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September 2, 2010

Kirsten Walli  
Board Secretary  
Ontario Energy Board  
P.O. Box 2319  
2300 Yonge Street, Suite 2700  
Toronto, Ontario M4P 1E4

Dear Ms. Walli:

**Re: Board File EB-2010-0245 – Notice of Proposal to Revoke and Re-Issue a Code, Proposed Revocation and Re-Issuance of the Electricity Retailer Code of Conduct, Notice of Proposal to Revoke and Re-Issue a Rule and Amend a Rule, Proposed Revocation and Re-Issuance of the Gas Marketer Code of Conduct and Proposed Amendments to the Gas Distribution Access Rule**

Planet Energy (Ontario) Corp. welcomes the opportunity to provide written comments on the proposed restated Retailer Code, Marketer Code and amendment to the GDAR. Attached hereto are Planet's comments in this regard.

If you require any further information or clarification on Planet's submission, please do not hesitate to contact me at 289-360-3002 or [cgaffney@planetenergy.ca](mailto:cgaffney@planetenergy.ca).

Regards,

A handwritten signature in blue ink, appearing to read "Chris Gaffney".

Chris Gaffney  
Executive Vice President and Chief Legal Officer  
Planet Energy (Ontario) Corp.

# Planet Energy (Ontario) Corp.'s Comments on OEB's Proposed Revised Supplier Codes of Conduct (including new Disclosure Statements, and Verification Scripts) (the "Proposed Documents")

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In general, these comments have been made on the electricity Proposed Documents. Unless the gas Proposed Documents are specifically addressed herein, all of the comments on the electricity Proposed Documents apply to the gas Proposed Documents wherever applicable.

Planet Energy (Ontario) Corp. ("Planet") is a privately held, 100% Canadian owned licensed retailer of electricity and marketer of natural gas in Ontario. Pursuant to its licenses, Planet offers electricity and natural gas products to both large volume and low volume consumers.

With respect to Planet's marketing to low-volume consumers, Planet ceased its door-to-door marketing program in the spring of 2010 in favour of internet based sign ups as Planet has found this to be a viable marketing channel that creates a higher level of customer satisfaction. Planet generates customer interest through relationship and affinity based customer programs. Through these programs, representatives introduce potential customers to Planet's product offering and directs such potential customers to Planet's internet portal for further information and, if the customer chooses, to enter into contracts. In respect of affinity based programs potential customers have a commercial or association based relationship (e.g. customers of a retail outlet or residents of a building). In respect of relationship based marketing potential customers are the friends, family and acquaintances of the Planet representative. It is from this perspective that Planet makes the following comments on the Proposed Documents.

## **Sec 2: Requirement to provide a business card and wear an identification badge**

Planet supports the underlying principal that a salesperson must clearly identify himself and the party he is representing. Planet has concerns with the current proposals in this regard in two contexts.

1. Planet believes the current proposals as they pertain to large volume electricity consumers ("LVCs") are inappropriate. Our sales representatives have well developed commercial relationships with many Large Volume Customers ("LVCs") and their consultants. It should be sufficient to provide such LVCs with a business card. The requirement to carry a badge and further wear it on the outer clothing at all times is unnecessary. Consider a lunch or dinner at a fine restaurant with a client you have known for years, or attending a public event with a client. The requirement to wear a badge in these circumstances is inappropriate.

2. Planet understands that the requirement to present a badge when retailing to small volume consumers is explicitly set out in the draft regulations. However, Planet submits that the requirement to wear an identification badge be limited to representatives/agents marketing via the door-to-door channel and not to marketing through pre-arranged meetings or to persons personally known by the representative of the supplier. Planet believes that the requirement for presenting a business card to a consumer provides the same level of customer protection associated with the requirement for an identification badge when marketing through pre-arranged meetings or to persons personally known by the representative of the supplier. The requirement for the identification badge requires an additional cost and administrative burden on the supplier with no additional benefits. Planet has submitted this same comment as part of the comment process on the regulations. We include it here for consistency.

In summary it is our view that it is inappropriate, for the reasons set out above to require a badge be worn on the outer clothing at all times when dealing with LVCs, or small volume consumers whom the salesperson personally knows. Planet believes the requirement of presenting a business card in these circumstances meets the objectives of identifying the salesperson and the retailer represented by the sales person. The badge is an unnecessary redundancy in these specific circumstances.

#### **Sec 2.4(f) Requirement of badge**

Planet submits that this subsection should be revised to contemplate the issuance of an identification number by an arms length third party.

#### **Sec 3.8 Incumbent's requirement to notify low volume consumer of contest**

Planet submits that this requirement should only apply if the incumbent intends to pursue cancellation charges under the contract. If the incumbent has determined to let the consumer out of his contractual obligations we see no reason why the incumbent should have to notify the consumer. Section 3.8 should be modified accordingly.

