

Court/Estate Nos. 31-2943175  
and 31-2943168

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF PLANET  
ENERGY (ONTARIO) CORP.**

**AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF  
PLANET ENERGY (B.C.) CORP.**

**MOTION RECORD  
(Motion for Approval of the Sale Process and Administration Order and Extension  
of Proposal Period)**

**(Returnable June 5, 2023)**

**MAY 26, 2023**

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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
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**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF PLANET ENERGY (ONTARIO) CORP.**

**AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF PLANET ENERGY (B.C.) CORP.**

**SERVICE LIST  
(as at May 26, 2023)**

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**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF PLANET ENERGY (ONTARIO) CORP.**

**AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF PLANET ENERGY (B.C.) CORP.**

**NOTICE OF MOTION  
(Motion for Approval of the Sale Process and Administration Order and Extension of Proposal Period)**

**(Returnable June 5, 2023)**

The Applicants, Planet Energy (Ontario) Corp. ("**PEOC**") and Planet Energy (B.C.) Corp. ("**PEBC**", and together with PEOC, "**Applicants**" or "**Planet Energy**") will make a motion to a judge presiding over the Commercial List on June 5, 2023, at 10:00 a.m. or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

**PROPOSED METHOD OF HEARING:** The motion is to be heard orally.

**THE MOTION IS FOR:** an Order (the "**Sale Process and Administration Order**"), substantially in the form attached hereto as Schedule "A":

- (a) abridging the time for the service and filing of this Notice of Motion and the Motion Record, if necessary;
- (b) approving the administrative consolidation of the Applicants' proposal proceedings (the "**Proposal Proceedings**") and authorizing Richter Inc., in its capacity as Proposal Trustee of each of the Applicants (the "**Proposal Trustee**"), to administer the Proposal Proceedings as if the Proposal Proceedings were a single

proceeding for the purposes of carrying out its duties and responsibilities as proposal trustee under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the “**BIA**”);

(c) approving a court-supervised sale process in respect of the business and/or assets of the Applicants in accordance with the procedures set out at Schedule A to the Sale Process and Administration Order (the “**Sale Process**”);

(d) extending the time for the Applicants to file a proposal (the “**Proposal Period**”) under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) until July 25, 2023; and

(e) such further and other relief as the Court may deem just.

#### **THE GROUNDS FOR THE MOTION ARE:**

##### **BACKGROUND**

(a) Planet Energy is an energy retailer that provides fixed-price electricity and natural gas supply to residential and commercial customers in Canada;

(b) Planet Energy retained All Communications Network of Canada, Co. (“**ACN**”) to act as its master agent to market and retail Planet Energy’s products to potential customers in British Columbia, Manitoba and Ontario pursuant to the terms of an Amended, Restated and Assigned Sales Agency Agreement dated November 9, 2012 (the “**SAA**”);

(c) The SAA contemplated, among other things, that (i) Planet Energy would pay a commission to ACN for each referred customer who successfully registered for Planet Energy’s products and services in accordance with the SAA, and (ii) ACN

would indemnify Planet Energy in respect of any complaints regarding the misconduct of ACN salespersons (the “**IBOs**”) and regulatory proceedings related thereto;

(d) In March 2018, Planet Energy delivered a notice to ACN in accordance with the SAA of its intention to seek indemnification in an amount exceeding \$11 million due to the voluminous number of complaints it received relating to ACN’s IBOs (including the costs incurred as a result of an OEB Enforcement Proceeding bearing File No. EB-2017-0007) and the early terminations by customers. Planet Energy ceased paying commissions to ACN to set off this indemnification claim and accrued these unpaid commissions as a liability and in cash;

(e) On April 26, 2018, ACN commenced an arbitration alleging that Planet Energy failed to make certain commission payments to ACN. On June 12, 2018, Planet Energy delivered a counterclaim seeking indemnification for ACN’s IBOs misconduct and alleging that ACN had breached several of its obligations under the SAA;

(f) The arbitrator released her final award (the “**Arbitral Award**”) on February 3, 2021 granting judgment in favour of ACN and ordering Planet Energy to pay a total sum of approximately \$29 million plus interest and costs to ACN;

(g) On March 4, 2021, Planet Energy commenced an application in the Ontario Superior Court of Justice (Commercial List) (the “**Commercial List**”) to set aside the Arbitral Award (the “**Set Aside Application**”) pursuant to Article 34 of Schedule 1 (the “**Model Law**”) of the *International Commercial Arbitration Act, 2017*;

(h) On March 18, 2021, ACN commenced an application in the Commercial List to enforce the Arbitral Award (the “**Enforcement Application**”);

(i) On April 7, 2022, Justice Cavanagh dismissed the Set Aside Application and granted ACN's Enforcement Application, which decision was affirmed by the Ontario Court of Appeal on May 8, 2023 (the "**ONCA Decision**");

(j) On May 11, 2023, each of PEOC and PEBC filed a Notice of Intention to Make a Proposal (the "**NOIs**") under the BIA and commenced these Proposal Proceedings;

### **APPROVAL OF THE SALE PROCESS**

(k) Planet Energy pursued various efforts to maximize the value of its business and assets for the benefit of creditors in the event Planet Energy's appeal of the Set Aside Decision was unsuccessful;

(l) Planet Energy undertook significant steps to reduce costs and, where possible, increase revenues since 2021, and has continued to do so as part of these Proposal Proceedings;

(m) Planet Energy is not able to satisfy the Arbitral Award and its other indebtedness, including the debt of certain secured creditors;

(n) Planet Energy, in consultation with its financial advisor and the Proposal Trustee, has determined that the best approach to maximize creditor recovery is to seek to sell Planet Energy's business and/or customer book;

(o) It is envisaged that the Sale Process will be administered by the Proposal Trustee;

### **EXTENSION OF THE PROPOSAL PERIOD**

(p) The Sale Process is anticipated to proceed through July 25, 2023;

- (q) Planet Energy requires that the Proposal Period resulting from the filing of the NOI to be extended until July 25, 2023 in order to allow (i) Planet Energy to carry out the Sale Process; (ii) negotiate any transaction resulting from the Sale Process; and (iii) contemplate the terms of a proposal to be submitted to Planet Energy's creditors;
- (r) The extension of the Proposal Period will assist Planet Energy in maximizing the value of its assets for the benefit of its stakeholders;
- (s) Planet Energy has been acting and continues to act in good faith and with due diligence during these proceedings;
- (t) No creditor of Planet Energy will be materially prejudiced by extending the Proposal Period as Planet Energy has sufficient liquidity and is projected to generate neutral or moderately positive cash flow to continue operating during the proposed extension of the Proposal Period;
- (u) It is just and convenient and in the interest of Planet Energy and its stakeholders that the Proposal Period be extended to July 25, 2023.

**GENERAL**

- (v) Sections 50.4(9), 65.13, 183 of the BIA and the other provisions of the BIA;
- (w) Rules 1.04, 1.05, 2.03, 3.02 and 37 of the Rules of Civil Procedure, R.R.O. 1990 Reg. 194, as amended;
- (x) Section 137(2) of the *Courts of Justice Act*, R.S.O. 1990, c 43; and
- (y) Such further grounds as counsel may advise and this Court may permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:

- (z) The Affidavit of Nino Silvestri, sworn May 26, 2023 and the exhibits thereto;
- (aa) the First Report of the Proposal Trustee, to be provided; and
- (bb) such further and other material as counsel may advise and this Court may permit.

May 26, 2023

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Court /Estate Nos. 31-2943175  
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PROPOSAL OF PLANET ENERGY (B.C.) CORP.**

**AFFIDAVIT OF NINO SILVESTRI  
(sworn May 26, 2023)**

I, Nino Silvestri, of the Town of Oakville, in the Province of Ontario, **MAKE OATH AND  
SAY:**

1. I am the Chief Executive Officer and the sole director of Planet Energy (Ontario) Corp. and Planet Energy (B.C.) Corp. (collectively, "**Planet Energy**"). As such, I have personal knowledge of the matters to which I hereinafter depose. To the extent that I am informed by others, I have identified the source of such information and believe it to be true.

**Part I Overview**

2. On May 11, 2023, Planet Energy filed a Notice of Intention to Make a Proposal (the "**NOI**") under the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**") appointing Richter Inc. ("**Richter**") as proposal trustee. I swear this affidavit in support of Planet Energy's motion to extend the stay of proceedings under the NOI and for approval of a sale process for Planet Energy's business and/or customer contracts.

3. I have reviewed the motion record of All Communications Network of Canada ("**ACN**") dated May 16, 2023, seeking the appointment of KSV Restructuring Inc. ("**KSV**") as interim receiver and receiver and manager, without security, of all of the assets, undertakings and

properties of Planet Energy, including the affidavit of Robert Stevanovski sworn May 15, 2023 (the “**Second Stevanovski Affidavit**”). I have also reviewed the affidavit of Mr. Stevanovski sworn May 11, 2023 (the “**First Stevanovski Affidavit**”) in support of a previous motion served by ACN dated May 11, 2023, seeking similar relief, which ACN served shortly following the filing of the NOI. In addition to swearing this affidavit on behalf of Planet’s motion to extend the stay and for approval of a sales process, I also swear this affidavit in response to ACN’s motion and the First and Second Stevanovski Affidavits.

## **Part II Background to the NOI**

### **A. My Personal Background**

4. I have spent my entire professional career of forty-one years working in the North American energy industry, primarily in marketing, retailing and regulatory capacities, after obtaining my Honours Bachelor of Business Administration degree from Wilfrid Laurier University in May 1982 and my Master of Arts in Economics from York University in June 1986.

5. I started my career in May 1982 as an economic analyst at TransCanada Pipelines. While in this role, I became interested in energy retailing and in 1986 began working with TransCanada Pipeline’s marketing affiliate, Western Gas Marketing, upon the deregulation of the Canadian natural gas industry. I started working as a sales representative and, later, as manager of sales, selling energy products to large industrial customers and gas utilities in eastern Canada and the United States.

6. I joined Direct Energy Marketing as its Manager of Sales in April 1992 and was later promoted to Senior Vice-President, Marketing, where I was responsible for overseeing all retail and marketing efforts in North America. In May 2000, I decided to start my own consulting company, Silvestri Energy Services, focused on assisting industry participants with regulatory and marketing issues on wholesale and retail energy matters in Canada.



7. Through my consulting experience, I worked with and ultimately joined Universal Energy Corporation, an Ontario based energy retailer, as its Chief Operating Officer in March 2005. My responsibilities included overseeing all operations, with a primary focus on retailing, marketing and regulatory matters. In July 2009, Universal Energy Corporation was sold to Just Energy and I decided to start another business with my business partner, Stephen Plummer, Sunwave Solar and Sunwave Power & Gas, which we sold to Oneenergy in 2011.

8. In 2012, Mr. Plummer and I, along with certain other strategic partners, purchased Planet Energy. I have operated Planet Energy since that time, and I am currently the sole director and officer of Planet Energy.

#### **B. Planet Energy**

9. Planet Energy is an energy retailer that was established in 2009 and provides primarily five-year fixed-price electricity and natural gas supply contracts to residential and commercial customers. Planet Energy now operates principally in Ontario, but previously has also operated in other Canadian and U.S. jurisdictions. Planet Energy provides customers with long-term price certainty to shield them against market changes in electricity and natural gas supply prices.

10. Planet Energy's traditional business model has been to generate gross margin through the difference between the fixed price it earns from customers on electricity and natural gas supply and the fixed price it pays pursuant to its energy supply and swap agreements. In general terms, Planet Energy would review the ordinary energy consumption of its customers and purchase long-term energy supply contracts from Shell Energy North America (US) L.P. ("**Shell**"). A schematic that describes how a financial swap for Ontario electricity works is attached as **Exhibit A**.

11. Planet Energy's relationship with Shell has been principally governed by an Amended and Restated Global Agreement (the "**Global Agreement**"). Planet Energy has also entered into other agreements with Shell, including swap agreements to hedge against commodity price fluctuations

(the “**Swap Agreements**”) in respect of its retail electricity business. Pursuant to these Swap Agreements, Planet Energy purchases electricity at a fixed “swap” (or “mark”) price instead of the variable hourly Ontario energy price (known as the “**HOEP**”), which the Independent Electricity System Operator (“**IESO**”) calculates and charges to the Ontario electricity utilities and other consumers (*i.e.*, the “market” price). In the ordinary course, Planet Energy would settle its position with Shell and the Ontario electricity utilities on a monthly basis based on whether the weighted average HOEP was higher or lower than the weighted average swap price and the weighted average customer sales price, respectively. Planet Energy earned a gross margin on the difference between its weighted average customer contract price and the weighted average swap price with Shell. The Global Agreement is attached as **Exhibit B**. The master swap agreement is attached as **Exhibit C**.

12. At present, Planet Energy operates out of one office in North York, Ontario, and has 17 employees.

### **C. The SAA**

13. Due to the regulated nature of the energy retailing business in Ontario and other jurisdictions, including restrictions on door-to-door and other sales methods, almost from inception Planet Energy engaged with ACN to market and sell fixed-price energy products to the friends and family of ACN’s agents, typically called independent business owners (“**IBOs**”). ACN is a Nova Scotia corporation and an indirect subsidiary of ACN, LLC, a global multi-level marketing firm headquartered in Concord, North Carolina. ACN principally operates as a sales agency business by contracting with IBOs to act as sales agents to refer customers to ACN or other third-party providers of telecommunications, energy and other services, and paying commissions to these IBOs for successful customer referrals.

14. Shortly after Mr. Plummer and I, with our other partners, acquired Planet Energy in 2012, Planet Energy and ACN entered into an Amended, Restated and Assigned Sales Agency

Agreement dated November 9, 2012 (the “**SAA**”). The SAA is attached as **Exhibit D**. The purpose of the SAA was for Planet Energy to continue to engage ACN as a “master agent” to market and retail Planet Energy’s products through its IBOs to potential customers in British Columbia, Manitoba, Ontario and Quebec. Planet Energy agreed to pay a commission to ACN based on the customer’s actual monthly consumption for every referred customer who successfully registered for Planet Energy’s products and services in accordance with the SAA.

15. Between 2010 and December 2014, Planet Energy’s relationship with ACN was a successful one. Over this period, ACN referred an increasing number of customers to Planet Energy and both parties were achieving increased profitability. In 2015, however, the number of customers being referred by ACN to Planet Energy started to decline precipitously. In 2014, ACN procured 16,998 net new sales. In 2015 and 2016, ACN procured only 10,657 and 4,454 net new sales, respectively.

16. In my view there was no material change in the regulatory landscape or any other market change that would have impeded ACN's ability to continue its strong sales trajectory in 2015 and 2016. Those years were an especially critical period for sales and marketing as Planet Energy’s initial five-year contracts from 2010 were approaching their expiration dates and were eligible for re-contracting for another five-year term (and would have been characterized as “new sales”, per the numbers set out in paragraph 15 above).

17. Unknown to me at the time, ACN was working with an energy retailing affiliate (that goes by the name “**Xoom**”) to enter the Canadian market, including Ontario. The term of the SAA was scheduled to expire in November 2016. Mr. Plummer and I were informed unofficially by Mr. Stevanovski in March 2016 that ACN would not renew the SAA. On June 1, 2016, ACN provided formal notice to Planet Energy that it would not renew the SAA. Almost immediately thereafter, Xoom submitted an application to the Ontario Energy Board (the “**OEB**”) for an energy retailer license.

#### D. The Arbitration

18. Following the termination of the SAA, Planet Energy faced a significant and increasing number of complaints made by customers to the OEB relating to the conduct of ACN's IBOs from the period when they were marketing Planet Energy products. Pursuant to the SAA, ACN indemnified Planet Energy in respect of complaints regarding IBO misconduct and regulatory proceedings relating thereto. During this period, Planet Energy also determined that ACN had breached the SAA by failing to make commercially reasonable efforts to sell Planet Energy products and sharing confidential information with Xoom to assist its entry into the Canadian (and especially Ontario) market.

19. For purposes of this affidavit I will not repeat my evidence with respect to these and other issues which manifested in an arbitration between Planet Energy and ACN. Instead, I refer to paragraphs 32 to 48 of my affidavit sworn May 7, 2021 (the "**First Silvestri Affidavit**"), served in support of Planet Energy's application to set aside the Arbitral Award (defined below). The First Silvestri Affidavit (without exhibits) is attached as **Exhibit E**.

20. In March 2018, Planet Energy delivered a notice to ACN in accordance with the SAA of its intention to seek indemnification in an amount exceeding \$11 million due to the voluminous number of complaints it received relating to ACN's IBOs (including the costs incurred as a result of an OEB Enforcement Proceeding bearing File No. EB-2017-0007) and the early terminations by customers pursuant to section 12 of the SAA. Planet Energy ceased paying commission payments to ACN at this time to set off its indemnification claim, but instead accrued these unpaid commissions as a liability and in cash. The eventual accrual of these unpaid commissions totaled approximately \$11 million.

21. On April 26, 2018, ACN commenced an arbitration (the "**Arbitration**") alleging that Planet Energy failed to make certain commission payments to ACN. On June 12, 2018, Planet Energy delivered a counterclaim seeking indemnification for ACN's IBOs misconduct and alleging that

ACN had breached several of its obligations under the SAA including that ACN failed to use commercially reasonable efforts to promote Planet Energy's products and had acted in a manner that it knew would cause harm to Planet Energy.

22. Relevant evidence with respect to the conduct of the Arbitration is set out in paragraphs 57 to 131 of the First Silvestri Affidavit instead of being repeated here. On February 3, 2021, the arbitrator released her final award (the "**Arbitral Award**") granting judgment in favour of ACN and ordering Planet Energy to pay a total sum of approximately \$29 million plus interest to ACN. The Arbitral Award is attached as **Exhibit F**.

23. The Arbitral Award was a staggering result for Planet Energy. The amount awarded was almost 3 times the unpaid commissions accrued and included commissions (a) for gross margin that was never earned; (b) for future gross margin that Planet Energy had not yet (and may never) earn; and (c) that, according to OEB staff, are illegal under the *Energy Consumer Protection Act* (the "**ECPA**"). As a result, if enforced, the Arbitral Award would render Planet Energy insolvent. A more complete summary of the Arbitral Award is set out at paragraphs 132 to 163 of the First Silvestri Affidavit.

#### **E. The Commercial List Proceedings**

24. On March 4, 2021, Planet Energy commenced an application in the Ontario Superior Court of Justice (Commercial List) (the "**Commercial List**") to set aside the Arbitral Award (the "**Set Aside Application**") pursuant to Article 34 of Schedule 1 (the "**Model Law**") of the *International Commercial Arbitration Act, 2017*. Planet Energy's notice of application on the Set Aside Application is attached as **Exhibit G**.

25. On March 18, 2021, ACN commenced an application in the Commercial List to enforce the Arbitral Award (the "**Enforcement Application**"). ACN's notice of application on the

Enforcement Application is attached as **Exhibit H**. The parties agreed that the Set Aside Application and the Enforcement Application would be heard together on August 20, 2021.

26. In conjunction with these applications, ACN also brought a motion in the Commercial List for an order requiring Planet Energy to post security in the full amount of the Arbitral Award as a condition to the hearing of the Set Aside Application (the “**Security Motion**”).<sup>1</sup>

27. On the Security Motion, ACN argued that security was appropriate for many of the same reasons it seeks the appointment of a receiver on this motion. ACN argued (i) Planet Energy comes to the court with unclean hands based in findings of bad conduct made by the Arbitrator; and (ii) an order of security would assist ACN in execution of a judgment recognizing and enforcing the Arbitral Award. ACN’s factum on the Security Motion is attached as **Exhibit I**.

28. ACN had made similar requests for interim relief in the Arbitration, first in December 2018 and again in February 2020, relying on many of the same claims in respect of Planet Energy’s conduct. The Arbitrator dismissed both requests in Procedural Order Nos. 5 and 18. Procedural Order Nos. 5 and 18 are attached as **Exhibit J** and **K**, respectively.

29. In response to the Security Motion, I swore an affidavit on June 23, 2021 (the “**Second Silvestri Affidavit**”). Among other things, I explained in the Second Silvestri Affidavit that Planet Energy would not be able to satisfy the full amount of the Arbitral Award if enforced, but that Planet Energy:

- (a) was a going concern with positive cash flow;
- (b) has not made any distributions or paid any dividends to shareholders since fiscal 2018, the period in which the Arbitration was commenced;
- (c) has not paid any bonuses to directors and officers since fiscal 2018; and

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<sup>1</sup> Prior to the hearing of the Security Motion, ACN reduced the amount of its requested to security to \$10 million.

- (d) has accrued as a liability and as cash the sales commissions to which ACN claimed entitlement following Planet Energy's decision to cease paying such commissions in March 2018.

The Second Silvestri Affidavit is attached (without exhibits) as **Exhibit L**.

30. Given that the Security Motion, if granted, would have forced Planet Energy to immediately commence insolvency proceedings while the Set Aside Application was ongoing, Stikeman Elliott LLP ("**Stikeman**"), counsel to Planet Energy, retained Richter (formerly, Richter Advisory Group Inc.) to assess the financial condition of Planet Energy and to prepare a report (the "**First Richter Report**"). The purpose of the First Richter Report was to assist the Court in assessing the impact on Planet Energy of the payment of security, either in the full amount of the Arbitral Award or some reduced amount, including prejudice to other creditors of Planet Energy (including secured creditors). The First Richter Report provided significant disclosure to ACN regarding Planet Energy's business and financial affairs. The First Richter Report is attached as **Exhibit M**.

31. The First Richter Report sets out that, as at April 30, 2021, Planet Energy had approximately \$12.8 million in cash on hand, excluding certain restricted cash, and had a \$2.2 million USD contingent liability owed to Shell, resulting from the mark-to-market differences in the fair value of the commodity price under the Swap Agreements. This is also confirmed in Planet Energy's audited financial statements for the year ended September 30, 2020, which are attached as **Exhibit N**.

32. The Security Motion was heard before Justice Cavanagh on August 10, 2021. Cavanagh J. dismissed the Security Motion in an endorsement released the following day, holding that "it would not be proper to require [Planet Energy] to provide security for the benefit of one creditor, ACN, without consideration of the interests of secured and other unsecured creditors of Planet Energy." Cavanagh J. also stated that if ACN believed it had proper grounds to move for pre-

judgment remedies, such as a *Mareva* injunction, it was at liberty to do so. Cavanagh J.'s endorsement dismissing the Security Motion is attached as **Exhibit O**.

33. The Set Aside and Enforcement Applications were heard the following week on August 20, 2021, also before Cavanagh J. ACN did not bring a motion or otherwise seek to obtain pre-judgment remedies, such as a *Mareva* injunction, prior to (or after) April 7, 2022, when Cavanagh J. released his decision dismissing the Set Aside Application and granting the Enforcement Application (the "**Cavanagh Decision**"). The Cavanagh Decision is attached as **Exhibit P**.

#### **F. The Mediation**

34. Planet Energy served and filed a notice of appeal in respect of the Cavanagh Decision on May 6, 2022. Planet Energy's notice of appeal is attached as **Exhibit Q**.

35. ACN agreed to an extension of time for Planet Energy to perfect its appeal (until August 30, 2022) to provide the parties an opportunity to mediate a potential settlement of the Arbitral Award. The parties retained Greg Watson, a partner at FTI Consulting Inc. with considerable experience in insolvency related matters, to act as a neutral third-party mediator to assist Planet Energy and ACN in resolving their dispute. The parties' consent to the extension of the appeal is attached as **Exhibit R**.

36. The conduct of the mediation itself was confidential and without prejudice. In connection with this mediation, Stikeman Elliott retained Richter to prepare an updated picture of Planet Energy's current and projected financial position (the "**Second Richter Report**"). The Second Richter Report is not attached to this affidavit as it was prepared for the purposes of the mediation, but provided ACN with significant updated disclosure about Planet Energy's business and financial affairs.

37. By the time the Second Richter Report was prepared, and with a mindset towards maximizing recovery for creditors in the event that the Set Aside Application (and/or subsequent



appeal) was not successful, Planet Energy had reduced its selling, general and administration expenses by approximately \$5.9 million and disposed of its unprofitable U.S. based natural gas customer contracts. Planet Energy also returned its U.S. based electricity customers back to utility supply in May and June 2022 during a period of abnormally high energy prices. In doing so, Planet Energy decided to sell back its U.S. based electricity supply to Shell and earned a net margin of approximately \$2.3 million USD. This turned out to be when energy prices were at their peak, maximizing Planet Energy's return, and they have reduced significantly in the year since.

38. Although settlement discussions were ongoing with the continued involvement and assistance of Mr. Watson, ACN did not agree to extend the time for Planet Energy to perfect its appeal beyond August 30, 2022. Planet Energy perfected the appeal on September 21, 2022. ACN however did not deliver responding materials when they were due on November 20, 2022, and instead waited four months before delivering them on February 15, 2023.

39. At paragraph 43 of the Second Stevanovski Affidavit, Mr. Stevanovski states that ACN will never agree to any proposal made by Planet Energy to its creditors. I consider this statement to be inconsistent with ACN's engagement, over a period of almost 6 months, in a mediation process focused achieving a settlement.

#### **G. The Termination of the Shell Swap Agreements**

40. On January 12, 2023, I was informed by Shell verbally that it expected to let the Global Agreement expire in the ordinary course on October 1, 2023 and was generally looking to wind down its relationship with Planet Energy due to its small size (relative to Shell's more significant customers). If Shell followed through with this decision, any operation of Planet Energy past October 2023 (regardless of the result of the appeal of the Arbitral Award) would not have been based on its traditional business model of a fixed gross margin unless it could secure electricity swaps and natural gas supply with another provider. At this time, Planet Energy began to consider whether to seek a buyer of its business and/or customer book instead of an alternative provider.

41. As a result of the failure of the mediation process and the upcoming hearing at the Court of Appeal for Ontario, Shell accelerated its termination of the Swap Agreements. On March 22, 2023, I received a letter from Shell (the “**Shell Termination Letter**”) advising that Planet Energy had committed an Event of Default under the Global Agreement and that it was exercising its contractual remedies to (i) terminate the Swap Agreements and demand the Settlement Amount (*i.e.*, the cumulative difference in the mark to market price) in the amount of \$1,872,748 USD, and (ii) accelerate the outstanding principal balance of the U.S. Collateral Credit Facility provided by Shell, such that all amounts thereunder (\$285,000 USD) became immediately due and payable. The Shell Termination Letter confirmed that Shell was exercising these remedies, stating:

We understand that the Planet Defendants and ACN had been working on an agreed settlement, and it had been our expectation that such settlement would reduce the Planet Defendant’s obligations to ACN to an amount substantially below the amount of the [Arbitral Award], but Planet has recently informed us that the parties have been unable to reach a settlement.

Planet Energy’s financial statements as recently provided to Shell show that it has current assets of approximately \$14.7 million, which is far short of the assets needed to satisfy the [Arbitral Award], not to mention Planet’s obligations to Shell and its other creditors. As a result of the foregoing events, one or more Events of Default exist under the Global Agreement...

The Shell Termination Letter is attached as **Exhibit S**.

42. At my request, Shell agreed at this time not to terminate its natural gas supply to Planet Energy on the condition that it paid the demanded amounts by no later than March 24, 2023 (the “**Forbearance Condition**”). Obtaining Shell’s agreement not to terminate natural gas supply was important for Planet Energy and its stakeholders in order to maximize value and continue operating since the natural gas supply is physically settled and if the supply was terminated by Shell, Planet Energy would no longer be able to service its natural gas customers.

43. I contacted Shell prior to receiving the Shell Termination Letter to assess whether it would reconsider its position if Planet Energy could provide security for any amounts owing under the

Swap Agreements in the form of a letter of credit from Scotiabank. Shell advised me that it would reconsider its termination of the Swap Agreements if Planet Energy could obtain a letter of credit of \$2.5 million USD. Shell also informed me that the only acceptable form of security it would accept, pursuant to its credit policy, was a letter of credit. Shell would not accept other forms of collateral such as cash or a bank draft. On March 20, 2023, Scotiabank informed me that it would not issue a letter of credit for Planet Energy, even if fully cash collateralized, and would not issue any further credit to Planet Energy while the Arbitral Award remained outstanding. This email exchange is attached as **Exhibit T**.

44. The Shell Termination Letter asserted that Planet Energy had become a “Bankrupt” as the basis for the Event of Default. I wrote to Shell by letter dated March 23, 2023, advising that Planet Energy was not a “Bankrupt” as that term is used in the Global Agreement. This letter is attached as **Exhibit U**.

45. Shell delivered a further letter to Planet Energy on March 24, 2023, confirming its view that Planet Energy had become a “Bankrupt” and reiterating that it was exercising its remedies, in part, because it “expected ACN to commence enforcement action shortly.” The letter sent on March 24, 2023, also declared a default on the basis that Planet Energy had not been able to comply with certain financial covenants set out in the Global Agreement. Planet Energy acknowledged this default which was clear in the compliance reporting previously delivered to Shell. This letter is attached as **Exhibit V**.

46. On March 24, 2023, as result of the acknowledged default related to the financial covenants and to secure the benefit of the Forbearance Conditions for the benefit of Planet Energy and its stakeholders, Planet Energy paid \$2,157,748 USD to Shell as outlined in the Shell Termination Letter. Planet Energy sent a further letter to Shell dated March 29, 2023 restating that while it disagreed with several of the bases for Shell’s termination of the Swap Agreements, Planet Energy acknowledged being offside its financial covenants. This letter is attached as

**Exhibit W.** Shell responded later that day to confirm that the Forbearance Conditions had been satisfied and that it would continue to supply natural gas to Planet Energy, as attached at **Exhibit X.**

47. I am informed by Mr. Murdoch that he met with Mr. Borg-Olivier on April 25, 2023 and informed him that Shell had terminated the Swap Agreements and required Planet to pay over \$2 million USD to settle the mark-to-market on the Swap Agreements. In the interest of transparency and given that ACN was a significant contingent creditor, Mr. Murdoch proceeded to provide a letter to Mr. Borg-Olivier dated May 3, 2023 setting out this and other relevant financial information. This letter is attached as **Exhibit Y.**

#### **H. The Appeal of the Set Aside Application**

48. Planet Energy's appeal of the Cavanagh Decision was heard by the Court of Appeal for Ontario on March 27, 2023. The appeal was taken under reserve. On May 8, 2023, the Court of Appeal released its decision dismissing the appeal (the "**ONCA Decision**"). I am informed by Mr. Murdoch that Planet Energy has until August 8, 2023 to file an application for leave to appeal the ONCA Decision to the Supreme Court of Canada. The ONCA Decision is attached as **Exhibit Z.**

### **Part III The NOI**

#### **A. The Arbitral Award Becomes Enforceable**

49. On May 4, 2023, the Court of Appeal for Ontario provided advance notice that the ONCA Decision would be released on May 8, 2023. I am informed by Mr. Murdoch that on May 5, 2023, he spoke with Mr. Borg-Olivier to seek agreement that ACN would not take immediate enforcement steps if the appeal of the Cavanagh Decision was dismissed. Following a virtual meeting among the parties' respective counsel and financial advisors on May 9, 2023, ACN did not agree to any forbearance. On the evening of May 9, 2023, Max Starnino, counsel to ACN, sent an email to counsel for Planet Energy advising of ACN's intent to seek to appoint a receiver.

This email does not contain any settlement offers but was marked "Without Prejudice" by Mr. Starnino and therefore is not attached to this affidavit.

50. Given that the Arbitral Award was now enforceable and ACN did not agree to any forbearance, on May 11, 2023, Planet Energy filed the NOI. Planet Energy's Form 33 and Certificate of Filing are attached as **Exhibits AA** and **BB**, respectively. On the same day, Mr. Murdoch wrote to counsel to ACN informing them of the NOI and that all proceedings against Planet Energy were thereby stayed. This letter is attached as **Exhibit CC**.

### **B. Planet Energy's Creditors and Cash Flow**

51. Planet Energy's Form 33 shows that the creditors' claim amounts total \$42,745,358.08. ACN's unsecured claim amount is listed as \$35,184,894, or approximately 82 percent of the total creditor claims.

