacARTHUR: Yes.

25 MR. ZACHER: And the before scenario, if you look over
26 -- under the right-hand column "description", you will see
27 that this is a customer who is enrolled with another
28 retailer, JustEnergy. Do you agree?

1 MR. MacARTHUR: I don't get the connection with
2 JustEnergy, so that -- oh, I guess JustEnergy was the
3 original supplier to him, although I -- from -- it's
4 blocked out at the top there a bit, but it may be
5 PowerStream. Yes, it is.

6 MR. ZACHER: JustEnergy; right?

7 MR. MacARTHUR: PowerStream. It's very clear on the
8 second page.

9 MR. ZACHER: Well, if you look under "description",
10 the supply is from JustEnergy. Local distribution company
11 is PowerStream, but this is a customer who is being
12 supplied by another retailer, JustEnergy; correct?

13 MR. MacARTHUR: I don't see that.

14 MR. ZACHER: You don't see the words "supply by
15 JustEnergy"?

16 MR. MacARTHUR: Okay. I see that word "supply by
17 JustEnergy".

18 MR. ZACHER: So this isn't a comparison of a customer
19 who is paying -- who is a standard supply customer,
20 comparing what they pay under standard supply to what they
21 would pay under a retail contract.

22 MR. MacARTHUR: Well, in fact, what this says, now
23 that I read through this, as you pointed it out, this is a
24 retail contract, which I didn't realize until now and never
25 thought of -- JustEnergy didn't ring a bell, but now I see
26 that, and on the second page that is by Planet Energy,
27 although it is billed from PowerStream, but the supplier
28 was Planet Energy.

1 MR. ZACHER: Mr. MacArthur, if you go to tab 10B in
2 that binder, this is the spreadsheet we looked at before?

3 MR. MacARTHUR: Yes.

4 MR. ZACHER: So a number of the consumers who are
5 identified as having enrolled under your IBO number are
6 large commercial customers; right?

7 MR. MacARTHUR: No, there is a split between the two.
8 These are not all --

9 MR. ZACHER: I agree with you. Some of them are large
10 commercial customers?

11 MR. MacARTHUR: Correct.

12 MR. ZACHER: And those would include --

13 MR. SAFAYENI: I wonder if we could just define -- if
14 that term is being used with a certain legal definition, I
15 wonder if we could just put that on the record. If we are
16 using it colloquially that's different, but --

17 MR. ZACHER: So Mr. MacArthur, you understood that
18 there was a difference between a low-volume consumer and a
19 large commercial consumer at the time that you were an IBO;
20 correct? And there was a different -- in some cases there
21 was different enrollment process for those customer;
22 correct?

23 MR. MacARTHUR: Originally when I signed these people
24 up I signed them up like I would do any residential
25 customer. It wasn't until sometime after that I was made
26 aware that there was such a thing as a commercial account
27 based on the number of kilowatt-hours used --

28 MR. ZACHER: And you under --

1 MR. MacARTHUR: -- but that was after the fact. And
2 then I applied to ACN for both of those to be considered --
3 or there is three of them, actually, to be considered for
4 -- to be a large commercial account, in which case the rate
5 was down to 4.69 cents.

6 MR. ZACHER: Right. And in all cases that was
7 accepted?

8 MR. MacARTHUR: In the three cases, yes.

9 MR. ZACHER: And those cases were [REDACTED], correct?

10 MR. MacARTHUR: Yes.

11 MR. ZACHER: And there is a numbered company at the
12 bottom of the list, [REDACTED]

13 MR. MacARTHUR: Yes.

14 MR. ZACHER: And [REDACTED].

15 MR. MacARTHUR: It would be a combination of a
16 numbered company and [REDACTED], so there is two
17 there. There's a numbered company plus the name Baluke
18 Dental. They're two specific accounts --

19 MR. ZACHER: Right.

20 MR. MacARTHUR: -- they're separate accounts.

21 MR. ZACHER: Right. Each of which were large
22 commercial accounts?

23 MR. MacARTHUR: Yes.

24 MR. ZACHER: And you understood that the threshold for
25 large commercial was 250,000 cubic metres for gas; right?

26 MR. MacARTHUR: Yes, but we are not talking about gas
27 here.

28 MR. ZACHER: And you understood for electricity it was

1 150,000 kilowatt-hours.

