



ONTARIO ENERGY BOARD

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

VOLUME: Volume 5

DATE: November 28, 2017

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

THE ONTARIO ENERGY BOARD

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

AND IN THE MATTER OF a Notice of Intention to
make an Order for Compliance and Payment of an
Administrative Penalty against Planet Energy
(Ontario) Corp. (ER-2011-0409) (GM-2013-0269).

Hearing held at 2300 Yonge Street,
25th Floor, Toronto, Ontario,
on Tuesday, November 28, 2017,
commencing at 9:40 a.m.

VOLUME 5

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

I N D E X O F P R O C E E D I N G S

<u>Description</u>	<u>Page No.</u>
--- On commencing at 9:40 a.m.	1
--- On commencing in camera at 9:41 a.m.	1
PLANET ENERGY - PANEL 1, resumed	1
N. Silvestri; Previously Affirmed	
Continued Cross-Examination by Mr. Safayeni	1
--- Recess taken at 10:59 a.m.	49
--- On resuming at 11:20 a.m.	49
--- Luncheon recess taken at 12:25 p.m.	88
--- On resuming at 1:27 p.m.	88
Questions by the Board	108
Procedural Matters	113
--- Whereupon the hearing adjourned at 2:15 p.m.	116

E X H I B I T S

Description

Page No.

NO TABLE OF FIGURES ENTRIES FOUND.
No table of figures entries found.

U N D E R T A K I N G S

Description

Page No.

NO TABLE OF FIGURES ENTRIES FOUND.

1 Tuesday, November 28, 2017

2 --- On commencing at 9:40 a.m.

3 MS. LONG: Please be seated.

4 Counsel, are there any preliminary matters to deal
5 with before we hear from this witness?

6 MS. GONSALVES: Madam Chair, good morning. I don't
7 believe there are any.

8 MS. LONG: Okay, thank you. Then Mr. Safayeni, do you
9 want to continue with your cross-examination of Mr.
10 Silvestri?

11 MR. SAFAYENI: Yes, thank you, Madam Chair.

12 --- On commencing in camera at 9:41 a.m.

13 **PLANET ENERGY - PANEL 1, RESUMED**

14 **Nino Silvestri; Previously Affirmed.**

15 **CONTINUED CROSS-EXAMINATION BY MR. SAFAYENI:**

16 MR. SAFAYENI: Good morning, Mr. Silvestri.

17 MR. SILVESTRI: Good morning, sir.

18 MR. SAFAYENI: So you told us yesterday that the
19 majority of ACN IBOs do that as a part-time job; right?

20 MR. SILVESTRI: Yes, that's correct. That's my
21 understanding.

22 MR. SAFAYENI: And they are doing it basically on the
23 side to earn some extra income?

24 MR. SILVESTRI: That's correct.

25 MR. SAFAYENI: Most of them don't have any background
26 in the energy industry, fair to say?

27 MR. SILVESTRI: I would say so, yes.

28 MR. SAFAYENI: And most of them are selling more than

1 just Planet Energy contracts. I think you told us that
2 yesterday as well.

3 MR. SILVESTRI: That's correct.

4 MR. SAFAYENI: They sell a host of ACN products:
5 phone, Internet, water heaters, security systems; right?

6 MR. SILVESTRI: That's correct.

7 MR. SAFAYENI: And each of those products requires
8 IBOs to acquire a different type of knowledge and expertise
9 related to that specific product; right?

10 MR. SILVESTRI: I would disagree with the expertise.
11 I think the intent is for the IBOs to direct their friends
12 and family, associated customers, to the ACN website so the
13 customer or the IBO themselves can purchase a host of
14 products. But the intent is not for them to become experts
15 in any product.

16 MR. SAFAYENI: All right. So just to be clear, your
17 understanding is that IBOs are selling products that they
18 do not have expertise in?

19 MR. SILVESTRI: They aren't selling products. They
20 don't sell products, they direct their potential customer
21 to the website to promote the product and advertise the
22 product. I would not describe it as selling products.

23 MR. SAFAYENI: Well... Mr. Silvestri, could you turn
24 to tab 6B of Volume 1 of the Planet Energy documents.
25 Exhibit KX1.4 for the record.

26 MR. SILVESTRI: 6B?

27 MR. SAFAYENI: 6B.

28 MR. SILVESTRI: Yes.

1 MR. SAFAYENI: And you remember that I asked you
2 questions about this contract yesterday; correct?

3 MR. SILVESTRI: Yes.

4 MR. SAFAYENI: And I asked you if it accurately
5 describes each party's roles and responsibilities in their
6 relationship together; correct?

7 MR. SILVESTRI: Yes.

8 MR. SAFAYENI: And you said it did; right?

9 MR. SILVESTRI: Yes.

10 MR. SAFAYENI: Can you turn to page 128, please.

11 MR. SILVESTRI: Yes.

12 MR. SAFAYENI: If you look about -- if you look at the
13 third paragraph on that page, the paragraph that starts "PE
14 and ACN have been made parties". Do you see that, sir?

15 MR. SILVESTRI: Yes.

16 MR. SAFAYENI: If you look at the very last sentence
17 in that paragraph, it says:

18 "The parties intend that this agreement be the
19 definitive agreement for ACN to act as master
20 agent and for ACN's network of IBOs to act as
21 limited agents for Planet to sell electricity
22 commodity and natural-gas products and related
23 services to retail, residential, and commercial
24 consumers."

25 And that's an accurate statement of how the
26 relationship was intended to function; right?

27 MR. SILVESTRI: Just let me read the...

28 Yeah, I think the key word there is "limited agents

1 for Planet to sell electric commodity and natural-gas
2 products".

3 MR. SAFAYENI: Right. The IBOs are agents to sell the
4 products; correct? That's an accurate representation of
5 what --

6 MR. SILVESTRI: Well, that's what it says in this
7 agreement, but --

8 MR. SAFAYENI: And then you told --

9 MR. SILVESTRI: -- what they are trained to do is to
10 promote and direct their potential customers to the
11 website.

12 MR. SAFAYENI: For the purposes of making a sale;
13 correct?

14 MR. SILVESTRI: For the customer to enroll, yes.

15 MR. SAFAYENI: Can you turn to page 131, please, sir.

16 MR. SILVESTRI: Yes.

17 MR. SAFAYENI: If you look at number 2(a), third line
18 down, the sentence says:

19 "ACN shall use its commercially reasonable
20 efforts to cause IBOs to sell energy products and
21 otherwise promote Planet's retail energy business
22 within the territory."

23 And again, that's an accurate representation of your
24 expectations in ACN's role, correct?

25 MR. SILVESTRI: Yes, once again emphasis on "promote".

26 MR. SAFAYENI: Well, that's your emphasis, sir, but
27 the contract says what it says; right?

28 MR. SILVESTRI: I can also tell you what the

1 experience is as well.

2 MR. SAFAYENI: And your evidence to me was that the
3 experience is that each party performed its role as set out
4 in the agreement; right?

5 MR. SILVESTRI: That's correct.

6 MR. SAFAYENI: Of the products that ACN IBOs are
7 authorized to sell, only energy contracts are subject to a
8 unique regulatory regime that governs their sales conduct;
9 correct?

10 MR. SILVESTRI: I am not sure that's correct. They'd
11 have to be compliant with, for example, the Ontario
12 Consumer Protection Act and other -- and other acts.

13 MR. SAFAYENI: Well, apart from the Consumer
14 Protection Act, which is one of general application, are
15 you aware of any specific act similar to the Ontario Energy
16 Board Act or the Ontario --

17 MR. SILVESTRI: I am not familiar --

18 MR. SAFAYENI: Please let me finish my question, sir.
19 Or the Ontario Energy Consumers Protection Act that applies
20 to, for example, telephones or security systems?

21 MR. SILVESTRI: I am not an expert in long-distance or
22 telephone and cable and security systems, so I am not
23 authorized -- I am not capable of answering that question.

24 MR. SAFAYENI: I asked if you are aware of any similar
25 regimes.

26 MR. SILVESTRI: I am not aware, no, I am not.

27 MR. SAFAYENI: Okay. And on top of learning about
28 these different products, IBOs also have to learn about how

1 ACN works: the compensation system, the back office,
2 online store, recruitment, et cetera; right?

3 MR. SILVESTRI: I would think so, yes.

4 MR. SAFAYENI: And in terms of learning about energy
5 contracts, to do their jobs properly you would agree with
6 me that IBOs have to understand the rules that apply when
7 selling energy contracts in Ontario?

8 MR. SILVESTRI: Well, they'd have to understand the
9 rules pursuant to the then prevailing code of conduct. I
10 believe it was section 5.2 of the training requirements,
11 which our training manual, I believe, covers adequately.

12 MR. SAFAYENI: Well, they have to understand all the
13 rules that apply in that section and any other rules that
14 apply; correct?

15 MR. SILVESTRI: They would have to understand the
16 rules that are necessary for them to finish their training
17 and pass the test. I disagree that they have to know --
18 that they have to be what you were alluding to yesterday,
19 an expert in knowing what's in the -- contained in the
20 Energy Consumer Protection Act or the entire Ontario Energy
21 Board Act, for example.

22 MR. SAFAYENI: So your evidence is they just have to
23 know what's necessary to pass the test.

24 MR. SILVESTRI: As a minimum, yes. And once again,
25 their role is to promote and advertise and direct the
26 customer to the website for enrollment purposes.

27 MR. SAFAYENI: Ultimately it's up to each IBO to learn
28 the products that they are selling for themselves; right?

1 MR. SILVESTRI: You mean self-enrollment?

2 MR. SAFAYENI: No.

3 MR. SILVESTRI: I don't understand your question.

4 MR. SAFAYENI: Okay. I will try again.

5 Each IBO is independently responsible to learn what
6 they need to know to sell products.

7 MR. SILVESTRI: You say "sell"; I say "promote", but,
8 yes.

9 MR. SAFAYENI: Well, I am going to keep saying "sell".
10 That's what the contract says.

11 MR. SILVESTRI: I will keep saying "promote", so...

12 MR. SAFAYENI: Okay. IBOs are responsible for
13 learning the products that they approach consumers with on
14 -- when they are ACN IBOs; right? It's their own
15 responsibility to learn about those products.

16 MR. SILVESTRI: Well, just to learn at a high level in
17 order to direct the customer to the website.

18 MR. SAFAYENI: Your answer is not an answer to my
19 question. Your answer is the degree of -- referring the
20 degree of knowledge they need to have. My question, sir,
21 is about whose responsibility it is to learn that degree of
22 knowledge. Is it the IBO's responsibility, or is it
23 somebody else's responsibility?

24 MR. SILVESTRI: Well, it would be Planet Energy's
25 responsibility to provide the wherewithal and the platform
26 for the IBO to learn, and the IBO's responsibility is to
27 understand what's necessary as a minimum requirement to
28 promote those products.

1 MR. SAFAYENI: Planet Energy representatives don't
2 accompany IBOs when they are interacting with prospective
3 consumer, correct?

4 MR. SILVESTRI: That's correct.

5 MR. SAFAYENI: And there's no IBO shadowing as part of
6 the ACN process?

7 MR. SILVESTRI: I don't know what you mean by that
8 process.

9 MR. SAFAYENI: I mean nobody -- IBOs don't shadow --
10 or Planet Energy representatives or Planet Energy
11 representatives don't shadow IBOs as part of the training
12 process.

13 MR. SILVESTRI: That's correct.

14 MR. SAFAYENI: If an IBO does something wrong, it's
15 ACN that disciplines the IBO?

16 MR. SILVESTRI: Well, both ACN and Planet Energy. ACN
17 would have the direct contact with the IBO. Planet Energy,
18 if we felt it necessary, would deactivate the IBOs status
19 in our system.

20 MR. SAFAYENI: So ACN is the one who directly
21 interacts with the IBO in terms of discipline?

22 MR. SILVESTRI: Yes.

23 MR. SAFAYENI: And Planet Energy has an independent
24 ability to cut an IBO off from selling its products?

25 MR. SILVESTRI: That's correct.

26 MR. SAFAYENI: And is that regardless of what ACN
27 determines should be the outcome with an IBO?

28 MR. SILVESTRI: That's correct. If we felt there was

1 a compliance issue, we would deactivate the IBO.

2 MR. SAFAYENI: Could you turn to tab 1B of Staff's
3 documents -- for the record, Exhibit KX1.2 -- the bottom of
4 page 2 and the top of page 3.

5 MR. SILVESTRI: Yes.

6 MR. SAFAYENI: You see that paragraph mentions a
7 number of different charges and fees.

8 MR. SILVESTRI: Yes.

9 MR. SAFAYENI: You see what I am talking about. IBOs
10 were never provided any training on the different charges
11 outlined in this paragraph?

12 MR. SILVESTRI: When required to the -- the fair
13 markets practices in part B of section 1 of the OEB code of
14 conduct requires that they understand and verbally state
15 the pricing term of the electricity supply. But these
16 charges and prices are not related to electricity supply.
17 They are pointed out in the price comparison form.

18 MR. SAFAYENI: My question is a very simple one, which
19 is simply whether they were provided training on these
20 charges in that paragraph at the bottom of page 2 and the
21 top of page 3.

22 MR. SILVESTRI: At the monthly Friday sessions, these
23 charges usually came up as questions, if the question was
24 asked.

25 MR. SAFAYENI: Okay. Apart from that, they weren't
26 provided training?

27 MR. SILVESTRI: That's correct.

28 MR. SAFAYENI: Okay, back to the other black binder,

1 Exhibit KX1.4, Planet Energy's documents. If you turn to
2 page 6, tab 6 -- sorry, page 114.

3 MR. SILVESTRI: Yes.

4 MR. SAFAYENI: So if we go to the box at the bottom of
5 that page, you'll see it says Nino Silvestri and Jordan
6 Small are the principal individuals responsible for
7 compliance, complaint handling and quality assurance on the
8 Planet Energy side of the equation, right?

9 MR. SILVESTRI: Yes.

10 MR. SAFAYENI: And I gather your responsibilities were
11 more on the business side as opposed to the day-to-day of
12 handling complaints and supervising agent issues. Is that
13 fair to say?

14 MR. SILVESTRI: That's with the exception of escalated
15 complaints that Mr. Small would bring to my attention for
16 discussion.

17 MR. SAFAYENI: And that was a small subset of --

18 MR. SILVESTRI: Yes.

19 MR. SAFAYENI: -- the overall number of issues that
20 arose, fair?

21 MR. SILVESTRI: Yes.

22 MR. SAFAYENI: So the primary responsibility was Mr.
23 Small's for compliance issues?

24 MR. SILVESTRI: For managing compliance issues. As
25 far as developing compliance policy and ensuring that
26 compliance policy was followed, I was also involved.

27 MR. SAFAYENI: And when you say managing compliance
28 issues, can you just explain what you mean by that?

1 MR. SILVESTRI: Well, for example, when we developed
2 the quality assurance measures I had explained earlier in
3 our customer management system, ensuring we conduct an
4 annual compliance audit each year when I am required to
5 sign the annual compliance certificate for the Board. So I
6 make it clear that I want each and every section that we
7 agreed to, to ensure that everything is working properly.

8 MR. SAFAYENI: And it would also include supervising
9 IBOs, and responding to issues that were raised about IBOs
10 who were selling Planet Energy products?

11 MR. SILVESTRI: In my case?

12 MR. SAFAYENI: No, Mr. Small's case.

13 MR. SILVESTRI: Well, Mr. Small would not supervise
14 the IBOs, but he would manage any issues that may come up
15 in conjunction with ACN.

16 MR. SAFAYENI: And at the time, according to this
17 response, Mr. Small's position was director of regulatory
18 and compliance, correct?

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

20 MR. SAFAYENI: And is he still in that position today?

21 MR. SILVESTRI: Yes, he is promoted to vice president
22 regulatory affairs and compliance.

23 MR. SAFAYENI: And is that a new position?

24 MR. SILVESTRI: No, same position. Mr. Small's an
25 exemplary employee. He acts with distinction and I decided
26 to promote him.

27 MR. SAFAYENI: I guess what I am trying to get at is
28 at the time this response was submitted, was there somebody

1 else in the VP regulatory affairs and compliance position?

2 MR. SILVESTRI: No, there was not.

3 MR. SAFAYENI: Okay. So that position was created
4 after this response was submitted?

5 MR. SILVESTRI: Well, it's the same position; he was
6 promoted. He is promoted to vice president. From director
7 to --

8 MR. SAFAYENI: Let me try it this way, Mr. Silvestri.
9 At the time that this response was submitted, was there
10 anybody superior to Mr. Small in the regulatory and
11 compliance department?

12 MR. SILVESTRI: No, Mr. Small reports to me.

13 MR. SAFAYENI: Okay. How many people at Planet Energy
14 work in the regulatory and compliance department?

15 MR. SILVESTRI: Today?

16 MR. SAFAYENI: Yes, today.

17 MR. SILVESTRI: Including Mr. Small, there would be
18 three other individuals. So total of four.

19 MR. SAFAYENI: So total of four. And at the time of
20 this response? This is back -- this is back in the fall of
21 2015, I believe.

22 MR. SILVESTRI: The same, a total of four.

23 MR. SAFAYENI: Same number?

24 MR. SILVESTRI: Yes.

25 MR. SAFAYENI: Okay. And has that remained more or
26 less constant?

27 MR. SILVESTRI: Yes.

28 MR. SAFAYENI: Same tab, if we turn to page 122 -- do

1 you have that in front of you, sir?

2 MR. SILVESTRI: Yes.

3 MR. SAFAYENI: Okay. If we go to the bottom box, it
4 says:

5 "During each week of the inspection period,
6 between 4500 and 6500 ACN IBOs were active, i.e.,
7 were qualified to mark or retail Planet Energy
8 products to consumers, for an average of
9 approximately 5500 active IBOs per week."

10 Do you have any -- well, first of all, I assume that's
11 accurate to the best of your knowledge, that statement?

12 MR. SILVESTRI: Yes.

13 MR. SAFAYENI: And do you have any reason to believe
14 that the number of active ACN IBOs has changed materially
15 since that time to the conclusion of the relationship with
16 ACN?

17 MR. SILVESTRI: I don't have an exact number. I would
18 think it would have been reduced when word came out that
19 ACN and Planet Energy would not be continuing their
20 relationship post the contract expiry in November of 2016
21 and we saw a decline in enrolments, which led me to believe
22 that there were fewer active IBOs promoting energy
23 products.

24 MR. SAFAYENI: Okay. In fairness to you, that's
25 speculation. You don't have numbers.

26 MR. SILVESTRI: I don't have an exact number. I am
27 trying to answer your question.

28 MR. SAFAYENI: And when did word -- I appreciate that.

1 And when did word come out that the relationship was coming
2 to an end?

3 MR. SILVESTRI: May of 2016.

4 MR. SAFAYENI: And prior to that period, so prior to
5 word coming out, let me put it that way, is it fair to say
6 that these numbers accurately represent the number of
7 active IBOs retailing Planet Energy products before word
8 came out?

9 MR. SILVESTRI: Yes.

10 MR. SAFAYENI: And this number of IBOs, they aren't
11 necessarily all the same people; correct? One IBO could
12 decide to stop retailing products, another IBO could sign
13 up?

