

REDACTED



ONTARIO ENERGY BOARD

FILE NO.: **EB-2017-0007** **Planet Energy (Ontario) Corp.**

VOLUME: **Volume 4**

DATE: **November 27, 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 Monday, November 27, 2017,
commencing at 9:35 a.m.

VOLUME 4

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 Monday, November 27, 2017

2 --- On commencing at 9:35 a.m.

3 MS. LONG: Please be seated.

4 Good morning, everyone. The Panel continues today to
5 sit in EB-2017-0007, an enforcement action against Planet
6 Energy.

7 Ms. Gonsalves. Mr. Safayeni. Are you ready with your
8 next witness, or are there any preliminary matters that we
9 need to deal with?

10 **PRELIMINARY MATTERS:**

11 MS. GONSALVES: There are a couple of preliminary
12 matters, Madam Chair. To begin, following discussions
13 between us and our friends during the break, we will be
14 providing the Panel with an amended notice of intention
15 that we will be asking the Panel to sign.

16 Having reviewed the evidence, enforcement staff is of
17 the view that there is no prospect of a finding of
18 contravention in respect of the contract self-enrolled by
19 the two agents. And so in this amended notice of intention
20 that I am about to hand up, we have struck off of Appendix
21 A and Appendix B the two contracts. One was enrolled by
22 Mr. MacArthur himself and one was on behalf of his wife,
23 and then there were two self-enrolled by Mr. Nahid.

24 So I will hand that up and then I will explain a
25 second aspect of an area where we have sort of narrowed the
26 case following discussions.

27 And so you will see there, members of the Panel, that
28 on page 2, it's noted in red, we have changed the number of

1 contracts at issue for Mr. MacArthur from 27 to 25. And on
2 page 3 we have changed the number of contracts at issue for
3 Mr. Nahid from 18 to 16. No other changes until you get to
4 page 7, where we have changed the date to today as an
5 amended date. And, Madam Chair, we are asking, it's a
6 joint request by the parties that this be signed by you to
7 take effect. And then on Appendix A and Appendix B, you
8 will see the two contracts crossed out of each.

9 MS. LONG: Okay, thank you.

10 MS. GONSALVES: Thank you.

11 The second aspect of this, it's not reflected in any
12 changes to the notice, but we have undertaken to our
13 friends to advise the Panel that we will be seeking a
14 finding of no contravention in respect of the allegations
15 relating to the Energy Consumers Protection Act and
16 regulations for the four commercial contracts, commercial
17 consumers, about which you heard Mr. MacArthur testify in
18 relation to their electricity contracts only.

19 We have not removed those contracts from Appendix A of
20 the notice because the enforcement team intends to still
21 proceed on allegations relating to contraventions of the
22 codes.

23 MS. LONG: Can you repeat that for me, I am sorry?

24 MS. GONSALVES: Sure, yes. So I will break it down a
25 little bit more.

26 You will recall that when Mr. MacArthur testified he
27 acknowledged that four of his customers were commercial-
28 volume consumers in respect of their electricity accounts.

1 And the enforcement team acknowledges that for those four
2 accounts, the electricity accounts for those four
3 commercial customers, we cannot proceed on the allegations
4 of contraventions of the ECPA or the regulations, which are
5 premised on the consumers being low-volume consumers, so
6 below the threshold.

7 We haven't deleted those from Appendix A of the notice
8 because it's our position that we still have grounds to
9 proceed and seek findings of contraventions of the codes,
10 which are not subject to the same low-volume cut-off. And
11 so just to put on the record, those are contracts number
12 10033212, 10033779, 10024558, and 10020679. Okay?

13 MS. LONG: Okay.

14 MS. GONSALVES: The next preliminary matter, my
15 friends have new versions of the transcripts of the various
16 recorded phone calls that are now agreed transcripts that I
17 understand they have got copies to replace or to supplement
18 what's in your binders. I will let Mr. Zacher speak to
19 that.

20 MR. ZACHER: Yeah, so there were just a few, Madam
21 Chair, a few -- some transcripts of some telephone calls
22 that we had transcribed. My friends provided some
23 proposed edits. We agree with those proposed edits, and so
24 we have made replacement sets, and I think we have provided
25 the Panel's version of the replacement sets to Mr. Bell to
26 have replaced in your binders or to hand it up -- hand up.

27 Rather than substitute what you have in there already
28 in the event that you have made any handwritten notes, it

1 would probably make sense to just add it at the tab so that
2 you appreciate the changes.

3 I believe the changes are largely not substantive, but
4 we will allow you to make that determination --

5 MS. LONG: Okay. Mr. Bell is -- okay, not here, so --

6 MR. RICHLER: Madam Chair, we do have those copies,
7 and we can make the necessary revisions to your binders at
8 the next break, perhaps.

9 MS. LONG: Okay, thank you.

10 MS. GONSALVES: It actually occurs to me, Madam Chair,
11 before moving on to the last preliminary is perhaps we
12 should make the amended notice an exhibit, and I think it
13 can be just a regular public exhibit. It's been purged of
14 any private confidential information.

15 MR. RICHLER: We can call that Exhibit K4.1, unless
16 any of the parties have any comments on the numbering
17 conventions.

18 **EXHIBIT NO. K4.1: AMENDED NOTICE OF INTENTION**
19 **(REDACTED)**

20 MS. GONSALVES: Thank you. And so the last is just an
21 update on the schedule.

22 MS. LONG: Sorry, just before we continue, Ms.
23 Gonsalves, Mr. Zacher, any other comments that you would
24 like to make on anything Ms. Gonsalves has said thus far?

25 MR. ZACHER: No, I mean, the only -- and my friend's
26 correct that in terms of the amendment to the notice so
27 that we propose that that amendment be made on consent, so
28 with the consent of Planet Energy as well.

1 MS. LONG: Okay.

2 MR. ZACHER: With regards to my friend's proposal that
3 they will not seek any contraventions with regards to the
4 large-volume commercial contracts under the ECPA, just
5 caution that it may -- it will be our position that there
6 may, in fact, be other large-volume commercial contracts
7 that should fall into the same bucket, and that we may take
8 issue as well with the enforcement team's proposal to
9 continue to seek findings of contravention under the codes.

10 So I am not -- just highlight that for you.

11 MS. LONG: Okay, thank you.

12 Okay. Now to scheduling.

13 MS. GONSALVES: To scheduling.

14 So we are going to begin today with Mr. Hawkins, who
15 will be the last witness for the enforcement team. We
16 expect that including cross-examination he will be wrapped
17 up by or before lunch. That will be the close of the
18 enforcement team's case, subject to any reply that may be
19 necessary.

20 I understand that Planet Energy will call Mr.
21 Silvestri as their one and only witness. We expect that he
22 will go into tomorrow. And both sides are quite optimistic
23 that we shouldn't need Thursday at this point.

24 MS. LONG: Okay, very good, thank you.

25 Do you want to get Mr. Hawkins up? Mr. Hawkins, can
26 you approach the bench, please. Good morning, sir.

27 MR. HAWKINS: Take either seat?

28 MS. LONG: Either seat is fine. Perhaps you can just

1 introduce Mr. Hawkins for the record, and then we will have
2 him affirmed.

3 MR. SAFAYENI: Sure. The enforcement team's next
4 witness is Robert Hawkins.

5 **ONTARIO ENERGY BOARD - ENFORCEMENT PANEL 3**

6 **Robert Hawkins; Affirmed**

7 MR. SAFAYENI: Good morning, Mr. Hawkins. Can you
8 hear me okay?

9 MR. HAWKINS: Yes, I can.

10 MR. RICHLER: Excuse me, Madam Chair, I am sorry to
11 interrupt. But just before we get going, I notice we are
12 still on air and I just want to raise with you whether that
13 was your intention or not.

14 MS. LONG: Thank you. We will just go off-air. Thank
15 you, Mr. Richler.

16 --- On commencing in camera at 9:46 a.m.

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

18 MR. SAFAYENI: Mr. Hawkins, can you state and spell
19 your entire name for the record, please?

20 MR. HAWKINS: Robert Wayne Hawkins. R-O-B-E-R-T W-A-
21 Y-N-E H-A-W-K-I-N-S.

22 MR. SAFAYENI: And where do you live currently, Mr.
23 Hawkins?

24 MR. HAWKINS: [REDACTED].

25 MR. SAFAYENI: And what's your occupation?

26 MR. HAWKINS: I am self-employed, and a landlord.

27 MR. SAFAYENI: And when you say self-employed, is
28 there anything you do other than being a landlord?

1 MR. HAWKINS: I am in the entertainment business.

2 MR. SAFAYENI: Can you be a little more specific?

3 MR. HAWKINS: Disk jockey.

4 MR. SAFAYENI: And it's not controversial that in May
5 2015, you were enrolled into five contracts with Planet
6 Energy for five different properties that you own, correct?

7 MR. HAWKINS: Correct.

8 MR. SAFAYENI: I am going to list the addresses, and
9 you correct me if I am wrong. [REDACTED] in

10 [REDACTED]

11 MR. HAWKINS: Yes.

12 MR. SAFAYENI: [REDACTED], which you
13 already mentioned.

14 MR. HAWKINS: Yes.

15 MR. SAFAYENI: [REDACTED].

16 MR. HAWKINS: Yes.

17 MR. SAFAYENI: [REDACTED]

18 MR. HAWKINS: Yes.

19 MR. SAFAYENI: And [REDACTED].

20 MR. HAWKINS: Yes.

21 MR. SAFAYENI: Some of those properties that I have
22 listed have since been sold?

23 MR. HAWKINS: Yes.

24 MR. SAFAYENI: Which ones?

25 MR. HAWKINS: [REDACTED].

26 MR. SAFAYENI: The other three properties you still
27 own?

28 MR. HAWKINS: Yes.

1 MR. SAFAYENI: Are any of those properties still
2 flowing with Planet Energy today?

3 MR. HAWKINS: No.

4 MR. SAFAYENI: Are you the sole utility account holder
5 on all of those properties?

6 MR. HAWKINS: Yes.

7 MR. SAFAYENI: At some point, did you come to know a
8 man named Jim MacArthur?

9 MR. HAWKINS: Yes.

10 MR. SAFAYENI: How did you first meet Jim?

11 MR. HAWKINS: He rented from me.

12 MR. SAFAYENI: In which one of your properties?

13 MR. HAWKINS: [REDACTED].

14 MR. SAFAYENI: And approximately how long did he rent
15 from you?

16 MR. HAWKINS: Approximately two years.

17 MR. SAFAYENI: Did you become friends with Mr.
18 MacArthur?

19 MR. HAWKINS: Yes.

20 MR. SAFAYENI: Did you come to trust Mr. MacArthur?

21 MR. HAWKINS: Yes.

22 MR. SAFAYENI: At some point, did Mr. MacArthur raise
23 the issue of energy contracts with you?

24 MR. HAWKINS: Yes.

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

26 MR. HAWKINS: Well, he spent considerable amount of
27 time attempting to convince me that I could save money on
28 my hydro. Everybody wants to save money, and with hydro

1 rates rising at the time, or the newspapers advertising
2 they are raising, I guess, reluctantly I decided to do --
3 to go with the contracts.

4 MR. SAFAYENI: So let's just break that down a little
5 bit. Did you have more than one discussion with Mr.
6 MacArthur?

7 MR. HAWKINS: We had several discussions.

8 MR. SAFAYENI: And specifically on the issue of energy
9 contracts was the rest of my question.

10 MR. HAWKINS: Yes.

11 MR. SAFAYENI: Where did those discussions take place?

12 MR. HAWKINS: To the best of my recollection, at
13 [REDACTED].

14 MR. SAFAYENI: Were you looking to enroll into an
15 energy contract with a retailer at the time of those
16 discussions?

17 MR. HAWKINS: No.

18 MR. SAFAYENI: I want you to tell me what you
19 remember, if anything, Mr. MacArthur telling you in those
20 discussions about Planet Energy contracts.

21 MR. HAWKINS: Well, he didn't specify Planet Energy.
22 He did -- he was selling me on a concept of saving money on
23 hydro that, with the hydro rates rising, this would be a
24 fixed rate for the term of the contract; the rate wouldn't
25 go up.

26 And after considerable conversation, I believed that
27 he was telling -- his explanation was fact. He was telling
28 me that this would be a fixed contract for the term -- a

1 fixed price for the term of the contract, 4.99 cents per
2 kilowatt, with him stressing that repeatedly they are going
3 to go up and this would be a great opportunity. In fact,
4 he said they had gone up, and I should -- if I bought in
5 now, it would be fixed until -- for the full term of the
6 contract.

7 MR. SAFAYENI: Did Mr. MacArthur raise any other
8 rates, or fees, or costs with you, apart from the 4.99 per
9 kilowatt hour rate that you just mentioned?

10 MR. HAWKINS: No, just 4.99, fixed.

11 MR. SAFAYENI: Did Mr. MacArthur mention anything
12 about the global adjustment?

13 MR. HAWKINS: No.

14 MR. SAFAYENI: Did you know anything about the global
15 adjustment at the time?

16 MR. HAWKINS: No.

17 MR. SAFAYENI: Based on your discussions with Mr.
18 MacArthur about energy contracts, what was your
19 understanding about cancellation fees?

20 MR. HAWKINS: There wasn't one.

21 MR. SAFAYENI: Did Mr. MacArthur wear a badge during
22 any of your interactions with him when energy contracts
23 were discussed?

24 MR. HAWKINS: No.

25 MR. SAFAYENI: Do you remember whether Mr. MacArthur
26 provided you with a business card during any of your
27 interactions with him when energy contracts were discussed?

28 MR. HAWKINS: There was no business cards.

1 MR. SAFAYENI: How would you describe your own
2 knowledge of the energy industry and the energy market at
3 the time of your discussions with Mr. MacArthur?

4 MR. HAWKINS: Limited to purchasing my hydro from the
5 appropriate energy provider, Hydro One, Newmarket Hydro.
6 That's the limit, just a consumer's -- there was no
7 alternative, so that was it.

8 MR. SAFAYENI: So eventually you agreed to enrol your
9 five properties into energy contracts, right; we have
10 already been through that.

11 MR. HAWKINS: Yes.

12 MR. SAFAYENI: And can you describe to me how the
13 actual process of becoming enrolled in those contracts
14 unfolded?

15 MR. HAWKINS: Well, as we discussed earlier, Mr.
16 MacArthur approached me on different occasions to discuss
17 it. There was some discussion, with a lot of resistance or
18 hesitation on my part.

19 I didn't see any need for this, but, again, with him
20 stressing that it would be fixed, with him stressing that
21 hydro was going up continually, with the media advertising
22 the fact that hydro was going to go up and we should all be
23 prepared for it, eventually I guess, I don't know, I guess
24 I gave in and decided to sign the contracts, but it was
25 clear that this was a fixed rate for five years of 4.99
26 cents.

27 MR. SAFAYENI: When you say that you decided to sign
28 the contracts, did you ever actually sign anything?

1 MR. HAWKINS: I don't think so, no. I think it was...

2 MR. SAFAYENI: So how did the enrollment process
3 actually unfold?

4 MR. HAWKINS: Well, I guess I am a delegator, and
5 after I was convinced to do it I delegated to Jim -- to Mr.
6 MacArthur to do it for me. That was just the way it was.
7 I have other pressing matters, and so he went ahead.

8 MR. SAFAYENI: And what did Mr. MacArthur do?

9 MR. HAWKINS: Enroll me in the contracts. I guess
10 that sums it up well.

11 MR. SAFAYENI: Were you present when Mr. MacArthur
12 enrolled you in the contracts?

13 MR. HAWKINS: If you're asking was I involved in it,
14 no. Was I present? I could have been in the room. I may
15 not have been in the room. But was I looking over his
16 shoulder discussing the contracts? No.

17 MR. SAFAYENI: Did you participate in any way in the
18 enrollment process?

19 MR. HAWKINS: No.

20 MR. SAFAYENI: And just to be clear, was that the same
21 for all five contracts?

22 MR. HAWKINS: Yes.

23 MR. SAFAYENI: Before Mr. MacArthur enrolled you, did
24 you ever sit down and review the terms and conditions of
25 the contracts?

26 MR. HAWKINS: No.

27 MR. SAFAYENI: Did you ever review the disclosure
28 statement?

1 MR. HAWKINS: No.

2 MR. SAFAYENI: The price comparison?

3 MR. HAWKINS: No.

4 MR. SAFAYENI: Did you ever click any kind of
5 electronic check box or acknowledgement box online before
6 you were enrolled by Mr. MacArthur?

7 MR. HAWKINS: I don't remember.

8 MR. SAFAYENI: Do you remember what computer Mr.
9 MacArthur used to enroll you in the energy contracts?

10 MR. HAWKINS: We have two computers, and I -- so he
11 could have used one of those. And I think he might have
12 had a computer of his own, a laptop. But it's possible he
13 used my computer.

14 MR. SAFAYENI: And, sorry, when you say "we have two
15 computers", what are you --

16 MR. HAWKINS: My son has a computer and I have a
17 computer, and then there was -- actually, there was three
18 computers of ours there. We have three computers in the
19 office. And he likely sat at the third one, now that I
20 remember.

21 MR. SAFAYENI: And just to be clear for the record,
22 when you say "at the office", what location are you
23 referring to?

24 MR. HAWKINS: [REDACTED].

25 MR. SAFAYENI: Okay. Mr. MacArthur, do you -- Mr.
26 Hawkins, do you remember reviewing and signing a witness
27 statement in this matter?

28 MR. HAWKINS: Yes.

1 MR. SAFAYENI: I'd ask you to turn to that witness
2 statement, if I could. It's going to be underneath the
3 bound volume in front of you. Do you have it in front of
4 you there?

5 MR. HAWKINS: Yes.

6 MR. SAFAYENI: So it's Exhibit KA.1 for the record.
7 And Mr. Hawkins, I would like to take your attention to
8 paragraph 7 of the witness statement, if I could. And I
9 will give you a moment to simply read that, and then I
10 would like to ask you a question about it.

11 MS. LONG: Sorry, Mr. Safayeni, can you refer us back
12 to where the witness statement is?

13 MR. SAFAYENI: Yes, it's Exhibit KA.1. It was a loose
14 sheet. It's not part of any -- actually, if you have my
15 friend's excerpt volume from last week, it's also in there,
16 if that's easier for the Panel members.

17 MS. LONG: Can you give me the date of the statement?
18 The date?

19 MR. SAFAYENI: The date of the statement is December
20 5th, 2016.

21 MS. LONG: Okay, thank you.

22 MR. SAFAYENI: Sorry, I believe it's actually May -- I
23 think I was reading that wrong. I think it's May 11th,
24 2016. I can provide an extra copy if --

25 MS. LONG: That would be helpful, thank you.

26 MR. ZACHER: I think it's also -- there was a
27 compendium that I handed up last week for the cross-
28 examination of Mr. Hawkins and Mr. MacArthur. It's at

1 tab 5 in that binder.

2 MS. LONG: Okay. Thank you, Mr. Safayeni.

3 MR. SAFAYENI: Thank you, Madam Chair.

4 So if we go to paragraph 7 -- and I will just give you
5 a moment, Mr. Hawkins, to read that paragraph to yourself.

6 MR. HAWKINS: I have read it.

7 MR. SAFAYENI: So my first question is simply one of
8 clarification. At the beginning of that paragraph it says
9 "before I had even begun to sell one of my rental
10 properties". Do you see that there?

11 MR. HAWKINS: Yes.

12 MR. SAFAYENI: What property are you talking about in
13 that part of the witness statement?

14 MR. HAWKINS: [REDACTED].

15 MR. SAFAYENI: Is that the first property that you
16 sold that was under a Planet Energy contract?

17 MR. HAWKINS: Yes.

18 MR. SAFAYENI: And when did you sell that property, at
19 least month and year?

20 MR. HAWKINS: December 2015.

21 MR. SAFAYENI: And I'd like to draw your attention to
22 the very last sentence in the witness statement where it
23 says:

24 "This is the first time that I discovered that I
25 was enrolled in a contract with Planet Energy for
26 one of my properties."

27 Do you see that?

28 MR. HAWKINS: Yes.

1 MR. SAFAYENI: Is that statement accurate?

2 MR. HAWKINS: Not completely.

3 MR. SAFAYENI: Could you please explain?

4 MR. HAWKINS: Well, it was -- I was aware I was under
5 contract, but I was totally surprised and -- I guess upset,
6 but surprised when I started finding out there was a
7 cancellation clause or a cancellation penalty.

8 MR. SAFAYENI: Are you aware of a call that you had
9 with Planet Energy on May 5th, 2015?

10 MR. HAWKINS: Yes.

11 MR. SAFAYENI: Were you aware of that call when you
12 were reviewing and signing this witness statement?

13 MR. HAWKINS: No.

14 MR. SAFAYENI: When did you first become aware of that
15 call?

16 MR. HAWKINS: Recently, within the last month and a
17 half, two months.

18 MR. SAFAYENI: You can put away the witness statement
19 for now. I'd like you to turn to Volume 3 of Planet Energy
20 documents. It's Exhibit KX1.4, for the record, and it's
21 the large -- should be the large -- one of the large black
22 binders in front of you. It says "Planet Energy documents
23 Volume 3".

24 MR. HAWKINS: Okay.

25 MR. SAFAYENI: And I'd ask you to turn to tab 139.
26 For the record, I'll just note that this is one of the
27 transcripts that we'll have, I believe, some minor
28 corrections to it. But for the purposes of my questions, I

1 don't believe anything turns on it.

2 MS. LONG: Okay, thank you.

3 MR. SAFAYENI: So, Mr. Hawkins, do you have tab 139 in
4 front of you there?

5 MR. HAWKINS: Yes, I do.

6 MR. SAFAYENI: Okay, and this is a transcript of that
7 May 5th, 2015, call. Have you had a chance to review this
8 transcript?

9 MR. HAWKINS: Yes, I have.

10 MR. SAFAYENI: And having reviewed this transcript,
11 did it refresh your memory as to whether this call took
12 place?

13 MR. HAWKINS: Yes, it did.

14 MR. SAFAYENI: And I'd like to direct you specifically
15 to page -- if we are going by the numbers at the top right-
16 hand corner, page 1064. Just less than halfway down the
17 page, or just past halfway down the page, where it says,
18 "Yeah, what's the cancellation policy?"

19 MR. HAWKINS: Yes.

20 MR. SAFAYENI: Again, I will give you a moment just to
21 review from that line to the very end of the transcript.

22 MR. HAWKINS: I have.

23 MR. SAFAYENI: So having reviewed the transcript, what
24 was your impression or understanding of cancellation fees
25 after this phone call?

26 MR. HAWKINS: Well, my understanding was it was \$50
27 per year or partial year remaining on the contract; that
28 was stressed. And then in passing, it says if you stay

1 within 15,000 kilowatts per year. That was just glanced
2 over. I have no idea what -- I have had no idea what
3 15,000 kilowatts per year meant, but I do remember it being
4 stressed that it was \$50 per year or partial part there,
5 and that seemed to me at the time to be a reasonable amount
6 of money for cancelling.

7 But I had no idea what my energy consumption was at
8 that time, and neither did -- it was explained to me how
9 much energy 15,000 kilowatts per year was. They had my
10 hydro bills and had they gone into more depth on that, on
11 the second statement, if you stay within 15,000 per year, I
12 would have asked more questions. But it wasn't, it wasn't
13 dealt with at the time.

14 MR. SAFAYENI: Okay, sticking with this transcript, if
15 we go to page 1062, again about halfway down the page, you
16 will see a statement attributed to you where it says, "Hold
17 on, please. Jim, come here."

18 MR. HAWKINS: Yes, I see that.

19 MR. SAFAYENI: And who is Jim when you say that
20 statement?

21 MR. HAWKINS: The salesman, Jim MacArthur.

22 MR. SAFAYENI: And do you remember whether, at any
23 point in time during this call, you put the call on speaker
24 phone?

25 MR. HAWKINS: It's very likely I did. I am assuming I
26 did because of the jargon of the call.

27 MR. SAFAYENI: Do you have a specific memory one way
28 or another?

1 MR. HAWKINS: No.

2 MR. SAFAYENI: Can you turn to page 1063 of the
3 transcript? I am going to start at the very top of that
4 page.

5 The CSR, so the Planet Energy customer service
6 representative says, "Okay, and you completed the Internet
7 agreement yourself, right?" And your answer is "Yes." Do
8 you see that exchange?

9 MR. HAWKINS: Yes.

10 MR. SAFAYENI: Is that an accurate answer by you?

11 MR. HAWKINS: No.

12 MR. SAFAYENI: Why did you provide that answer?

13 MR. HAWKINS: Because that's what I was prompted to
14 say.

15 MR. SAFAYENI: Prompted by who?

16 MR. HAWKINS: Mr. MacArthur.

17 MR. SAFAYENI: And in the next exchange, the customer
18 service rep says:

19 "Other than yourself, there was no ACN
20 independent business owner on the premises when
21 you pressed the placement order buttons to
22 complete the Internet agreement, correct?"

23 Your answer:

24 "Correct."

25 Do you see that exchange?

26 MR. HAWKINS: Yes.

27 MR. SAFAYENI: Is that an accurate answer by you?

28 MR. HAWKINS: No.

1 MR. SAFAYENI: Why did you provide that answer?

2 MR. HAWKINS: Same as before. Mr. MacArthur was
3 prompting me or advising me to say that.

4 MR. SAFAYENI: The next question from the customer
5 service rep:

6 "And no ACN independent business owner
7 represented that they would be immediately
8 returning after you completed this Internet
9 agreement, correct?"

10 And your answer is "Correct"; is that answer accurate
11 by you?

12 MR. HAWKINS: Can I read that?

13 MR. SAFAYENI: Yes.

14 MR. HAWKINS: That's correct.

15 MR. SAFAYENI: Sorry, is that answer by you accurate?

16 MR. HAWKINS: Yes.

17 MR. SAFAYENI: The question says that you completed
18 this Internet agreement. Is that portion --

19 MR. HAWKINS: No, I didn't complete it.

20 MR. SAFAYENI: Thank you.

21 MR. HAWKINS: That was part of the deal. That was
22 part of me signing the contracts, that he would have to do
23 all this. He would have to complete the forms for me.
24 That was part of the arrangement. That means if I was
25 going to sign up, I didn't have time to fill in the blanks.
26 I took him at his word, and because he repeated himself
27 repeatedly, I took him at his word. So that was the terms
28 of the agreement.

1 MR. SAFAYENI: And just to be clear for the record,
2 when you are referring to he and him in that sentence --

3 MR. HAWKINS: Mr. MacArthur.

4 MR. SAFAYENI: Thank you. Okay. At some point did you
5 become aware that you were facing a cancellation fee in
6 respect of one of your Planet Energy contracts?

7 MR. HAWKINS: Yes.

8 MR. SAFAYENI: And approximately when was that? Do
9 you recall?

10 MR. HAWKINS: Right around the time I sold it.

11 MR. SAFAYENI: I think you told us earlier that was
12 December 2015.

13 MR. HAWKINS: That's when I sold it.

14 MR. SAFAYENI: And what property are we talking about
15 again?

16 MR. HAWKINS: [REDACTED].

17 MR. SAFAYENI: And what was your reaction when you
18 discovered that you were facing a cancellation fee for that
19 property?

20 MR. HAWKINS: Surprise, disbelief.

21 MR. SAFAYENI: Why were you surprised?

22 MR. HAWKINS: Repeatedly I was advised from the
23 initial discussions that there was going to be no penalty
24 for cancellation. Mr. MacArthur said there wasn't a
25 penalty.

26 MR. SAFAYENI: Did you find out about the cancellation
27 fee from Planet Energy, or from another source?

28 MR. HAWKINS: Well, from the notices I was getting,

1 that's how it all -- cancellation, collection, that's how
2 it all began. I was very surprised.

3 MR. SAFAYENI: When you say the notices, could I ask
4 you to turn to the other black binder, which should be in
5 your immediate vicinity, that says book of documents OEB
6 enforcement staff. It's Exhibit KX 1.2, for the record.
7 Do you have that in front of you?

8 MR. HAWKINS: Yes, sir.

9 MR. SAFAYENI: Could I ask you to turn to Exhibit 32
10 -- tab 32, sorry.

11 MR. HAWKINS: I'm there.

12 MR. SAFAYENI: So is this an example of one of the
13 notices you just discussed?

14 MR. HAWKINS: Yes.

15 MR. SAFAYENI: Did you receive others?

16 MR. HAWKINS: Yes.

17 MR. SAFAYENI: Did a collection agency contact you by
18 any other means?

19 MR. HAWKINS: Me personally, no. My son, who answers
20 our business line, which they repeatedly called, sometimes
21 two and three times a day or more, yeah, they contacted
22 him, and when they did I don't know if he notified me every
23 time, because he was pretty upset or tired of receiving the
24 calls, but he would tell me he received some of them.

25 MR. SAFAYENI: Did you discuss the issue of the
26 cancellation fee with Mr. MacArthur?

27 MR. HAWKINS: Yes, I did.

28 MR. SAFAYENI: And what did you tell him?

1 MR. HAWKINS: I told -- well, I guess we discussed the
2 no-fee cancellation policy, and I -- and he -- he said that
3 he'd look after it, and he was as surprised as I was,
4 actually, but he said, "Don't worry about it. I will look
5 after it." And he said that repeatedly to me at different
6 times.

7 MR. SAFAYENI: Have you ever -- after the [REDACTED]
8 [REDACTED] property was sold, did you sell any of your other
9 properties that were under contract with Planet Energy?

10 MR. HAWKINS: [REDACTED].

11 MR. SAFAYENI: And did that result in cancellation
12 fees as well?

13 MR. HAWKINS: I believe so, yes.

14 MR. SAFAYENI: And the remaining three properties that
15 you still own but you told us are no longer flowing with
16 Planet Energy, why are those properties no longer flowing
17 with Planet Energy?