2 MR. MacARTHUR: Correct.

3 MR. ZACHER: Annually.

4 MR. MacARTHUR: Yes.

5 MR. ZACHER: And Mr. Hawkins, you never enrolled any
6 of these consumers without their authorization. In every
7 single case they provided you with authorization to enroll
8 them.

9 MR. MacARTHUR: Correct.

10 MR. ZACHER: And you have never enrolled anyone
11 without their authorization; correct?

12 MR. MacARTHUR: Correct.

13 MR. ZACHER: And in the case of Mr. Hawkins, in
14 addition to -- you said in addition to introducing Planet
15 Energy products to him, you had also provided him with
16 other services?

17 MR. MacARTHUR: Yes, but I don't see that has any
18 bearing on what we are talking about here today.

19 MR. MacARTHUR: You were in the water system
20 installation business?

21 MR. MacARTHUR: That's not relevant.

22 MR. ZACHER: I agree. Not to this case, but you
23 provided him with a water installation system? You sold
24 that to him?

25 MR. MacARTHUR: That's confidential. I can't discuss
26 customers --

27 MR. SAFAYENI: I am struggling to relate these
28 questions, as I think the witness is, to the issues here.

1 I mean, we are talking about energy contracts. Whether Mr.
2 MacArthur had other business dealing with Mr. Hawkins has
3 absolutely nothing to do with what happened in relation to
4 the energy contracts.

5 MR. ZACHER: Mr. Hawkins provided you with broad
6 authority to enter into energy contracts on his behalf that
7 you believed were prudent?

8 MR. MacARTHUR: I believe, sorry?

9 MR. ZACHER: That you believed were prudent?

10 MR. MacARTHUR: Yes.

11 MR. ZACHER: Right. Mr. Hawkins -- sorry, Mr.
12 MacArthur, after having made -- helped Mr. Hawkins make
13 these complaints to the OEB and the Better Business Bureau,
14 you applied to renew your ACN IBO authority in June of
15 2016; correct?

16 MR. MacARTHUR: Yes. There was a reason for that, by
17 the way. That was to get information needed for this
18 inquiry.

19 MR. ZACHER: Who directed you to do that?

20 MR. MacARTHUR: I did that on my own, and without
21 access to the back office, I had -- I would not have any of
22 this up-to-date at all, so I had to pay the renewal.

23 MR. ZACHER: And prior to that you had been locked out
24 of the ACN back office?

25 MR. MacARTHUR: Yes, because you have an anniversary
26 date once a year, and if you go beyond it you are locked
27 out of your store and your back office until you pay it.

28 MR. ZACHER: And you were locked out of your ACN back

1 office effective when?

2 MR. MacARTHUR: I don't remember the dates.

3 MR. ZACHER: Before June 2016?

4 MR. MacARTHUR: If you say so.

5 MR. ZACHER: Well, if you are applying to renew your
6 application in June you must have been locked out before
7 then.

8 MR. MacARTHUR: Oh, yeah, for sure.

9 MR. ZACHER: Those are all my questions, thank you
10 very much, Mr. MacArthur. And I apologize for calling you
11 Mr. Hawkins a dozen times.

12 MS. LONG: Thank you, Mr. Zacher. I do have one
13 question that I am going to ask, Mr. Safayeni.

14 **QUESTIONS BY THE BOARD:**

15 Mr. MacArthur, you had discussion with Mr. Zacher
16 about a telephone call, a confirmation call from Planet
17 Energy where a CSR asked a number of questions to Mr.
18 Hawkins and you were there.

19 I would like to understand. Could you hear what the
20 CSR was saying?

21 MR. MacARTHUR: No.

22 MS. LONG: Because you were not on speaker phone? He
23 was not on speaker phone, and you could not hear what she
24 was saying?

25 MR. MacARTHUR: I don't think he knows how to use a
26 speaker phone. To be honest, I can't recall.

27 MS. LONG: You can't recall, or you couldn't hear? Do
28 you remember? You could hear what Mr. Hawkins was saying,

1 but could you hear what the CSR was saying?