52. The secured claim amount for Shell is \$607,487.30. The secured claim amount for Scotiabank is \$2,426,225. This amount relates to letters of credit that are in the process of being cancelled, and as such I do not expect that Planet Energy will ultimately owe any material amounts to Scotiabank. The same applies to the claim amount (in the same denomination as Scotiabank) for Export Development Canada, the guarantor of the letters of credit.

53. The balance of \$2,100,526.78 relates to various unsecured claims. The largest of these is a claim amount of \$1,600,000 for Prime Real Estate Holdings Inc., which relates to an ongoing action in the Ontario Superior Court of Justice that has been dormant for an extended time (approximately 5 years). These amounts do not include termination or severance pay for Planet Energy employees. Accordingly, while ACN is the largest stakeholder by far, the recovery of other unsecured creditors including Planet Energy employees will be impacted by the recovery that is obtained through this process.

54. To the best of my knowledge, ACN did not consult with Planet Energy's other creditors prior to bringing its motions for a receiver or interim receiver. ACN's debt remains subordinate to Shell, and is on par with other unsecured creditors on a *pro rata* basis.

55. Over two years ago, on May 13, 2021, Mr. Borg-Olivier wrote to Shell and to Fulcrum Capital Partners, one of our equity partners, stating as follows:

. . . ACN realizes that the arbitration award may be beyond Planet's ability to immediately satisfy in full. ACN desires to work with Shell and Fulcrum and any other creditors of Planet to find an appropriate resolution that protects both ACN's interests and those of Planet's creditors. In the meantime, ACN requests, to the extent Shell and Fulcrum are able to exercise control, that they prohibit Planet from making (i) any distributions or other payments to its owners or any of their affiliates, and (ii) transferring funds from Planet's bank accounts except to pay arms-length unaffiliated vendors in the ordinary course of business.

This letter is attached as **Exhibit DD**.

56. The letter was not copied to Planet Energy or to its counsel, despite the pending Set Aside and Enforcement Applications. Both Shell and Fulcrum Capital Partners alerted me to this correspondence and advised me at that time that they did not intend to respond.

57. On May 19, 2023, Planet Energy filed its Form 29 and 4-week cash flows, which are attached as **Exhibits EE** and **FF**, respectively. The cash flows generally show Planet Energy as cash flow neutral over the period, despite the restructuring professional fees. Planet Energy, with the assistance of Richter, has also prepared a 10-week cash flow statement, which shows Planet Energy being largely cash flow neutral or moderately positive during the period. Planet Energy's 10-week cash flow statement is attached as **Exhibit GG**.

### **C. Planet Energy's Continued Efforts to Maximize Value**

58. While Planet Energy vigorously contested the Arbitral Award, including on the Set Aside Application, it always understood ACN was a significant contingent creditor and potential

stakeholder. Accordingly, Planet Energy pursued various efforts to maximize the value of its business and assets for the benefit of creditors in the event Planet Energy's appeal of the Set Aside Decision was unsuccessful and acted appropriately while the litigation was outstanding.

59. As referenced above and outlined in the First Richter Report:

- a) Planet Energy did not pay any distributions or paid any dividends to shareholders following fiscal 2018, the period in which the Arbitration was commenced;
- b) Planet Energy did not pay any bonuses to directors and officers since fiscal 2018; and
- c) Planet Energy accrued as a liability and as cash the sales commissions to which ACN claimed entitlement following Planet Energy's decision to cease paying such commissions in March 2018.

60. Prior to and after the release of the Arbitral Award in February 2021 Planet Energy also took significant steps to reduce costs and, where possible, increase revenues. These efforts by Planet Energy included:

- a) moving office buildings in Toronto, resulting in savings of approximately \$30,000 per month beginning September 2020;
- b) terminating a contract with one of its call centre service providers in Jamaica in January 2022, resulting in savings of approximately \$45,000 USD per month;
- c) terminating Mr. Plummer's consulting services agreement in April 2022, resulting in savings of approximately \$30,000 per month;
- d) returning all of its electricity customers in Pennsylvania, Ohio and Maryland to the utility supply in the spring of 2022, resulting in approximately \$2.3 million USD in one-time additional revenue;

- e) allowing its U.S. office lease in Miami, Florida to expire on October 31, 2022, resulting in savings of approximately \$10,000 USD per month;
- f) instituting a hiring freeze and did not re-hire or replace any employees who resigned in 2022, resulting in savings of approximately \$150,000 per year;
- g) instituting a hiring freeze and did not re-hire or replace two risk management employees who resigned in 2023, resulting in savings of approximately \$160,000 per year;
- h) increasing the monthly administrative fees charged to all of its Ontario gas and electric customers, resulting in increased revenues of approximately \$25,000 per month in 2022 and \$40,000 per month in 2023;
- i) terminating the employment of Planet Energy's Miami Office Manager effective January 2023, resulting in approximate savings of \$60,000 USD per year;
- j) cancelling its U.S. billing and service agreements with ERTH and EC Information Systems, resulting in approximate savings of \$3,000 per month; and
- k) cancelling all storage contracts for Planet Energy's office furniture and IT equipment, resulting in approximate savings of \$2,000 per month.

61. During the past year, I took several additional steps to continue cutting Planet Energy's costs and have continued these efforts as part of these NOI proceedings. Among other things, on April 12, 2022, I directed Planet Energy's management team to suspend certain marketing activities in the United States (such as mailing, telesales and email advertisements) and all employee hiring activities, not to approve any requests for salary increases, and to seek my approval prior to incurring any incremental expenses. During these NOI proceedings, I have also terminated six employees that would not be necessary in the context of a sale of the business and also negotiated a reduction in the licence agreements with Easybooks of \$10,000 per month



effective June 1, 2023. I have also agreed to reduce my own salary by \$21,000 per month effective June 1, 2023.

62. I believe these efforts that Planet Energy has taken over the past few years will improve recoveries for creditors and have assisted in maximizing the remaining value of Planet Energy's business.

63. Planet Energy has also been transparent with ACN regarding its business since the Arbitral Award was issued. As referenced above, Planet Energy provided ACN with the First and Second Richter Reports, which provided significant information and disclosure regarding Planet Energy's business, assets and liabilities. It was also in the interest of transparency and disclosure that Mr. Murdoch wrote Mr. Borg-Olivier on May 3, 2023 setting out that Shell had terminated the Swap Agreements and demanded that Planet Energy pay over \$2 million USD to settle the mark-to-market on the Swap Agreements and other relevant financial information.

64. ACN's claims it has lost faith in management appears to be on the basis that Planet Energy and ACN have been embattled in difficult litigation relating to events that occurred over 5 years ago, rather any alleged improper management of the business following the commencement of the Arbitration in March 2018.

**D. The Sales Process**

65. As a result of the termination of the Swap Agreements and the ONCA Decision, Planet Energy, in consultation with its financial advisor, determined that the best approach to maximize creditor recoveries is to (a) seek to sell Planet Energy's business and/or assets, including its customer book, and (b) if a reasonable price cannot be obtained through a sale process, conduct an orderly wind-down of the business.

66. Planet Energy's key assets are:

- a) Cash of approximately \$9 million;

- b) Customer contracts representing approximately 19,000 residential customer equivalents; and
- c) Accounts receivable (as at March 2023) of approximately \$1.3 million, including (i) approximately \$575,000 related to the disposition of U.S. contracts (estimated using a present value calculated based on a discount rate of about 5 percent) and (ii) approximately \$600,000 representing billed and accrued revenue due from utility companies.

Planet Energy's most recent unaudited financial statements for the month ended March 31, 2023 are attached as **Exhibit HH**.

67. The draft teaser document to support the sale process is attached as **Exhibit II**.

68. Contrary to the statement at paragraph 6 of the Second Stevanovski Affidavit, Planet Energy is not presently in run-off. While Planet Energy has taken significant steps to minimize expenses and maximize gross margins, Planet Energy continues to re-contract customers when their contracts are expiring and soliciting small commercial customers in order to maximize the value of its customer book.

69. In the same paragraph, Mr. Stevanovski claims that "its contracts with customers can be viewed as either an asset or liability" and that "[i]n these circumstances, its only real asset is its cash". Due to the termination of the Swap Agreements, Planet Energy was obliged to pay approximately \$2.2 million USD to Shell as the forward HOEP prices were less than the average weighted price of the Swap Agreement prices. Based on forward estimates of electricity prices, which project that Planet Energy's customer book will return significant cash flow in the near to medium term, ACN's approach would eliminate a significant source of potential recovery for Planet Energy's creditors.

70. As of May 24, 2023, the present value of the mark-to-market of Planet Energy's electricity customer book is \$2.8 million and the present value of the discounted gross margin of Planet Energy's gas supply customer book is \$687,000. These are based on the Platts M2MS Index, described below, and a discount rate of 10% to account for risk. Spreadsheets setting out these positions are attached as **Exhibits JJ** and **KK**, respectively.

71. The expected recovery on any sale of Planet Energy's customer book is dependant on several factors including whether the contracts are purchased by a strategic buyer or new player in the market and the various assumptions used by prospective purchasers in assessing the value of the customer book, such as the discount rate, attrition, volume and renewal opportunities.

72. Richter, in consultation with Planet Energy, has prepared proposed terms and conditions for a sales process for Planet Energy's business and/or assets. Given the limited number of potential bidders and the relative simplicity of Planet's assets, Richter estimates that a sales process can be completed in 8 to 10 weeks. The proposed terms and conditions for the sales process are attached as **Exhibit LL**, which is proposed to advance on the following timeline subject to court approval:

Milestone	Date
Teaser Letter sent to Prospective Participants	By June 9, 2023 or shortly thereafter
Due Diligence by Prospective Participants	June 5, 2023 – August 3, 2023
Offer Deadline	August 4, 2023 at 5:00 p.m. (Toronto time)
Auction (if any)	August 11, 2023
Motion to Approve the Winning Bid	On or after August 21, 2023 (dependent on Court availability)

73. Subject to court approval, Planet Energy would be willing to consult with ACN and its advisors during this sales process provided a mutually acceptable confidentiality agreement is executed and that it does not eliminate a potential bidder (because ACN cannot be privy to information that would not be available to other bidders if it chooses to participate in the sale process).

74. In the event that a reasonable offer for Planet Energy's business and/or the customer contracts is not obtained through the sales process, a determination can be made at that time whether a proposal can be made to permit Planet Energy to distribute certain cash to creditors and run out the customer contracts for the benefit of creditors or whether to return those customers to utility supply.

75. In my opinion, Planet Energy's business, and at minimum its customer contracts, have real potential value that can be attained for the benefit of its creditors, including ACN and Planet Energy's employees, over and above Planet Energy's current cash and accounts receivable. Given that Planet Energy is projected to be cash flow neutral or moderately positive during the period of any sales process, and as discussed further below, it would be prejudicial to creditors to foreclose on the value of these contracts by returning customers to utility supply and/or entering into new swap agreements.

#### **Part IV Response to ACN's Motion**

76. Based on my review of ACN's motion record and the First and Second Stevanovski Affidavits, I have identified two reasons provided for ACN's request to appoint KSV as an interim receiver and receiver and manager over Planet Energy: (1) the expressed concern about the termination of the Swap Agreements and (2) the claims that Planet Energy's management (i.e., me) engaged in fraud.

77. I note, firstly, that section 17 of the SAA provides as follows:

ACN acknowledges that its rights to Gross Margin is contractual in nature, is not a traditional security interests and does not specifically attach to or encumber any assets of Planet, including, without limitation, to the ACN Customer contracts. ACN agrees that it will not assert or attempt to assert these rights via any UCC-1 or similar filings.

**A. The Termination of the Electricity Swaps is Not a Reason for a Receivership**

78. Mr. Stevanovski contends that the urgent appointment of a receiver is necessary because Planet Energy is now operating without a hedge in respect of its electricity retail business. In the current market environment, Planet Energy has benefitted from, and is projected to continue benefitting from, the termination of the Swap Agreements, and a decision to hedge the exposure of the electricity contracts would book a significant instant reduction in cash flow that would be prejudicial to Planet Energy's creditors. Based on current market conditions and settlement discussions with ACN to date, described below, I am skeptical that ACN is interested in hedging Planet Energy's electricity book.

79. S&P Global Inc., an independent third-party research company, publishes regular projections of the Ontario commodity price (HOEP) (known as the Platts M2MS Index), which are regularly relied upon by market participants. Based on the Platts M2MS Index and the market prices for swap contracts which I received from Shell on May 24, 2023, Planet Energy will generate the best return for its creditors by continuing its electricity retail business on an unhedged basis at this time. Attached as **Exhibits MM** and **NN** is the Platts M2MS Index as of May 10, 2023 and Shell swap contract prices as of May 24, 2023, respectively.

80. Shell ordinarily offers swap contracts for six months and one-, two-, three- and five-year periods. Based on the Platts M2MS Index, the unhedged present value of Planet Energy's forecasted gross margin is approximately \$2.8 million. If Planet Energy were to enter into a swap agreement of any length, the value of its forecasted gross margin decreases considerably, due to the risk premium that Shell, and other swap providers, incorporate into their price offers. In fact, if Planet Energy were to enter into a three- or five-year swap agreement, Planet Energy will crystallize a loss given the negative forecasted gross margin:

Indicative Ontario electricity offers for a 7x24 block:	CAD/Mwh	Forecast Gross Margin		Present Value of Variance from No Swap	
		Forecast Gross Margin	PV of Forecast Gross Margin	Variance from No Swap	Variance from No Swap
No Swap		3,039,244	2,790,735		
Jun23 6month:	\$29.64	2,846,133	2,603,302	(193,112)	(187,433)
Jun23 1 Year:	\$43.03	1,885,880	1,686,768	(1,153,364)	(1,103,968)
Jun23 2 Year:	\$47.41	771,112	672,671	(2,268,132)	(2,118,064)
Jun23 3 Year:	\$51.61	(120,791)	(117,695)	(3,160,036)	(2,908,430)
Jun23 5 Year:	\$55.33	(883,342)	(789,105)	(3,922,586)	(3,579,840)

81. Planet Energy has stress tested this analysis to ensure that it is sufficiently protected in the event that energy prices do not move in line with the Platts M2MS Index. As depicted in the table below, if the HOEP increases by 20% above forecast (which would be a considerable and unexpected jump), the present value of Planet Energy's forecasted gross margin would be \$1.61 million, which is still greater than the present value of Planet Energy's forecasted gross margin if it enters into a swap contract of any length one year or longer:

Impact on Present Value of Forecast Gross Margin due to Increase in HOEP										
PV of Forecast Gross Margin - No Swap	2,790,735	2,790,735	2,790,735	2,790,735	2,790,735	2,790,735	2,790,735	2,790,735	2,790,735	2,790,735
% Increase in HOEP	5%	10%	15%	20%	25%	30%	35%	40%	45%	50%
Impact of HOEP Increase	(294,300)	(588,600)	(882,900)	(1,177,200)	(1,471,500)	(1,765,800)	(2,060,100)	(2,354,400)	(2,648,700)	(2,943,000)
PV of Forecast Gross Margin	2,496,435	2,202,136	1,907,836	1,613,536	1,319,236	1,024,936	730,636	436,336	142,036	(152,264)

All of these calculations have been conducted with the assistance and review of Richter. Attached as **Exhibit OO** is the spreadsheet Richter used to prepare these tables.

82. While Mr. Stevanovski asserts that Planet Energy “may be forced to incur losses on its sales” if it remains unhedged, that will only occur if the HOEP increases by 45% above forecast, which is not expected, to my knowledge, any participant in the Ontario energy market for the foreseeable future. Mr. Stevanovski also highlights based solely on “heat warnings issued for parts of British Columbia and Alberta” that there is a material risk of eroding value for creditors if Planet Energy remains unhedged throughout the summer months. The summer temperatures in British Columbia and Alberta have no bearing on the Ontario energy market. More importantly, the increase in summer temperatures is reflected in forward projections of HOEP.

83. If ACN is genuinely concerned about Planet Energy operating without a hedge, Planet Energy has advised ACN that it can purchase a swap contract at any time (in its own name), provided it collateralizes the necessary security to do so. I do not believe it would be appropriate for Planet Energy to enter into a swap contract at this time as it would result in an immediate loss to the *pro rata* recovery of unsecured creditors compared to the forecasts of industry experts. But if it was determined, in conjunction with court approval, that Planet Energy should enter into such an agreement, a receivership is not required to implement such a swap if ACN is able to find a counterparty and collateralizes it.

84. I do not understand the statement in the Second Stevanovski Affidavit that it will take at least four to six weeks to enter into a swap agreement with Shell. In my experience, it does not take 4 to 6 weeks to enter into a swap agreement. To the extent that Mr. Stevanovski is seeking to enter into a swap agreement with Shell using Planet Energy as the counterparty, I have been informed by Shell that it will not do this under any circumstances as it has a strict credit policy of not accepting collateral from a third party. I understand that ACN has been advised of this position by Shell as well.

85. I am informed by Lee Nicholson of Stikeman, counsel to Planet Energy, that on Monday, May 22, 2023 he was contacted by Sara Keith, in-house counsel for Shell. Mr. Nicholson spoke with Ms. Keith on May 24, 2023, and was advised that Shell had informed ACN that it would not enter into additional hedge transactions with Planet Energy. Ms. Keith forwarded to Mr. Nicholson a letter from Shell to Mr. Stevanovski dated May 22, 2023, setting out this position. This letter states that it is in response to a letter from Mr. Stevanovski dated May 16, 2023, the date of the Second Stevanovski Affidavit. The letter from Shell dated May 22, 2023 is attached as **Exhibit PP**. Planet Energy has not been provided the letter from Mr. Stevanovski dated May 16, 2023.

**B. There has been no Finding of Fraud (nor any Fraud in Fact)**

86. The First and Second Stevanovski Affidavits state repeatedly that I was “found by the arbitrator to have engaged in fraudulent conduct” or similar accusations. These statements are false, both in fact and in terms of what is stated in the Arbitral Award. I will address them relatively briefly in this affidavit because I will need to consider the legal ramifications of these statements from a personal perspective.

87. ACN’s repeated mention of “fraud”, “covertness”, “subterfuge”, and allegations of criminal activity have permeated this business dispute; however, I believe the First and Second Stevanovski Affidavits are the first time that these spurious claims against me personally have been advanced in a public document and I will consider my legal remedies.

88. After the release of the Arbitral Award, over 2 years ago, Mr. Borg-Olivier responded to a settlement proposal from Planet Energy with a letter dated February 15, 2021, threatening action, including criminal action, against myself and others, possibly including its counsel:

Be further advised that ACN intends to pursue Planet Energy’s principals, representatives, and advisors personally and in their capacity as directors, officers, representatives, or advisors of Planet, as well as affiliated parties of the foregoing, who ACN suspects or discovers participated in, or contributed to, enabled, or wrongfully benefited from Planet’s wrongful conduct. To the extent



ACN believes fraudulent or other illegal conduct occurred, ACN will also consider filing criminal charges where applicable.

If you have not already done so, please direct your client, its principals, each of its representatives and advisors, and each of their affiliates to preserve all relevant documentation and information in anticipation of litigation – including, but not limited to, all financial documentation reflecting transfers from Planet to its principals (including any entities in which Planet's principals have an interest) and to any related or affiliated parties, from 2016 to the present. We also suggest that the foregoing parties notify any potential insurers of ACN's demand.

Mr. Borg-Olivier's letter dated February 15, 2021 is attached as **Exhibit QQ**.

89. There is not a single mention of the words "fraud", "subterfuge", "covert" or "misconduct" in the 109-page Arbitral Award. Mr. Stevanovski mischaracterizes the Arbitral Award and erroneously states the arbitrator made findings of fact that Planet Energy and its management "engaged in fraudulent conduct." The arbitrator did not find that I or Planet Energy engaged in fraud at any time.

90. Mr. Stevanovski conflates "fraud" with the contractual issues that were argued before the Arbitrator. For example, the Arbitrator did not, as Mr. Stevanovski asserts at paragraph 36(a) of the Second Stevanovski Affidavit, conclude that Planet Energy engaged in fraud by beginning to "surreptitiously manipulate database information" to deprive ACN of commission payments. Planet Energy made a legal determination under the terms of the SAA that customers *re-contracted* by Planet Energy (rather than ACN), instead of being renewed, upon the expiry of their initial contract were not "ACN Customers", as defined in the SAA, that were subject to commissions payments. As a result Planet Energy did not record its customers as "ACN Customers" in its database. While the arbitrator ultimately disagreed with Planet Energy's interpretation of the SAA, this does not amount to "fraud" nor did the Arbitrator (or ACN's forensic expert from Stout Risius Ross ("**Stout**") make any finding that Planet Energy engaged in

fraudulent or covert activities. Attached at **Exhibit RR** are various excerpts of the testimony at the Arbitration that relate to these issues.

91. Mr. Stevanovski's false fraud allegations relate to conduct from over 5 years ago. These same allegations were used twice to argue for interim relief in the form of security before the Arbitrator (dismissed both times) and on the Security Motion. There is no new conduct alleged.

92. At paragraph 36(a) of the Second Stevanovski Affidavit, Mr. Stevanovski states that Planet Energy instructed a former employee, Christina David, who appeared at the Arbitration on behalf of ACN, to lie to ACN. I address this in paragraph 20 of the Second Silvestri Affidavit.

93. At paragraph 36(b) of the Second Stevanovski Affidavit, Mr. Stevanovski states that Planet "failed to provide accurate or complete reports in connection with the SAA". As set out in paragraphs 76(a) and 148 of the First Silvestri Affidavit, the testimony from Stout was that the restrictions were from the procedural orders made by the arbitrator with respect to the scope of ACN's audit.

94. Mr. Stevanovski erroneously states at paragraph 38 of the Second Stevanovski Affidavit that "in light of the Arbitrator's finding that Planet Energy attempted to incite fraudulent behaviour" – which is not a finding made by the Arbitrator – that it is "concerning to ACN that Planet Energy has historically outsourced its billing and call center activities to two related companies" which "create an opportunity for the wrongful erosion of value through aggressive transfer pricing and/or outright fraud."

95. Planet Energy's only related party contracts are licence agreements with Easybooks, a company owned by my business partner Mr. Plummer. The licence agreements permit Planet Energy to use Easybooks software for customer care and financial reporting and, as such, are important to Planet Energy's business and operations Planet Energy has consistently disclosed the related party contracts to its auditor, KPMG and they have been consistently disclosed in

Planet Energy's annual audited financial statements. KPMG, Shell and Fulcrum Capital Partners have all agreed that the licence agreements with Easybooks were on arm's length terms. In the context of the NOI proceedings, Planet Energy has negotiated a discount on the licence agreement with Easybooks (to approximately \$20,000 per month), and it would be far more costly and time consuming for Planet Energy to seek to work with another provider. The licence agreements with Easybooks are attached as **Exhibit SS**.

96. Planet Energy does not, and has not, outsourced billing or call centre activities to a related party.

**C. Appointment of a Receiver is Not in the Best Interests of Planet Energy or its Stakeholders**

97. As set out in detail above, contrary to Mr. Stevanovski's various allegations, Planet Energy's management has taken significant efforts to maintain value of its business and assets in recent years. The complaints by ACN (which I consider to be mischaracterized) stem directly from difficult litigation between the parties and conduct from over 5 years ago. There does not appear to be any recent complaints related to improper conduct in respect of operation of the business, which we have continued to manage with diligence and in the face of difficult circumstances with the Arbitral Award. We have also attempted to provide ACN with material updates regarding our business and financial position through the First and Second Richter Reports, and recently with our communication regarding Shell's termination of the electricity swaps. In these circumstances, I do not believe it would be in the best interest of Planet Energy and its stakeholders for a receiver to be appointed.

98. There are also certain risks related to appointment of a receiver that may jeopardize Planet Energy's remaining business and its value:

- a) *Employees*: Planet Energy has approximately 17 remaining employees (6 employees were recently terminated) who are now the "mission critical" staff that

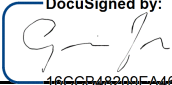
are necessary for Planet Energy to continue operating. If a receiver is appointed, I have concerns that certain key employees will seek out other employment opportunities. I have worked with these employees for a number of years and believe a number of employees are continuing in their roles at this time due to a sense of loyalty.

- b) *Regulatory:* Planet Energy is a licensed electricity retailer that operates under a license granted by the OEB pursuant to Section 57 of the *Ontario Energy Board Act, 1998* (the “**OEB Act**”). A copy of Planet Energy’s current license is attached as **Exhibit TT**. Section 57 of the OEB Act states that no person may, unless licensed to do so by the OEB, retail electricity. The OEB granted Planet Energy’s electricity retailer licence and subsequent renewals of its license, including the current renewal, based on information filed by Planet Energy with the OEB demonstrating Planet Energy’s ability to capably operate a retail electricity business. This included information concerning Planet Energy management and other personnel’s experience in the business of electricity retailing.

I am informed by Glenn Zacher at Stikeman Elliott LLP, it is uncertain whether a receiver would be able to continue operating Planet Energy’s business as a receiver would not be licensed as an electricity retailer by the OEB. The OEB has authority under Part VII.1 of the OEB Act to take compliance and enforcement action against a person that has contravened an enforceable provision, which includes provisions of the OEB Act. This includes the authority to order that a license be revoked. If the receiver was unable to operate Planet Energy’s business, I understand that the remaining Planet Energy customers would be returned to standard supply with their applicable local distribution company and

Planet Energy would not be able to realize any value from its remaining business and contracts.


SWORN BEFORE ME by  
videoconference at the City of Toronto,  
in the Province of Ontario, on the 26<sup>th</sup>  
day of May, 2023 in accordance with O.  
Reg. 431/20, Administering Oath or  
Declaration Remotely

DocuSigned by:  


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Commissioner for taking Affidavits

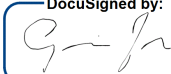
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**NINO SILVESTRI**

This is Exhibit "A" referred to in the Affidavit of Nino Silvestri sworn by Nino Silvestri of the Town of Oakville, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on May 26, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

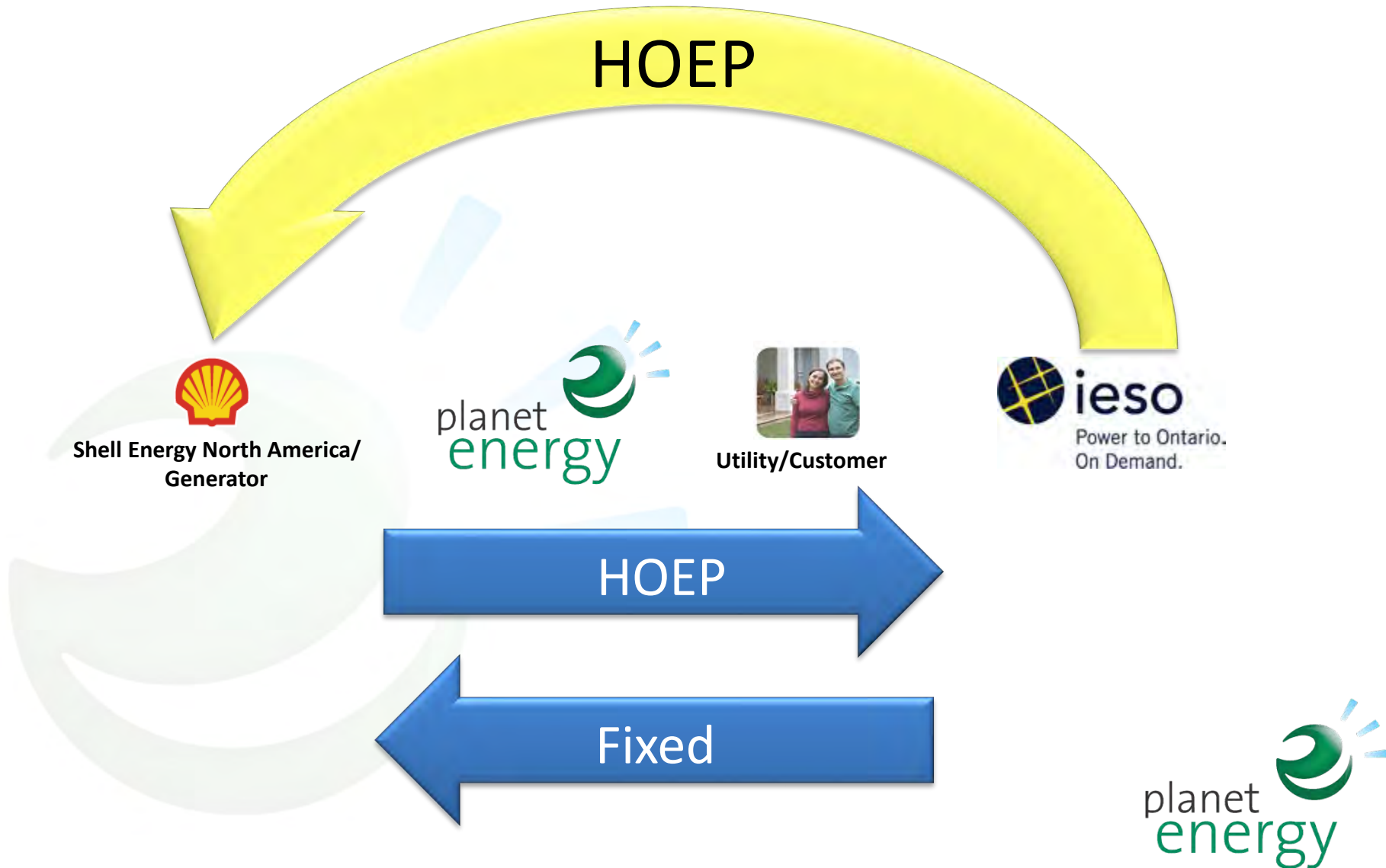
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Commissioner for Taking Affidavits (or as may be)

**GAVIN INKSTER LSO# 82737I**

# 39 Ontario Electricity Financial Swap (Contract for differences)



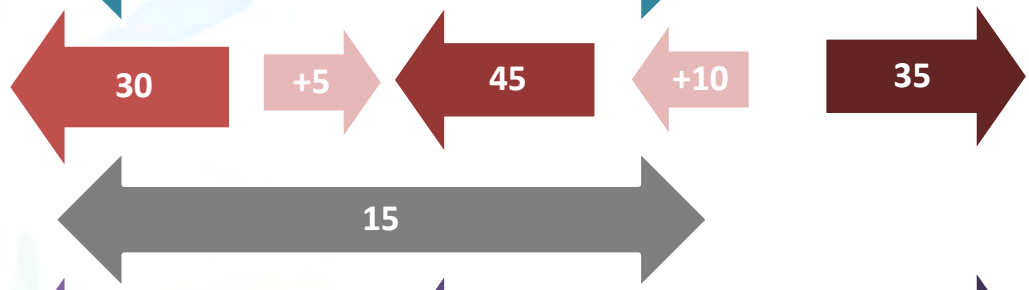
**Assumptions:**  
 HOEP = \$35/MW  
 Planet Energy Gross Margin = \$15/MW



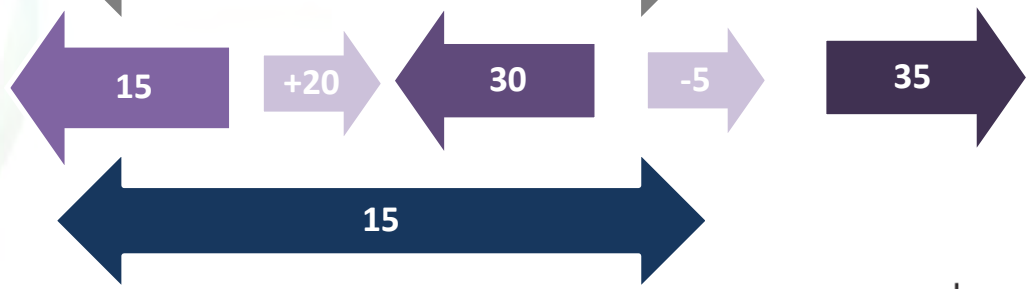
**Scenario I – Supply and Customer Price > HOEP**



**Scenario II – Supply < HOEP Customer Price > HOEP**



**Scenario III – Supply & Customer Price < HOEP**



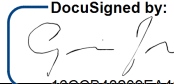
**Planet Energy:** Pays Fixed/Receives Floating [HOEP]  
**Shell:** Receives Fixed from Planet Energy/Pays Generator Fixed and Receives Floating [HOEP] from IESO  
**Utility/Customer:** Pays Planet Energy Fixed/Receives HOEP from Planet Energy, pays IESO HOEP  
**IESO:** Pays Shell/Generator HOEP





This is Exhibit "B" referred to in the Affidavit of Nino Silvestri sworn by Nino Silvestri of the Town of Oakville, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on May 26, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:



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Commissioner for Taking Affidavits (or as may be)

**GAVIN INKSTER LSO# 82737I**

## AMENDED AND RESTATED GLOBAL AGREEMENT

This Amended and Restated Global Agreement (this “Agreement”) is entered into as of October 1, 2017 (the “Effective Date”) by and among Planet Energy (Ontario) Corp., a corporation formed under the Canada Business Corporations Act, Energie Planete Inc./Planet Energy Inc., a Quebec corporation, Planet Energy (Alberta) Corp., an Alberta corporation, Planet Energy (B.C.) Corp., a British Columbia corporation, Planet Energy (Manitoba) Corp., a Manitoba corporation, Planet Energy Corp., a Delaware corporation (formerly known as Planet Energy USA Corp.), Planet Energy (Maryland) Corp., a Delaware corporation, Planet Energy (New York) Corp., a Delaware corporation, Planet Energy (Pennsylvania) Corp., a Delaware corporation, Planet Energy (Ohio) Corp., a Delaware corporation, Planet Energy (Illinois) Corp., a Delaware corporation, Planet Energy (New Jersey) Corp., a Delaware corporation (each of the foregoing is herein a “Customer Party” and collectively, together with those additional entities that may hereafter become a party to this Agreement as a ‘Customer Party’ as provided herein, the “Customer Parties”), Shell Energy North America (US), L.P., a Delaware limited partnership (“Shell Energy”), Shell Energy North America (Canada) Inc., an Alberta corporation (“Shell Energy Canada”), Shell Trading Risk Management, LLC, a Delaware limited liability company (“STRM” and collectively with Shell Energy, Shell Energy Canada and any entity that may hereafter become a party to this Agreement as a ‘Shell Canada Swap Entity’, the “Shell Parties”). In this Agreement, each of the Shell Parties and Customer Parties may hereinafter be referred to individually as a “Party” and collectively as the “Parties”.