18 MR. HAWKINS: Well, I cancelled the agreements with
19 each one of them after contacting the various hydro
20 providers. They -- I asked them in each case how much I
21 would be paying if I paid direct to them and how much I'd
22 be paying continue -- well, I guess I knew how much I'd be
23 paying through Planet Energy, but what I wanted to know,
24 what the difference would be. And without exception, they
25 told me, sometimes in numbers, if I persisted, that I would
26 be paying less, paying direct through Hydro One, paying
27 through Newmarket Hydro, and InnPower. They all said you'd
28 be paying less and sometimes substantial -- substantially

1 less.

2 So I said I wanted to cancel it. And they explained I
3 couldn't cancel it, the contract they had with Planet
4 Energy. And, I guess I'm upset, so I said, "Well, I pay
5 the bill. It's my hydro. Cancel it." So then what they
6 said was, well, they couldn't, but then after some
7 discussions they said they would, but in the case of -- the
8 best of my recollection, in the case of Newmarket, which
9 was in March, they said it would be June. I said, "June?"
10 They said, "Well, June because the contract is with Planet
11 Energy, not with you."

12 So to get any kind of response that was favourable, I
13 suppose, the one word I could use, we had to go to
14 supervisors. Now, Hydro One was very cooperative, InnPower
15 was sort of cooperative, sort of, and Newmarket Hydro was
16 pretty stubborn, but after some considerable discussions
17 they said, "Fine, we cancel it," but we couldn't cancel in
18 the middle of a month, say, for example, and I understood
19 that.

20 So then they cancelled it, and without exception, they
21 said it was a -- well, I am paraphrasing, but they said it
22 wasn't a good deal. I could be -- I'd be paying more than
23 if I went direct. I guess after our conversations --
24 perhaps the one -- the first conversation I had decided if
25 the other two were correct I was going to cancel them all,
26 and that's what I did. I cancelled them. Not because -- I
27 just cancelled them because it wasn't as Mr. MacArthur
28 said. He said it would be 4.99 cents per kilowatt.

1 Somebody -- either he misled me or Planet Energy misled
2 him. So anyway, I cancelled them. I said that was enough.

3 MR. SAFAYENI: Have you ever received any indication
4 from Planet Energy or from a collection agency that they
5 consider the matter of your cancellation fees in respect of
6 any of these properties to be resolved?

7 MR. HAWKINS: No. No. All I have ever heard from Mr.
8 MacArthur saying, don't worry about it, don't worry about
9 it. But from Planet Energy I really, to the best of my
10 knowledge, they have never, ever said, "It's over." I
11 think they are in abeyance or something, maybe.

12 MR. SAFAYENI: And have you ever paid any of the
13 cancellation fees in respect of any of these properties?

14 MR. HAWKINS: No, no. No, I have not paid any.

15 MR. SAFAYENI: So again, it's not controversial that
16 you lodged a complaint with the Ontario Energy Board on
17 January 23rd, 2016. Correct?

18 MR. HAWKINS: No, that's -- that's what happened.

19 MR. SAFAYENI: That's right.

20 MR. HAWKINS: That's true, that's true.

21 MR. SAFAYENI: Whose idea was it to lodge that
22 complaint?

23 MR. HAWKINS: My idea.

24 MR. SAFAYENI: Did you get any assistance in terms of
25 drafting the complaint?

26 MR. HAWKINS: Yes, I did.

27 MR. SAFAYENI: From who?

28 MR. HAWKINS: Mr. MacArthur.

1 MR. SAFAYENI: Did you review Mr. MacArthur's work
2 before the complaint was submitted?

3 MR. HAWKINS: Yes.

4 MR. SAFAYENI: Did you believe it to be accurate?

5 MR. HAWKINS: Yes.

6 MR. SAFAYENI: Apart from the Energy Board, did you
7 contact anyone else about the issues you were having with
8 Planet Energy?

9 MR. HAWKINS: The Better Business Bureau, and Ellen
10 Roseman of Toronto Star.

11 MR. SAFAYENI: And why did you contact the Better
12 Business Bureau and Ms. Roseman?

13 MR. HAWKINS: Well, I have been involved with the
14 Better Business Bureau in the past, and I wanted others to
15 know, I guess, to read the fine print, that if what
16 happened to me was going to happen to somebody else, they
17 should be aware of it. And Ellen Roseman, again, if she
18 found to be true what I said, then perhaps she would
19 publish it in her column in the Toronto Star, advising
20 others to be leery of these contracts.

21 MR. SAFAYENI: Are you aware of any financial reward
22 or financial incentive for Mr. MacArthur that is tied to
23 the outcome of this case?

24 MR. HAWKINS: No.

25 MR. SAFAYENI: Has Mr. MacArthur ever paid you
26 anything in respect of any of the Planet Energy contracts
27 that you were enrolled in?

28 MR. HAWKINS: No.

1 MR. SAFAYENI: Do you ever expect him to?

2 MR. HAWKINS: No.

3 MR. SAFAYENI: Have you ever threatened or threatened
4 to take legal action against Mr. MacArthur in respect of
5 the Planet Energy contracts?

6 MR. HAWKINS: Well, there was some discussion, I
7 think, when I was receiving these collection notices and
8 him assuring me that he was looking after it, and my
9 concern for my credit rating, I guess, maybe at times I was
10 frustrated, and without any intention of doing anything, I
11 guess it's possible I did discuss the consequences to me,
12 maybe we should share the consequences. I guess that's it.

13 My credit rating is very important to me, and these
14 letters kept coming, and I have an 800-plus credit rating,
15 so that can tend to upset you when you think they may be in
16 jeopardy for such a small amount of money in the bigger
17 picture.

18 So I sometimes get frustrated. I mean, you find --
19 you don't know me, but I get frustrated, and I am very
20 protective of my credit rating, and I was concerned with
21 these collection notices coming and him saying, "Don't
22 worry about it, Bob, don't worry about it, Bob." Well,
23 there was no -- no written assurance that this was
24 happening.

25 MR. SAFAYENI: So I am going to break my question down
26 and I am going to ask it again, just because I want a clear
27 answer. Have you ever taken legal action against Mr.
28 MacArthur in respect of the Planet Energy contracts?

1 MR. HAWKINS: No.

2 MR. SAFAYENI: And I understand your frustration, but
3 have you ever threatened to take legal action against Mr.
4 MacArthur --

5 MR. HAWKINS: No.

6 MR. SAFAYENI: -- in respect of the Planet Energy
7 contracts?

8 MR. HAWKINS: No.

9 MR. SAFAYENI: Do you have any plans on taking legal
10 action against Mr. MacArthur in the future?

11 MR. HAWKINS: No, this is behind me.

12 MR. SAFAYENI: Why did you decide to agree to be a
13 witness in this proceeding?

14 MR. HAWKINS: Well, so that others would -- if
15 anything comes good out of this, other people won't be
16 enticed into agreements that aren't spelled out properly.

17 If they are spelled out properly, you take your
18 chances. But in the situations where they are vague, then
19 I think they should be -- it should be brought to their
20 attention, to the Energy Board's attention, to the
21 consumers' attention.

22 MR. SAFAYENI: What impact has this situation with
23 Planet Energy had on you personally?

24 MR. HAWKINS: Very upsetting, very frustrating, for a
25 variety of reasons. One is my credit rating, one is my
26 friendship with Jim, the amount of time I have spent on
27 this. Coming down here, this is my third or fourth time I
28 have been involved in this and many conversations.

1 It's -- I guess it weighs on you. You know, I am not
2 young anymore, so I guess -- again, I never received
3 credit. These collection notices of receiving them with no
4 resolvment, I guess, is just very upsetting to me. I am
5 70 years old, so...

6 MR. SAFAYENI: When you talk about the collection
7 notices, do you or your son continue to receive those?

8 MR. HAWKINS: Yeah, I think we got one a couple weeks
9 ago. I thought they had stopped. I was assured this was
10 over. I don't know if it was over, but they stopped.
11 Another one slipped through the other day, and I think a
12 phone call did, too.

13 MR. SAFAYENI: Thank you very much, Mr. Hawkins, those
14 are all my questions. My friend Mr. Zacher will have some
15 questions for you -- or Ms. Wood; I am not sure, sorry.

16 MS. LONG: Mr. Zacher? Ms. Wood?

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

18 MR. ZACHER: That you, Madam Chair. Mr. MacArthur, I
19 am going to ask you some questions --

20 MR. HAWKINS: Hawkins.

21 MR. ZACHER: Sorry, Mr. Hawkins. And I am going to
22 ask you to refer to some documents. It might help if you
23 just get a couple of binders near by.

24 MR. HAWKINS: Sure, got them here.

25 MR. ZACHER: There is one that is entitled
26 "compendium". It's a slim -- I think it's cerloxed.

27 MR. HAWKINS: This?

28 MR. ZACHER: That's right.

1 MR. HAWKINS: Yes.

2 MR. ZACHER: And as well, if you could get one of the
3 black binders entitled Volume 3, Planet Energy documents.

4 MR. HAWKINS: Yeah.

5 MR. ZACHER: So, Mr. Hawkins, you enrolled in these
6 five contracts with Planet Energy in early May 2015?

7 MR. HAWKINS: Okay.

8 MR. ZACHER: Right?

9 MR. HAWKINS: Yes.

10 MR. ZACHER: And those properties were all investment
11 or rental properties that were owned by you?

12 MR. HAWKINS: One's my -- where I live also.

13 MR. ZACHER: That was which property?

14 MR. HAWKINS: [REDACTED].

15 MR. ZACHER: And you received -- after you enrolled,
16 you received confirmation e-mails to your e-mail address,
17 enclosing the contract documents, terms and conditions,
18 disclosure statements, price comparisons, et cetera?

19 MR. HAWKINS: I don't remember.

20 MR. ZACHER: Let me ask you if you can go to, in
21 volume 3, tab 124.

22 MR. HAWKINS: Yes.

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

24 MR. HAWKINS: Yes.

25 MR. ZACHER: And that's an e-mail from Planet Energy.
26 You will see that it's dated May 3, 2015?

27 MR. HAWKINS: Yes.

28 MR. ZACHER: That would be the date that you enrolled

1 in this contract? This is a contract that relates to [REDACTED]
2 [REDACTED] you will see that three-quarters of the way
3 down the page.

4 MR. HAWKINS: Which one? Which tab am I looking at?

5 MR. ZACHER: My mistake, 124, I am sorry. It's for
6 [REDACTED]; I apologize.

7 MR. HAWKINS: Okay.

8 MR. ZACHER: You agree with me that's your e-mail,
9 Bob@BobHawkins.com?

10 MR. HAWKINS: Yes.

11 MR. ZACHER: And the next couple of tabs are the
12 documents that were enclosed with that e-mail. But then if
13 you get to tab 127, you will see that's another e-mail,
14 also dated May 3rd, addressed to [REDACTED].

15 MR. HAWKINS: Yes.

16 MR. ZACHER: That's for [REDACTED]?

17 MR. HAWKINS: Yeah.

18 MR. ZACHER: That encloses the same contract
19 documents. And likewise at tab 130.

20 MR. HAWKINS: 130?

21 MR. ZACHER: Yes.

22 MR. HAWKINS: Yes.

23 MR. ZACHER: And that's another e-mail to Bob Hawkins
24 at [REDACTED], May 3, 2015. That's for [REDACTED]
25 [REDACTED]?

26 MR. HAWKINS: Yeah, yes.

27 MR. ZACHER: And then at 133, an e-mail May 3, 2015,
28 to [REDACTED] in respect of [REDACTED].

1 MR. HAWKINS: Yes.

2 MR. ZACHER: And, finally, at 136 an e-mail -- this is
3 dated May 4, 2015, to [REDACTED], and this is in
4 regards to the [REDACTED] [REDACTED] property; do you see that?

5 MR. HAWKINS: Yes.

6 MR. ZACHER: So those are the five properties in
7 respect of which you enrolled with Planet Energy?

8 MR. HAWKINS: Yes.

9 MR. ZACHER: And that was your e-mail at the time,
10 Bob@BobHawkins.com?

11 MR. HAWKINS: They are sent on Sunday. Sunday,
12 it's -- I wouldn't have read them on Sunday.

13 MR. ZACHER: Does the e-mail disappear on Monday?

14 MR. HAWKINS: It depends what happens on Mondays.
15 When I go into the office, I am looking for business e-
16 mails.

17 MR. ZACHER: You are not going to deny, Mr. Hawkins,
18 that you received these e-mails, are you?

19 MR. HAWKINS: I said that I don't recollect them.

20 MR. ZACHER: And you have had all sorts of
21 communications with Board Staff in this proceeding,
22 correct?

23 MR. HAWKINS: Since this came to -- this began, yes.

24 MR. ZACHER: Right, and that was -- those were
25 communications by e-mail to your e-mail at

26 [REDACTED]

27 MR. HAWKINS: Yes, they were, yes.

28 MR. ZACHER: And the record is replete with all sorts

1 of communications you had with Mr. MacArthur by e-mail,
2 correct?

3 MR. HAWKINS: Yeah. I don't know if I received them
4 all; I know I received quite a few.

5 MR. ZACHER: And when you received these e-mails, Mr.
6 Hawkins, you reviewed the contract documents?

7 MR. HAWKINS: Not necessarily.

8 MR. ZACHER: You don't recollect?

9 MR. HAWKINS: I don't recollect.

10 MR. ZACHER: So these were with regards to four
11 investment rental properties and one in which you lived?

12 MR. HAWKINS: Yes.

13 MR. ZACHER: And electricity would be a material
14 expense?

15 MR. HAWKINS: Yes.

16 MR. ZACHER: And you would have reviewed these
17 documents to ensure that what Mr. MacArthur had told you
18 was accurate?

19 MR. HAWKINS: I said like I am not sure I reviewed
20 them, I am not sure I received them.

21 MR. ZACHER: If I could ask you, Mr. Hawkins, to turn
22 to the compendium, and if you go to tab 16 -- do you have
23 that?

24 MR. HAWKINS: Yes, I do.

25 MR. ZACHER: There's page numbers in the top right
26 corner.

27 MR. HAWKINS: Yes.

28 MR. ZACHER: If you go to page 835, you see that?

1 That's an e-mail from you dated May 7 to customer service,
2 Planet Energy?

3 MR. HAWKINS: Yes.

4 MR. ZACHER: And over on the back, the next page, 836,
5 there's a fax that you sent to Planet Energy on May 8th?

6 MR. HAWKINS: Okay.

7 MR. ZACHER: That's a fax you sent.

8 MR. HAWKINS: Okay. I see that.

9 MR. ZACHER: Those are within a few days of having
10 been enrolled in these contracts. Right?

11 MR. HAWKINS: Yes. The -- the -- Mr. MacArthur was
12 continually coaching me on what to do.

13 MR. ZACHER: Yeah. And you're bringing to Planet
14 Energy's attention some apparently incorrect account
15 numbers with regards to two of your properties. That's
16 what the subject of these e-mails and faxes are; right?

17 MR. HAWKINS: I don't see that.

18 MR. ZACHER: Look at page 835.

19 MR. HAWKINS: Oh, yes, I see at the bottom I said
20 "please change the account."

21 MR. ZACHER: So you have reviewed the contract
22 documentation that you have received from Planet Energy,
23 identified some deficiencies, and you are promptly bringing
24 that to Planet Energy's attention.

25 MR. HAWKINS: I guess so, yeah.

26 MR. ZACHER: And over on to page 833.

27 MR. HAWKINS: 833.

28 MR. ZACHER: Looks to be the final e-mail in this e-

1 mail chain from Planet Energy confirming your documentation
2 has been received and your accounts have been updated,
3 account numbers -- account number [REDACTED] is still
4 processing, and then it indicates that the balance of the
5 enrollments have all been processed; do you see that?

6 MR. HAWKINS: Yeah.

7 MR. ZACHER: You would have received that?

8 MR. HAWKINS: I guess so. You are talking about 833.

9 MR. ZACHER: That's right.

10 MR. HAWKINS: And Mr. MacArthur's e-mail address is on
11 this.

12 MR. ZACHER: That's right. It's addressed to you,
13 copied to Mr. MacArthur. Right?

14 MR. HAWKINS: Yeah, it says that, but like I've
15 explained to you on numerous occasion, Mr. MacArthur was
16 doing most of this for me. I might have been the person
17 who actually physically did it, but what I did I did on his
18 advice.

19 MR. ZACHER: Mr. MacArthur didn't have access to your
20 e-mail.

21 MR. HAWKINS: You just said right here, it says copied
22 him.

23 MR. ZACHER: Well, the previous e-mails he is not
24 copied on. He didn't have access to your e-mail,
25 bob@bobhawkins.com. Do you agree with that?

26 MR. HAWKINS: Why would he not have a -- why would he
27 not have a -- if it was printed, why would he not have a --
28 can you tell me he didn't see it?

1 MR. ZACHER: No, I am suggesting to you that the e-
2 mails that you -- the e-mail exchange you had with Planet
3 Energy, you received the e-mails from Planet Energy and you
4 sent e-mails in response to Planet Energy. Mr. MacArthur
5 may have been copied on some of these things, but you did
6 them, you did this.

7 MR. HAWKINS: He was consulting me and advising me at
8 the same time.

9 MR. SAFAYENI: I am sorry to interrupt my friend, but
10 we made reference to the [REDACTED] e-mail address.
11 The documents we are talking about at 833 to 835 seem to be
12 from a different e-mail address, [REDACTED].

13 MR. ZACHER: That's another e-mail address that you
14 used at the time?

15 MR. HAWKINS: That's my son's e-mail address. It's
16 not mine. He has his own e-mail address. That's not my e-
17 mail address.

18 MR. ZACHER: And so your son was doing some of this on
19 your behalf?

20 MR. HAWKINS: I think -- you are sending -- I can't
21 speak for my son. You are asking me to speak for him. I
22 can't speak for him.

23 MR. ZACHER: Whatever your son did, he did with your
24 authorization?

25 MR. HAWKINS: Not necessarily.

26 MR. ZACHER: Mr. Hawkins, I gather that Mr. MacArthur
27 did a variety of other things for you in respect of your
28 businesses; is that correct?

1 MR. HAWKINS: Yeah, yeah, that's correct, at various
2 times.

3 MR. ZACHER: I think when he testified last week he
4 said that when this call, this quality assurance, came in
5 from Planet Energy he was present, because he was assisting
6 you with a project that related to one of your businesses.

7 MR. HAWKINS: Yeah, that's -- that's possible, yeah.

8 MR. ZACHER: He, among other things, sold you a water
9 installation system?

10 MR. HAWKINS: Yes, he did.

11 MR. ZACHER: And fair to say that one of the reasons
12 you're suggesting that Mr. MacArthur took responsibility
13 for these contracts is because you simply conferred
14 authority on Mr. MacArthur to take care of your energy
15 needs with regards to your investment properties and the
16 one house that you shared with him?

17 MR. HAWKINS: In my -- in my world, in my world, when
18 people convince me they're competent, I tend to delegate.

19 MR. ZACHER: Right. You said, "I'm a delegator."

20 MR. HAWKINS: And I delegate mostly for his advice or
21 his oversight. I am not an expert in hydro, and I am not
22 an expert in Planet Energy, and I am not -- I have no
23 knowledge of all this. So when he discussed this
24 repeatedly with me, eventually he convinced me that he knew
25 what he was talking about, he had been informed by Planet
26 Energy, and I went ahead with it.

27 MR. ZACHER: So fair to say that you ultimately
28 deferred the decision to Mr. MacArthur to make on behalf

1 with regards to energy contracts for your five properties?

2 MR. HAWKINS: Not the final decision. The buck stops
3 with Bob when it comes to final decisions. But I do rely
4 on other people's expertise. Like I say, I am not a hydro
5 salesman. As I explained earlier, I am a disc jockey. So
6 you want information about a disc jockey, I am the man to
7 talk to.

8 MR. ZACHER: Mr. Hawkins, you had no complaints and
9 you made no complaints to Mr. MacArthur or Planet Energy or
10 to anyone else about the Planet Energy contracts for your
11 five properties until the issue of cancellation fees came
12 up in December of 2015 with regards to the [REDACTED]
13 property; is that right?

14 MR. HAWKINS: I can't speak to that.

15 MR. ZACHER: You have no recollection sitting here
16 today with being dissatisfied or to making any complaints
17 to anyone about these five contracts prior to receiving
18 notice of these cancellation fees?

19 MR. HAWKINS: When you say "anyone", I travel in a
20 pretty broad circle, and it's possible I did discuss this
21 with many people. I tend to spread the word.

22 MR. ZACHER: There was an order that you produce all
23 relevant documents in this proceeding, and you did that,
24 you provided all of your relevant documentation to Mr.
25 MacArthur; correct?

26 MR. HAWKINS: To the best of my knowledge.

27 MR. ZACHER: And there wouldn't be any other e-mails
28 or letters that you failed to disclose?

1 MR. HAWKINS: To the best of my knowledge. I mean,
2 Mr. MacArthur didn't walk in one day and make a sales
3 presentation. It took a period of time. And over a period
4 of time he convinced me he knew everything, he knew all
5 about the good and bad, and I quizzed him, and so I bought
6 into the program. It's not like he went -- [knocking on
7 the table] -- "I am here." It wasn't that kind of deal.
8 He was sold, so then he sold me.

9 MR. ZACHER: Mr. Hawkins, if you could just turn up
10 your witness statement that Mr. Safayeni referred you to
11 earlier.

12 MR. HAWKINS: Yes.

13 MR. ZACHER: I just want to be clear. Paragraph 7. I
14 think I heard this correctly, but the statement, it's in
15 the last sentence, that it was only after you received
16 collection notices that this was the first time you
17 discovered that you were enrolled in a contract with Planet
18 Energy for one of your properties. That is not a correct
19 statement.

20 MR. HAWKINS: That's correct. I...

21 MR. ZACHER: And you were provided with this witness
22 statement by Board Staff in draft and asked to review it,
23 make sure it was accurate, before you signed it; right?

24 MR. HAWKINS: Yes.

25 MR. ZACHER: And to be clear, you were well aware you
26 had a contract with Planet Energy for your five properties.
27 You'd received welcome letters at your properties. In
28 fact, you complained to Mr. MacArthur about all the welcome

1 letters you were receiving.

2 MR. HAWKINS: I am not disputing that, or that's not
3 in question, in my opinion. The part that's in question is
4 the cancellation policy.

5 MR. ZACHER: I am just -- what I am just suggesting,
6 Mr. Hawkins, is that when you signed this witness statement
7 you well knew that you knew you were in a contract with
8 Planet Energy well before this cancellation issue arose in
9 December of 2015.

10 MR. HAWKINS: I think I have said that.

11 MR. ZACHER: Yeah.

12 MR. HAWKINS: I think I have been very clear on that.

13 MR. ZACHER: Mr. Hawkins, can I ask you to have a look
14 at the quality assurance call that was earlier referenced?
15 You can -- actually, if you look at the compendium, it
16 might be easier. You can find it at tab 25.

17 MR. HAWKINS: Great. I'm there.

18 MR. ZACHER: Sir, if you look at -- and I believe in
19 this compendium, I believe the page numbers are different.
20 But if you look at 1479 -- do you have that?

21 You know what? If you look at the top left of the
22 document, you will see that the pages are numbered 2, 3 --

23 MR. HAWKINS: I see that.

24 MR. ZACHER: That may be easier. If you can look at
25 page 3?

26 MR. HAWKINS: Yes.

27 MR. ZACHER: You will see these are the series of
28 questions that my friend asked you about where the Planet

1 customer service representative asked you if you had
2 completed the Internet agreement yourself, in the absence
3 of the IBO, Mr. MacArthur. Do you recall that?

4 MR. HAWKINS: You are looking at the first one? Yes,
5 okay. You completed the Internet agreement yourself,
6 right? Is that the one you're looking at?

7 MR. ZACHER: Yes. If you want to take a moment, you
8 can just read the ensuing two or three questions.

9 MR. HAWKINS: I would like to deal with them one at a
10 time, please.

11 MR. ZACHER: Okay. So the first one, the question,
12 "Okay, and you completed the Internet agreement yourself,
13 right?" "Yes."

14 And that was an untrue statement, and you knew --

15 MR. HAWKINS: That was said in error.

16 MR. ZACHER: It was an untrue statement?

17 MR. HAWKINS: I said it in error.

18 MR. ZACHER: Next question.

19 "Okay, other than yourself, there was no ACN
20 independent business owner on the premises when
21 you pressed the placement order buttons to
22 complete the Internet agreement, correct?"

23 Answer: "Correct".

24 MR. HAWKINS: Again, that was said in error.

25 MR. ZACHER: Are you suggesting -- let me back up. I
26 thought I had understood this. Your evidence, Mr. Hawkins,
27 is that Mr. MacArthur enrolled you in your contracts and he
28 did so on his own over the Internet, right?

1 MR. HAWKINS: Without my supervision.

2 MR. ZACHER: Without your supervision, okay. So the
3 first question -- let's back up.

4 "Okay, and you completed the Internet agreement
5 yourself, right?"

6 "Yes."

7 So that's a false statement?

8 MR. HAWKINS: It was an incorrect statement, yeah, it
9 was said in error.

10 MR. ZACHER: Let's just be -- you knew it was
11 incorrect when you gave the answer?

12 MR. HAWKINS: Well...

13 MR. ZACHER: That wasn't a mistake. You intentionally
14 gave an incorrect answer?

15 MR. HAWKINS: I have to think about that for a minute.

16 MR. ZACHER: Was it a mystery to you at the time, Mr.
17 Hawkins, who had enrolled you?

18 MR. HAWKINS: No.

19 MR. ZACHER: You knew Mr. MacArthur had enrolled you;
20 that's your evidence?

21 MR. HAWKINS: Well, yeah, you have restated it several
22 times.

23 MR. ZACHER: Right. And so you knew when you gave
24 this answer that you were giving an untruthful answer.

25 MR. HAWKINS: I said it in error.

26 MR. ZACHER: I take an error to be a mistake. You
27 intentionally gave an untruthful answer to the Planet
28 customer service rep.

1 MR. HAWKINS: That's your impression and your
2 interpretation.

3 MR. ZACHER: Do you dispute that?

4 MR. HAWKINS: Which?

5 MR. ZACHER: That it was not an intentionally
6 untruthful statement.

7 MR. HAWKINS: It is what I was prompted to say.

8 MR. ZACHER: And you knew what you were prompted to
9 say was not the truth.

10 MR. HAWKINS: I was just doing what I was told.

11 MR. ZACHER: And likewise, the next question:

12 "Okay, other than yourself, there was no ACN
13 independent business owner on the premises when
14 you placed the order buttons to complete the
15 Internet agreement, correct?

16 "Correct."

17 Again, that was an untruthful statement.

18 MR. HAWKINS: It was said in error after I was
19 prompted to say what I said.

20 MR. ZACHER: Midway down the page, the customer
21 service rep asks you to confirm your e-mail address so that
22 the agreement and terms and conditions can be sent to the
23 right address.

24 That's your correct e-mail address, right?

25 MR. HAWKINS: Yes, it is.

26 MR. ZACHER: And then you will see there's
27 confirmation by the customer service representative in
28 respect of a number of properties, and if you just read

1 through those, you will confirm that those are the five
2 properties that you enrolled?

3 MR. HAWKINS: That's correct.

4 MR. ZACHER: And I want to turn your attention to
5 page 4 of this call transcript. Do you have that?

6 MR. HAWKINS: Yes.

7 MR. ZACHER: And if you go two-thirds of the way down
8 the page, you will see that the customer service
9 representative is about to conclude the call. She says,
10 "So thank you, Robert, for calling in to confirm
11 your enrolment. Were these the only accounts you
12 have with us, the electricity?"

13 And then you ask about the cancellation policy.

14 MR. HAWKINS: Yes.

15 MR. ZACHER: And that's because you didn't know what
16 the cancellation policy was, and whether or not there were
17 any sort of cancellation fees, correct? You wouldn't ask a
18 question you already knew the answer to.

19 MR. HAWKINS: Yes, I would. As a consumer, this
20 was -- this wasn't Jim MacArthur, this was -- although I
21 trusted Jim MacArthur, I also wanted to confirm if there
22 was. This was -- for me, it was more important to me than
23 what -- I was confirming what Mr. MacArthur said, whatever
24 way you want to cut it. I wanted to clarify if there was a
25 cancellation policy.

26 MR. ZACHER: And so your evidence is that Mr.
27 MacArthur had already spoken to you about the cancellation
28 policy?

1 MR. HAWKINS: I didn't say that. I said -- I said
2 that to the best of my recollection, the cancellation
3 wasn't discussed in depth.

4 MR. ZACHER: By who?

5 MR. HAWKINS: By anybody up to this time, and this
6 person here didn't discuss it in depth neither. She
7 made -- he or she, I forget --

8 MR. ZACHER: Well --

9 MR. HAWKINS: Excuse me, let me finish. She made a
10 very matter of fact statement and didn't dwell on it for a
11 second. If I hadn't asked it, she wouldn't have even
12 mentioned it.

13 MR. ZACHER: Let's be really, really clear.

14 MR. HAWKINS: Yeah.

15 MR. ZACHER: I would like you to exhaust your memory
16 and tell me everything you knew about Planet's cancellation
17 policy, and any early termination fees before this call.

18 MR. HAWKINS: To the best of my recollection, there
19 was no cancellation fees.

20 MR. ZACHER: And that was based on information from
21 who?

22 MR. HAWKINS: That's -- this is all based on my
23 recollection.

24 MR. ZACHER: Yeah, based on what source? What was the
25 source of information for that recollection?

26 MR. HAWKINS: Conversations.

27 MR. ZACHER: With who?

28 MR. HAWKINS: With Jim.

1 MR. ZACHER: And what did Mr. MacArthur tell you?

2 MR. HAWKINS: To the best of my recollection, he said
3 there was no cancellation fees. And when I heard this here
4 -- since you want to elaborate, I will elaborate again, one
5 more time. Since I -- \$50 per year or partial remaining
6 year didn't seem terribly unreasonable to me, okay. That
7 seemed like a ballpark figure. I am not a stupid person, I
8 think you forget that.