#### **Sec 5.5 to 5.10 Conduct of training and record keeping thereof.**

1. The proposed code does not seem to specifically contemplate internet based training. Given the prevalence of use and robustness of internet based training Planet feels that this should be specifically provided for in the Proposed Documents.
2. Section 5.5 – Planet submits that section 5.5 is too broad. It fails to consider internet based training hosted on a third party's web site where that party is also engaged by the retailer to provide retailing activities. Who hosts internet based training should not be relevant. With internet based training only responsibility for the content as it is presented on the internet is relevant. A third party should be able to host training and even prepare the training so long as the retailer approves it and remains ultimately responsible for its content and delivery.
3. Section 5.6 (c) and (d)
  - a. Planet submits that the requirements to (i) obtain 90% to pass the test, (ii) only allow a prospective sales representatives to retake the test once, and (iii) to have the

prospective sales representative retake the entire training if the test is failed on the first attempt is far too restrictive, and entirely unprecedented.

- b. Planet submits that there are other professions and activities in Ontario where individuals are required to undergo training and/or competency testing and where (i) these requirements do not (a) require a 90% pass rate, (b) allow only one retake of the testing if failed, and (c) require the candidate to retake all training before retesting can occur, and (ii) the consequences of a failure of these individuals to appropriately carry out their duties are far more severe (to the point of being catastrophic) than the consequences if an energy sales representative fails to appropriately carry out his or her duties. The possible consequence of an energy sales representative not appropriately performing his or her duties may result in a consumer paying more for their energy than they might otherwise have paid. On its face, the requirements of section 5.6(c) and (d) are unduly onerous and should be relaxed appropriately. Planet submits that,
  - i. a pass rate of 60% is sufficient
  - ii. the test can be retaken as many times as the prospective sales representative desires, and
  - iii. Retraining be required only in so much as required to pass the test.

To do otherwise unnecessarily places inappropriate barriers to entry into the role of sales representative.

4. Section 5.6(e)

- a. This paragraph in its current form appears to restrict internet self study and testing. Planet submits that it needs to be revised to account for internet self study and testing.

5. Sections 5.8 and 5.9

- a. These sections require retraining of sales representatives annually and after a 60 day period of inactivity. Planet submits that this is unprecedented and unduly restrictive. Planet submits that an active sales representative should be required to remain current with any regulatory changes and that full retraining and retesting should only be required in the case of a 2 year period of inactivity.

6. Section 5.10 – Training and testing record keeping

- a. Planet submits that the record keeping requirements set out in section 5.10 are unduly onerous and that the goal of ensuring sales representatives are trained and knowledgeable can be achieved by keeping records of the date the representative passed the test and general records of training materials and tests used over time.
- b. Planet submits that the requirement for a sales representative to physically sign a certification is not appropriate for internet based training.
- c. Planet submits that it is unnecessary to keep a copy of each representative's badge and business card.

### Internet Disclosure Statement – Electricity

1. Planet submits that it is not appropriate or necessary to identify the name of a sales representative on an internet disclosure statement as there may not be any sales representative involved in the transaction. Further (and as set out earlier in these comments), in the case of network marketing the customer is a family member or close friend of the sales representative and it is not necessary to display the sales representative's name on the disclosure statement. If a sales representative has introduced a potential customer to a retailer's products and directed them to a website for further information, and should they decide, contracting, it should be sufficient to capture an identifying piece of information on the transaction record for future reference if required, and then only if provided by the customer at the time of entering into the internet based contract.
2. The regulations require that a customer enter their email address as part of the internet contracting process. Planet submits that the location of this requirement implied in the disclosure form (at the completion of the contracting process) is inappropriately restrictive. It may make more sense to capture this information elsewhere in the process. The disclosure statement should be adjusted accordingly.
3. The 10 day cooling off period mentioned in the disclosure statement is redundant given the draft regulation allowing a customer to cancel within 30 days of their first bill. As a follow on to this, Planet suggests it is therefore inappropriate to force retailers to wait 10 days to submit an enrol request to a distributor.
4. The disclosure statement should explicitly set out that by entering a contract with a retailer the customer's electricity will continue to be safely delivered and billed by the local utility, and that in the event of an emergency or outage the customer should call the local utility and not the retailer, and that the only change will be that the cost of the electricity supply portion of the bill will state that the electricity is supplied by the retailer.

### Renewal Disclosure Statement- Electricity

1. The disclosure statement implies that if a customer does not extend or renew a contract that they will be returned to utility supply. This should explicitly state that this will occur at the end of the existing contract's term.
2. Any reference to a customer being returned to standard supply service should read “. . . transferred back to the Regulated Price Plan for your electricity supply . . .”. It should not refer to being transferred back to their “utility”, the customer always remains a customer of the utility, even when subject to a retail contract.
3. Planet submits that there should be specific allowance for renewal of contracts by way of internet renewal. This is of particular importance in respect of consumers that have chosen to

enter into contracts through the internet. Planet agrees that the process for internet based renewals should present the information required by the proposed regulation.