### RECITALS

A. The Parties have developed or intend to develop a substantial business relationship pursuant to which the Parties will purchase and sell physical and financial power and natural gas and related products and provide and receive other related services, and the Shell Parties have agreed to provide certain credit support arrangements to the Customer Parties in connection therewith.

B. In connection with the foregoing, the Original Customer Parties (as defined herein) have previously entered into that certain Global Agreement dated as of April 27, 2011 among the Original Customer Parties, Shell Energy and Shell Energy Canada (as previously amended, the “Original Global Agreement”).

C. The Parties now desire that the Original Global Agreement be amended and restated in its entirety by this Amended and Restated Global Agreement, as set forth herein.

### AGREEMENT

For and in consideration of the promises and the agreements contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

#### SECTION 1. DEFINITIONS.

1.1 Capitalized terms used herein but not otherwise defined herein have the meanings set forth in Appendix A hereto.

## SECTION 2. REPRESENTATIONS AND WARRANTIES.

Each Customer Party represents and warrants to the Shell Parties as set forth below. Each representation and warranty contained in this Agreement shall be deemed to be reaffirmed by each Customer Party each time a Customer Party requests or is deemed to have requested an advance under the Loan Agreement. For purposes of the foregoing, only representations and warranties that by their terms expressly apply only to a specific date shall be deemed made only as of such date.

2.1 Organization; Powers. The Customer Party (a) is duly organized or formed, validly existing and in good standing under the laws of the jurisdiction of its organization or formation, (b) has all corporate, limited liability company or partnership, as the case may be, power and authority, and the legal right, to own and operate its property and assets and to carry on its business as now conducted and as proposed to be conducted, (c) is qualified to do business in, and is in good standing in, every jurisdiction where such qualification is required, except where any failure to have such qualification would not reasonably be expected to have a Material Adverse Effect and (d) has the corporate, limited liability company or partnership, as the case may be, power and authority, and the legal right, to execute, deliver and perform its obligations under this Agreement, each of the other Transaction Agreements and each other agreement or instrument contemplated hereby or thereby to which it is or will be a party.

2.2 Authorization; No Conflicts. The Contemplated Transactions: (a) have been duly authorized by all requisite corporate, partnership or limited liability company and, if required, stockholder, partner or member action of the Customer Party, (b) will not violate (i) any provision of law, or of the certificate or articles of incorporation or other constitutive documents or by-laws of the Customer Party, (ii) any order of any Governmental Authority or arbitrator or (iii) any provision of any agreement to which the Customer Party is a party or by which it or any of its property is or may be bound, (c) will not be in conflict with, result in a breach of or constitute (alone or with notice or lapse of time) a default under, or give rise to any right to require the prepayment, repurchase or redemption of any obligation under any such agreement, (d) will not result in the creation or imposition of any Lien (other than pursuant to the Transaction Agreements) upon or with respect to any property now owned or hereafter acquired by the Customer Party or (e) will not require the authorization or consent of any other Person except for such consents which have been obtained.

2.3 Enforceability. This Agreement, along with each other Transaction Agreement to which the Customer Party is a party, constitutes a legal, valid and binding obligation of the Customer Party enforceable against the Customer Party in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

2.4 Governmental Approvals. No action, consent or approval of, registration or filing with, permit from, notice to, or any other action by, any Governmental Authority is or will be required in connection with the Contemplated Transactions as they relate to the Customer Party, except for (a) the filing of UCC financing statements, (b) filings as may be required by the

Customer Party under applicable federal and state securities laws and (c) such as have been made or obtained and are in full force and effect.

2.5 Litigation; Compliance with Laws. Except for matters relating to the Ontario Energy Board's 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), there are no actions, suits or proceedings by or before any arbitrator or Governmental Authority now pending or, to the knowledge of the Customer Party, threatened against or affecting the Customer Party or any of its business, property or rights (i) that involve any Transaction Agreement or the Contemplated Transactions or (ii) that, if adversely determined, would reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect. The Customer Party is in compliance with all Requirements of Law, orders, writs, injunctions and orders, except to the extent that failure to do so would not reasonably be expected to have a Material Adverse Effect, and the Customer Party has not received any notice of the assertion by any Governmental Authority that the Customer Party is in violation of any Requirements of Law which has not been remedied to the satisfaction of such Governmental Authority.

2.6 Taxes. The Customer Party has timely filed or timely caused to be filed all tax returns required to have been filed by it, including without limitation, all income, gross receipts, sales and excise tax returns, and all such tax returns are correct and complete in all material respects. The Customer Party has timely paid or timely caused to be paid all taxes due and payable by it and all assessments received by it, except taxes that are being contested in good faith by appropriate proceedings and for which the Customer Party shall have set aside on its books adequate reserves in accordance with IFRS. The Customer Party has made adequate provision in accordance with IFRS for all taxes not yet due and payable.

2.7 Investment Company Act. Neither the Customer Party nor any of its Subsidiaries is an "investment company" as defined in, or subject to regulation under, the U.S. Investment Company Act of 1940, as amended.

2.8 Information Furnished. No information, report, financial statement, exhibit, appendix or schedule furnished by the Customer Party to the Shell Parties in connection with the Contemplated Transactions or in connection with the negotiation of any Transaction Agreement or included therein or delivered pursuant thereto when taken as a whole contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they are made, not misleading; provided that to the extent any such information, report, financial statement, exhibit, appendix or schedule was based upon or constitutes a forecast or projection, the Customer Party represents only that it acted in good faith and utilized assumptions believed by it to be reasonable in the preparation of such information, report, financial statement, exhibit, appendix or schedule.

2.9 Subsidiaries. Schedule 2.9 hereto sets forth a list of all of the Customer Party's direct and indirect Subsidiaries, including each Subsidiary's exact legal name and jurisdiction of formation, and the Customer Party's percentage ownership interest therein.

2.10 Risk Policy. The Risk Policy has been duly approved and adopted by the Customer Party's board of directors or similar governing body, and the Risk Policy is consistent with the risk tolerance requirements set forth in Section 3.18.

### SECTION 3. COVENANTS.

Each of the Customer Parties covenants and agrees with the Shell Parties that such Customer Party will abide by the following covenants:

3.1 Existence; Businesses and Properties. The Customer Parties will do or cause to be done all things necessary to preserve, renew and keep in full force and effect their legal existence, and do or cause to be done all things necessary to obtain, preserve, renew, extend and keep in full force and effect the rights, licenses, permits, franchises, and authorizations material to the conduct of their business.

3.2 Taxes. Other than in respect of amounts being contested in good faith by appropriate proceedings and for which reserves required by IFRS have been established, the Customer Parties will pay when due all taxes and governmental charges imposed upon them or upon their income or profits or in respect of their property, before the same shall become delinquent.

3.3 Compliance with Laws. The Customer Parties will comply with the requirements of all applicable laws, rules, regulations and orders of any Governmental Authority, noncompliance with which would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

3.4 Reporting Requirements. The Customer Parties will furnish or cause to be furnished to Shell Energy each of the reports required by the Reporting Requirements on or before the dates specified therein.

3.5 Litigation and Other Notices. The Customer Parties will furnish to Shell Energy:

(a) prompt written notice of any Event of Default, specifying the nature and extent thereof and the corrective action (if any) taken or proposed to be taken with respect thereto;

(b) within ten days of becoming aware of same, written notice of (i) any investigation or regulatory action by a Governmental Authority with respect to a Customer Party or (ii) the initiation of any legal proceeding against a Customer Party seeking to recover amounts in excess of CAD\$100,000 or the Equivalent Amount in US\$, or any other proceeding against a Customer Party that would reasonably be expected to result in a Material Adverse Effect; and

(c) prompt written notice of the entering into any agreement that would constitute or give rise to a Change of Control.

3.6 Compliance with Financial Metrics. The Customer Parties will comply with the Financial Metrics.

3.7 Indebtedness.

(a) The Customer Parties shall not incur, create, assume or permit to exist any Indebtedness except Permitted Indebtedness.

(b) The Customer Parties will not make any additional borrowings under the Fulcrum Indebtedness; and for avoidance of doubt, any amounts repaid under the Fulcrum Indebtedness will not be re-borrowed.

3.8 Liens. The Customer Parties shall not create, incur, assume or permit to exist any Lien on any of their properties or assets or on any of their income or revenues or rights in respect of any thereof, except for Permitted Liens.

3.9 Investments, Loans and Advances. The Customer Parties shall not purchase, hold or acquire any equity interests, evidence of Indebtedness or other securities of, or make or permit to exist any loans or advances or capital contributions to, or make or permit to exist any investment or any other interest in, any other Person, except for Permitted Investments.

3.10 Transactions with Affiliates. The Customer Parties will not enter into any transaction with any Affiliate except (i) transactions expressly permitted under the Transaction Agreements, (ii) transactions upon fair and reasonable terms no less favorable to such Customer Party than it would obtain in a comparable arm's length transaction from unrelated third parties, (iii) transactions between or among Customer Parties and not involving any other Person, so long as each Customer Party is a party to the US Security Agreement or the Canadian Security Agreement at the time of such transaction and (iv) reasonable fees and compensation to, and indemnities provided on behalf of, officers, directors and employees of such Customer Party.

3.11 Mergers, Consolidations, Sales of Assets.

(a) Without the prior written consent of Shell Energy, no Customer Party shall merge into or consolidate with any other Person, or permit any other Person to merge into or consolidate with it, or liquidate or dissolve.

(b) No Customer Party shall sell, transfer, lease or otherwise dispose of any of its assets other than (i) in the ordinary course of the business of such Customer Party, (ii) the sale or disposition of surplus, obsolete or worn-out equipment and (iii) the transfer of assets from one Customer Party to another Customer Party, so long as the Customer Party to which the assets are transferred is a party to the US Security Agreement or the Canadian Security Agreement at the time of such transfer.

3.12 Deposit Accounts. The Customer Parties shall not have any deposit accounts or securities accounts that are not subject to a Blocked Account Agreement, other than (i) petty cash accounts, (ii) accounts used exclusively for payroll, payroll taxes and other employee wage and benefit payments to or for the Customer Parties' employees and (iii) accounts used to secure Permitted Letter of Credit Indebtedness so long as the amount of cash in such account does not exceed 102% of the amount of Permitted Letter of Credit Indebtedness secured by such account.

3.13 Restricted Payments. The Parent shall not pay or declare any Restricted Payment if, immediately after giving effect to such Restricted Payment, the Customer Parties would not be in compliance with the Modified Working Capital requirement as set forth in Appendix B. It is

understood that payment of a Restricted Payment may cause a reduction in the exercise price for the Warrant, in such manner as set forth in the Warrant Agreement.

3.14 Sale and Lease-Back Transactions. No Customer Party shall enter into any arrangement, directly or indirectly, with any Person whereby it shall sell or transfer any property used or useful in its business, whether now owned or hereafter acquired, and thereafter rent or lease such property or other property which it intends to use for substantially the same purpose or purposes as the property being sold or transferred.

3.15 Modification of Other Indebtedness. Without the prior written consent of Shell Energy, no Customer Party shall agree to any amendment, modification or supplement to the Fulcrum Indebtedness, any Subordinated Indebtedness or the Permitted Indebtedness described on Schedule 3.7 hereto, the effect of which would be to (i) increase the rate of interest thereon or the maximum principal amount thereof, (ii) change the dates upon which payments of principal or interest thereon are due, other than to extend such dates, or (iii) amend any other term thereof if such amendment (together with all other amendments), would increase the obligations of the obligor thereunder or confer additional rights on holders thereof in a manner materially adverse to the Shell Parties.

3.16 Payments on Subordinated Indebtedness. No Customer Party shall make any payment with respect to Subordinated Indebtedness other than as permitted in the applicable subordination agreement among the Shell Parties, Customer Parties and the holder of such Subordinated Indebtedness.

3.17 Subsidiaries. No Customer Party shall have any Subsidiary (whether direct or indirect) unless no later than 10 days after the date that such entity becomes a Subsidiary, such Subsidiary shall have become a party to this Agreement by executing and delivering to the Shell Parties a Joinder in substantially the form attached hereto as Appendix C, and shall have become a party to the Loan Agreement by executing and delivering to the Shell Parties a Joinder in substantially the form of Joinder as attached to the Loan Agreement, and the Customer Party shall have caused such Subsidiary to execute and deliver to the Shell Parties joinders to the Security Documents and/or any other documents that Shell Energy determines to be reasonably necessary to grant to the Shell Parties a first priority perfected security interest (subject to Permitted Liens) in and to the assets of such Subsidiary. Any document, agreement, or instrument executed or issued pursuant to this paragraph shall be a Transaction Agreement. The execution and delivery of any instrument adding a Subsidiary as a party to a Transaction Agreement in accordance with the foregoing requirement shall not require the consent of any other Customer Party.

3.18 Risk Policy, Required and Permitted Hedges.

(a) The Customer Parties shall at all times comply with the Risk Policy and shall not modify the Risk Policy without the prior written consent of Shell Energy. Without limiting the foregoing, the Customer Parties shall enter into supply purchase transactions reasonably approximated to match the forecasted daily commodity sales on all months for the term of the Energy Customer Contracts, taking into consideration historical consumption, customer load forecasts, attrition rates, weather influences on consumption and any other factors the Customer Parties utilize to forecast consumption. The Customer Parties shall not enter into any purchase

agreement or commodity hedge for speculative purposes, and the Customer Parties shall enter into such contracts solely for the purpose of minimizing the fixed price, basis or index premium risk on their portfolio.

(b) The Customer Parties shall (i) hedge their fixed price Energy Customer Contracts (both power and gas) at a minimum of 95% and a maximum of 105% of monthly forecasted sales for the term of such Energy Customer Contract.

(c) The Customer Parties shall hedge the forward exposure associated with their non-fixed price month-to-month Energy Customer Contracts for power within the following minimum and maximum percentages:

<u>Forecasted Load Term</u> (with month 0 (zero) being the current delivery month)	<u>Minimum Hedge Percentage of Forecasted Load</u>		<u>Maximum Hedge Percentage of Forecasted Load (Peak and Non-Peak Months)</u>
	Peak Month	Non-Peak Month	
1 <sup>st</sup> forward month	75%	50%	105%
2nd forward month	50%	20%	105%
3rd forward month	25%	5%	105%
4th forward month	10%	0%	105%
Beyond 4th forward month	0%	0%	25% for the two immediate peak seasons but not beyond 18 forward months (with additional hedges to be considered on a case-by-case basis)

(d) For non-fixed price month-to-month Energy Customer Contracts for gas, the Customer Parties shall hedge 100% of the first forward month forecasted gas volumes prior to the month of delivery.

(e) The Customer Parties shall at all times abide by the Risk Process and Procedures Guidelines, and provide updates thereto as required by the Reporting Requirements.

3.19 Credit Policy. The Customer Parties shall at all times comply fully with the Credit Policy (including the establishment of credit and processes and procedures for service disconnection and collection of delinquent accounts) and shall not modify the Credit Policy without the prior written consent of Shell Energy. The Customer Parties shall not enter into any Energy Customer Contracts with customers that do not meet the customer criteria set forth in the



Credit Policy, or otherwise alter or deviate from the Credit Policy without Shell Energy's prior written consent.

3.20 Nature of Business. No Customer Party will engage in any line of business that is different from the business set forth on Schedule 3.20 hereto. It is understood that Shell Energy will serve the gas delivery points listed as Shell Gas Delivery Points in Schedule 3.20, and no Customer Party will sell gas to customers which cannot be served by such Shell Gas Delivery Points without Shell Energy's prior written consent.

3.21 Tenure Limits on PJM Energy Customer Contracts. The Customer Parties will not enter into fixed price Energy Customer Contracts in the PJM territory that fix the price thereunder for a term of more than 36 months from the date such price is contracted for.

3.22 Key Services Agreements. Without the prior written consent of Shell Energy, the Customer Parties shall not (i) cancel, terminate or surrender any Key Services Agreement, (ii) forgive any material obligation thereunder, (iii) modify or amend any of the Key Services Agreements in any material respect, other than to extend the term thereof, (iv) assign its interest in any Key Services Agreement or any portion thereof or (v) fail to perform any of its obligations in accordance with the provisions thereof, which failure would constitute a default under such Key Services Agreement and which failure shall continue beyond any applicable cure period provided under such Key Services Agreement.

#### SECTION 4. GUARANTY OF CUSTOMER PARTY OBLIGATIONS.

4.1 Each Customer Party (herein a "Guarantor" for purposes of this Section 4), hereby jointly, severally, irrevocably and unconditionally, guarantees to the Shell Parties the prompt and complete payment and performance of the Guaranteed Obligations by each other Customer Party when due (whether at the stated maturity, by acceleration or otherwise). If and to the extent that any Customer Party shall fail to make any payment with respect to any of the Guaranteed Obligations as and when due or to perform any of the Guaranteed Obligations in accordance with the terms thereof, then in each such event the other Customer Parties will make such payment with respect to, or perform, such Guaranteed Obligations.

4.2 The obligations of each Guarantor under the provisions of this Section 4 constitute the absolute and unconditional, full recourse obligations of such Guarantor enforceable against such Guarantor to the full extent of its properties and assets, and each Guarantor understands and agrees that the guarantee contained in this Section 4 may be construed as a continuing, absolute and unconditional guarantee of payment and performance and shall not be diminished or rendered unenforceable by any bankruptcy, winding up, reorganization, arrangement, liquidation, reconstruction or similar proceeding with respect to any other Customer Party or any other Person. Without limiting the generality of the foregoing, the obligations of each Guarantor under this Section 4 shall not be released, discharged or otherwise affected by any defense, set-off or counterclaim (other than a defense of payment or performance hereunder) that may at any time be available to or be asserted by the other Customer Parties or any other Guarantor against any Shell Party, or any release, impairment, non-perfection or invalidity of any direct or indirect security for any obligation of any other Customer Party or any other Guarantor under the Transaction Agreements.

4.3 Until all of the Guaranteed Obligations have been paid in full, each Guarantor waives any right of subrogation, reimbursement, indemnification and contribution (contractual, statutory or otherwise), including any claim or right of subrogation under applicable bankruptcy law, that such Guarantor may now or hereafter have against any other Customer Party with respect to the Guaranteed Obligations. Each Guarantor waives any right to enforce any remedy that a Shell Party now has or may hereafter have against any other Customer Party, and waives any benefit of, and any right to participate in, any security now or hereafter held by any Shell Party. Each Guarantor hereby waives any election of remedies by a Shell Party that impairs any subrogation or other right of such Guarantor to proceed against any other Customer Party or other Person, including any loss of rights resulting from any applicable anti-deficiency laws or other laws limiting, qualifying or discharging obligations or remedies.

4.4 Except for any notice that is expressly required to be given to a Customer Party under the Transaction Agreements, each Guarantor hereby waives notice of the creation, renewal, extension or accrual of any of the Guaranteed Obligations, the occurrence of any Event of Default, notice of any demand for any payment under any Transaction Agreement, notice of presentment, dishonor or protest, and notice of any action at any time taken or omitted by a Shell Party under or in respect of any of the Guaranteed Obligations. Each Guarantor further waives any right to notice of the creation of new Guaranteed Obligations by any other Customer Party. With respect to both the Guaranteed Obligations and any collateral securing the Guaranteed Obligations, each Guarantor hereby agrees to any extension or postponement of the time of payment or any other indulgence, to any substitution, exchange or release of or failure to perfect any security interest in such collateral, to the addition or release of any party or Person primarily or secondarily liable, to the acceptance of partial payment thereon or settlement thereof, all in such manner and at such time or times as Shell Energy may deem advisable.

4.5 Each Guarantor represents and warrants to the Shell Parties that such Guarantor will derive substantial benefit, directly or indirectly, from the collective administration of the transactions contemplated by the Transaction Agreements and any extensions of credit thereunder. Each Guarantor agrees that the Shell Parties will not be required to inquire as to the disposition by any Customer Party of any funds loaned by the Shell Parties or any goods or services sold or provided pursuant to the Transaction Agreements. Each Guarantor agrees that it is solely responsible for keeping itself informed as to the financial condition of the other Customer Parties and of all circumstances that bear upon the risk of nonpayment. Each Guarantor waives any right it may have to require the Shell Parties to disclose to such Guarantor any information that a Shell Party may now or hereafter acquire concerning the financial condition of the other Customer Parties.

4.6 The provisions of this Section 4 are made for the benefit of the Shell Parties and their respective successors and assigns, and may be enforced by them from time to time against any or all Guarantors as often as occasion therefor may arise and without requirement first to make a similar demand on or otherwise pursue any rights and remedies as it may have against the other Customer Parties, any other Guarantor or any other Person or against any collateral security or guarantee for the Guaranteed Obligations or any right of offset with respect thereto, and without requirement to marshal any collateral or claims of the Shell Parties. The provisions of this Section 4 shall remain in effect until all of the Guaranteed Obligations shall have been paid in full or otherwise fully satisfied. If at any time, any payment, or any part thereof, made in respect of any

of the Guaranteed Obligations, is rescinded or must otherwise be restored or returned by a Shell Party upon the insolvency, bankruptcy or reorganization of any Customer Party, or otherwise, the provisions of this Section 4 will forthwith be reinstated in effect, as though such payment had not been made.

## SECTION 5. INTERCOMPANY SUBORDINATION.

5.1 Each Customer Party (herein an “Intercompany Obligee” for purposes of this Section 5) agrees that all sums now or hereafter owing to it from any other Customer Party (herein an “Intercompany Obligor” for purposes of this Section 5) shall be subordinated to the prior payment in full of all obligations owing to the Shell Parties pursuant to the Transaction Agreements, and that such subordination is for the benefit of the Shell Parties.

5.2 Each Intercompany Obligee agrees that until all obligations owing to the Shell Parties under the Transaction Agreements have been paid in full:

(a) all obligations owing to such Intercompany Obligee from any Intercompany Obligor (herein, the “Intercompany Obligations”) shall at all times be unsecured;

(b) it shall cause all payments owing with respect to any Intercompany Obligations to be paid to an account that is subject to a Blocked Account Agreement;

(c) if any Event of Default has occurred and is continuing, such Intercompany Obligee shall not, upon written request by Shell Energy, accept payments from any Intercompany Obligor with respect to any Intercompany Obligations owing to it;

(d) such Intercompany Obligee will not (i) assign or transfer, or agree to assign or transfer, to any Person (other than in favor of the Shell Parties or any other Intercompany Obligee) any claim such Intercompany Obligee has or may have with respect to any Intercompany Obligations, and any transfer in violation of the foregoing shall be void; and

(e) such Intercompany Obligee shall not enforce any rights or remedies it may have against any Intercompany Obligor with respect to any Intercompany Obligations owing to it, including any set-off rights, and without limiting the foregoing such Intercompany Obligee agrees that it shall not initiate, prosecute, or participate in any action or take any other steps to (i) enforce any judgment obtained against any Intercompany Obligor (ii) enforce any rights or remedies against the assets of any Intercompany Obligor or (iii) commence bankruptcy, receivership or similar proceedings against any Intercompany Obligor.

5.3 Each Intercompany Obligee further agrees that upon any distribution of assets of any Intercompany Obligor in any dissolution, winding up, liquidation or reorganization, whether in bankruptcy, insolvency or receivership proceedings, or upon an assignment for the benefit of creditors:

(a) the Shell Parties shall first be entitled to receive payment in full in cash of all amounts owing to them under the Transaction Agreements before any Intercompany Obligee shall be entitled to receive any payment on account of any Intercompany Obligations owing to such Intercompany Obligee;

(b) any payment or distribution of assets of any Intercompany Obligor of any kind or character, whether in cash, property or securities, to which any Intercompany Obligees would otherwise have been entitled except for the provisions hereof, shall be paid by the liquidating trustee or other Person making such payment or distribution directly to Shell Energy (for the ratable benefit of the Shell Parties), to the extent necessary to make payment in full of all obligations owing to the Shell Parties under the Transaction Agreements; and

(c) in the event that notwithstanding the provisions hereof, any payment or distribution of assets of any Intercompany Obligor of any kind or character, whether in cash, property or securities, shall be received by any Intercompany Obligees with respect to any Intercompany Obligations before all obligations owing to the Shell Parties under the Transaction Agreements are paid in full, such payment or distribution shall be received and held in trust for and shall be paid over to Shell Energy (for the ratable benefit of the Shell Parties) until all obligations owing to the Shell Parties under the Transaction Agreements have been paid in full.

## SECTION 6. PERFORMANCE ASSURANCE.

6.1 Shell Energy shall have the right, at any time, to require that credit support (in addition to the credit support provided in the Security Documents) be provided by the Customer Parties in an amount equal to the Performance Assurance Amount as described in Appendix G hereto. Such additional credit support shall be in the form of cash or letters of credit, and is herein called the “Additional Performance Assurance”. If Shell Energy determines that Additional Performance Assurance is required pursuant to Appendix G, Shell Energy shall calculate such amount in accordance with Appendix G and provide such calculation to the Customer Parties. Within two Business Days after receiving such notice, the Customer Parties shall cause Additional Performance Assurance to be delivered to Shell Energy. Shell Energy may periodically, but not more than once per month, recalculate the Performance Assurance Amount in accordance with Appendix G. The Customer Parties may from time to time request a recalculation of the Performance Assurance Amount; provided that Shell Energy shall not be required to recalculate the Performance Assurance Amount more often than once during any six month period. Within two Business Days after Shell Energy delivers any recalculation of the Performance Assurance Amount to the Customer Parties, the Customer Parties shall deliver to Shell Energy Additional Performance Assurance in the amount necessary so that the aggregate amount of all Additional Performance Assurance held by Shell Energy pursuant to this Section 6 equals the recalculated Performance Assurance Amount. If the aggregate of all Additional Performance Assurance held by Shell Energy pursuant to this Section 6 exceeds the recalculated Performance Assurance Amount, then Shell Energy shall return the amount of any cash comprising such excess within two Business Days after Shell Energy’s delivery of such recalculation, and if such excess Additional Performance Assurance consists of letters of credit, Shell Energy shall cooperate with the Customer Parties and the issuer of such letters of credit to reduce the undrawn face amount of such letters of credit so that the aggregate of all Additional Performance Assurance held by Shell Energy is equal to the recalculated Performance Assurance Amount.

6.2 If any Additional Performance Assurance consists of cash, each Customer Party hereby grants to Shell Energy a first priority continuing security interest in and right of set-off against all such Additional Performance Assurance as security for the Obligations, and Shell Energy shall have the right to commingle or otherwise utilize such Additional Performance

Assurance, subject however to Shell Energy's obligation to return such Additional Performance Assurance to the Customer Parties in accordance with this Section 6.

6.3 If at any time an Event of Default has occurred and is continuing, Shell Energy may, in addition to any other rights then available under the Transaction Agreements or at law, draw on any letter of credit issued as Additional Performance Assurance, or apply any Additional Performance Assurance or the proceeds thereof to the payment of the Obligations in accordance with the Transaction Agreements. Within two Business Days following the date that all outstanding payment obligations owed by the Customer Parties under the Transaction Agreements have been paid in full and Shell Energy has no further obligation to deliver products, render services or make extensions of credit to any Customer Party, Shell Energy shall return to the Customer Parties any Additional Performance Assurance held by Shell Energy.

6.4 All letters of credit delivered by the Customer Parties pursuant to this Section 6 shall be issued by a Qualified Institution. The Customer Parties shall renew or replace any letters of credit provided hereunder no later than 30 days prior to the expiration date of such letter of credit. The Customer Parties shall pay all fees and charges applicable to such letters of credit.

## SECTION 7. EVENTS OF DEFAULT.

7.1 Any one or more of the following events shall constitute an event of default hereunder (each, an "Event of Default"):

(a) Any Customer Party shall fail to pay when due any payment owing by it under the Transaction Agreements, which failure remains unremedied for a period of three Business Days following such due date; provided that no such cure period shall apply with respect to regularly scheduled payments owing under the Transaction Agreements if the Customer Parties have failed to timely pay any regularly scheduled payment more than twice during any 12 month period.

(b) Customer Parties fail to comply with Financial Metrics; provided, however, that such failure shall not constitute an Event of Default if a Financial Metric Equity Injection Cure sufficient to cure such default has been made in accordance with this Agreement.

(c) The Customer Parties shall either (i) fail to deliver any report required by the Reporting Requirements by the deadlines specified therein more than twice during any six month period or (ii) fail to deliver any of the reports required by the Reporting Requirements within 15 days after the deadline specified in the Reporting Requirements.

(d) Any representation or warranty made or deemed made by any Customer Party in any Transaction Agreement, or any representation, warranty, statement or information contained in any report, certificate, financial statement or other instrument furnished in connection with or pursuant to any Transaction Agreement, shall prove to have been false or misleading in any material respect when so made, deemed made or furnished.

(e) An event of default or a termination event as defined or described in any other Transaction Agreement occurs with respect to a Customer Party, which is not cured prior to the expiration of any applicable cure period.

(f) Any Customer Party fails to perform or observe any covenant or other agreement contained in Section 3.18.

(g) Any Customer Party fails to perform or observe any covenant or other agreement contained in any Transaction Agreement (other than those specified in paragraphs (a) through (f) above), provided, that if such default is capable of remedy, no Event of Default shall have occurred pursuant to this paragraph if such default has been remedied within 30 days after the earlier of (i) the date on which such failure shall first become known to any officer of any Customer Party or (ii) the date on which written notice thereof is given to Customer Party by Shell Energy.