9 But when it came to 15,000 kilowatts per year, this
10 person didn't go into any in-depth. They had my hydro
11 bills, but they didn't -- she didn't seem to -- first of
12 all, she didn't ask the question. To me, she didn't
13 volunteer this information. And then secondly, she never
14 stopped and said, well, let me review your hydro bill and
15 see which category you fit into.

16 All she did -- all she said was this is point blank,
17 you know, sign here.

18 MR. ZACHER: This was a call that you were unaware of
19 when you gave your witness statement in this proceeding;
20 you've said that.

21 MR. HAWKINS: Yeah.

22 MR. ZACHER: And this was a call that had been brought
23 to your attention since then, correct?

24 MR. HAWKINS: Yeah.

25 MR. ZACHER: And this is a call that was brought to
26 your attention in the last few days?

27 MR. HAWKINS: No. Recently.

28 MR. ZACHER: When?

1 MR. HAWKINS: Within a month or two.

2 MR. ZACHER: Who brought it to your attention?

3 MR. HAWKINS: I think that the -- Justin did. I think
4 he did. I think it was him. But there was other people I
5 was speaking with too. It may not have been him. I don't
6 want to...

7 MR. ZACHER: Have you had any discussions with Mr.
8 MacArthur since he gave evidence in this proceeding last
9 week?

10 MR. HAWKINS: No.

11 MR. ZACHER: None at all?

12 MR. HAWKINS: None at all.

13 MR. ZACHER: Any communications with Mr. MacArthur at
14 all?

15 MR. HAWKINS: No.

16 MR. ZACHER: None at all?

17 MR. HAWKINS: No.

18 MR. ZACHER: So you agree with me, you have had no
19 communications at all with Mr. MacArthur since he gave
20 evidence in this proceeding?

21 MR. HAWKINS: No communications with Mr. MacArthur
22 since this.

23 MR. ZACHER: So Mr. Hawkins, just to clarify, you
24 decide the reason for asking this question about the
25 cancellation policy is because you wanted to confirm or
26 clarify what you already understood through Mr. MacArthur?

27 MR. HAWKINS: I don't -- that's not correct. This was
28 a matter-of-fact question. This is a question I asked the

1 person on the phone. There is no reference on Mr.
2 MacArthur here in this question.

3 MR. ZACHER: But you are asking a question about
4 something because you want to know the answer. You didn't
5 know the answer. That's why you were asking.

6 MR. HAWKINS: I was just confirming that there was no
7 -- I just asked the question, confirming the cancellation
8 policy that was as I believed. So there's -- we are going
9 in circles.

10 MR. ZACHER: And you asked the question, what's the
11 cancellation policy, and you are told, so for electric it's
12 \$50 per year partial year remaining on the contract if you
13 stay within 15,000 kilowatt hours per year; you recall that
14 answer?

15 MR. HAWKINS: I remember after listening to the tape,
16 yes.

17 MR. ZACHER: And then you asked, "What if I decide to
18 sell a place? What's the program?" And the answer was --

19 MR. HAWKINS: You skipped over part of the thing. The
20 15,000 kilowatt hours, she never explained what 15,000
21 kilowatts are.

22 MR. ZACHER: Okay. And so then you asked, "If I
23 decide to sell the place, what's the program?" And the
24 answer was, "So if it's your permanent residence you would
25 just have to show us proof of move." Do you recall that?

26 MR. HAWKINS: After listening to the tape, yeah.

27 MR. ZACHER: And then you asked, "What if it's not a
28 permanent residence?" And you asked that question, Mr.

1 Hawkins, because at least four of your properties were not
2 your permanent residence; correct?

3 MR. HAWKINS: Yes, but we are going back to the \$50
4 per year per --

5 MR. ZACHER: And so you were then told if it's an
6 investment property the termination charge will always
7 apply. And you asked, "You can't just assign it to the new
8 people?" And the answer, "You can if they want to take
9 over the contract. It's not automatic." Do you recall
10 that?

11 MR. HAWKINS: After listening to the tape, yeah.

12 MR. ZACHER: And if you had any questions about what
13 your consumption was, what 15,000 kilowatts per year
14 translated into, you could have asked further questions.
15 There was nothing to stop you from asking further
16 questions; you agree?

17 MR. HAWKINS: There was nothing to stop her from
18 expanding upon that, because I asked the question and she
19 didn't answer the question in detail.

20 MR. ZACHER: And you had Mr. MacArthur with you
21 listening on speakerphone; correct?

22 MR. HAWKINS: It's a possibility, yes.

23 MR. ZACHER: And if you had any questions about what
24 15,000 kilowatt hours per year meant, you could have asked
25 Mr. MacArthur; correct?

26 MR. HAWKINS: I --

27 MR. ZACHER: He was your energy expert. You were
28 relying on him. That's what you said.

1 MR. HAWKINS: No, he -- I was relying on -- this woman
2 here, this person here, was the expert at the end. This is
3 the one that was the final, finally -- she called me asking
4 me these questions, so she was -- she was representing
5 Planet Energy inasmuch as the head office or whatever it
6 was.

7 MR. ZACHER: And there was nothing to prevent you from
8 calling her back if you had any further questions?

9 MR. HAWKINS: There was nothing to prevent her
10 describing that one statement to me.

11 MR. ZACHER: And there was nothing to prevent you from
12 looking at your contract? You'd had it e-mailed to you.
13 You had had it mailed to your five service addresses?

14 MR. HAWKINS: And there was nothing to prevent her
15 from expanding upon that.

16 MR. ZACHER: Just turning to your witness statement,
17 Mr. Hawkins. Paragraph 2. At the bottom:

18 "Jim also informed me that I could cancel my
19 contract at any time without penalty."

20 And then if you turn over and look at paragraph 9:

21 "When I received the penalty notice I felt that I
22 was lied to by Jim, because he told me that I
23 could cancel my contract at any time. He said
24 there would be no consequences."

25 You agree that those are not correct statements?

26 MR. HAWKINS: Well, to the best of my recollection,
27 that's correct.

28 MR. ZACHER: Well, you were on a call in the presence

1 of Mr. MacArthur when you were, even by your own
2 concessions, told that there would be a \$50 per year
3 penalty; right?

4 MR. HAWKINS: Right.

5 MR. ZACHER: And you said that it was only when you
6 received this penalty notice that in December there is the
7 very first time you ever knew there could be any kind of
8 consequences for moving, selling your property, and
9 cancelling your contract.

10 MR. HAWKINS: I believed Mr. MacArthur was telling the
11 truth. I don't believe he was misled when he signed me up.
12 So I am saying to you -- you keep going past the 15,000. I
13 keep saying to you, this person called. She must have been
14 informed on what she was asking. Was this just a
15 questionnaire she went down and checked the mark and she
16 checked this, checked that, and why if it was, why wasn't
17 it any mention of the cancellation contract when I could
18 have decided, change my plans?

19 MR. ZACHER: You maintain the accuracy of your
20 statement that Mr. MacArthur lied to you?

21 MR. HAWKINS: You are not answering -- you are not
22 responding.

23 MR. ZACHER: I am not here to answer your questions.
24 You are here to answer mine.

25 MR. HAWKINS: You are not here to respond?

26 MR. ZACHER: No, I am not.

27 MR. HAWKINS: Okay.

28 MR. ZACHER: You maintain the statement in your

1 witness statement that Mr. MacArthur lied to you by telling
2 you there would be no consequences of cancellation?

3 MR. HAWKINS: I am saying to you he was honest and
4 told me that in my opinion to the best of his knowledge.
5 If I thought he lied to me I wouldn't have signed the
6 contracts.

7 MR. ZACHER: Madam Chair, it might not be a bad -- I
8 am in your hands, but I could take a break and I can
9 collect, have a look --

10 MS. LONG: Sure, why don't we do that.

11 MR. ZACHER: -- I may be fairly brief.

12 MS. LONG: Okay. We are going to take a break now for
13 20 minutes. Mr. Hawkins, you are not able to talk to the
14 enforcement team, because you are in your cross-
15 examination, so I will just ask that you take a break and
16 get a coffee or something and be back here at 11:20. Okay?

17 MR. HAWKINS: I will stay here.

18 MS. LONG: Thank you.

19 --- Recess taken at 11:03 a.m.

20 --- On resuming at 11:21 a.m.

21 MS. LONG: Please be seated. Mr. Zacher, are you
22 ready to continue?

23 MR. ZACHER: Thank you, Madam Chair. Mr. Hawkins, I
24 gather that when you did receive collection notices, or
25 notifications of early termination fees in December 2015,
26 this was with regards to your [REDACTED] property?

27 MR. HAWKINS: I guess so, yes.

28 MR. ZACHER: That's the property that -- initially,

1 that's the property that you say attracted these notices.

2 MR. HAWKINS: Yeah, I think so.

3 MR. ZACHER: And this was a property in which you
4 house a business office, and there were a couple of rental
5 units as well?

6 MR. HAWKINS: That's correct.

7 MR. ZACHER: And I understand that notwithstanding
8 this call that you'd had with Planet Energy in early May
9 about cancellation fees, you nonetheless blamed Mr.
10 MacArthur for this issue. Is that fair?

11 MR. HAWKINS: You are saying I blamed him for the
12 issue?

13 MR. ZACHER: Yes. You blamed him for the fact that
14 you were being exposed to these cancellation fees and the
15 collection notices.

16 MR. HAWKINS: I faulted him for it.

17 MR. ZACHER: And can you turn in the compendium to tab
18 16, page 825?

19 MR. HAWKINS: Okay, I am there.

20 MR. ZACHER: That's an e-mail dated December 31, 2015,
21 from you to Mr. MacArthur. Do you have that?

22 MR. HAWKINS: 826, you are saying?

23 MR. ZACHER: I think it's 825.

24 MR. HAWKINS: 825.

25 MS. LONG: I don't have that page, Mr. Zacher.

26 MR. ZACHER: I believe, Madam Chair, tab 16, it would
27 be the third page in, e-mail dated December 31, 2015.

28 MS. LONG: Sorry, I do --

1 MR. ZACHER: Okay, okay.

2 MR. HAWKINS: I don't have it either.

3 MR. ZACHER: Apologies. Okay. So it's Tab 89, if you
4 look at Planet Energy's documents, volume 2.

5 MS. LONG: Do you have that, Mr. Hawkins? It's a
6 binder, volume 2.

7 MR. HAWKINS: I have got three here. Okay, I've got
8 it now.

9 MR. ZACHER: Sorry for the mix-up. So this is an
10 e-mail from you to Mr. MacArthur, dated December 31, 2015.

11 MR. HAWKINS: Um-hmm.

12 MR. ZACHER: Is that a yes?

13 MR. HAWKINS: Yes, yes.

14 MR. ZACHER: And in this e-mail, you're requesting
15 that Mr. MacArthur pay you \$100 to have deposited in the
16 red box to defray these cancellation costs that are being
17 assessed against you.

18 MR. HAWKINS: What's the question?

19 MR. ZACHER: That's what this e-mail is about, right?

20 MR. HAWKINS: Yes, so what's the question?

21 MR. ZACHER: And I gather the red box is the box in
22 the house where the rent cheques are deposited.

23 MR. HAWKINS: Yes.

24 MR. ZACHER: And so you are asking that Mr. MacArthur,
25 on top of his rent, pay \$100 to help defray these
26 cancellation expenses?

27 MR. HAWKINS: I look at this as more of a motivational
28 moment, to get him to go good on his word that there was no

1 cancellation fees.

2 MR. ZACHER: Okay, okay. And if I could ask you --
3 apologies for switching back, but if you could look at the
4 compendium, tab 17, page 907? I hope that page is there,
5 the top right corner.

6 MR. HAWKINS: 17, you say?

7 MR. ZACHER: Yes, and it should be page 907 at tab 17.

8 MS. SPOEL: It's not here.

9 MR. ZACHER: Okay, let's just use the binder we were
10 looking at, Mr. MacArthur, tab 104.

11 MR. HAWKINS: Mr. Hawkins.

12 MR. ZACHER: Tab 104 in the other binder.

13 MR. HAWKINS: What tab?

14 MR. ZACHER: Tab 104.

15 MR. HAWKINS: Okay.

16 MR. ZACHER: So that's an e-mail from you to Mr.
17 MacArthur dated February 18, 2016.

18 MR. HAWKINS: What number is it? Tab 104, but what --

19 MR. ZACHER: Page number 907.

20 MR. HAWKINS: Yeah.

21 MR. ZACHER: And if you go down about two-thirds of
22 the way down the e-mail, you will see it says:

23 "On another issue, I have been remiss this week
24 in not checking the red box for your \$100. I
25 will be at the house later, checking the red box.
26 Please ensure your \$100 is in there".

27 I take it this is further motivation?

28 MR. HAWKINS: Give me a minute to think about that

1 one, okay. I think I better read it. Whereabouts is that,
2 again?

3 MR. ZACHER: About two-thirds of the way down.

4 MR. HAWKINS: I appreciate --

5 MR. ZACHER: It says "on another issue".

6 MR. HAWKINS: We are going 908?

7 MR. ZACHER: No, 907.

8 MR. HAWKINS: 907.

9 MR. HAWKINS: Yeah, I sent that to him. You are
10 right; it was just another motivational to get this matter
11 resolved so I'd quit getting the collection notices.

12 MR. ZACHER: And then over on to the next page, 908,
13 and 909, there's a couple of additional e-mails from you to
14 Mr. MacArthur dated February 19th. Do you see those?

15 MR. HAWKINS: Yeah, I see them.

16 MR. ZACHER: And at page 908, about a quarter of the
17 way down that first e-mail, it says: "Starting Monday,
18 March 7, you will deposit \$100 each Friday." And then
19 towards the bottom of the e-mail, it says:

20 "This e-mail is very straightforward. Settle
21 your account with me by paying me the money owing
22 me at the end of this month, and between the
23 hours of 10 and 4, you will be out of the house
24 until you are back to work."

25 So this is further motivation --

26 MR. HAWKINS: That's a different issue altogether.

27 MR. ZACHER: It says settle your account with me.

28 MR. HAWKINS: If you read further in, it says him

1 living there, he has to have a job, and he didn't have a
2 job.

3 MR. ZACHER: The first part of the sentence
4 says: "This e-mail is very straightforward.
5 Settle your account with me, paying me the money
6 owing me at the end of this month."

7 I take it's that --

8 MR. HAWKINS: It was strictly motivation.

9 MR. ZACHER: And the same thing on the next page, 909:
10 "I appreciate this is putting the squeeze on you
11 financially. I would tell you what I tell others
12 and have explained to you I am not a bank."

13 MR. HAWKINS: All that was strictly motivational. I
14 never intended to collect any money. It was just sort of
15 to spur him into motion.

16 [Technical interruption]

17 [Ms. Long confers with Madam Reporter]

18 Well, why don't we just stand down. We'll be in the
19 conferring room. You'll let us know when you're ready to
20 go. Unfortunately, Mr. Hawkins, I'm sorry, you'll have to
21 just wait.

22 MR. HAWKINS: I don't mind.

23 MS. LONG: It'll be five or ten minutes --

24 MR. HAWKINS: I'm enjoying the company.

25 MS. LONG: -- we'll get back to it when we're online.

26 MR. HAWKINS: No problem.

27 --- Recess taken at 11:40 a.m.

28 --- On resuming at 11:45 a.m.

1 MS. LONG: Please be seated.

2 MR. HAWKINS: Can I expand on something extremely
3 relevant?

4 MS. LONG: Is this in relation to a question Mr.
5 Zacher asked you.

6 MR. HAWKINS: It's in relation to his -- he brought up
7 these pages, 903 and 905; they are all relevant to what he
8 is discussing.

9 MS. LONG: Mr. Hawkins, go ahead.

10 MR. HAWKINS: They have nothing to do with Planet
11 Energy. The first page here, page 903, has to do with
12 Small Claims Court. I was taking somebody to court over a
13 sign in a commercial condominium I owned at one time. The
14 rest of the pages all deal with the water system he
15 installed in my house, and some of the problems we
16 experienced.

17 The other one is over rent that he hadn't paid because
18 he wasn't well. The red box and the hundred bucks to go
19 into the red box had everything to do with him not paying
20 his rent. If you read on, as I explained to him --

21 MS. LONG: Sorry, Mr. Hawkins, what page are you at
22 now?

23 MR. HAWKINS: They are all about the same. You can to
24 907, 906 -- they are all about the same. He is moving out
25 on his own free accord because my house is not suitable
26 because of the stairs. He needs to be closer to town. I
27 never asked him to move. And the money he owes me is
28 because he was driving one of my vehicles and he was paying

1 me for the vehicle and he hadn't paid. And then he hadn't
2 paid the rent. And then the first page has to do with the
3 signs, Small Claims Court.

4 Every one of them deals with -- none of them deal with
5 Planet Energy. They all deal with incidents that are not
6 related. If you read them, you can go through them and
7 like I say, you can choose whichever one you want. The
8 hundred -- the red box was to pay the rent. He says he
9 wasn't well and that he hadn't paid the rent, and I
10 explained to him you pay the rent, everybody pays the rent.
11 I say everybody pays the box, so the red box is where you
12 put the rent money.

13 MS. LONG: Mr. Hawkins, is it your evidence that you
14 didn't ask Mr. MacArthur to make \$100 payment to motivate
15 him to resolve this issue?

16 MR. HAWKINS: I would have to really sit down and read
17 all this stuff through. I don't remember doing it, but
18 it's possible because I'm not -- that's my personality, but
19 I never -- like I say, he owed me money. I didn't kick him
20 out; he moved out on his own.

21 None of this information he has brought forward today
22 and questioned me on -- if you read it, it's nothing to do
23 with Planet Energy. They are looking for straws that
24 aren't there.

25 MS. LONG: Mr. Zacher?

26 MR. HAWKINS: Read them.

27 MR. ZACHER: One moment, Madam Chair.

28 MR. HAWKINS: We deal with the fact that --

1 MR. ZACHER: Mr. Hawkins, have a look back at Planet
2 Energy document 89, tab 89.

3 MR. HAWKINS: Could we just --

4 MR. ZACHER: No.

5 MR. HAWKINS: Yes.

6 MR. ZACHER: Look at that document, please.

7 MR. HAWKINS: What about to the ones you brought
8 forward from a minute ago?

9 MR. ZACHER: You have tab 89 in front of you?

10 MR. HAWKINS: Yeah, I do.

11 MR. ZACHER: Go to page 825.

12 MR. HAWKINS: Yeah.

13 MR. ZACHER: "Jim: In the meantime, until Planet
14 Energy confirms with me they are withdrawing
15 their request for the cancellation fee, deposit
16 \$100 in the red box no later than Monday morning
17 before Robert leaves the house."

18 Do you see that?

19 MR. HAWKINS: I see that.

20 MR. ZACHER: That's about Planet Energy, right?

21 MR. HAWKINS: Do you see the other ones I bring
22 forward that you brought forward. They have nothing to do
23 with this case that you brought into evidence.

24 MS. LONG: Mr. Hawkins, can you answer Mr. Zacher's
25 question?

26 MR. HAWKINS: I did, I did. It does say that. Like I
27 say, that part is true. But the rest of it is slanderous.

28 MR. ZACHER: Can I ask you to look at tab 116, Mr.

1 Hawkins, in the same binder?

2 MR. HAWKINS: Yup.

3 MR. ZACHER: And go to page 995.

4 MR. HAWKINS: Yup.

5 MR. ZACHER: So we have just been looking at some e-
6 mails in the February 2015 time frame. Here is an e-mail
7 dated -- or, sorry, February 2016 time frame. Here is an
8 e-mail several months later in May of 2016, from you to Mr.
9 MacArthur. Do you see that?

10 MR. HAWKINS: May 16th. What's the date of the --
11 what's the date?

12 MR. ZACHER: The page number in the top right corner
13 is 991.

14 MR. HAWKINS: I got it.

15 MR. ZACHER: It's an e-mail dated May 9, 2016. Do you
16 have that?

17 MR. HAWKINS: Yeah.

18 MR. ZACHER: "Jim: Silence is golden. I am looking
19 to be paid back from the money I have spent
20 collecting the money I have spent attempting to
21 collect money that is evidently not being
22 recovered. This includes the cheques I am
23 writing Planet Energy because of your failure to
24 stop their collections."

25 Do you see that?

26 MR. HAWKINS: Yeah.

27 MR. ZACHER: So this is continued, your word,
28 motivation to get Mr. MacArthur to get rid of the

1 cancellation fees or you are going to hold him responsible,
2 correct?

3 MR. HAWKINS: Yeah, I guess -- I've got to read it.
4 Yeah, I wrote that, but I didn't -- okay, I wrote that.

5 MR. ZACHER: And you will see that it references "the
6 cheques I am writing Planet Energy because of your failure
7 to stop their collections". Do you see that?

8 MR. HAWKINS: Yeah.

9 MR. ZACHER: So you had been writing cheques to Planet
10 Energy in respect of these collections, and you're asking
11 Mr. MacArthur to reimburse you for cheques you have
12 written, correct?

13 MR. HAWKINS: Well, I don't remember writing cheques.
14 If Planet Energy has got payment receipts, we can deal with
15 them. But I don't remember writing cheques. I think this
16 is all bluff. I don't think I wrote any cheques.

17 So if you have got evidence I wrote cheques, bring
18 them forward.

19 MR. ZACHER: You wouldn't be misrepresenting things to
20 Mr. MacArthur and asking him to reimburse you for money you
21 haven't spent, would you?

22 MR. HAWKINS: Yeah.

23 MR. ZACHER: Those are all my questions, thank you
24 Madam Chair. Thank you, Mr. Hawkins.

25 MS. LONG: Thank you. The panel has no questions. Mr.
26 Safayeni, any redirect?

27 MR. SAFAYENI: Just very briefly, Madam Chair. Mr.
28 Hawkins, you recall that Mr. Zacher asked you a number of

1 questions about cancellation fees and discussions you had
2 with Mr. MacArthur and Planet Energy representatives on
3 that issue.

4 MR. HAWKINS: Yes.

5 MR. SAFAYENI: You remember that?

6 MR. HAWKINS: Yes.

7 MR. SAFAYENI: I already took you there. I don't
8 think we need to go back. But the December 2015 collection
9 notice for the [REDACTED] property, states the amount of
10 cancellation fees at 1340.79.

11 MR. HAWKINS: Yes.

12 MR. SAFAYENI: Do you have any idea how that amount
13 was calculated?

14 MR. HAWKINS: No.

15 MR. SAFAYENI: Did Mr. MacArthur, or anyone else from
16 ACN or anyone else from Planet Energy, ever tell you that
17 you might be subject to a cancellation penalty of 1.5 cents
18 per kilowatt hour of estimated consumption?

19 MR. HAWKINS: No.

20 MR. SAFAYENI: Those are all my questions.

21 MS. LONG: Okay, thank you. Thank you very much, Mr.
22 Hawkins, for your evidence. Thank you for coming down
23 today, and you are excused.

24 MR. HAWKINS: Thank you very much.

25 MS. GONSALVES: Madam Chair, I will just confirm for
26 the record that having completed Mr. Hawkins' evidence,
27 that is the end of the case for the enforcement team,
28 subject to any reply, if it becomes necessary. Thank you.

1 MS. LONG: Thank you very much. Mr. Zacher, are you
2 ready to proceed with your case?

3 MR. ZACHER: I am, yes. Thank you, Madam Chair.
4 Planet's first and only witness is Nino Silvestri from
5 Planet Energy.

6 MS. LONG: Okay, we will get Mr. Silvestri in place
7 and do his affirmation.

8 **PLANET ENERGY - PANEL 1**

9 **Nino Silvestri, Affirmed**

10 **EXAMINATION-IN-CHIEF BY MR. ZACHER:**

11 MR. ZACHER: Good morning, Mr. Silvestri. Can you
12 just start off, please, by stating and spelling your full
13 name for the record?

14 MR. SILVESTRI: Nino Canferino Silvestri. Nino is
15 spelled N-i-n-o, Canferino is spelled C-a-n-f-e-r-i-n-o,
16 Silvestri is spelled S-i-l-v-e-s-t-r-i.

17 MR. ZACHER: Mr. Silvestri, I understand you reside in
18 [REDACTED], Ontario, and you are the co-CEO of Planet Energy
19 Canada?

20 MR. SILVESTRI: Yes, that's correct, the co-CEO of
21 Planet Energy Ontario Corporation.

22 MR. ZACHER: And I understand you have been in that
23 position since 2012; is that correct?

24 MR. SILVESTRI: Yes, since November 2012.

25 MR. ZACHER: Can you just very briefly highlight for
26 the Panel your educational and professional qualifications?

27 MR. SILVESTRI: Yes, I hold an Honours Bachelor of
28 Business Administration with an economics option from

1 Wilfred Laurier University, a Master of Arts in economics
2 from York University. I have worked in the energy business
3 in Ontario my entire career, approximately 35-and-a-half
4 years. I started at TransCanada Pipelines in May of 1982
5 as an economic analyst, having worked on long-term
6 facilities expansion applications. I worked with
7 TransCanada Pipelines' marketing affiliate, Western Gas
8 Marketing, from 1986 to 1992 as a sales representative and
9 manager of sales to large industrial customers and eastern
10 Canadian and U.S. northeast natural gas utilities.

11 I joined Direct Energy Marketing in April of 1992 as
12 manager of sales and was promoted to senior vice-president,
13 marketing. I left in May of 2000 to start my consulting
14 company, Silvestri Energy Services Corporation, where I
15 assisted clients mainly with regulatory and marketing
16 issues on wholesale and retail matters in energy.

17 I joined Universal Energy Corporation in March of 2005
18 as chief operating officer and left as president and chief
19 operating officer in July of 2009 when Universal Energy was
20 sold to JustEnergy. My partner, Steve Plummer, and I
21 started Sunwave Solar and Sunwave Power & Gas in 2009, and
22 for -- to take advantage of solar projects at the time in
23 Ontario. And our partnership group purchased Planet Energy
24 in November 2012, and I have been the co-CEO of Planet
25 Energy since then.

26 MR. ZACHER: Mr. Silvestri, I understand Planet Energy
27 is in the business of retailing and marketing electricity
28 and natural gas and has been doing so since its inception

1 in around 2006?

2 MR. SILVESTRI: That's correct.

3 MR. ZACHER: And through an affiliate it also operates
4 in several U.S. states?

5 MR. SILVESTRI: That's correct.

6 MR. ZACHER: Okay. And that it was started by a
7 different ownership group but, as you indicated, your
8 ownership and management group purchased the company in
9 2012.

10 MR. SILVESTRI: That's correct, November 2012.

11 MR. ZACHER: Okay. Can you just elaborate a little
12 bit on who are Planet Energy's customers?

13 MR. SILVESTRI: Most of Planet Energy's customers are
14 residential and small-business customers that we sell
15 natural gas supply and electricity supply to, and we also
16 have some large-volume commercial customers as well,
17 selling natural-gas supply and electricity supply.

18 MR. ZACHER: And how does Planet market to its
19 customers? Does it engage in in-person sales or door-to-
20 door sales; can you explain that?

21 MR. SILVESTRI: Umm... My understanding was Planet
22 Energy did do some door-to-door marketing in 2010.
23 However, since 2010 virtually all of Planet Energy's
24 customers enrolled online via the Internet, as far as low-
25 volume customers. Large-volume customers are typically
26 contracted through a separate process where the customer
27 would sign a contract.

28 MR. ZACHER: Sorry, just to clarify, low-volume

1 consumers are -- are they enrolled in person or is it
2 exclusively through the Internet?

3 MR. SILVESTRI: Exclusively through the Internet.
4 Low-volume consumers, since our relationship with ACN
5 commenced, have all enrolled via the Internet. There have
6 been no in-person sales.

7 MR. ZACHER: And your relationship with ACN commenced
8 when?

9 MR. SILVESTRI: The relationship between Planet Energy
10 and ACN commenced November of 2010.

11 MR. ZACHER: And can you just explain briefly who ACN
12 is and what the nature of ACN's business is?

13 MR. SILVESTRI: Yes, ACN stands for All Communications
14 Network. They are a multi-level marketing company that
15 promotes and sells home utility products such as energy, in
16 our case, Internet, long-distance, cable, and home security
17 systems.

18 MR. ZACHER: And where are they? Are they active just
19 in Canada or are they active outside of Canada?

20 MR. SILVESTRI: They are active throughout the world.
21 The last count, I believe, they were active in 21
22 countries.

23 MR. ZACHER: And how does ACN market its products to
24 customers, including energy and its whole range of
25 products, Internet, et cetera?

26 MR. SILVESTRI: There are a couple of methods. As we
27 discussed, ACN operates through their Independent Business
28 Owners, or IBOs. The IBOs can purchase the products on

1 their own once they become a member. We refer to that as a
2 self-enrollment. And the IBOs can also promote their
3 products to friends and family members.

4 The role of the IBO is basically to introduce ACN's
5 vendor, such as Planet Energy, to their friends and family
6 and to direct them to a web portal that the vendor or ACN
7 would manage and direct the customer to that portal to have
8 them review the products or product guide, the frequently
9 asked questions, and then the customer can decide whether
10 or not they wish to purchase any products.

11 MR. ZACHER: And are the ACN IBOs restricted to
12 marketing or promoting to their friends and family or
13 acquaintances, or can they also engage in cold calls or
14 "cold marketing"?

15 MR. SILVESTRI: That's a strict ACN policy they are to
16 market or promote products strictly to friends and family.
17 They are not permitted to conduct cold calls or door-to-
18 door marketing. The intent is what they call a warm
19 network, and to introduce products and services on behalf
20 of ACN's vendors.