14 MR. SILVESTRI: I don't understand your question.

15 MR. SAFAYENI: Okay, let me try it again. It wasn't
16 fantastically worded. The number of IBOs where it says,
17 for example, an average of 5,500 active IBOs per week, from
18 week to week those are not necessarily the same
19 individuals; correct?

20 MR. SILVESTRI: That's correct. There's a turnover of
21 IBOs who may be active one week and not active the next
22 week, and then a new group of IBOs that might have been
23 recruited.

24 MR. SAFAYENI: Right. Mr. Silvestri, Planet Energy
25 understood ACN's business model before entering into
26 business with ACN; correct?

27 MR. SILVESTRI: Yes.

28 MR. SAFAYENI: And you understood that new ACN IBOs

1 are told to target to their quote-unquote warm network?

2 MR. SILVESTRI: Yes.

3 MR. SAFAYENI: And that IBOs mainly sell products to
4 people with whom they already have some sort of
5 relationship of trust.

6 MR. SILVESTRI: Yes, typically friends and family.

7 MR. SAFAYENI: Yes, and you kept mentioning friends
8 and family yesterday in your answers to Mr. Zacher, but you
9 will agree with me that the warm network also includes
10 acquaintances, meaning people who are known personally to
11 IBOs; correct?

12 MR. SILVESTRI: Yes, that's correct, yes.

13 MR. SAFAYENI: You were here, Mr. Silvestri, when we
14 heard from Mr. Nahid that he sold a Planet Energy contract
15 to an office manager at his local health centre. Is it
16 your understanding that this qualifies as part of the warm
17 network?

18 MR. SILVESTRI: I don't recall the specific
19 individual. I recall him mentioning people that he knew,
20 that he knew personally, people that trusted him. That's
21 what I recall him saying. I don't recall him saying
22 "office manager".

23 MR. SAFAYENI: Well, he used the term "secretary".
24 But when Ms. Andrassin, who was the person he was referring
25 to, was on the stand, she described herself as the office
26 manager at basically the doctor's office he attended.

27 So I am asking you, does that qualify as part of the
28 warm network?

1 MR. SILVESTRI: If it's someone that he knew that he
2 had a relationship with, I would say yes.

3 MR. SAFAYENI: Well, what kind of relationship is
4 required, I guess is my question.

5 MR. SILVESTRI: Well, the intent is that you know the
6 person to some extent. I guess the way to answer that is,
7 what is -- what is not allowed is to cold-call and approach
8 someone that you do not know at all.

9 MR. SAFAYENI: We have had the pleasure of spending a
10 few days together in this room now. We have said hello a
11 few times and exchanged pleasantries Fridays. Would I be
12 part of your warm network?

13 MR. SILVESTRI: I would say not.

14 MR. SAFAYENI: But you would agree that if you were
15 approaching me you would know at the very least my name;
16 correct?

17 MR. SILVESTRI: Yes.

18 MR. SAFAYENI: And we have had some exchanges such
19 that it wouldn't be completely cold if you spoke to me
20 about a product; correct?

21 MR. SILVESTRI: I wouldn't consider you someone that I
22 would approach for a product, not knowing you very well.

23 MR. SAFAYENI: Ultimately neither ACN nor Planet
24 Energy has any way of determining the nature of the
25 relationship between an IBO and the customer.

26 MR. SILVESTRI: Can you repeat the question?

27 MR. SAFAYENI: Ultimately neither ACN nor Planet
28 Energy has any way to actually know the relationship

1 between an IBO and a customer.

2 MR. SILVESTRI: I would say that's correct. And once
3 again, the intent is for -- we are relying on the customer
4 to enroll themselves through the web portal and at their
5 leisure, you know, review the products and the information
6 that's on the web portal.

7 MR. SAFAYENI: I understand the intent, Mr. Silvestri,
8 but from looking at the data, someone who's enrolled by an
9 IBO, they could be their best friend, they could be a total
10 stranger. The bottom line is you don't know.

11 MR. SILVESTRI: Well, what we do know is that, you
12 know, the vast majority of our enrollments are self-
13 enrollments. Approximately 80 percent are the IBOs
14 themselves, so that we do know. We are able to track that.

15 So 80 percent of the sales we know are self-
16 enrollments. The other 20 percent, we have no way of
17 determining through our system if the IBO knew the
18 enrollment customer.

19 MR. SAFAYENI: Okay, coming back to the ACN kind of
20 business model, you understood that ACN IBOs are recruited
21 by existing IBOs into a group or a leg of IBOs; correct?

22 MR. SILVESTRI: That's not always the case. There's
23 some people who sign up on their own, there's some people
24 who join as a group. There seems to be all kinds of
25 different groups of -- and teams of IBOs.

26 MR. SAFAYENI: Well, I think that's what I -- well,
27 you told me yesterday that although you thought IBOs could
28 sign up on their own, you acknowledged that the vast

1 majority are recruited through referrals; correct?

2 MR. SILVESTRI: That's correct.

3 MR. SAFAYENI: Okay, and the people who are recruited
4 through referrals, you are aware that they join some sort
5 of group or leg comprised of other IBOs, correct? Or is
6 that news to you?

7 MR. SILVESTRI: No, it's not news to me. I am trying
8 to answer your question. Most do, but I am telling you
9 there are some -- I don't know an exact number or
10 percentage -- that sign up on their own.

11 MR. SAFAYENI: It's a small percentage.

12 MR. SILVESTRI: I would think so, yes.

13 MR. SAFAYENI: And you understand that the IBOs who
14 recruit new IBOs stand to benefit financially if those new
15 IBOs sell energy contracts; right?

16 MR. SILVESTRI: That's correct.

17 MR. SAFAYENI: And they also stand to benefit
18 financially if those new IBOs themselves recruit IBOs who
19 in turn sell energy products; correct?

20 MR. SILVESTRI: That's correct.

21 MR. SAFAYENI: And so on down the line; right?

22 MR. SILVESTRI: That's correct.

23 MR. SAFAYENI: So there are many IBOs in a particular
24 group who will have an incentive, financial incentive, to
25 see a new IBO get qualified and start selling products;
26 correct?

27 MR. SILVESTRI: That's correct. Provided everything
28 is done within the rules.

1 MR. SAFAYENI: Well, the incentive doesn't change
2 whether it's done within the rules or not, does it? The --

3 MR. SILVESTRI: Well, no, it does, because if they
4 break the rules they are deactivated and they can lose all
5 future residual commissions.

6 MR. SAFAYENI: If they violate the rules and that
7 violation is captured and disciplined; correct?

8 MR. SILVESTRI: That's correct.

9 MR. SAFAYENI: Did you understand that IBOs within the
10 same group or leg share sales tips and strategies for how
11 to sell products?

12 MR. SILVESTRI: Yes, I understand that they meet and
13 work with each other to help promote the products.

14 MR. SAFAYENI: And there's no process in place for
15 Planet Energy to know what information is being shared
16 between IBOs at those meetings; correct?

17 MR. SILVESTRI: Other than if they utilize the back
18 office and the web portal, that's the information that we
19 expect them to use.

20 MR. SAFAYENI: No, but you don't know what's being
21 said at those meetings.

22 MR. SILVESTRI: No, I don't. We are not present.

23 MR. SAFAYENI: And neither is anybody else from Planet
24 Energy?

25 MR. SILVESTRI: That's correct.

26 MR. SAFAYENI: And you ultimately or Planet Energy
27 ultimately doesn't have any control over the information
28 that they share with one another; correct?

1 MR. SILVESTRI: If it's information utilized outside
2 of the back office, that's correct.

3 MR. SAFAYENI: And neither does ACN?

4 MR. SILVESTRI: Same answer, if that's information
5 utilized outside of the back office or web portal.

6 MR. SAFAYENI: And there are no rules in place against
7 IBOs sharing tips and information with each other, correct?

8 MR. SILVESTRI: No, there are. They are not supposed
9 to share information or make false statements which are
10 contrary to, for example, the Board's code of conduct.

11 MR. SAFAYENI: Well, I understand that there are rules
12 governing what IBOs can say to customers. My question is
13 different. My question is when IBOs meet amongst
14 themselves, there are no rules that I am aware of from the
15 documents that I have seen, that prohibits IBOs from
16 sharing tips and strategies and information with each
17 other, right?

18 MR. SILVESTRI: I would disagree with that. I think
19 that the rules with respect to the Board's code of conduct
20 would apply to the IBOs sharing information amongst each
21 other. We expect them to always operate in a compliant
22 manner pursuant to fair marketing practices.

23 MR. SAFAYENI: I'm sorry. Are you telling me that the
24 Board's fair marketing rules for consumers would apply when
25 IBOs are sharing tips with each other?

26 MR. SILVESTRI: I would say yes. I think if one IBO
27 were to inform another IBO to commit an unfair practice to
28 a consumer, that that would be a violation of the code.

1 MR. SAFAYENI: Apart from that, are there any other
2 rules that you are aware of that would prohibit the sharing
3 of tips or information between IBOs?

4 MR. SILVESTRI: If it's a fair marketing practice,
5 there is no other rules that I am aware of.

6 MR. SAFAYENI: Planet Energy didn't provide IBOs with
7 sales scripts or guidelines of any kind, correct?

8 MR. SILVESTRI: That's correct.

9 MR. SAFAYENI: So you talked quite a bit yesterday
10 about the testing process for IBOs. And just to confirm,
11 the testing was done purely on line, correct?

12 MR. SILVESTRI: That's correct.

13 MR. SAFAYENI: And it wasn't completed in any kind of
14 controlled environment, correct?

15 MR. SILVESTRI: I'd say that's correct.

16 MR. SAFAYENI: So there wasn't any supervision or
17 monitoring of IBOs while they wrote the test, correct?

18 MR. SILVESTRI: That's correct, other than the test
19 times-out after one hour.

20 MR. SAFAYENI: The test can be completed anywhere with
21 internet connection?

22 MR. SILVESTRI: Yes.

23 MR. SAFAYENI: There's no control over whether
24 somebody else, like a more experienced IBO, is there with
25 the person writing the test?

26 MR. SILVESTRI: Well, they are not to share answers.
27 As I mentioned yesterday, there is an attestation that they
28 will not share answers and complete the test on their own.

1 MR. SAFAYENI: Beyond the attestation, which is a box
2 that they click on a form --

3 MR. SILVESTRI: A box that we would think someone
4 would take seriously.

5 MR. SAFAYENI: Okay. Beyond that, there's no control
6 over whether somebody else, such as a more experienced IBO,
7 is sitting there with the person writing the test, correct?

8 MR. SILVESTRI: That's correct.

9 MR. SAFAYENI: There's no way to ensure IBOs aren't
10 sharing answers with each other?

11 MR. SILVESTRI: Outside of the attestation, that's
12 correct.

13 MR. SAFAYENI: And there's no --

14 MR. SILVESTRI: Sorry, I need to correct that. You
15 mean if they are writing the test at the same time?

16 MR. SAFAYENI: Well, I mean, they could be writing the
17 test at the same time, or they could just simply be sharing
18 answers from somebody else who happens to know the answer.

19 MR. SILVESTRI: If they are writing with the test at
20 the same time, as I mentioned yesterday, the test questions
21 are random. So no one test question would be on two
22 computers at the same time.

23 MR. SAFAYENI: Right. But if they are not necessarily
24 writing the test at the same time, or if the other person
25 simply happens to know the answer, there is nothing
26 preventing it from happening, right?

27 MR. SILVESTRI: No. But like I said yesterday, if
28 someone is unscrupulous and would want to do that and

1 breach the attestation, that's possible. And so far,
2 there's only one person I am aware of who has done that,
3 which is your witness.

4 MR. SAFAYENI: But, Mr. Silvestri, sitting here today,
5 you do not have personal knowledge of the circumstances in
6 which all these IBOs wrote all these tests, correct?

7 MR. SILVESTRI: That's correct. But I only know of
8 one instance where there is evidence that it happened.

9 MR. SAFAYENI: Right. And you don't know the
10 circumstances around all the other tests that were written,
11 correct?

12 MR. SILVESTRI: No, I don't.

13 MR. SAFAYENI: So you are in no position to say that
14 it hasn't happened in other such situations, correct?

15 MR. SILVESTRI: That's correct. I can just tell you I
16 am not aware of any other instance.

17 MR. SAFAYENI: And there's no way to verify that the
18 person completing the test online is the actual IBO who is
19 supposed to be completing the test, correct?

20 MR. SILVESTRI: Well, if the IBO were to have to log
21 into his back office, presumably he would have his own
22 password and user name. If he were to share that or allow
23 someone else to utilize his back office, supposedly someone
24 could write the test.

25 But as I mentioned I just know of one case where
26 that's happened.

27 MR. SAFAYENI: My question is: There's no way to
28 verify that that's not happening?

1 MR. SILVESTRI: I don't know if I agree with that, Mr.
2 Safayeni. You know, somebody logs in with their personal
3 password and log-in which is a common practice for most log
4 ins, I would think that's a security measure that we can
5 rely on.

6 MR. SAFAYENI: Well, let me provide you with a
7 hypothetical. Let's say that I'm an IBO. I don't know
8 anything about energy. You are not expecting me to be an
9 expert, as you have said several times.

10 I log-in, I hand my computer to you just for the sake
11 of the hypothetical. You complete the test for me, and the
12 process completes itself.

13 MR. SILVESTRI: No, Mr. Safayeni --

14 MR. SAFAYENI: Please let me finish my question.

15 MR. SILVESTRI: Okay.

16 MR. SAFAYENI: If that happens, Planet Energy --
17 neither Planet Energy nor ACN would be able to determine
18 that you wrote the test instead of me, correct?

19 MR. SILVESTRI: I am not going to answer a
20 hypothetical question. You know, there is a saying the
21 turtle would have beaten the rabbit in the race if the
22 rabbit stopped to go to bathroom as well. So I am not
23 going to answer your question.

24 MR. SAFAYENI: I don't understand that saying, and I
25 don't think it has any relevance here.

26 MR. SILVESTRI: I am not going to answer a
27 hypothetical question, sir.

28 MR. SAFAYENI: Let me put it this way. If Mr.

1 MacArthur's evidence is believed that he didn't complete
2 the test himself and it was completed by somebody else, how
3 would Planet Energy determine that that was in fact the
4 case?

5 MR. SILVESTRI: Well, I don't believe Mr. MacArthur.
6 He has no credibility with me, based on his evidence. And
7 once again, I am not going to answer that kind of question.

8 MR. SAFAYENI: Okay. The attestation that you have
9 referred to several times now is at tab 41. Your evidence
10 is that this is the screen an IBO would see before they
11 take the test?

12 MR. SILVESTRI: That's correct.

13 MR. SAFAYENI: Sorry, for the record, we are at tab 41
14 of Planet's documents, KX1.4. And again, there's no way to
15 ensure that whoever's reading and clicking "I agree" at the
16 end of this is the same IBO who's supposed to be completing
17 the test, right?

18 MR. SILVESTRI: Other than the person who logged in
19 would have his IBO user name and password.

20 MR. SAFAYENI: And it's physically possible for that
21 person to hand the computer to somebody else, right?
22 That's not against the laws of physics?

23 MR. SILVESTRI: It's not against the laws of physics,
24 but it would be unlawful after they --

25 MR. SAFAYENI: It would be contrary to the
26 attestation?

27 MR. SILVESTRI: That's correct.

28 MR. SAFAYENI: Other than that, there's nothing

1 preventing it, right?

2 MR. SILVESTRI: That's correct.

3 MR. SAFAYENI: And even if it is the same IBO, there's
4 no way to ensure that they are actually reading the
5 contents of the attestation, correct?

6 MR. SILVESTRI: Well, if they are going to click on
7 it, I presume they read it.

8 MR. SAFAYENI: You presume. But there's no way to
9 ensure that that's the case.

10 MR. SILVESTRI: I can't say someone would have always
11 read it before they clicked, but we would hope that would
12 be the case.

13 MR. SAFAYENI: So same binder, tab 36.

14 MR. SILVESTRI: Yes.

15 MR. SAFAYENI: And I think you told us yesterday, this
16 is the page that IBOs would see before they take the online
17 test; right?

18 MR. SILVESTRI: They would see this in preparation of
19 prior to training and preparing their badge.

20 MR. SAFAYENI: Okay. So they would see it at the
21 outset of the process or near the outset of the process?

22 MR. SILVESTRI: Yes, while they commence their --
23 prior to commencing their training and testing.

24 MR. SAFAYENI: Prior to even commencing the training?

25 MR. SILVESTRI: Yes.

26 MR. SAFAYENI: Okay. And the printout -- this
27 particular printout is dated January 13th, 2011, but is it
28 fair to say that this page has remained materially the same

1 from that point until the end of the ACN relationship?

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

3 MR. SAFAYENI: And under "important reminders", which
4 is the final heading there -- do you see that?

5 MR. SILVESTRI: Yes.

6 MR. SAFAYENI: The second bullet point says:

7 "The certification test is open-book. Use the
8 training slides to help ensure you pass the
9 test."

10 Do you see that?

11 MR. SILVESTRI: Yes.

12 MR. SAFAYENI: First of all, just to be clear, the
13 "training slides" there, is that a reference to what you
14 called yesterday the training manual?

15 MR. SILVESTRI: Yes.

16 MR. SAFAYENI: Okay. And would you agree with me that
17 a closed-book test would better assess the IBO's knowledge
18 of the contents in the training manual?

19 MR. SILVESTRI: No, I disagree with that. I have
20 written closed- and open-book tests and I find that open-
21 book tests are very useful to refer to when you are writing
22 the test and --

23 MR. SAFAYENI: Well, they are very useful for the
24 test-writer.

25 MR. SILVESTRI: And tend to retain more knowledge.

26 MR. SAFAYENI: More knowledge through an open-book
27 test than a closed-book test is your evidence?

28 MR. SILVESTRI: I had a professor who once said

1 knowledge is not so much what's retained but where you go
2 look for it.

3 MR. SAFAYENI: But in this context, to go look for it
4 in their interactions with consumers, IBOs would have to
5 print and bring a 100-page manual with them or access it
6 online.

7 MR. SILVESTRI: No, this is for the purpose of the
8 test, Mr. Safayeni, not for the purpose of promoting the
9 products.

10 MR. SAFAYENI: Okay. So for the purpose of the test
11 it's better if they have the answers next to them.

12 MR. SILVESTRI: I think so, as a guide.

13 MR. SAFAYENI: Would you agree with me that a test
14 delivered in a controlled environment such as a room with
15 supervision would better assess the IBO's knowledge than
16 one that could be taken anywhere with anyone by their side?

17 MR. SILVESTRI: I don't know if I can agree with that.

18 MR. SAFAYENI: You are not going to agree that a test
19 in a supervised environment is better than a test that
20 could be written anywhere.

21 MR. SILVESTRI: When you say "better", what do you
22 mean by "better"?

23 MR. SAFAYENI: Better assess an IBO's knowledge.

24 MR. SILVESTRI: No, I disagree with that.

25 MR. SAFAYENI: Well, at a minimum, if it was in a
26 controlled environment, you could make sure that the person
27 writing the test was the person who was supposed to be
28 writing the test; you'd agree with me on that.