(h) Unless otherwise waived in writing by Shell Energy, any Key Member ceases to be directly or indirectly, through employment, consulting or through other similar arrangements, working for the benefit of the Customer Parties, and such Key Member is not replaced in a prompt manner by an individual acceptable to Shell Energy in its commercially reasonable good faith discretion.

(i) Any Key Services Agreement shall be terminated or shall otherwise cease to be in full force and effect.

(j) A Change of Control shall occur.

(k) Any Customer Party suffers a final judgment against it which, within 30 days from the date such judgment is entered, shall not have been satisfied or otherwise discharged or execution thereof stayed pending appeal, and the aggregate amount of all such judgments suffered during any Fiscal Year which are not adequately covered by insurance exceeds CAD\$200,000 or the Equivalent Amount in US\$.

(l) (i) The failure of any Customer Party to pay at maturity any Indebtedness of such Customer Party, or the default by any Customer Party under any note, indenture, mortgage or obligation incurred pursuant thereto, the effect of which default (assuming the giving of notice or the passage of time or both) accelerates, or entitles any Person to accelerate, any maturity thereof, and the amount of any such Indebtedness individually or in the aggregate exceeds CAD\$100,000 or (ii) the occurrence of an event of default under the Fulcrum Indebtedness with respect to any Customer Party.

(m) The Customer Parties fail to repay the Fulcrum Indebtedness in full and obtain a termination of all Liens securing the Fulcrum Indebtedness on or before June 20, 2019.

(n) (i) Any of the Transaction Agreements ceases to be in full force or effect for any reason other than a full or partial waiver or release by the Shell Parties in accordance with the terms thereof, (ii) any Customer Party shall challenge or contest in any action, suit or proceeding the validity or enforceability of any of the Transaction Agreements, the legality or enforceability of any of the Obligations or the perfection or priority of any Lien granted to the Shell Parties as security for the Obligations, or (iii) any Lien purported to be created as security for the Obligations shall cease to be, or shall be asserted by any Customer Party not to be, a valid, perfected and first priority Lien (subject only to Permitted Liens, if any, which are permitted by the terms of the Transaction Agreements to have priority over the Liens of the Shell Parties), other

than such Liens which have been specifically released pursuant to a partial or full release executed by the Shell Parties.

(o) Any Customer Party or any Person guaranteeing the obligations of a Customer Party under the Transaction Agreements becomes Bankrupt.

7.2 Upon the occurrence and during the continuance of an Event of Default, the Shell Parties may, in their sole discretion (i) terminate any existing obligation of the Shell Parties to make extensions of credit to any Customer Party, whereupon the same shall forthwith terminate, (ii) upon notice to the Customer Parties, declare all amounts payable under the Transaction Agreements, including any interest thereon, to be immediately due and payable in whole (or in part, in which case any amounts not so declared to be due and payable may thereafter be declared to be due and payable), whereupon all such amounts so declared to be due and payable shall become immediately due and payable, all without further notice and without presentment, demand, protest, or other notice of any kind, all of which are hereby waived by the Customer Parties; provided that if any Customer Party becomes Bankrupt, any existing obligation of the Shell Parties to make extensions of credit to any Customer Party shall automatically terminate, all amounts payable under the Transaction Agreements, including any interest thereon, shall automatically become due and payable, without notice, presentment, demand, protest, or other notice of any kind, all of which are hereby waived by each Customer Party, and (iii) exercise any or all of the remedies available to the Shell Parties under any of the Transaction Agreements, or at law or in equity.

## SECTION 8. TERMINATION.

8.1 Election to Terminate and Transition to a New Supplier The Customer Parties may at any time elect to terminate the Transaction Agreements and assign all (but not less than all) transactions under the Master Agreements (herein, a “Supplier Assignment”) to a third party (the “New Supplier”), with Shell Energy, Shell Energy Canada or STRM, as applicable, remaining a party to each such transaction, subject to the satisfaction of each of the conditions set forth below:

(a) Shell Energy, Shell Energy Canada or STRM, as applicable, are enabled to trade with the New Supplier (or shall become enabled with the New Supplier on the effective date of the Supplier Assignment).

(b) The New Supplier meets the Shell Party’s credit requirements in its good faith commercially reasonable discretion (including sufficient credit capacity granted to such New Supplier by such Shell Party, and to such Shell Party by such New Supplier, for the Supplier Assignment, in addition to the credit capacity utilized by such Shell Party for its own business purposes with such New Supplier).

(c) In order to effectuate the Supplier Assignment, no Shell Party shall be required, as of the effective date of the Supplier Assignment, to provide any form of credit support to the New Supplier, other than reliance upon the Shell Party’s general balance sheet.

(d) The New Supplier is a Permitted Transferee.

(e) On or prior to the effective date of the Supplier Assignment, the Customer Parties shall have paid (i) all obligations outstanding under the Loan Agreement, (ii) all

outstanding charges and fees owing to the Shell Parties under the Master Agreements, along with 100% of the Program Fees with respect to any then-outstanding transactions, regardless of the scheduled delivery or settlement date, (iii) any fees and other amounts owing to the Shell Parties under the Scheduling Coordinator Agreements and (iv) any other amounts, if any, that are due and payable to the Shell Parties under the Transaction Agreements as of the effective date of the Supplier Assignment (provided that the Shell Parties shall have provided written notices specifying such amounts due).

(f) In addition to the amounts payable pursuant to Section 8.1(e) above, if the effective date of the Supplier Assignment is prior to the Primary Term Date, then the Customer Parties shall have paid to Shell Energy an early termination payment as follows:

(i) for any Supplier Assignment other than a Supplier Assignment concurrent with a Change of Control, the early termination payment shall be US\$2,000,000 for each year remaining from the effective date of the Supplier Assignment through the Primary Term Date, prorated as applicable for any partial years.

(ii) for any Supplier Assignment concurrent with a Change of Control, the early termination payment shall be US\$500,000 for each year remaining from the effective date of the Supplier Assignment through the Primary Term Date, prorated as applicable for any partial years.

The Parties will each act in good faith and in a commercially reasonable manner to effectuate a transition in connection with any Supplier Assignment, including, without limitation, if the above conditions are satisfied, a termination and release of all liens and a termination of the Security Documents.

## SECTION 9. CERTAIN CHANGES IN CANADIAN LAW.

9.1 In the event there are changes in law or regulation related to financial energy business in Canada, such that the transactions completed or contemplated hereunder may contribute to the Shell Parties' determination that one or more Shell Parties will incur material additional registration or reporting requirements, tax obligations, or administrative burdens (collectively, the "Increased Regulatory Burden"), then at any time following the third (3<sup>rd</sup>) anniversary of the Effective Date:

(a) The Shell Parties have the right to cease any future activity that the Shell Parties determine would contribute to the Increased Regulatory Burden, including hedge sales or sleeves of hedge products from third parties, and

(b) if the Shell Parties determine that any previously transacted and unsettled hedges under the Transaction Agreements would contribute to the Increased Regulatory Burden, the Shell Parties shall have the right to require that such transactions be terminated or novated to a third party, and the Parties will work together to pre-emptively settle such transactions, or novate such transactions to a third party.

If the Shell Parties exercise their rights as described above and the Customer Parties determine that the remaining services available to them from the Shell Parties are insufficient, then the



Customer Parties may terminate the Transaction Agreements as they relate to their Canadian business, upon payoff of all loan amounts and settlement of all open exposures associated with the Canadian business, and the Parties will work together in good faith to restructure the remaining Transaction Agreements as appropriate for the Customer Parties' U.S. business. As part of the calculation of the settlement of any transaction terminated pursuant to this Section 9.1, no Program Fees shall be payable by the Customer Parties with respect to any undelivered volumes at the time of such termination. For purposes of this Section 9.1, any change in law or regulations shall be deemed to have occurred upon finalization of the regulations or law, regardless of the effective date of the regulation or law.

## SECTION 10. GENERAL TERMS AND PROVISIONS.

10.1 Conditions Precedent. The Shell Parties shall have no obligation to sell any product or financial derivatives to the Customer Parties, or provide any sleeving services to the Customer Parties, until all the conditions precedent as set forth in the Loan Agreement for the initial Drawdown thereunder have been satisfied.

10.2 Default Interest. During the continuance of an Event of Default, all sums then owing under the Transaction Agreements shall bear interest at the Default Rate or the Non-Monetary Default Rate, as applicable, in accordance with the Loan Agreement.

10.3 Shell Canada Swap Entity. If Shell Energy determines that it is desirable to form a Shell Canada Swap Entity for the purpose of engaging in financial swap transactions in Canada, then upon written notice from Shell Energy to the Customer Parties, Shell Energy may require that an Affiliate of Shell Energy that is a Shell Canada Swap Entity (as defined herein) become a party to this Agreement as a 'Shell Canada Swap Entity' and a 'Shell Party' as set forth herein.

10.4 No Partnership or Joint Venture. Nothing in this Agreement or any of the other Transaction Agreements is intended to create an association, trust, partnership or joint venture or to impose a trust or partnership duty, obligation or liability on or with regard to (i) any Customer Party and (ii) any Shell Party. No fiduciary duty or relationship shall exist between the Customer Parties and the Shell Parties with respect to this Agreement or any of the Transaction Agreements.

10.5 No Third Party Beneficiaries. This Agreement and each of the Transaction Agreements is intended solely for the benefit of the Parties and nothing in this Agreement or in any Transaction Agreement shall be construed to create any rights in favor of, any duty to or standard of care with reference to, or any liability to any third party.

10.6 Shell Parties' Obligations are Several. The obligations of the Shell Parties under the Transaction Agreements shall be several and not joint, and no Shell Party shall have any liability with respect to the acts or omissions of the other Shell Parties under the Transaction Agreements.

10.7 Control of Operations. **EACH CUSTOMER PARTY ACKNOWLEDGES THAT (A) ITS BUSINESS STRATEGIES AND OPERATIONS ARE SUBJECT TO ITS SOLE CONTROL AND MANAGEMENT, (B) IT IS SOLELY RESPONSIBLE FOR ITS OWN ACTUAL AND PROJECTED BUSINESS MODEL, STRATEGY, OPERATIONS, REVENUES, EXPENSES, CASH FLOWS, AND NET INCOME, (C) IT IS RELYING ON**

**ITS OWN JUDGMENT IN ENTERING INTO THE TRANSACTION AGREEMENTS, AND (D) IT IS NOT RELYING ON (AND HEREBY DISCLAIMS ANY RELIANCE ON) ANY STATEMENT, REPRESENTATION, WARRANTY, COVENANT, PROMISE OR AGREEMENT OF A SHELL PARTY OR ANY OF ITS AFFILIATES, OR ANY OF ITS OR THEIR OFFICERS, DIRECTORS, EMPLOYEES, REPRESENTATIVES OR AGENTS, EXCEPT FOR ANY REPRESENTATIONS, WARRANTIES OR COVENANTS OF THE SHELL PARTIES EXPRESSLY SET FORTH IN THE TRANSACTION AGREEMENTS. EACH CUSTOMER PARTY ACKNOWLEDGES THAT NO SHELL PARTY OR ANY OF ITS AFFILIATES, OR ANY OF ITS OR THEIR OFFICERS, DIRECTORS, EMPLOYEES, REPRESENTATIVES OR AGENTS HAS MADE ANY PROMISES, PROJECTIONS OR PREDICTIONS TO SUCH CUSTOMER PARTY CONCERNING ANY BUSINESS PLANS RELATING TO THE CUSTOMER PARTIES, INCLUDING, WITHOUT LIMITATION, THE VIABILITY, PROFIT POTENTIAL AND POTENTIAL CASH FLOW RELATING THERETO.**

10.8 Customer Parties' Responsibility for Requirements of Law. Notwithstanding the review and approval by the Shell Parties of any matters specified in the Transaction Agreements, the Shell Parties shall have no responsibility for compliance by any Customer Party with any Requirement of Law. **EACH CUSTOMER PARTY EXPRESSLY ASSUMES SUCH RESPONSIBILITY AND SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE SHELL PARTIES AND EACH OF THEIR AFFILIATES AND THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, AGENTS AND ADVISORS (EACH A "SHELL RELATED PARTY") FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES AND RELATED EXPENSES, INCLUDING ATTORNEY FEES, INCURRED BY OR ASSERTED AGAINST ANY SHELL RELATED PARTY IN CONNECTION WITH ANY CLAIM, LITIGATION, INVESTIGATION OR PROCEEDING RELATING TO A CUSTOMER PARTY'S FAILURE TO COMPLY WITH ANY REQUIREMENT OF LAW.**

10.9 Amendments and Waivers. No amendment of any provision of this Agreement or any Transaction Agreement shall be valid unless the same shall be in writing and signed by each of the Parties to such agreement against whom enforcement is sought. No waiver by any Party of any default under this Agreement or any Transaction Agreement, whether intentional or not, shall be deemed to extend to any prior or subsequent default, misrepresentation or breach of warranty or covenant under such agreement or affect in any way any rights arising by virtue of any prior or subsequent such occurrence.

10.10 Cumulative Remedies. The rights and remedies of the Parties hereunder and under each Transaction Agreement shall be cumulative, and the exercise or partial exercise of any such right or remedy shall not preclude the exercise of any other right or remedy.

10.11 Succession and Assignment. This Agreement shall bind and inure to the benefit of the respective successors and permitted assigns of each of the Parties. Unless expressly permitted by a Transaction Agreement, no Party may assign any of its rights or obligations under a Transaction Agreement without the prior written consent of the other Parties thereto. Notwithstanding the foregoing (i) a Shell Party may transfer its rights and obligations under the Transaction Agreements to an Affiliate of such Shell Party so long as the creditworthiness of such transferee or its guarantor is equal to or greater than that of the transferring Shell Party or its

guarantor, as applicable and (ii) if an Event of Default as described in Section 7.1(a) or Section 7.1(o) has occurred and is continuing, the Shell Parties may assign all or any portion of any claims they may have for amounts owing to them under the Transaction Agreements, and no consent of the Customer Parties shall be required for such assignments. Any assignment of a Party's rights or obligations under the Transaction Agreements not in accordance with this paragraph shall be void.

10.12 Severability. Any term or provision of this Agreement or any Transaction Agreement that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions of such agreement or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction. In the event any provision hereof or thereof conflicts with any applicable law, such provision shall be deemed modified, consistent with the aforementioned intent, to the extent necessary to resolve such conflict.

10.13 Notices. All communications under any Transaction Agreement shall be given in the manner and to the notice address as set forth in such Transaction Agreement, and if the manner or address for any such notice is not set forth in such Transaction Agreement, such notice or other communication shall be in writing and may be delivered by hand delivery, overnight courier service or facsimile. Notice by facsimile or hand delivery shall be effective as of the close of business on the day actually received, if received during business hours on a Business Day, and otherwise shall be effective at the close of business on the next Business Day. Notice by overnight courier shall be effective on the next Business Day after it was sent to the appropriate notice address set forth below or at such other address as any Party hereto may have furnished to the other parties in writing in accordance with this Agreement:

If to a Shell Party:

1000 Main, Level 12  
Houston, Texas 77002  
Attention: Contracts North America  
Facsimile: 713-767-5414

with a copy to

1000 Main, Level 12  
Houston, Texas 77002  
Attention: General Counsel  
Facsimile: 713-230-2900

If to a Customer Party:

5255 Yonge St., Suite 1500  
North York, ON M2N 5P8  
Attention: Nino Silvestri and Stephen Plummer  
Email: Nino [NSilvestri@planetenergy.ca](mailto:NSilvestri@planetenergy.ca)  
[splummer@energlobeenergy.com](mailto:splummer@energlobeenergy.com)

10.14 Shell Energy's Internal Compliance. Each Customer Party acknowledges that:

(a) it has received a copy of the Shell Business Principles (or alternatively taken note of the Shell General Business Principles at: [http://www.shell.com/home/content/aboutshell/who\\_we\\_are/our\\_values/sgbp/](http://www.shell.com/home/content/aboutshell/who_we_are/our_values/sgbp/));

(b) it has received a copy of the Shell Code of Conduct (or alternatively has taken note of the Shell Code of Conduct at: [http://www.shell.com/home/content/aboutshell/who\\_we\\_are/our\\_values/code\\_of\\_conduct/](http://www.shell.com/home/content/aboutshell/who_we_are/our_values/code_of_conduct/));

(c) it has been made aware of the Shell Global Helpline at [http://www.shell.com/home/content/aboutshell/who\\_we\\_are/our\\_values/compliance\\_helpline/](http://www.shell.com/home/content/aboutshell/who_we_are/our_values/compliance_helpline/) and telephone number 1-800-738-1615; and

(d) it has been made aware of the Shell Trading Compliance email address at [TR-STNA-Compliance-Support@shell.com](mailto:TR-STNA-Compliance-Support@shell.com).

Each Shell Party is committed to and requires that its staff and contractors representing or working on behalf of such Shell Party behave in a manner consistent with the Shell Code of Conduct and adhere to the principles contained in the Shell General Business Principles. In the event that a Customer Party observes a Shell Party's employees or contractors engaged in behavior or activity that gives any Customer Party concern or that any Customer Party believes is not in compliance with the Shell General Business Principles, the Shell Code of Conduct or applicable laws and regulations, such Customer Party may contact the Shell Global helpline at the telephone number specified herein or at such other telephone number as may be indicated on the internet at the link above or send an email to Shell Trading Compliance at the email address set forth above. Notwithstanding the foregoing, nothing in this clause shall give any Customer Party the right to terminate the Agreement or a cause of action against any Shell Party for failing to adhere to the Shell General Business Principles or Code of Conduct.

10.15 Limitation of Liability and Waiver of Jury Trial.

**(a) NOTWITHSTANDING ANYTHING IN ANY TRANSACTION AGREEMENT TO THE CONTRARY, IN NO EVENT SHALL ANY PARTY BE LIABLE UNDER ANY TRANSACTION AGREEMENT TO ANY OTHER PARTY OR ANY THIRD PARTY FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES, INCLUDING ANY DAMAGES FOR BUSINESS INTERRUPTION OR LOSS OF REVENUE OR PROFIT, WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT THE PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**

**(b) EACH PARTY WAIVES ITS RIGHT TO A JURY TRIAL WITH RESPECT TO ANY ACTION OR CLAIM ARISING OUT OF ANY DISPUTE IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER TRANSACTION**

**AGREEMENT, ANY RIGHTS OR OBLIGATIONS HEREUNDER OR THEREUNDER OR THE PERFORMANCE OR ENFORCEMENT OF ANY SUCH RIGHTS OR OBLIGATIONS.**

**(c) EACH PARTY (i) CERTIFIES THAT NEITHER THE SHELL PARTIES ON THE ONE HAND, NOR THE CUSTOMER PARTIES ON THE OTHER HAND, NOR ANY REPRESENTATIVES, AGENTS OR ATTORNEYS OF SUCH PARTIES HAVE REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVERS OR OTHER WAIVERS CONTAINED IN THIS AGREEMENT AND (ii) ACKNOWLEDGES THAT, IN ENTERING INTO THIS AGREEMENT, EACH PARTY IS RELYING UPON, AMONG OTHER THINGS, THE WAIVERS AND CERTIFICATIONS CONTAINED IN THIS SECTION 10.15.**

10.16 Liquidated Damages. To the extent that any payment required to be made pursuant to this Agreement or any Transaction Agreement is deemed to be or agreed to be liquidated damages, the Parties acknowledge that the damages that would be suffered are difficult to determine and that such payment constitutes a reasonable estimate of the amount of damages.

10.17 Usury. Anything in this agreement or the Transaction Agreements to the contrary notwithstanding, the Customer Parties shall never be required to pay interest on the Obligations at a rate in excess of the Highest Lawful Rate, and if the effective rate of interest which would otherwise be payable under the Transaction Agreements would exceed the Highest Lawful Rate, or if the holder of the Obligations shall receive monies that are deemed to constitute interest which would increase the effective rate of interest payable by the Customer Parties under the Transaction Agreements to a rate in excess of the Highest Lawful Rate, then (a) the amount of interest which would otherwise be payable by the Customer Parties under the Transaction Agreements shall be reduced to the highest nonusurious amount allowed under applicable law; and (b) any interest paid by the Customer Parties in excess of the Highest Lawful Rate shall be credited on the principal of the Obligations and to the extent any funds remain, refunded to the Customer Parties. It is further agreed that, without limitation of the foregoing, all calculations of the rate of interest contracted for, charged or received by the Shell Parties under the Transaction Agreements shall be made, to the extent permitted by applicable law (now or hereafter enacted), by amortizing, prorating and spreading in equal parts during the period of the full stated term of the Obligations all interest at any time contracted for, charged or received by the Shell Parties in connection therewith.

10.18 Governing Law. **THIS AGREEMENT AND, UNLESS OTHERWISE SPECIFIED IN SUCH TRANSACTION AGREEMENT, EACH TRANSACTION AGREEMENT, SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT REFERENCE TO ITS CONFLICT OF LAWS PROVISIONS THAT WOULD REQUIRE OR PERMIT THE APPLICATION OF LAW OF ANOTHER JURISDICTION.** Each Party agrees that any action or claim arising out of any dispute in connection with this Agreement and, unless otherwise specified in such Transaction Agreement, any other Transaction Agreement, along with any rights or obligations hereunder or thereunder, or the performance or enforcement of such rights or obligations, may be brought in the courts of the State of Texas in Harris County or any federal court sitting therein and consents to the non-exclusive jurisdiction of such court. Each Party hereby

waives any objection that it may now or hereinafter have to the venue of any such suit or any such court or that such suit is brought in an inconvenient court.

10.19 Appointment of Administrative Agent. For convenience purposes (i) each of the Shell Parties hereby appoints Shell Energy as its administrative agent for purposes of administering the provisions of this Agreement and each of the Transaction Agreements on behalf of the Shell Parties, and (ii) each of the Customer Parties hereby appoints the Parent as its administrative agent for the sole purpose of administering the provisions of this Agreement and each of the Transaction Agreements on behalf of the Customer Parties.

10.20 Titles of Articles, Sections and Subsections. All titles or headings to articles, sections, subsections or other divisions of this Agreement and each of the Transaction Agreements are only for the convenience of the Parties and shall not be construed to have any effect or meaning with respect to the other content of such articles, sections, subsections or other divisions, such other content being controlling as to the agreement between the Parties to this Agreement or any of the Transaction Agreements.

10.21 Interpretation. In interpreting and construing this Agreement and each of the Transaction Agreements, the following principles shall be followed:

- (a) all of the annexes, appendixes, schedules and exhibits attached to such Transaction Agreement shall be deemed incorporated therein by reference;
- (b) examples shall not be construed to limit, expressly or by implication, the matter they illustrate;
- (c) unless expressly stated to the contrary, if an obligation, payment or action required is due on a date that is not a Business Day, such obligation or action required shall be due on the immediately following Business Day;
- (d) whenever this Agreement or any Transaction Agreement refers to a number of days, such number shall refer to calendar days unless Business Days are specified; and
- (e) all Financial Metrics and other references to financial information shall be calculated on a Modified Consolidated Basis unless stated to the contrary.

10.22 Construction. The Parties have participated jointly in the negotiation and drafting of this Agreement and each Transaction Agreement and each has had the opportunity to consult with legal counsel of their choice. In the event an ambiguity or question of intent or interpretation arises, this Agreement and each Transaction Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of any such agreement.

10.23 Entire Agreement. Each Transaction Agreement constitutes the entire agreement among the Parties thereto with respect to the subject matter thereof, and supersedes any prior understandings, agreements or representations by or among the Parties, written or oral, to the extent they relate in any way to the subject matter of such Transaction Agreement.

10.24 Confidentiality. The terms of the Transaction Agreements and any transactions entered into under the Master Agreements, along with any financial statements delivered pursuant to the Transaction Agreements and any other information provided in connection with the Transaction Agreements that constitutes “material confidential information” as such term is used in CFTC Regulation 23.410(c) (herein, collectively the “Confidential Information”) shall be confidential and none of the Parties shall disclose such Confidential Information to any third party, other than (i) such Party’s directors, officers, employees, counsel, accountants, consultants, independent contractors, subcontractors, agents, auditors, lenders or insurers (collectively, “Representatives”) who have a need to know such information and (ii) disclosures from one Shell Party to another Shell Party, except that the foregoing restrictions shall not apply to (A) disclosures of information as may become generally available to the public, other than as a result of a violation of this Agreement, (B) disclosures as may be required in connection with any litigation or any court or regulatory proceeding, or to comply with any applicable law, order, regulation, ruling, or regulatory or accounting disclosure rule or standard, (C) disclosures of information obtained from a third party so long as such third party was not known to be in violation of any confidentiality arrangement in making such disclosure, (D) disclosures reasonably required in order to effect a Sleeved Transaction requested by a Customer Party under the Transaction Agreements or (E) disclosures of the specific terms of a transaction to a Person for the sole purpose of that Person aggregating and reporting to the public, on an aggregate basis, price data for purchases and sales of financial derivative products, so long as the counterparty identity is not disclosed. With respect to transactions entered into (i) in connection with the Master Agreements, the foregoing obligations shall survive for a period of one year following the expiration or termination of such transaction, (ii) with respect to financial statements delivered pursuant to the Transaction Agreements, the foregoing obligations shall survive for a period of two years following such delivery, and (iii) with respect to all other Confidential Information, the foregoing obligations shall survive for a period of two years following the expiration or termination of this Agreement.

10.25 Counterparts. This Agreement and each Transaction Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together will constitute one and the same instrument. Delivery of an executed signature page to this Agreement and each other Transaction Agreement by facsimile, e-mail or other electronic transmission shall be as effective as delivery of a manually signed counterpart of this Agreement or such other Transaction Agreement, as the case may be.

10.26 Termination of Certain Agreements. The Parties agree that the agreements identified in Appendix I hereto are hereby terminated.

10.27 English Language. The parties hereto have agreed that all Transaction Agreements, as well as any notice, invoice, document or instrument relating thereto be drawn up in English only but without prejudice to any such notice, document or instrument which may from time to time be drawn up in French only or in both French and English. *Les parties aux présentes ont convenu que la présente convention ainsi que tous autres avis, actes ou documents s’y rattachant soient rédigés en anglais seulement mais sans préjudice à tous tels avis, actes ou documents qui pourraient à l’occasion être rédigés en français seulement ou à la fois en anglais et en français.*

10.28 Amendment and Restatement. This Agreement is an amendment and restatement (but not an extinguishment) of the Original Global Agreement.

[Signature pages follow]



IN WITNESS WHEREOF, each of the undersigned has caused this Agreement to be duly executed and delivered as of the date first above written.

**CUSTOMER PARTIES:**

PLANET ENERGY (ONTARIO) CORP., a corporation formed under the Canada Business Corporations Act

By: *Nino C. Silvestri*  
Name: Nino Silvestri  
Title: Co-CEO

ENERGIE PLANETE INC./PLANET ENERGY INC., a Quebec corporation

By: *Nino C. Silvestri*  
Name: Nino Silvestri  
Title: Co-CEO

PLANET ENERGY (ALBERTA) CORP., an Alberta corporation

By: *Nino C. Silvestri*  
Name: Nino Silvestri  
Title: Co-CEO

PLANET ENERGY (B.C.) CORP., a British Columbia corporation

By: *Nino C. Silvestri*  
Name: Nino Silvestri  
Title: Co-CEO

PLANET ENERGY (MANITOBA) CORP., a Manitoba corporation

By: *Nino C. Silvestri*  
Name: Nino Silvestri  
Title: Co-CEO

PLANET ENERGY CORP., a Delaware corporation (formerly known as Planet Energy USA Corp.)

By: *Nino C. Silvestri*  
Name: Nino Silvestri  
Title: Co-CEO

PLANET ENERGY (MARYLAND) CORP., a Delaware corporation

By: *Nino C. Silvestri*  
Name: Nino Silvestri  
Title: Co-CEO

PLANET ENERGY (NEW YORK) CORP., a Delaware corporation

By: *Nino C. Silvestri*  
Name: Nino Silvestri  
Title: Co-CEO

PLANET ENERGY (PENNSYLVANIA) CORP., a Delaware corporation

By: *Nino C. Silvestri*  
Name: Nino Silvestri  
Title: Co-CEO

PLANET ENERGY (OHIO) CORP., a Delaware corporation

By: *Nino C. Silvestri*  
Name: Nino Silvestri  
Title: Co-CEO

PLANET ENERGY (ILLINOIS) CORP., a  
Delaware corporation

By: *Nino C. Silvestri*  
Name: Nino Silvestri  
Title: Co-CEO

PLANET ENERGY (NEW JERSEY) CORP., a  
Delaware corporation

By: *Nino C. Silvestri*  
Name: Nino Silvestri  
Title: Co-CEO

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**SHELL PARTIES:**

SHELL ENERGY NORTH AMERICA (US), L.P.,  
a Delaware limited partnership

DocuSigned by:  
*Christopher Riley*  
By: \_\_\_\_\_  
Name: Christopher Riley  
Title: vice president

SHELL ENERGY NORTH AMERICA  
(CANADA) INC., an Alberta corporation

*Drew Harris*  
By: \_\_\_\_\_  
Name: A.J. (Drew) Harris  
Title: Senior Vice President

SHELL TRADING RISK MANAGEMENT, LLC,  
a Delaware limited liability company

DocuSigned by:  
*Carla E Vincitore*  
By: \_\_\_\_\_  
Name: Carla E Vincitore  
Title: president

## APPENDIX A

### Definitions

“Additional Performance Assurance” has the meaning set forth in Section 6.

“Affiliate” means, when used with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

“Agreement” has the meaning as set forth in the opening paragraph hereof.

“Bankrupt” means with respect to any Person, such Person shall (i) voluntarily commence any proceeding or file any petition seeking relief under any federal, state or foreign bankruptcy, insolvency, receivership or similar law, (ii) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official, or any such receiver, trustee, custodian sequestrator, conservator or similar official is appointed for such Person or for a substantial part of the property or assets of such Person, (iii) file an answer admitting the material allegations of a petition filed against it in any such proceeding, (iv) make a general assignment for the benefit of creditors, (v) become unable, admit in writing its inability or fail generally to pay its debts as they become due, or (vi) an involuntary proceeding shall be commenced seeking (A) relief in respect of such Person, or of a substantial part of the property or assets of such Person, under any federal, state or foreign bankruptcy, insolvency, receivership or similar law, (B) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for such Person or for a substantial part of the property or assets of such Person or (C) the winding-up or liquidation of such Person; and such proceeding or petition shall continue undismissed for thirty (30) days or an order or decree approving or ordering any of the foregoing shall be entered.

“Blocked Account Agreement” means any agreement among a Shell Party, a Customer Party and a deposit bank or securities intermediary pursuant to which such Shell Party shall have control over the deposit account or securities account that is the subject of such agreement.

“Business Day” means a day other than a Saturday, Sunday or legal holiday for commercial banks under the laws of the Province of Ontario or the State of Texas, along with the Friday following the Thanksgiving holiday in the State of Texas.

“Canadian Customer Parties” means (i) Planet Energy (Ontario) Corp., a corporation formed under the Canada Business Corporations Act, (ii) Energie Planete Inc./Planet Energy Inc., a Quebec corporation, (iii) Planet Energy (Alberta) Corp., an Alberta corporation, (iv) Planet Energy (B.C.) Corp., a British Columbia corporation and (v) Planet Energy (Manitoba) Corp., a Manitoba corporation, together with those additional Customer Parties that may hereafter become a party to this Agreement as provided herein, and which have been designated by the Shell Parties as a “Canadian Customer Party” pursuant to the Joinder executed by such Customer Party, and “Canadian Customer Party” means any of them.

“Canadian Security Agreement” means the Second Amended and Restated Security Agreement (Canadian Obligors) dated of even date herewith among Shell Energy Canada, as collateral agent, and the Canadian Customer Parties, as the same may be amended, restated, supplemented, or modified from time to time.

“Cash Collateral Report” means a report in the form attached as Appendix D-2 to this Agreement.

“Change of Control” shall be deemed to have occurred if (i) any Person or group of Persons other than Nino Silvestri and Stephen Plummer shall (A) own, directly or indirectly, equity interests in the Parent representing more than 50% of the total voting power of all outstanding classes of the Parent’s equity interests, or (B) shall Control the Parent, or (ii) the Parent shall cease to own 100% of the outstanding equity interests in each other Customer Party or shall cease to Control any Customer Party.