21 MR. ZACHER: And are IBOs -- are they employees or are
22 they contractors? What's the status?

23 MR. SILVESTRI: They are not employees. They are
24 independent contractors that can operate on their own
25 schedule. The intent is basically that it's intended as a
26 part-time opportunity for the IBO to earn some additional
27 residual income.

28 MR. ZACHER: So are they full-time or part-time

1 employees --

2 MR. SILVESTRI: For the most part -- well, they are
3 not employees, for the most part they are part-time. There
4 are some that are full-time, but the very vast majority are
5 part-time.

6 MR. ZACHER: Okay. And do you know what sort of other
7 professions IBOs are typically engaged in, or do you know
8 that?

9 MR. SILVESTRI: Yes, I have met IBOs from diverse
10 backgrounds. I have met professionals, I have met
11 teachers, entrepreneurs, trades people, and also retired
12 sports -- professional sports athletes.

13 MR. ZACHER: And how are IBOs paid for products that
14 they promote or that they market?

15 MR. SILVESTRI: They are paid on what we refer to as a
16 residual or trailing basis. So provided that the customer
17 associated with that IBO continues to flow or continues to
18 purchase the product or service, the IBO will be paid a
19 commission on a monthly basis.

20 MR. ZACHER: And can you just outline briefly what the
21 nature of Planet Energy's contractual relationship was with
22 ACN, when it began, when it ended, and what the key sort of
23 features of the relationship were?

24 MR. SILVESTRI: Yes, the contractual relationship
25 between Planet Energy and ACN commenced in November 2010.
26 Planet Energy was the exclusive natural gas and electricity
27 supply provider for ACN in Canada and originally in three
28 U.S. states.

1 When -- in November 2012, when our partnership group
2 purchased Planet Energy, we were strictly the exclusive
3 electricity supplier and natural gas supplier for ACN in
4 Canada; namely, Ontario, British Columbia, Manitoba, and
5 Quebec.

6 Planet Energy by electronic wire transfer sends a
7 monthly commission amount to ACN based on the consumption
8 of those customers, natural gas and electricity consumption
9 for that particular delivery month, and Planet Energy
10 provides the basic training for the IBOs and testing with
11 respect to the electricity retail markets.

12 ACN's role is to provide access to us for -- to their
13 IBOs. Planet Energy is not permitted to utilize any other
14 multi-level marketing company in those markets. However,
15 we are still free to operate through other sales channels,
16 other than multi-level marketing, and the contractual
17 arrangement between Planet Energy and ACN expired in
18 November of 2016.

19 MR. ZACHER: Has it been renewed?

20 MR. SILVESTRI: No, it has not.

21 MR. ZACHER: Can you, Mr. Silvestri, just sort of at a
22 high level, explain the base -- I want to ask you about the
23 multi-level marketing process with regards to potential
24 energy consumers.

25 So can you just explain how an IBO would go about
26 marketing Planet Energy's products to prospective
27 customers?

28 MR. SILVESTRI: An IBO would typically approach

1 friends and family, introduce the fact that Planet Energy
2 is an exclusive energy supplier on behalf of ACN for
3 natural gas and electricity supply, and direct the
4 potential customers who are friends and family to the
5 website that was managed by ACN and Planet Energy, and
6 direct them to the information that's on the website, such
7 as the product guide and the frequently asked questions.

8 And then there is a very is strict policy to allow the
9 customer to review that information on their own at their
10 own leisure, at their own time, and allow the customer to
11 decide whether or not they wish to enrol in any of Planet
12 Energy's products.

13 MR. ZACHER: Okay. Were the IBOs authorized or
14 expected to promote the potential benefits of Planet Energy
15 products to friends and family?

16 MR. SILVESTRI: The basic benefits are such as our
17 stability product, where the electricity or natural gas
18 supply could be fixed for up to a five-year period, and
19 other types of products that we offer that a customer would
20 not be able to obtain from the utility, such as our peak
21 protection product that would lock-in electricity supply
22 during peak hours, or -- and our reliable product, where a
23 customer could purchase their natural gas on a fixed dollar
24 monthly amount each month.

25 MR. ZACHER: Can you just explain why that might be of
26 interest to energy or gas consumers?

27 MR. SILVESTRI: Well, in the case of electricity,
28 there are businesses, for example, that operate Monday to

1 Friday during peak hours that are interested in locking in
2 their electricity supply.

3 On the residential side, a case such as my personal
4 situation. My mother-in-law lives with us, and she has
5 advanced Alzheimer's, so my wife cares for her. So the
6 majority of our electricity consumption is consumed during
7 peak hours, as well with nurses and personal care workers
8 coming to the house.

9 On the natural gas side, we found that --

10 MR. ZACHER: Just stopping there, why would it be --
11 why would a Planet Energy product be an advantage for
12 somebody with that kind of a consumption profile?

13 MR. SILVESTRI: Well, for example, if someone is
14 consuming power at peak hours, they are paying \$0.16 for
15 peak and 12 cents for mid-peak, which includes global
16 adjustment. If they are paying 4.99, that may be of
17 benefit to them.

18 MR. ZACHER: I wasn't sure; you may have answered.
19 But were IBOs authorized or expected to talk to prospective
20 customers about these potential benefits?

21 MR. SILVESTRI: At a high level, yes. However, more
22 importantly to direct them to the website where the
23 customer can review this, the products and services on
24 their own. But the IBO was just expected to introduce the
25 products at a high level, and leave it to the customer to
26 decide if they wished to enrol via the website.

27 MR. ZACHER: And why is that the case? Why was that
28 the model?

1 MR. SILVESTRI: Well, we wanted the customer to enrol
2 via the Internet, so it was not considered an in-person
3 sale, so that there wouldn't be any pressure on the
4 customer to sign. You know, there have been some issues in
5 Ontario, for example, with respect to door-to-door
6 marketing and in-person marketing.

7 So we thought the multi-level channel, where an IBO
8 would be selling to their friends and family to introduce
9 our products and then leave it up to the customer to decide
10 on their own. We felt we would end up with a customer that
11 would appreciate the product and would understand what he
12 or she would be entering into.

13 MR. ZACHER: And are there -- were there particular
14 benefits that you believed this approach provided to your
15 customers over other more conventional sales models, like
16 door-to-door or other kinds of in-person sales?

17 MR. SILVESTRI: Yes, absolutely. We wanted to stay
18 away from the door-to-door model because of the issues in
19 Ontario, also issues that we experienced in previous
20 companies. And we also liked the fact that everything was,
21 you know, was paperless, everything was done via the
22 Internet.

23 Customers would receive their confirmation e-mail
24 instantaneously. With the exception of the welcome
25 letters, all communications were electronic or over the
26 phone with us.

27 MR. ZACHER: And does this sort of multi-level
28 marketing model, does it provide any other advantages in

1 terms of the training of IBOs, or the how IBOs are expected
2 to conduct marketing?

3 MR. SILVESTRI: Yes. We don't expect the IBOs to end
4 up becoming energy experts. We expect the IBO to have, you
5 know, a working knowledge, high-level knowledge of the
6 retail energy markets that our training provides and that
7 meets the requirements of the Board's code of conduct.

8 And furthermore, they are promoting these products to
9 their friends and family, so we would expect them to be
10 honest at all times, but especially in promoting products
11 to friends and family, we expect them to maintain good
12 compliance and good customer relations.

13 MR. ZACHER: Mr. Silvestri, you've referenced the
14 commission structure. Can you explain a little bit more
15 what the nature of the commission structure was between
16 Planet and ACN, and between Planet ACN and IBOs?

17 MR. SILVESTRI: Yes. So we, Planet Energy, would pay
18 ACN, as I mentioned, on a monthly basis what we call a
19 residual commission. So for example, next week, you know,
20 the first Monday of each month, we wire them the commission
21 for the two months previous, so that would be September.
22 And then ACN would take a portion of the commission that we
23 would have paid them and pay the IBO based on the
24 consumption of their specific customers.

25 And we refer to that as a residual or trending
26 commission. As long as the customer continues to flow,
27 Planet Energy will continue to pay that residual commission
28 to ACN, and ACN will continue to pay that residual

1 commission to the IBO. If the customer were to cancel,
2 switch to another retailer, or upon expiry of the contract,
3 then Planet Energy would cease paying that residual
4 commission to ACN, and ACN would cease paying that residual
5 commission to the IBO.

6 MR. ZACHER: And are there any advantages, in your
7 view, to this residual commission structure?

8 MR. SILVESTRI: Yes, I believe so, quite
9 significantly. We believe that the residual commission
10 incentivizes the IBO to maintain good customer relations
11 and, you know, good compliance with their customers who are
12 friends and family during the term of the contract to
13 ensure, you know -- for example, if there were any
14 questions, the friend or family would ask the IBO or the
15 IBO can direct to ACN, or ACN can direct to Planet Energy,
16 versus the door-to-door model, which is typically an up-
17 front -- what we call an up-front commission which can lead
18 to, you know, a fair amount of pressure on behalf of the
19 sales person to sign the customer knowing that once the
20 customer's enrolled, they will receive the entire
21 commission for that contract upon enrolment.

22 MR. ZACHER: And during --

23 MR. SILVESTRI: So which will be a higher dollar
24 amount than the monthly residual commission.

25 MR. ZACHER: And during the term of Planet's
26 contractual relationship with ACN, was this kind of a
27 residual commission structure mandated by regulation, or is
28 this something that you, Planet Energy, chose to do?

1 MR. SILVESTRI: This is something Planet Energy chose
2 to do.

3 MR. ZACHER: Mr. Silvestri, you're familiar with the
4 fact that in this proceeding, it has been alleged that
5 Planet breached various regulations by failing to ensure
6 proper training and testing of IBOs.

7 MR. SILVESTRI: Yes, I am aware of that.

8 MR. ZACHER: So I want to ask you some questions
9 around that subject. Can you first explain who developed
10 the training and testing content that IBOs reviewed, and
11 were required to undergo.

12 MR. SILVESTRI: Planet Energy developed the training
13 manual and the test questions.

14 MR. ZACHER: Did ACN have any responsibility for that
15 content?

16 MR. SILVESTRI: No, other than to host the training
17 manual in their back office. Otherwise they had no say
18 into the material and content of the training manual and
19 the test questions.

20 MR. ZACHER: So other than providing the platform to
21 host the materials, ACN didn't have any other
22 responsibility; is that correct?

23 MR. SILVESTRI: That's correct, but they only hosted
24 the training manual.

25 MR. ZACHER: And were the materials that Planet Energy
26 designed, were they updated -- reviewed or updated
27 regularly?

28 MR. SILVESTRI: Yes, Planet Energy reviewed the

1 training manual and test questions on an annual basis and
2 we updated them as necessary. I am sorry, and I should add
3 that at times, as a minimum, we reviewed them on an annual
4 basis, but there were times when we reviewed them more than
5 once per year.

6 MR. ZACHER: And what sort of informed the design and
7 updating of those training and test materials?

8 MR. SILVESTRI: I am sorry, I didn't hear your --

9 MR. ZACHER: Sorry. What informed the design and
10 updating of the training and test materials?

11 MR. SILVESTRI: Well, Planet Energy wanted to ensure
12 that they were fully compliant with all the requirements of
13 the Board's code of conduct and the regulations pursuant to
14 the Energy Consumer Protection Act.

15 MR. ZACHER: Were IBOs required to undertake Planet
16 Energy training and testing before marketing Planet Energy
17 products?

18 MR. SILVESTRI: Yes, absolutely.

19 MR. ZACHER: And I gather that before an -- before an
20 IBO sold Planet Energy products, they may have been selling
21 other or marketing other ACN products; is that right?

22 MR. SILVESTRI: That's possible, but they would not be
23 permitted to have sold Planet Energy products until they
24 completed the training and successfully passed the test.

25 MR. ZACHER: Right. So that's my question. What
26 would prevent an ACN IBO from marketing Planet Energy
27 products to a prospective customer before taking the
28 training and testing?

1 MR. SILVESTRI: There would have been two stop
2 measures. One, the enrollment portal itself would not have
3 permitted that IBO -- that specific IBO number to enroll
4 any customers or for any customers to enroll even
5 themselves associated with that number unless that IBO
6 completed the training and successfully passed the test.

7 The other stop measure would have been in Planet
8 Energy's internal system that the system would not have
9 allowed the enrollment to the utility if the system did not
10 recognize an IBO in good standing having completed the
11 training and successfully passed the test.

12 MR. ZACHER: Can you walk through, Mr. Silvestri --
13 and it may help in a moment to refer to some documents, but
14 can you just, first, sort of at a high level walk through
15 what would be the required steps that an IBO would have to
16 undertake to be trained and tested?

17 MR. SILVESTRI: Yes. The IBO would go into his or her
18 back office --

19 MR. ZACHER: This is online back office?

20 MR. SILVESTRI: Yes, online back office through their
21 ACN account, they refer to their back office, that the IBO
22 would enter, utilizing his or her login and IBO number.
23 They would then have to review the training manual and
24 attest they have reviewed the training manual and completed
25 that review. They would then be directed to print their
26 identification and badge and business card, and then they
27 would be taking -- would be taken to a link to conduct the
28 test.

1 MR. ZACHER: Okay. So can you have a look at Planet
2 Energy -- Planet Energy's documents, Volume 1.

3 MR. SILVESTRI: Yes.

4 MR. ZACHER: And Mr. Silvestri, I am just going to
5 walk through some documents, and maybe you can explain them
6 by reference to the steps that you just outlined. So if
7 you can first turn up tab 29.

8 MR. SILVESTRI: Yes.

9 MR. ZACHER: Do you recognize that document?

10 MR. SILVESTRI: Yes, I do.

11 MR. ZACHER: Okay, and can you explain to the Panel
12 what that document is in light of the steps that you just
13 outlined?

14 MR. SILVESTRI: Yes, so the IBO would click on to this
15 page in their back office under "training", and click on
16 "Canada energy training", where the training manual would
17 be hosted.

18 MR. ZACHER: Okay. And just maybe stop there for a
19 moment. If you can just, at the same binder, access tab
20 6E.

21 MR. SILVESTRI: Yes.

22 MR. ZACHER: And what document is that?

23 MR. SILVESTRI: This is the training manual that we
24 submitted to the Board at the time of the July 2015
25 compliance inspection.

26 MR. ZACHER: Okay, and is that the training -- the
27 Planet Energy landing page you just referred to had the
28 link to training. Is this the document that you would

1 access if you were to click on that link?

2 MR. SILVESTRI: Yes, it is.

3 MR. ZACHER: Okay. And I appreciate this is from
4 2015, but was this manual in material respects largely the
5 same for the period 2015 and 2016?

6 MR. SILVESTRI: Yes, it was.

7 MR. ZACHER: And actually, I should ask you, even
8 before that, for the years 2013 and 2014, would it in
9 material respects have been largely the same?

10 MR. SILVESTRI: Yes, it would have been largely the
11 same since the inception of the Energy Consumer Protection
12 Act in January 2011.

13 MR. ZACHER: Sorry, but since the Energy Consumer
14 Protection Act came into force in 2011 it would have been
15 much the same?

16 MR. SILVESTRI: Yes, that's correct.

17 MR. ZACHER: And just while you have that open, Mr.
18 Silvestri, you will see the first page, it says "mandatory
19 regulation process must be followed in order"?

20 MR. SILVESTRI: Yes.

21 MR. ZACHER: And are those the steps that you outlined
22 that an IBO would have to undergo in order to be accredited
23 to market Planet Energy products?

24 MR. SILVESTRI: That's correct. It's also outlined in
25 detail in tab 36.

26 MR. ZACHER: Okay.

27 MR. SILVESTRI: On page -- is that 609?

28 MR. ZACHER: Okay. So can you explain to the Panel

1 what that document is?

2 MR. SILVESTRI: On page 609?

3 MR. ZACHER: Yes, please.

4 MR. SILVESTRI: That's also a page that would be in
5 the IBO's back office explaining the detailed steps
6 required in order to become authorized to sell Planet
7 Energy products, such as completing the training,
8 downloading the energy badge and business card, and
9 completing the test.

10 MR. ZACHER: And this document is -- at the top it
11 says "ACN energy badge instructions", so I take it this is
12 sort of step 2 in the process you outlined?

13 MR. SILVESTRI: Yes, but there is also details of
14 reminders with respect to the training, the testing, and
15 the test requirements.

16 MR. ZACHER: Okay. And, Mr. Silvestri, if you just,
17 while you are there, flip to tab 30 in that Planet Energy's
18 documents. What's that?

19 MR. SILVESTRI: This is the landing page with respect
20 to the preparation of the identification badge and the
21 business card for the IBO, where the IBO attests at the
22 bottom that they agree that only the customer can complete
23 the online process, that they affirm that they have
24 completed, understand all the training materials for
25 selling energy pursuant to the various codes of conduct,
26 and also agree and attest that they will not mislead, make
27 false statements, or do anything that will otherwise induce
28 energy sale under false pretenses.

1 MR. ZACHER: And were IBOs required to provide those
2 agreements and affirmations in order to print their badge?

3 MR. SILVESTRI: Yes, that's correct. If they did not
4 attest and agree to these statements, the system will not
5 allow them to print their identification badge or business
6 card.

7 MR. ZACHER: Would it allow them to proceed to take
8 the test?

9 MR. SILVESTRI: No, it would not.

10 MR. ZACHER: Okay. Can I ask you to turn to document
11 41 in that same binder.

12 MR. SILVESTRI: Yes.

13 MR. ZACHER: Can you explain to the Panel what this
14 document is?

15 MR. SILVESTRI: This would be the landing page when
16 the IBO were to click to conduct the test.

17 MR. ZACHER: So just to stop you there, would this be
18 after they had clicked on the training tab, gone through
19 the training manual, and then gone through the badging
20 process?

21 MR. SILVESTRI: That's correct.

22 MR. ZACHER: Okay.

23 MR. SILVESTRI: So this link is hosted outside of the
24 ACN portal by Planet Energy and the IBO agrees to, once
25 again, various statements such as committing to wear their
26 ACN badge, issuing business cards, not to mislead
27 customers, provide accurate and complete information,
28 comply with applicable legal and regulatory requirements,

1 and conduct activities with the utmost integrity and
2 honesty, and also confirming that whether or not this is
3 their first or second attempt at the test, and also
4 confirming that they will not share their answers with any
5 other person taking the exam.

6 MR. ZACHER: And I see that there is a box at the
7 bottom of the page where it says "I agree".

8 MR. SILVESTRI: That's correct.

9 MR. ZACHER: Were IBOs required to confirm their
10 agreement by clicking that box in order to do the test?

11 MR. SILVESTRI: That's correct. They had to click
12 that box, and then click on continue.

13 MR. ZACHER: Mr. Silvestri, if I could ask you to go
14 back to tab 6E, which is the training manual.

15 MR. SILVESTRI: Yes.

16 MR. ZACHER: So you appreciate that in this
17 proceeding, it's been alleged that Planet Energy did not
18 provide adequate and accurate material covering various
19 regulatory requirements?

20 MR. SILVESTRI: Yes, I am aware of the allegation.

21 MR. ZACHER: And more specifically, that it's alleged
22 that Planet Energy's training materials did not adequately
23 and accurately address the electricity and gas market
24 structure, how to complete contract applications, behaviour
25 that constitutes an unfair practice, use of business cards
26 and badges, disclosure statements, price comparisons,
27 consumer cancellation rights, how electricity pricing
28 works. You are familiar with that?

1 MR. SILVESTRI: Yes, I am aware of those allegations.

2 MR. ZACHER: And in your view, does Planet Energy's
3 training materials adequately and accurately address those
4 issues?

5 MR. SILVESTRI: Yes, I believe it does. For example,
6 in part B, commencing at page 22 --

7 MR. ZACHER: So maybe just before. I see the very
8 first page of the manual, that's the actual training,
9 badging and testing process that you've alluded to,
10 correct?

11 MR. SILVESTRI: That's correct.

12 MR. ZACHER: And then the next portion of the manual,
13 what does that address?

14 MR. SILVESTRI: Well, the next portion, part B, deals
15 specifically with the some of the issues that you just
16 described, such as the regulatory structure.

17 MR. ZACHER: Sorry, where do you find that, what page?

18 MR. SILVESTRI: Part B, page 222.

19 MR. ZACHER: Okay. This is what's entitled "Ontario
20 natural gas and electricity training"?

21 MR. SILVESTRI: Yes.

22 MR. ZACHER: And below that, an ACN IBO selling energy
23 in Manitoba, British Columbia must also review this
24 section, as much of the information is also relevant. But
25 this is principally for Ontario?

26 MR. SILVESTRI: Yes.

27 MR. ZACHER: All right, please go on.

28 MR. SILVESTRI: Page 223, you can see some of the

1 issues required for the IBO to review, such as persons who
2 may enter an order, cancellation rights, business cards,
3 disclosure statements, behaviours that constitute an unfair
4 practice, and any requirements for verification or contract
5 renewals which were not necessarily applicable, but the
6 information was there.

7 MR. ZACHER: Does this manual, Mr. Silvestri, make it
8 clear that IBOs may not enrol customers on their own?

9 MR. SILVESTRI: Yes.

10 MR. ZACHER: Sorry, let me restate that. Does it make
11 it clear that IBO's may not enrol customers on their own,
12 and that customers have to do that in the absence of an
13 IBO?

14 MR. SILVESTRI: That's correct. In fact, it states
15 that in a number of places. Just give me a second to --
16 page 191, acquiring customers in Ontario. It describes in
17 accordance with the OEB bulletin issued April 13, 2012, an
18 IBO must leave the premises and make no representation
19 about returning, and is not allowed to be present when the
20 customer completes the Internet sign-up. And that's
21 repeated a number of times.

22 MR. ZACHER: Okay. Where else in the manual is that
23 stated? If I can ask you just to flip to 247?

24 MR. SILVESTRI: Yes, in 247 at the bottom, the chapter
25 entitled "persons who may enter an order." At the bottom
26 of 247, "Under no circumstances," underlined, "are you
27 permitted to enter a customer's order on their behalf, or
28 be present at the time the customer enters their own order.

1 Doing so is a very serious offence" -- "very serious
2 offence" being underlined.

3 MR. ZACHER: And 254?

4 MR. SILVESTRI: Yes, at point 11. To leave the
5 premises before customer completes their online enrollment
6 and make no representations about returning.

7 MR. ZACHER: Does the manual, Mr. Silvestri, address
8 whether IBOs are entitled or allowed to represent savings
9 to consumers?

10 MR. SILVESTRI: No, not at all.

11 MR. ZACHER: It does address that?

12 MR. SILVESTRI: I am sorry --

13 MR. ZACHER: Does the manual address that issue?

14 MR. SILVESTRI: I am sorry, I thought you said does
15 the manual suggest that.

16 I am sorry, yes, the manual does address that it would
17 be unfair practice to guarantee any savings.

18 MR. ZACHER: And where can that be found in the
19 manual? Do you know?

20 MR. SILVESTRI: Page 221:

21 "Important - do not promote savings. ACN IBOs
22 should not position Planet Energy products as
23 providing savings on the customer's bill."

24 MR. ZACHER: Okay. Can I ask you to turn to page 242?
25 And while you are doing that, can I ask you whether this
26 manual addresses the issue of the global adjustment?

27 MR. SILVESTRI: Yes, it does. On page 242, it
28 describes the global adjustment, what it is, and in green:

1 "If you buy from an electricity retailer such as
2 Planet Energy, the global adjustment is not
3 included in the contract price offered by the
4 retailer. Therefore, it is a separate line item
5 on your utility bill."

6 And then a link to the Independent Energy System
7 Operators Website, so the customer -- sorry, the IBO can
8 look at historical global adjustment rates.

9 MR. ZACHER: And lastly, can I ask you whether this
10 manual explains Planet Energy's cancellation policies and
11 any early termination penalties that customers may be
12 exposed to?

13 MR. SILVESTRI: Yes, it does, on page 249.

14 MR. ZACHER: Like chapter 7 starts --

15 MR. SILVESTRI: Chapter 7, page 249. Early
16 termination charges after the cooling-off period for
17 natural gas residential is \$100 per year or partial year
18 remaining. For large commercial customers, which would be
19 above 3500 cubic meters per year, the early termination
20 charge would be \$0.05 per cubic meter?, and for electricity
21 residential, the early termination charge would be \$50 for
22 each year or partial year, and for large commercial or
23 large residential, the early termination charge would be
24 1.5 cents per kilowatt hour on remaining contract
25 consumption.

26 MR. ZACHER: Mr. Silvestri, you're aware that the
27 notice in this case also suggests that the manner of
28 training and the training test do not sufficiently address

1 knowledge and required legal and regulatory requirements
2 and, in particular, did not ensure that Mr. Nahid and Mr.
3 MacArthur would not be able to share questions and answers.

4 MR. SILVESTRI: Yes, I am aware of the allegation.

5 MR. ZACHER: Mr. Silvestri, would it be possible to
6 pass the test without reading or reviewing the training
7 manual?

8 MR. SILVESTRI: In my opinion, I don't believe anyone
9 can pass the test without having reviewed the training
10 manual unless they had prior experience in the retail
11 energy markets.

12 MS. LONG: Sorry, Mr. Zacher, can I just interrupt for
13 a moment here. I just want to be clear. So at tab E, I
14 guess it's 6E, we have Schedule E, so 169 to page 272, that
15 is the training material. I shouldn't be looking anywhere
16 else. That's the entirety of it? Is that fair, or is
17 there --

18 MR. ZACHER: That's the training manual --

19 MS. LONG: Man -- okay. That's the training --

20 MR. ZACHER: -- but I will be asking Mr. Silvestri --

21 MS. LONG: Silvestri.

22 MR. ZACHER: -- questions about some other --

23 MS. LONG: Okay. And you going to ask Mr. Silvestri
24 questions about the test too? So he has just spoken to the
25 test, but do we have in the materials the actual test
26 itself?

27 MR. ZACHER: There are test questions in the
28 materials.

1 MR. SILVESTRI: Yes.

2 MS. LONG: They are. Okay. You are going to take us
3 there too?

4 MR. ZACHER: Yes.

5 MS. LONG: Okay, thank you.

6 MR. ZACHER: And I should say, Madam Chair, I am
7 totally in your hands in terms of lunch, whether you want
8 it now or go to 1:00 --

9 MS. LONG: Well, if Mr. Silvestri is good for another
10 25 minutes can we go to one o'clock; is that okay?

11 MR. SILVESTRI: Yes, yes.

12 MS. LONG: Sorry for the interruption, Mr. Zacher. I
13 just wanted to make sure I had all the material in front of
14 me.

15 MR. ZACHER: Mr. Silvestri, if I can ask you to turn
16 to page 35 -- sorry, tab 35 in that document brief.

17 MR. SILVESTRI: Yes.

18 MR. ZACHER: Do you recognize this document?

19 MR. SILVESTRI: Yes, I do.

20 MR. ZACHER: And what is this?

21 MR. SILVESTRI: This is the entirety of all of the
22 possible test questions that will be asked in a test of an
23 IBO. The -- however, the actual test would consist of
24 fewer -- or a subset of these test questions.

25 MR. ZACHER: And I gather that you said you updated --
26 Planet Energy would review and update test questions
27 periodically?

28 MR. SILVESTRI: That's correct.

1 MR. ZACHER: Okay. So this would be -- fair to say
2 this would be a representation of the test questions set at
3 a certain point in time?

4 MR. SILVESTRI: That's correct.

5 MR. ZACHER: Okay. And, Mr. Silvestri, I understand
6 the test that IBOs write is an online test.

7 MR. SILVESTRI: Yes, that's correct.

8 MR. ZACHER: And IBOs are entitled -- it's an open-
9 book test, so they are entitled to review the manual in the
10 course of taking the test?

11 MR. SILVESTRI: That's correct.

12 MR. ZACHER: Okay. And in your view, does that
13 sufficiently test IBOs' knowledge and familiarity with
14 requirements if they are able to look up answers and
15 consult the manual as part of taking the test?

16 MR. SILVESTRI: I believe it does. The training
17 manual is there as a resource for IBOs to review prior to
18 taking the test, during the test, and even after they
19 successfully pass the test. And, you know, it's not -- I
20 don't think it's necessary for them to have to memorize
21 something and potentially, you know, forget it. The manual
22 is there as a constant resource for them to understand the
23 questions asked of them during the test.

24 MR. ZACHER: And when you say that it's always there,
25 do you mean that it is in their back office throughout, at
26 all times?

27 MR. SILVESTRI: That's correct, as long as they are an
28 IBO in good standing with ACN and Planet Energy, the

1 training manual is always available to them.

2 MR. ZACHER: And I understand that the testing is,
3 again, online.

4 MR. SILVESTRI: Yes.

5 MR. ZACHER: And it's not supervised?

6 MR. SILVESTRI: That's correct.

7 MR. ZACHER: And how do you ensure that IBOs who are
8 taking the test are not sharing answers or questions with
9 each other?

10 MR. SILVESTRI: Well, as you saw previously, they are
11 required to attest that they will not share their answers.
12 Also, the test questions are issued randomly as a subset of
13 these questions here, so, for example, if two IBOs were
14 taking the test at the same time, they will not be viewing
15 the same question at the same time. The system was set up
16 so that only one IBO at one time can view a specific
17 question.

18 MR. ZACHER: In your view is it sufficient to simply
19 have IBOs attest to the fact that they are not sharing
20 answers and questions with each other?

21 MR. SAFAYENI: I am sorry, I have to interrupt my
22 friend there. I mean, we have had a number of these
23 questions about Mr. Silvestri's views about whether things
24 are sufficient, and I have concerns about the relevance of
25 his views on whether something is sufficient. Surely
26 that's a matter for the Panel to decide. I am not sure Mr.
27 Silvestri's opinion is all that helpful in the matter.

28 MR. ZACHER: I wasn't asking Mr. Silvestri's personal

1 opinion. I was asking his views as the CEO of Planet
2 Energy. I thought the answer would be helpful, but...