2 MR. MacARTHUR: No.

3 MS. LONG: No, you couldn't hear, or no, you can't
4 remember?

5 MR. MacARTHUR: Like I can't remember whether it was
6 on speaker phone or not. I don't think so.

7 MS. LONG: Mr. Zacher, did you want to follow up after
8 that -- or I am sorry, Mr. Janigan has a question.

9 MR. JANIGAN: Just very briefly. When you were going
10 through sort of the hierarchy at ACN, there was a number of
11 positions that were listed and one of them, I think, was
12 senior vice president.

13 MR. MacARTHUR: Yes.

14 MR. JANIGAN: But that senior vice president wasn't
15 really a senior vice president of ACN? Is that what I
16 got --

17 MR. MacARTHUR: No, he was in no way connected with
18 ACN as far as a company is concerned. It's in this mass
19 marketing system or systems that once you sign up so many
20 people and you've got so many legs down here, you go from a
21 supervisor to a director to a senior vice president in the
22 end, and all that means is it's a relationship to your
23 status in your group or groups. And when you get to that
24 level, you are making serious amount of money.

25 But there's no connection whatsoever. They cannot
26 speak on behalf of ACN.

27 MR. JANIGAN: So the vice president of your group, is
28 that what it is, or what is it?

1 MR. MacARTHUR: No, there was no -- the group's name
2 was the group's name. There was no hierarchy in that
3 group, there was no -- it was just a name that we all --
4 when I signed up, I signed up under my name, but I was part
5 of that group.

6 MR. JANIGAN: Okay. That's all.

7 MS. LONG: I am sorry. I am going to let Mr. Zacher
8 ask any questions that he might have and then you can do
9 your re-exam, if necessary.

10 **FURTHER CROSS-EXAMINATION BY MR. ZACHER:**

11 MR. ZACHER: Thank you. Just to clarify, Mr.
12 MacArthur, the call that the chair referred you to, to be
13 clear, you don't recall whether it was on speaker phone or
14 not, right?

15 MR. MacARTHUR: No.

16 MR. ZACHER: And if Mr. Hawkins were to say that it
17 was on speaker phone, you would have no reason to disagree,
18 correct?

19 MR. MacARTHUR: No, because I can't be sure.

20 MR. ZACHER: Thank you.

21 MS. LONG: Okay. Mr. Safayeni?

22 MR. SAFAYENI: Madam Chair, if we could just perhaps
23 just have five minutes to collect our thoughts. I think we
24 have a very brief re-exam, but I would appreciate a moment
25 just to confer with Ms. Gonsalves.

26 MS. LONG: Okay. Well, we are actually going to step
27 out for five minutes, and then we will come back. How
28 about that?

1 MR. SAFAYENI: Thank you.

2 --- Recess taken at 4:23 p.m.

3 --- On resuming at 4:32 p.m.

4 MS. LONG: Please be seated. Mr. Safayeni.

5 **RE-EXAMINATION BY MR. SAFAYENI:**

6 MR. SAFAYENI: Thank you, Madam Chair. Mr. MacArthur,
7 I know it's been a long day. I only have a few more
8 questions with you -- for you, and then I think we will be
9 finished.

10 So do you remember my friend Mr. Zacher asked you
11 whether it was true that you understood there was no
12 guarantee of savings in respect of the energy contracts
13 but, based on advice you heard from friends and
14 acquaintances, you nevertheless made representations to
15 consumers about price savings, and -- do you remember being
16 asked that question?

17 MR. MacARTHUR: Yes.

18 MR. SAFAYENI: And the answer you gave was "I would
19 have to say yes." Do you remember giving that answer?

20 MR. MacARTHUR: Yes.

21 MR. SAFAYENI: So my question is why did you make
22 those representations to consumers?

23 MR. MacARTHUR: In the sales business, you say a lot
24 of things that aren't true. And in this case I would say
25 that probably 75 percent of ACN reps are doing exactly the
26 same things as I did.

27 MR. SAFAYENI: But why did you make those
28 representations to prospective consumers about the issue of

1 price savings?