“Commodity Exchange Act” means the U.S. Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute.

“Confidential Information” has the meaning set forth in Section 10.24.

“Contemplated Transactions” means, collectively, (i) the execution, delivery and performance by each of the Customer Parties of the Transaction Agreements to which it is a party, (ii) any extensions of credit to the Customer Parties under the Transaction Agreements, (iii) the granting of Liens by each of the Customer Parties pursuant to the Security Documents to which it is a party, and (iv) any other transactions entered into between a Customer Party and a Shell Party in connection with any of the foregoing.

“Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities, by contract or otherwise, and the terms “Controlling” and “Controlled” shall have meanings correlative thereto.

“Credit Policy” means the Customer Parties’ written policies regarding their processes and procedures for approving and establishing credit with customers, service disconnection and collections for delinquent accounts, a true and correct copy of which has been delivered to the Shell Parties pursuant to a Document Certificate dated as of the Effective Date, as the same may be amended from time to time with the written consent of the Shell Parties.

“Credit Rating” means, with respect to any Person, the rating then assigned to such Person’s unsecured, senior long-term debt obligations (not supported by third party credit enhancements) by Moody’s, S&P or any other rating agency agreed by the Parties in writing, or if such Person does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such Person as an issuer rating by S&P, Moody’s or any other rating agency agreed by the Parties in writing.

“Customer Parties” and “Customer Party” have the meanings set forth in the opening paragraph to this Agreement.

“Default Rate” means, with respect to amounts outstanding under any Credit Facility, the stated interest rate for such Credit Facility plus 500 basis points per annum, and with respect to all other amounts outstanding under the Transaction Agreements, the Revolving Credit Facility Interest Rate plus 500 basis points per annum; provided that the Default Rate may never exceed the Highest Lawful Rate.

“Document Certificate” means a Document Certificate executed by the Customer Parties and delivered to the Shell Parties, and certifying as to true and correct copies of the document or documents attached thereto.

“Drawdown” has the meaning as set forth in the Loan Agreement.

“Effective Date” has the meaning set forth in the opening paragraph to this Agreement.

“Energy Customer Contract” means any contract entered into by a Customer Party for the sale of energy or energy related products or services.

“Equivalent Amount” means with respect to any two currencies, the amount obtained in one such currency when an amount in the other currency is translated into the first currency using the rate as published by FT.com on the Business Day with respect to which such computation is required.

“Event of Default” has the meaning set forth in Section 7.1.

“Excluded Swap Obligation” means, with respect to any Guarantor, any Swap Obligation if, and to the extent that, all or a portion of the Guarantee of such Guarantor of, or the grant by such Guarantor of a security interest to secure, such Swap Obligation (or any Guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the United States Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Guarantor's failure for any reason to constitute an "eligible contract participant" as defined in the Commodity Exchange Act and the regulations thereunder at the time the Guarantee of such Guarantor or the grant of such security interest becomes effective with respect to such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such Guarantee or security interest is or becomes illegal.

“Financial Metrics” means those Financial Metrics set forth in Appendix B to this Agreement.

“Financial Metric Equity Injection Cure” has the meaning set forth in Appendix B to this Agreement.

“Financial Officer” means with respect to any entity, its chief financial officer, principal accounting officer, treasurer or controller.

“Financing Level” has the meaning set forth in the Loan Agreement.

“Fiscal Year” means the 12 month period ending on September 30 of each year.

“Fulcrum Indebtedness” means Indebtedness owing to Fulcrum Capital Partners Inc. pursuant to the Loan Agreement dated as of June 20, 2013 among Planet Energy (Ontario) Corp. as borrower, the Customer Parties identified therein as guarantors, and Fulcrum Capital Partners Inc. as lender, as the same may be amended or restated to the extent permitted by the Transaction Agreements.

“Governmental Authority” means the government of the United States of America or any other nation, any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other Person exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

“Guaranteed Obligations” means the Obligations, excluding any Excluded Swap Obligation.

“Guarantor” has the meaning set forth in Section 4.

“Highest Lawful Rate” means at any date the maximum nonusurious interest rate that may then be contracted for, charged or received under applicable law.

“IFRS” means the International Financial Reporting Standards as in effect from time to time as

set forth in the opinions, statements and pronouncements of the International Accounting Standards Board.

“Increased Regulatory Burden” has the meaning set forth in Section 9.1.

“Indebtedness” of any Person shall mean (i) indebtedness for borrowed money, (ii) obligations evidenced by bonds, debentures, notes or other similar instruments, (iii) obligations to pay the deferred purchase price of property or services (other than current trade accounts payable incurred in the ordinary course of business), (iv) the obligations of such Person to pay rental payments under a lease that would, in accordance with IFRS, be required to be classified and accounted for as a capital lease on the balance sheet of such Person, (v) all obligations of such Person as an account party in respect of letters of credit or letters of guaranty and (vi) all guaranties by such Person in respect of obligations of others of the kinds referred to in clauses (i) through (v) above.

“Intercompany Obligations” has the meaning set forth in Section 5.2.

“Intercompany Oblige” has the meaning set forth in Section 5.1.

“Intercompany Obligor” has the meaning set forth in Section 5.1.

“ISDA Master Agreement” means any ISDA Master Agreement between a Customer Party and a Shell Party, along with all schedules and confirmations related thereto.

“ISO” means any organization that coordinates, controls and monitors the operation of the electrical power system.

“ISO Activity Charge” means an amount calculated monthly with respect to each ISO as follows:

- (i) the ISO Activity Charge for volumes purchased or otherwise procured by a Customer Party from any ISO in Canada shall be CAN\$0.50 per MWh.
- (ii) the ISO Activity Charge for volumes purchased or otherwise procured by a Customer Party from NYISO shall be US\$0.75 per MWh.
- (iii) the ISO Activity Charge for volumes purchased or otherwise procured by a Customer Party from any ISO in the United States (excluding NYISO) shall be (A) US\$0.15 per MWh with respect to all volumes purchased or otherwise procured by a Customer Party from such ISO, *plus* (B) US\$1.70 per MWh with respect to those volumes (if any) purchased from such ISO that exceed 10% of the Customer Parties’ end use power consumption at such ISO, *plus* (C) US\$0.50 per MWh with respect to those volumes (if any) purchased from such ISO that exceed 30% of the Customer Parties’ end use power consumption at such ISO. Examples of this calculation are set forth below:

	<b>Example 1</b>	<b>Example 2</b>	<b>Example 3</b>
<b>Total Load (MWh)</b>	100,000 MWh	100,000 MWh	100,000 MWh
<b>Volume Purchased from ISO</b>	9,000 MWh	15,000 MWh	38,000 MWh
<b>Volume Purchased from Shell Parties</b>	91,000 MWh	85,000 MWh	61,000 MWh



<b>Amount calculated pursuant to clause (A)</b>	$9,000 \times \$0.15 = \$1,350$	$15,000 \times \$0.15 = \$2,250$	$38,000 \times \$0.15 = \$5,700$
<b>Amount calculated pursuant to clause (B)</b>	N/A	$5,000 \times \$1.70 = \$8,500$	$28,000 \times \$1.70 = \$47,600$
<b>Amount calculated pursuant to clause (C)</b>	N/A	N/A	$8,000 \times \$0.5 = \$4,000$
<b>Total ISO Activity Charge (sum of clauses (A), (B) and (C))</b>	\$1,350	\$10,750	\$57,300

“Key Members” means those individuals listed on Appendix H to this Agreement.

“Key Services Agreements” means the License Agreement dated November 12, 2012 between the Parent and Easybooks Inc., as amended by the License Extension Agreement dated November 10, 2015, a true and correct copy of which has been delivered to the Shell Parties pursuant to a Document Certificate dated as of the Effective Date, as the same may be amended from time to time with the written consent of the Shell Parties.

“Last Look Quote” has the meaning set forth the definition of Sleeving Procedure.

“LDC” means a local distribution company that owns or operates the facilities to transport natural gas.

“Lien” means with respect to any property, (i) any lien, security interest, pledge, mortgage, deed of trust, collateral assignment or hypothecation of, on or in such property, (ii) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such property and (iii) in the case of property consisting of securities, any purchase option, call or similar right of a third party with respect to such securities.

“Loan Agreement” means the Second Amended and Restated Loan Agreement dated of even date herewith among the Customer Parties, Shell Energy and Shell Energy Canada, as the same may be amended, restated, supplemented, or modified from time to time.

“Master Agreements” means collectively, the Master Gas Agreements, Master Power Agreements, Master Swap Agreements and the ISDA Master Agreements, and “Master Agreement” means any of the foregoing.

“Master Gas Agreement” means any Base Contract for Sale and Purchase of Natural Gas between a Customer Party and a Shell Party, along with all schedules and confirmations related thereto.

“Master Power Agreement” means any Master Power Purchase and Sale Agreement between a Customer Party and a Shell Party, along with all schedules and confirmations related thereto.

“Master Swap Agreement” means any Master Swap Agreement between a Customer Party and a Shell Party, along with all schedules and confirmations related thereto.

“Material Adverse Effect” means a material adverse condition affecting, or material adverse change in (i) the business, assets, liabilities, operations, prospects or condition (financial or otherwise) of the Customer Parties, taken as a whole or (ii) the validity or enforceability of any of the Transaction Agreements or the rights and remedies of Shell Parties thereunder.

“Modified Consolidated Basis” means the consolidated financial position or results of the Customer Parties as determined in accordance with IFRS consistently applied; provided that all terms of an accounting or financial nature used herein shall be construed, and all computation of amounts and ratios referred to herein shall be made, without giving effect to (i) any election or requirement under any financial accounting standard to value any derivative based asset, derivative based debt or other similar assets or liabilities of the Customer Parties at “fair value” as defined in any such financial accounting standard or (ii) the unamortized portion of any intangible assets, including accrued commission expense, deferred taxes or goodwill. For the avoidance of doubt, a reference to Modified Consolidated Basis shall exclude any Person other than the Customer Parties unless specifically stated otherwise.

“Modified Working Capital” has the meaning set forth in Appendix B to this Agreement.

“Moody’s” means Moody’s Investor Services, Inc. or its successor.

“New Supplier” has the meaning set forth in Section 8.1.

“Non-Monetary Default Rate” means, with respect to amounts outstanding under any Credit Facility, the stated interest rate for such Credit Facility plus 250 basis points per annum, and with respect to all other amounts outstanding under the Transaction Agreements, the Revolving Credit Facility Interest Rate plus 250 basis points per annum; provided that the Non-Monetary Default Rate may never exceed the Highest Lawful Rate.

“Non-Peak Month” means each month that is not a Peak Month.

“Non-Standard Remittance Report” means a report in the form attached as Appendix D-3 to this Agreement.

“Obligations” means all amounts now or hereafter owing by the Customer Parties to the Shell Parties in respect of the Transaction Agreements, including, without limitation, accrued and unpaid interest, all fees, purchases, mark-to-market exposure, commitments for reimbursement, indemnifications, damages and early termination payments, if any, along with all expenses incurred by the Shell Parties to enforce any of their rights under the Transaction Agreements or to maintain or preserve any collateral securing any of the foregoing obligations. For the avoidance of doubt, the term “Obligations” includes any of the foregoing that arises after the filing of a petition by or against a Customer Party under any bankruptcy or insolvency statute, even if the Obligations do not accrue because of any statutory automatic stay or otherwise.

“Original Customer Parties” means (i) Planet Energy (Ontario) Corp., a corporation formed under the Canada Business Corporations Act, (ii) Planet Energy Corp., a Delaware corporation (formerly known as Planet Energy USA Corp.), (iii) Planet Energy (B.C.) Corp., a British Columbia corporation, (iv) Planet Energy (Alberta) Corp., an Alberta corporation, (v) Planet Energy (Manitoba) Corp., a Manitoba corporation, (vi) Energie Planete Inc./Planet Energy Inc., a Quebec corporation, (vii) Planet Energy (New York) Corp., a Delaware corporation, (viii) Planet Energy (Maryland) Corp., a Delaware corporation and (ix) Planet Energy (Pennsylvania) Corp., a Delaware corporation.

“Original Global Agreement” has the meaning set forth in the recitals to this Agreement.

“Parent” means Planet Energy (Ontario) Corp., a corporation formed under the Canada Business Corporations Act.

“Parties” and “Party” have the meanings set forth in the opening paragraph to this Agreement.

“Peak Month” means January, February, July and August.

“Performance Assurance Amount” means the amount calculated in accordance with Appendix G to this Agreement.

“Permitted Indebtedness” means (i) Indebtedness created by the Transaction Agreements, (ii) Indebtedness as shown and in the amounts set forth on Schedule 3.7 to this Agreement, (iii) Indebtedness under capital leases or incurred to finance the purchase price for assets necessary or desirable in Customer Parties’ business in an aggregate amount not to exceed CAD\$500,000 or the Equivalent Amount in US\$ at any time with respect to all Customer Parties, (iv) Subordinated Indebtedness, (v) Permitted Letter of Credit Indebtedness and (vi) Indebtedness owing from one Customer Party to another Customer Party and (vii) the Fulcrum Indebtedness (subject to the restrictions in Section 3.7(b) and Section 7.1(l)).

“Permitted Investments” means (i) investments in cash, cash equivalents, and negotiable instruments deposited or to be deposited for collection, (ii) advances made in connection with purchases of goods or services in the ordinary course of business, (iii) investments by a Customer Party in another Customer Party, (iv) investments received in settlement of amounts due to any Customer Party effected in the ordinary course of business, or investments received as a result of a bankruptcy involving an account debtor or upon the enforcement by a Customer Party of any Lien in favor of a Customer Party and (v) investments by a Customer Party in its Subsidiaries as listed on Schedule 2.9 hereto.

“Permitted Letter of Credit Indebtedness” means Indebtedness in respect of outstanding letters of credit issued for the account of a Customer Party for the benefit of ISOs, TDSPs, natural gas LDCs, pipelines, public utility commissions or similar agencies solely for the purpose of providing required collateral support with such entities.

“Permitted Liens” means (i) Liens granted to the Shell Parties, (ii) Liens securing the Fulcrum Indebtedness (subject to the restrictions in Section 3.7(b) and Section 7.1(l)), (iii) statutory landlord’s, mechanic’s, carrier’s, workers’ or other like Liens arising by operation of law from obligations that are not delinquent or which are being contested in good faith by appropriate proceedings and for which reserves required by IFRS have been maintained, (iv) Liens for taxes that are not delinquent or that are being contested in good faith by appropriate proceedings and for which reserves required by IFRS have been maintained, (v) Liens granted to utilities to secure tariff-based purchase of receivables programs and not in connection with the borrowing of money, (vi) Liens to secure Indebtedness or capital leases incurred to finance the purchase price for assets necessary or desirable in Borrower’s business in an aggregate amount not to exceed CAD\$500,000 or the Equivalent Amount in US\$ at any time, provided that such liens cover only the assets acquired with or financed by such Indebtedness or capital lease and (vii) Liens on cash or deposit accounts to secure Permitted Letter of Credit Indebtedness so long as the amount of cash in such account does not exceed 102% of the amount of Permitted Letter of Credit Indebtedness secured by such account.

“Permitted Transferee” means an entity that (i) satisfies (and prior to such transfer, the Shell Parties have received all material documentation and other information required by regulatory authorities under) the Shell Parties’ internal requirements solely as they relate to “know-your-customer” rules, anti-money laundering policies and procedures, laws, rules and regulations, in each case, as consistently applied by Shell Energy; (ii) demonstrates to the Shell Parties’ satisfaction that it is an “eligible contract participant” under the Commodity Exchange Act (to the that extent any assigned transaction requires that such entity be an eligible contract participant); (iii) has not formally threatened in writing or commenced any litigation proceeding against a Shell Party and is not subject of any formal written threat of litigation, issued or of any litigation proceeding initiated, by a Shell Party; (iv) is not a Swap Dealer or Major Swap Participant (each as defined by the Commodity Exchange Act); (v) demonstrates to the Shell Parties’ satisfaction that it has satisfied all requirements necessary for the Shell Parties to comply with their obligations under the Commodity Exchange Act (and the rules and regulations thereunder) upon any transfer to such entity; and (vi) in the Shell Parties’ reasonable discretion is a counterparty with whom the Shell Parties are not prohibited from transacting under the regulatory regime then-applicable to the Transactions.

“Person” (whether or not capitalized) means an individual, corporation, limited liability company, partnership, joint venture, trust, association, unincorporated organization, receiver, custodian or similar official or any other juridical entity, or a government or any agency or political subdivision thereof.

“Pooled Facility Amounts” has the meaning set forth in the Loan Agreement.

“Primary Term Date” means October 1, 2023.

“Pro Forma Business Plan” has the meaning set forth in Appendix D-1 to this Agreement.

“Program Fee” means:

(i) For natural gas related transactions, US\$0.05 per MMbtu for all transactions having a delivery point in the United States and CAD\$0.05 per GJ for all transactions having a delivery point in Canada. The foregoing shall apply to all volumes (of all commodities and derivatives) purchased by a Customer Party from a Shell Party, regardless of delivery or settlement date, including, for avoidance of doubt, any transactions between a Customer Party and a Shell Party outstanding on the Effective Date.

(ii) For power related transactions, the following amounts on all volumes (of all commodities and derivatives) purchased, regardless of delivery or settlement date, by a Customer Party from a Shell Party or from an ISO, as applicable, including, for avoidance of doubt, any transactions between a Customer Party and a Shell Party outstanding on the Effective Date:

(A) the Program Fee for volumes purchased from a Shell Party shall be US\$0.75 per MWh for transactions having a delivery point in the United States; regardless of delivery or settlement date.

(B) the Program Fee for volumes purchased from a Shell Party shall be CAD\$0.50 per MWh for transactions having a delivery point in Canada; regardless of delivery or settlement date.

(C) For power purchased or otherwise procured from an ISO, the Program Fee shall be the ISO Activity Charge.

“Qualified Institution” means (i) the Canadian or U.S. office of a commercial bank or trust company (which is not an affiliate of a Party) organized under the laws of Canada or the United States or any state or a political subdivision thereof, or (ii) the U.S. branch of a foreign (other than Canada) bank (which is not an affiliate of a Party), in each case having assets of at least USCAD\$10 billion, and having a Credit Ratings of at least A3 by Moody's and at least A- by S&P.

“Reporting Requirements” means the reports that the Customer Parties shall submit to Shell Energy within the time frames specified as per Appendix D-1 to this Agreement.

“Representatives” has the meaning set forth in Section 10.24.

“Requirements of Law” means as to any Person (i) any law, treaty, rule or regulation or determination of a Governmental Authority, in each case applicable to or binding upon such Person or any of its properties and (ii) the constituent and governing documents of such Person.

“Restricted Payment” means any payment (whether in cash or other property) (i) as a dividend or other distribution on account of any class of equity interests of a Customer Party, except a dividend payable solely in equity interests of that class to the holders of that class; (ii) made to retire, redeem or acquire shares of any class of equity interests of a Customer Party; or (iii) made to acquire or obtain the surrender of, any outstanding warrants, options or other rights to acquire any equity interests of a Customer Party.

“Revolving Credit Facility Interest Rate” has the meaning specified in the Loan Agreement.

“Risk Policy” means the Customer Parties’ Risk and Trading Policy, a true and correct copy of which has been delivered to the Shell Parties pursuant to a Document Certificate dated as of the Effective Date, as the same may be amended from time to time with the written consent of the Shell Parties.

“Risk Process and Procedures Guidelines” means the Customer Parties’ written guidelines describing their key processes and procedures to identify and measure commodity risk, including timelines employed to measure risks related to Energy Customer Contracts and actions required to mitigate the risks so identified, a true and correct copy of which has been delivered to the Shell Parties pursuant to the Document Certificate dated as of the Effective Date, as may be updated from time to time in accordance with the Reporting Requirements.

“Run and Maintain” has the meaning set forth in Appendix B to this Agreement.

“S&P” means the Standard & Poor’s Rating Group (a division of McGraw-Hill, Inc.) or its successor.

“Scheduling Coordinator Agreement” means any scheduling coordinator agreement, qualified scheduling entity agreement or similar agreement between a Shell Party and a Customer Party regarding the scheduling of power with respect to an ISO.

“Security Documents” means the US Security Agreement, the Canadian Security Agreement, the Blocked Account Agreements and any other security agreement, pledge or similar document executed as security for the obligations of the Customer Parties under the Transaction Agreements or any part thereof, and any other document executed pursuant to any of the foregoing.

“Service Territories” means the service territories of the utilities set forth on Schedule 3.20 to this Agreement.

“Shell Canada Swap Entity” means an entity that is a wholly owned Subsidiary of Royal Dutch Shell plc (directly or indirectly) that is established for the purpose of engaging in financial swap activity in Canada and registered for such purposes under applicable Canadian law.

“Shell Energy Canada” has the meaning set forth in the opening paragraph to this Agreement.

“Shell Energy” has the meaning set forth in the opening paragraph to this Agreement.

“Shell Parties” and “Shell Party” have the meanings set forth in the opening paragraph to this Agreement.

“Shell Related Party” has the meaning specified in Section 10.8.

“Sleeved Transaction” means a proposed identical back-to-back transaction for the purchase and sale of a commodity or service, where a Customer Party desires that a Shell Party purchase such commodity or service from a third party for resale to the Customer Party.

“Sleeving Fee” means:

- (i) US\$0.05 per MMbtu for physical and financial natural gas transactions having a delivery point in the United States and CAD\$0.05 per GJ for physical and financial natural gas transactions having a delivery point in Canada;
- (ii) US\$1.10 per MWh for physical and financial power transactions having a delivery point in the United States and CAD\$0.60 per MWh for physical and financial power transactions having a delivery point in Canada, and
- (iii) 5.0% of the underlying price for all non-energy products (including renewable energy credits).

“Sleeving Procedure” means the following process in which a Customer Party may obtain sleeving services from a Shell Party:

- A. If a Customer Party desires to enter into a Sleeved Transaction, the Customer Party shall provide a quote for a specific product or service to the Shell Party (the “Third-Party Quote”) from a third party unaffiliated with the Customer Party (the “Third-Party Supplier”). Such Third-Party Quote shall include the following information:
  - (i) name of Third-Party Supplier
  - (ii) product/service
  - (iii) volume
  - (iv) delivery location
  - (v) term
  - (vi) price
- B. The Shell Party shall review the Third-Party Quote.
- C. Prior to entering into any Sleeved Transaction, the Shell Party shall have the opportunity to provide the Customer Party with a quote (the “Last Look Quote”) specifying the price

at which the Customer Party may purchase the product or service from the Shell Party pursuant to the terms of such Last Look Quote.

- D. If the Third-Party Quote is for a product or service that the Shell Party does not offer in its ordinary course of business, then the Shell Party may, in its sole discretion, decline to pursue any transaction associated with the Third-Party Quote.
- E. If the price in the Shell Party's Last Look Quote is equal to or less than the sum of (i) the price in the Third-Party Quote and (ii) the Sleeving Fee, the Customer Party shall purchase the product or service from the Shell Party pursuant to the terms of the Shell Party's Last Look Quote. For the avoidance of doubt, the product or service sold by the Shell Party to a Customer Party pursuant to the Shell Party's Last Look Quote shall be subject to the Program Fee, but shall not be subject to the Sleeving Fee.
- F. If no Shell Party is willing or able to supply the product or service described in the Third-Party Quote at an aggregate price (inclusive of the Sleeving Fee but exclusive of the Program Fee) that is equal to or less than that of the Third-Party Quote, then the Shell Party will enter into a Sleeved Transaction with respect to the Third-Party Quote; provided that the following conditions are satisfied:
  - (i) No Event of Default has occurred and is continuing;
  - (ii) the Shell Party must have an existing contractual relationship with the Third-Party Supplier with respect to the product or service;
  - (iii) the Third-Party Supplier must meet the Shell Party's credit requirements (including sufficient credit capacity granted to such Third-Party Supplier by the Shell Party and to the Shell Party by such Third-Party Supplier, for the proposed Sleeved Transaction, in addition to the credit capacity utilized by the Shell Party for its own business purposes with such Third-Party Supplier);
  - (iv) the Shell Party, the Customer Party and the Third-Party Supplier must confirm the details of the Third-Party Quote in real time and the Shell Party and such Third-Party Supplier must be able to complete a definitive agreement upon terms equivalent to or better than those terms offered in the Third-Party Quote. The Shell Party does not guarantee that it will be able to enter into a definitive agreement with any Third-Party Supplier; and
  - (v) the transaction price for the Sleeved Transaction shall be equal to the Third Party Quote plus the Sleeve Fee, and the Program Fee shall also apply with respect to all Sleeved Transactions; provided that no Program Fee shall apply to any Sleeved Transactions entered into with respect to non-energy products.
- G. Under no circumstances will any Shell Party be obligated to enter into a transaction with any Third-Party Supplier who, in such Shell Party's sole discretion, is not creditworthy or would require the Shell Party to provide any form of credit support (other than reliance on the Shell Party's general balance sheet).
- H. Each Customer Party understands and agrees that the Shell Parties conduct business on a regular basis with many third-parties who may also be a Third-Party Supplier. Each Customer Party understands and agrees that the business the Shell Parties conduct with

such third-parties who are also Third-Party Suppliers will take precedence over any proposed Sleeved Transaction in connection with a Third-Party Quote.

- I. Under no circumstances, will STRM be obligated to enter into a transaction with any Third Party Supplier, or any corresponding transaction with a Customer Party, if STRM determines in its sole discretion that doing so will result in a violation of, or a reportable event for STRM under, the Commodity Exchange Act or any related rules or regulations. Each Customer Party acknowledges that STRM is a Swap Dealer under the Commodity Exchange Act and as such must comply with, among other things, certain real time reporting obligations and recordkeeping requirements.

“STRM” has the meaning set forth in the opening paragraph to this Agreement.

“Subordinated Indebtedness” means unsecured Indebtedness of a Customer Party which is consented to by Shell Energy in writing and is subordinate to the Obligations pursuant to a written subordination agreement on terms satisfactory to Shell Energy.

“Subsidiary” means, with respect to any Person (herein referred to as the “parent”), any corporation, partnership, limited liability company, association or other entity (i) of which securities or other ownership interests representing more than 50% of the equity or more than 50% of the ordinary voting power or more than 50% of the general partnership interests are, at the time any determination is being made, owned or held, directly or indirectly, or (ii) that is, at the time any determination is made, otherwise Controlled, directly or indirectly, by the parent or one or more subsidiaries of the parent or by the parent and one or more Subsidiaries of the parent.

“Supplier Assignment” has the meaning set forth in Section 8.1.

“Supply Buckets” means the volume over each of the periods as set forth in Appendix E to this Agreement for the applicable month beginning with the month following the month of delivery. If for any reason, the forecasted volumes as set forth in Appendix E are materially higher than the Customer Parties’ actual purchases of commodities or derivatives from the Shell Parties, then after a review of the Customer Parties’ most recent Pro Forma Business Plan, Shell Energy may, upon 10 days prior written notice, adjust the Supply Buckets set forth in the table after consultation with Customer Parties.

“Swap Obligation” means, with respect to any Guarantor, any obligation to pay or perform under any agreement, contract or transaction that constitutes a "swap" within the meaning of Section 1a(47) of the Commodity Exchange Act.

“TDSP” means a transmission/distribution service provider that owns or operates the facilities to transmit and/or distribute electricity.

“Third Party Supplier” means a Person unaffiliated with any Customer Party that has offered to provide natural gas, power or other commodities for use in a Customer Party’s business or transportation, delivery services, storage, ancillary services or other services for use in a Customer Party’s business.

“Transaction Agreements” means this Agreement, the other agreements listed on Appendix F to this Agreement (and all confirmations issued in connection therewith), and each other agreement between or among a Customer Party and a Shell Party relating to any of the transactions contemplated by any of the foregoing, each as may be amended, restated, supplemented, or modified from time to time.



“US Customer Parties” means (i) Planet Energy Corp., a Delaware corporation, (ii) Planet Energy (Maryland) Corp., a Delaware corporation, (iii) Planet Energy (New York) Corp., a Delaware corporation, (iv) Planet Energy (Pennsylvania) Corp., a Delaware corporation, (v) Planet Energy (Ohio) Corp., a Delaware corporation, (vi) Planet Energy (Illinois) Corp., a Delaware corporation and (vii) Planet Energy (New Jersey) Corp., a Delaware corporation, together with those additional Customer Parties that may hereafter become a party to this Agreement as provided herein, and which have been designated by the Shell Parties as a “US Customer Party” pursuant to the Joinder executed by such Customer Party, and “US Customer Party” means any of them.

“US Security Agreement” means the Amended and Restated Security Agreement (US Obligors) dated of even date herewith among Shell Energy, as collateral agent, and the US Customer Parties, as the same may be amended, restated, supplemented, or modified from time to time.

“Warrant Agreement” means the Amended and Restated Warrant Agreement dated as of the Effective Date issued by the Parent to Shell Energy Canada.

**APPENDIX B**

## Financial Metrics

1. Minimum Modified Working Capital. The Customer Parties shall maintain a Modified Working Capital, determined as of the last day of each calendar month, equal to or greater than the applicable minimum Modified Working Capital amounts set forth below, which correspond to the Financing Levels established in the Loan Agreement. On the Effective Date the required minimum Modified Working Capital shall be the Modified Working Capital that corresponds with Financing Level 1. The required minimum Modified Working Capital shall thereafter be increased as set forth below upon the Customer Parties' election to increase the Pooled Facility Amounts to a higher Financing Level in accordance with the Loan Agreement.

Financing Level	US Pooled Facility Amount	Canadian Pooled Facility Amount	Trailing 12 month US volumes (MWh) delivered by Borrowers (based on combined US gas and US power volumes, utilizing a 10 heat rate) (e.g., 5,000 MMBtu = 500 MWh)	Required Modified Working Capital
1	US\$10,000,000	CAD\$1,000,000	Less than 2,000,000 MWh	CAD\$2,200,000
2	US\$20,000,000	CAD\$1,000,000	Equal to or greater than 2,000,000 MWh, and less than 3,000,000 MWh	CAD\$4,200,000
3	US\$30,000,000	CAD\$1,000,000	Equal to or greater than 3,000,000 MWh, and less than 4,000,000 MWh	CAD\$6,200,000
4	US\$40,000,000	CAD\$1,000,000	Equal to or greater than 4,000,000 MWh	CAD\$8,200,000

As used herein, "Modified Working Capital" means the sum of (i) the Customer Parties' total current assets less total current liabilities as reflected on their consolidated balance sheet, prepared on a Modified Consolidated Basis, plus (ii) the current portion (if any) of Subordinated Indebtedness owing from the Customer Parties to their shareholders or members who are not Customer Parties, plus (iii) the current portion (if any) of the Fulcrum Indebtedness.

2. Positive Run and Maintain. The Run and Maintain (as defined below) amount calculated with respect to the Customer Parties must be greater than \$0 for each Fiscal Quarter;

provided, however, the Run and Maintain metric shall not apply (and no Event of Default shall result from the failure to satisfy this metric) if the Customer Parties' Modified Working Capital as of the end of such Fiscal Quarter was at least twice the Modified Working Capital then required by the Financial Metrics.

As used herein, "Run and Maintain" for any Fiscal Quarter means the sum of the following items with respect to the Customer Parties for such Fiscal Quarter, determined on a consolidated basis in accordance with IFRS:

- Net income
- + depreciation expense
- + amortization expense (including but not limited to amortization relating to warrant accretion, capitalized leases, deferred financing costs and customer contracts)
- +/- accounting adjustments related to equity-based compensation expense
- +/- fair value accounting adjustments related to derivative instruments
- + *only* if Net Added Customers is positive:
  - sales and marketing expenses  $\times$  (1-(Attrition Customers  $\div$  Gross New Customers))
- +/- change in provision for deferred income taxes (for example, an increase in deferred tax benefit would be a deduction in this calculation and an increase in deferred tax expense would be an add-back)

As used herein, "Attrition Customer" means a customer of a Customer Party that such Customer Party services at the beginning of the measurement period and no longer services at the end of the measurement period.