1 MR. SILVESTRI: Yes, that would be correct. If you --

2 MR. SAFAYENI: And that's a significant advantage;
3 right?

4 MR. SILVESTRI: Well, I don't know if it's
5 significant. Like I mentioned to you, in the six years
6 that we've operated with ACN, there's only one case I am
7 aware of of a person who alleged that he did not write the
8 test.

9 MR. SAFAYENI: You keep saying that, but my question
10 is very simple. You'd agree with me it's a significant
11 advantage when you are trying to assess someone's knowledge
12 based on a test that it is actually them who is writing the
13 test. Do you agree with me on that?

14 MR. SILVESTRI: I don't understand your question.

15 MR. SAFAYENI: When somebody is writing a test
16 designed to assess their knowledge, it's an advantage in
17 terms of assessing their knowledge to ensure that the
18 person who is supposed to be writing the test is writing
19 the test.

20 MR. SILVESTRI: Well, I guess that would be true for
21 any test. You want to make sure that the person who is
22 writing is the actual person who they say they are.

23 MR. SAFAYENI: I agree. Can we turn to Staff's book
24 of documents now, which is Exhibit KX1.2 for the record.
25 Tab 15. And this is the Ernst & Young inspection report
26 that there was also some discussion of yesterday; right?

27 MR. SILVESTRI: Yes.

28 MR. SAFAYENI: And Planet Energy received a copy of

1 this report; correct?

2 MR. SILVESTRI: Yes.

3 MR. SAFAYENI: And under -- if you turn to page 7. Do
4 you have that there?

5 MR. SILVESTRI: Yes.

6 MR. SAFAYENI: At the bottom of the page it says
7 "point 4, training tests"; do you see that?

8 MR. SILVESTRI: Yes.

9 MR. SAFAYENI: And it says:

10 "On review of the training process E&Y observed
11 that the following requirements were not met."

12 Turn the page:

13 "1), important reminder section stated that the
14 test is open-book test, where the salespersons
15 and verification representatives could refer to
16 the training material to ensure they passed the
17 test."

18 Do you see that?

19 MR. SILVESTRI: Yes.

20 MR. SAFAYENI: And that concern was not remedied after
21 this inspection report was received by Planet Energy.

22 MR. SILVESTRI: Well, it was not a concern to Board
23 Staff or to the Board either.

24 MR. SAFAYENI: Well, my question to you is the concern
25 identified by E&Y in their audit report was not remedied
26 after you received the audit report; correct?

27 MR. SILVESTRI: Are you talking about point 1, the
28 open book?

1 MR. SAFAYENI: Yes.

2 MR. SILVESTRI: I don't -- when you say "remedy",
3 there was nothing to remedy.

4 MR. SAFAYENI: Well, it didn't change. Let's put it
5 that way.

6 MR. SILVESTRI: It didn't change; that's correct.

7 MR. SAFAYENI: Okay. And the second point:

8 "As the training test for salespersons was given
9 online, the requirement that the training test is
10 conducted in a manner that would not permit the
11 persons taking the test to share questions and
12 answers with one another while taking the
13 training test was not met."

14 And nothing changed after Planet Energy became aware
15 of that concern.

16 MR. SILVESTRI: That's not correct. Although I wasn't
17 there, my understanding is that that's when they started to
18 issue random questions. So no one IBO, no one -- sorry, no
19 one question would be seen at the same time. So that was
20 remedied after this audit.

21 MR. SAFAYENI: Well, okay. Apart from the -- so in
22 response to this audit, the change that was made was,
23 different IBOs would be given different random sets of
24 questions.

25 MR. SILVESTRI: Correct.

26 MR. SAFAYENI: Okay. And apart from that no other
27 change was made.

28 MR. SILVESTRI: That's correct.

1 MR. SAFAYENI: And this was back in 2011, and you told
2 us you didn't join the company until November 2012;
3 correct?

4 MR. SILVESTRI: That's correct.

5 MR. SAFAYENI: So you weren't privy to or part of any
6 discussions between Planet Energy representatives or Board
7 Staff flowing from this report; correct?

8 MR. SILVESTRI: That's correct.

9 MR. SAFAYENI: Did the number of questions on the
10 training test ever change?

11 MR. SILVESTRI: I believe we added a few, probably
12 added about a dozen questions.

13 MR. SAFAYENI: Sorry, I should have been more specific
14 in my question. I am not talking about the bank of overall
15 questions. I am talking about the number of questions that
16 IBOs had to complete as part of their training.

17 MR. SILVESTRI: You know, I can't recall. I recall
18 adding the bank of questions. I can't recall if we added
19 the number of questions per test. I am sorry, I just can't
20 recall.

21 MR. SAFAYENI: You told us yesterday that you thought
22 there were 20 questions on the test.

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

24 MR. SAFAYENI: And your understanding how -- for how
25 long has that been the case, approximately, even? I am not
26 going to hold you to specific dates.

27 MR. SILVESTRI: Soon after our group joined the
28 company, late 2012, early 2013.

1 MR. SAFAYENI: Can you turn to, still in Staff's book
2 of documents, Exhibit KX1.2, can you turn to tab 9B,
3 please. Sorry, tab 9A.

4 MR. SILVESTRI: 9A?

5 MR. SAFAYENI: 9A.

6 MR. SILVESTRI: The spreadsheet?

7 MR. SAFAYENI: It's actually the page on the back of
8 the spreadsheet.

9 MR. SILVESTRI: Yes.

10 MR. SAFAYENI: And this is information that was
11 provided by Planet Energy in response to a request from
12 Board Staff, correct?

13 MR. SILVESTRI: Correct, yes.

14 MR. SAFAYENI: And if we look at question number 2,
15 where it says "representative test score" --

16 MR. SILVESTRI: Yes.

17 MR. SAFAYENI: -- for Kayvan and for Jim MacArthur; do
18 you see that?

19 MR. SILVESTRI: Yes.

20 MR. SAFAYENI: Both of those test scores say 93
21 percent.

22 MR. SILVESTRI: That's correct.

23 MR. SAFAYENI: And your math is no doubt better than
24 mine. But with the help of a calculator, I was able to
25 determine that it's impossible to be able to get a score of
26 93 percent out of a 20-question test. You would agree with
27 me?

28 MR. SILVESTRI: I can't agree. I don't know if this

1 was rounded, or I don't know if there are marks for --
2 marks deducted if someone conducted an error. I don't know
3 the answer to that, how that was calculated.

4 MR. SAFAYENI: Sorry, I don't understand your answer.
5 Are you suggesting that there was a way there could be a 93
6 percent score out of 20 questions?

7 MR. SILVESTRI: I don't know. I don't know if this is
8 an error, a rounding error. I just don't know.

9 MR. SAFAYENI: Well, these are answers Planet Energy
10 provided in response to requests for information from the
11 Board, correct?

12 MR. SILVESTRI: Correct.

13 MR. SAFAYENI: And you understand that Planet Energy
14 has an obligation to make full, frank, and accurate
15 responses --

16 MR. SILVESTRI: We always have, that's correct.

17 MR. SAFAYENI: And you take that obligation seriously?

18 MR. SILVESTRI: Of course.

19 MR. SAFAYENI: And your verify information to the best
20 of your ability before providing it to the Board, correct?

21 MR. SILVESTRI: Of course.

22 MR. SAFAYENI: So what is your explanation today for
23 why this says 93 percent?

24 MR. SILVESTRI: I don't have one. I'd have to check.
25 I don't know, for example, if the -- if a wrong answer is
26 given a negative mark. I am not aware of that.

27 MR. SAFAYENI: Well, let me suggest a possibility to
28 you, that the test is actually out of 15 questions rather

1 than 20; is that possible?

2 MR. SILVESTRI: I don't know.

3 MR. SAFAYENI: Okay. You told us yesterday that
4 Planet Energy wrote these test questions, correct?

5 MR. SILVESTRI: Yes.

6 MR. SAFAYENI: These aren't questions that are
7 mandated by the Board, the substance of the questions
8 aren't mandated by the Board?

9 MR. SILVESTRI: They were reviewed by Board Staff in
10 the 2011 audit.

11 MR. SAFAYENI: Well, they weren't reviewed by the
12 Board Staff before they were first used, which was before
13 the audit, correct?

14 MR. SILVESTRI: That's correct.

15 MR. SAFAYENI: And I think you told us that -- well,
16 let me just ask to be clear. The content of the questions
17 hasn't remained totally static since the time of the audit,
18 correct?

19 MR. SILVESTRI: As I mentioned, we did add some
20 questions to the test.

21 MR. SAFAYENI: After the audit?

22 MR. SILVESTRI: After the audit -- well, after
23 November 2012.

24 MR. SAFAYENI: After --

25 MR. SILVESTRI: That I am aware of. After our group
26 joined Planet Energy.

27 MR. SAFAYENI: And are you aware if any of the
28 existing questions that were reviewed as part of the audit

1 were changed or removed?

2 MR. SILVESTRI: I am not aware of that.

3 MR. SAFAYENI: So can we turn to tab 35 of Planet's
4 volume 1, Exhibit KX 1.4? Do you have that in front of
5 you, sir?

6 MR. SILVESTRI: Yes.

7 MR. SAFAYENI: So these are the test questions, or at
8 least the bank from which individual test questions are
9 pulled.

10 MR. SILVESTRI: That is correct.

11 MR. SAFAYENI: And does this accurately represent the
12 questions -- the question bank more or less since you
13 became involved and the 12 or 13 additional questions were
14 added that you've talked about?

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

16 MR. SAFAYENI: And apart from obviously where it
17 indicates "correct answer", these are the questions as they
18 would appear to somebody taking the test, right?

19 MR. SILVESTRI: I don't know how it actually looks on
20 a desktop, if there's any different format. I would think
21 so, but --

22 MR. SAFAYENI: Well, let's put the format issue aside.
23 In terms of the substance, the words on the page apart from
24 where it says "correct answer", are the substance of what
25 somebody would see when they are taking the test?

26 MR. SILVESTRI: That's correct.

27 MR. SAFAYENI: And I think you told us yesterday that
28 questions are randomly drawn from this bank of questions at

1 tab 35, correct?

2 MR. SILVESTRI: That's correct.

3 MR. SAFAYENI: So there's no requirement or guarantee
4 that every IBO who wants to sell Planet Energy products
5 would, for example, get a question on the global
6 adjustment? It's not a guarantee?

7 MR. SILVESTRI: That's correct.

8 MR. SAFAYENI: And the same with the cancellation
9 rights, for example?

10 MR. SILVESTRI: That's correct.

11 MR. SAFAYENI: When an IBO selects an incorrect
12 answer, are they immediately told that they got that
13 question wrong?

14 MR. SILVESTRI: No, I believe they receive the grade
15 after completing the test.

16 MR. SAFAYENI: And when they receive the grade, are
17 they ever -- are they told at that point what questions
18 they got wrong, or are they just told you got 14 out of 15?

19 MR. SILVESTRI: They are just told their grade.

20 MR. SAFAYENI: And if an IBO fails the test and takes
21 it again, they get assigned another random set of
22 questions, right?

23 MR. SILVESTRI: That's correct.

24 MR. SAFAYENI: And there could be overlap between the
25 first set and the second set? That's possible?

26 MR. SILVESTRI: It's possible, yes.

27 MR. SAFAYENI: And the second test can be taken
28 immediately after the first test?

1 MR. SILVESTRI: Yes.

2 MR. SAFAYENI: So you mentioned that IBOs have a
3 maximum of one hour to complete the test, correct?

4 MR. SILVESTRI: Correct.

5 MR. SAFAYENI: Does Planet Energy or ACN have a way to
6 determine how long an IBO has taken to complete the test?

7 MR. SILVESTRI: Once the test is commenced on the
8 computer, it's only available for one hour. It times out
9 and it would lock the IBO out, or discontinue the process.

10 MR. SAFAYENI: If an IBO completes the test in, let's
11 say, half an hour, would that information be recorded and
12 available to Planet Energy or ACN?

13 MR. SILVESTRI: I don't know. I have never seen that
14 specific information. I have just seen the -- Springboard
15 issued a monthly report to inform us of the number of IBOs
16 that took the test, took it the first time, the second
17 time, and what the grades were.

18 MR. SAFAYENI: And Springboard is a vendor that Planet
19 Energy has --

20 MR. SILVESTRI: They are an information technology
21 vendor out of Windsor, Ontario, that manage the testing
22 process for us, on behalf of Planet Energy.

23 MR. SAFAYENI: By my count, at tab 35 there are there
24 65 questions, and 38 of these are either true-or-false or
25 yes-or-no questions. I won't ask you to sit there and
26 count them; I think anybody could just count for
27 themselves.

28 But my question to you is it's possible that an IBO

1 could get a random set of questions that are the majority
2 or even entirely just true-or-false or yes-or-no?

3 MR. SILVESTRI: I am not aware of the query, how
4 Springboard managed the questions. My understanding was
5 that it was managed in a way so that there would be a
6 random sampling of general questions, so that to avoid
7 things like all true or false or yes or no.

8 But I would say that the, you know, the query would
9 not allow all questions to be all yes or no or true or
10 false. There would be a good random selection for each
11 test.

12 MR. SAFAYENI: Well, I don't want to get too deep into
13 statistics here, but a random selection from 68 questions
14 where more than half are true or false, if we're only
15 getting, for example, 15 or 20 questions, a random
16 selection could produce 15 or 20 true or false questions,
17 you'd agree with me.

18 MR. SILVESTRI: My understanding from Springboard is
19 that the query was set up so that something like that
20 wouldn't happen. There would be a random sampling of
21 general questions and potential answers so that wouldn't
22 happen.

23 MR. SAFAYENI: What exactly is your understanding of
24 how Springboard set up this to avoid all true or false
25 questions? Because it sounds like if you are speculating,
26 but if you are not I'd like all the --

27 MR. SILVESTRI: No, I am not speculating, Mr.
28 Safayeni, I am telling you the truth, that my understanding

1 from Springboard is that the questions would represent a
2 selection of questions that had various, you know, various
3 types of answers, whether it would be A, B, C, D, none of
4 the above, yes or no, true or false.

5 MR. SAFAYENI: So what's the maximum number of true or
6 false questions an IBO could receive?

7 MR. SILVESTRI: I don't know.

8 MR. SAFAYENI: Could we turn to page 598, please. Do
9 you have that in front of you?

10 MR. SILVESTRI: Yes.

11 MR. SAFAYENI: If we look at the question at the
12 bottom, it says:

13 "Which statement below is not a marketing
14 regulation?"

15 MR. SILVESTRI: Yes.

16 MR. SAFAYENI: The correct answer says:

17 "If need be falsely identify yourself to the
18 customer and do not allow the customer sufficient
19 opportunity to read any of the documents
20 provided. Hmm, make this a little less obvious."

21 Do you see that?

22 MR. SILVESTRI: Yes.

23 MR. SAFAYENI: You'd agree with me that "hmm, make
24 this a little less obvious" is not something that somebody
25 taking the test should be able to see; correct?

26 MR. SILVESTRI: Yeah, I would agree. I would prefer
27 that that phrase not be there.

28 MR. SAFAYENI: If we turn to page 602. Do you have

1 that in front of you there, sir?

2 MR. SILVESTRI: Yes.

3 MR. SAFAYENI: The second question from the top says:

4 "Early termination charges will apply if consumer
5 moves from the premises to which the electricity
6 or gas is provided under the contract."

7 And the correct answer is stated as "false". Do you
8 see that?

9 MR. SILVESTRI: Yes.

10 MR. SAFAYENI: But the reality is that sometimes early
11 termination charges will apply and sometimes they won't
12 apply; right?

13 MR. SILVESTRI: If a customer moves?

14 MR. SAFAYENI: Correct.

15 MR. SILVESTRI: No, if a customer permanently moves
16 from their residence early termination charges will not
17 apply.

18 MR. SAFAYENI: But that's not what the question says,
19 it says if a customer moves from the premises to which
20 electricity or gas is provided under the contract.

21 MR. SILVESTRI: The answer is false.

22 MR. SAFAYENI: I understand what the answer is given,
23 but I am putting it to you that sometimes early termination
24 charges will apply.

25 MR. SILVESTRI: Not if a customer moves; that's not
26 correct.

27 MR. SAFAYENI: Okay. Well, let's go to your own terms
28 and conditions. Keep that tab open, if you could, but

1 could you also turn to the other binder that we have been
2 dealing with, Staff's binder, Exhibit KX1.2.

3 MR. SILVESTRI: Which tab?

4 MR. SAFAYENI: Tab 1B. And if we turn to section 7.
5 Do you have that in front of you there?

6 MR. SILVESTRI: Yes.

7 MR. SAFAYENI: So starting at the last -- the last
8 full sentence on the bottom of page 3, it says:

9 "Notwithstanding the foregoing, if the customer
10 is a low-volume consumer and the customer
11 permanently moves out of the premises to which
12 the energy is provided under the agreement, the
13 customer may without penalty cancel this
14 agreement."

15 The next sentence says:

16 "If the customer's premises are occupied for the
17 primary purpose of carrying on a business or if
18 the customer does not permanently reside in the
19 premises, the sale of the premises may not
20 qualify as a permanent move and may result in
21 early termination charges pursuant to section 8."

22 Then section 8, as you know, has a calculation for
23 that; right?

24 MR. SILVESTRI: That's correct.

25 MR. SAFAYENI: So returning to the question in front
26 of us, holding both of these documents open but returning
27 to the question that I took you to earlier at page 602,
28 you'd agree with me that, according to Planet Energy's

1 terms and conditions, whether an early termination charge
2 applies depends on the use of the premises; right?

3 MR. SILVESTRI: Well, the intent of this -- that
4 sentence, if -- we have had cases where a business is sold,
5 the business has not moved, it's just changed ownership,
6 and early termination charges will still apply. If a
7 business -- if a business is a low-volume customer and has
8 permanently moved, we would not charge early termination
9 charges.

10 MR. SAFAYENI: Right. So I think you just
11 acknowledged that sometimes a customer who moves from a
12 premises will incur early termination charges and sometimes
13 they won't.

14 MR. SILVESTRI: If a business changes ownership, the
15 business has not moved, Mr. Safayeni, just changed
16 ownership, the business still exists.

17 MR. SAFAYENI: Okay. But the last sentence of your
18 terms and conditions says that if the premises are occupied
19 for the purposes of carrying on a business or if a customer
20 doesn't permanently reside, then the sale may not qualify
21 as a permanent move and may result in early termination
22 damages. Right? So you'd agree with me that sometimes
23 moving from the premises will result in early termination
24 damages. That's what the last sentence of your terms and
25 conditions say, sir.

26 MR. SILVESTRI: Well, no, what it says is if the
27 customer does not permanently reside in the premises. So
28 if you don't permanently reside there, you can't move,

1 right? The sale of the premises may not qualify as a
2 permanent move. As I said for the third time now, if the
3 business is sold and/or change of ownership, that would not
4 qualify as a move. If the business is a low-volume
5 customer and actually moves, then that would qualify as a
6 permanent move.