2 MR. MacARTHUR: I would talk to them about price
3 savings, and it was there, I could show it, and that wasn't
4 exactly in some cases the truth, because it wasn't until
5 well into my ACN time that I became aware of the global
6 adjustment and exactly what it did. I have got other ACN
7 IBOs who were trying to teach me, saying, "Okay. Well, if
8 somebody asks about the global adjustment, just say that
9 the average was five cents." Well, that might have been
10 okay in 2012, but it's not true today. So today it would
11 be very difficult to sell a consumer electricity or hydro,
12 or even gas, for that matter.

13 MR. SAFAYENI: Did anyone from ACN or Planet Energy do
14 anything to stop you from making those representations
15 about price savings to prospective consumers?

16 MR. MacARTHUR: No.

17 MR. SAFAYENI: You may remember that my friend Mr.
18 Zacher asked you whether you provided answers to -- or
19 information, I think he said, to the OEB that you knew
20 would assist in their prosecution of Planet Energy. Do you
21 remember that question?

22 MR. MacARTHUR: Yes.

23 MR. SAFAYENI: And based on my notes, part of your
24 response was:

25 "I was only trying to assist because I felt
26 partially responsible."

27 Do you remember giving that answer?

28 MR. MacARTHUR: Yes.

1 MR. SAFAYENI: Why did you feel partially responsible?

2 MR. MacARTHUR: Because here I had found out the hard
3 way that I sold somebody something and did not explain
4 terms and conditions and the cancellation, disclosure
5 statements, so I feel responsible I did not point out the
6 cancellation clause, that it was even there, or what it
7 meant, because I didn't know. I had not read it, I didn't
8 pay attention to it, and then as time went on, of course,
9 all of this developed.

10 MR. SAFAYENI: Do you remember Mr. Zacher asked you
11 whether -- well, he made reference to a demand from Mr.
12 Hawkins that you start putting \$100 in the red box to cover
13 the cancellation fee that he got hit with. We didn't
14 actually go to the e-mail, but he made reference to that,
15 and then he asked you whether you actually did that or
16 suggested to you that you did.

17 Do you remember that line of questioning?

18 MR. MacARTHUR: Yes.

19 MR. SAFAYENI: And you said:

20 "No, I did not. There was no payment from me."

21 Do you remember that?

22 MR. MacARTHUR: Yes.

23 MR. SAFAYENI: What was your response to Mr. Hawkins
24 regarding the possibility of having to pay \$100 a week when
25 Mr. Hawkins raised it?

26 MR. MacARTHUR: Exactly two things. Number one, get
27 stuffed, and number two, you as a purchaser of a product
28 are responsible to read the terms and conditions, and which

1 he did not.

2 MR. SAFAYENI: The time of the OEB complaint -- which
3 is not controversial. This is January 23rd, 2016 -- was
4 Mr. Hawkins pursuing you for any amount of money in respect
5 of the energy contracts or the cancellation fees?

6 MR. MacARTHUR: He kept talking about it, and nothing
7 happened. I didn't pay anything, he didn't threaten for me
8 to pay anything after that, because he saw that I was doing
9 everything I could do to try and get the cancellation
10 penalty waived. He had no objection to paying the lower
11 one, because he did ask in that phone conversation that he
12 had with the CSR, and was told -- obviously it's written
13 there -- that it was \$50 a year for the balance of the term
14 on that contract.

15 MR. SAFAYENI: Do you feel any pressure to pay Mr.
16 Hawkins anything in respect of the cancellation fees?

17 MR. MacARTHUR: Absolutely not.

18 MR. SAFAYENI: Do you remember Mr. Zacher asked you
19 whether you would provide the OEB with any information
20 needed to assist them in the prosecution against Planet
21 Energy? I think I already asked you this. You said yes.

22 MR. MacARTHUR: Yes.

23 MR. ZACHER: This is going beyond reply, and my friend
24 is leading the witness. I have not said anything to this
25 point. He had already asked this very question.

26 MR. SAFAYENI: I am very close to being done, and I am
27 only leading the witness because it was redundant. It was
28 a bad question on my part.

1 When you were providing information to the OEB, did
2 you give the information that was as truthful, accurate,
3 and complete as you could recall at the time that you gave
4 it?