As used herein, "Gross New Customers" means the number of customers who began receiving natural gas or power purchased from a Customer Party at the end of or during the measurement period that had not received natural gas or power purchased from a Customer Party at the beginning of the measurement period.

As used herein, "Net Added Customers" means the difference between Gross New Customers for the measurement period less Attrition Customers for the measurement period.

3. Financial Metric Equity Injection Cure. If the Customer Parties fail to achieve any of the above Financial Metrics, the Customer Parties may elect to cure such failure by providing a Financial Metric Equity Injection Cure as set forth herein.

As used herein, "Financial Metric Equity Injection Cure" means a capital contribution to the Parent, in the form of cash in immediately available funds, in an aggregate amount equal to 120% of the amount needed to enable the Customer Parties to comply with the

applicable Financial Metric. The Customer Parties will give Shell Energy written notice that they have elected to effectuate a Financial Metric Equity Injection Cure, and such Financial Metric Equity Injection Cure must be funded within three business days following the due date of the Reporting Requirement establishing (or that would have established) that Customer Parties failed to comply with the applicable Financial Metric. No more than one Financial Metric Equity Injection Cure per calendar year may be made with respect to each Financial Metric. If a Financial Metric Equity Injection Cure is made in accordance with the foregoing provisions, then no Event of Default shall have occurred with respect to the breach of such Financial Metric. For avoidance of doubt, any capital contribution provided to effectuate a Financial Metric Equity Injection Cure with respect to one Financial Metric shall also be counted towards any capital contribution needed to effectuate a Financial Metric Equity Injection Cure of any other Financial Metric for the same period.

**APPENDIX C****FORM OF JOINDER AGREEMENT**

(Amended and Restated Global Agreement)

This JOINDER AGREEMENT (this “Agreement”) dated as of [\_\_\_\_], is among [\_\_\_\_], a [\_\_\_\_] (collectively, the “Existing Customer Parties”), [\_\_\_\_], a [\_\_\_\_] (the “New Customer Party”), Shell Energy North America (US), L.P., a Delaware limited partnership (“Shell Energy”), Shell Energy North America (Canada) Inc., a corporation formed under the laws of the Province of Alberta, Canada (“Shell Energy Canada”), Shell Trading Risk Management, LLC, a Delaware limited liability company (“STRM”), and any entity that has become a party to the Global Agreement as a Shell Canada Swap Entity (collectively with Shell Energy Shell Energy Canada and STRM, the “Shell Parties”). Capitalized terms used and not defined herein shall have the meanings as set forth in the Global Agreement (as defined below).

**RECITALS**

A. The Existing Customer Parties and the Shell Parties are parties to that certain Amended and Restated Global Agreement dated [\_\_\_\_], 20\_\_ (as amended, restated, supplemented or otherwise modified from time to time, the “Global Agreement”).

B. Pursuant to the Global Agreement, the Shell Parties are requiring New Customer Party to execute this Agreement in order to become a party to the Global Agreement and agree to perform the obligations of a Customer Party thereunder.

C. The Existing Customer Parties and the New Customer Party have agreed to this and execute this Agreement for the purpose of evidencing such agreement.

NOW THEREFORE, in consideration of the premises and the mutual covenants herein contained, the Existing Customer Parties and the New Customer Party hereby agree for the benefit of the Shell Parties as follows:

1. Joinder to and Ratification of Global Agreement. The New Customer Party hereby approves and adopts the Global Agreement and hereby becomes a party to the Global Agreement as a “Customer Party”, and assumes the obligations of a Customer Party thereunder and agrees to be bound thereby as if it had been an original party to the Global Agreement, and confirms that after joining the Global Agreement as set forth herein, the representations and warranties with respect to it set forth in the Global Agreement shall be true and correct as of the date hereof, except to the extent they relate to an earlier date in which case they shall be true and correct as of such earlier date. The Existing Customer Parties and the New Customer Party hereby agree that all of the obligations of the Customer Parties contained in the Global Agreement and all of the rights, privileges and interests of the Shell Parties arising therefrom are hereby adopted, agreed to, ratified, renewed, confirmed and brought forward in all respects.

2. Designation as US Customer Party or Canadian Customer Party. The New Customer Party is hereby designated as a [“US Customer Party”] [“Canadian Customer Party”] under the Global Agreement.

3. Reliance. The Existing Customer Parties and the New Customer Party acknowledge that the Shell Parties are relying on this Agreement, the accuracy of the statements herein contained and the performance of the conditions placed upon the Existing Customer Parties and the New Customer Party hereunder, and that, but for the execution of this Agreement by said parties, the Shell Parties would not enter into, and perform their respective duties under, the Transaction Agreements. Each of the Existing Customer Parties and the New Customer Party shall execute such further documents and undertake any such measure as may be necessary to effect and carry out the terms of this Agreement and the implementation thereof.

3. Global Agreement Controls. All parties agree that, in the event of a conflict between or among the terms of this Agreement and the Global Agreement, the Global Agreement shall control.

4. Multiple Counterparts and Delivery. This Joinder is a Transaction Agreement as defined in the Global Agreement. This Agreement may be executed in multiple counterparts and by different parties hereto in separate counterparts, and may be delivered in original, facsimile or electronic form, each of which shall be considered an original but which together shall constitute but one document.

5. Notice. Any notice delivered hereunder shall be delivered as described for the delivery of notices in the Global Agreement.

6. Headings. All section headings herein contained are for convenience only and shall not be considered substantive in any interpretation of this Agreement.

7. Waiver of Trial by Jury. EACH PARTY HERETO WAIVES ITS RIGHT TO A JURY TRIAL WITH RESPECT TO ANY ACTION OR CLAIM ARISING OUT OF ANY DISPUTE IN CONNECTION WITH THIS AGREEMENT, ANY RIGHTS OR OBLIGATIONS HEREUNDER OR THE PERFORMANCE OR ENFORCEMENT OF ANY SUCH RIGHTS OR OBLIGATIONS.

8. Choice of Law. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED UNDER THE LAWS OF THE STATE OF TEXAS.

9. Entire Agreement. This Agreement represents the full agreement of the parties in regard to this matter and may not be modified or amended except by written agreement signed by each party hereto. There are no other oral or written agreements among the parties hereto in regard to the matters herein described.

EXECUTED to be effective as of the date first written above.

[Insert signatures]

**APPENDIX D-1**  
**Reporting Requirements**

The Customer Parties shall deliver the following information to Shell Energy by the dates specified below:

1. Within 120 Days following the end of each Fiscal Year, (A) the consolidated financial statements of the Customer Parties and associated audit report for such Fiscal Year prepared in accordance with IFRS and audited by a nationally recognized accounting firm acceptable to Shell Energy in its reasonable discretion and (B) copies of any auditor's report to management, along with any management letter or report of internal control related matters. Such financial statements shall include, at a minimum, a profit and loss statement, balance sheet, cash flow statement, a statement showing the changes in equity on consolidated basis. Concurrently with the delivery of such audited financial statements, the Customer Parties shall provide Shell Energy with schedules (A) reconciling such audited financial statements to the financial statements of the Customer Parties as prepared on a Modified Consolidated Basis, and (B) reconciling such financial statements to the Financial Metrics.
2. On or before the last business day of the month, for the immediately preceding month, the monthly and year to date consolidated and consolidating (without duplication and after elimination of intercompany transactions) financial statements of the Customer Parties for such month prepared on a Modified Consolidated Basis and schedules (A) reconciling such statements to those prepared for Customer Parties' internal management purposes and (B) reconciling such financial statements to the Financial Metrics. Such financial statements shall include, at a minimum, a detailed profit and loss statement (by legal entity and by commodity), balance sheet, statement of cash flows, a monthly and year to date financial projections showing line item and total variances between such financial projections and actual results and upon Shell Energy's written request, an executive summary describing the causes of any variances which are +/- 5% between the monthly financial statements and the financial projections. Such report shall be in the format as Shell Energy may reasonably require from time to time.
3. On or before the last business day of the month, for the immediately preceding month, complete and return to Shell Energy the completed financial information template in the form provided by Shell Energy.
4. On or before the last business day of the month, for the immediately preceding month, (A) the monthly bank statements and bank reconciliations for such bank accounts as Shell Energy may request and (B) a report listing any cash deposited to secure Permitted Letter of Credit Indebtedness.
5. On or before the last business day of the month, for the immediately preceding month, the Cash Collateral Report, which includes a complete and detailed report of all collateral, by customer, that the Customer Parties and are holding from their customers, including any non-cash collateral.

6. On or before the last business day of the month, for the immediately preceding month, a calculation of the Performance Assurance Amount as of the end of such month.
7. On or before the last business day of the month, for the immediately preceding month, a Non-Standard Remittance Report.
8. On or before the last business day of the month, for the immediately preceding month, a complete and detailed report of all accounts payable and accounts receivable, including aging.
9. On or before the last business day of the month, for the immediately preceding month, a report showing daily actual usage for such month, and showing for each day the amount purchased from a Shell Party and the amount purchased from the ISO. This report should include any settled volumes.
10. On or before the last business day of the month, for the immediately preceding month, a complete and detailed monthly physical fixed price and basis contract position report, by zone or location, in a form reasonably acceptable to Shell Energy.
11. On or before the last business day of the month, for the immediately preceding month, a report showing the volumes of gas and power delivered by the Customer Parties in the US and in Canada on a trailing 12-month basis.
12. On or before the last business day of the month, for the immediately preceding month, such pipeline, LDC and other statements and information as are necessary to calculate the monthly injections and withdrawals from any natural gas storage facilities for the immediately preceding month.
13. On or before April 15th and October 15th of each year, an updated Risk Process and Procedures Guidelines, which updates shall be subject to the good faith review and approval of Shell Energy, after discussion with the Customer Parties.
14. Updated pro forma projected financial statements (the “Pro Forma Business Plan”) for the Customer Parties’ Canadian operations and updated pro forma projected financial statements for the Customer Parties’ US operations (*i.e.*, separate pro formas for Canadian and US operations) for the next succeeding 24 months, no later than 30 days prior to the end of each Fiscal Year (and no earlier than 30 days prior to the beginning of the third quarter of each Fiscal Year), along with a detailed business plan for at least the next 24 month period which includes business goals and objectives, existing and anticipated service territories, financial projections, targeted customer profile, projected volumes and gross margin estimates by customer class, commodity, legal entity and service territory in a form to be mutually agreed by the Parties, which plans shall be deemed to be subject to customary and traditional forward looking statement disclaimers.
15. A certificate of compliance executed by a Financial Officer of the Customer Parties and in form reasonably acceptable to Shell Energy (“Compliance Certificate”):



- (A) to be delivered concurrently with the financial statements delivered pursuant to items (1) and (2) above, certifying (i) that such financial statements fairly present in all material respects the financial condition and results of operations of the Customer Parties in accordance with IFRS; provided that with respect to the financial statements delivered pursuant to item (2) above such certification may be qualified to make note of the absence of normal year-end audit adjustments, the absence of footnotes and to state that such financial statements were prepared in accordance with the Modified Consolidated Basis instead of IFRS; (ii) as to the Customer Parties' compliance with the Financial Metrics; and (iii) as to the Customer Parties' compliance with the covenants set forth in Section 3 of the Global Agreement.
  - (B) to be delivered concurrently with each of the calculations and reconciliations set forth above, certifying as to the accuracy and completeness of such calculation or reconciliation.
  - (C) to be delivered on or before the last business day of the next month following the end of each Fiscal Quarter, certifying as to the Customer Parties' compliance with the Credit Policy and the Risk Policy.
16. Such other information as Shell Energy may reasonably request from time to time.

**APPENDIX D-2**

**Form of Cash Collateral Report**

Date	(A) Beginning Bank Balance Customer Deposit Acct	(B) New Customer Deposits (+)	(C) Applied Deposits / Non- Deposit Transfers to Outstanding AR (Lockbox) (-)	(D) Refunded Deposits from Operating Acct - Not Applied to AR (-)	Amount to Increase / Decrease Customer Deposit Acct (Sum B-D)	Amount to Refund Operating Acct (Equals D)	Ending Bank Balance - Customer Deposit Acct (Sum A-D)	Ending Balance Sheet Customer Party Liability Account

**APPENDIX D-3**

**Form of Non-Standard Remittance Report**

<b>Customer Name</b>	<b>Date Funds Received</b>	<b>Date of Deposit into the Primary Secured Account (within 2 business days)</b>	<b>Dollar Amount</b>	<b>Action Taken to Rectify</b>	<b>Date Action was Taken</b>

**APPENDIX E**  
**Supply Buckets**

<b>US</b>	<b>1 - 12 months</b>	<b>13 - 24 months</b>	<b>25 - 36 months</b>	<b>37 - 48 months</b>	<b>49 - 60 months</b>
Power Volume (MWh)	1,555,500	1,244,400	860,100	622,200	366,000
Gas Volume (MMBtu)	1,921,500	1,555,500	1,098,000	786,900	512,400

<b>CANADA</b>	<b>1 - 12 months</b>	<b>13 - 24 months</b>	<b>25 - 36 months</b>	<b>37 - 48 months</b>	<b>49 - 60 months</b>
Volume (MWh)	1,222,000	988,200	774,700	393,450	256,200
Volume (GJ)	3,745,000	1,738,500	1,372,500	915,000	549,000

**APPENDIX F**

**Transaction Agreements**

1. Global Agreement
2. Loan Agreement
3. US Security Agreement
4. Canadian Security Agreement
5. US and Canadian Promissory Notes
6. Master Agreements
7. Blocked Account Agreements
8. Scheduling Coordinator Agreements
9. Warrant Agreement
10. Amended and Restated Intercreditor Agreement (Fulcrum Indebtedness)

**APPENDIX G**

**Performance Assurance Amount**

Performance Assurance Amount is the total sum of the following:

1. 100% of the mark-to-market exposure for Energy Customer Contracts that have a fixed term of more than 60 months.
2. 100% of the mark-to-market exposure for supply obligations associated with Energy Customer Contracts that have more than a 6-month delayed start date.
3. 100% of the mark-to-market exposure for supply obligations associated with Energy Customer Contracts with local governmental agencies and municipalities with a Credit Rating less than BBB, or any federal government agencies.
4. 100% of accounts receivable that are past due 90 days or more (excluding any portion thereof which have been reserved as uncollectible), and 50% of accounts receivable that are past due 60 days or more (excluding any portion thereof which have been reserved as uncollectible).
5. 100% of the mark-to-market exposure associated with supply obligations for Energy Customer Contracts having delivery points outside of the Service Territories, plus 100% of the accounts receivable associated with such Energy Customer Contracts.

**APPENDIX H**

**Key Members**

1. Nino Silvestri
2. Stephen Plummer

**APPENDIX I****Terminated Agreements**

- 025-11.1 Amended and Restated Guaranty, Planet Energy Ontario as Guarantor for Planet Energy Corp. (Shell Energy Canada as beneficiary), dated April 27, 2011 (**Misc #7818**)
- 026-11.1 Amended and Restated Guaranty, Planet Energy B.C. as Guarantor for Planet Energy Corp. (Shell Energy Canada as beneficiary), dated April 27, 2011 (**Misc #7819**)
- 027-11.1 Amended and Restated Guaranty, Planet Energy Alberta as Guarantor for Planet Energy Corp. (Shell Energy Canada as beneficiary), dated April 27, 2011 (**Misc #7820**)
- 028-11.1 Amended and Restated Guaranty, Planet Energy Inc./Energie Planete Inc. as Guarantor for Planet Energy Corp. (Shell Energy Canada as beneficiary), dated April 27, 2011 (**Misc #7821**)
- 029-11.1 Amended and Restated Guaranty, Planet Energy Manitoba as Guarantor for Planet Energy Corp. (Shell Energy Canada as beneficiary), dated April 27, 2011 (**Misc #7822**)
- 030-11.1 Amended and Restated Guaranty, Planet Energy USA as Guarantor for Planet Energy Corp. (Shell Energy as beneficiary), dated April 27, 2011 (**Misc #7823**)
- 031-11.1 Amended and Restated Guaranty, Planet Energy USA as Guarantor for Planet Energy New York (Shell Energy as beneficiary), dated April 27, 2011 (**Misc #7824**)
- 032-11.1 Amended and Restated Guaranty, Planet Energy USA as Guarantor for Planet Energy Maryland (Shell Energy as beneficiary), dated April 27, 2011 (**Misc #7825**)
- 033-11.1 Amended and Restated Guaranty, Planet Energy USA as Guarantor for Planet Energy Pennsylvania (Shell Energy as beneficiary), dated April 27, 2011 (**Misc #7826**)
- 034-11.1 Amended and Restated Guaranty, Planet Energy New York as Guarantor for Planet Energy USA (Shell Energy as beneficiary), dated April 27, 2011 (**Misc #7827**)
- 035-11.1 Amended and Restated Guaranty, Planet Energy Maryland as Guarantor for Planet Energy USA (Shell Energy as beneficiary), dated April 27, 2011 (**Misc #7828**)
- 036-11.1 Amended and Restated Guaranty, Planet Energy Pennsylvania as Guarantor for Planet Energy USA (Shell Energy as beneficiary), dated April 27, 2011 (**Misc #7829**)
- 037-11.1 Intercreditor and Subordination Agreement executed between Shell Energy and Planet Energy USA (Planet Energy New York), dated April 27, 2011 (**Misc #7830**)
- 038-11.1 Intercreditor and Subordination Agreement executed between Shell Energy and Planet Energy USA (Planet Energy Maryland), dated April 27, 2011 (**Misc #7831**)



- 039-11.1 Intercreditor and Subordination Agreement executed between Shell Energy and Planet Energy USA (Planet Energy Pennsylvania), dated April 27, 2011 (**Misc #7832**)
- 040-11.1 Intercreditor and Subordination Agreement executed between Shell Energy and Planet Energy New York (Planet Energy USA), dated April 27, 2011 (**Misc #7833**)
- 041-11.1 Intercreditor and Subordination Agreement executed between Shell Energy and Planet Energy Maryland (Planet Energy USA), dated April 27, 2011 (**Misc #7834**)
- 042-11.1 Intercreditor and Subordination Agreement executed between Shell Energy and Planet Energy Pennsylvania (Planet Energy USA), dated April 27, 2011 (**Misc #7835**)
- 043-11.1 Intercreditor and Subordination Agreement executed between Shell Energy and Planet Energy Corp. (Planet Energy USA), dated April 27, 2011 (**Misc #7836**)
- 044-11.1 Intercreditor and Subordination Agreement executed between Shell Energy Canada and Planet Energy Ontario (Planet Energy Corp.), dated April 27, 2011 (**Misc #7837**)
- 045-11.1 Intercreditor and Subordination Agreement executed between Shell Energy Canada and Planet Energy Ontario (Planet Energy B.C.), dated April 27, 2011 (**Misc #7838**)
- 046-11.1 Intercreditor and Subordination Agreement executed between Shell Energy Canada and Planet Energy Alberta (Planet Energy Corp.), dated April 27, 2011 (**Misc #7839**)
- 047-11.1 Intercreditor and Subordination Agreement executed between Shell Energy Canada and Planet Energy Manitoba (Planet Energy Corp.), dated April 27, 2011 (**Misc #7840**)
- 048-11.1 Intercreditor and Subordination Agreement executed between Shell Energy Canada and Planet Energy Inc./ Energie Planete Inc. (Planet Energy Corp.), dated April 27, 2011 (**Misc #7841**)
- 049-13.1 Direction to Pay executed between Shell Energy, Planet Energy USA and Planet Energy Corp., dated September 30, 2013
- 050-13.1 Direction to Pay executed between Shell Energy, Planet Energy USA and Planet Energy New York, dated September 30, 2013
- 051-13.1 Direction to Pay executed between Shell Energy, Planet Energy USA and Planet Energy Maryland, dated September 30, 2013
- 052-13.1 Direction to Pay executed between Shell Energy, Planet Energy USA and Planet Energy Pennsylvania, dated September 30, 2013
- 053-13.1 Direction to Pay executed between Shell Energy, Planet Energy USA and Planet Energy New York, dated September 30, 2013

- 054-13.1 Direction to Pay executed between Shell Energy, Planet Energy USA and Planet Energy Maryland, dated September 30, 2013
- 055-13.1 Direction to Pay executed between Shell Energy, Planet Energy USA and Planet Energy Pennsylvania, dated September 30, 2013
- 056-11.1 Direction to Pay executed between Shell Energy Canada, Planet Energy Corp. and Planet Energy Ontario, dated April 27, 2011 (**Misc #7849**)
- 057-11.1 Direction to Pay executed between Shell Energy Canada, Planet Energy Corp. and Planet Energy B.C., dated April 27, 2011 (**Misc #7850**)
- 058-11.1 Direction to Pay executed between Shell Energy Canada, Planet Energy Corp. and Planet Energy Alberta, dated April 27, 2011 (**Misc #7851**)
- 059-11.1 Direction to Pay executed between Shell Energy Canada, Planet Energy Corp. and Planet Energy Manitoba, dated April 27, 2011 (**Misc #7852**)
- 060-11.1 Direction to Pay executed between Shell Energy Canada, Planet Energy Corp. and Planet Energy Quebec, dated April 27, 2011 (**Misc #7853**)
- 065-11.1 Amended and Restated Guaranty, Planet Energy Corp. as Guarantor for Planet Energy USA, (Shell Energy), dated April 27, 2011 (**Misc #7858**)
- 066-11.1 Amended and Restated Guaranty, Planet Energy Corp. as Guarantor for Planet Energy New York, (Shell Energy), dated April 27, 2011 (**Misc #7859**)
- 067-11.1 Amended and Restated Guaranty, Planet Energy Corp. as Guarantor for Planet Energy Maryland, (Shell Energy), dated April 27, 2011 (**Misc #7860**)
- 068-11.1 Amended and Restated Guaranty, Planet Energy Corp. as Guarantor for Planet Energy Pennsylvania (Shell Energy), dated April 27, 2011 (**Misc #7861**)

**SCHEDULE 2.9****Subsidiaries**

<b>Name of Parent Entity</b>	<b>Legal Name of Subsidiary</b>	<b>Jurisdiction of Formation of Subsidiary</b>	<b>Ownership Interest in Subsidiary</b>
Planet Energy (Ontario) Corp.	Energie Planete Inc./Planet Energy Inc.	Quebec	100%
Planet Energy (Ontario) Corp.	Planet Energy (Alberta) Corp.	Alberta	100%
Planet Energy (Ontario) Corp.	Planet Energy (B.C.) Corp.	British Columbia	100%
Planet Energy (Ontario) Corp.	Planet Energy (Manitoba) Corp.	Manitoba	100%
Planet Energy (Ontario) Corp.	Planet Energy Corp.	Delaware	100%
Planet Energy Corp.	Planet Energy (Maryland) Corp.	Delaware	100%
Planet Energy Corp.	Planet Energy (New York) Corp.	Delaware	100%
Planet Energy Corp.	Planet Energy (Pennsylvania) Corp.	Delaware	100%
Planet Energy Corp.	Planet Energy (Ohio) Corp.	Delaware	100%
Planet Energy Corp.	Planet Energy (Illinois) Corp.	Delaware	100%
Planet Energy Corp.	Planet Energy (New Jersey) Corp.	Delaware	100%

**SCHEDULE 3.7**

**Additional Indebtedness**

None.

**SCHEDULE 3.20****Nature of Business and Service Territories**

1. Nature of Business: Supplier of electricity and natural gas to residential and commercial consumers.
  
2. Service Territories (list Power utilities by State):
  - (a) New York:
    - (i) Consolated Edison Inc. (Con Ed)
    - (ii) National Grid (NiMo)
  
  - (b) Maryland:
    - (i) Baltimore Gas and Electric Company (BGE Electric)
    - (ii) Potomac Edison – First Energy
    - (iii) Delmarva
    - (iv) Potomac Electric Power (Pepco)
  
  - (c) Pennsylvania:
    - (i) PECO An Exelon Company
    - (ii) West Penn Power (Allegheny Power) – First Energy (WPP)
    - (iii) Duquesne Light Co.
    - (iv) Pennsylvania Power & Light (PPL)
    - (v) Penelec – First Energy
    - (vi) Metropolitan Edison (Met-Ed)
    - (vii) Penn Power – First Energy
  
  - (d) Ohio:
    - (i) Ohio Edison Company
    - (ii) Toledo Edison
    - (iii) Ohio Power Company (American Electric Power - AEP)
    - (iv) Columbus Southern Power (American Electric Power - AEP)
    - (v) Cleveland Electric Illuminating Company (Illuminating)
    - (vi) Duke Energy

3. Shell Gas Delivery Points: The gas delivery points will not expand beyond the delivery points set forth below without Shell Energy's prior written consent:

**Shell Gas Delivery Points**

AGT POOL  
ALGONQUIN - HANOVER  
ALGONQUIN - LAMBERTVILLE NJ  
ALLIANCE  
ATCO GAS NORTH  
ATCO GAS SOUTH  
CONSUMERS CITYGATE  
DAWN  
EAST POOL  
EMPRESS  
EMPRESS FUEL  
HOLLOW ROAD DEHY  
HUNTINGDON  
LAMBERTVILLE REC-HUNTERDON  
M/L POOL-SENA  
MARCELLUS  
MICHCON SUPPLY  
ML-7  
NATIONAL GRID-PONKAPOAG  
NIT  
PARKWAY  
POOLING PT-TEXOK ZN-G.C.  
POOLING-STATION 210  
POOLING-STATION 30  
POOLING-STATION 65  
POOLING-STATION 85  
S E HEADSTATION (TRANSMISSION)  
STATION #2  
STATION #2N  
TETCO M2 RECEIPTS  
TETCO M3 POOL  
TITLE TRANSFER POINT - NORTH  
TITLE TRANSFER POINT - SOUTH  
TRANSCO LEIDY PRODUCTION  
UDEL POOL  
UNION SWDA  
WADDINGTON  
WILLOW RUN - RECEIPT  
WILLOW RUN (TO MICHCON)  
ZONE 4 200 LINE POOLING AREA

**Shell Gas Delivery Points**

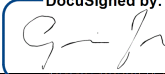
ZONE 5 CITYGATE DELIVERIES  
ZONE 6 200 LINE POOLING AREA  
ZONE 6 NEW YORK  
ZONE 6 NON NEW YORK  
ZONE L LEG 500 POOLING AREA  
ZONE L LEG 800 POOLING AREA  
ZONE M2 30 SERVICE POINT  
ZONE M2 30 SERVICE POINT - VPC  
9260 NIPSCO/NGPL  
BALTIMORE GAS & ELEC  
BG&E POOL  
CANANDAIGUA DEHY  
CHIPPAWA  
CHIPPAWA – VPC  
CORNING - EMPIRE PL  
CREC  
CREC  
CREC FUEL  
DAWN VECTOR  
DEO GATE  
ENBRIDGE CDA  
ENBRIDGE EDA  
NATURAL GAS PIPELINE  
NGPL  
NORTHERN STORAGE INJECTION  
NORTHSHORE NGPL  
POOLING-STATION 45  
RAMAPO AGT  
ROSE LAKE (BI 1 1110)  
ROSE LAKE\*\* (BI 1 1110)  
S W HEADSTATION  
SENA (US) TRN EAST LA TABS  
SHARON PENNSYLVANIA  
SOUTH COMMACK  
STONY POINT  
STX SERVICE POINT  
TCO-LEACH  
TERASEN GAS INTERIOR DIVISION  
TOMBS RUN M3610  
WASH GAS LIGHT RETAIL POOL  
WASHINGTON GAS  
WASHINGTON GAS-30  
WGL POOL

**Shell Gas Delivery Points**

WISCONSIN  
WLA SERVICE POINT  
ZONE 0 LEG 100 SOUTH POOL



This is Exhibit "C" referred to in the Affidavit of Nino Silvestri sworn by Nino Silvestri of the Town of Oakville, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on May 26, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:  


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Commissioner for Taking Affidavits (or as may be)

**GAVIN INKSTER LSO# 827371**

(Multicurrency--Cross Border)

# ISDA<sup>®</sup>

International Swap Dealers Association, Inc.

## MASTER AGREEMENT

dated as of October 1, 2017

SHELL TRADING RISK MANAGEMENT, LLC ("Party A")

and

PLANET ENERGY CORP. ("Party B")

have entered and/or anticipate entering into one or more transactions (each a "Transaction") that are or will be governed by this Master Agreement, which includes the schedule (the "Schedule"), and the documents and other confirming evidence (each a "Confirmation") exchanged between the parties confirming those Transactions.

Accordingly, the parties agree as follows:

### 1. Interpretation

- (a) **Definitions.** The terms defined in Section 14 and in the Schedule will have the meanings therein specified for the purpose of this Master Agreement.
- (b) **Inconsistency.** In the event of any inconsistency between the provisions of the Schedule and the other provisions of this Master Agreement, the Schedule will prevail. In the event of any inconsistency between the provisions of any Confirmation and this Master Agreement (including the Schedule), such Confirmation will prevail for the purpose of the relevant Transaction.
- (c) **Single Agreement.** All Transactions are entered into in reliance on the fact that this Master Agreement and all Confirmations form a single agreement between the parties (collectively referred to as this "Agreement"), and the parties would not otherwise enter into any Transactions.

### 2. Obligations

- (a) **General Conditions.**
  - (i) Each party will make each payment or delivery specified in each Confirmation to be made by it, subject to the other provisions of this Agreement.
  - (ii) Payments under this Agreement will be made on the due date for value on that date in the place of the account specified in the relevant Confirmation or otherwise pursuant to this Agreement, in freely transferable funds and in the manner customary for payments in the required currency. Where settlement is by delivery (that is, other than by payment), such delivery will be made for receipt on the due date in the manner customary for the relevant obligation unless otherwise specified in the relevant Confirmation or elsewhere in this Agreement.
  - (iii) Each obligation of each party under Section 2(a)(i) is subject to (1) the condition precedent that no Event of Default or Potential Event of Default with respect to the other party has occurred and is continuing, (2) the condition precedent that no Early Termination Date in respect of the relevant Transaction has occurred or been effectively designated and (3) each other applicable condition precedent specified in this Agreement.

(b) **Change of Account.** Either party may change its account for receiving a payment or delivery by giving notice to the other party at least five Local Business Days prior to the scheduled date for the payment or delivery to which such change applies unless such other party gives timely notice of a reasonable objection to such change.

(c) **Netting.** If on any date amounts would otherwise be payable:

- (i) in the same currency; and
- (ii) in respect of the same Transaction,

by each party to the other, then, on such date, each party's obligation to make payment of any such amount will be automatically satisfied and discharged and, if the aggregate amount that would otherwise have been payable by one party exceeds the aggregate amount that would otherwise have been payable by the other party, replaced by an obligation upon the party by whom the larger aggregate amount would have been payable to pay to the other party the excess of the larger aggregate amount over the smaller aggregate amount.

The parties may elect in respect of two or more Transactions that a net amount will be determined in respect of all amounts payable on the same date in the same currency in respect of such Transactions, regardless of whether such amounts are payable in respect of the same Transaction. The election may be made in the Schedule or a Confirmation by specifying that subparagraph (ii) above will not apply to the Transactions identified as being subject to the election, together with the starting date (in which case subparagraph (ii) above will not, or will cease to, apply to such Transactions from such date). This election may be made separately for different groups of Transactions and will apply separately to each pairing of Offices through which the parties make and receive payments or deliveries.