7 MR. SAFAYENI: A consumer can move from a premises
8 that they own for purposes other than their primary
9 residence; correct? You'd agree with me?

10 MR. SILVESTRI: Well, if it's not their primary
11 residence and they moved? I don't understand.

12 MR. SAFAYENI: Yeah, I can own two houses, live in one
13 and move out of the other; right?

14 MR. SILVESTRI: Right. But when you move, presumably
15 you are moving from your primary residence.

16 MR. SAFAYENI: Well, that's a presumption that doesn't
17 appear in this question; correct? Explicitly.

18 MR. SILVESTRI: If one moves from their premises. I
19 don't know what you are doing, Mr. Safayeni. It seems to
20 me you are playing on words. If someone moves they move
21 from a primary residence. You don't move from a vacation
22 property, so...

23 MR. SAFAYENI: It doesn't say that in the question;
24 right?

25 MR. SILVESTRI: The question says "will apply if the
26 consumer moves from the premises."

27 MR. SAFAYENI: And your own terms and conditions
28 acknowledge that premises can be something other than a

1 primary residence, correct?

2 MR. SILVESTRI: It can be a business, that's correct.

3 MR. SAFAYENI: And it could be a property that's not a
4 primary residence, correct?

5 MR. SILVESTRI: A move?

6 MR. SAFAYENI: A premises. A premises could be a
7 property other than a primary residence, correct?

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

9 MR. SAFAYENI: So sometimes when you move from a
10 premises, you will incur early termination charges?

11 MR. SILVESTRI: Not if it's your permanent residence.

12 MR. SAFAYENI: Right. Turning the page to 603.

13 MR. SILVESTRI: 603?

14 MR. SAFAYENI: Just over the page.

15 MR. SILVESTRI: The terms and conditions, I don't see
16 the numbers here.

17 MR. SAFAYENI: Sorry, I am in the other book, tab 35.

18 MR. SILVESTRI: Oh, yes.

19 MR. SAFAYENI: It says: "If a residential electricity
20 customer cancels the contract after a ten-day cooling off
21 period, they may be subject to the following early
22 termination charges: \$50 for each year or partial year
23 remaining on the contract". Right?

24 MR. SILVESTRI: That's correct.

25 MR. SAFAYENI: And the correct answer is "true", as
26 indicated. But you'd agree with me that if a customer
27 consumes more than 15,000 kilowatt hours per year, then a
28 different calculation for cancellation fees applies,

1 correct?

2 MR. SILVESTRI: That's correct, and that's outlined in
3 our terms and conditions.

4 MR. SAFAYENI: I understand that. But it's not
5 outlined in the question?

6 MR. SILVESTRI: Not this question, no.

7 MR. SAFAYENI: And not any other question that I have
8 seen on the test.

9 MR. SILVESTRI: I don't see it here.

10 MR. SAFAYENI: And the 15,000 kilowatt hours per year
11 threshold is not mentioned anywhere in the training manual
12 either, right, sir?

13 MR. SILVESTRI: That's correct. There's just mention
14 of a larger residential or commercial account, not the
15 throughput.

16 MR. SAFAYENI: Not the threshold, right?

17 MR. SILVESTRI: Right.

18 MR. SAFAYENI: So for all contracts that were enrolled
19 through the online process with ACN, it was -- I just want
20 to be clear. It was a purely online process?

21 MR. SILVESTRI: That's right.

22 MR. SAFAYENI: Correct. And there were no physical
23 signatures required, right?

24 MR. SILVESTRI: That's correct.

25 MR. SAFAYENI: There was no physical documents
26 required to enroll, correct?

27 MR. SILVESTRI: You mean paper documents?

28 MR. SAFAYENI: Yes.

1 MR. SILVESTRI: That's correct.

2 MR. SAFAYENI: And I think you told us yesterday that
3 the majority of Planet Energy's customers are residential
4 and low-volume commercial accounts, right?

5 MR. SILVESTRI: That's correct.

6 MR. SAFAYENI: And those consumers enrolled online,
7 correct?

8 MR. SILVESTRI: That's correct.

9 MR. SAFAYENI: And large-volume commercial accounts, I
10 think you've told us, enrolled through a different process
11 where a customer would actually sign a contract, right?

12 MR. SILVESTRI: There were two avenues. They could
13 have gone through what they call a lead pass format, where
14 they would sign a paper contract, or they could have still
15 enrolled online as a large-volume contract.

16 MR. SAFAYENI: And what avenue did most large-volume
17 consumers take?

18 MR. SILVESTRI: They usually went the lead pass route.

19 MR. SAFAYENI: And that would have some sort of paper,
20 physical paper aspect to it?

21 MR. SILVESTRI: That's correct.

22 MR. SAFAYENI: And just to be clear, when you are
23 talking about large volume, you are talking about over
24 150,000 kilowatt hours of electricity per year?

25 MR. SILVESTRI: Yes, or greater than 50,000 cubic
26 meters of natural gas per year.

27 MR. SAFAYENI: You anticipated my next question.
28 Putting aside the four -- let's call them the large

1 commercial accounts discussed by Mr. MacArthur, for the
2 other contracts at issue in this case, Planet Energy
3 provided those consumers with welcome letters that were
4 sent by regular mail, correct?

5 MR. SILVESTRI: That's correct.

6 MR. SAFAYENI: And welcome e-mails attaching terms and
7 conditions, disclosure statements, correct?

8 MR. SILVESTRI: That's correct.

9 MR. SAFAYENI: And those documents reflect the
10 protections that these consumers were entitled to under the
11 ECPA and the regulation and the codes?

12 MR. SILVESTRI: That's correct.

13 MR. SAFAYENI: Because we are talking about low-volume
14 consumers here, correct?

15 MR. SILVESTRI: That's correct.

16 MR. SAFAYENI: If we could turn to -- Madam Chair, I
17 am in your hands, but this is a somewhat logical spot to
18 take a morning recess, if we wish. I can also push ahead.

19 MR. SILVESTRI: Sorry, Mr. Safayeni, can you repeat
20 the last -- were you talking large volume greater than 150,
21 or large volume between -- the large volume contracts,
22 being Mr. MacArthur's, that were greater than 150 kilowatt
23 hours per year?

24 MR. SAFAYENI: Yes. Mr. MacArthur identified four,
25 and those -- as we have talked amongst counsel, those have
26 been acknowledged to be over 150,000.

27 MR. SILVESTRI: Sorry, can you repeat your last
28 question? I was confused. I was thinking they were less

1 than 150,000. I thought you were referring to between 15
2 and 150; I apologize. If you don't mind repeating your
3 last question.

4 MR. SAFAYENI: I don't think my last question had
5 anything to do with that particular --

6 MR. SILVESTRI: Well, your question regarding the
7 code.

8 MR. SAFAYENI: Yes. I asked that apart from those,
9 you sent people the welcome letter and the e-mails and
10 those reflected the protections under the ECPA, the
11 regulations and the codes.

12 MR. SILVESTRI: Those customers also received welcome
13 letters and e-mails.

14 MR. SAFAYENI: Mr. MacArthur's four --

15 MR. SILVESTRI: Yeah, with the exception of [REDACTED]
16 [REDACTED] went through the lead pass format, and
17 the other customers went through the portal.

18 So I apologize; I was confused by your question.

19 MR. SAFAYENI: That's fair enough.

20 Sorry Madam Chair, I am in your hands.

21 MS. LONG: Why don't we take a break we will be back
22 at 11:15.

23 MR. SAFAYENI: Thank you.

24 --- Recess taken at 10:59 a.m.

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

26 MS. LONG: Please be seated.

27 Mr. Safayeni?

28 MR. SAFAYENI: Thank you, Madam Chair.

1 Mr. Silvestri, I think you told us yesterday that ACN
2 IBOs who are authorized to sell Planet Energy products have
3 to retake training and be retested annually.

4 MS. LONG: Sorry, Mr. Silvestri, I think I turn that
5 off when we leave, and so you have to turn it back on.

6 MR. SILVESTRI: Okay. Thank you.

7 That's correct, yes.

8 MR. SAFAYENI: And just to be clear, when you say
9 "retake training", you are talking about accessing the
10 training manual again?

11 MR. SILVESTRI: Yes, accessing the training manual and
12 reprinting the identification badges and business cards.

13 MR. SAFAYENI: That has to be done every year.

14 MR. SILVESTRI: That's correct. Or if the IBO is not
15 active within a 60-day period.

16 MR. SAFAYENI: Okay, we will get to that.

17 And just like the first time you accessed the training
18 manual, there's no obligation to do anything more than
19 access it; right? You can click on the link and then click
20 out. We talked about that yesterday; right?

21 MR. SILVESTRI: Yes, presumably they would have
22 reviewed it, the training manual.

23 MR. SAFAYENI: There's no requirement that that
24 happen; right? There's no way to ensure that that happens.

25 MR. SILVESTRI: Well, they -- once again, they attest
26 that they've reviewed the training manual prior to taking
27 the test.

28 MR. SAFAYENI: Apart from the attestation there is no

1 way to ensure somebody is doing anything more than clicking
2 on the training manual and then clicking out.

3 MR. SILVESTRI: That's correct.

4 MR. SAFAYENI: Could I direct you to Staff's book of
5 documents, for the record Exhibit KX1.2, tab 10B.

6 MR. SILVESTRI: The spreadsheet?

7 MR. SAFAYENI: Yes, the spreadsheet. And, again, this
8 was provided by Planet Energy in response to a request for
9 information from the Board during a compliance inspection;
10 right?

11 MR. SILVESTRI: That's correct.

12 MR. SAFAYENI: And it represents Planet's best and
13 most accurate information about the consumers whose
14 information is listed in this document; right?

15 MR. SILVESTRI: That's correct.

16 MR. SAFAYENI: Now, if we look at the contract dates
17 for Mr. MacArthur, he was enrolling consumers from April
18 2012 to June 2015, and apart from him and his then wife, he
19 was enrolling consumers from May 2012 to June 2015;
20 correct? MR. SILVESTRI: Yes.

21 MR. SAFAYENI: And that's a period of more than three
22 years; right?

23 MR. SILVESTRI: That's correct. I understand he took
24 the test or should have taken the test three times.

25 MR. SAFAYENI: Well, if he was being retested
26 annually, in fact, he would have to be retested four times,
27 right, before he started selling in May 2012; right?

28 MR. SILVESTRI: '12/'13, '13/'14, '14/'15, three

1 times.

2 MR. SAFAYENI: Well, I think you just listed four
3 dates, but let's just break it down. So he start --

4 MR. SILVESTRI: Three years --

5 MS. LONG: I am going to ask you each to speak one at
6 a time. It's very hard for the court reporter.

7 MR. SAFAYENI: So before he started selling in May
8 2012, you would agree with me that he would have had to
9 take a test; right?

10 MR. SILVESTRI: Yes.

11 MR. SAFAYENI: So that's test number 1. And you just
12 told me that he has to retake testing annually, so test
13 number 2 would be May 2013.

14 MR. SILVESTRI: Correct.

15 MR. SAFAYENI: Test number 3 would be May 2014.

16 MR. SILVESTRI: Correct.

17 MR. SAFAYENI: Test number 4 would be May 2015.

18 MR. SILVESTRI: Well, up until the expiry of his
19 previous test. I am not sure when he would have taken his
20 previous test, if he took it in July or not, or if there
21 was a period of non-activity. It would depend on when he
22 took his test.

23 MR. SAFAYENI: No, but you just told me that they have
24 to retake the test at least once a year; right?

25 MR. SILVESTRI: That's correct, but if they don't, if
26 they miss their anniversary date and they are not active,
27 they can perhaps take the test a couple months later. So I
28 don't know his period of activity or inactivity. You don't

1 necessarily have to take -- if you are not active you don't
2 have to take the test.

3 MR. SAFAYENI: I understand what you are saying. So
4 the four times assumes that he was active throughout the
5 period.

6 MR. SILVESTRI: I can't make that assumption. I don't
7 know when he was active.

8 MR. SAFAYENI: Okay. Well, sticking with the chart,
9 if we look at his degree of activity -- and maybe it's just
10 helpful to define some of these terms. So when you are
11 talking about inactivity, I --

12 MR. SILVESTRI: If you can see from --

13 MR. SAFAYENI: Sorry, let me just ask the question,
14 sir. When you are talking about inactivity, are you
15 talking about not selling any Planet Energy products?

16 MR. SILVESTRI: Not promoting products, yes.

17 MR. SAFAYENI: And not selling any ACN products at
18 all, or just Planet Energy products?

19 MR. SILVESTRI: I can only speak for Planet Energy
20 products.

21 MR. SAFAYENI: No, but I am asking you what inactivity
22 means, though. Does it mean that they are not involved in
23 ACN at all or is it specific to Planet Energy?

24 MR. SILVESTRI: It means that there are no customers
25 enrolled associated with his IBO number.

26 MR. SAFAYENI: Enrolled in a Planet Energy contract.

27 MR. SILVESTRI: Correct.

28 MR. SAFAYENI: So they could still be selling other

1 things.

2 MR. SILVESTRI: Yes, it's possible. As you can see,
3 it appears he wasn't active from August 2014 to April 2015.

4 MR. SAFAYENI: You are quite right. So let's go
5 through those periods. So from August 2012, when Helen
6 Bull was enrolled -- do you see that?

7 MR. SILVESTRI: Yes.

8 MR. SAFAYENI: Or actually, I guess more specifically
9 maybe [REDACTED] is the last contract in August -- do you
10 see that? Right below [REDACTED]? Do you see that?

11 MR. SILVESTRI: Yes, yes.

12 MR. SAFAYENI: Okay. So from that time to November
13 2013, August 2012 to November 2013, that's more than a
14 year.

15 MR. SILVESTRI: Yes.

16 MR. SAFAYENI: So that qualifies as a period of
17 inactivity.

18 MR. SILVESTRI: Correct.

19 MR. SAFAYENI: There should have been a test, right,
20 according to you?

21 MR. SILVESTRI: Yes.

22 MR. SAFAYENI: And we can agree -- I think you already
23 said this, but let's just --

24 MR. SILVESTRI: But I don't know when he would have --
25 you know, if he wasn't active after August 2012, like I
26 said, he wouldn't necessarily have to write the test in
27 August 2013. He could have written it in November 2013
28 prior to [REDACTED] enrolling.

1 MR. SAFAYENI: Fair enough. My simple point right now
2 is simply that he would have had to write the test at some
3 point before enrolling [REDACTED], according to the 60-day
4 rule.

5 MR. SILVESTRI: That would be correct, yes.

6 MR. SAFAYENI: And just to be clear for the record,
7 because there's numerous [REDACTED] contracts, I am talking
8 about the [REDACTED] contract in November 2013; right?

9 MR. SILVESTRI: Correct.

10 MR. SAFAYENI: And if we go down the list a little bit
11 more, we see from November 2013 to January 31st, 2014,
12 again, that's a period of more than 60 days; right?

13 MR. SILVESTRI: Uh... Yes.

14 MR. SAFAYENI: And so, again, there should have been a
15 test before -- at some point before Mr. MacArthur was able
16 to enroll the January 2014 contract for [REDACTED];
17 right?

18 MR. SILVESTRI: If he did, if that would have been the
19 case, I don't know the exact dates.

20 MR. SAFAYENI: I am not asking for when -- sorry, go
21 ahead.

22 MR. SILVESTRI: If that's the case, if he was inactive
23 for 60 days, the system should have picked him up, yes.

24 MR. SAFAYENI: Well, you say if that's the case. But
25 it's a calendar, so we can determine whether it's the case.
26 It's November 27, 2013, to January 31, 2014, and we agreed
27 that's more than 60 days, right?

28 MR. SILVESTRI: That's correct.

1 MR. SAFAYENI: So there should have been a test.

2 MR. SILVESTRI: There should have been.

3 MR. SAFAYENI: Okay. Going down a little bit further,
4 from February 10, 2014, to May 27, 2014; again, a period of
5 more than 60 days, correct?

6 MR. SILVESTRI: Yes. What we don't know, by the way,
7 is whether any customers -- it's quite possible that people
8 would have enrolled with Mr. MacArthur and cancelled or
9 been rejected; we don't have that data here. So if that
10 would have happened, then he would not have -- then the
11 system would not have picked him up as being inactive.

12 You are assuming these are just the contracts that Mr.
13 MacArthur -- associated with Mr. MacArthur that actually
14 flowed. So if there were contracts that were enrolled that
15 were rejected, or that didn't flow, or that were not
16 cancelled, that's not illustrated here.

17 MR. SAFAYENI: Well, in fact, contracts that didn't
18 flow are captured on this chart. If we look at --

19 MR. SILVESTRI: No, no, that's not correct. All these
20 contracts would have at one time flowed. They may have
21 dropped or cancelled, but contracts that Mr. MacArthur --
22 that were associated with Mr. MacArthur that would have
23 enrolled that never flowed for whatever reason would not be
24 on this chart.

25 MR. SAFAYENI: So if we just follow along for the
26 February 10th, 2014, contract of [REDACTED], do you see
27 that there?

28 MR. SILVESTRI: Yes.

1 MR. SAFAYENI: I recognize it's challenging to follow
2 this chart all the way across. But if you do follow it
3 across, you will see that flow date and drop date are both
4 N/A, correct?

5 MR. SILVESTRI: Flow dates?

6 MR. SAFAYENI: Well, perhaps we can just do it this
7 way, sir. If you just look in the column of flow date and
8 drop date, you will see entries that are N/A. I am not
9 sure it matters much who the customers are.

10 MR. SILVESTRI: Yeah, that just means not available,
11 we didn't have the information available. But my
12 understanding is all of these contracts would have flowed
13 at one point in time. That's what we are trying to answer.

14 MR. SAFAYENI: We have no information before us to
15 suggest that Mr. MacArthur did enroll contracts that either
16 didn't flow or were dropped, right?

17 MR. SILVESTRI: No, we were not asked to provide that
18 information.

19 MR. SAFAYENI: That information is within the
20 knowledge of Planet Energy, correct?

21 MR. SILVESTRI: It would be in our system, yes.

22 MR. SAFAYENI: And from August 2014, if we follow down
23 the chart to August 20th, 2014, --

24 MR. SILVESTRI: Yes.

25 MR. SAFAYENI: -- where there's a numbered company, do
26 you see that?

27 MR. SILVESTRI: Oh, yes, [REDACTED]

28 MR. SAFAYENI: Correct, yes. And the next entry is

1 April 30th, 2015.

2 MR. SILVESTRI: Um-hmm.

3 MR. SAFAYENI: Again, that's a period of more than
4 eight months, right?

5 MR. SILVESTRI: Yes. What I can tell you in the case
6 of Mr. Baluke and this numbered company --

7 MR. SAFAYENI: My question, sir, is simply whether
8 another test should have been completed because we have
9 more than 60 days between August 20th, 2014, and April
10 30th, 2015.

11 MR. SILVESTRI: Not in this case; that's what I was
12 trying to tell you. In the case of [REDACTED], he had
13 called himself and we had agreed that he could terminate
14 his existing contracts and enter into new contracts. So
15 when he re-enrolled, he did not re-enroll through the ACN
16 portal. He enrolled through our internal processes, and
17 the large-volume account being a large-volume account.