3 MR. SAFAYENI: I have heard a number of these
4 questions now, and I am not sure that -- all of the answers
5 start with "in my view" or "in my opinion", and it's
6 clearly the witness giving his personal view on the
7 sufficiency of a matter that's going to be for this Panel
8 to decide, so I won't belabour the point, but those are
9 concerns.

10 MS. LONG: No, I mean, I interpret it to be that he is
11 giving his view as co-CEO of Planet Energy, and this Panel
12 obviously is going to decide whether or not we feel it's
13 sufficient.

14 Seeing how we have a break here, Mr. Silvestri, can I
15 ask -- just a break in your questions, Mr. Zacher -- how
16 many questions would there be on a test?

17 MR. SILVESTRI: I believe there were 20 questions on
18 one given test that an IBO would take.

19 MS. LONG: So there would be 20 questions.

20 MR. SILVESTRI: I believe so.

21 MS. LONG: And they would be random.

22 MR. SILVESTRI: Random from this entire list of
23 questions, yes.

24 MS. LONG: From this set of questions. Okay, thank
25 you.

26 MR. ZACHER: So my question, Mr. Silvestri, was just
27 about the sufficiency of having IBOs attest to the fact
28 that they are not sharing answers and questions.

1 MR. SILVESTRI: And the random nature of the questions
2 offered.

3 MR. ZACHER: Yeah, right, but my question was in
4 Planet's view whether it's sufficient to have IBOs attest
5 to the fact that they are not answering -- not sharing
6 questions and answers, notwithstanding the fact that the
7 test, of course, is not supervised.

8 MR. SILVESTRI: Yes, I believe it's sufficient. Until
9 this proceeding, the only IBO that we ever became aware of
10 was Mr. MacArthur, who claimed that he did otherwise.

11 MR. ZACHER: What do you mean by that?

12 MR. SILVESTRI: Well, Mr. MacArthur in his testimony
13 alleged that he did not conduct the test, that he allowed
14 someone else to conduct the test. He admitted to clicking
15 on to the fact that he did conduct the test, and that's the
16 first that we have ever heard of any such case.

17 So we have had good experiences with IBOs and with
18 ACN, and Mr. MacArthur is the first one that we became
19 aware of that admitted to basically contravening a
20 requirement and attestation that was required.

21 MR. ZACHER: Were IBOs required to only take the test
22 once, or were there any retraining and retesting
23 obligations?

24 MR. SILVESTRI: IBOs were required to take the test
25 annually on their anniversary date if they remained as an
26 active IBO. If they were inactive for a period of more
27 than 60 days, they would have to retake the training and
28 attesting again. I should also mention on an annual basis

1 they would have to retake the training again as well as the
2 test, and that the system would not allow them to enroll
3 customers if they did not take the annual training testing
4 or if they were not active for a period of 60 days.

5 MR. ZACHER: When you say "active for 60 days" do you
6 mean active selling or marketing any ACN products or just
7 Planet Energy?

8 MR. SILVESTRI: Just the Planet Energy products, so
9 the system would know, for example, if they had not -- if
10 the customer had not enrolled with an IBO number associated
11 with a particular IBO for a period of more than 60 days,
12 the system would automatically lock out that IBO number and
13 have to require that IBO to retake the training and test.

14 MR. ZACHER: And could IBOs fail and rewrite the test
15 as many times as they wished?

16 MR. SILVESTRI: No, they can only fail -- the minimum
17 grade is 80 percent, the minimum passing grade, and they
18 only had two attempts in total throughout their life, so
19 they had two chances to fail. If they failed a second time
20 they would not be permitted to retake the test again, ever.

21 MR. ZACHER: The same process? They would be locked
22 out if they were to fail --

23 MR. SILVESTRI: That's correct, yes.

24 MR. ZACHER: Mr. Silvestri, was there other training
25 or educating of IBOs other than training -- the requirement
26 that they review the training manual and take the test?

27 MR. SILVESTRI: Yes, there were monthly sessions, the
28 first Friday day of each month, where Planet Energy was

1 also in attendance.

2 MR. ZACHER: Sorry, attendance where?

3 MR. SILVESTRI: I am sorry, attendance at IBO training
4 sessions that ACN would host. And Planet Energy
5 representatives were there to answer any questions and to
6 make presentations.

7 There were also Saturday training sessions that Planet
8 Energy did not attend, but my understanding was that there
9 was training for all of ACN-related products, including
10 energy.

11 MR. ZACHER: The Friday night training sessions, did
12 Planet attend those and provide presentations every month?

13 MR. SILVESTRI: Yes, for the most part, every month.

14 MR. ZACHER: And I can't recall whether it was those
15 sessions or the Saturday morning sessions, but either Mr.
16 MacArthur or Mr. Nahid described those as sort of your rah-
17 rah promotional sessions. Was that the nature of the
18 presentations that Planet Energy gave at these Friday night
19 sessions?

20 MR. SILVESTRI: No. There is no rah-rah or
21 promotional -- either myself or my colleagues are not rah-
22 rah types. So we would just be there to make a
23 professional presentation and answer any questions that the
24 IBOs may have.

25 MR. ZACHER: What were the nature of the
26 presentations? Sort of how long were they, and what
27 exactly would you --

28 MR. SILVESTRI: They were generally about -- the

1 presentation was generally about half an hour, and then the
2 question and answer was another half an hour to an hour.
3 You know, the two main issues, as has been the subject of
4 this proceeding, tended to be with respect to the global
5 adjustment, how to explain the global adjustment, early
6 termination charges, if customers were permitted to switch
7 to another retailer if they were on with another retailer,
8 also the nature of the products of course, such as
9 describing the stability product, the peak protection
10 products, the reliability product.

11 MR. ZACHER: In addition to the training manual, were
12 there any other training or educational materials that were
13 contained in IBOs' back offices?

14 MR. SILVESTRI: Yes, we occasionally prepared not so
15 much promotional materials, but I would describe as
16 brochures, informational brochures for the IBOs to use.
17 They were not intended to be given to customers and we
18 didn't pass them out to customers. But we would -- if, for
19 example, we prepared a brochure for a Friday evening
20 session, or ACN also hosted quarterly conferences in the
21 United States. We would have a kiosk at that conference
22 and would hand out informational brochures.

23 So whenever we prepared an informational brochure,
24 that would also be hosted in the IBOs' back office.

25 MR. ZACHER: Were there any other sorts of
26 informational materials, training, regulatory materials
27 that were posted --

28 MR. SILVESTRI: Yes, we had written some pretty

1 detailed write-ups with respect to the global adjustment
2 and early termination charges, and they were hosted in the
3 back office and also linked to the enrolment portal.

4 MR. ZACHER: And there was a reference -- I believe
5 Mr. MacArthur had frequently asked questions that he had
6 Downloaded. Were those also included in the back office?

7 MR. SILVESTRI: I don't believe those would have been
8 in the back office. I believe the frequently asked
9 questions were part of the enrolment portal.

10 MR. ZACHER: And could IBOs, if they had any
11 questions, call ACN or Planet Energy?

12 MR. SILVESTRI: Yes, IBOs were required to call ACN.
13 ACN had a dedicated call centre related to energy
14 questions. The representatives, you know, were trained by
15 Planet Energy, and Planet Energy provided ongoing
16 information and assistance to the ACN representatives.

17 IBOs, as part of our agreement with ACN, were not
18 permitted to call Planet Energy as an IBO. If they were a
19 customer, of course they were welcome to call and ask any
20 questions pursuant to their contract.

21 MR. ZACHER: Mr. Silvestri, you mentioned the global
22 adjustment. I just wanted to ask why is that a -- an issue
23 that was the subject of questions at these training
24 sessions or otherwise?

25 MR. SILVESTRI: Well, it's a very confusing topic for
26 most people, due to the fact that customers do not see the
27 global adjustment as a separate line item if they are a
28 system customer of the utility. Yet when they enter into

1 an energy supply -- electricity supply contract with a
2 retailer, they see the global adjustment as a separate line
3 item. It's been --

4 MR. ZACHER: How is it expressed on a standard supply
5 customer's bill?

6 MR. SILVESTRI: It's not. It's buried in the time of
7 use or regulatory price plan price.

8 MR. ZACHER: So customers pay it; it's just not
9 separately identified?

10 MR. SILVESTRI: That's correct. It's been very
11 frustrating and a very difficult thing to have to work
12 with, since customers aren't able to make an apples-to-
13 apples comparison. We have brought this to Board Staff's
14 attention many times. We have written to Board Staff many
15 times. We've written as part of Part 2 of the Energy
16 Consumer Protection Act review, we mention that.

17 MR. ZACHER: What are you --

18 MR. SILVESTRI: Our suggestion was the same as the
19 Auditor General's suggestion of Ontario that the global
20 adjustment should be seen as a separate line item for all
21 customers, including system customers of the utility.

22 Also, as in our evidence, we e-mailed every electric
23 utility in Ontario to alert them to this, because a lot of
24 customers were calling and were told by electric utilities,
25 and also allegedly by Ontario Energy Board Staff in the
26 call centre, that the global adjustment was a retailer
27 charge. And when customers hear that from the utility or
28 from Ontario Energy Board Staff, they tend to believe it,

1 of course, and then we are left to have to deal with it.

2 MR. ZACHER: Is this something that you get calls from
3 customers about?

4 MR. SILVESTRI: Yes, it's the number one complaint.
5 And we've also stated that in our most recent electricity
6 renewal licence when energy Board Staff asked why there was
7 a difference in complaint numbers between the numbers we
8 submitted and the numbers that they had seen.

9 The main reason was the fact that the complaint was
10 with respect to the global adjustment, not with respect to
11 a Planet Energy issue.

12 MR. ZACHER: And how do you address those complaints
13 when you receive them, questions or complaints from
14 consumers?

15 MR. SILVESTRI: Well, we have a script that the CSRs
16 would explain what the global adjustment is, explain that
17 it's -- you know, it's a charge to pay for the difference
18 in generation, mainly electricity generation between the
19 fixed price of that generation and the hourly Ontario
20 energy price, and that that money is paid to the
21 Independent Energy System Operator, formerly the Ontario
22 Power Authority.

23 MR. ZACHER: Mr. Silvestri, how many contracts with
24 low-volume consumers have been entered into by Planet since
25 it began to exclusively market through ACN IBOs?

26 MR. SILVESTRI: Via the ACN portal since inception,
27 approximately 120,000 low-volume energy supply contracts.

28 MR. ZACHER: And approximately how many IBOs have

1 these contracts been marketed through?

2 MR. SILVESTRI: Approximately 6,000 to 7,000 IBOs. I
3 don't have an exact number; that's the best I was able to
4 gather marketed to friends and family type customers.

5 MR. ZACHER: Okay. And I'd like to ask you, Mr.
6 Silvestri, some questions about Planet Energy's customer
7 care and compliance. Okay?

8 MR. SILVESTRI: Yes.

9 MR. ZACHER: What sort of customer care and quality
10 assurance does Planet have in place generally to monitor
11 and address compliance issues, including potential
12 compliance issues relating to IBOs?

13 MR. SILVESTRI: In early to mid-2013, we installed a
14 new customer care management system. Some of the quality
15 assurance measures that, for lack of a better term, would
16 red flag an issue would be cases where there'd be a
17 duplicate phone number, a duplicate e-mail address, a
18 duplicate residence address or service address, a duplicate
19 utility account number, a mismatch between the account
20 holder' name and their e-mail address, a mismatch between
21 the account holder's name and the contract, and the account
22 holder's name that come back from the utility. So if any
23 of those items are red flagged, the quality assurance group
24 would immediately conduct an investigation, such as calling
25 the customer to verify the contract, or a quality assurance
26 call or to correct the information to ensure that e-mails
27 are, for example, not being sent to an IBO's e-mail
28 address. We send welcome letters out within three to five

1 days of enrollment to the service address to ensure that
2 the customer receives the welcome letter in the event they
3 didn't see the e-mail, or if the e-mail went to a spam
4 folder, or perhaps one spouse may have enrolled via his or
5 her e-mail and another spouse would review the welcome
6 letter; and also we conducted, we conduct -- prior to
7 January 1st of 2017 we conducted quality assurance calls
8 with a metric to --

9 MR. ZACHER: Just stop there for a second. Let me
10 back up and ask some questions.

11 The customer-care measures that you are talking about,
12 those are automated, I guess, the red flagging?

13 MR. SILVESTRI: Yes, that's correct.

14 MR. ZACHER: Okay. And then if these issues are
15 flagged, that's what triggers a further investigation by
16 your customer representatives?

17 MR. SILVESTRI: Yes, we have a dedicated quality
18 assurance group that would review that.

19 MR. ZACHER: Okay. And is this something that's all
20 done near or at contract inception?

21 MR. SILVESTRI: Yes.

22 MR. ZACHER: Near enrollment?

23 MR. SILVESTRI: Yes, soon after enrollment.

24 MR. ZACHER: So what are the kinds of issues that
25 these measures are designed to detect and address?

26 MR. SILVESTRI: Well, for example, if we have a case
27 where there is a duplicate phone number, we would
28 investigate that to ensure that, you know, someone isn't --

1 is not enrolling customers, you know, with one phone
2 number, we want -- you know, logically every account holder
3 should have their own phone number.

4 If there's a duplicate e-mail address, you know, the
5 same thing, we want to make sure that the right person is
6 receiving the confirmation e-mail and the contract terms
7 and conditions and disclosure statements.

8 With respect to a mismatch, you know, between the
9 account holder's name or an e-mail address or the account
10 holder's name that comes back from the utility acceptance,
11 sometimes you get issues, as I said before, where one
12 spouse may sign, they have a different surname than the
13 other spouse. We get into issues where -- a tenant-
14 landlord issue, where a tenant may have enrolled because he
15 or she feels they are authorized to do so since they are
16 paying the utility bill, but the landlord may feel
17 otherwise. We have had issues where -- on a large-volume
18 side where a property manager may enroll a building but
19 the, you know, the condominium corporation may feel
20 otherwise.

21 So we just want to make sure that all parties involved
22 are in agreement and that before we enroll with the
23 utility, and these measures -- if any of these red flags
24 came up the enrollment will not go any further into our
25 system, it will not reach the utility for enrollment. So
26 we just want to make sure that all these quality measures
27 are checked off before we actually enroll the customer.

28 MR. ZACHER: And if these issues are detected and your

1 customer-care representatives investigate and contact
2 customers, would you -- do you then offer them the
3 opportunity to either not enroll or cancel the contract at
4 that stage?

5 MR. SILVESTRI: That's correct. It is still within
6 the cooling-off period, so the customer is free to cancel,
7 not pursue, or if they wish to pursue we'd ask that the
8 information be updated.

9 MR. ZACHER: It might be a good point to break, thank
10 you.

11 MS. LONG: We will break for one hour and be back at
12 two o'clock, thank you.

13 MR. JANIGAN: Mr. Zacher, how much more examination-
14 in-chief do you have?

15 MR. ZACHER: I think hour, hour, hour and a half,
16 tops. Yes.

17 MR. JANIGAN: Thanks.

18 MS. LONG: And any estimate on this side with respect
19 to how long the cross will be? Mr. Safayeni?

20 MR. SAFAYENI: Probably around two hours.

21 MS. LONG: Two hours? Okay, good, thank you.

22 --- Luncheon recess taken at 1:00 p.m.

23 --- On resuming at 2:12 p.m.

24 MS. LONG: Please be seated. Mr. Zacher, you're going
25 to continue with this witness.

26 I would like to reserve about ten minutes at the end
27 of the day to talk about two procedural issues.

28 MR. ZACHER: Sure.

1 MS. LONG: One with respect to the amended notice of
2 intention. I would like to speak to you about why you feel
3 this Panel needs to sign that. I am not sure why we would
4 do that. And the other issue is with respect to argument
5 and timing.

6 MR. ZACHER: Sure.

7 MS. LONG: Okay.

8 MR. ZACHER: Mr. Silvestri, before the break, we were
9 just asking you some questions generally about Planet's
10 customer management system. I would like to ask, in
11 addition to what you've described, does Planet Energy
12 employ any more specific quality assurance measures to
13 monitor and detect non-compliance, in particular the sort
14 of non-compliance that has been alleged in this case?

15 MR. SILVESTRI: Yes. Planet Energy has conducted
16 random quality assurance calls with customers who have
17 enrolled, and our goal was to conduct quality assurance
18 calls with approximately 25 percent, so one in four
19 enrolments of customers.

20 MR. ZACHER: And are those quality assurance calls, or
21 at least during the period of time that is the subject of
22 this proceeding, were those required by regulation?

23 MR. SILVESTRI: No, they were not. Since all the
24 enrolments were Internet based enrolments, verification was
25 not required.

26 However, in addition -- sorry, in addition we want to
27 have an additional quality control and compliance measure
28 to conduct quality assurance calls just to confirm the

1 basic arrangement with the customer, to confirm the
2 compliance such as the IBO not being present and confirming
3 that the customer had in fact enrolled his or her energy
4 contract.

5 MR. ZACHER: And were those sorts of quality assurance
6 calls employed with regards to any of the contracts that
7 are the subject of this proceeding?

8 MR. SILVESTRI: Yes. The majority of customers
9 associated with Mr. MacArthur had quality assurance calls.
10 I believe -- including Mr. MacArthur's own self-enrolments,
11 I believe eighteen of the contracts comprised of nine
12 quality assurance calls, including Mr. MacArthur's.

13 MR. ZACHER: And are those quality assurance calls
14 recorded?

15 MR. SILVESTRI: Yes, they are all recorded.

16 MR. ZACHER: And are the recordings and the
17 transcription of the recordings included in the documents
18 that Planet has produced and filed in this proceeding?

19 MR. SILVESTRI: Yes, they are.

20 MR. ZACHER: Mr. Silvestri, if I could just ask you to
21 turn up Volume 4 of Planet Energy's documents. Do you have
22 that, sir?

23 MR. SILVESTRI: Yes, sir.

24 MR. ZACHER: Okay, and if you just look at -- actually
25 if you look at the index at the beginning of that volume,
26 starting on, I think, page 14 of the index at tab 232,
27 there is reference to a verification call. And then over
28 on to the next page, tabs 245, 246, 247, 249 and ongoing,

1 all of those calls that are labelled "verification calls",
2 are those the quality assurance calls you are referring to?

3 MR. SILVESTRI: Yes, they are.

4 MR. ZACHER: Okay. I think we went through one of
5 those calls with Mr. Hawkins. But just for illustrative
6 purposes, can you perhaps turn to another -- why don't we
7 go to tab 261.

8 MR. SILVESTRI: Yes.

9 MR. ZACHER: And can you just -- is that another one
10 of the -- that is a quality assurance call, I take it?

11 MR. SILVESTRI: Yes, it is with Ms. Lisa Sturge.

12 MR. ZACHER: And was she one of the customers with
13 regards to one of the contracts in this proceeding?

14 MR. SILVESTRI: Yes, she was.

15 MR. ZACHER: And can you just highlight -- perhaps
16 just walk through and highlight for the Panel the
17 procedures that are undertaken for the purposes of one of
18 these quality assurance calls?

19 MR. SILVESTRI: Yes. Normally, Planet Energy would
20 contact the customer. In this case, [REDACTED] actually
21 returned a reply from a voicemail message that we must have
22 left and the call just starts out with an introduction.

23 The CSR, being customer service representative for
24 Planet Energy, pulls up the account, and the CSR explains
25 that the purpose of the call is a follow-up regarding [REDACTED]
26 [REDACTED] Internet agreement with ACN Canada Energy when she
27 chose Planet Energy as her electricity supplier, and that
28 we are required to confirm a few matters.

1 On top of page 3, the CSR confirms the date and time,
2 and reminds [REDACTED] that she made important
3 representations when she enrolled, and just to confirm her
4 name, that she is in fact the account holder or spouse of
5 the account holder, that she -- that [REDACTED], the CSR
6 asked [REDACTED] if she in fact completed the Internet
7 agreement herself, [REDACTED] replied yes.

8 The CSR asked [REDACTED] if there was an ACN
9 independent owner on the premises; she says, no, correct.
10 And the CSR asks [REDACTED] no independent business owner
11 represented they would be returning immediately after you
12 completed agreement; [REDACTED] replies correct.

13 The CSR requested the standard confirmation that she's
14 [REDACTED] not making a false statement or misrepresentation, and [REDACTED]
15 [REDACTED] says yes.

16 MR. ZACHER: We don't need -- we won't go through all
17 of them, but are the questions, that is the script that the
18 customer service representative goes through with customers
19 on these quality assurance calls, is it a standard question
20 or question script?

21 MR. SILVESTRI: Yes, it is. In fact the script is on
22 page 491 in tab 11B of volume 1.

23 MR. ZACHER: Okay. And was that a script that you
24 ever consulted Board Staff with regards to?

25 MR. SILVESTRI: Yes. I believe I presented the script
26 to Mr. Aleck Dadson and Mr. Karim Karsan when I met with
27 them in January 2013 to explain to them that this is an
28 additional quality assurance measure that Planet Energy was

1 conducting.

2 MR. ZACHER: And what was the outcome of that meeting?

3 MR. SILVESTRI: There was really no follow-up, Mr.
4 Dadson seemed very pleased with the measures that we were
5 taking.

6 MR. ZACHER: And if a customer service representative
7 were to learn during one of these calls from the customer
8 that they had actually not enrolled in a contract, or it
9 was news to them, or that, for instance, the customer had
10 been enrolled by their IBO, what would the result be?

11 MR. SILVESTRI: We would immediately conduct an
12 investigation. First of all, we would not allow that
13 enrolment to continue. We would ask the customer if they
14 were still interested in enrolling that they themselves
15 return to the portal and enrol on their own.

16 If it was a case of the IBO being present at the same
17 time, we would look into that issue. Quite a few times, we
18 received that when there was, for example, a family member,
19 a son or daughter, who may have enrolled the parent, so we
20 would confirm with the parent, you know, that they would
21 have to re-enroll, and we would warn the IBO, you know,
22 that they should not do that again.

23 MR. ZACHER: If it was not -- if it was the sort of
24 situation that's been alleged in this case, Mr. Silvestri,
25 so for instance, Mr. MacArthur is alleged to have enrolled
26 customers on his own, either with the customer present or
27 on his own in his own residence, I guess, if Planet Energy
28 had learned through these quality assurance calls from Mr.

1 MacArthur's customers that he was enrolling them, would
2 that have -- I guess first of all, would that have
3 triggered an investigation?

4 MR. SILVESTRI: Yes, automatically. First I will
5 start by saying we are not aware of any case such as Mr.
6 MacArthur's or Mr. Nahid's where IBOs are admitting that
7 they had enrolled customers on their own for low-volume
8 accounts. There were some cases -- in large-volume
9 accounts, there was examples being employer-employee issues
10 where an employee may have enrolled feeling he or she had
11 the authority.

12 But having said that, if that was the case we would
13 immediately conduct an investigation, we would call all
14 customers, and we would offer to cancel each customer if
15 they so wished.

16 MR. ZACHER: Would you contact the IBO who is --
17 you've learned may be engaging in this sort of conduct?

18 MR. SILVESTRI: We would have asked ACN to contact the
19 IBO for his or her side of the story.

20 MR. ZACHER: Would you make an inquiry through ACN; is
21 that what you would do?

22 MR. SILVESTRI: Yes.

23 MR. ZACHER: And what would you do if you didn't
24 receive a response from the IBO?

25 MR. SILVESTRI: As we did in the case of Mr. Nahid,
26 who did not respond to ACN's request, we would deactivate
27 that IBO, so that IBO would not be permitted to enroll any
28 customers or have any customers enroll associated with his

1 or her IBO number.

2 MR. ZACHER: In addition to reaching out to the IBO
3 for information and contacting other customers who have
4 enrolled through that IBO, are there any other
5 investigative steps you would take?

6 MR. SILVESTRI: Other than contacting -- sorry, can
7 you repeat the question?

8 MR. ZACHER: Other than contacting the -- other than
9 trying to contact the IBO and the IBOs -- and customers who
10 have enrolled through that IBO, would you do anything else?

11 MR. SILVESTRI: Once we have contacted all the
12 customers either by phone or by e-mail or by letter and
13 attempt to contact the IBO, we would deactivate the IBO if
14 there's non-response or if we felt or if ACN felt that the
15 IBO was non-compliant.

16 MR. ZACHER: Okay, and so if you -- maybe you have
17 answered this, but if you determined as the result of your
18 investigation that an IBO had been enrolling customers on
19 his or her own, what would you do with regards to that IBO?

20 MR. SILVESTRI: We would immediately deactivate the
21 IBO with respect to having the ability to promote Planet
22 Energy products, and we would recommend to ACN that the IBO
23 be deactivated entirely as an IBO for any products of
24 ACN's.

25 MR. ZACHER: What steps would you take to redress any
26 harm or to address any issues with the IBO's customers or I
27 guess customers who've enrolled through that IBO?

28 MR. SILVESTRI: If we would feel that a contract was

1 not entered into properly and the customer did not want to
2 continue or re-enroll, we would reimburse the customer for
3 the difference, if any difference between our contract
4 price and the utility's price.

5 MR. ZACHER: Would you contact the customer and -- I
6 guess you are saying you'd contact the customer as part of
7 your investigation. But if you determined through your
8 investigation that this had been happening, would you
9 contact the customer and offer them any kind of remedy?

10 MR. SILVESTRI: Yes, we would offer them -- we would
11 ask them if they wished to continue, we would ask them to
12 re-enroll through the portal, and if they want to cancel,
13 we would cancel without penalty.

14 MR. ZACHER: Okay. Mr. Silvestri, I just want to ask
15 you some questions about early termination charges. Can
16 you explain what Planet Energy's policy is on early
17 termination charges; that is, when they would be charged,
18 when they would not be charged?

19 MR. SILVESTRI: Yes, so if a customer were to cancel
20 within the cooling-off period at the time, being 30 days
21 from receipt of their first bill, or if it was a permanent
22 move by the customer from one principal residence to
23 another principal residence, we would not charge any early-
24 termination charges. If, however, a customer outside of
25 those circumstances did cancel for whatever reason, our
26 policy is to ask for early termination charges pursuant to
27 the contract.

28 And by offering fixed-price natural gas and

1 electricity supply up to five years, we have to pay our
2 supplier and hedge, and with that comes a risk premium,
3 like in any commodity or product. And so if a customer
4 wishes to cancel, that's their prerogative, but we would
5 expect them to honour their contract, as we have, and pay
6 the early termination charges pursuant to the contract and
7 pursuant to -- which are identical to the regulatory
8 entitlements.

9 MR. ZACHER: Okay. Are your -- and we've spent time
10 with regards to the testimony of some of the other
11 witnesses going through Planet's enrollment portal, so I
12 don't know if it's necessary to go through that again. But
13 are your policies with regards to early-termination charges
14 explained on the enrollment portal?

15 MR. SILVESTRI: Yes, they are, in the frequently-
16 asked-questions section.

17 MR. ZACHER: Okay, anywhere else?

18 MR. SILVESTRI: And it's also explained in the terms
19 and conditions, sections 7 and 8 of the terms and
20 conditions.

21 MR. ZACHER: Okay. Is it addressed in any of the
22 other Board-prescribed documents like disclosure statements
23 or price comparisons that customers are required to
24 download or to review?

25 MR. SILVESTRI: I don't believe the disclosures or
26 price-comparison forms explain the early termination
27 charge. They do explain the cooling-off period.

28 MR. ZACHER: When you may be exposed to --

1 MR. SILVESTRI: Right.

2 MR. ZACHER: Okay. And just while I am it, does the
3 enrollment portal address the global adjustment?

4 MR. SILVESTRI: Yes, many, many instances, in the
5 frequently asked questions, in the product guide, and steps
6 1, 2, and 6 of the seven-step enrollment portal.

7 MR. ZACHER: And is the global adjustment addressed in
8 any of the Board-prescribed documents like price comparison
9 or disclosure statement?

10 MR. SILVESTRI: Yes, it's described in both -- the
11 disclosure statement has an explanation and the forecast
12 global adjustment is also incorporated in the price
13 comparison form.

14 MR. ZACHER: Mr. Silvestri, I just want to ask you
15 about Ms. Andrassin's complaint regarding early termination
16 charges; you are familiar with that?

17 MR. SILVESTRI: Yes.

18 MR. ZACHER: And I appreciate that Planet has conceded
19 for the purposes of this proceeding that Ms. Andrassin was
20 initially given some wrong information when she called in
21 October 2016; is that correct?

22 MR. SILVESTRI: That's correct.

23 MR. ZACHER: Can you -- do you know why Ms. Andrassin
24 may have been -- well, why she was given incorrect
25 information when she first called in October 2016?

26 MR. SILVESTRI: First I would like to say I feel very
27 badly, the manner which Ms. Andrassin was dealt with. We
28 strive to offer excellent customer service. Unfortunately,

1 that wasn't the case with Ms. Andrassin. The customer-
2 service representatives who talked to Ms. Andrassin are no
3 longer with Planet Energy.

4 In my review of her file, what I think happened is
5 that Ms. Andrassin enrolled in April 2015, there was a
6 delay in her account commencing flow with Planet Energy
7 supply until July of 2015, and when she called in October,
8 what I think happened is that the customer-service
9 representative probably thought that that wasn't -- she had
10 already received her first bill, and since it was such a
11 delay in the commencement of her contract flowing with us.

12 MR. ZACHER: So you were here when Ms. Andrassin gave
13 her evidence.

14 MR. SILVESTRI: Yes.

15 MR. ZACHER: And you would have heard her say that
16 even after that first call she had to call a couple more
17 times to Planet customer-service reps and she ultimately
18 had to make a complaint to the Board before Planet agreed
19 that she should be let out of her contract without penalty.