#### Internet Disclosure Statement – Gas

1. Planet submits that it is not appropriate or necessary to identify the name of a sales representative on an internet disclosure statement as there may not be any sales representative involved in the transaction. Further (and as set out earlier in these comments), in the case of network marketing the customer is a family member or close friend of the sales representative and it is not necessary to display the sales representative's name on the disclosure statement. If a sales representative has introduced a potential customer to a marketer's products and directed them to a website for further information, and should they decide, contracting, it should be sufficient to capture an identifying piece of information on the transaction record for future reference if required, and then only if provided by the customer at the time of entering into the internet based contract.
2. The regulations require that a customer enter their email address as part of the internet contracting process. Planet submits that the location of this requirement implied in the disclosure form (at the completion of the contracting process) is inappropriately restrictive. It may make more sense to capture this information elsewhere in the process. The disclosure statement should be adjusted accordingly.
3. The disclosure statement should explicitly set out that by entering a contract with a marketer the customer's gas will continue to be safely delivered and billed by the local utility, and that in the event of an emergency or outage the customer should call the local utility and not the marketer. The only change will be that the gas supply portion of the bill will state that the gas is supplied by the marketer.

#### Renewal Disclosure Statement – Gas

1. The disclosure statement implies that if a customer does not extend or renew a contract that they will be returned to utility supply. This should explicitly state that this will occur at the end of the existing contract's term.

#### Electricity Verification Call Script

These comments are based on the proposed electricity verification script but should be considered to apply to the proposed gas verification script wherever applicable.

1. The verification call script as proposed is quite simply far too long. In its current form it is likely that the script will double, if not triple the existing reaffirmation call time. This will place materially increased costs on retailers and result in price increases to consumers. Planet submits that the Board work with the retailer community to develop a script that limits the reaffirmation call to a two minute average.

2. Planet submits that the verification call should be able to proceed in French, an official language in the province of Ontario, or another language of the customer's choosing.
3. A customer is entitled to a copy of verification call recording made under the regulations. Planet submits that there is no need to mention this right during the verification call. The only time a verification recording is necessary is to resolve a dispute that has arisen. It should be sufficient at that point for the retailer to provide a copy of the call if requested. To mention this on the verification call will lead to an unnecessarily large number of call recordings being requested for no particular reason. This will result in the retailer becoming a technical support department for customers whose computers cannot open the recording as provided. The administration of this process will result in a material cost addition to retailers and price increases to customers for no incremental benefit.
4. Point 9 in the script states that the customer is under no obligation to verify the contract and if he/she does not verify the contract there will be no fees or penalties to be paid.
  - a. There should also be a statement to the effect that should the customer choose not to verify the contract he/she will not receive any of the potential benefits of the contract. The addition of this statement serves to balance an otherwise significantly negative tone created by the statement as proposed.
  - b. There is no need to mention termination fees at this point as it is dealt with later on in point # 16.
5. Point 10 in the script tries to confirm the date a copy of the contract was delivered to the customer. Planet submits that it is a practical reality that few if any customers will remember this date. A signed and dated contract should be sufficient to meet this requirement. If the customer's memory of the date they entered into and was delivered a contract is a requirement to proceed with the verification call the vast majority of calls will not continue past this point.
6. Point 11 asks if the customer received a disclosure statement. Again, Planet submits that even if thoroughly reviewed at the time of entering into a contract, after 10 days few customers will recall this or more specifically recall the disclosure statement document by the name: "disclosure statement". A signed acknowledgement, as now required under the proposed regulations, that the customer received, read, and understood a disclosure statement should be sufficient.
7. Point 12 asks if the customer read and understood the disclosure statement. Again, Planet submits that many customers may not recall this. A signed acknowledgement, as now required under the regulations, that the customer received, read, and understood a disclosure statement should be sufficient.
8. Point 13 of the script reminds a customer that by verifying the contract that the retailer will become the customer's electricity supplier. When we remind the customer of this fact we

should also remind the customer that by verifying the contract the customer's electricity will continue to be safely delivered and billed by the local utility, and that in the event of an emergency or outage the customer should continue to call the local utility as they have always done in the past and not the retailer, and that the only change will be that the electricity supply portion of the bill will state that the electricity is supplied by the marketer.

9. Point 21 reiterates the customer's right to a copy of the call recording. As stated above, and for the reasons set out there, Planet submits that this is not desirable.
10. Point 22 – Planet submits that it is not necessary for the retailer to provide Board contact information on a verification call. That information is available on the customer's written contract and on the Board's website. Providing that information during the verification call will serve to unnecessarily lengthen the call.