18 MR. SAFAYENI: I am not sure how that helps with the
19 60-day period. Even if we take [REDACTED] out of the
20 equation and move to the next contract up -- for example,
21 for [REDACTED] -- in any event, it would be more than 60
22 days between that contract and [REDACTED] in April of
23 2015, correct?

24 MR. SILVESTRI: April 2015, and his previous contract
25 would have been -- I am not sure I understand your
26 question.

27 MR. SAFAYENI: Well, the information in the chart,
28 which is the best information that you provided to the

1 Board, indicates that there was a contract enrolled by Mr.
2 MacArthur on August 20th, 2014. That's what the chart
3 says, right?

4 MR. SILVESTRI: Contracts associated with Mr.
5 MacArthur.

6 MR. SAFAYENI: Okay. However we want --

7 MR. SILVESTRI: Not with Mr. MacArthur; there is a big
8 difference.

9 MR. SAFAYENI: Keep your finger there, but can you
10 turn to tab 8B, please?

11 MR. SILVESTRI: Yes.

12 MR. SAFAYENI: Sorry, just give me one moment. It's
13 tab 8A, actually. And if you look at page 3, appendix A --

14 MR. SILVESTRI: Yes.

15 MR. SAFAYENI: -- about a third of the way down the
16 page, it says: "You are required to provide the following
17 no later than May 24, 2016: total number of contract
18 enrolments for gas and electricity consumers for each sales
19 person listed at Appendix B," correct?

20 MR. SILVESTRI: Yes.

21 MR. SAFAYENI: And that's what you provided in the
22 chart that we are looking at together at tab 10B, correct?

23 MR. SILVESTRI: Yes.

24 MR. SAFAYENI: And Mr. MacArthur's evidence was clear
25 that he personally enrolled --

26 MR. ZACHER: Hold on, I just want to -- I think Mr.
27 Safayeni is referring to -- and I may be wrong, I
28 apologize, but I think he is referring to the first notice,

1 not the notice that was replaced, and the information
2 request that replaced the first information -- the initial
3 information request.

4 MR. SAFAYENI: I am, and thank you to my friend for
5 that. I don't think the wording I took Mr. Silvestri to is
6 any different, apart from the due date. Right?

7 MS. LONG: Do you want to look at that, Mr. Zacher?

8 MR. ZACHER: Perhaps he can just re-ask the question,
9 because we are looking at a document that was superseded by
10 a subsequent Board notice and information request, just to
11 be clear.

12 MR. SAFAYENI: Okay. If you turn to tab 8B, Mr.
13 Silvestri.

14 MR. SILVESTRI: Yes.

15 MR. SAFAYENI: And we look at the same page 3,
16 appendix A, it says: "You are required to provide the
17 following no later than June 6, 2016," and then it has the
18 exact same language I just read to you, "provide the total
19 number of contract enrolments for gas and electricity
20 consumers for each of ACN Planet Energy sales person listed
21 at Appendix B," correct?

22 MR. SILVESTRI: Correct.

23 MR. SAFAYENI: That's the request you received,
24 correct?

25 MR. SILVESTRI: Yes.

26 MR. SAFAYENI: And that's the question responded to
27 through the chart in 10B, correct?

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

1 MS. LONG: So I want to be clear here. So this
2 spreadsheet that we are looking at that Mr. Safayeni's
3 taken you to, this is a complete list of all the contracts.

4 MR. SILVESTRI: Well, it's a complete list of the
5 contracts that flowed, Madam Chair.

6 MS. LONG: That flowed or that were entered into?
7 Because there seems to be a difference there. If I am
8 looking at this information request:

9 "Provide the total number of contract enrollments
10 for gas and electricity consumers for each of the
11 ACN Planet Energy salespersons listed at Appendix
12 B."

13 MR. SILVESTRI: For example, Madam Chair, if a
14 contract were to be rejected, I don't think we would have
15 included it, to the best of my knowledge.

16 MS. LONG: Okay, rejected. Is that -- that's the only
17 distinction?

18 MR. SILVESTRI: Yes, if it was rejected and didn't
19 flow, I don't think we would have included it in the
20 spreadsheet. We took this question to mean, you know, when
21 you look at its in its entirety, enrollment, flow dates,
22 drop date, utility name.

23 MR. SAFAYENI: So there may have been contracts
24 enrolled, you are telling us now, that were not included on
25 this chart?

26 MR. SILVESTRI: Not enrolled. If it's enrolled it
27 would have flowed. When we think of enrollment we think of
28 a contract that would have gone through the proper

1 processes and would have flowed.

2 MR. SAFAYENI: Sorry, I want to be very clear about
3 the distinct stages here, because I think we are conflating
4 different issues. Enrollment I am going to define to mean
5 the person who fills out the online process and clicks "I
6 agree, I accept" at the end, okay?

7 MR. SILVESTRI: Okay.

8 MR. SAFAYENI: That can happen without energy flowing.
9 In fact, there's a delay built in between enrollment online
10 and when the energy starts to flow; correct?

11 MR. SILVESTRI: That's correct.

12 MR. SAFAYENI: So somebody can be enrolled online and
13 later the energy may or may not flow; correct?

14 MR. SILVESTRI: That's correct.

15 MR. SAFAYENI: And you were asked by the Board to
16 provide information for all the enrollments associated with
17 two salespeople that we just took you to that request;
18 correct?

19 MR. SILVESTRI: That's correct.

20 MR. SAFAYENI: And you provided that information to
21 the best of Planet Energy's knowledge, or were certain
22 enrollments omitted from the chart in 10B? I would like
23 some clarity on that issue.

24 MR. SILVESTRI: Well, my answer is, Mr. Safayeni, I
25 just don't know. I don't know, and I don't think we would
26 have included an account that would have been enrolled
27 through the ACN portal but was not successfully enrolled in
28 our system.

1 MR. SAFAYENI: Even though you were requested to
2 include all enrollments.

3 MR. SILVESTRI: Well, like I say, we look at the
4 entirety of the question. We took this to mean enrollments
5 that went through a system that flowed. We don't consider
6 an account that never flowed to be enrolled.

7 MR. SAFAYENI: Can you look at the fifth, sixth, and
8 seventh entries on the chart.

9 MR. SILVESTRI: Fifth, sixth, and seventh.

10 MR. SAFAYENI: Back the chart -- just to be clear for
11 the record, we are back to the chart at tab 10B.

12 MR. SILVESTRI: Yes.

13 MR. SAFAYENI: So these contracts were entered into in
14 March of 2015, right?

15 MR. SILVESTRI: Correct.

16 MR. SAFAYENI: And you see flow date, drop date, and
17 it says "N/A, N/A"; right?

18 MR. SILVESTRI: Yes.

19 MR. SAFAYENI: And this information, this chart, was
20 provided to the Board in June of 2016, I believe; correct?

21 MR. SILVESTRI: Correct.

22 MR. SAFAYENI: More than a year after the contracts
23 were entered into; right?

24 MR. SILVESTRI: That's correct.

25 MR. SAFAYENI: How is it possible that the N/A, N/As
26 in the flow-date and drop-date column represent anything
27 other than the fact that these contracts simply did not
28 flow?

1 MR. SILVESTRI: We may not have the available actual
2 dates from the utility when they actually started flowing.

3 MR. SAFAYENI: 15 months after the fact?

4 MR. SILVESTRI: Well, the data is there or it's not
5 there, sir, so we would put in the data that we had
6 available.

7 MR. SAFAYENI: Do you have any actual knowledge about
8 what investigative work went into filling out this chart,
9 Mr. Silvestri?

10 MR. SILVESTRI: Compliance group filled out this
11 chart, I did not fill it out.

12 MR. SAFAYENI: And so you don't know for a fact what
13 the N/As in the flow-date and drop-date column mean, right?
14 You are making an educated guess.

15 MR. SILVESTRI: I'm presuming that the data is not
16 available in our system.

17 MR. SAFAYENI: It's presumption, it's not knowledge;
18 right?

19 MR. SILVESTRI: It's presumption, yes.

20 MR. SAFAYENI: Mr. MacArthur testified that he was
21 only tested twice during his time as an ACN IBO. You don't
22 have any direct knowledge of facts that would contradict
23 that evidence; correct?

24 MR. SILVESTRI: I believe our records show -- I don't
25 have them with me -- that he was tested three times.

26 MR. SAFAYENI: Those records have not been produced as
27 part of this proceeding; right?

28 MR. SILVESTRI: I don't think so.

1 MR. SAFAYENI: And apart from the documents that
2 you're talking about and that we haven't seen, you don't
3 have any direct knowledge yourself; right?

4 MR. SILVESTRI: I did ask the question how many times
5 he had been tested. The reply was he was three times.

6 MR. SAFAYENI: And that's a reply from somebody else
7 advising you.

8 MR. SILVESTRI: That's correct.

9 MR. SAFAYENI: If we go back to Staff's documents,
10 Exhibit KX1.4, tab 15. This is back to the Ernst & Young
11 report. Do you have that in front of you?

12 MR. SILVESTRI: Yes.

13 MR. SAFAYENI: Page 8 of that report. Do you have
14 that in front of you, sir?

15 MR. SILVESTRI: Yes.

16 MR. SAFAYENI: Okay. Point 5, "tracking of inactive
17 status of salesperson and verification representatives".
18 It says:

19 "E&Y was informed that ACN locks the
20 salesperson's ID in the order entry system if he
21 or she remains inactive status for a continuous
22 period of 60 days or more. However, there were
23 no controls in place at Planet Energy to ensure
24 that this control was working effectively."

25 Do you see that?

26 MR. SILVESTRI: Yes.

27 MR. SAFAYENI: And so you were aware that this was an
28 observation made by E&Y back at the time of the audit;

1 correct?

2 MR. SILVESTRI: Yes, it was also a question I asked of
3 former owners, if it was corrected. They told me it was.
4 And it's also corrected in our system.

5 MR. SAFAYENI: Do you have any information on what
6 specific steps were taken to correct it, or were you simply
7 advised that it had been dealt with?

8 MR. SILVESTRI: I was advised that it was dealt with.
9 I definitely know in our system as of the first or second
10 quarter of 2013 that's definitely an edit check in our
11 system.

12 MR. SAFAYENI: Mr. Nahid's evidence was that he only
13 took the online test once. You heard him say that, Mr.
14 Silvestri?

15 MR. SILVESTRI: Yes, our records show that he took it
16 twice.

17 MR. SAFAYENI: And again, those records are not before
18 us today?

19 MR. SILVESTRI: I would think so. I am not positive.

20 MR. SAFAYENI: Sorry, you think the records are before
21 us today?

22 MR. SILVESTRI: I don't think the record of the first
23 test is before you. I believe he also testified that he
24 was an IBO back as far as 2009.

25 MR. SAFAYENI: Let's go back to tab 10B, the big
26 chart. And we see from the chart that Mr. Nahid started
27 enrolling consumers as of late February 2015; correct?

28 MR. SILVESTRI: That's correct.

1 MR. SAFAYENI: And had Mr. Nahid enrolled consumers
2 during his previous stint as an IBO, you would have
3 provided that information in the chart; correct?

4 MR. SILVESTRI: If we had the information. We didn't
5 have it available at the time we prepared his charts.
6 Apparently -- apparently he was registered under a
7 different IBO number back in 2009.

8 MR. SAFAYENI: And there was nothing preventing Planet
9 Energy from looking up that IBO number; correct?

10 MR. SILVESTRI: Well, we didn't have it available
11 until later.

12 MR. SAFAYENI: Well, you had the salesperson's name,
13 correct?

14 MR. SILVESTRI: Yes.

15 MR. SAFAYENI: And --

16 MR. SILVESTRI: We didn't have, we didn't have --

17 MR. SAFAYENI: And the system didn't allow you to
18 search for all IBO numbers associated with the
19 salesperson's name?

20 MR. SILVESTRI: Our system -- we didn't have records
21 back that far to 2009 in our system.

22 MR. SAFAYENI: So that's a different issue than the
23 IBO number issue.

24 MR. SILVESTRI: Well, both. We didn't have the
25 information and we didn't have his original IBO number.
26 And in 2009, I don't believe testing was a requirement for
27 a salesperson.

28 MR. SAFAYENI: Okay. If we go to Staff Tab 1 --

1 MR. SILVESTRI: Tab 1?

2 MR. SAFAYENI: Yes. And if we go to page 4, we are
3 looking at the consumer complaint response associated with
4 Ms. Andrassin, right?

5 MR. SILVESTRI: Yes.

6 MR. SAFAYENI: And if you go to page 4, under "agent
7 tracking" ...

8 MR. SILVESTRI: Yes.

9 MR. SAFAYENI: Do you see that?

10 MR. SILVESTRI: Yes.

11 MR. SAFAYENI: First of all, can you confirm with me
12 that in information in this section is filled out by Planet
13 Energy?

14 MR. SILVESTRI: Yes, it was -- the testing...

15 MR. SAFAYENI: At the end of the document, it says --

16 MR. SILVESTRI: The agent tracking section?

17 MR. SAFAYENI: Yes.

18 MR. SILVESTRI: I don't know. I don't know if this
19 actual format was filled out. We would have given the
20 information to the Board Staff.

21 MR. SAFAYENI: And it would have been Mr. Small,
22 correct?

23 MR. SILVESTRI: Correct.

24 MR. SAFAYENI: And just like when you're responding to
25 a request for information, Planet Energy understands that
26 it has a duty to give complete, truthful and accurate
27 information when filling out information in the CCRs,
28 correct?

1 MR. SILVESTRI: That's correct.

2 MR. SAFAYENI: And it takes that obligation seriously
3 and strives to meet it?

4 MR. SILVESTRI: Yes, of course.

5 MR. SAFAYENI: And if we look at the date of initial
6 training for Mr. Nahid, you'll see that it says April 17th,
7 2015, correct?

8 MR. SILVESTRI: Correct.

9 MR. SAFAYENI: And that would be after he started
10 selling contracts, according to the chart in 10B, which
11 shows his first enrolment in February of 2015, correct?

12 MR. SILVESTRI: What tab is the chart in again?

13 MR. SAFAYENI: 10B.

14 MR. SILVESTRI: Is that Mr. Nahid's ex-wife? If it
15 was a self-enrolment, then there would be no training or
16 testing required.

17 MR. SAFAYENI: No, and that's fair enough. Let's move
18 past the first four to the fifth entry, dated March 3rd,
19 2015.

20 MR. SILVESTRI: Okay.

21 MR. SAFAYENI: So that's neither Mr. Nahid nor a
22 spouse or ex-spouse of his, okay. And it still is before
23 the training date reflected on the CCR that we just went
24 to, right?

25 MR. SILVESTRI: Give me one second. Yes, that appears
26 to be the case.

27 MR. SAFAYENI: And if we -- it's easiest if you just
28 maybe keep your thumb at the chart, but go back to tab 1,

1 if you can, back to the CCR, back to page 4.

2 MR. SILVESTRI: Yes.

3 MR. SAFAYENI: It says: "Date agent active - April 17,
4 2015." Do you see that?

5 MR. SILVESTRI: Yes.

6 MR. SAFAYENI: And I assume that refers to the date on
7 which the agent becomes authorized to enroll consumers into
8 Planet Energy contracts, right?

9 MR. SILVESTRI: That should be the case, but it looks
10 like it's an error; we'd have to check.

11 MR. SAFAYENI: Right. And you say that because again,
12 it's after the date where the enrolments started, according
13 to the chart at 10B, right?

14 MR. SILVESTRI: That's correct.

15 MR. SAFAYENI: I gather that Planet Energy got the
16 information associated with the date of initial training
17 and the date agent active from ACN through ACN's systems.
18 Am I right about that?

19 MR. SILVESTRI: That's correct.

20 MR. SAFAYENI: And Planet Energy took that information
21 at face value, correct?

22 MR. SILVESTRI: That's correct.

23 MR. SAFAYENI: And even when it doesn't appear to make
24 any sense, as in Mr. Nahid's case, right?

25 MR. SILVESTRI: Well, it's an error. It appears to be
26 an error, Mr. Safayeni.

27 MR. SAFAYENI: Well, there is no further investigation
28 that was conducted on Planet Energy's part, right?

1 MR. SILVESTRI: Not to my knowledge, no.

2 MR. SAFAYENI: And while we are on this page at tab 1,
3 where it says "agent trained by a third party agency", do
4 you see that in the agent tracking section near the bottom?

5 MR. SILVESTRI: Yes.

6 MR. SAFAYENI: I gather that's a reference to ACN?

7 MR. SILVESTRI: Well, I don't think we would -- I
8 think that's a Board Staff comment, not from us.

9 MR. SAFAYENI: I think you told me earlier that the
10 information in this section was provided by Mr. Small on
11 behalf of Planet Energy, right? We agreed on that earlier.

12 MR. SILVESTRI: I didn't see that at the bottom, third
13 party agent -- I thought you were referring to the agent on
14 top, the agent information.

15 MR. SAFAYENI: I was referring to the section. But is
16 your evidence now that "third party agency" is something
17 that Board Staff put in?

18 MR. SILVESTRI: Well, we would say ACN. I am not
19 aware of if we would say ACN or third party agency. I
20 would think we would have said ACN.

21 MR. SAFAYENI: And ACN is a third party, it's not
22 Planet Energy?

23 MR. SILVESTRI: That's correct.

24 MR. SAFAYENI: I think you told us yesterday that the
25 global adjustment is a confusing topic for most people. Do
26 you remember saying that?

27 MR. SILVESTRI: Yes.

28 MR. SAFAYENI: And would you agree with me that most

1 consumers don't have a full understanding of what it is, or
2 exactly how it works?

3 MR. SILVESTRI: I would agree. The Auditor General
4 and even the Premier herself thought that as well.

5 MR. SAFAYENI: And most consumers may not even know
6 anything about the global adjustment at all?

7 MR. SILVESTRI: Correct.

8 MR. SAFAYENI: You told us yesterday that the rates
9 charged by utilities to consumers are a blend of the global
10 adjustment rate and the rate for electricity right.

11 MR. SILVESTRI: If the customer is on a time-of-use or
12 regulated price plan, yes.

13 MR. SAFAYENI: And for the rates and electricity
14 packages that are offered by Planet Energy, they don't
15 include the global adjustment?

16 MR. SILVESTRI: That's correct.

17 MR. SAFAYENI: Right. It's broken out as a separate
18 item on the bill.

19 MR. SILVESTRI: That's correct, and we outline that in
20 numerous places in the enrolment process.

21 MR. SAFAYENI: You will agree with me it's misleading
22 to compare the RPP or time-of-use rates that blend in the
23 global adjustment with the fixed rate provided by a
24 retailer like Planet Energy, that do not include the global
25 adjustment, correct?

26 MR. SILVESTRI: Yes, if someone were to compare time-
27 of-use rate -- well, it depends. It sounds as if it's
28 explained correctly, that the time-of-use rate includes the

1 global adjustment, and Planet Energy's price does not
2 include the global adjustment. If that is explained, I
3 think that would be a fair comparison.