20 MR. SILVESTRI: Yes, that's correct.

21 MR. ZACHER: Can you explain why she had to go through
22 all of that before --

23 MR. SILVESTRI: For the same reason. I think the
24 customer service department just didn't look at the file
25 closely enough and erred when they informed her that Ms.
26 Andrassin would be subject to early termination charges.
27 It wasn't until her file was escalated to the compliance
28 department, to the vice president of regulatory affairs and

1 compliance, who had noticed the error and immediately
2 offered Ms. Andrassin cancellation without penalty.

3 MR. ZACHER: Is that an excuse for the fact that Ms.
4 Andrassin had to go through all of those telephone calls --

5 MR. SILVESTRI: That's no excuse. That's the honest
6 reason that I can gather, having reviewed the file.

7 MR. ZACHER: And Ms. Andrassin indicated that even
8 after she was let out of her contract without penalty in
9 February of 2016, it still took some months before she was
10 reverted to standard supply with her local distribution
11 company, I think it was June or July. Can you explain why
12 it took so much time?

13 MR. SILVESTRI: Planet Energy immediately issued a
14 drop notice to Power Stream the same day the vice president
15 of regulatory affairs and compliance offered to cancel
16 without penalty. Once again there was a delay, which is
17 out of Planet Energy's control, from the time that we sent
18 the drop request on February 22, 2016, to the time she
19 actually discontinued receiving Planet Energy supply, which
20 I believe was in May of 2016.

21 MR. ZACHER: Mr. Silvestri, you have gone through in
22 some detail Planet Energy's processes, training, testing,
23 and multi-level marketing enrolment that are the subject of
24 this proceeding.

25 Have these processes been reviewed or inspected, or
26 audited by the OEB or any other regulatory agencies in the
27 past?

28 MR. SILVESTRI: Yes. With respect to the OEB, a

1 number of times, the audit conducted by Ernst & Young in
2 2011 where the entire enrolment process, training and
3 marketing promotional materials were reviewed.

4 In 2013, there was a review with respect to the
5 marketing processes and enrolment by Board Staff. We
6 received a satisfactory letter from Mr. Karim Karsan in
7 September 2014.

8 In 2015, there was another thorough inspection of the
9 training and the enrolment processes by Board Staff. And
10 in 2016, there was another compliance inspection with
11 respect to the enrolment processes.

12 Our processes have also been reviewed significantly by
13 the British Columbia Utilities Commission, and by the
14 Manitoba Public Utilities Board, and we've -- except for
15 the administrative penalty and assurance of voluntary
16 compliance signed with the Ontario Energy Board in 2011,
17 there's been no other findings of any non-compliance or any
18 penalties or fines whatsoever by Planet Energy.

19 MR. ZACHER: So I take it the 2011 Ernst & Young
20 audit, that was the first sort of comprehensive inspection?

21 MR. SILVESTRI: Yes.

22 MR. ZACHER: Okay. Can I ask you to turn up the book
23 of documents of OEB enforcement staff, and if you could
24 turn to tab 15.

25 MR. SILVESTRI: Yes.

26 MR. ZACHER: I don't think there's any controversy
27 about this. You're familiar generally with the nature of
28 this audit, is that right?

1 MR. SILVESTRI: Yes, I am.

2 MR. ZACHER: And this was an audit that was the Board
3 had Ernst & Young conduct of all marketers and retailers in
4 2011, shortly after the Energy Consumer Protection Act came
5 into effect.

6 MR. SILVESTRI: That's correct.

7 MR. ZACHER: And if you go to page 4 of that document,
8 the pages are numbered at the bottom of the page.

9 MR. SILVESTRI: Yes.

10 MR. ZACHER: We went through this with Ms. Armstrong,
11 so we won't go through it in detail, But you'll see at the
12 top of the page "scope and approach", and then under Phase
13 1 it identifies all of the areas which Ernst & Young
14 inspected.

15 MR. SILVESTRI: Yes.

16 MR. ZACHER: And, Mr. Silvestri, is it your
17 understanding that Ernst & Young did inspect, audit all of
18 those areas?

19 MR. SILVESTRI: Yes, that's my understanding.

20 MR. ZACHER: Okay. And to be clear, at this time in
21 2011, was Planet Energy marketing exclusively to low-volume
22 consumers through ACN IBOs?

23 MR. SILVESTRI: Yes, in Ontario, British Columbia,
24 Manitoba and Quebec.

25 MR. ZACHER: And since this audit, have there been any
26 material changes to Planet Energy's business practices with
27 regards to IBO training and testing?

28 MR. SILVESTRI: No, there have not.

1 MR. ZACHER: With regards to the multi-level marketing
2 promotion by IBOs and enrolment by customers?

3 MR. SILVESTRI: No, there's been no material changes.

4 MR. ZACHER: With regards to the contract enrolment
5 and contract documentation?

6 MR. SILVESTRI: No, no material changes.

7 MR. ZACHER: And any material changes to cancellation
8 rights and obligations?

9 MR. SILVESTRI: No, no material changes, other than we
10 automated the process to issue cancellation e-mails and
11 letters.

12 MR. ZACHER: Any material changes to Planet Energy's
13 business practices and procedures since the time of this
14 audit?

15 MR. SILVESTRI: Yes. In mid-2013, as I stated
16 earlier, we implemented a new customer care system which
17 incorporated the various quality assurance measures that I
18 outlined earlier.

19 MR. ZACHER: That would be it?

20 MR. SILVESTRI: Yes.

21 MR. ZACHER: And again, we won't need to go over it,
22 but I understand the outcome of this audit was some
23 findings of non-compliance with regards to the form of ID
24 badges and business cards -- or not just the form, but some
25 of the content of those documents?

26 MR. SILVESTRI: Yes.

27 MR. ZACHER: And with regards to cancellation, I
28 gather that cancellation was being -- the processes were

1 being followed, but in some cases, cancellation notices
2 were going out outside of the ten-day period.

3 MR. SILVESTRI: That's correct. And I understand that
4 the Board accepted the assurance of voluntary compliance as
5 a full and final resolution of the matter.

6 MR. ZACHER: And you may have said -- and I apologize
7 if you did. But with the exception of assurance of
8 voluntary compliance, have there been any other compliance
9 findings or sanctions in Ontario against Planet Energy,
10 either before or after the Ernst & Young audit?

11 MR. SILVESTRI: No, there have not.

12 MR. ZACHER: Mr. Silvestri, you made reference to
13 another 2015 compliance inspection review.

14 MR. SILVESTRI: Yes.

15 MR. ZACHER: I don't think we have talked about that
16 yet. I want to ask you about that in some detail.

17 If you can locate Planet Energy's documents, volume 1
18 -- do you have that in front of you?

19 MR. SILVESTRI: Yes, tab 6.

20 MR. ZACHER: If I can actually ask you to turn up
21 tab 4, document 4.

22 MR. SILVESTRI: Yes.

23 MR. ZACHER: Is this the notice that precipitated that
24 compliance inspection?

25 MR. SILVESTRI: Yes, it is.

26 MR. ZACHER: I see that this was triggered by some
27 allegations around unauthorized enrolment of customers.

28 MR. SILVESTRI: Yes, that's correct.

1 MR. ZACHER: And if you go to page 106, at the top
2 there is an appendix, and this is the start of an
3 information request.

4 MR. SILVESTRI: Yes.

5 MR. ZACHER: So I take it from looking at this
6 information request, which continues on to the next page,
7 paragraphs 1 through 7 --

8 MR. SILVESTRI: Yes.

9 MR. ZACHER: -- this was a very broad and
10 comprehensive inspection of Planet's business processes,
11 practices, including its relationship with ACN; is that
12 correct?

13 MR. SILVESTRI: Yes, that's correct.

14 MR. ZACHER: And paragraph 3 requires Planet to
15 describe the type of business and corporate organization of
16 ACN and its relationship with Planet?

17 MR. SILVESTRI: That's correct.

18 MR. ZACHER: And paragraph 4 provides a detailed
19 description of the business activities of ACN?

20 MR. SILVESTRI: Yes.

21 MR. ZACHER: And then paragraph 5 enumerates numerous
22 information requirements, including your -- Planet Energy's
23 specific relationship with ACN, all of the contracts
24 between the company and ACN, compensation structure, use of
25 clawback fines and other sales incentives, salesperson
26 recruitment processes, assessment of salesperson
27 qualifications and competencies, standards required to be
28 met, such as standards for education, training,

1 certification, and performance, ID badge and business-card
2 processing for new salespersons, salesperson processes,
3 length of training, group training, or individual training,
4 and (n), complaint handling process in relation to
5 salespersons; et cetera.

6 Is that all information that the Board required --
7 demanded of Planet Energy at the time and did you provide
8 all of that information?

9 MR. SILVESTRI: Yes, we provided all that information.
10 I felt we answered all of Board Staff's questions
11 thoroughly.

12 MR. ZACHER: Okay, and if you turn over to tab 5, is
13 this the cover letter enclosing Planet Energy's response?

14 MR. SILVESTRI: Yes, it is.

15 MR. ZACHER: Okay, and then is the response found at
16 tab 6?

17 MR. SILVESTRI: Yes, tab 6, pages 110 to 123.

18 MR. ZACHER: And then I see that appended to the
19 response at tabs A, B, C, D, and E are documents that
20 Planet provided to the Board at the time; is that right?

21 MR. SILVESTRI: That's correct, yes.

22 MR. ZACHER: And that would include at tab B the
23 agency agreement with ACN?

24 MR. SILVESTRI: Yes.

25 MR. ZACHER: And at tab D, ACN's policies and
26 procedures?

27 MR. SILVESTRI: Yes.

28 MR. ZACHER: And at tab E, the training manual that we

1 have already looked at.

2 MR. SILVESTRI: Yes, that's correct.

3 MR. ZACHER: Mr. Silvestri, can you, without reading
4 word for word, answer whether Planet Energy provided Board
5 Staff or, sorry, the Board with responses to its questions
6 about the nature of Planet Energy and ACN's relationship?

7 MR. SILVESTRI: Yes. In answer to question 3 on page
8 112, the question being, describe the type of business and
9 corporate organization of ACN and its relationship with
10 Planet Energy, and the response is below.

11 MR. ZACHER: And I see that includes a description of
12 the nature of the IBO warm network marketing?

13 MR. SILVESTRI: That's correct.

14 MR. ZACHER: And is there also answers to that
15 question in response to question number 2 on page 2?

16 MR. SILVESTRI: Yes, that's with respect to whether a
17 commission or bonus was paid, and as I mentioned earlier,
18 how Planet Energy pays ACN directly as a master agent, and
19 then how the IBOs are paid on a residual basis, which is
20 explained, the second-last point on page 2.

21 MR. ZACHER: And did Planet Energy provide the Board
22 with detailed information on the nature of IBO marketing to
23 customers and the manner in which customers enroll over the
24 Internet?

25 MR. SILVESTRI: Yes, answer to number 5 explains that.

26 MR. ZACHER: Is that 5A?

27 MR. SILVESTRI: Yes, 5A. The third-last point from
28 the bottom. The ACN relationship limits IBOs to soliciting

1 customers who are offering Planet Energy products as set
2 forth in its marketing materials, applications, and sales
3 agreements, and recommending Planet Energy products.

4 MR. ZACHER: And then in -- I see in the third main
5 paragraph again there's a description of the nature of --

6 MR. SILVESTRI: Yes, the warm.

7 MR. ZACHER: -- no cold-calling and the --

8 MR. SILVESTRI: Correct.

9 MR. ZACHER: And did Planet Energy provide the Board
10 with detailed information as to how IBOs were trained and
11 undertook testing?

12 MR. SILVESTRI: Yes, just, umm... Yes, in answer to
13 F, assessment of salesperson's qualifications and
14 competencies.

15 MR. ZACHER: That's on page 1 --

16 MR. SILVESTRI: Page 117.

17 MR. ZACHER: Okay. And did Planet provide the Board
18 with information on the nature -- I may have asked this
19 already -- on the nature of Planet and ACN's commission
20 structure and the ability to withdraw or claw back
21 commissions?

22 MR. SILVESTRI: Yes, so in answer to 2, and also -- I
23 just saw it, I am sorry, give me a second. Oh, D, I am
24 sorry, page 116, compensation structure, use of clawback
25 fines, and any other sales incentives.

26 MR. ZACHER: And you talked today a little bit about
27 Planet Energy's quality monitoring and quality assurance
28 processes and how to monitor for non-compliance. Was that

1 an issue that was also addressed in this response?

2 MR. SILVESTRI: Yes. Answer to K.

3 MR. ZACHER: On page 119.

4 MR. SILVESTRI: 119. L, 120.

5 MR. ZACHER: And finally, Mr. --

6 MR. SILVESTRI: And M as well.

7 MR. ZACHER: M on...

8 MR. SILVESTRI: 121.

9 MR. ZACHER: 121. And finally, Mr. Silvestri, did
10 Planet provide the Board with information on the number of
11 active IBOs who were qualified to market Planet Energy
12 products?

13 MR. SILVESTRI: Yes, I believe over the time period
14 requested in answer to number 7.

15 MR. ZACHER: That's on page 122?

16 MR. SILVESTRI: 122, yes.

17 MR. ZACHER: And were the processes that Planet Energy
18 explained in this document with regards to all of the areas
19 that you've just referenced, are those answers
20 representative of the practices that prevailed at the time
21 that the contracts that are the subject of this proceeding
22 were entered into?

23 MR. SILVESTRI: Yes, they were, they would be the
24 exact same processes.

25 MR. ZACHER: Certainly no material differences?

26 MR. SILVESTRI: No, none at all.

27 MR. ZACHER: And after you provided the Board with
28 this very comprehensive and detailed report and

1 documentation, were there follow-up meetings or calls with
2 the Board or Board Staff?

3 MR. SILVESTRI: There were some follow-up meetings. I
4 attended just one of them.

5 MR. ZACHER: But were there others?

6 MR. SILVESTRI: Yes, the compliance department met
7 with members of Board Staff.

8 MR. ZACHER: And are you familiar with those meetings?

9 MR. SILVESTRI: I was briefed on them, yes.

10 MR. ZACHER: Okay. And can you just explain what the
11 nature of those follow-up communications, meetings, calls,
12 et cetera, were?

13 MR. SILVESTRI: Well, Board Staff had requested that,
14 you know, that they would like to improve the relationship
15 between Board Staff and Planet Energy --

16 MR. ZACHER: So let me just stop you there for a
17 moment. I appreciate that's one of the -- this may be one
18 of the outcomes of this. But were there simply follow-up
19 meetings or calls with Board Staff to further understand
20 the information you'd provided to ask follow-up questions?

21 MR. SILVESTRI: No, there were not.

22 MR. ZACHER: Okay. And so was there any compliance
23 action taken against Planet Energy as the result of this
24 inspection?

25 MR. SILVESTRI: No, there was not.

26 MR. ZACHER: Were there any findings that any
27 contracts had been entered into without the knowledge and
28 authorization of customers?

1 MR. SILVESTRI: No, in fact, as I recall, the
2 inspection commenced with, I think it was 108 alleged non-
3 compliant contracts, was dropped to 80, was dropped to 24,
4 then was dropped to zero.

5 MR. ZACHER: And as a result of this compliance
6 action, did the Board or Board Staff recommend any
7 corrective action or remedial measures to address any of
8 the matters that were the subject of this inspection?

9 MR. SILVESTRI: There was no formal compliance
10 retirement or follow-up.

11 MR. ZACHER: Was there any proposed corrective or
12 remedial action by the Board or Board Staff with respect to
13 Planet Energy's MLM marketing through ACN IBOs?

14 MR. SILVESTRI: No, none whatsoever.

15 MR. ZACHER: With regards to the recruitment,
16 training, or testing of IBOs?

17 MR. SILVESTRI: No, none whatsoever.

18 MR. ZACHER: With regards to Planet Energy's training
19 manual?

20 MR. SILVESTRI: No, none whatsoever.

21 MR. ZACHER: With regards to Planet's Internet
22 contract enrolment processes?

23 MR. SILVESTRI: No, none whatsoever.

24 MR. ZACHER: With regards to plane's contract
25 documentation?

26 MR. SILVESTRI: No, none whatsoever.

27 MR. ZACHER: And finally, with regards to Planet
28 Energy's quality assurance complaint handling processes?

1 MR. SILVESTRI: The only request by Board Staff was,
2 as I mentioned earlier, an attempt to improve the
3 relationship between Planet Energy and Board Staff. Board
4 Staff had requested that perhaps we can enter into a more
5 efficient way to reply to complaint -- customer complaint
6 responses or CCRs, as they are known, or resolution action
7 plans or RAPs, that perhaps we should consider being
8 lenient with some customers, especially if complaints are
9 escalated. And so we attempted to do that.

10 MR. ZACHER: And did you have meetings with Board
11 Staff personnel about those issues, about improving the
12 manner in which you responded to complaints in your
13 relationship generally?

14 MR. SILVESTRI: Yes, as I said, I attended the first
15 meeting, and then the follow-up meetings were attended by
16 Planet Energy's compliance department.

17 MR. ZACHER: Who were those meetings with, which
18 personnel at Board Staff?

19 MR. SILVESTRI: The meeting I attended, Charlotte
20 Ellis Morgan was in attendance and Maureen Helt. Chris
21 Jette attended at the first part of the meeting to present
22 the results of the compliance inspection. And the follow-
23 up meetings, as I understand, were with Charlotte Ellis
24 Morgan and her staff, namely Andy Chung at the time.

25 MR. ZACHER: And what was the outcome of those
26 meetings? Was it productive? What were the results?

27 MR. SILVESTRI: To be honest, it was rather confusing.
28 We attempted to improve relations with Charlotte Ellis

1 Morgan and Andy Chung. We attempted to be lenient with
2 some customer complaints, if Board Staff felt it was
3 necessary.

4 And by the way, those were customers that were the
5 subject of this inspection, not new complaints. But we
6 were receiving conflicting signals from other departments
7 within Board Staff. I believe the manager at the time was
8 Nancy Mintz, and so we were receiving, you know,
9 conflicting messages with rather -- rather disparaging
10 statements about us.

11 MR. ZACHER: Were the meetings with Ms. Ellis Morgan
12 productive?

13 MR. SILVESTRI: The report back to me was that they
14 seemed to be productive, yes.

15 MR. ZACHER: Mr. Silvestri, you referred as well to an
16 October 2013 compliance inspection.

17 MR. SILVESTRI: Yes.

18 MR. ZACHER: Can I ask you, while you are in binder 1
19 of Planet Energy's documents, can you go to tab 3?

20 MR. SILVESTRI: Yes.

21 MR. ZACHER: Is that the letter from the Board that
22 initiated this inspection?

23 MR. SILVESTRI: Yes, it is.

24 MR. ZACHER: Okay. And it says there in the first
25 paragraph that this was an assessment in relation to
26 marketing and promotional materials utilized by Planet --

27 MR. SILVESTRI: Yes.

28 MR. ZACHER: -- when marketing to low-volume

1 consumers?

2 MR. SILVESTRI: Yes.

3 MR. ZACHER: And I understand that this was an
4 inspection that was not targeted to Planet, but done with
5 regards to other active retailers or marketers.

6 MR. SILVESTRI: That's correct, that was our
7 understanding.

8 MR. ZACHER: And if you look at tab 9 in that same
9 binder -- do you have that document?

10 MR. SILVESTRI: Yes.

11 MR. ZACHER: And was this Planet's response to the
12 initial inspection request?

13 MR. SILVESTRI: Yes, the cover letter and then the
14 appendices where we attached our enrolment process,
15 disclosure forms, and also pages from Planet Energy's
16 website.

17 MR. ZACHER: And would the -- I see attached to the
18 letter, the first document says "enrolment portal" and
19 that's a lengthy document.

20 MR. SILVESTRI: Yes.

21 MR. ZACHER: And is that the same enrolment portal
22 that we walked through earlier in this proceeding?

23 MR. SILVESTRI: Yes, that's correct.

24 MR. ZACHER: And have there been any material changes
25 to that enrolment process since the time of this
26 inspection?

27 MR. SILVESTRI: No, there have not.

28 MR. ZACHER: And, Mr. Silvestri, if you could turn to

1 tab 10 of that binder --

2 MR. SILVESTRI: Yes.

3 MR. ZACHER: -- that would appear to be the letter
4 almost a year later, indicating that the inspection has
5 come to a conclusion.

6 MR. SILVESTRI: Yes, that's correct, the letter from
7 Mr. Karsan, then vice president consumer services at the
8 Energy Board, stating that the inspection undertaken by
9 Board Staff is now complete and no further action will be
10 taken with regard to this matter.

11 MR. ZACHER: And were there any corrective actions, or
12 any kind of remedial action recommended by Board Staff that
13 came out of this inspection?

14 MR. SILVESTRI: No, none whatsoever.

15 MR. ZACHER: Was that letter the sole response that
16 you received from the Board in respect of this inspection?

17 MR. SILVESTRI: Yes, it was.

18 MR. ZACHER: Mr. Silvestri, has the Board also
19 considered Planet Energy's business practices and
20 compliance procedures as part of its regular -- as part of
21 Planet's regular electricity and gas licence renewal
22 applications?

23 MR. SILVESTRI: Yes, the Board has.

24 MR. ZACHER: And when was the last time that Planet's
25 gas marketing licence was renewed?

26 MR. SILVESTRI: In 2013.

27 MR. ZACHER: And can I ask you to flip to tab 14 of
28 this binder?

1 MR. SILVESTRI: Yes.

2 MR. ZACHER: Is that the decision?

3 MR. SILVESTRI: Yes, it's the decision, the main issue
4 Board Staff had recommended Planet Energy --

5 MR. ZACHER: Just before that, let me just ask you --
6 if you go to the end of it, the reasons, page 508.

7 MR. SILVESTRI: Yes.

8 MR. ZACHER: Was the licence granted?

9 MR. SILVESTRI: Yes, the licence was granted without
10 any conditions.

11 MR. ZACHER: For the usual five-year term?

12 MR. SILVESTRI: Five-year term, yes.

13 MR. ZACHER: When was the last time that your
14 electricity retailing licence was renewed?

15 MR. SILVESTRI: It was this year, 2017.

16 MR. ZACHER: And are the documents that are applicable
17 to that licensing proceeding at tabs 15 through 17 of the
18 same binder?

19 MR. SILVESTRI: Yes.

20 MR. ZACHER: And at tab 17, is that the decision
21 renewing Planet Energy's licence?

22 MR. SILVESTRI: Yes, the licence was renewed without
23 conditions for a term of five years.

24 MR. ZACHER: Just one moment. And if I can just ask
25 you to turn back to tab 16.

26 MR. SILVESTRI: Yes.

27 MR. ZACHER: These are OEB staff submissions in
28 regards to your licence renewal application?

1 MR. SILVESTRI: Yes, that's correct.

2 MR. ZACHER: And if you look at page 553, there's a
3 reference there to, in the first full paragraph, according
4 to the OEB's records, Planet Energy has a relatively low
5 level of complaints, within or below average among licensed
6 retailers and gas marketers.

7 MR. SILVESTRI: Yes, that is correct.

8 MR. ZACHER: What statistics is OEB referring to
9 there?

10 MR. SILVESTRI: I believe they are referring to page
11 519 in tab 15.

12 MR. ZACHER: Okay. This is your response to the
13 interrogatories in this case?

14 MR. SILVESTRI: Yes.

15 MR. ZACHER: Okay. Well, let me just ask you, if you
16 look at tab 18, there's a document entitled "assessment."

17 MR. SILVESTRI: Yes.

18 MR. ZACHER: And there's similar documents for ensuing
19 periods of time right through to tab 27; do you see that?

20 MR. SILVESTRI: Yes.

21 MR. ZACHER: And are these documents relevant to
22 Planet Energy's industry complaint statistics?

23 MR. SILVESTRI: Yes, these documents show the
24 quarterly cost assessments that we receive from the Board,
25 and it outlines for the past three years with respect from
26 the date of the cost assessment the enrollments by Planet
27 Energy. For example, if you look at 558 --

28 MR. ZACHER: Hold on. That's at tab 18?

1 MR. SILVESTRI: Yes.

2 MR. ZACHER: Okay. So the table at the bottom?

3 MR. SILVESTRI: Yes. So --

4 MR. ZACHER: Can you just explain how that -- what
5 that says with regards to Planet Energy's complaint
6 statistics?

7 MR. SILVESTRI: Yes, so if you look at number of
8 customers, company, those are the customers flowing with
9 Planet Energy electricity for those respective years, and
10 then in the box below, number of complaints, company, you
11 see 2013 is 35, 16, 2012, 66, 2011, and that's my
12 handwriting. If you take 39 -- average of 39 complaints
13 over 32,653, you get a complaint ratio of .12 percent.

14 MR. ZACHER: And are these the Board's complaint
15 statistics?

16 MR. SILVESTRI: Yes.

17 MR. ZACHER: And you had said earlier that you thought
18 those statistics were -- even those were overstated?

19 MR. SILVESTRI: Yes, as we explained on page 519 in
20 tab 15 in our reply to Board Staff's interrogatory in our
21 electric licence application, the reason why we have a
22 difference in our complaint statistics, which are lower
23 than the Board's, are mainly due to complaints not related
24 to Planet Energy, such as the global adjustment, and Board
25 Staff seemed to acknowledge that in their submission.

26 MR. ZACHER: Mr. Silvestri, you had indicated that
27 Planet Energy's contractual arrangement with ACN came to an
28 end in November 2016?

1 MR. SILVESTRI: That's correct.

2 MR. ZACHER: And how is Planet currently marketing to
3 new low-volume consumers in Ontario?

4 MR. SILVESTRI: We have ceased marketing to new low-
5 volume consumers since our arrangement with ACN ended in
6 November 2016.

7 MR. ZACHER: Have you effectively exited the Ontario
8 market?

9 MR. SILVESTRI: Yes, with the exception of servicing
10 our current customers. We service our current customers on
11 a daily basis and also attempt to enter into new agreements
12 with them as their current agreements expire.

13 MR. ZACHER: Those are renewal agreements?

14 MR. SILVESTRI: Yes, but they are not renewals per se,
15 as per the Board's processes, they are brand-new agreements
16 that we enter into with our customers.

17 MR. ZACHER: Okay. And are those done exclusively
18 over the Internet?

19 MR. SILVESTRI: Yes.

20 MR. ZACHER: And are there any in-person -- is there
21 any kind of in-person solicitation or promotion with
22 regards to those renewal or new agreements?

23 MR. SILVESTRI: No, none whatsoever. Sorry, I should
24 add, there are very few cases where if a customer doesn't
25 have an e-mail address, we will send the customer written -
26 - paper contract to sign and send back, and then follow-up
27 with a required verification call for all customers,
28 Internet and/or paper contract, who enrolled on or after

1 January 1st, 2017.

2 MR. ZACHER: Thank you, Mr. Silvestri. Madam Chair,
3 those are all my questions. That concludes my examination
4 of Mr. Silvestri.

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

6 Mr. Safayeni, is it you or Ms. Gonsalves?

7 MR. SAFAYENI: Fortunately or unfortunately, it's me,
8 Madam Chair. I am in the Panel's hands --

9 MS. LONG: Sorry, we are just going to take a moment
10 here. I am wondering, Mr. Bell, if you are able to lower
11 the blinds for us.

12 MR. JANIGAN: You are in our version of the hot box,
13 Mr. Silvestri. The sun is shining right on you.

14 MS. LONG: Great, thank you. Thank you.

15 MR. SAFAYENI: Apologies, Madam Chair. We are having
16 a slight technical hiccup. I wonder if we could take a
17 brief break. That might help me organize my notes a little
18 bit and we can deal with this and --

19 MS. LONG: Sure, why don't we take ten minutes. We
20 will be back at 3:20 and you ask start your cross then.

21 MR. SAFAYENI: Thank you, Madam Chair.

22 --- Recess taken at 3:08 p.m.

23 --- On resuming at 3:22 p.m.

24 MS. LONG: Please be seated. Mr. Safayeni?

25 **CROSS-EXAMINATION BY MR. SAFAYENI:**

26 MR. SAFAYENI: Thank you, Madam Chair. Good
27 afternoon, Mr. Silvestri.

28 MR. SILVESTRI: Good afternoon.

1 MR. SAFAYENI: Can you hear me okay?

2 MR. SILVESTRI: Yes, I can.

3 MR. SAFAYENI: So you became CEO of Planet Energy in
4 April 2012, correct?

5 MR. SILVESTRI: No, November 2012.

6 MR. SAFAYENI: November 2012.

7 MR. SILVESTRI: Yes, November 2012. You are probably
8 looking at my CV.

9 MR. SAFAYENI: I am.

10 MR. SILVESTRI: April 2012 was when we set up
11 EnerGlobe Energy, which was the company that my partners
12 and I set up for the purpose of acquiring a potential
13 retailer, such as Planet Energy.

14 MR. SAFAYENI: All right, thank you for clarifying.

15 MR. SILVESTRI: We amalgamated EnerGlobe Energy and
16 Planet Energy after we closed.

17 MR. SAFAYENI: So it was November 2012 when you
18 assumed the title of co-CEO then?

19 MR. SILVESTRI: Of Planet Energy, yes.

20 MR. SAFAYENI: Of Planet Energy. And the latest, and
21 I believe final contract between Planet Energy and ACN is
22 dated November 9th, 2012, correct?

23 MR. SILVESTRI: That's correct, yes.

24 MR. SAFAYENI: And you were involved in negotiating
25 and completing that contract?

26 MR. SILVESTRI: No, I was not. That was negotiated by
27 the previous shareholders. I was kept informed of the
28 progress, but I was not directly involved in the

1 negotiations.