5 MR. MacARTHUR: Yes.

6 MR. SAFAYENI: And my last question. Member Jan --

7 MS. LONG: You are getting very close to new --

8 MR. ZACHER: There is an answer embedded in that
9 question, which is not proper on direct examination. It is
10 certainly not proper on -- in reply.

11 MR. SAFAYENI: Okay. Well, I have -- I don't agree
12 with that, but I only have one further question which
13 arises out of Member Janigan's question to you about the
14 senior VP of ACN. Do you remember he asked you about what
15 the role of that person was and whether they were --

16 MR. MacARTHUR: Yes.

17 MR. SAFAYENI: -- actually connected with the
18 organization, and your answer was:

19 "He was in no way connected with ACN as far as
20 the company is concerned."

21 Or something to that effect. Do you remember giving
22 that answer?

23 MR. MacARTHUR: Yes.

24 MR. SAFAYENI: Just to be clear, is the SVP of ACN an
25 IBO?

26 MR. MacARTHUR: Yes, absolutely.

27 MR. SAFAYENI: Okay. No further questions, thank you.

28 MS. LONG: Thank you, Mr. Safayeni.

1 I should have mentioned this yesterday, but I trust,
2 Ms. Gonsalves and Mr. Safayeni, that you have spoken to
3 your witnesses about not speaking with other witnesses, but
4 I am going to remind you, Mr. MacArthur, that -- thank you
5 very much for your testimony, and I would ask that you not
6 speak with any other witnesses about your testimony. And
7 we thank you for coming and giving your evidence. Thank
8 you.

9 MR. MacARTHUR: Okay, thank you.

10 MS. LONG: You are excused.

11 **PROCEDURAL MATTERS:**

12 Are there any other matters we need to deal with prior
13 to tomorrow morning?

14 MS. GONSALVES: Madam Chair, I think it's only on the
15 subject of scheduling. Unfortunately we are behind where
16 we had hoped we would be at this stage. I have been
17 speaking with my friend, I have been speaking with Mr.
18 Bell. Certainly the parties are quite prepared to do
19 whatever is necessary to ensure that the hearing wraps up
20 in the six days we have. We are trying to sort out who
21 will be called tomorrow, and we are prepared to have
22 further discussions with Mr. Zacher about that. But we are
23 certainly -- if the Panel is interested, we would certainly
24 be quite willing to start the sitting day a bit earlier or
25 to go a bit later, as you wish. I just wanted to convey
26 our willingness to do whatever we can to that end, and the
27 witnesses that are called tomorrow may not be in quite the
28 same order that we had originally planned because of their

1 own work schedules, and we have an interpreter that we may
2 need to reschedule.

3 So things are a little bit up in the air, but I will
4 let you know first thing in the morning how we hope the day
5 plays out.

6 MS. LONG: Mr. Zacher?

7 MR. ZACHER: It would be helpful to know now who is
8 going to be -- what the order is going to be tomorrow. I
9 would think it makes sense for Mr. Hawkins to follow Mr.
10 MacArthur and not be delayed beyond this week.

11 I said to my friend that I don't think -- I understand
12 my friend wouldn't be more than 45 minutes with Mr. Hawkins
13 in direct, and I don't expect much more than half an hour
14 in cross-examination.

15 MS. LONG: Is there a problem with getting Mr. Hawkins
16 here tomorrow morning?

17 MS. GONSALVES: We do need to get in contact with all
18 of our witnesses, so I can't tell you right now. I will
19 sort it out with Mr. Zacher before we leave today, but I
20 think we have got to make some phone calls. I think it
21 would assist if we start at 9.

22 MS. LONG: It's unfortunate, but we actually do
23 schedule other things. As Board members, we sit on many
24 other files and so really from 8:30 to 9:30 is our time to
25 work on other files and do phone calls and things like that
26 when we are sitting in multiple-day hearings. So that's
27 not going to work for us. We do need to start tomorrow at
28 9:30.

1 So perhaps you can speak as quickly as you can make
2 some phone calls, and advise Mr. Zacher and also advise Mr.
3 Bell so the Panel knows what it is we need to be prepared
4 to hear first thing in the morning.

5 MS. GONSALVES: We will do our best, thank you.

6 MS. LONG: Okay, thank you very much.

7 --- Whereupon the hearing adjourned at 4:44 p.m.

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