4 MR. SAFAYENI: Okay, that's fair enough. But if that
5 piece you just mentioned at end was taken out and we are
6 simply comparing time-of-use rates under the RPP on the one
7 hand and the fixed rate, 4.99 or whatever it may be, on the
8 other hand, that comparison is not a fair one.

9 MR. SILVESTRI: Without any mention of the global
10 adjustment, that would not be a fair comparison.

11 MR. SAFAYENI: I think you said yesterday it's not an
12 apples-to-apples comparison, right?

13 MR. SILVESTRI: That's correct.

14 MR. SAFAYENI: You'll agree with me, sir, that it
15 would be false and misleading to tell a consumer that the
16 global adjustment would average out to \$0.05, or frankly
17 any amount over a given number of years, correct?

18 MR. SILVESTRI: Yeah, I would think it would be unfair
19 to state the forecast of the global adjustment, but to
20 outline what the historical global adjustment rates were, I
21 think, is a fair point.

22 MR. SAFAYENI: Right. But in terms of predicting
23 future rates, it's false and misleading to do so; right?

24 MR. SILVESTRI: That's correct.

25 MR. SAFAYENI: If we go to Staff's documents, Exhibit
26 KX1.2, at tab 22.

27 MR. SILVESTRI: Yes.

28 MR. SAFAYENI: So if we look at this before and after

1 bill comparison, the overall difference between the amount
2 due on the bill marked before and the amount due on the
3 bill marked after is just under \$90; right?

4 MR. SILVESTRI: 196 less 108, whatever that is. Is
5 that what you are referring to?

6 MR. SAFAYENI: Yes, it's around \$90; right? Can we
7 say that?

8 MR. SILVESTRI: If you say so.

9 MR. SAFAYENI: Well, you are the economics major, Mr.
10 Silvestri.

11 MR. SILVESTRI: I need a calculator.

12 MR. SAFAYENI: Okay. The "after" bill starts with a
13 balance forward credit of \$66.26; do you see that on the
14 bill there, sir?

15 MR. SILVESTRI: Yes.

16 MR. SAFAYENI: And if we turn to the "before" bill,
17 there is no credit; right?

18 MR. SILVESTRI: Well, the tele-payments, \$230 credits?
19 I don't know what that is. September 19th.

20 MR. SAFAYENI: Well, that seems to be paying the
21 previous bill of 229.67. There is no balance-forward
22 credit reflected on the "before" bill; right?

23 MR. SILVESTRI: Correct.

24 MR. SAFAYENI: And you'd agree with me that unless a
25 consumer understands that the "after" bill has a \$66 credit
26 and the "before" bill has no such credit, comparing these
27 before and after bills is a misleading comparison; right?

28 MR. SILVESTRI: If you just looked at the difference

1 in the totals, but if you looked at the difference in the
2 components you can see an apples-to-apples comparison since
3 the "before" bill is a customer supplied by JustEnergy, so
4 the JustEnergy supply price is illustrated, the global
5 adjustment is illustrated, the regulatory charges.

6 So I would agree if you just looked at the totals, but
7 if you looked at the components that would be a fair
8 comparison.

9 MR. SAFAYENI: Right. So if you're looking -- when
10 you say "the totals", you are talking about if you're just
11 flipping back and forth between the amount dues at the
12 bottom, right?

13 MR. SILVESTRI: If that's all somebody did, it
14 wouldn't be a fair comparison.

15 MR. SAFAYENI: Okay. And you mentioned that both
16 bills are from retailers; right?

17 MR. SILVESTRI: They appear to be. I don't know who
18 the second bill is from.

19 MR. SAFAYENI: Well, it appears that the second bill
20 is from Planet Energy.

21 MR. SILVESTRI: I don't see a note here saying
22 "supplied by Planet Energy". It looks -- it's a retailer
23 bill.

24 MR. SAFAYENI: Well, if you look, sir, if you follow
25 your eyes down from where it says "after", you will see it
26 says "energy provided through PlanetEnergy (Ontario) Corp."

27 MR. SILVESTRI: Oh, I see. I didn't see that, sorry.

28 MR. SAFAYENI: But in any event, my point right now is

1 simply that both bills appear on their face to be from
2 retailers; right?

3 MR. SILVESTRI: Yes.

4 MR. SAFAYENI: So this comparison would not
5 demonstrate the difference between what someone might pay
6 if they were an RPP customer and they switched to a
7 retailer.

8 MR. SILVESTRI: That's correct. It would be a
9 difference in the components between being supplied by two
10 different retailers.

11 MR. SAFAYENI: Yesterday you took us to a slide in the
12 training manual that explicitly tells IBOs, do not promote
13 saving; do you remember that?

14 MR. SILVESTRI: That's correct.

15 MR. SAFAYENI: I don't think we have to go back to
16 that slide. But you would agree with me the reason that
17 message is sent by Planet Energy is because not every
18 customer will necessarily save money if they switch to
19 Planet Energy; correct?

20 MR. SILVESTRI: That's correct --

21 MR. SAFAYENI: It's not --

22 MR. SILVESTRI: -- the promotion is to fix in the cost
23 of the commodity and not to guarantee any savings, because
24 we just -- we don't know what the forecasted utility prices
25 will be.

26 MR. SAFAYENI: And so you'd agree with me it's false
27 and misleading to tell customers that they will save money
28 if they switch to Planet Energy?

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

2 MR. SAFAYENI: The online enrollment system that we
3 have talked about was designed so that a prospective
4 customer could decide by themselves and for themselves
5 whether to enroll with Planet Energy.

6 MR. SILVESTRI: That's correct.

7 MR. SAFAYENI: And the idea was, I think, as you have
8 described it, that prospective customers would log on, they
9 would go through the enrollment process by themselves,
10 without the ACN IBO even being in the room.

11 MR. SILVESTRI: That was our policy, yes.

12 MR. SAFAYENI: And certainly IBOs were not supposed to
13 be the ones logging on and signing up prospective
14 customers?

15 MR. SILVESTRI: That's correct.

16 MR. SAFAYENI: And in fact, again, I don't think we
17 have to take you there, but yesterday we went to the slide
18 that says under no circumstances are you permitted to enter
19 a customer's order on their behalf or be present at the
20 time the customer enters their own order. Doing so is a
21 very serious offence. You remember that slide from the
22 training manual?

23 MR. SILVESTRI: Yes, I do.

24 MR. SAFAYENI: And that message is included there
25 because Planet Energy understood having IBOs enroll
26 consumers, apart from themselves or their spouses if they
27 were living together at the time, was against the law;
28 right?

1 MR. SILVESTRI: Well, I don't know if it's against the
2 law. I am not a lawyer. The Energy Consumer Protection
3 Act does allow for authorized persons, for account holder
4 to authorize someone to enroll, it just wasn't our policy.
5 Mr. Zacher can -- and Ms. Wood can argue whether it's
6 against the law.

7 MR. SAFAYENI: Well, it says in your training manual
8 that doing so is a very serious offence, right?

9 MR. SILVESTRI: Correct.

10 MR. SAFAYENI: So what -- so that --

11 MR. SILVESTRI: That's the message we wanted to give
12 them.

13 MR. SAFAYENI: -- "an offence" suggests that it is
14 contrary to laws or rules; correct?

15 MR. SILVESTRI: Well, it's an offence in the sense
16 that they are attesting that they are not present when the
17 customer enrolls and they will not enroll the customer on
18 their own, so it's an offence to make a false statement and
19 then do otherwise.

20 MR. SAFAYENI: So your understanding of "offence" in
21 the training manual is that it's an offence in that it goes
22 contrary to the attestation; is that your evidence, sir?

23 MR. SILVESTRI: Yes.

24 MR. SAFAYENI: Sir, are you suggesting that if a
25 consumer tells an IBO, "You go ahead and enroll me, I
26 authorize you," that it is permissible for the IBO to go
27 ahead and enroll that consumer? Is that Planet Energy's
28 position in this proceeding?

1 MR. SILVESTRI: It's not our --

2 MR. SAFAYENI: Sir, answer -- don't look at your
3 lawyer. Answer the question, please.

4 MR. SILVESTRI: Well, I will look at who I --

5 MR. ZACHER: I think Mr. --

6 MR. SAFAYENI: This is highly improper.

7 MR. ZACHER: It's not highly improper. Mr. Safayeni
8 is asking Mr. Silvestri whether certain behaviour or
9 conduct is permissible at law, and --

10 MS. LONG: Well, I think he has moved off that, Mr.
11 Zacher. I think the question he has asked is whether or
12 not it's Planet Energy's position that a customer can
13 authorize an IBO to enter into a contract for them. I
14 think that's a fair question. Do you have an issue with
15 that? I mean, obviously he is not a lawyer, he can't
16 interpret what is permissible at law, but I think he can
17 answer what Planet Energy's position is, whether or not
18 that violates your policies. Do you want Mr. Safayeni to
19 rephrase --

20 MR. SILVESTRI: I can answer that as far as policy and
21 I can answer that as far as my understanding of the Energy
22 Consumer Protection Act.

23 MS. LONG: Do you want him to repeat the question or
24 do you understand what the question is?

25 MR. SILVESTRI: Yes, please, Madam Chair.

26 MS. LONG: Okay.

27 MR. SAFAYENI: Okay. So my question is, is it Planet
28 Energy's position that if a consumer or prospective

1 consumer tells an IBO, "You go ahead and you enroll me, I
2 authorize you," that that is acceptable conduct?

3 MR. SILVESTRI: I will answer it this way: As far as
4 our policy, it is contrary to our policy to have done that.
5 As far as breaching the regulatory requirement, I believe
6 it's section 6 of the Energy Consumer Protection Act
7 regulations does allow an account holder to authorize an
8 IBO.

9 In cases where we have seen that, such as a son or
10 daughter enrolling their parents, you know, we have allowed
11 that if the account holder has in fact authorized the IBO
12 to do so.

13 But it is contrary to our policy. As far as our
14 position in this proceeding, if it is not contrary to
15 breaching the regulation or law, then we feel that we have
16 not breached such.

17 MR. SAFAYENI: So your position, just so I make sure,
18 is that an IBO, who is acting as an agent on behalf of
19 Planet Energy, could also effectively act as an agent on
20 behalf of a consumer and consummate a transaction as both
21 an agent of Planet Energy and an agent of the consumer. Is
22 that your position?

23 MR. ZACHER: I object to that a question. The
24 question of agency is a legal issue, and what Mr. Silvestri
25 did is to reference a provision of the Energy Consumer
26 Protection Act. We can have an argument at the end of the
27 day as to whether, you know, a relationship of agency was
28 created. But I don't think he can answer that question.

1 He can answer what Planet Energy's policies are, and I
2 think he has done that. But that's not a proper question
3 for Mr. Silvestri to answer.

4 MR. SAFAYENI: So my friend's position seems to be
5 that Mr. Silvestri can give opinions on the ECPA and the
6 law when it suits him, and when I ask the question, it
7 becomes objectionable.

8 MR. ZACHER: It's the reason I objected in the first
9 place because I knew we were probably heading in that
10 direction. It's really not proper for my friend to be
11 trying to elicit evidence from a fact witness about whether
12 something complies or doesn't comply with law or
13 regulation.

14 MR. SAFAYENI: My question was whether it was
15 acceptable. Mr. Silvestri, in his response, made lengthy
16 reference to the ECPA and had no problem opining on what he
17 thought the ECPA meant, and to prevent me from asking a
18 follow-up question on the same issues doesn't make a lot of
19 sense to me. If Mr. Silvestri is content to opine on his
20 understanding of the ECPA for one purpose, I should be able
21 to ask him a follow-up question.

22 MS. LONG: Aren't you asking him questions now about
23 agency?

24 MR. SAFAYENI: I asked him if it's position that it
25 allows for an IBO to be on both sides of the transaction.
26 I mean, we can take the word agent out; I didn't mean it as
27 an in-depth legal term of art. IBOs are representing
28 Planet Energy, IBOs are representing consumers.

1 My question is, just to get clarity ...

2 MS. LONG: I think you should take agency out of the
3 Question, and I think you should try again. And I think
4 what he said was that in certain circumstances, they would
5 allow that. I think he used the example of a daughter or
6 son-in-law or son registering a parent. So if you want to
7 explore that with him and whether there's other exceptions,
8 I think you can do that.

9 But I think the way you framed your question, it was
10 confusing even to me. So I think you should try again.

11 MR. SAFAYENI: I am happy to try again. So IBOs, on
12 your position, could represent Planet Energy and they could
13 also enroll consumers into agreements on behalf of --
14 enroll consumers into agreements with Planet Energy?

15 MR. SILVESTRI: That is not our policy and our
16 practice.

17 MR. SAFAYENI: No, but it's your position that they
18 are allowed to?

19 MR. ZACHER: I think, again -- I mean, it's okay to
20 ask about Planet Energy's policy. I don't know what is
21 confused by your position -- you know, we will have a
22 position in this proceeding, and that will be expressed in
23 our argument at the end of the day.

24 If my friend wants to confine his questions to what is
25 Planet Energy's policy about a particular practice and put
26 those facts to Mr. Silvestri, that's fair.

27 MR. SAFAYENI: Again, Mr. Silvestri was happy to give
28 his position in his answer; it just can't be tested.

1 MS. LONG: Mr. Safayeni ...

2 MR. ZACHER: That's exactly wrong. We can have the
3 reporter read back the answer. But my friend asked what's
4 your position and Mr. Silvestri responded by talking about
5 Planet Energy's policy. And my friend retorted with, yes,
6 but your position in this proceeding. That's where --
7 that's improper.

8 MR. SAFAYENI: So is Planet Energy okay with defending
9 practices that don't accord with its policies?

10 MR. ZACHER: I don't even know what that means. I
11 mean, put a specific question to him.

12 MR. SAFAYENI: I tried, and it drew three of the same
13 objections. Okay, you know, let's just move on.

14 MS. LONG: Do you want to be more specific in putting
15 facts to this fact witness?

16 MR. SAFAYENI: Are there any circumstances, according
17 to Planet Energy's policies, where it would be acceptable
18 for an IBO to enroll a consumer who is not that IBO him or
19 herself or their spouse, if they were living together at
20 the time?

21 MR. SILVESTRI: The other circumstance that we come
22 across in a small business, for example, if an employee
23 enrolls the business where, you know, obviously the employee
24 is not the account holder, but if they are authorized to
25 enroll the business, then it will be acceptable to us that
26 that IBO enroll the business.

27 MR. SAFAYENI: I am not sure I understand. So an IBO
28 enrolls an employee as a representative of a business --

1 MR. SILVESTRI: Let's say that the employee is an IBO.

2 MR. SAFAYENI: If the employee, himself or herself, is
3 the IBO?

4 MR. SILVESTRI: Right.

5 MR. SAFAYENI: Apart from that situation, are there
6 any other exceptions, according to Planet Energy's
7 policies?

8 MR. SILVESTRI: Not pursuant to our policy, but there
9 have been some exceptions, as I mentioned earlier, where a
10 family member, a son or daughter who lives at the
11 residence, on approval of the parents may enroll the
12 premises. We would allow something like that.

13 MR. SAFAYENI: But the training manual, the message
14 sent to IBOs is that there are no exceptions, correct?

15 MR. SILVESTRI: That's what we would like to -- that
16 is our practice and our policy and our training. However,
17 I am trying to answer your question. If upon review in our
18 quality assurance, for example, we find out that the e-mail
19 address of the person who enrolled did not match the
20 account holder's, we would investigate that. And if it's a
21 case such as, you know, a child living at home, we would
22 most likely allow it.

23 If it is a case of a friend who enrolled, we would not
24 allow that. We would ask the account holder to re-enroll
25 on their own.

26 MR. SAFAYENI: And there is no information that any of
27 the contracts entered into by Mr. Nahid or Mr. MacArthur
28 fall into that category, correct?

1 MR. SILVESTRI: I don't understand the question.

2 MR. SAFAYENI: The scenario you just described about a
3 child living at home, that is not the scenario we are
4 talking about with the contracts Mr. Nahid or Mr. MacArthur
5 enrolled, correct?

6 MR. SILVESTRI: That's correct.

7 MR. SAFAYENI: And part of the reason that Planet
8 Energy's practice and policy, as you have described it, and
9 training is not to allow IBOs to enroll customers is that
10 if an IBO is doing the enrolment process instead of a
11 customer, then the customer doesn't have the opportunity to
12 review the documents and statements and acknowledgements
13 provided online, right?

14 MR. SILVESTRI: Prior to enrolment, that's correct.

15 MR. SAFAYENI: Prior to enrolment. And without
16 reviewing those documents or statements, the customer isn't
17 in a position to make a fully informed decision as to
18 whether they want to be enrolled or not, correct?

19 MR. SILVESTRI: Well, prior to enrolment, if they
20 would have -- if they received the documents after
21 enrolment via the e-mail or the welcome letter, they still
22 have the cooling off period to cancel without penalty.

23 MR. SAFAYENI: I am talking prior to enrolment,
24 though.

25 MR. SILVESTRI: Yes, prior to enrolment, if the IBO
26 had enrolled the customer on his own, the customer would
27 not have an opportunity to review any of the documents.

28 MR. SAFAYENI: And those documents are designed to

1 allow the customer to make an informed decision, right?

2 MR. SILVESTRI: Correct.

3 MR. SAFAYENI: So if the policies and practices of
4 Planet Energy are working as they should, an IBO would meet
5 with a prospective customer, provide an explanation of the
6 contract, give them the IBO number and website address, and
7 then leave?

8 MR. SILVESTRI: Correct.

9 MR. SAFAYENI: And if the customer asked the IBO to
10 sit beside them, the IBO should refuse?

11 MR. SILVESTRI: Correct.

12 MR. SAFAYENI: And if the customer asked the IBO to
13 enroll them, the IBO should decline?

14 MR. SILVESTRI: Correct.

15 MR. SAFAYENI: And it doesn't matter if the customer
16 says to the IBO, "I authorize you to enroll me", correct?

17 MR. SILVESTRI: Pursuant to our policies, correct.

18 MR. SAFAYENI: Planet Energy didn't have a system in
19 place to know whether IBOs were sitting next to customers
20 while they enrolled; correct?

21 MR. SILVESTRI: That's not correct. We did conduct
22 random quality assurance calls where we tried to achieve a
23 25 per cent contact and specifically asked the customers if
24 the IBO was present, whether or not the IBO was present
25 during enrollment, and whether the IBO left and did not
26 return.

27 MR. SAFAYENI: That's after the enrollment has
28 occurred; correct?

1 MR. SILVESTRI: Yes.

2 MR. SAFAYENI: How about before or during the
3 enrollment?

4 MR. SILVESTRI: Other than the attestations during the
5 enrollment process a number of times, the customer's asked
6 to attest that the IBO is not present and had left.

7 MR. SAFAYENI: And if the IBO is actually doing the
8 enrollment the customer would never see that attestation;
9 correct?

10 MR. SILVESTRI: If that's what occurred.

11 MR. SAFAYENI: And Planet Energy didn't have a system
12 in place to prevent IBOs from enrolling consumers; correct?

13 MR. SILVESTRI: Once again, the enrollment portal was
14 very clear that the customer is attesting that the IBO is
15 not present and has left.