2 MR. SAFAYENI: So you were at least aware of the
3 contract, obviously?

4 MR. SILVESTRI: Yes.

5 MR. SAFAYENI: And you reviewed it at the time?

6 MR. SILVESTRI: Yes.

7 MR. SAFAYENI: And that contract was extended on
8 January 30th, 2014, correct?

9 MR. SILVESTRI: Yes, for another two years.

10 MR. SAFAYENI: And you were involved in that decision,
11 obviously.

12 MR. SILVESTRI: Yes.

13 MR. SAFAYENI: And it was Planet's decision to extend
14 that agreement?

15 MR. SILVESTRI: Yes, we had an option to extend for
16 another two years.

17 MR. SAFAYENI: And just to be clear, when you say
18 there was an extension, that was just an extension of the
19 existing November 2012 contract. There was no new
20 contract, correct?

21 MR. SILVESTRI: That's correct.

22 MR. SAFAYENI: And that contract, the one dated
23 November 9, 2012, accurately describes the roles and
24 responsibilities of ACN and Planet Energy and their
25 relationship?

26 MR. SILVESTRI: Yes, it does.

27 MR. SAFAYENI: Now you told your counsel that the
28 contract between Planet Energy and ACN expired on November

1 9th, 2016. Do you remember that?

2 MR. SILVESTRI: Yes, that's correct.

3 MR. SAFAYENI: I am going to suggest to you that the
4 contract was actually terminated by ACN; would you agree
5 with me?

6 MR. SILVESTRI: No, I would not. The contract
7 expired. That was the expiry date of the contract and the
8 parties agreed not to renew the contract.

9 MR. SAFAYENI: So, Mr. Silvestri, are you familiar
10 with another energy retailer called Xoom Energy.

11 MR. SILVESTRI: Yes, I am.

12 MR. SAFAYENI: And are you aware of the fact that Xoom
13 Energy brought an application to obtain a gas marketer and
14 electricity retailer licence?

15 MR. SILVESTRI: Yes, I am.

16 MR. SAFAYENI: And are you aware of the fact that
17 Planet Energy made submissions in respect of that
18 application?

19 MR. SILVESTRI: Yes, I am.

20 MR. SAFAYENI: And did you review and approve those
21 submissions before they were filed?

22 MR. SILVESTRI: Yes, I did.

23 MS. LONG: Mr. Zacher, have you seen these materials
24 before?

25 MR. SAFAYENI: He authored them, but I am not
26 proposing to file it as an exhibit. I just want to be fair
27 to the witness. I am going to draw his attention to a
28 particular statement in it, and then I'll be done.

1 MR.ZACHER: The answer to the question is no, which
2 was the subject to my side comment to Mr. Safayeni asking
3 why it wasn't included in the brief of documents that they
4 intended to rely upon.

5 MR. SAFAYENI: With respect, it's not a document that
6 I am relying on. It's a statement that I am going to give
7 an opportunity to the witness to adopt that contradicts
8 evidence that he gave. I wasn't going to rely on it if he
9 gave the answer that I expected, that would have been
10 consistent with the statement I am about to take him to.

11 MS. LONG: Well, let's proceed. But I don't have it
12 in front of me either.

13 MR. SAFAYENI: If the Panel wants copies, I have
14 copies. But frankly, for my limited use, I am not sure
15 it's necessary.

16 MS. LONG: Let's see where you are going.

17 MR. SAFAYENI: Mr. Silvestri, I would like to turn to
18 page 2, paragraph 7.

19 MR. SILVESTRI: Yes, I see that.

20 MR. SAFAYENI: Okay. And the statement says:

21 "In 2016, ACN notified Planet Energy that it
22 intended to terminate its sales agency agreement
23 with Planet Energy effective November 9th, 2016.
24 ACN is terminating the sales agency agreement due
25 to the entry into Canada of Xoom Energy."

26 Do you see that?

27 MR. SILVESTRI: I see that.

28 MR. SAFAYENI: Is that statement accurate, sir?

1 MR. SILVESTRI: Yes, it is. But what it doesn't state
2 is that Planet Energy had also decided not to renew the
3 contract in light of the implementation of Bill 112; ACN
4 just called us first.

5 MR. SAFAYENI: So ACN terminated the contract, but
6 Planet Energy independently reached the same --

7 MR. SILVESTRI: There is a difference, Mr. Safayeni,
8 between terminated and expiry. It should say the contract
9 expired on November 9th, 2016.

10 MR. SAFAYENI: Sorry, what should say that?

11 MR. SILVESTRI: That should have said the contract was
12 expiring and was not renewed.

13 MR. SAFAYENI: So when it says ACN notified Planet
14 Energy that it intended to terminate its sales agency
15 agreement, that's inaccurate?

16 MR. SILVESTRI: I would say so. We should have
17 perhaps said either terminate our relationship, or not
18 renew the contract upon its expiry.

19 MR. SAFAYENI: But I think you also told me that ACN
20 communicated the termination decision to Planet Energy
21 first. I heard you say that, correct?

22 MR. SILVESTRI: That's correct, yes. But we had also
23 decided internally not to renew the agreement.

24 MR. SAFAYENI: When did ACN communicate that decision
25 to Planet Energy?

26 MR. SILVESTRI: I believe it was in May of 2016.

27 MR. SAFAYENI: And you're aware that ACN is now
28 selling energy products on behalf of Xoom Energy, correct?

1 MR. SILVESTRI: I don't know the details. I have not
2 kept in touch with ACN or Xoom, with the exception of some
3 infrequent discussions with ACN with respect to this
4 proceeding.

5 MR. SAFAYENI: Well, you're aware that Xoom Energy
6 planned to market its products through ACN, right, sir?

7 MR. SILVESTRI: Yes.

8 MR. SAFAYENI: And in fact, that was the entire
9 business model that Xoom was presenting as part of its
10 application that we were just talking about, correct?

11 MR. SILVESTRI: I can't speak for Xoom Energy, sir.
12 You may want to ask them that.

13 MR. SAFAYENI: No, but keep to the same document, turn
14 to paragraph 2.

15 MR. SILVESTRI: I am sorry, paragraph?

16 MR. SAFAYENI: Same document, paragraph 2.

17 MR. SILVESTRI: Okay.

18 MR. SAFAYENI: Well, let's start with paragraph 1,
19 actually.

20 "All indications are that the applicant, Xoom
21 Energy, intends to market electricity to
22 electricity and gas customers in Ontario through
23 ACN, a multi-level marketing company, that for
24 the past seven years marketed and promoted Planet
25 Energy products and services".

26 And that's Planet Energy's understanding at the time
27 this document was filed, correct?

28 MR. SILVESTRI: That's correct, yes.

1 MR. SAFAYENI: Mr. Silvestri, you spoke with Mr.
2 Zacher about the back office website available to ACN IBOs.
3 It's fair to say that whatever online training was
4 available to ACN IBOs, it was delivered through the ACN
5 website; correct?

6 MR. SILVESTRI: Yes.

7 MR. SAFAYENI: And whatever training or information
8 was available for ACN IBOs to attend in person, it was
9 delivered through ACN events; correct?

10 MR. SILVESTRI: That's correct. I should add, there's
11 also the frequently asked questions and the product guide
12 that would have been on the ACN/Planet Energy web portal,
13 enrollment portal.

14 MR. SAFAYENI: Okay. That's now the portal that
15 customers could access to sign up contracts; correct?

16 MR. SILVESTRI: That's correct.

17 MR. SAFAYENI: Okay. Under the sales agency agreement
18 dated November 9th, 2012, Planet Energy had the right to
19 train IBOs directly and in person at ACN events; correct?

20 MR. SILVESTRI: That's correct.

21 MR. SAFAYENI: And other than the Friday sessions that
22 I heard you talk about, Planet Energy didn't exercise that
23 right at any other ACN events.

24 MR. SILVESTRI: Yes, we did, at the quarterly
25 conferences. We had a kiosk at the quarterly conferences
26 where we had staff available to discuss and answer any
27 questions with respect to our products and training with
28 IBOs.

1 MR. SAFAYENI: And that was a kiosk that people could
2 approach and ask somebody from Planet Energy questions at;
3 is that correct?

4 MR. SILVESTRI: That's correct.

5 MR. SAFAYENI: It was not a presentation that
6 everybody was mandated to sit down and listen to; correct?

7 MR. SILVESTRI: That's correct.

8 MR. SAFAYENI: And the quarterly conferences, those
9 are only available, as I understand it, to a subset of IBOs
10 who have reached a certain level in the organization;
11 correct?

12 MR. SILVESTRI: No, that's not correct. All IBOs are
13 qualified to go as long as they are an IBO in good
14 standing.

15 MR. SAFAYENI: With respect to the Friday sessions
16 that you talked about, as co-CEO of this corporation, I
17 assume you weren't personally making presentations at those
18 sessions; correct?

19 MR. SILVESTRI: I actually was.

20 MR. SAFAYENI: You attend -- sorry, go ahead.

21 MR. SILVESTRI: I attended every one, and I made
22 presentations and answered questions.

23 MR. SAFAYENI: You attended every -- your sworn
24 testimony is that you attended every Friday session as the
25 CEO of a major company?

26 MR. SILVESTRI: Co-CEO.

27 MR. SAFAYENI: Co-CEO?

28 MR. SILVESTRI: Yes, I attended every session that we

1 were invited to.

2 MR. SAFAYENI: And how many sessions were you invited
3 to in total? How many of these did you do?

4 MR. SILVESTRI: Once a month -- I am sorry, one per
5 month, so 12 per year, umm... We didn't -- once ACN gave
6 us notice that they were not renewing in May we no longer
7 attended, so let's say 40 or 45.

8 MR. SAFAYENI: And attendance at those Friday sessions
9 was not mandatory for IBOs?

10 MR. SILVESTRI: That's correct.

11 MR. SAFAYENI: And we don't have before us any kind of
12 presentation material or documents related to what was said
13 at those Friday sessions; correct?

14 MR. SILVESTRI: I believe in enforcement team's
15 submissions there were some brochures that we would have
16 discussed -- a sample of the brochure products that we
17 would have discussed.

18 MR. SAFAYENI: I am not aware of such brochures in my
19 materials or yours.

20 MR. SILVESTRI: Give me one second, please.

21 If you go to tab 29 of your enforcement binder.

22 MR. SAFAYENI: Yes, I have it.

23 MR. SILVESTRI: That's an example of one.

24 MR. SAFAYENI: Sorry, sir, at my tab --

25 MR. SILVESTRI: Tab 30, tab 31 are examples.

26 MR. SAFAYENI: Sorry, you have to slow down. At tab
27 29 of my --

28 MR. SILVESTRI: I am looking at book of documents of

1 OEB enforcement staff.

2 MR. SAFAYENI: Okay. Sorry, I was -- it's my fault.
3 I was looking at the wrong binder.

4 So at tab 29, okay, there is a -- I see the document
5 you are referring to. This is something that -- what is
6 the nature of this document? You say that you had this
7 there at the Friday sessions?

8 MR. SILVESTRI: Yes. This is a sample document we
9 would have at the Friday sessions and at the quarterly
10 conferences.

11 MR. SAFAYENI: And we are talking --

12 MR. SILVESTRI: This is not the entire document. The
13 entire document would have outlined the various products,
14 such as peak protection, reliability, stability.

15 MR. SAFAYENI: And you are talking about page 1 on the
16 front; correct?

17 MR. SILVESTRI: Yes. If you look at tab 30, page 2.

18 MR. SAFAYENI: Okay.

19 MR. SILVESTRI: That's another example.

20 MR. SAFAYENI: Any other examples from these
21 documents? MR. SILVESTRI: Well, they are your
22 documents, sir, but let me check.

23 MR. SAFAYENI: They are my documents, but it's your
24 answer. I am interested in what documents you say when you
25 personally attended all of these sessions were provided.

26 MR. SILVESTRI: No, no other documents that we would
27 have presented or authorized, that I can see.

28 MR. SAFAYENI: Okay. Can you turn to tab, in your --

1 in your documents now, so for the record, Exhibit KX1.4,
2 Volume 1. Can you turn to tab 6E, please.

3 MR. SILVESTRI: Yes.

4 MR. SAFAYENI: And so you told us this document was
5 available online in the ACN IBO back office; correct?

6 MR. SILVESTRI: That's correct; it's the training
7 manual.

8 MR. SAFAYENI: Okay. I will be honest with you. I
9 don't love that name, but for simplicity I will refer to it
10 as the training manual.

11 So the training manual was available under the product
12 training tab; is that correct?

13 MR. SILVESTRI: I'm looking at tab 29. It would be
14 just called "training". And then below, you click on
15 "Canada energy training".

16 MR. SAFAYENI: Okay. So your evidence is, if we look
17 at tab 29, still within the same volume, and we clicked on
18 "Canada energy training", this -- the training manual would
19 be available through that link?

20 MR. SILVESTRI: That's correct.

21 MR. SAFAYENI: Okay. And IBO's weren't provided with
22 a hard copy of this document; correct?

23 MR. SILVESTRI: It was online. They could have
24 printed it off, but it was intended as an online e-training
25 as permitted pursuant to the Board's code of conduct.

26 MR. SAFAYENI: Right. But my question is a simple
27 one, I think you answered it, but they weren't given a hard
28 copy; right?

1 MR. SILVESTRI: Not by Planet Energy, no.

2 MR. SAFAYENI: Or by ACN, as far as you know.

3 MR. SILVESTRI: As far as I know, they weren't, that's
4 correct.

5 MR. SAFAYENI: And the material we see in the document
6 at tab 6E, this same material was provided to IBOs across
7 Canada where Planet Energy sold energy contracts, correct?

8 MR. SILVESTRI: That's correct, yes.

9 MR. SAFAYENI: And so some slides in here discuss only
10 Ontario, right?

11 MR. SILVESTRI: Yes.

12 MR. SAFAYENI: Some slides discuss Manitoba or B.C.,
13 correct?

14 MR. SILVESTRI: Yes. The majority is with respect to
15 Ontario.

16 MR. SAFAYENI: That's fair. Other slides discuss all
17 the jurisdictions, right?

18 MR. SILVESTRI: Yes.

19 MR. SAFAYENI: And it would have been possible for
20 Planet Energy to tailor the training to a particular
21 jurisdiction, but it chose not to do that.

22 MR. SILVESTRI: I disagree. We have sections with
23 respect to Ontario, section B.

24 MR. SAFAYENI: My point is simply there could have
25 been one slide show only for Ontario, one slide show only
26 for Manitoba, one slide show only for B.C. There was
27 nothing stopping Planet Energy from developing tailored
28 training manuals per jurisdiction. There's no reason you

1 couldn't do that?

2 MR. SILVESTRI: That's correct. But in part B, we
3 state Ontario natural gas and electricity training, page
4 222.

5 MR. SAFAYENI: We are going to go through it, don't
6 worry. The material we see in the training manual, this is
7 a full representation of what somebody who accesses the
8 manual online would see?

9 MR. SILVESTRI: That's correct.

10 MR. SAFAYENI: So there's no additional audio track,
11 for example?

12 MR. SILVESTRI: No, there is not.

13 MR. SAFAYENI: There is no additional graphics that
14 slide in to the presentation and out?

15 MR. SILVESTRI: That's correct. There's additional,
16 you know, marketing materials that --

17 MR. SAFAYENI: I am talking just about the training
18 manual right now, sir.

19 MR. SILVESTRI: Okay.

20 MR. SAFAYENI: So there's no additional graphics.
21 Okay, let's start at page 170.

22 MR. SILVESTRI: Yes.

23 MR. SAFAYENI: The slide that says "new regulation
24 process for IBOs", do you have that in front of you?

25 MR. SILVESTRI: Yes.

26 MR. SAFAYENI: It shows training, then an arrow to
27 print badge and biz card, then an arrow to testing, and
28 then an arrow to qualified to acquire Canada energy

1 customers, correct?

2 MR. SILVESTRI: Yes.

3 MR. SAFAYENI: Is your evidence that that's the
4 accurate order of how steps would be required to proceed
5 before an IBO would be able to sell Planet Energy
6 contracts?

7 MR. SILVESTRI: Yes, that's correct.

8 MR. SAFAYENI: So just to be clear, your evidence is
9 that the badge was available before testing?

10 MR. SILVESTRI: Available to be printed, yes.

11 MR. SAFAYENI: Both Mr. MacArthur and Mr. Nahid
12 testified that they got their badges only after they
13 completed their testing. You were here for that, right?

14 MR. SILVESTRI: Yes. It's possible you can print them
15 after the fact.

16 MR. SAFAYENI: But their testimony was that they had
17 to complete the tests first. Do you have any direct
18 knowledge to contradict their version of events?

19 MR. SILVESTRI: I have no knowledge as to what they
20 did. I can just tell you what I understand our process or
21 ACN's process to have been.

22 MR. SAFAYENI: If you're right and the badge was
23 available before testing, what purpose is served by letting
24 somebody print a badge that they can't use until they have
25 completed a test?

26 MR. SILVESTRI: I think the reason for that is the
27 test was done on different server, a different platform.
28 So, you know, for convenience, we allowed the IBOs to print

1 their ID badges and their business cards. Then they had to
2 conduct the test. Unless they passed the test, the ID
3 badge and the business cards, you know, were not
4 authorized.

5 MR. SAFAYENI: You will maybe just have to help me. I
6 am not sure I just understand why going to another platform
7 -- and I assume that there you are referring to the
8 Springboard site, right?

9 MR. SILVESTRI: That's correct.

10 MR. SAFAYENI: Why does that matter, whether that
11 happens before or after the badge?

12 MR. SILVESTRI: Well, that's the process that we set
13 up, that's the process that the Board reviewed and that we
14 thought was appropriate.

15 MR. SAFAYENI: If we turn to page 187 --

16 MR. SILVESTRI: Yes.

17 MR. SAFAYENI: -- you'll see two white boxes in the
18 middle of that page.

19 MR. SILVESTRI: Yes.

20 MR. SAFAYENI: It looks like there's a word missing;
21 do you agree?

22 MR. SILVESTRI: It appears that way.

23 MR. SAFAYENI: Can you make sense of this slide for
24 me?

25 MR. SILVESTRI: I would think one would say natural
26 gas and the other would say electricity supply.

27 MR. SAFAYENI: Okay, but you are guessing. It doesn't
28 say that on the slide, right?

1 MR. SILVESTRI: I am not guessing. That's what I
2 think it should say, and it looks like it didn't get picked
3 up here.

4 MR. SAFAYENI: If I am reading this slide, I would
5 have no way to know what's supposed to go in the blank,
6 right?

7 MR. SILVESTRI: You or me?

8 MR. SAFAYENI: Me, someone who is not co-CEO of an
9 energy company.

10 MR. SILVESTRI: I can't answer what your knowledge is,
11 sir. I can just tell you what I think it is.

12 MR. SAFAYENI: Okay. The same question for 189, page
13 189. Seems to be a word missing, right?

14 MR. SILVESTRI: With respect to British Columbia and
15 Manitoba?

16 MR. ZACHER: If I might interject? I think it
17 actually says natural gas. It's underlined in some kind of
18 a hyperlink and it looks like it just didn't get picked up
19 in the photocopy. But it's clearly apparent that it says
20 natural gas.

21 MS. LONG: I see it on the slide. Can we just go back
22 to the last slide?

23 MR. SAFAYENI: Yeah, I did see it on the slide.

24 MS. LONG: I don't see it there. Do you see it, Mr.
25 Zacher, on your copy?

26 MR. ZACHER: I don't, and I don't know if the reason
27 is the same or --

28 MS. LONG: Okay, okay.

1 MR. SAFAYENI: So let's go to pages 194, starting at
2 page 194, and I want you to just take a moment, or as long
3 as you need. I want you to look at pages 194 to 206, and
4 my question for you is simply whether these are screenshots
5 from the online enrolment process the customers would
6 follow to buy a Planet Energy product.

7 You can take the time you need, but I am interested in
8 194 to 206.

9 MR. SILVESTRI: Well, I would say, the online ordering
10 would commence on page 199. The previous pages, the
11 customer, or the IBO if he or she was the customer, would
12 select the jurisdiction, the province. 196 itself is more
13 of an informational page. 197 is where the customer would
14 enter the IBO number or the IBO, his or her own number.
15 198 looks like a case where the system does not recognize a
16 valid IBO number.

17 So as I said, 199 would be step 1, as would be 200.
18 201 would not be part of the enrolment process; that would
19 be part of the frequently asked questions showing the Union
20 Gas franchise map. 202 would be part of the online
21 ordering, as far as products.

22 Whether -- I should add, for example, the customer, if
23 they were to click "compare", the disclosure and price
24 comparison forms would be available for the customer to
25 review before they went any further.

26 Page 203 is a formal presentation of the disclosure
27 and price comparison forms for the customer or IBO to
28 review and/or print off. 204 commences step 4, where

1 customer or IBO is asked to fill in their contact and
2 account information. 205 illustrates the terms and
3 conditions which, by the way, the customer or IBO would
4 have to scroll all the way down to the end and then affirm
5 that they have read the terms and conditions. And I
6 believe there's also a disclosure on global adjustment
7 below. And then 206 is the final page to make the various
8 confirmations and attestations.

9 MR. SAFAYENI: Okay, thank you for that.

10 And a number of the pages you just took us through
11 have red circles on them; correct?

12 MR. SILVESTRI: Yes.

13 MR. SAFAYENI: And beyond what we see on the slides,
14 there's no explanation provided for what those red circles
15 mean or what they signify; right? Beyond what we see on
16 the pages in front of us?

17 MR. SILVESTRI: That's correct.

18 MR. SAFAYENI: If we go to page 214.

19 MR. SILVESTRI: Yes.

20 MR. SAFAYENI: It talks here about the ability to
21 cancel service without penalty within ten days; do you see
22 that?

23 MR. SILVESTRI: Yes.

24 MR. SAFAYENI: And we can agree there's no mention on
25 this slide about the right to cancel within 30 days after
26 receiving the first bill.

27 MR. SILVESTRI: Not on this slide, but there is in the
28 Ontario section.

1 MR. SAFAYENI: There is. It does come up later on.
2 In fairness, it's on page 250, but I am talking about this
3 slide, where it talks about cancelling service. We are
4 only talking about the ten days; right?

5 MR. SILVESTRI: That's correct. That would be
6 applicable to natural gas at the time in Ontario.

7 MR. SAFAYENI: And if we turn to page 218 and 219, we
8 see a number of common objections; right?

9 MR. SILVESTRI: Yes.

10 MR. SAFAYENI: And nothing in this material addresses
11 how to respond to those objections; correct?

12 MR. SILVESTRI: I would say that's correct. You know,
13 the main objective of the IBO is to direct the customer to
14 the online portal, as we illustrate on page 190, where the
15 customer can review the product guide and frequently asked
16 questions on their own, at their own leisure.

17 MR. SAFAYENI: Go to page 240, please.

18 MR. SILVESTRI: Yes.

19 MR. SAFAYENI: And both pages 240 and 241 talk about
20 the information related to the RPP structure; correct?

21 MR. SILVESTRI: RPP and time of use, yes.

22 MR. SAFAYENI: And I take it that the majority of
23 consumers who enrolled with Planet Energy through ACN were
24 previously on an RPP plan.

25 MR. SILVESTRI: Or time of use, yes.

26 MR. SAFAYENI: Or time of use. Weren't with another
27 retailer.

28 MR. SILVESTRI: Correct. There are a few, but rather

1 minimal.

2 MR. SAFAYENI: Sorry, I missed that.

3 MR. SILVESTRI: There were a few customers with other
4 retailers, but rather minimal.

5 MR. SAFAYENI: Go to page 242.

6 MR. SILVESTRI: Yes.

7 MR. SAFAYENI: Your counsel, Mr. Zacher, took you to
8 this. Talking about the global adjustment. This is the
9 only slide in this tab that talks about the global
10 adjustment; correct?

11 MR. SILVESTRI: Yes, that's correct.

12 MR. SAFAYENI: And I appreciate at the bottom that
13 there is a, what appears to be a hyperlink to the IESO
14 website about rates, but nowhere on this slide or in any
15 other slide do we actually see any of the rates; correct?
16 Global adjustment rates.

17 MR. SILVESTRI: Yes, that's correct. There is
18 additional information in the frequently asked questions
19 and product guide.

20 MR. SAFAYENI: Right now I am just worried about the
21 document we have in front of us, sir.

22 MR. SILVESTRI: Okay.

23 MR. SAFAYENI: If we go to page 249.

24 MR. SILVESTRI: Yes.

25 MR. SAFAYENI: The last bullet point on the page,
26 where it says "for electricity commercial or large
27 residential: 1.5 cents per kilowatt hour for the estimated
28 remaining consumption on the contract", do you see that?

1 MR. SILVESTRI: Yes.

2 MR. SAFAYENI: Am I correct that that only applies if
3 the consumer's consumption is above 15,000 kilowatt hours?

4 MR. SILVESTRI: Per year, yes.

5 MR. SAFAYENI: Per year?

6 MR. SILVESTRI: Yes.

7 MR. SAFAYENI: And there's nowhere in this slide does
8 it say that; correct?

9 MR. SILVESTRI: That's correct.

10 MR. SAFAYENI: And nowhere in any other slide does it
11 say that; correct?

12 MR. SILVESTRI: Not in the training manual, no.

13 MR. SAFAYENI: So from reviewing the training manual,
14 there would be no way to know what qualifies as commercial
15 or large residential; correct?

16 MR. SILVESTRI: Yes, as far as volumetric, I would say
17 that's correct, in the training manual.

18 MR. SAFAYENI: And I think you said this to Mr.
19 Zacher, but let me just ask it to be clear. The idea was
20 for IBOs to review this document online on their own;
21 right?

22 MR. SILVESTRI: That's correct.

23 MR. SAFAYENI: There wasn't any kind of session where
24 someone sat down and guided them through it slide by slide
25 or anything like that?

26 MR. SILVESTRI: That's correct. Unless an IBO asked
27 for assistance, but for the most part it was intended as an
28 online e-training manual for the IBO to review.

1 MR. SAFAYENI: Well, there wasn't any session Planet
2 Energy organized where IBOs were sat down and guided
3 through this. I understand it was possible for an IBO to
4 perhaps on their own get assistance, but there was no
5 organized session where that happened; fair?

6 MR. SILVESTRI: That's correct.

7 MR. SAFAYENI: There was no kind of monitoring or
8 supervision in place to make sure IBOs reviewed the manual;
9 right?

10 MR. SILVESTRI: Other than the attestation that they
11 were asked to attest to upon completion of training and
12 prior to taking the test.

13 MR. SAFAYENI: Yeah, the attestation is all?

14 MR. SILVESTRI: Right.

15 MR. SAFAYENI: Right. It was basically the honour
16 system.

17 MR. SILVESTRI: Which we expect people to tell the
18 truth.

19 MR. SAFAYENI: And there was no way to ensure that
20 IBOs in fact did review the manual apart from the
21 attestation; right?

22 MR. SILVESTRI: That's correct, they could have taken
23 the test without -- well, I shouldn't say that. They had
24 to go through the -- they had to click on the training
25 manual web link before they attest and then go to the test,
26 so they just, for example, could not go straight to the
27 test. They would have to open up the link --

28 MR. SAFAYENI: Okay. So --

1 MR. SILVESTRI: -- so the system would know that they
2 went into the training manual.

3 MR. SAFAYENI: Okay. So there was a requirement to at
4 least click on the link that would take you to the training
5 manual.

6 MR. SILVESTRI: Correct.

7 MR. SAFAYENI: But there was no, for example, minimum
8 amount of time you had to spend at the training manual
9 site, correct?

10 MR. SILVESTRI: That's correct.

11 MR. SAFAYENI: There was no requirement that each
12 slide was paused on for a certain amount of time, correct?

13 MR. SILVESTRI: That's correct.

14 MR. SAFAYENI: I could, if I wanted to, click on,
15 immediately click out, and then go to the next step?

16 MR. SILVESTRI: That's correct.

17 MR. SAFAYENI: And even if an IBO did access the
18 manual, for example while they were writing their test or
19 have it open while they were writing their test, there was
20 no way to make sure they weren't simply searching for key
21 words triggered by certain questions, as opposed to doing a
22 complete review of the training manual, right?

23 MR. SILVESTRI: I don't understand your question.

24 MR. SAFAYENI: So let's say that I am an IBO and one
25 of my random test questions has to do with the global
26 adjustment, right?

27 MR. SILVESTRI: Yes.

28 MR. SAFAYENI: There was nothing preventing me from

1 simply doing a control find, looking for a certain word in
2 a document, typing in global adjustment, going to the
3 global adjustment slide, looking at that slide, which might
4 or might not help me answer the question, but not reviewing
5 the rest of the training manual?

6 MR. SILVESTRI: I don't think the training manual had
7 the capability for anyone to do things -- any edit
8 requirements or searches. They would have to go and look
9 for it.

10 MR. SAFAYENI: Mr. Silvestri, you're familiar with the
11 name [REDACTED] ?

12 MR. SILVESTRI: I am familiar with the name; I do not
13 know her.

14 MR. SAFAYENI: That's fair. She is somebody who
15 Planet Energy at one point in time had planned to
16 potentially call as a witness. Is that how you familiar
17 with the name?

18 MR. SILVESTRI: Yes.

19 MR. SAFAYENI: And are you aware of the fact that
20 Planet Energy provided a witness statement from [REDACTED]
21 [REDACTED] as part of this proceeding?

22 MR. SILVESTRI: I was not aware that a witness
23 statement was submitted in this proceeding. I was aware
24 that she completed a witness statement. I was not aware
25 that [REDACTED] witness statement was submitted.

26 MR. SAFAYENI: Okay. Well, it was submitted. And in
27 [REDACTED] witness statement, she says the following
28 -- and in fairness to you, I will give you a copy of the

1 document.

2 So, Mr. Silvestri, I just want to ask you a question
3 about the first bullet point on the page that I have
4 provided to you. And, Madam Chair, I don't think it's
5 necessary for me to file this; it's a very brief reference.