(d) **Deduction or Withholding for Tax.**

(i) **Gross-Up.** All payments under this Agreement will be made without any deduction or withholding for or on account of any Tax unless such deduction or withholding is required by any applicable law, as modified by the practice of any relevant governmental revenue authority, then in effect. If a party is so required to deduct or withhold, then that party ("X") will:

- (1) promptly notify the other party ("Y") of such requirement;
- (2) pay to the relevant authorities the full amount required to be deducted or withheld (including the full amount required to be deducted or withheld from any additional amount paid by X to Y under this Section 2(d)) promptly upon the earlier of determining that such deduction or withholding is required or receiving notice that such amount has been assessed against Y;
- (3) promptly forward to Y an official receipt (or a certified copy), or other documentation reasonably acceptable to Y evidencing such payment to such authorities; and
- (4) if such Tax is an Indemnifiable Tax, pay to Y, in addition to the payment to which Y is otherwise entitled under this Agreement, such additional amount as is necessary to ensure that the net amount actually received by Y (free and clear of Indemnifiable Taxes, whether assessed against X or Y) will equal the full amount Y would have received had no such deduction or withholding been required. However, X will not be required to pay any additional amount to Y to the extent that it would not be required to be paid but for:
  - (A) the failure by Y to comply with or perform any agreement contained in Section 4(a)(i), 4(a)(iii) or 4(d); or
  - (B) the failure of a representation made by Y pursuant to Section 3(f) to be accurate and true unless such failure would not have occurred but for (I) any action taken by a taxing authority, or brought in a court of competent jurisdiction, on or after the date on which a Transaction is entered into (regardless of whether such action is taken or brought with respect to a party to this Agreement) or (II) a Change in Tax Law.

(ii) **Liability.** If:

- (1) X is required by any applicable law, as modified by the practice of any relevant governmental revenue authority, to make any deduction or withholding in respect of which X would not be required to pay an additional amount to Y under Section 2(d)(i)(4);
- (2) X does not so deduct or withhold; and
- (3) a liability resulting from such Tax is assessed directly against X,

then, except to the extent Y has satisfied or then satisfies the liability resulting from such Tax, Y will promptly pay to X the amount of such liability (including any related liability for interest, but including any related liability for penalties only if Y has failed to comply with or perform any agreement contained in Section 4(a)(i), 4(a)(iii) or 4(d)).

(e) **Default Interest; Other Amounts.** Prior to the occurrence or effective designation of an Early Termination Date in respect of the relevant Transaction, a party that defaults in the performance of any payment obligation will, to the extent permitted by Law and subject to Section 6(c), be required to pay interest (before as well as after judgment) on the overdue amount to the other party on demand in the same currency as such overdue amount, for the period from (and including) the original due date for payment to (but excluding) the date of actual payment, at the Default Rate. Such interest will be calculated on the basis of daily compounding and the actual number of days elapsed. If, prior to the occurrence or effective designation of an Early Termination Date in respect of the relevant Transaction, a party defaults in the performance of any obligation required to be settled by delivery, it will compensate the other party on demand if and to the extent provided for in the relevant Confirmation or elsewhere in this Agreement.

### 3. Representations

Each party represents to the other party (which representations will be deemed to be repeated by each party on each date on which a Transaction is entered into and, in the case of the representations in Section 3(f), at all times until the termination of this Agreement) that:

(a) **Basic Representations.**

- (i) **Status.** It is duly organized and validly existing under the laws of the jurisdiction of its organization or incorporation and, if relevant under such laws, in good standing;
- (ii) **Powers.** It has the power to execute this Agreement and any other documentation relating to this Agreement to which it is a party, to deliver this Agreement and any other documentation relating to this Agreement that it is required by this Agreement to deliver and to perform its obligations under this Agreement and any obligations it has under any Credit Support Document to which it is a party and has taken all necessary action to authorize such execution, delivery and performance;
- (iii) **No Violation or Conflict.** Such execution, delivery and performance do not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets;
- (iv) **Consents.** All governmental and other consents that are required to have been obtained by it with respect to this Agreement or any Credit Support Document to which it is a party have been obtained and are in full force and effect and all conditions of any such consents have been complied with; and
- (v) **Obligations Binding.** Its obligations under this Agreement and any Credit Support Document to which it is a party constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at Law)).

(b) **Absence of Certain Events.** No Event of Default or Potential Event of Default or, to its knowledge, Termination Event with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement or any Credit Support Document to which it is a party.

(c) **Absence of Litigation.** There is not pending or, to its knowledge, threatened against it or any of its Affiliates any action, suit or proceeding at Law or in equity or before any court, tribunal, governmental body, agency or official or any arbitrator that is likely to affect the legality, validity or enforceability against it of this Agreement or any Credit Support Document to which it is a party or its ability to perform its obligations under this Agreement or such Credit Support Document.

(d) **Accuracy of Specified Information.** All applicable information that is furnished in writing by or on behalf of it to the other party and is identified for the purpose of this Section 3(d) in the Schedule is, as of the date of the information, true, accurate and complete in every material respect.

(e) **Payer Tax Representation.** Each representation specified in the Schedule as being made by it for the purpose of this Section 3(e) is accurate and true.

(f) **Payee Tax Representations.** Each representation specified in the Schedule as being made by it for the purpose of this Section 3(f) is accurate and true.

#### 4. Agreements

Each party agrees with the other that, so long as either party has or may have any obligation under this Agreement or under any Credit Support Document to which it is a party:

(a) **Furnish Specified Information.** It will deliver to the other party or, in certain cases under subparagraph (iii) below, to such government or taxing authority as the other party reasonably directs:

(i) any forms, documents or certificates relating to taxation specified in the Schedule or any Confirmation;

(ii) any other documents specified in the Schedule or any Confirmation; and

(iii) upon reasonable demand by such other party, any form or document that may be required or reasonably requested in writing in order to allow such other party or its Credit Support Provider to make a payment under this Agreement or any applicable Credit Support Document without any deduction or withholding for or on account of any Tax or with such deduction or withholding at a reduced rate (so long as the completion, execution or submission of such form or document would not materially prejudice the legal or commercial position of the party in receipt of such demand), with any such form or document to be accurate and completed in a manner reasonably satisfactory to such other party and to be executed and to be delivered with any reasonably required certification,

in each case by the date specified in the Schedule or such Confirmation or, if none is specified, as soon as reasonably practicable.

(b) **Maintain Authorizations.** It will use all reasonable efforts to maintain in full force and effect all consents of any governmental or other authority that are required to be obtained by it with respect to this Agreement or any Credit Support Document to which it is a party and will use all reasonable efforts to obtain any that may become necessary in the future.

(c) **Comply with Laws.** It will comply in all material respects with all applicable laws and orders to which it may be subject if failure so to comply would materially impair its ability to perform its obligations under this Agreement or any Credit Support Document to which it is a party.

(d) **Tax Agreement.** It will give notice of any failure of a representation made by it under Section 3(f) to be accurate and true promptly upon learning of such failure.

(e) **Payment of Stamp Tax.** Subject to Section 11, it will pay any Stamp Tax levied or imposed upon it or in respect of its execution or performance of this Agreement by a jurisdiction in which it is incorporated, organized, managed and controlled,

or considered to have its seat, or in which a branch or office through which it is acting for the purpose of this Agreement is located ("Stamp Tax Jurisdiction") and will indemnify the other party against any Stamp Tax levied or imposed upon the other party or in respect of the other party's execution or performance of this Agreement by any such Stamp Tax Jurisdiction which is not also a Stamp Tax Jurisdiction with respect to the other party.

## 5. Events of Default and Termination Events

(a) **Events of Default.** The occurrence at any time with respect to a party or, if applicable, any Credit Support Provider of such party or any Specified Entity of such party of any of the following events constitutes an event of default (an "Event of Default") with respect to such party:

(i) **Failure to Pay or Deliver.** Failure by the party to make, when due, any payment under this Agreement or delivery under Section 2(a)(i) or 2(e) required to be made by it if such failure is not remedied on or before the third Local Business Day after notice of such failure is given to the party;

(ii) **Breach of Agreement.** Failure by the party to comply with or perform any agreement or obligation (other than an obligation to make any payment under this Agreement or delivery under Section 2 (a)(i) or 2(e) or to give notice of a Termination Event or any agreement or obligation under Section 4(a)(i), 4(a)(iii) or 4(d)) to be complied with or performed by the party in accordance with this Agreement if such failure is not remedied on or before the thirtieth day after notice of such failure is given to the party;

(iii) **Credit Support Default.**

(1) Failure by the party or any Credit Support Provider of such party to comply with or perform any agreement or obligation to be complied with or performed by it in accordance with any Credit Support Document if such failure is continuing after any applicable grace period has elapsed;

(2) the expiration or termination of such Credit Support Document or the failing or ceasing of such Credit Support Document to be in full force and effect for the purpose of this Agreement (in either case other than in accordance with its terms) prior to the satisfaction of all obligations of such party under each Transaction to which such Credit Support Document relates without the written consent of the other party; or

(3) the party or such Credit Support Provider disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, such Credit Support Document;

(iv) **Misrepresentation.** A representation (other than a representation under Section 3(e) or (f)) made or repeated or deemed to have been made or repeated by the party or any Credit Support Provider of such party in this Agreement or any Credit Support Document proves to have been incorrect or misleading in any material respect when made or repeated or deemed to have been made or repeated;

(v) **Default under Specified Transaction.** The party, any Credit Support Provider of such party or any applicable Specified Entity of such party (1) defaults under a Specified Transaction and, after giving effect to any applicable notice requirement or grace period, there occurs a liquidation of, an acceleration of obligations under, or an early termination of, that Specified Transaction, (2) defaults, after giving effect to any applicable notice requirement or grace period, in making any payment or delivery due on the last payment, delivery or exchange date of, or any payment on early termination of, a Specified Transaction (or such default continues for at least three Local Business Days if there is no applicable notice requirement or grace period) or (3) disaffirms, disclaims, repudiates or rejects, in whole or in part, a Specified Transaction (or such action is taken by any person or entity appointed or empowered to operate it or act on its behalf);

(vi) **Cross Default.** If "Cross Default" is specified in the Schedule as applying to the party, the occurrence or existence of (1) a default, event of default or other similar condition or event (however described) in respect of such party, any Credit Support Provider of such party or any applicable Specified Entity of such party under one or more agreements or instruments relating to Specified Indebtedness of any of them (individually or collectively) in an aggregate amount of not less than the applicable Threshold Amount (as specified in the Schedule) which has resulted in such Specified Indebtedness becoming, or becoming capable at such time of being declared, due and payable under

such agreements or instruments before it would otherwise have been due and payable or (2) a default by such party, such Credit Support Provider or such Specified Entity (individually or collectively) in making one or more payments on the due date thereof in an aggregate amount of not less than the applicable Threshold Amount under such agreements or instruments (after giving effect to any applicable notice requirement or grace period);

(vii) **Bankruptcy.** The party, any Credit Support Provider of such party or any applicable Specified Entity of such party:

(1) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (2) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due; (3) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (4) institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition (A) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation or (B) is not dismissed, discharged, stayed or restrained in each case within 30 days of the institution or presentation thereof; (5) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger); (6) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee custodian or other similar official for it or for all or substantially all its assets; (7) has a secured party take possession of all or substantially all its assets or has a distress, execution attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 30 days thereafter; (8) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (1) to (7) (inclusive); or (9) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts; or

(viii) **Merger Without Assumption.** The party or any Credit Support Provider of such party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer:

(1) the resulting, surviving or transferee entity fails to assume all the obligations of such party or such Credit Support Provider under this Agreement or any Credit Support Document to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other party to this Agreement; or

(2) the benefits of any Credit Support Document fail to extend (without the consent of the other party) to the performance by such resulting, surviving or transferee entity of its obligations under this Agreement.

(b) **Termination Events.** The occurrence at any time with respect to a party or, if applicable, any Credit Support Provider of such party or any Specified Entity of such party of any event specified below constitutes an Illegality if the event is specified in (i) below, a Tax Event if the event is specified in (ii) below or a Tax Event Upon Merger if the event is specified in (iii) below, and, if specified to be applicable, a Credit Event Upon Merger if the event is specified pursuant to (iv) below or an Additional Termination Event if the event is specified pursuant to (v) below:

(i) **Illegality.** Due to the adoption of, or any change in, any applicable law after the date on which a Transaction is entered into, or due to the promulgation of, or any change in, the interpretation by any court, tribunal or regulatory authority with competent jurisdiction of any applicable law after such date, it becomes unlawful (other than as a result of a breach by the party of Section 4(b)) for such party (which will be the Affected Party):

(1) to perform any absolute or contingent obligation to make a payment or delivery, or to receive a payment or delivery in respect of such Transaction or to comply with any other material provision of this Agreement relating to such Transaction; or

(2) to perform, or for any Credit Support Provider of such party to perform, any contingent or other obligation which the party (or such Credit Support Provider) has under any Credit Support Document relating to such Transaction.

(ii) **Tax Event.** Due to (x) any action taken by a taxing authority, or brought in a court of competent jurisdiction, on or after the date on which a Transaction is entered into (regardless of whether such action is taken or brought with respect to a party to this Agreement) or (y) a Change in Tax Law, the party (which will be the Affected Party) will or there is a substantial likelihood that it will, on the next succeeding Scheduled Payment Date (1) be required to pay to the other party an additional amount in respect of an Indemnifiable Tax under Section 2(d)(i)(4) (except in respect of interest under Section 2(e), 6(d)(ii) or 6(e)) or (2) receive a payment from which an amount is required to be deducted or withheld for or on account of a Tax (except in respect of interest under Section 2(e), 6(d)(ii) or 6(e)) and no additional amount is required to be paid in respect of such Tax under Section 2(d)(i)(4) (other than by reason of Section 2(d)(i)(4)(A) or (B));

(iii) **Tax Event Upon Merger.** The party (the "Burdened Party") on the next succeeding Scheduled Payment Date will either (1) be required to pay an additional amount in respect of an Indemnifiable Tax under Section 2(d)(i)(4) (except in respect of interest under Section 2(e), 6(d)(ii) or 6(e)) or (2) receive a payment from which an amount has been deducted or withheld for or on account of any Indemnifiable Tax in respect of which the other party is not required to pay an additional amount (other than by reason of Section 2(d)(i)(4)(A) or (B)), in either case as a result of a party consolidating or amalgamating with, or merging with or into, or transferring all or substantially all its assets to, another entity (which will be the Affected Party) where such action does not constitute an event described in Section 5(a)(viii);

(iv) **Credit Event Upon Merger.** If "Credit Event Upon Merger" is specified in the Schedule as applying to the party, such party ("X"), any Credit Support Provider of X or any applicable Specified Entity of X consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, another entity and such action does not constitute an event described in Section 5(a)(viii) but the creditworthiness of the resulting, surviving or transferee entity is materially weaker than that of X, such Credit Support Provider or such Specified Entity, as the case may be, immediately prior to such action (and, in such event, X, or its successor or transferee, as appropriate, will be the Affected Party); or

(v) **Additional Termination Event.** If any "Additional Termination Event" is specified in the Schedule or any Confirmation as applying, the occurrence of such event (and, in such event, the Affected Party or Affected Parties shall be as specified for such Additional Termination Event in the Schedule or such Confirmation).

(c) **Event of Default and Illegality.** If an event or circumstance which would otherwise constitute or give rise to an Event of Default also constitutes an Illegality, it will be treated as an Illegality and will not constitute an Event of Default.

## 6. Early Termination

(a) **Right to Terminate Following Event of Default.** If at any time an Event of Default with respect to a party (the "Defaulting Party") has occurred and is then continuing, the other party (the "Non-defaulting Party") may, by not more than 20 days notice to the Defaulting Party specifying the relevant Event of Default, designate a day not earlier than the day such notice is effective as an Early Termination Date in respect of all outstanding Transactions. If, however, "Automatic Early Termination" is specified in the Schedule as applying to a party, then an Early Termination Date in respect of all outstanding Transactions will occur immediately upon the occurrence with respect to such party of an Event of Default specified in Section 5(a)(vii)(1), (3), (5), (6) or, to the extent analogous thereto, (8) and as of the time immediately preceding the institution of the relevant proceeding or the presentation of the relevant petition upon the occurrence with respect to such party of an Event of Default specified in Section 5(a)(vii)(4) or, to the extent analogous thereto, (8).

(b) **Right to Terminate Following Termination Event.**

(i) **Notice.** If a Termination Event occurs, an Affected Party will, promptly upon becoming aware of it notify the other party, specifying the nature of that Termination Event and each Affected Transaction and will also give such other information about that Termination Event as the other party may reasonably require.



(ii) **Transfer to Avoid Termination Event.** If either an Illegality under Section 5(b)(i)(1) or a Tax Event occurs and there is only one Affected Party, or if a Tax Event Upon Merger occurs and the Burdened Party is the Affected Party, the Affected Party will, as a condition to its right to designate an Early Termination Date under Section 6(b)(iv), use all reasonable efforts (which will not require such party to incur a loss, excluding immaterial, incidental expenses) to transfer within 20 days after it gives notice under Section 6(b)(i) all its rights and obligations under this Agreement in respect of the Affected Transactions to another of its Offices or Affiliates so that such Termination Event ceases to exist.

If the Affected Party is not able to make such a transfer it will give notice to the other party to that effect within such 20 day period, whereupon the other party may effect such a transfer within 30 days after the notice is given under Section 6(b)(i).

Any such transfer by a party under this Section 6(b)(ii) will be subject to and conditional upon the prior written consent of the other party, which consent will not be withheld if such other party's policies in effect at such time would permit it to enter into transactions with the transferee on the terms proposed.

(iii) **Two Affected Parties.** If an Illegality under Section 5(b)(i)(1) or a Tax Event occurs and there are two Affected Parties, each party will use all reasonable efforts to reach agreement within 30 days after notice thereof is given under Section 6(b)(i) on action to avoid that Termination Event.

(iv) **Right to Terminate.** If:

(1) a transfer under Section 6(b)(ii) or an agreement under Section 6(b)(iii), as the case may be, has not been effected with respect to all Affected Transactions within 30 days after an Affected Party gives notice under Section 6(b)(i); or

(2) an Illegality under Section 5(b)(i)(2) a Credit Event Upon Merger or an Additional Termination Event occurs, or a Tax Event Upon Merger occurs and the Burdened Party is not the Affected Party,

either party in the case of an Illegality, the Burdened Party in the case of a Tax Event Upon Merger, any Affected Party in the case of a Tax Event or an Additional Termination Event if there is more than one Affected Party, or the party which is not the Affected Party in the case of a Credit Event Upon Merger or an Additional Termination Event if there is only one Affected Party may, by not more than 20 days notice to the other party and provided that the relevant Termination Event is then continuing, designate a day not earlier than the day such notice is effective as an Early Termination Date in respect of all Affected Transactions.

(c) **Effect of Designation.**

(i) If notice designating an Early Termination Date is given under Section 6(a) or (b), the Early Termination Date will occur on the date so designated, whether or not the relevant Event of Default or Termination Event is then continuing.

(ii) Upon the occurrence or effective designation of an Early Termination Date, no further payments or deliveries under Section 2(a)(i) or 2(e) in respect of the Terminated Transactions will be required to be made, but without prejudice to the other provisions of this Agreement. The amount, if any, payable in respect of an Early Termination Date shall be determined pursuant to Section 6(e).

(d) **Calculations.**

(i) **Statement.** On or as soon as reasonably practicable following the occurrence of an Early Termination Date, each party will make the calculations on its part, if any, contemplated by Section 6(e) and will provide to the other party a statement (1) showing, in reasonable detail, such calculations (including all relevant quotations and specifying any amount payable under Section 6(e)) and (2) giving details of the relevant account to which any amount payable to it is to be paid. In the absence of written confirmation from the source of a quotation obtained in determining a Market Quotation, the records of the party obtaining such quotation will be conclusive evidence of the existence and accuracy of such quotation.

(ii) **Payment Date.** An amount calculated as being due in respect of any Early Termination Date under Section 6(e) will be payable on the day that notice of the amount payable is effective (in the case of an Early Termination Date which is designated or occurs as a result of an Event of Default) and on the day which is two Local Business Days after the day on which notice of the amount payable is effective (in the case of an Early Termination Date which is designated as a result of a Termination Event). Such amount will be paid together with (to the extent permitted under applicable law) interest thereon (before as well as after judgment) in the Termination Currency, from (and including) the relevant Early Termination Date to (but excluding) the date such amount is paid, at the Applicable Rate. Such interest will be calculated on the basis of daily compounding and the actual number of days elapsed.

(e) **Payments on Early Termination.** If an Early Termination Date occurs, the following provisions shall apply based on the parties' election in the Schedule of a payment measure, either "Market Quotation" or "Loss", and a payment method, either the "First Method" or the "Second Method". If the parties fail to designate a payment measure or payment method in the Schedule, it will be deemed that "Market Quotation" or the "Second Method", as the case may be, shall apply. The amount, if any, payable in respect of an Early Termination Date and determined pursuant to this Section will be subject to any Set-off.

(i) **Events of Default.** If the Early Termination Date results from an Event of Default:

(1) **First Method and Market Quotation.** If the First Method and Market Quotation apply, the Defaulting Party will pay to the Non-defaulting Party the excess, if a positive number, of (A) the sum of the Settlement Amount (determined by the Non-defaulting Party) in respect of the Terminated Transactions and the Termination Currency Equivalent of the Unpaid Amounts owing to the Non-defaulting Party over (B) the Termination Currency Equivalent of the Unpaid Amounts owing to the Defaulting Party.

(2) **First Method and Loss.** If the First Method and Loss apply, the Defaulting Party will pay to the Non-defaulting Party, if a positive number, the Non-defaulting Party's Loss in respect of this Agreement.

(3) **Second Method and Market Quotation.** If the Second Method and Market Quotation apply, an amount will be payable equal to (A) the sum of the Settlement Amount (determined by the Non-defaulting Party) in respect of the Terminated Transactions and the Termination Currency Equivalent of the Unpaid Amounts owing to the Non-defaulting Party less (B) the Termination Currency Equivalent of the Unpaid Amounts owing to the Defaulting Party. If that amount is a positive number, the Defaulting Party will pay it to the Non-defaulting Party; if it is a negative number, the Non-defaulting Party will pay the absolute value of that amount to the Defaulting Party.

(4) **Second Method and Loss.** If the Second Method and Loss apply, an amount will be payable equal to the Non-defaulting Party's Loss in respect of this Agreement. If that amount is a positive number, the Defaulting Party will pay it to the Non-defaulting Party; if it is a negative number, the Non-defaulting Party will pay the absolute value of that amount to the Defaulting Party.

(ii) **Termination Events.** If the Early Termination Date results from a Termination Event:

(1) **One Affected Party.** If there is one Affected Party, the amount payable will be determined in accordance with Section 6(e)(i)(3), if Market Quotation applies, or Section 6(e)(i)(4), if Loss applies, except that, in either case, references to the Defaulting Party and to the Non-defaulting Party will be deemed to be references to the Affected Party and the party which is not the Affected Party, respectively, and, if Loss applies and fewer than all the Transactions are being terminated, Loss shall be calculated in respect of all Terminated Transactions.

(2) **Two Affected Parties.** If there are two Affected Parties:

(A) if Market Quotation applies, each party will determine a Settlement Amount in respect of the Terminated Transactions, and an amount will be payable equal to (I) the sum of (a) one-half of the difference between the Settlement Amount of the party with the higher Settlement Amount ("X") and the Settlement Amount of the party with the lower Settlement Amount ("Y") and (b) the Termination Currency Equivalent of the Unpaid Amounts owing to X less (II) the Termination Currency Equivalent of the Unpaid Amounts owing to Y; and

(B) if Loss applies, each party will determine its Loss in respect of this Agreement (or, if fewer than all the Transactions are being terminated, in respect of all Terminated Transactions) and an amount will be payable equal to one-half of the difference between the Loss of the party with the higher Loss ("X") and the Loss of the party with the lower Loss ("Y").

If the amount payable is a positive number, Y will pay it to X; if it is a negative number, X will pay the absolute value of that amount to Y.

(iii) **Adjustment for Bankruptcy.** In circumstances where an Early Termination Date occurs because "Automatic Early Termination" applies in respect of a party, the amount determined under this Section 6(e) will be subject to such adjustments as are appropriate and permitted by law to reflect any payments or deliveries made by one party to the other under this Agreement (and retained by such other party) during the period from the relevant Early Termination Date to the date for payment determined under Section 6(d)(ii).

(iv) **Pre-Estimate.** The parties agree that if Market Quotation applies an amount recoverable under this Section 6(e) is a reasonable pre-estimate of loss and not a penalty. Such amount is payable for the loss of bargain and the loss of protection against future risks and except as otherwise provided in this Agreement neither party will be entitled to recover any additional damages as a consequence of such losses.

## 7. Transfer

Subject to Section 6(b)(ii), neither this Agreement nor any interest or obligation in or under this Agreement may be transferred (whether by way of security or otherwise) by either party without the prior written consent of the other party, except that:

(a) a party may make such a transfer of this Agreement pursuant to a consolidation or amalgamation with, or merger with or into, or transfer of all or substantially all its assets to, another entity (but without prejudice to any other right or remedy under this Agreement); and

(b) a party may make such a transfer of all or any part of its interest in any amount payable to it from a Defaulting Party under Section 6(e).

Any purported transfer that is not in compliance with this Section will be void.

## 8. Contractual Currency

(a) **Payment in the Contractual Currency.** Each payment under this Agreement will be made in the relevant currency specified in this Agreement for that payment (the "Contractual Currency"). To the extent permitted by applicable law, any obligation to make payments under this Agreement in the Contractual Currency will not be discharged or satisfied by any tender in any currency other than the Contractual Currency, except to the extent such tender results in the actual receipt by the party to which payment is owed, acting in a reasonable manner and in good faith in converting the currency so tendered into the Contractual Currency, of the full amount in the Contractual Currency of all amounts payable in respect of this Agreement. If for any reason the amount in the Contractual Currency so received falls short of the amount in the Contractual Currency payable in respect of this Agreement, the party required to make the payment will, to the extent permitted by applicable law, immediately pay such additional amount in the Contractual Currency as may be necessary to compensate for the shortfall. If for any reason the amount in the Contractual Currency so received exceeds the amount in the Contractual Currency payable in respect of this Agreement, the party receiving the payment will refund promptly the amount of such excess.

(b) **Judgments.** To the extent permitted by applicable law, if any judgment or order expressed in a currency other than the Contractual Currency is rendered (i) for the payment of any amount owing in respect of this Agreement, (ii) for the payment of any amount relating to any early termination in respect of this Agreement or (iii) in respect of a judgment or order of another court for the payment of any amount described in (i) or (ii) above, the party seeking recovery, after recovery in full of the aggregate amount to which such party is entitled pursuant to the judgment or order, will be entitled to receive immediately from the other party the amount of any shortfall of the Contractual

Currency received by such party as a consequence of sums paid in such other currency and will refund promptly to the other party any excess of the Contractual Currency received by such party as a consequence of sums paid in such other currency if such shortfall or such excess arises or results from any variation between the rate of exchange at which, the Contractual Currency is converted into the currency of the judgment or order for the purposes of such judgment or order and the rate of exchange at which such party is able, acting in a reasonable manner and in good faith in converting the currency received into the Contractual Currency, to purchase the Contractual Currency with the amount of the currency of the judgment or order actually received by such party. The term "rate of exchange" includes, without limitation, any premiums and costs of exchange payable in connection with the purchase of or conversion into the Contractual Currency.

(c) **Separate Indemnities.** To the extent permitted by applicable law, these indemnities constitute separate and independent obligations from the other obligations in this Agreement, will be enforceable as separate and independent causes of action, will apply notwithstanding any indulgence granted by the party to which any payment is owed, and will not be affected by judgment being obtained or claim or proof being made for any other sums payable in respect of this Agreement.

(d) **Evidence of Loss.** For the purpose of this Section 8, it will be sufficient for a party to demonstrate that it would have suffered a loss had an actual exchange or purchase been made.

## 9. Miscellaneous

(a) **Entire Agreement.** This Agreement constitutes the entire agreement and understanding of the parties with respect to its subject matter and supersedes all oral communication and prior writings with respect thereto.

(b) **Amendments.** No amendment, modification or waiver in respect of this Agreement will be effective unless in writing (including a writing evidenced by a facsimile transmission) and executed by each of the parties or confirmed by an exchange of telexes or electronic messages on an electronic messaging system.

(c) **Survival of Obligations.** Without prejudice to Sections 2(a)(iii) and 6(c)(ii), the obligations of the parties under this Agreement will survive the termination of any Transaction.

(d) **Remedies Cumulative.** Except as provided in this Agreement, the rights, powers, remedies and privileges provided in this Agreement are cumulative and not exclusive of any rights, powers, remedies and privileges provided by law.

(e) **Counterparts and Confirmations.**

(i) This Agreement (and each amendment, modification and waiver in respect of it) may be executed and delivered in counterparts (including by facsimile transmission), each of which will be deemed an original.

(ii) The parties intend that they are legally bound by the terms of each Transaction from the moment they agree to those terms (whether orally or otherwise). A Confirmation shall be entered into as soon as practicable and may be executed and delivered in counterparts (including by facsimile transmission) or be created by an exchange of telexes or by an exchange of electronic messages on an electronic messaging system, which in each case will be sufficient for all purposes to evidence a binding supplement to this Agreement. The parties will specify therein or through another effective means that any such counterpart, telex or electronic message constitutes a Confirmation.

(f) **No Waiver of Rights.** A failure or delay in exercising any right, power or privilege in respect of this Agreement will not be presumed to operate as a waiver, and a single or partial exercise of any right, power or privilege will not be presumed to preclude any subsequent or further exercise, of that right, power or privilege or the exercise of any other right, power or privilege.

(g) **Headings.** The headings used in this Agreement are for convenience of reference only and are not to affect the construction of or to be taken into consideration in interpreting this Agreement.

## 10. Offices; Multibranch Parties

- (a) If Section 10(a) is specified in the Schedule as applying, each party that enters into a Transaction through an Office other than its head or home office represents to the other party that, notwithstanding the place of booking office or jurisdiction of incorporation or organization of such party, the obligations of such party are the same as if it had entered into the Transaction through its head or home office. This representation will be deemed to be repeated by such party on each date on which a Transaction is entered into.
- (b) Neither party may change the Office through which it makes and receives payments or deliveries for the purpose of a Transaction without the prior written consent of the other party.
- (c) If a party is specified as a Multibranch Party in the Schedule, such Multibranch Party may make and receive payments or deliveries under any Transaction through any Office listed in the Schedule, and the Office through which it makes and receives payments or deliveries with respect to a Transaction will be specified in the relevant Confirmation.

#### 11. Expenses

A Defaulting Party will, on demand, indemnify and hold harmless the other party for and against all reasonable out-of-pocket expenses, including legal fees and Stamp Tax, incurred by such other party by reason of the enforcement and protection of its rights under this Agreement or any Credit Support Document to which the Defaulting Party is a party or by reason of the early termination of any Transaction, including, but not limited to, costs of collection.

#### 12. Notices

(a) **Effectiveness.** Any notice or other communication in respect of this Agreement may be given in any manner set forth below (except that a notice or other communication under Section 5 or 6 may not be given by facsimile transmission or electronic messaging system) to the address or number or in accordance with the electronic messaging system details provided (see the Schedule) and will be deemed effective as indicated:

- (i) if in writing and delivered in person or by courier, on the date it is delivered;
- (ii) if sent by telex, on the date the recipient's answer back is received;
- (iii) if sent by facsimile transmission, on the date that transmission is received by a responsible employee of the recipient in legible form (it being agreed that the burden of proving receipt will be on the sender and will not be met by a transmission report generated by the sender's facsimile machine);
- (iv) if sent by certified or registered mail (airmail, if overseas) or the equivalent (return receipt requested), on the date that mail is delivered or its delivery is attempted; or
- (v) if sent by electronic messaging system, on the date that electronic message is received,

unless the date of that delivery (or attempted delivery) or that receipt, as applicable, is not a Local Business Day or that communication is delivered (or attempted) or received, as applicable, after the close of business on a Local Business Day, in which case that communication shall be deemed given and effective on the first following day that is a Local Business Day.

(b) **Change of Addresses.** Either party may by notice to the other change the address, telex or facsimile number or electronic messaging system details at which notices or other communications are to be given to it.

#### 13. Governing Law and Jurisdiction

(a) **Governing Law.** This Agreement will be governed by and construed in accordance with the law specified in the Schedule.