16 MR. SAFAYENI: Sir, you are referring to an
17 attestation, if the IBO is the one at the portal, the
18 customer wouldn't see that attestation; right?

19 MR. SILVESTRI: If that's what occurred.

20 MR. SAFAYENI: Okay.

21 MR. SILVESTRI: And as I stated earlier, I only know
22 of two cases where that happened, and they are both your
23 witnesses.

24 MR. SAFAYENI: And you have no direct knowledge of how
25 other IBOs interacted with their consumers or whether they
26 enrolled their consumers. You don't --

27 MR. SILVESTRI: We have no other complaints that
28 occurred, such as Mr. Nahid and Mr. MacArthur are alleging.

1 There is no evidence of such, no complaints of such, by
2 customers or other IBOs.

3 MR. SAFAYENI: Madam Chair, I -- again, scheduling-
4 wise I am in your hands. This has taken -- and it's not --
5 I will apologize, but it's not entirely in my control, but
6 it's taken much longer than I had anticipated. If we take
7 a break, I will do my best to review and try and be a bit
8 briefer after lunch, but I don't think we are going to
9 finish before lunch. So I am in the Panel's hands as to --

10 MS. LONG: What is your estimate, Mr. Safayeni? You
11 told me last night about 90 minutes, and you are at two
12 hours and 15 minutes, so --

13 MR. SAFAYENI: In fairness, Madam Chair, I only
14 control the questions, not the answers.

15 MS. LONG: I know, but I think the witness has been
16 cooperative, so I'd like to know what your estimate is for
17 the afternoon.

18 MR. SAFAYENI: Well, I've -- out of a 36-page script I
19 am on page 26, so I am more than -- definitely more than
20 halfway through. I think probably another hour.

21 MS. LONG: Okay. We are going to break now. We will
22 be back in one hour, so 1:25. And I would encourage you to
23 take a look at your cross and see what you can cut back.

24 MR. SAFAYENI: I will, Madam Chair, thank you.

25 MS. LONG: Okay, thank you.

26 --- Luncheon recess taken at 12:25 p.m.

27 --- On resuming at 1:27 p.m.

28 MS. LONG: Please be seated. Mr. Safayeni?

1 MR. SAFAYENI: Thank you, Madam Chair. Mr. Silvestri,
2 in this case, the Board requested the IP address associated
3 with each of the contracts enrolled by Mr. MacArthur and
4 Mr. Nahid, correct?

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

6 MR. SAFAYENI: And that was provided by Planet Energy,
7 correct?

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

9 MR. SAFAYENI: So Planet obviously has the ability to
10 determine the IP addresses associated with a particular
11 enrolment, right?

12 MR. SILVESTRI: We did have that ability.

13 MR. SAFAYENI: When you say you did, you mean during
14 the time of your relationship with ACN?

15 MR. SILVESTRI: That's correct.

16 MR. SAFAYENI: If you turn to Staff's documents KX1.2,
17 at tab 10B, which is the chart -- and again, I recognize
18 that it's small print here. But if we look at the IP
19 address column, which is all the way to the right -- do you
20 see that, sir?

21 MR. SILVESTRI: Yes.

22 MR. SAFAYENI: And if we look starting at about four-
23 fifths of the way down the page, you'll see an IP address
24 992.43.156.185; do you see that?

25 MR. SILVESTRI: Yes.

26 MR. SAFAYENI: And it repeats over the course of a
27 number of different customers; do you see that?

28 MR. SILVESTRI: Yes.

1 MR. SAFAYENI: It repeats over the course of Mr.

2 [REDACTED], right?

3 MR. SILVESTRI: Yes.

4 MR. SAFAYENI: And then Mr. Hawkins, with properties

5 [REDACTED] right?

6 MR. SILVESTRI: I am sorry, [REDACTED] and Hawkins?

7 MR. SAFAYENI: Hawkins, yeah, the next five under

8 [REDACTED] -- I am just looking at the city of service, but

9 they are associated with Robert Hawkins, [REDACTED],

10 [REDACTED].

11 MR. SILVESTRI: Yes.

12 MR. SAFAYENI: And then going down the list to the

13 fourth and fifth from the bottom, we see [REDACTED]

14 addresses associated with [REDACTED]. Those do not have

15 the same IP address, but if we keep going down we see the

16 same IP address again associated with a numbered company in

17 [REDACTED], right?

18 MR. SILVESTRI: Yes.

19 MR. SAFAYENI: And then finally [REDACTED] in

20 [REDACTED], right?

21 MR. SILVESTRI: Yes.

22 MR. SAFAYENI: Would you agree with me that the same

23 IP address associated with all these different customers in

24 all these different cities at least suggests a compliance

25 issue?

26 MR. SILVESTRI: No, I disagree I am not an IT expert,

27 but the advice I was give was that IP addresses can be

28 static or dynamic; they are not reliable. For example,

1 Mr.Facchini; if he enrolled at the same time, why would his
2 two IP addresses be different?

3 It would make sense that Mr. Hawkins for his accounts
4 would have the same IP address, but I can't given an
5 opinion on whether an IP address would mean -- that the
6 same IP address would mean that the enrolment came from the
7 same computer.

8 MR. SAFAYENI: I understand you can't give an opinion.
9 But I am asking whether it's something that at least
10 suggests a compliance issue. And is your answer to that
11 no, it doesn't even suggest a compliance issue?

12 MR. SILVESTRI: Well, it would suggest an
13 investigation. I don't know if it suggests a compliance
14 issue.

15 MR. SAFAYENI: Okay. And was this issue investigated
16 by Planet Energy?

17 MR. SILVESTRI: No, because we did not review IP
18 addresses. We had other quality assurances that I've
19 described.

20 MR. SAFAYENI: Right. You described yesterday a
21 number of items that would raise red flags. I think that's
22 the term you used, right?

23 MR. SILVESTRI: That's correct.

24 MR. SAFAYENI: IP addresses wasn't one of them?

25 MR. SILVESTRI: That's correct, because we never saw
26 -- didn't think they would be a reliable metric.

27 MR. SAFAYENI: And ACN didn't employ IP addresses as
28 any kind of red flag on its end as far as you know either,

1 correct?

2 MR. SILVESTRI: As far as I know, yes.

3 MR. SAFAYENI: And the information that you say you
4 obtained about the reliability of IP addresses, did you
5 obtain that information after these proceedings were
6 initiated?

7 MR. SILVESTRI: No, we obtained that -- obtained an
8 opinion from our vice president information technology
9 after the inspection notice.

10 MR. SAFAYENI: Okay, so after you received the Board
11 inspection notice in --

12 MR. SILVESTRI: Correct.

13 MR. SAFAYENI: In May of...

14 MR. SILVESTRI: May of 2016.

15 MR. SAFAYENI: May of 2016. Could you turn to
16 Planet's book of documents, Exhibit KX 1.4, tab 11, please?

17 MR. SILVESTRI: Yes.

18 MR. SAFAYENI: And this is a submission that -- or a
19 memorandum that was provided by Planet Energy to the Board
20 Staff relating to the use of multi-level marketing
21 companies, correct?

22 MR. SILVESTRI: Yes, back in December 20th, 2011, by
23 the then-executive vice president and chief legal officer
24 of Planet Energy, Chris Gaffney.

25 MR. SAFAYENI: Right. And if we go to page 476 of the
26 exhibit, we see under the title "submissions" --

27 MR. SILVESTRI: Yes.

28 MR. SAFAYENI: -- the second paragraph, and I think

1 it's useful to just let's just read the second paragraph
2 together. It says:

3 "Notwithstanding the forgoing, Planet Energy
4 recognizes the potential need for additional
5 consumer protection measures to ensure that
6 marketers and retailers do not try to circumvent
7 the in-person sales protection provided by the
8 legislation/regulations by using electronic means
9 to disguise as internet agreements what are in
10 essence in-person high-pressure sales situations.
11 An obvious example of this would be a cold
12 calling door-to-door agent showing up at a
13 residence with an iPad or a similar device. If
14 this agent takes all the customer data and simply
15 hands the iPad to the customer to accept the
16 contract, this contract, while technically being
17 an internet agreement, would likely warrant the
18 protections provided for in-person agreements".

19 And that was Planet Energy's position back on December
20 20th, 2011, right?

21 MR. SILVESTRI: Correct.

22 MR. SAFAYENI: And Planet's position on that issue
23 hasn't changed since then, correct?

24 MR. SILVESTRI: That's correct, with respect to cold
25 calling or -- as an example, if a salesperson showed up at
26 a door with an iPad and just told the customer to sign
27 here, whether on the cold call they sign an iPad or a piece
28 of paper, in our view would be no different.

1 MR. SAFAYENI: And if instead of cold calling it was
2 somebody who was a friend, or family, or part of the warm
3 network, and they showed up with and iPad, they put in all
4 the information and at the end, the customer just clicked
5 "I accept", your answer would still be that while
6 technically being an internet agreement, it would likely
7 warrant the protections provided for in-person agreements,
8 correct?

9 MR. SILVESTRI: I disagree. In a case like that, that
10 would not be a cold call, in-person, high pressure sales
11 situation. That's what Mr. Gaffney was referring to here
12 in this paragraph.

13 MR. ZACHER: Just to be clear, when my friend is
14 asking the questions, just so we don't get into the same
15 issue as before, if he could just clarify whether he is
16 asking Mr. Silvestri to express a view as to Planet
17 Energy's policies versus whether something is legally
18 compliant.

19 MR. SAFAYENI: This is a memo that represents Planet
20 Energy's position, and I am asking if Planet Energy's
21 position has changed. The witness' answer was no. And now
22 my question is if instead of a cold call, there was a warm
23 network, but all the other facts were the same, is your
24 position that the protections provided for in-person
25 agreements would not apply?

26 MR. SILVESTRI: Well, I would answer that as far as
27 our policy, as we stated many times, our policy would be
28 that the IBO should not be present when the customer

1 enrolls and should leave to allow the customer to enroll
2 and not return.

3 MR. SAFAYENI: Without getting into the details of and
4 the specifics of any relative margins, Planet Energy viewed
5 its relationship with ACN as a profitable one that made
6 business sense.

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

8 MR. SAFAYENI: And for every consumer that was sold a
9 Planet Energy product by an ACN IBO, Planet Energy received
10 a share of the revenue associated with that; correct?

11 MR. SILVESTRI: Share of the gross margin.

12 MR. SAFAYENI: Planet Energy's position is that
13 consumers enrolled through ACN were enrolled in Internet
14 contracts or Internet agreements; correct?

15 MR. SILVESTRI: Correct.

16 MR. SAFAYENI: And during the time Planet Energy was
17 in business with ACN, Internet contracts did not require
18 verification calls; am I right?

19 MR. SILVESTRI: Correct.

20 MR. SAFAYENI: And in fact, Planet Energy never made
21 any verification calls to consumers who enrolled through
22 ACN.

23 MR. SILVESTRI: We made quality assurance calls. We
24 did not make verification calls, for example, utilizing the
25 verification script for in-person sales issued by the
26 Board.

27 MR. SAFAYENI: Right. And the quality assurance calls
28 were not made to all consumers; correct?

1 MR. SILVESTRI: That's correct. We targeted 25
2 percent.

3 MR. SAFAYENI: And the script for what you are calling
4 the quality assurance calls, just to make sure I am clear,
5 is at the same volume we are in, so Planet's documents
6 KX1.4, tab 11B, page 491, I believe.

7 MR. SILVESTRI: That's correct.

8 MR. SAFAYENI: And this is the script that you'd
9 expect to be followed when those calls were made; right?

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

11 MR. SAFAYENI: And unless the issue was raised by a
12 consumer on the call, these quality assurance calls would
13 not discuss any issues related to the global adjustment;
14 right?

15 MR. SILVESTRI: That's correct.

16 MR. SAFAYENI: Wouldn't discuss any issues related to
17 cancellation fees or cancellation rights?

18 MR. SILVESTRI: That's correct.

19 MR. SAFAYENI: And wouldn't discuss any additional
20 fees or costs apart from the specific fixed contract, 4.99
21 or whatever it may be under the contract with Planet
22 Energy; right?

23 MR. SILVESTRI: The purpose of the quality assurance
24 call was more to ensure there was compliance with respect
25 to the IBO and just to confirm that the customer was aware
26 of the enrollment. It wasn't intended to satisfy a
27 regulatory requirement. It was intended to satisfy an
28 internal compliance measure.

1 MR. SAFAYENI: Okay. But my question was a very
2 simple one, whether any charges or costs or fees apart from
3 the 4.99 or whatever the fixed rate was were mentioned on
4 the call.

5 MR. SILVESTRI: No. Those are all in the terms and
6 conditions and disclosure statements.

7 MR. SAFAYENI: For the July 2015 inspection by the
8 Board, Board Staff requested that Planet Energy provide
9 certain documents and information; correct?

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

11 MR. SAFAYENI: And the response that Planet Energy
12 provided is at tab 6 of Exhibit KX1.4, which is the first
13 volume of the Planet Energy documents; correct?

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

15 MR. SAFAYENI: And I suppose, just to be accurate, the
16 cover letter is at tab 5; right?

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

18 MR. SAFAYENI: And that's the full response that was
19 provided?

20 MR. SILVESTRI: There was also 6F, Schedule F.

21 MR. SAFAYENI: Sorry, when I say -- I meant tab 6,
22 including A through F, was the full response provided.

23 MR. SILVESTRI: And I believe tab 7, Mr. Zacher's
24 letter to Maureen Helt.

25 MR. SAFAYENI: Okay. I -- all right, fair enough.

26 MR. SILVESTRI: It's part of this package.

27 MR. SAFAYENI: Anything else?

28 MR. SILVESTRI: No, that's it, that's all of it.

1 MR. SAFAYENI: Can I take you to tab 6, page 111.

2 MR. SILVESTRI: Yes.

3 MR. SAFAYENI: You see, under the third bullet point
4 from the bottom, it starts "ACN's compensation plan"?

5 MR. SILVESTRI: Yes.

6 MR. SAFAYENI: It says:

7 "ACN's compensation plan is designed to help IBOs
8 build a successful business. IBOs can earn money
9 through ACN in two ways: one, monthly
10 commissions based on customer usage of products
11 and services enrolled through ACN; two, weekly
12 and monthly bonuses based on customer
13 acquisition."

14 Right?

15 MR. SILVESTRI: Yes, this answer was provided by ACN,
16 so they would know the compensation structure between ACN
17 and the IBO.

18 MR. SAFAYENI: I am sorry, just to make sure I
19 understand, this answer that I just read to you was
20 provided to Planet Energy by ACN?

21 MR. SILVESTRI: Well, that particular -- with -- you
22 know, we required ACN's assistance to answer this question
23 since we do not pay the IBOs directly. So we would have
24 required ACN to draft the reply for this answer.

25 MR. SAFAYENI: But you understand that it's an answer
26 that Planet Energy was submitting to the Board; correct?

27 MR. SILVESTRI: That's correct.

28 MR. SAFAYENI: And ACN, we have talked about, is not a

1 Board-licenced retailer.

2 MR. SILVESTRI: That's correct, but --

3 MR. SAFAYENI: And it's Planet Energy that as the
4 retailer has obligations to ensure that these answers are
5 full, frank, and accurate; correct?

6 MR. SILVESTRI: That's correct. We believed ACN when
7 they replied, but we don't have detailed knowledge as to
8 how ACN pays the IBOs, so we had asked them to prepare the
9 answer to this question, and we informed Board Staff that
10 we were talking to ACN.

11 MR. SAFAYENI: Well, you were aware as part of -- you
12 told me earlier, I think that you were aware as part of
13 ACN's business model that another source of income for IBOs
14 was on the sales of products by IBOs that they recruited;
15 correct?

16 MR. SILVESTRI: That's correct.

17 MR. SAFAYENI: And that does not appear in this
18 answer; correct?

19 MR. SILVESTRI: Number 1... Well, the answer is with
20 respect to commissions with respect to contract enrollments
21 as per question 1, not with respect to recruitment.

22 MR. SAFAYENI: But it says -- my question right now is
23 whether it appears anywhere in the answer.

24 MR. SILVESTRI: It does not appear. It's not relevant
25 to the question.

26 MR. SAFAYENI: Well, that's your view. Does it appear
27 anywhere else in this document? I can tell you I have
28 looked through it and I can't find it anywhere.

1 MR. SILVESTRI: You'll have to give me a few minutes
2 to look.

3 [Flipping through document]

4 No, I don't see where it would be mentioned that IBOs
5 would receive a commission for recruiting other IBOs.

6 MR. SAFAYENI: And I appreciate that Planet Energy may
7 have sought information from ACN to complete certain
8 portions of these responses, but the Board didn't approach
9 ACN or any IBOs. It only approached Planet Energy for
10 information, correct?

11 MR. SILVESTRI: I don't know that. I am not aware of
12 them doing that, but I can't speak for the Board.

13 MR. SAFAYENI: You are not aware of that happening?

14 MR. SILVESTRI: I am not aware of that happening, no.

15 MR. SAFAYENI: Page 117, and still in the same tab --

16 MR. SILVESTRI: Yes.

17 MR. SAFAYENI: -- under F, it says "Assessment of
18 sales person qualifications and competencies". Do you see
19 that, sir?

20 MR. SILVESTRI: Yes.

21 MR. SAFAYENI: And about halfway down in the response
22 box, it starts talking about online testing.

23 MR. SILVESTRI: Yes.

24 MR. SAFAYENI: And really at the fourth paragraph --
25 you can take the time you need to read the whole thing, but
26 I am most interested in kind of the fourth and fifth
27 paragraphs that kind of talk about the content of the
28 testing.

1 You will agree with me, sir, that nowhere in those
2 paragraphs, or anywhere else in this response, does it
3 mention the fact that the test is an open-book test?

4 MR. SILVESTRI: Rather than look through it again, all
5 I can say is that was disclosed in the Ernst & Young audit,
6 that it was an open-book test, and we referenced the Ernst
7 & Young audit in response to E and a number of places.

8 MR. SAFAYENI: Right. But this request for
9 information is taking place more than four years later, and
10 it doesn't appear in the answer when discussing testing
11 here, right?

12 MR. SILVESTRI: Well, it appears in the Ernst & Young
13 audit.

14 MR. SAFAYENI: Okay. Yesterday Mr. Zacher asked you
15 some questions about Ms. Andrassin's complaint and the
16 handling of her cancellation request by Planet Energy
17 customer service representatives. Do you remember that?

18 MR. SILVESTRI: Yes.

19 MR. SAFAYENI: And you gave some evidence as to why
20 you thought she might have been given incorrect information
21 by CSRs, right?

22 MR. SILVESTRI: Correct.

23 MR. SAFAYENI: And I believe your evidence was that in
24 reviewing the file, what you think happened is because of
25 the delay in her account flowing with Planet Energy from
26 April, when she was enrolled, to July, when she was
27 actually switched over to Planet, the CSR probably thought
28 she'd already received her first bill. Do I have your

1 theory correct?