6 MS. LONG: Do you have a copy for me?

7 MR. ZACHER: Madam Chair, I don't mind my friend
8 putting this -- putting a proposition from this witness
9 statement to Mr. Silvestri. I am not sure that it should
10 be --

11 MS. LONG: You have a problem with him putting it
12 without me seeing it?

13 MR. ZACHER: You know, the reason witness statements
14 are provided is to give each side a heads-up as to what the
15 witnesses you are going to call may say. You know, I
16 informed my friend last week that [REDACTED], who is
17 the other potential witness we were going to call, had a
18 close family member pass away and had to travel to Trinidad
19 for the funeral this week. And so, you know, I gave some
20 thought to whether we would make some kind of arrangements
21 to have her testify from afar, or ask for an adjournment,
22 or what have you.

23 As I told my friend, I made the determination, based
24 on the evidence that had been given to date, that we didn't
25 think it was necessary to have her called. And so I just
26 don't think her witness statement should be put into
27 evidence, either for identification purposes or for any
28 purposes.

1 If my friend wants to put some kind of -- put a
2 proposition to Mr. Silvestri that's a relevant proposition
3 from her witness statement, I guess that's fine. But I
4 just -- the witness statement itself is neither here nor
5 there, it's not -- given the fact that she's not being
6 called to give evidence, it just shouldn't be.

7 MS. LONG: That makes sense to me. I feel
8 uncomfortable when people have documents that I don't have,
9 because I can't follow along. But I understand your point
10 and if you are comfortable with Mr. Safayeni putting a
11 proposition to your witness from that witness statement,
12 then I am fine with that.

13 MR. ZACHER: That's fine, yes.

14 MS. LONG: Okay, let's proceed on that basis.

15 MR. SAFAYENI: Thank you Madam Chair. So, Mr.
16 Silvestri, in her witness statement, [REDACTED] says --
17 and it's about halfway down that first bullet point, if you
18 have it in front of you -- "Whenever I mentor a new IBO, I
19 show him or her..."

20 Sorry, let's just start one sentence up so the context
21 makes sense. She says:

22 "I also showed him how to download the Planet
23 Energy training guide from the Planet Energy
24 portal on ACN's website. Whenever I mentor a new
25 IBO, I show him or her how to do this because it
26 is a lengthy document and some people have
27 difficulty downloading it. I also showed Mr.
28 Nahid how to perform electronic searches to find

1 specific information in Planet Energy's training
2 guide."

3 Do you see that?

4 MR. SILVESTRI: Yes.

5 MR. SAFAYENI: And you don't have any reason to
6 believe that [REDACTED] is mistaken when she wrote --

7 MR. SILVESTRI: All I can gather or understand is that
8 [REDACTED] is an IT professional. She may have
9 downloaded the training manual, or figured out how to
10 download the training manual to another format to conduct
11 searches.

12 My understanding was that the manual was locked, so
13 that searches could not be performed or any edits done.

14 MR. SAFAYENI: Do you know that for a fact, Mr.
15 Silvestri, or is this information that's been relayed to
16 you by others?

17 MR. SILVESTRI: Do I know what for a fact that she's
18 an IT professional?

19 MR. SAFAYENI: No, do you know for a fact that the
20 document is not searchable. Have you actually gone in and
21 tried to do searches on the document?

22 MR. SILVESTRI: I recall the document, yes, it was
23 locked in.

24 MR. SAFAYENI: I don't understand what you mean by
25 locked in.

26 MR. SILVESTRI: Well, from what I recall, you could
27 not do any searches. It was a PDF document that was locked
28 as a PDF. You were unable to do searches, unable to make

1 any changes to it is what I recall.

2 MR. SAFAYENI: Okay. The bottom line, though, is that
3 IBOs could physically access and write the training test
4 without reviewing the manual, right?

5 MR. SILVESTRI: Well, as I said to Mr. Zacher, that's
6 possible. I find it highly unlikely unless they had
7 experience in the energy business.

8 MR. SAFAYENI: I am talking right now just physically
9 access and write the test without looking at the manual.

10 MR. SILVESTRI: You mean if they just clicked on the
11 manual, clicked -- said I read it and gone to the test?

12 MR. SAFAYENI: Correct.

13 MR. SILVESTRI: And lied and said that they read the
14 test and gone to the manual. I suppose people can do that,
15 yeah.

16 MR. SAFAYENI: It's physically possible to do this.
17 There's nothing in the system preventing it, right?

18 MR. SILVESTRI: That's correct.

19 MR. SAFAYENI: And they could get their badge without
20 reviewing the manual?

21 MR. SILVESTRI: That's correct. It's the same idea.
22 If they open up the manual and didn't review it and
23 obtained their badge.

24 MR. SAFAYENI: That's my question. They could do
25 that, right?

26 MR. SILVESTRI: Yes.

27 MR. SAFAYENI: And they could start selling Planet
28 Energy products without --

1 MR. SILVESTRI: No, no, they could not unless they
2 passed the test, successfully passed the test.

3 MR. SAFAYENI: And I understand. I am not talking
4 about the test right now, Mr. Silvestri; I am talking about
5 looking at the manual.

6 MR. SILVESTRI: You said sell products. Isn't that
7 what you said?

8 MR. SAFAYENI: I did.

9 MR. SILVESTRI: They could not sell products unless
10 they successfully passed the test.

11 MR. SAFAYENI: I am not talking about the test. I am
12 talking about the manual at tab 6E. There is nothing
13 physically preventing them from selling products.

14 MR. SILVESTRI: Planet Energy products?

15 MR. SAFAYENI: Correct.

16 MR. SILVESTRI: For the third time, I am telling you.
17 Unless they successfully pass the test, they could not sell
18 Planet Energy products.

19 MR. SAFAYENI: Okay. I am not -- it might be a
20 problem with my question. I will try it again.

21 MR. SILVESTRI: Okay.

22 MR. SAFAYENI: If I click on the training manual,
23 click out of it, don't look at anything --

24 MR. SILVESTRI: Right.

25 MR. SAFAYENI: -- the only thing preventing me -- you
26 are saying that the test prevents me from selling Planet
27 Energy products; correct?

28 MR. SILVESTRI: They cannot go into the enrollment

1 portal. How are they going to sell products if they don't
2 go into the enrollment portal? That's the whole idea of
3 the enrollment portal.

4 MR. SAFAYENI: We just agreed, Mr. Silvestri, that you
5 could physically access and write the test without looking
6 at the manual first. You already told me that that's
7 possible, correct? I can write the test without looking at
8 the manual.

9 MR. SILVESTRI: Correct.

10 MR. SAFAYENI: Assuming I pass the test without
11 looking at the manual, I could then sell products.

12 MR. SILVESTRI: That's correct.

13 MR. SAFAYENI: Okay.

14 MR. SILVESTRI: Just like you can get a driver's
15 licence and pass a test and not study for it.

16 MR. SAFAYENI: And I think you offered the opinion to
17 Mr. Zacher and you repeated it to me that it would be
18 unlikely that somebody could pass the test without reading
19 the manual first unless they had a background in Planet
20 Energy contracts; correct?

21 MR. SILVESTRI: That's my opinion, yes.

22 MR. SAFAYENI: But it would be possible if somebody
23 else gave you the answers; right?

24 MR. SILVESTRI: If someone was there with you and gave
25 you the answers?

26 MR. SAFAYENI: That's my question.

27 MR. SILVESTRI: If someone did that?

28 MR. SAFAYENI: It would be possible.

1 MR. SILVESTRI: It would be possible.

2 MR. SAFAYENI: If someone else wrote the test for you
3 and you weren't even the person behind the computer at the
4 time, it would be possible; right?

5 MR. SILVESTRI: If somebody was unscrupulous enough to
6 do that, it would be possible.

7 MR. SAFAYENI: There is no requirement that IBOs study
8 the Energy Consumer Protection Act, the regulations, the
9 codes of conduct, or any other legal instrument before they
10 start selling energy contracts for Planet Energy; correct?

11 MR. SILVESTRI: As I mentioned a few times, the intent
12 of the IBO is to direct the customer to the online portal.
13 The intent of the training isn't to turn people into energy
14 experts or energy regulatory experts, and Board Staff
15 seemed to agree with that in their reviews, their
16 inspections, and audits in 2011 and '15.

17 MR. SAFAYENI: Mr. Silvestri, that's an interesting
18 answer, but it doesn't answer my question. My question is
19 whether there's any requirement for an IBO to study the
20 ECPA, the regulations, the codes of conduct, or any other
21 legal instrument before they start selling Planet Energy
22 contracts. Do they have to do that or not? It's a very
23 simple question.

24 MR. SILVESTRI: Not the actual regulations or codes,
25 other than what's included in the training manual.

26 MR. SAFAYENI: Mr. Silvestri, ACN is not an OEB
27 licensee; correct?

28 MR. SILVESTRI: To my knowledge, they are not.

1 MR. SAFAYENI: And you're in a position that you might
2 know if they were; right?

3 MR. SILVESTRI: I would think so.

4 MR. SAFAYENI: And none of its principals are OEB
5 licensees; correct?

6 MR. SILVESTRI: You mean their officers?

7 MR. SAFAYENI: Directors, officers, shareholders.

8 MR. SILVESTRI: I don't understand. I am not aware of
9 any individual licences that the Board issues for officers.

10 MR. SAFAYENI: Okay. And for shareholders and their
11 corporations, you are not aware that ACN is owned by any
12 entity that is a Board licensee; right?

13 MR. SILVESTRI: That's correct.

14 MR. SAFAYENI: In terms of recruiting IBOs, that is
15 left entirely in the hands of ACN; right?

16 MR. SILVESTRI: That's correct.

17 MR. SAFAYENI: Planet Energy has no role to play in
18 that process.

19 MR. SILVESTRI: We had no role; that's correct.

20 MR. SAFAYENI: And IBOs are recruited through referral
21 by other IBOs; correct?

22 MR. SILVESTRI: I think for the most part, yes. They
23 may contact ACN directly or an ACN-affiliated IBO. But for
24 the most part, yes, recruited by other IBOs.

25 MR. SAFAYENI: They don't need to go through any type
26 of interview process?

27 MR. SILVESTRI: That's correct.

28 MR. SAFAYENI: There's no background checks?

1 MR. SILVESTRI: That's correct.

2 MR. SAFAYENI: No reference checks?

3 MR. SILVESTRI: That's correct.

4 MR. SAFAYENI: No police checks?

5 MR. SILVESTRI: That's correct.

6 MR. SAFAYENI: And when it came to recruiting IBOs,
7 Planet Energy was aware that ACN allowed existing IBOs to
8 recruit random individuals with whom they had no personal,
9 business, social, or acquaintance relationship; right?

10 MR. SILVESTRI: I am not aware of that. My
11 understanding was that it was a friends and family, you
12 know, warm relationship as far as recruiting IBOs.

13 MR. SAFAYENI: Well, we will get to the warm-network
14 idea, and that -- I think your evidence was that's how IBOs
15 recruited customers; right? Sorry, you have to say yes for
16 the record.

17 MR. SILVESTRI: Correct, yes.

18 MR. SAFAYENI: I am talking, of course, about
19 something a little bit different. I am talking about
20 recruiting IBOs. And your understanding was that the same
21 warm-network idea applied to IBOs recruiting IBOs?

22 MR. SILVESTRI: That's my understanding, yes.

23 MR. SAFAYENI: Okay. Can I take you to our book of
24 documents, for the record, Exhibit KX1.4, tab 37.

25 MR. SILVESTRI: Yes.

26 MR. SAFAYENI: And you recognize this document, right,
27 Mr. Silvestri? These are the ACN policies and procedures.

28 MR. SILVESTRI: Yes.

1 MR. SAFAYENI: And if we turn to page 619, which is
2 near the end of the tab...

3 MR. SILVESTRI: I am sorry, which tab is that?

4 MR. SAFAYENI: Tab 37. I am sorry, I am sorry, I am
5 in the wrong volume. This is my mistake. So I am in,
6 actually, Volume 1 of Planet Energy's documents. Again,
7 for the record, Exhibit KX1.4. I apologize. Tab 37 of
8 those documents.

9 MR. SILVESTRI: Yes.

10 MR. SAFAYENI: Sorry, so are we now actually looking
11 at the policies and procedures?

12 MR. SILVESTRI: Yes, which page?

13 MR. SAFAYENI: Okay. So it's page 619.

14 MR. SILVESTRI: Yes.

15 MR. SAFAYENI: And if we look near the bottom of the
16 left-hand column under point 3, where it says "cold
17 marketing in customer acquisition and recruiting", do you
18 see that?

19 MR. SILVESTRI: Yes.

20 MR. SAFAYENI: Okay. So I just want to read this, and
21 I think it's useful maybe we just read it together. So:

22 "ACN is a network marketing company that is
23 focused solely on relationship or warm-marketing
24 techniques. ACN strictly prohibits IBOs from
25 engaging in any cold-marketing techniques for the
26 purposes of customer acquisition at any time.
27 Cold marketing is defined as any promotional
28 activity that is geared towards random

1 individuals with no -- who have no personal
2 business, social, or acquaintance relationships
3 with the promoter. Examples of cold marketing
4 include but are not limited to mass advertising,
5 purchase leads, trade-show participation, door-
6 to-door selling, telemarketing, pamphlet
7 distribution, et cetera. ACN also strictly
8 prohibits the purchase or sale of customers at
9 any time."

10 And then over to the beginning of the next column:

11 "Furthermore, ACN allows yet highly discourages
12 cold-marketing techniques for the purposes of
13 recruiting other IBOs, as these can be costly,
14 ineffective, and highly distracting to an IBO's
15 network marketing efforts. The use of
16 telemarketing and speed dial for recruiting is
17 strictly prohibited."

18 So you see that, Mr. Silvestri?

19 MR. SILVESTRI: Yes.

20 MR. SAFAYENI: So I just want to draw your attention
21 to the fact that it say there clearly that although it's
22 discouraged ACN does allow cold marketing for recruiting
23 other IBOs, and it sounds like that might be news to you.

24 MR. SILVESTRI: Yeah, well, it says they discourage
25 cold marketing. My understanding and my experience was
26 that IBOs were recruited through family and friends.

27 MR. SAFAYENI: Okay. But you agree with me now that
28 it's allowed for it to do --

1 MR. SILVESTRI: It's allowed but discouraged, right.

2 MR. SAFAYENI: Yeah. And you didn't know that before
3 just now; right?

4 MR. SILVESTRI: Or I forgot.

5 **PROCEDURAL MATTERS:**

6 MR. SAFAYENI: So, Madam Chair, I am in your hands. I
7 have reached the part in my notes that I had a chance to
8 kind of revise and edit and delete questions on, based on
9 Mr. Zacher's examination-in-chief. So there would be
10 perhaps some efficiency benefit if I could have the evening
11 to do the same for the rest of my script.

12 I understand that we are going to have to come back
13 tomorrow in any event.

14 MS. LONG: What is your time estimate for tomorrow at
15 this point, without reviewing your notes?

16 MR. SAFAYENI: Probably -- I think I am roughly a
17 third of the way through, so I am a little bit behind,
18 frankly, where I thought I would be. So perhaps around 90
19 minutes or so, an hour and 45 minutes.

20 MS. LONG: Then perhaps it does make sense for you to
21 take some time tonight and review your questions.

22 MR. SAFAYENI: I will try and winnow it down, yes,
23 absolutely.

24 MS. LONG: All right, good. Then perhaps we can
25 discuss the other two issues.

26 The first is in respect of the notice of intention. I
27 am just not clear. It looks like you are asking me as
28 Vice-Chair to sign this, and the Panel is happy to accept

1 this on the basis that both parties have consented. I
2 don't think this is contentious, but I didn't sign the
3 original notice; that was signed by the corporate B board.
4 So it seems a bit strange to me that sitting on this Panel
5 and hearing this actual case, that I would be the one to
6 sign a revised notice of intention.

7 MS. GONSALVES: I can certainly understand that, and
8 you do have of course the comfort that this is being done
9 on consent.

10 Following the discussions between ourselves and our
11 friends last week, we gave some thought as to how we could
12 go act effecting the change that both sides felt was
13 appropriate to have happen. The enforcement team felt that
14 we did not have the authority to unilaterally withdraw any
15 allegations or make revisions, that this being a Board-
16 issued document, it needed to be signed off on by a member
17 of the Board.

18 Given that this hearing is now before this Panel, it's
19 our view that this Panel is seized of it and therefore has
20 jurisdiction on behalf of the Board to make that change.
21 My understanding is that there have been other occasions
22 where this sort of thing has been done, and it hasn't been
23 objectionable.

24 I suppose we certainly could go back to the Chair to
25 have it signed off on, but it's my view that it would have
26 the same effect being signed off on by this Board, and of
27 course it wouldn't -- it's certainly -- it's just the
28 notice of intention, so it would not in any way reflect or

1 bind the Panel to any findings it may have to make at the
2 end of the case.

3 MS. LONG: Mr. Zacher, any comments?

4 MR. ZACHER: Yeah, I mean, I am not, to be honest, I
5 maybe don't appreciate all the niceties. Ordinarily I
6 think you'd be able to -- the prosecutor effectively would
7 be able to withdraw something like this. I am told by my
8 friend that she can't do that, which is why I -- and I
9 appreciate she proposed that amended on consent.

10 So I'd be happy with that outcome, but if there's --
11 you know, if there's another way to do it, I am in your
12 hands. I don't --

13 MS. LONG: Are you asking me to sign this because I am
14 the presiding member, or are you asking me because I am on
15 the management committee of this Board?

16 MS. GONSALVES: Purely as the presiding member of this
17 Panel, yes.

18 MS. LONG: All right, I am going to take that away to
19 think about.

20 The other issue was with respect to argument, and have
21 you -- have counsel come to an agreement on what will be
22 the subject of argument? I think when we started this
23 case, there was some difference of opinion as to whether
24 submissions would deal with liability and then penalty.

25 I think, Mr. Zacher, you were of the view that you
26 wanted those two things heard together and, Ms. Gonsalves,
27 you thought they should be separated. So do you still have
28 those same positions?

1 MR. ZACHER: I think where we are agreed, Madam Chair,
2 subject to the Panel's views, is that it would be efficient
3 and we think that the Panel would benefit from the exchange
4 and filing of written argument. So my friend, when the
5 evidentiary portion concludes, would within some period of
6 time file her closing argument, and then we would provide
7 our response.

8 I think my friend and I talked at the break and
9 thought that probably a written reply wasn't necessary.
10 But then we would come back at some time that is convenient
11 to the Panel for perhaps a half day of oral argument.

12 I mean, I strongly am of the view that that would be
13 very worthwhile to do, and the Panel would have an
14 opportunity to ask questions and test the submissions.

15 I think the only area where we diverge is the one that
16 you noted. I don't think it's -- I mean, I appreciate that
17 the Board sometimes hears submissions on liability first
18 and then penalty. I don't see a lot of -- first of all I
19 don't think it's efficient to do it that way. I don't
20 think we need to, and I really do think that the matters of
21 liability and the appropriate penalty are very, very much
22 intertwined. You have heard our submission at the opening,
23 which is that this is really -- this case is really sort of
24 premised on there being some systemic problems, and we
25 think that it's hard to sort of unpack arguments on
26 liability from the penalty.

27 MS. LONG: Ms. Gonsalves?

28 MS. GONSALVES: On the first point, yes, Mr. Zacher

1 and I are certainly in agreement. Given the volume of
2 evidence in this case, four-and-a-half days, roughly, of
3 testimony plus hundreds of documents, we feel that giving
4 the Panel written submissions as a road map marshalling
5 that evidence in respect of the various legal issues and
6 allegations, that that would assist the Panel in its
7 deliberations when it comes time to writing a decision.

8 You have those packages from both sides, but then a
9 half day of oral argument allows for the exchange between
10 the Panel and counsel, which can be helpful in illuminating
11 some of the issues and concerns.

12 The enforcement team remains of the view that the best
13 course in this case is to hive off submissions on penalty
14 until after the Panel has come up with its decision on
15 liability.

16 The reason for that is that in order for the penalty
17 submissions to be as focussed as possible on what the Panel
18 is most likely to do at the penalty stage, we need to have
19 the Panel's findings. If both sides know that the Panel
20 has made findings of contraventions in respect of
21 allegations 1, 2, 6 and 7, that's going to be a different
22 set of penalty submissions than it might be if certainly
23 the enforcement team thinks all of 1 through 7 is open
24 season.

25 And so the penalty submissions that the Panel will
26 get, if we know the panel's findings first, will be, in my
27 submission, much more useful to you because it's focussed
28 on the reality of the case including your findings, and not

1 just what each side hopes those findings might be.

2 MS. LONG: Is that your only concern, Ms. Gonsalves,
3 with respect to making it easier for us, to give us more
4 concise penalty submissions? Is that as I understand your
5 argument?

6 MS. GONSALVES: That is the principal concern. The
7 regulation that deals with the quantum of administrative
8 monetary penalties does lay out certain criteria that need
9 to be applied in arriving at an appropriate penalty, and
10 those criteria are highly fact specific.

11 In the absence of findings from the Panel, it's going
12 to be left to each side to interpret the evidence in a way
13 that they see as being most favourable. And we may be
14 talking at cross purposes when it comes time to making
15 submissions on penalty.

16 Just as an example, the enforcement team may view the
17 evidence that we have heard as demonstrating intention or
18 knowledge, wilful blindness on the part of Planet Energy,
19 for example, and make penalty submissions accordingly.
20 Planet Energy may say "entirely innocent", and that should
21 reduce the penalty.

22 If we have got the Panel's findings saying one or the
23 other or somewhere in the middle, it may bring our penalty
24 submissions that much closer, and it's my submission that
25 that gives you more meaningful submissions and ultimately,
26 yes, provides better assistance to the Panel, given also
27 that this is an area where there has not been a great deal
28 of case law.

1 And so I expect the Panel will be looking heavily to
2 what the parties submit, and if the Panel wants those
3 submissions to be -- to provide the best guidance and bring
4 the two sides closer together, it's my view that that best
5 happens after we have your findings.

6 MR. ZACHER: I would just -- my one response would be
7 -- two points. All the time parties make, you know,
8 submissions on liability and quantum of damages together,
9 and you argue this should be the result, but in the
10 alternative if there's no finding of liability on this
11 point this should be the result. And that's not something
12 that either of us are unaccustomed to.

13 And I think what falls from bifurcating it is that
14 instead of us exchanging submissions once and coming once
15 back before the Panel to address all of your questions, we
16 end up duplicating that process, so there's real efficiency
17 issue. And, I mean, I would say that I -- from my
18 standpoint, it's prejudicial to the point which, you know,
19 I am showing my hand again, which is that you may find
20 that, you know, there are some charges that result in
21 technical breaches, but the quantum of the penalty, if any,
22 is very much tied to my friend's proposition that this is
23 all evidence of some larger systemic problem, and I don't
24 think that we can make submissions, and I also say I don't
25 think you can -- as a Panel can fully appreciate the issue
26 unless those -- unless those two sides of the coin are
27 considered together. I think that really -- they really
28 are inextricably linked in this case.

1 MS. GONSALVES: If I may respond, just on that point,
2 Madam Chair. Based on what Mr. Zacher has said, I am
3 concerned that by weaving the two together submissions on
4 penalty may be used in some way towards contesting the
5 allegations at the liability stage that would not be
6 proper. There's good reason why these are two distinct
7 stages.

8 If my friend wants to make arguments about technical
9 breaches, he can do that. A breach is a breach is a
10 breach. And if the Panel finds a breach in respect of what
11 my friend refers to as a technical matter, then at the
12 penalty stage it's open to him to argue, well, based on the
13 Panel's findings this is just a technical breach and no amp
14 is called for.

15 But it would not be appropriate, in my submission, for
16 him to weave the two together and say this doesn't justify
17 a penalty of any magnitude and therefore you are better off
18 just finding that there was no contravention. That's what
19 I am concerned about, is this intermingling of the two
20 issues that are meant to represent very distinct and
21 separate purposes and phases of a process.

22 MS. LONG: Okay. Well, I have heard from both of you.
23 I think we understand what your concerns are, and we are
24 going to take it away and come back with a decision
25 tomorrow.

26 With respect to written versus oral argument, it had
27 been our hope that we could actually have oral submissions
28 on Thursday while the evidence is fresh in our minds. I

1 understand from Mr. Bell that is not a possibility,
2 unfortunately. But I guess I am just wondering what you're
3 proposing by way of written argument, as opposed to oral
4 argument, with some, you know, an outline or overview or
5 something like that, which we have found helpful in the
6 past.

7 I mean, I don't think there's a lot of law here. I
8 think there's a lot of facts here that you will want to
9 guide us through, and that's why we are -- why we would
10 like to have oral argument and we would like to have it
11 before the break so we can be writing over the break.

12 It's not lost on us that this notice of intention was
13 issued in February. I am sure that Planet Energy would
14 like to have this disposed of quickly, and we certainly
15 would like to get on with the writing. So we are concerned
16 about efficiency and getting this done.

17 MS. GONSALVES: We certainly understand the concern of
18 the Panel and the public interest as well as Planet in
19 having this matter brought to a conclusion as quickly as
20 possible. That being said, the process that I think we are
21 jointly proposing where there's written materials followed
22 by brief oral, it's my submission that that would result in
23 a benefit that exceeds sort of the couple of weeks that it
24 would add to the process.

25 Mr. Bell had expressed to us the Panel's preference
26 that all of this be completed before the Christmas break,
27 and both sides, I think, had said that's not an issue for
28 getting the written submissions in. What's looking like

1 more of a challenge is finding a date, not as early as
2 Thursday, but before the break, when we can all physically
3 be back in this room.

4 From our perspective, we would like to provide the
5 Panel with written submissions that really accomplish two
6 things. The first is, as I have said, taking the large
7 volume of evidence that we have already heard, the specific
8 questions and answers, the hundreds of documents with
9 discrete important references and excerpts, and tying them
10 to seven different allegations in respect of various
11 provisions of the ECPA, the regs, and the codes of conduct
12 in respect of numerous contracts for two different agents.

13 It's our burden to weave all of that together, and we
14 want to do a detailed and careful job, while being as
15 concise as possible, and we believe that a written document
16 with footnote references to the transcript is the best way
17 to accomplish that objective.

18 The second purpose that we believe we can best
19 accomplish in writing, well, I agree with you, Madam Chair,
20 that this is not a law-heavy case. That doesn't mean that
21 there isn't any law that would be useful here, law both in
22 respect of Internet contracts, as well as, if the Panel
23 decides we are going to go there, penalty, but also on
24 Planet Energy's responsibility from a regulatory
25 perspective for everything that's done in its name by its
26 unlicensed agents.

27 We'd like to give you some law on that, we'd like to
28 give you some law interpreting certain of the statutory

1 provisions that are in issue, and that kind of detailed
2 legal references are, in my submission, in my experience,
3 not particularly conducive to the sort of higher-level
4 discussion that happens when we have exclusively oral
5 argument.

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

7 MR. ZACHER: Madam Chair, I am happy -- I mean, we are
8 fine with what my friend proposes, which is that -- an
9 exchange and filing of all the written submissions and come
10 back in early January and argue for half a day. If the
11 Panel is inclined to try to compress that and have the oral
12 argument before the Christmas break, you know, I think we
13 can accommodate that. I do understand my friend does have
14 some real issues being out of town, and so we'd have to
15 work around that, but...

16 MS. LONG: What are you looking for --

17 MR. ZACHER: The only thing I would say is that, I
18 mean, it would -- certainly we should have the oral
19 argument after the written arguments are exchanged.
20 They've been filed and the Panel has had a few days to
21 digest and read and, you know, look at them in advance.

22 The final week before the holiday break I think is the
23 week of the 18th to the 22nd. With the exception of the
24 22nd, we can juggle our calendar to make any of those other
25 days work, so 18th, 19th, 20th, and 21st for oral
26 submissions. I think my friend is a little more
27 constrained, so...

28 MS. LONG: Are you available that week, Ms. Gonsalves?

1 MS. GONSALVES: The only day I have that week is the
2 22nd, which is the one day not available to Mr. Zacher. I
3 have tried to see if one of my partners can cover me for a
4 hearing on the 18th, and that appears to not be possible
5 for her. And so I have hearings every day from the 18th to
6 the 21st.

7 MS. LONG: And what were you looking at by way of
8 written hearing -- written schedule? Had you discussed
9 that? Did you say you didn't think reply would be
10 necessary?

11 MR. ZACHER: My friend was saying that as long as we
12 are going to come back and have oral submissions then
13 probably reply is not necessary --

14 MS. LONG: Okay.

15 MR. ZACHER: -- written reply. And I am not sure when
16 my friend could get her written argument in, but I would
17 think that we could deliver something within a week or ten
18 days after that.

19 MS. LONG: And have you discussed dates in early
20 January?

21 MS. GONSALVES: So, sorry, just with respect to our
22 written submissions, the discussion we had last week was
23 that we could provide that to our friends on the 12th, and
24 I believe they were comfortable with that.

25 Dates in early January are certainly much more
26 flexible to us, although we haven't sort of identified
27 specific ones. But it's much better than the December time
28 frame.

1 MS. LONG: Okay, we are going to take that away,
2 and --

3 MR. ZACHER: Sorry, Madam Chair, the only issue for me
4 is I am absent -- I am out of the country the week of the
5 1st to 5th, and I have something on the 8th. But I think I
6 could do the 9th, 10th, 11th, 12th and any -- I mean, I
7 have got things the following week, but I could juggle. So
8 from basically the 9th until the 19th, I could make any day
9 work.

10 MS. LONG: And you have some availability around that
11 time, Ms. Gonsalves?

12 MS. GONSALVES: Yes, 9, 11, 18, 19; those are all
13 possible.

14 MS. LONG: Okay. Well, we are going to go away and
15 discuss. I would ask counsel not to book anything tonight,
16 given that you have given me those dates, thank you.

17 We will see you tomorrow morning.

18 --- Whereupon the hearing adjourned at 4:44 p.m.

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