2 MR. SILVESTRI: Correct.

3 MR. SAFAYENI: In fairness, that evidence was
4 speculation on your part, right?

5 MR. SILVESTRI: It was speculation after having
6 reviewed the file?

7 MR. SAFAYENI: Correct.

8 MR. SILVESTRI: I don't know if I'd call it
9 speculation. I think -- that's what I think happened.

10 MR. SAFAYENI: Well, you are not the CSR who spoke to
11 Ms. Andrassin?

12 MR. SILVESTRI: No, I am not. But I think it's more
13 than speculation.

14 MR. SAFAYENI: Have you spoken to the CSR who spoke to
15 Ms. Andrassin?

16 MR. SILVESTRI: No, the CSR is no longer employed by
17 Planet Energy.

18 MR. SAFAYENI: I am going to suggest to you that there
19 in fact was no misunderstanding at all on the part of the
20 CSR that Ms. Andrassin requested cancellation within 30
21 days of receiving her first bill. Do you agree with me?

22 MR. SILVESTRI: No, and I don't appreciate the
23 question, Mr. Safayeni. We're not a fly-by-night company
24 that operates like a bunch of cowboys. I think an honest
25 mistake was made.

26 MR. SAFAYENI: Well, I would like to take you to the
27 transcript of the call if we could, which is at tab 41A of
28 staff's documents, Exhibit KX .1. And you will see -- do

1 you have that in front of you?

2 MR. SILVESTRI: Yes.

3 MR. SAFAYENI: You will see from the top that the date
4 of the call is October 5th, 2015, right?

5 MR. SILVESTRI: Yes.

6 MR. SAFAYENI: And if we turn to page 2, at the top of
7 the page, you see RA, who is Ms. Andrassin, and she says:

8 "So the statement date that I am just -- I have
9 concern about is September 11th, as you may see,
10 467.87."

11 The Planet Energy CSR says, "Um-hmm", and then Ms.
12 Andrassin says:

13 "So I believe this is the first time I got an
14 invoice from you guys, because before I was with
15 Power Stream."

16 And the customer service representative says "right."

17 So Ms. Andrassin makes it clear early in the call that
18 she was concerned about her bill dated September 11th,
19 right? We see that on the page?

20 MR. SILVESTRI: Well, she says, "I believe this is the
21 first time I got the invoice."

22 MR. SAFAYENI: Right, so that's her belief, the
23 information that she is providing, right?

24 MR. SILVESTRI: Correct.

25 MR. SAFAYENI: And she also says it's her first
26 invoice.

27 MR. SILVESTRI: She says, "I believe this is the first
28 time I got the invoice."

1 MR. SAFAYENI: Right. So the information she is
2 providing to the CSR is that to the best of her knowledge,
3 this is the first time she got the invoice, right?

4 MR. SILVESTRI: The words are what they say. I don't
5 know what Ms. Andrassin meant specifically, or what the CSR
6 heard or was thinking.

7 MR. SAFAYENI: Right, you don't know what the CSR was
8 thinking, right?

9 MR. SILVESTRI: No, I don't, but --

10 MR. SAFAYENI: And the call here was made within 30
11 days of September 11th; we can agree on that?

12 MR. SILVESTRI: Yes.

13 MR. SAFAYENI: And none of that information is
14 consistent with your speculation that the CSR probably
15 thought she'd received her first bill at some point in
16 April to July.

17 MR. SILVESTRI: Like I said, Mr. Safayeni, I don't
18 know what the CSR was thinking. We have already stated
19 that the CSR made an error. We have already consented to
20 this, so I don't know what more you'd like from me on that
21 matter.

22 MR. SAFAYENI: Well, I put it to you that it's more
23 consistent here that the CSR was simply misinformed about
24 Ms. Andrassin's rights than she thought that the contract
25 was flowing from back in or around July given, what we see
26 in the transcript.

27 MR. SILVESTRI: I can't answer that. I don't know
28 what the CSR was thinking. I reviewed the file when we

1 received the notice of inspection. I gave you my
2 assessment of what I thought happened.

3 MR. SAFAYENI: And that assessment is inconsistent
4 with what we see in the transcript.

5 MR. SILVESTRI: I disagree with that. The transcript
6 speaks for itself and I told you what I think.

7 MR. SAFAYENI: Well, that assessment doesn't account
8 for the fact that Ms. Andrassin says her first bill is on
9 September 11th.

10 MR. SILVESTRI: And I will say it again. "I believe
11 that this is the first time"; she doesn't say definitively,
12 right.

13 MR. SAFAYENI: And you have no information to the
14 contrary?

15 MR. SILVESTRI: I have no information to the contrary.

16 MR. SAFAYENI: But you stick with your theory anyway.

17 MR. SILVESTRI: I stick with my theory that an honest
18 mistake was made. We don't train our people to cheat
19 customers, Mr. Safayeni.

20 MR. SAFAYENI: You told us yesterday that Planet
21 Energy had some write-ups with respect to global adjustment
22 and the early the termination charges that were available
23 online. Do you remember that?

24 MR. SILVESTRI: That's correct.

25 MR. SAFAYENI: And those documents are not provided as
26 part of your materials, correct?

27 MR. SILVESTRI: We did not submit them, no. The
28 reason being that they were inserted in late of 2015, so we

1 didn't think they were relevant to these contracts. I was
2 answering the question as to what additional materials may
3 be in the, you know, in the training portion of the back
4 office.

5 MR. SAFAYENI: In response to a question from your
6 counsel yesterday you told us that if Planet Energy
7 believed a contract was not entered into properly and the
8 customer did not want to continue or re-enroll, that you'd
9 reimburse the customer for the difference, if any, between
10 Planet Energy's contract price and the utilities contract
11 price.

12 MR. SILVESTRI: If we felt that there was a compliance
13 issue where our policies were not followed, yes.

14 MR. SAFAYENI: And just to be clear, for the contracts
15 at issue in this proceeding --

16 MR. SILVESTRI: By the way, that's on a case-by-case
17 basis, not as a general blanket policy. So we look at
18 reimbursements on a case-by-case basis.

19 MR. SAFAYENI: So -- and just to be clear, for the
20 contracts that remain at issue in this proceeding, Planet
21 Energy has not reimbursed customers the difference between
22 the contract price and the utility price; correct?

23 MR. SILVESTRI: I don't think so.

24 MR. SAFAYENI: And you would be in a position to know
25 if that happened; right?

26 MR. SILVESTRI: Yes.

27 MR. SAFAYENI: And in fact, you haven't reimbursed --
28 Planet Energy hasn't reimbursed those customers any money

1 at all; right?

2 MR. SILVESTRI: Which customers?

3 MR. SAFAYENI: The customers associated with the
4 contracts that we are talking about in this proceeding.

5 MR. SILVESTRI: Well, there is only two customers in
6 this proceeding that have complained.

7 MR. SAFAYENI: I am talking about all the customers
8 who were enrolled, the customers in the chart at 10B.

9 MR. SILVESTRI: No, we haven't reimbursed anyone.

10 MR. SAFAYENI: We've heard evidence in this hearing
11 that for two of Mr. Nahid's customers, Ms. Andrassin and
12 [REDACTED], after they made complaints to the Board
13 Planet Energy agreed to cancel those contracts without
14 penalty, right?

15 MR. SILVESTRI: Correct.

16 MR. SAFAYENI: Are you aware of any other customers
17 from the chart at 10B that Planet Energy agreed to cancel
18 without penalty?

19 MR. SILVESTRI: I believe [REDACTED].

20 MR. SAFAYENI: Was cancelled without penalty?

21 MR. SILVESTRI: Yes, but I should mention [REDACTED]
22 and [REDACTED] complaints came to us via the Board
23 customer complaint resolution after the notice of
24 inspection. Ms. Andrassin was the only complaint via the
25 Board that we were aware of prior to the notice of
26 inspection.

27 MR. SAFAYENI: And [REDACTED], after you became aware
28 of the complaint made to the Board, you are telling me that

1 Planet Energy cancelled the contract, is that correct,
2 without penalty?

3 MR. SILVESTRI: That's correct.

4 MR. SAFAYENI: Okay. Thank you, Mr. Silvestri, those
5 are all my questions.

6 MR. SILVESTRI: Thank you.

7 **QUESTIONS BY THE BOARD:**

8 MS. LONG: Mr. Silvestri, the Panel has some questions
9 for you.

10 MS. SPOEL: Mr. Silvestri, I was -- wanted to ask you
11 a couple of questions following up from your comment that
12 about 80 percent of the ACN IBOs only enroll themselves or
13 their spouses in contracts.

14 So does that mean that those people don't actually
15 have to write the test or take the test in order to do
16 that; is that correct?

17 MR. SILVESTRI: That's correct, Member Spoel, so those
18 IBOs, based on our data, would have enrolled, you know,
19 their principal residence, vacation property, their own
20 business, and so they would not have been required to take
21 the test. Some of them in fact did, but they would not
22 have been required to, because they would enroll as a
23 customer.

24 MS. SPOEL: So in the information that's provided,
25 which gives some range of IBOs over the period of the
26 inspection of 400 up to a few thousand, do you have any
27 idea approximately how many of them would have been in the
28 category of only having enrolled their own -- they realized

1 there could be more than one account because there might be
2 gas and electricity and so on, but do you have any notion
3 of approximately how many of the active IBOs would be IBOs
4 that had actually written your test or were selling -- or
5 were, you know, doing contracts for other parties,
6 promoting or selling --

7 MR. SILVESTRI: I believe the number I gave was 6 --
8 during the term of the -- our contract with ACN, our data
9 approximately show 6- to 7,000 -- 6,000 to 7,000 IBOs would
10 have taken the test for the purposes of promoting our
11 products to other parties.

12 MS. SPOEL: Okay. Thanks.

13 MR. JANIGAN: Yes, Mr. Silvestri, I have got a small
14 question and then another one. The first, I wonder if you
15 could -- relates to evidence given yesterday -- turn up
16 Volume 4 of Planet Energy's materials, and I am looking at
17 tab 26 -- 262 and tab 261.

18 MR. SILVESTRI: I am sorry, Member Janigan, 261?

19 MR. JANIGAN: 261 and 262. And this involves the
20 customer known as Lesa Sturge.

21 MR. SILVESTRI: Yes, Member Janigan.

22 MR. JANIGAN: Am I correct that the contract that's
23 set out here in tab 262 of November 27th, 2013 has no
24 relation to the confirmation call of September the 12th,
25 20 -- I think it's the year before, 2012, I believe, I
26 think one's 2013 and the other one is 2012. The
27 confirmation call in this case seems to be before the
28 contract; have I got that correct?

1 MR. SILVESTRI: I think what happened is this -- she
2 would have, what we call conducted a plan switch, where the
3 original contract would have been terminated and then the
4 new one entered into. It looks like we submitted the
5 second contract.

6 MR. JANIGAN: Okay. So the original -- the
7 confirmation call refers to the first contract, which is
8 not in the materials.

9 MR. SILVESTRI: Yes, it appears that way.

10 MR. JANIGAN: Okay. The second thing is, when you
11 were discussing with Chairperson Long the tab 10B of the
12 Board Staff evidence, and we were -- your discussion dealt
13 with contracts that had been entered into but gas hadn't
14 flowed.

15 MR. SILVESTRI: Yes.

16 MR. JANIGAN: Now, are some of those contracts
17 associated with problems discovered in the verification
18 call?

19 MR. SILVESTRI: They may have been. I can't say for
20 certain, Member Janigan. It could have been that. It
21 could have been a rejection from the utility. It could
22 have been a customer cancelling prior to us enrolling with
23 the utility.

24 MR. JANIGAN: Okay. And there's no way of tracking
25 those kinds of things?

26 MR. SILVESTRI: We would have to conduct another
27 query. I am sorry, I just don't have that information
28 available today.

1 MR. JANIGAN: Okay. I guess the -- okay. I think
2 that's all I want to ask on that matter. Thank you.

3 MS. LONG: Mr. Silvestri, just while we are still
4 working on that spreadsheet, you had just mentioned in your
5 discussion with Mr. Safayeni about cancellation of two
6 contracts for [REDACTED] and [REDACTED]?

7 MR. SILVESTRI: Yes.

8 MS. LONG: Do those contracts appear on this
9 spreadsheet or not?

10 MR. SILVESTRI: I believe so, Madam Chair.

11 MS. LONG: I just looked at it very quickly.

12 MR. SILVESTRI: [REDACTED] I believe is
13 Dr. Boozary.

14 MS. LONG: Okay.

15 MR. SILVESTRI: And the [REDACTED] I
16 believe is [REDACTED].

17 MS. LONG: Okay.

18 MR. SILVESTRI: In the top half, Madam Chair.

19 MS. LONG: Okay, thank you. And yesterday you said in
20 evidence, you talked a bit about these quality assurance
21 calls that you have put in place, and you mentioned that
22 nine out of eighteen of Mr. MacArthur's contracts were
23 subject to a quality assurance call. Do you know why that
24 number was so high?

25 MR. SILVESTRI: Mr. MacArthur had been red-flagged in
26 our system, I believe it was the account -- the [REDACTED]
27 [REDACTED], is it, not quite halfway down. And as it turned
28 out, it was a -- it turned out to be a dispute between a

1 brother and a sister. So although we did not see that as a
2 compliance violation, the system had red-flagged Mr.
3 MacArthur in our system as having received a complaint,
4 and so it flagged the majority of his -- enrolments
5 associated with Mr. MacArthur would be a call for quality
6 assurance.

7 MS. LONG: And would that have been common practice
8 for any IBO that was red flagged?

9 MR. SILVESTRI: Yes.

10 MR. SAFAYENI: That you would do, it looks like about
11 50 percent of the calls, as opposed to --

12 MR. SILVESTRI: Well, it's random. It would be at
13 least 25 percent.

14 MS. LONG: Right.

15 MR. SILVESTRI: But the system is random, so whichever
16 call that the system randomly selected and whether the
17 customer answered as well. So if, for example, -- well, in
18 the case of Mr. MacArthur, he was red flagged. So the
19 majority of his calls would have been quality assured. I
20 just don't know an exact number.

21 MS. LONG: And your compliance department would have
22 red-flagged him and somehow keyed-in that more of the calls
23 should go to prospective clients on his behalf; is that how
24 it worked?

25 MR. SILVESTRI: That's correct, either the compliance
26 department or the quality assurance group.

27 MS. LONG: Okay, thank you. Those are all our
28 questions.

1 Mr. Zacher, I am just going to ask Mr. Safayeni if,
2 based on that, he has any questions for cross-examination.
3 And then I will let you do your re-exam.

4 MR. SAFAYENI: No further questions, Madam Chair.

5 MS. LONG: Thank you, Mr. Safayeni. Mr. Zacher?

6 MR. ZACHER: No questions in redirect, thank you.

7 MS. LONG: Okay. Then thank you, Mr. Silvestri. We
8 thank you for coming and giving your evidence and you are
9 excused.

10 MR. SILVESTRI: Thank you, Madam Chair, and thank you,
11 Member Janigan, thank you, Member Spoel.

12 MS. LONG: Thank you.

13 MR. JANIGAN: Thank you.

14 **PROCEDURAL MATTERS:**

15 MS. LONG: So if there's no other issues, I guess that
16 leaves us with the submissions. I can tell you that the
17 Panel did discuss the submissions that counsel made
18 yesterday and we have determined that we would be best
19 assisted by receiving submissions on liability and penalty.
20 This is Planet's preference.

21 The enforcement team has raised a concern regarding
22 combining liability and penalty. We understand the concern
23 and are live to it, but the Panel is confident that we will
24 be able to differentiate between liability and penalty.

25 We also believe that the enforcement team can deal
26 with their concern about linking liability to penalty for
27 various different outcomes based on liability through
28 written submissions. So we are going to allow for written

1 submissions, with oral submissions to follow.

2 So I believe, counsel for the enforcement team, you
3 had said that you felt you could have written submissions
4 done by December the 12th; is that correct?

5 MS. GONSALVES: Yes, that's correct.

6 MS. LONG: Okay. And Mr. Zacher and Ms. Wood, we will
7 then ask that you have your written submissions to us by
8 December the 22nd, if that's amenable to you.

9 MR. ZACHER: That absolutely is, thank you.

10 MS. LONG: Okay. And then I understand, Ms. Gonsalves
11 and Mr. Safayeni, that you did not feel that you would need
12 written reply if we did oral submissions.

13 MS. GONSALVES: That's correct, yes.

14 MS. LONG: Okay. So the Panel is prepared to sit for
15 a half day to hear oral submissions on January the 11th,
16 starting at 9:30. I believe that Mr. Bell has confirmed
17 with both of you that that works for your schedule. Yes?
18 Mr. Zacher?

19 MR. ZACHER: Yes, that's perfect, thanks.

20 MS. LONG: And Ms. Gonsalves, Mr. Safayeni, and Ms.
21 Wood, you are all fine with that?

22 MS. GONSALVES: Yes.

23 MS. LONG: So we will book that in the calendar for
24 January 11th starting at 9:30. I believe we will be in
25 this north hearing room, and we will be sending out a
26 letter to formalize all that for the record.

27 That being said, I think, Mr. Richler, you wanted to
28 raise an issue with respect to transcripts?

1 MR. RICHLER: Thank you Madam Chair. Just a very
2 minor housekeeping item that we, the case management team,
3 wanted to raise. And that is that normally transcripts are
4 posted to the Board's public website shortly after the day
5 of the hearing. In this case, because there was an
6 exclusion order, those transcripts have not yet been
7 posted.

8 Now, it occurred to us that during the course of some
9 of the testimony, there was some personal information that
10 was revealed -- nothing hugely sensitive, but things like,
11 for example, e-mail addresses.

12 So what we, the case management team, wanted to
13 propose to you and get your direction on is we would be
14 happy to go through those transcripts and scrub them of any
15 apparent personal information, and then post those redacted
16 versions on the public website. It might take a little bit
17 of time, but I don't think that doing so would delay the
18 proceeding in any way. Both parties already have the full
19 non-redacted transcripts.

20 So if that sounds like a good plan to you, we are
21 happy to do that.

22 MS. LONG: Any concerns from counsel on that?

23 MS. GONSALVES: No, no concerns.

24 MR. ZACHER: No, that's fine.

25 MR. RICHLER: And Madam Chair, I might just add we
26 could do the same for the transcript of the motion hearing
27 that was held in August. As you'll recall, there was a
28 procedural motion and that transcript was never posted to

1 the website. We are happy to review that to make sure that
2 there's no issues with any personal information, and have
3 that posted as well.

4 MS. LONG: Okay, very good. Why don't you start with
5 the hearing days, and then work backwards and do the
6 motion?

7 MR. RICHLER: Thank you.

8 MS. LONG: Okay. Are there any other issues that
9 anybody wants to raise?

10 MR. ZACHER: No, thank you very much.

11 MS. LONG: No? Okay. Then we are adjourned and we
12 will look forward to receiving your written submissions and
13 we will see you in January for oral submissions. Thank
14 you, everyone.

15 MR. ZACHER: Thank you.

16 --- Whereupon the hearing adjourned at 2:15 p.m.

17

18

19

20

21

22

23

24

25

26

27

28