(b) **Jurisdiction.** With respect to any suit, action or proceedings relating to this Agreement ("Proceedings"), each party irrevocably:

- (i) submits to the jurisdiction of the English courts, if this Agreement is expressed to be governed by English law, or to the non-exclusive jurisdiction of the courts of the State of New York and the United States District Court located in the Borough of Manhattan in New York City, if this Agreement is expressed to be governed by the laws of the State of New York; and
- (ii) waives any objection which it may have at any time to the laying of venue of any Proceedings brought in any such court, waives any claim that such Proceedings have been brought in an inconvenient forum and further waives the right to object, with respect to such Proceedings, that such court does not have any jurisdiction over such party.

Nothing in this Agreement precludes either party from bringing Proceedings in any other jurisdiction (outside, if this Agreement is expressed to be governed by English law, the Contracting States, as defined in Section 1(3) of the Civil Jurisdiction and Judgments Act 1982 or any modification, extension or re-enactment thereof for the time being in force) nor will the bringing of Proceedings in any one or more jurisdictions preclude the bringing of Proceedings in any other jurisdiction.

(c) **Service of Process.** Each party irrevocably appoints the Process Agent (if any) specified opposite its name in the Schedule to receive, for it and on its behalf, service of process in any Proceedings. If for any reason any party's Process Agent is unable to act as such, such party will promptly notify the other party and within 30 days appoint a substitute process agent acceptable to the other party. The parties irrevocably consent to service of process given in the manner provided for notices in Section 12. Nothing in this Agreement will affect the right of either party to serve process in any other manner permitted by law.

(d) **Waiver of Immunities.** Each party irrevocably waives, to the fullest extent permitted by applicable law, with respect to itself and its revenues and assets (irrespective of their use or intended use), all immunity on the grounds of sovereignty or other similar grounds from (i) suit, (ii) jurisdiction of any court, (iii) relief by way of injunction, order for specific performance or for recovery of property, (iv) attachment of its assets (whether before or after judgment) and (v) execution or enforcement of any judgment to which it or its revenues or assets might otherwise be entitled in any Proceedings in the courts of any jurisdiction and irrevocably agrees, to the extent permitted by applicable law, that it will not claim any such immunity in any Proceedings.

#### 14. Definitions

As used in this Agreement:

**"Additional Termination Event"** has the meaning specified in Section 5(b).

**"Affected Party"** has the meaning specified in Section 5(b).

**"Affected Transactions"** means (a) with respect to any Termination Event consisting of an Illegality, Tax Event or Tax Event Upon Merger, all Transactions affected by the occurrence of such Termination Event and (b) with respect to any other Termination Event, all Transactions.

**"Affiliate"** means, subject to the Schedule, in relation to any person, any entity controlled, directly or indirectly, by the person, any entity that controls, directly or indirectly, the person or any entity directly or indirectly under common control with the person. For this purpose, "control" of any entity or person means ownership of a majority of the voting power of the entity or person.

**"Applicable Rate"** means:

- (a) in respect of obligations payable or deliverable (or which would have been but for Section 2(a)(iii)) by a Defaulting Party, the Default Rate;
- (b) in respect of an obligation to pay an amount under Section 6(e) of either party from and after the date (determined in accordance with Section 6(d)(ii)) on which that amount is payable, the Default Rate;
- (c) in respect of all other obligations payable or deliverable (or which would have been but for Section 2(a)(iii)) by a Non-defaulting Party, the Non-default Rate; and

(d) in all other cases, the Termination Rate.

**"Burdened Party"** has the meaning specified in Section 5(b).

**"Change in Tax Law"** means the enactment, promulgation, execution or ratification of, or any change in or amendment to, any law (or in the application or official interpretation of any law) that occurs on or after the date on which the relevant Transaction is entered into.

**"consent"** includes a consent, approval, action, authorization, exemption, notice, filing, registration or exchange control consent.

**"Credit Event Upon Merger"** has the meaning specified in Section 5(b).

**"Credit Support Document"** means any agreement or instrument that is specified as such in this Agreement.

**"Credit Support Provider"** has the meaning specified in the Schedule.

**"Default Rate"** means a rate per annum equal to the cost (without proof or evidence of any actual cost) to the relevant payee (as certified by it) if it were to fund or of funding the relevant amount plus 1% per annum.

**"Defaulting Party"** has the meaning specified in Section 6(a).

**"Early Termination Date"** means the date determined in accordance with Section 6(a) or 6(b)(iv).

**"Event of Default"** has the meaning specified in Section 5(a) and, if applicable, in the Schedule.

**"Illegality"** has the meaning specified in Section 5(b).

**"Indemnifiable Tax"** means any Tax other than a Tax that would not be imposed in respect of a payment under this Agreement but for a present or former connection between the jurisdiction of the government or taxation authority imposing such Tax and the recipient of such payment or a person related to such recipient (including, without limitation, a connection arising from such recipient or related person being or having been a citizen or resident of such jurisdiction, or being or having been organized, present or engaged in a trade or business in such jurisdiction, or having or having had a permanent establishment or fixed place of business in such jurisdiction, but excluding a connection arising solely from such recipient or related person having executed, delivered, performed its obligations or received a payment under, or enforced, this Agreement or a Credit Support Document).

**"Law"** includes any treaty, law, rule or regulation (as modified, in the case of tax matters, by the practice of any relevant governmental revenue authority) and **"lawful"** and **"unlawful"** will be construed accordingly.

**"Local Business Day"** means, subject to the Schedule, a day on which commercial banks are open for business (including dealings in foreign exchange and foreign currency deposits) (a) in relation to any obligation under Section 2(a)(i), in the place(s) specified in the relevant Confirmation or, if not so specified, as otherwise agreed by the parties in writing or determined pursuant to provisions contained, or incorporated by reference, in this Agreement, (b) in relation to any other payment, in the place where the relevant account is located and, if different, in the principal financial center, if any, of the currency of such payment, (c) in relation to any notice or other communication, including notice contemplated under Section 5(a)(i), in the city specified in the address for notice provided by the recipient and, in the case of a notice contemplated by Section 2(b), in the place where the relevant new account is to be located and (d) in relation to Section 5(a)(v)(2), in the relevant locations for performance with respect to such Specified Transaction.

**"Loss"** means, with respect to this Agreement or one or more Terminated Transactions, as the case may be, and a party, the Termination Currency Equivalent of an amount that party reasonably determines in good faith to be its total losses and costs (or gain, in which case expressed as a negative number) in connection with this Agreement or that Terminated Transaction or group of Terminated Transactions, as the case may be, including any loss of bargain, cost of funding or, at the election of such party but without duplication, loss or cost incurred as a result of its terminating, liquidating, obtaining or reestablishing any hedge or related trading position (or any gain resulting from any of them). Loss includes losses and costs (or gains) in respect of any payment or delivery required to have been made (assuming satisfaction of each applicable condition precedent) on or before the relevant Early Termination Date and not made, except, so as to avoid duplication, if Section 6(e)(i)(1) or (3) or 6(e)(ii)(2)(A) applies. Loss does not include a party's legal fees and out-of-pocket expenses referred to under Section 11. A party will determine its Loss as of the relevant Early Termination Date, or, if that is not reasonably practicable, as of the earliest date thereafter as is reasonably

practicable. A party may (but need not) determine its Loss by reference to quotations of relevant rates or prices from one or more leading dealers in the relevant markets.

**"Market Quotation"** means, with respect to one or more Terminated Transactions and a party making the determination, an amount determined on the basis of quotations from Reference Market-makers. Each quotation will be for an amount, if any, that would be paid to such party (expressed as a negative number) or by such party (expressed as a positive number) in consideration of an agreement between such party (taking into account any existing Credit Support Document with respect to the obligations of such party) and the quoting Reference Market-maker to enter into a transaction (the "Replacement Transaction") that would have the effect of preserving for such party the economic equivalent of any payment or delivery (whether the underlying obligation was absolute or contingent and assuming the satisfaction of each applicable condition precedent) by the parties under Section 2(a)(i) in respect of such Terminated Transaction or group of Terminated Transactions that would, but for the occurrence of the relevant Early Termination Date, have been required after that date. For this purpose, Unpaid Amounts in respect of the Terminated Transaction or group of Terminated Transactions are to be excluded but, without limitation, any payment or delivery that would, but for the relevant Early Termination Date, have been required (assuming satisfaction of each applicable condition precedent) after that Early Termination Date is to be included. The Replacement Transaction would be subject to such documentation as such party and the Reference Market-maker may, in good faith, agree. The party making the determination (or its agent) will request each Reference Market-maker to provide its quotation to the extent reasonably practicable as of the same day and time (without regard to different time zones) on or as soon as reasonably practicable after the relevant Early Termination Date. The day and time as of which those quotations are to be obtained will be selected in good faith by the party obliged to make a determination under Section 6(e), and, if each party is so obliged, after consultation with the other. If more than three quotations are provided, the Market Quotation will be the arithmetic mean of the quotations, without regard to the quotations having the highest and lowest values. If exactly three such quotations are provided, the Market Quotation will be the quotation remaining after disregarding the highest and lowest quotations. For this purpose, if more than one quotation has the same highest value or lowest value, then one of such quotations shall be disregarded. If fewer than three quotations are provided, it will be deemed that the Market Quotation in respect of such Terminated Transaction or group of Terminated Transactions cannot be determined.

**"Non-default Rate"** means a rate per annum equal to the cost (without proof or evidence of any actual cost) to the Non-defaulting Party (as certified by it) if it were to fund the relevant amount.

**"Non-defaulting Party"** has the meaning specified in Section 6(a).

**"Office"** means a branch or office of a party, which may be such party's head or home office.

**"Potential Event of Default"** means any event which, with the giving of notice or the lapse of time or both, would constitute an Event of Default.

**"Reference Market-makers"** means four leading dealers in the relevant market selected by the party determining a Market Quotation in good faith (a) from among dealers of the highest credit standing which satisfy all the criteria that such party applies generally at the time in deciding whether to offer or to make an extension of credit and (b) to the extent practicable, from among such dealers having an office in the same city.

**"Relevant Jurisdiction"** means, with respect to a party, the jurisdictions (a) in which the party is incorporated, organized, managed and controlled or considered to have its seat, (b) where an Office through which the party is acting for purposes of this Agreement is located, (c) in which the party executes this Agreement and (d) in relation to any payment, from or through which such payment is made.

**"Scheduled Payment Date"** means a date on which a payment or delivery is to be made under Section 2(a)(i) with respect to a Transaction.

**"Set-off"** means set-off, offset, combination of accounts, right of retention or withholding or similar right or requirement to which the payer of an amount under Section 6 is entitled or subject (whether arising under this Agreement, another contract, applicable law or otherwise) that is exercised by, or imposed on, such payer.

**"Settlement Amount"** means, with respect to a party and any Early Termination Date, the sum of:

- (a) the Termination Currency Equivalent of the Market Quotations (whether positive or negative) for each Terminated Transaction or group of Terminated Transactions for which a Market Quotation is determined; and



(b) such party's Loss (whether positive or negative and without reference to any Unpaid Amounts) for each Terminated Transaction or group of Terminated Transactions for which a Market Quotation cannot be determined or would not (in the reasonable belief of the party making the determination) produce a commercially reasonable result.

**"Specified Entity"** has the meaning specified in the Schedule.

**"Specified Indebtedness"** means, subject to the Schedule, any obligation (whether present or future, contingent or otherwise, as principal or surety or otherwise) in respect of borrowed money.

**"Specified Transaction"** means, subject to the Schedule, (a) any transaction (including an agreement with respect thereto) now existing or hereafter entered into between one party to this Agreement (or any Credit Support Provider of such party or any applicable Specified Entity of such party) and the other party to this Agreement (or any Credit Support Provider of such other party or any applicable Specified Entity of such other party) which is a rate swap transaction, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap, equity or equity index option, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option or any other similar transaction (including any option with respect to any of these transactions), (b) any combination of these transactions and (c) any other transaction identified as a Specified Transaction in this Agreement or the relevant confirmation.

**"Stamp Tax"** means any stamp, registration, documentation or similar tax.

**"Tax"** means any present or future tax, levy, impost, duty, charge, assessment or fee of any nature (including interest, penalties and additions thereto) that is imposed by any government or other taxing authority in respect of any payment under this Agreement other than a stamp, registration, documentation or similar tax.

**"Tax Event"** has the meaning specified in Section 5(b).

**"Tax Event Upon Merger"** has the meaning specified in Section 5(b).

**"Terminated Transactions"** means with respect to any Early Termination Date (a) if resulting from a Termination Event, all Affected Transactions and (b) if resulting from an Event of Default, all Transactions (in either case) in effect immediately before the effectiveness of the notice designating that Early Termination Date (or, if "Automatic Early Termination" applies, immediately before that Early Termination Date).

**"Termination Currency"** has the meaning specified in the Schedule.

**"Termination Currency Equivalent"** means, in respect of any amount denominated in the Termination Currency, such Termination Currency amount and, in respect of any amount denominated in a currency other than the Termination Currency (the "Other Currency"), the amount in the Termination Currency determined by the party making the relevant determination as being required to purchase such amount of such Other Currency as at the relevant Early Termination Date, or, if the relevant Market Quotation or Loss (as the case may be), is determined as of a later date, that later date, with the Termination Currency at the rate equal to the spot exchange rate of the foreign exchange agent (selected as provided below) for the purchase of such Other Currency with the Termination Currency at or about 11:00 a.m. (in the city in which such foreign exchange agent is located) on such date as would be customary for the determination of such a rate for the purchase of such Other Currency for value on the relevant Early Termination Date or that later date. The foreign exchange agent will, if only one party is obliged to make a determination under Section 6(e), be selected in good faith by that party and otherwise will be agreed by the parties.

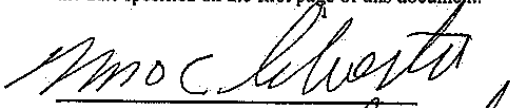
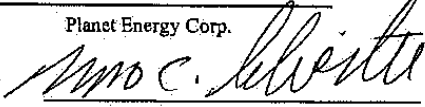
**"Termination Event"** means an Illegality, a Tax Event or a Tax Event Upon Merger or, if specified to be applicable, a Credit Event Upon Merger or an Additional Termination Event.

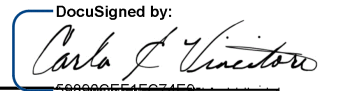
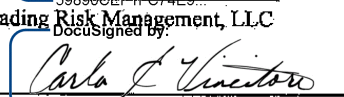
**"Termination Rate"** means a rate per annum equal to the arithmetic mean of the cost (without proof or evidence of any actual cost) to each party (as certified by such party) if it were to fund or of funding such amounts.

**"Unpaid Amounts"** owing to any party means, with respect to an Early Termination Date, the aggregate of (a) in respect of all Terminated Transactions, the amounts that became payable (or that would have become payable but for Section 2(a)(iii)) to such party under Section 2(a)(i) on or prior to such Early Termination Date and which remain unpaid as at such Early Termination Date and (b) in respect of each Terminated Transaction, for each obligation under Section 2(a)(i) which was (or would have been but for Section 2(a)(iii)) required to be settled by delivery to such party on or prior to such Early Termination Date and which has not been so settled as at such Early Termination Date, an amount equal to the fair market value of that which was (or would have been)

so settled as at such Early Termination Date, an amount equal to the fair market value of that which was (or would have been) required to be delivered as of the originally scheduled date for delivery, in each case together with (to the extent permitted under applicable law) interest, in the currency of such amounts, from (and including) the date such amounts or obligations were or would have been required to have been paid or performed to (but excluding) such Early Termination Date, at the Applicable Rate. Such amounts of interest will be calculated on the basis of daily compounding and the actual number of days elapsed. The fair market value of any obligation referred to in clause (b) above shall be reasonably determined by the party obliged to make the determination under Section 6(e) or, if each party is so obliged, it shall be the average of the Termination Currency Equivalents of the fair market values reasonably determined by both parties.

IN WITNESS WHEREOF the parties have executed this document on the respective dates specified below with effect from the date specified on the first page of this document.

  
 Planet Energy Corp.  
 By:   
 Name: Nino Silvestri  
 Title: Co-CEO  
 Date: October 1, 2017

DocuSigned by:  
  
 58890CEE1FC74E9  
 Shell Trading Risk Management, LLC  
 DocuSigned by:  
  
 58890CEE1FC74E9  
 Name: Carla E Vincitore  
 Title: President  
 Date: October 1, 2017

## SECOND AMENDED AND RESTATED MASTER SWAP AGREEMENT

This **Second Amended and Restated Master Swap Agreement** is entered into as of October 1, 2017 (the “Effective Date”) between **Planet Energy (Ontario) Corp.**, a corporation formed under the Canada Business Corporations Act (and survivor of an amalgamation with Planet Energy Corp., a corporation formed under the Canada Business Corporations Act) (herein “Counterparty”) and **Shell Energy North America (Canada) Inc.** (herein “Shell Energy”), and supersedes and replaces that certain Amended and Restated Master Swap Agreement between the parties hereto dated as of April 27, 2011. Additional definitions for capitalized terms used in this Agreement and any Confirmation are provided in Annex I and Annex II.

1. Master Agreement. This Amended and Restated Master Swap Agreement and all Confirmations constitute a single agreement between the parties (collectively, the “Agreement”). This Agreement will govern all Transactions entered into between the parties from time to time.

2. Transactions. Transactions shall be entered into primarily upon the agreement of the parties in a telephone conversation that may be recorded. Each party hereby consents to the recording of conversations between the parties without any further notice. The parties intend to be legally bound by the terms of each Transaction from the moment they agree to those terms (whether orally or otherwise). As a material part of the consideration for entering into this Agreement, each party agrees not to contest or assert any defense to the validity or enforceability of Transactions entered into in accordance with this Agreement (i) based on any law requiring certain agreements to be in writing or to be signed by such party, or (ii) based on any lack of authority of the party or of any employee or other personnel of the party to enter into a Transaction.

3. Confirmations. Shell Energy shall execute and send a Confirmation to Counterparty promptly after agreement to a Transaction and Counterparty agrees to promptly execute such Confirmation and return it to Shell Energy. If Counterparty has not either notified Shell Energy of a bona fide error in the Confirmation or executed and returned the Confirmation within three (3) Business Days after it was received by Counterparty, the Confirmation shall be deemed binding as sent.

4. Payments. All payments will be made in Canadian Dollars via wire transfer in immediately available funds on the relevant Payment Date (or if not a Business Day, on the next Business Day). Any amounts not paid when due shall accrue interest daily until paid in full at the Interest Rate based on the actual number of days elapsed. All payments due on the same day for two or more Transactions shall be offset and netted against each other, and the party owing the greater amount shall pay the difference to the other party. Notwithstanding the foregoing, each party’s obligations to make payments in connection with Transactions shall be subject to the conditions precedent that (i) no Event of Default or event which, with the giving of notice or the lapse of time or both, would constitute an Event of Default with respect to the other party has occurred and is continuing, and (ii) no Early Termination Date has occurred or been effectively designated.

5. Credit Terms. In addition to the credit support provided to Shell Energy pursuant to one or more of the Transaction Agreements (as defined in the Global Agreement), Counterparty will provide additional performance assurance to Shell Energy as may be required by the Global Agreement.

6. Representations. On the date hereof and on each date the parties enter into a Transaction, each party represents and warrants to the other that: (i) it is duly authorized to enter into this Agreement and to perform its obligations hereunder; (ii) the person executing this Agreement is duly authorized to do so; (iii) its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with its terms, except as enforceability may be limited by the effect of any applicable bankruptcy, insolvency, reorganization or similar laws affecting creditors’ rights generally and by general principles of equity; (iv) it has entered into this Agreement (including each Transaction evidenced hereby) in connection with the conduct of its business or to manage the risk associated with an asset or liability owned or incurred by it in the conduct of its business; (v) with respect to commodity derivative Transactions, it is a seller, buyer, trader, producer, marketer or broker or otherwise uses such commodity in its business and as a consequence enters into such Transactions; (vi) it is an “accredited investor” as that term is defined in National Instrument 45-106 – Prospectus and Registration Exemptions and a “permitted client” within the meaning of National Instrument 31-103 - Registration Requirements and Exemptions; (vii) it has consulted with its own legal, regulatory, tax, business, investment, financial, and accounting advisors to the extent it has deemed necessary, and it has made its own investment, hedging, and trading decisions based upon its own judgment and upon advice from such advisors, and not upon any view expressed by the other party; (viii) it is not relying upon any representations (whether written or oral) of the other party other than the representations expressly set forth in this Agreement; (ix) it is entering into this Agreement and each Transaction with a full understanding of all of the risks hereof and thereof (economic and otherwise), and it is capable of assuming and willing to assume (financially and otherwise) those risks; (x) its decisions with respect to this Agreement and each Transaction have been the result of arm’s length, individual negotiations between the parties; (xi) it is acting for its own account, as a principal only, and not as an agent, fiduciary or in any other capacity; (xii) it is not a non-resident of Canada for purposes of the *Income Tax Act* (Canada); and (xiii) other than as provided for herein, it is not required by any applicable law, as modified by the practice of any relevant governmental revenue authority, of any relevant jurisdiction to make any deduction or withholding for or on account of any tax from any payment to be made by it to the other party under this Agreement. In making this representation, it is relying on the accuracy of the representation made to it by the other party in paragraph 6(xii).

Additional representations specific to the jurisdiction of the Counterparty are set out in Annex II hereto.

7. Events of Default; Change of Law Determination. (A) An

event of default (“Event of Default”) shall mean with respect to a party (the “Defaulting Party”) or, if applicable, the Guarantor of such party, any of the following: (a) the failure by such party or its Guarantor, if any, to make, when due, any payment required under this Agreement or any Guaranty if such failure is not remedied within three (3) Business Days after written notice; (b) any representation or warranty made by such party or its Guarantor, if any, in this Agreement or any Guaranty is or was false or misleading in any material respect; (c) the breach by such party or its Guarantor, if any, of any covenant or obligation set forth in this Agreement or any Guaranty (other than obligations constituting a separate Event of Default under this Section 7), and such breach is not cured within ten (10) Business Days after written notice; (d) the occurrence of an Insolvency Event; (e) the occurrence of a Merger Event; (f) the expiration, termination or failure of a Guaranty given on behalf of a party to remain in full force and effect (other than in accordance with its terms) until satisfaction of all obligations of such party under this Agreement; or (g) with respect to Counterparty, an “Event of Default” as defined in the Global Agreement as occurred; (B) Change of Law Determination. Upon the occurrence of a Change of Law Determination, Shell Energy shall, by written notice to Counterparty, designate a day no earlier than the day such notice is effective as an Early Termination Date with respect to the affected Transactions. The affected Transactions shall be terminated pursuant to Paragraph 8 hereof, with Shell Energy acting as the non-defaulting party for purposes of calculating and providing notice of the Termination Payment; provided, however, if less than all of the outstanding Transactions are affected by the Change of Law Determination, then (i) only the affected Transaction(s) shall be terminated, (ii) all Transactions that are not affected by the Change of Law Determination shall remain in full force and effect, (iii) the Termination Payment with respect to the Terminated Transactions shall be determined by aggregating the Settlement Amount of all affected Transactions into a net amount owed to or from Shell Energy, and (iv) the Termination Payment shall not include Unpaid Amounts owed by either party.

8. Remedies. If an Event of Default occurs and is continuing, the non-defaulting party may, by written notice to the Defaulting Party, designate a day no earlier than the day such notice is effective as an early termination date (“Early Termination Date”). On the Early Termination Date, all obligations due on or after the Early Termination Date under (x) all Transactions in the case of an Event of Default, and (y) all affected Transactions between Shell Energy and Counterparty under this Agreement, in the case of a Change in Law Determination (the “Terminated Transactions”) shall be terminated except as provided herein. If an Early Termination Date has been designated, the non-defaulting party shall in good faith calculate the Settlement Amount of all Terminated Transactions as of the Early Termination Date (or as soon thereafter as reasonably practicable). The non-defaulting party shall aggregate all amounts due between the parties into a single net amount (the “Termination Payment”) by aggregating or setting off, as appropriate, (i) the Settlement Amount for each Terminated Transactions, (ii) all Unpaid Amounts owed to the non-defaulting party, and (iii) all Unpaid Amounts owed to the Defaulting Party. The non-defaulting party shall notify the Defaulting Party in writing of the amount of the Termination

Payment and whether the Termination Payment is due to or from the Defaulting Party. The party owing the Termination Payment shall pay it to the other party within two (2) Business Days after the effective date of such notice, with interest at the Interest Rate from the Early Termination Date until paid.

9. Consequential Damages. **No party shall be required to pay special, exemplary, punitive, incidental, consequential or indirect damages (whether or not arising from a party’s negligence) to the other party, except to the extent that the payments required to be made pursuant to this Agreement are deemed to be such damages. If and to the extent any payment made pursuant to this Agreement is deemed to constitute liquidated damages, the parties acknowledge and agree that damages are difficult or impossible to determine and that such payment is intended to be a reasonable and genuine pre-estimate and an approximation of the amount of such damages and not a penalty.**

10. Setoff. If an Early Termination Date is designated, the non-defaulting party shall be entitled, in its sole discretion, to setoff any amount payable by the non-defaulting party or any of its Affiliates to the Defaulting Party under this Agreement or otherwise, against any amounts payable by the Defaulting Party to the non-defaulting party or any of its Affiliates under this Agreement or otherwise. This Section 10 shall be in addition to any right of setoff or other right and remedies to which any party is otherwise entitled (whether by operation of law, contract or otherwise). If an obligation is unascertained, the non-defaulting party may in good faith estimate that obligation and setoff in respect of the estimate, subject to the non-defaulting party accounting to the Defaulting Party when the obligation is ascertained.

11. Market Disruption Events. If a Market Disruption Event has occurred and is continuing on any Pricing Date, the Floating Price for such Pricing Date shall be determined pursuant to the Floating Price Source for the first day thereafter on which no Market Disruption Event exists; provided, however, if the Floating Price is not so determined within three (3) Business Days after the first day on which the Market Disruption Event occurred or existed, then the parties shall negotiate in good faith to agree on a Floating Price (or a method for determining a Floating Price), and if the parties have not so agreed on or before the tenth (10<sup>th</sup>) Business Day following the first day on which the Market Disruption Event occurred or existed, then the Floating Price shall be determined in good faith by Shell Energy, by taking the average of two or more dealer quotes. Notwithstanding the foregoing, in the event that a Floating Price has been determined pursuant to this Section and at a later date the responsible exchange, publication or market announces or publishes the relevant Floating Price, then such Floating Price shall be used by the parties.

12. Waiver of Jury Trial. Each party waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in respect of any suit, action or proceeding relating to this Agreement or any Confirmation.

13. Notices. Unless otherwise specified, any demand, notice or other communication to be given hereunder shall be in writing and delivered personally, by overnight courier service,

by certified mail, postage prepaid and return receipt requested, or by facsimile, to the addresses set forth in this Agreement, or such other addresses as may be subsequently designated by effective notice. Notice shall be effective upon actual receipt, or, if receipt is refused or rejected, upon attempted delivery.

14. Miscellaneous. (A) Governing law: This Agreement shall be governed by, interpreted and construed in accordance with the laws of the Province of Alberta. (B) Binding Effect; Assignment. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns. Neither party shall assign or transfer this Agreement or any of its rights or obligations hereunder except as may be permitted in the Global Agreement. Any assignment in violation of the foregoing provisions shall be void. (C) Entire Agreement. This Agreement contains the entire agreement between the parties and supersedes all prior oral or written agreements relating to the subject matter hereof. (D) Attorney's Fees. Any party in default hereunder shall reimburse the other party, on demand, for actual, reasonable out-of-pocket expenses (with interest at the Interest Rate), including, without limitation, reasonable legal fees and expenses incurred by the other party in connection with the enforcement of this Agreement. (E) Amendments; Survival. No amendments to this Agreement will be effective unless in writing and executed by both parties. Unless otherwise terminated pursuant to Section 8, the obligations of the parties under this Agreement shall survive the termination of any Transaction and the provisions of this Agreement shall continue to be effective until the parties agree otherwise in writing. This Agreement may be executed in counterparts (including by facsimile), each of which when executed and delivered shall be deemed to constitute one and the same agreement. (F) Choice of Language. The parties acknowledge that they have required that this Agreement and all documents, notices or other communications in connection with this Agreement to be prepared and executed in the English language only. *Les parties aux présentes ont requis que la présente convention et tout document, avis, renonciation, consentement et autre communication qui s'y rattache sont rédigés et signés en langue anglais seulement et s'en déclarent satisfaites.*

15. Equivalency Clause. For purposes of disclosure pursuant to the *Interest Act* (Canada), the yearly rate of interest to which any rate of interest payable under this Agreement, which is to be calculated on any basis other than a full calendar year, is equivalent may be determined by multiplying such rate by a fraction the numerator of which is the number of days in the calendar year in which the period for which interest at such rate is payable ends and the denominator of which is the number of days comprising such other basis.

16. Bankruptcy. Without limiting the applicability of any other provision of any Canadian insolvency legislation, the parties acknowledge and agree that this Agreement and all Transactions entered into hereunder constitute "eligible financial contracts" as defined in the *Bankruptcy and Insolvency Act* (Canada), the *Companies' Creditors Arrangement Act* (Canada), the *Winding-up and Restructuring Act* (Canada), and, if Counterparty is a Canadian bank or trust

company, the *Canada Deposit Insurance Corporations Act* (Canada).

17. Documents to be Delivered. Concurrently with the execution and delivery of this Agreement, Counterparty shall furnish to Shell Energy (i) an incumbency certificate and specimen signatures of its officer or other authorized representatives executing this Agreement; and (ii) a certified copy of the resolutions of its board of directors (or other governing body) authorizing the execution and delivery of this Agreement.

18. Confidentiality. The parties shall abide by the confidentiality provisions set forth in the Global Agreement.

19. Program Fees. Counterparty shall pay Shell Energy the applicable Program Fees (as defined in the Global Agreement) with respect to all notional volumes transacted under this Agreement directly between Shell Energy and Counterparty, and with respect to all volumes purchased by Counterparty from an ISO as set forth in the Global Agreement. The foregoing Program Fees shall be in addition to the payments for such notional volumes specified in each Confirmation and in addition to any other expense, cost or fee described in this Agreement. The Program Fees shall be earned by Shell Energy when the Confirmation relating to such notional volumes has been entered into, or when such volumes are purchased from the ISO, as the case may be, and shall be due and payable on the payment date for the settlement of such notional volumes as specified in the Confirmation with respect to volumes transacted directly between Shell Energy and Counterparty, or the 20th day of the month following the month of purchase with respect to volumes purchased from an ISO, as the case may be, and shall be due and payable upon any designated Early Termination Date, or if the parties hereto agree in writing to novate Counterparty's rights and obligations with respect to any Confirmation to a third party, such Program Fees shall be due and payable upon the effectiveness of the novation. For purposes of clarity, the Program Fee shall apply to any transactions entered into prior to the date hereof that were unsettled as of the Effective Date (as defined in the Global Agreement) that are now governed by this Agreement.

20. Sleeving Services. Upon request by Counterparty and upon satisfaction of conditions set forth in the Sleeving Procedures (as defined in the Global Agreement) and any other requirements set forth in the Global Agreement, Shell Energy will act as a "sleeve" for Counterparty in exchange for the Sleeving Fee (as defined in the Global Agreement) and any other fees required by the Global Agreement. The Sleeving Fee shall be included in the price of such transaction as set forth in the Sleeving Procedures.

21. Supply Buckets. Counterparty acknowledges that, regardless of its need to minimize its financial exposure at any particular time, Shell Energy is not obligated to enter into any Transaction with Counterparty where at any time the obligations of the Shell Parties (as defined in the Global Agreement) under the aggregate of all outstanding transactions between the Shell Parties and the Customer Parties (as defined in the Global Agreement) would require the Shell Parties to deliver commodities or have any exposure

from financial derivatives to or with the Customer Parties in excess of the volumes specified in the Supply Buckets (as defined in the Global Agreement). For the avoidance of doubt, the limitation imposed by the Supply Buckets is intended to assist the parties in planning and forecasting and is not intended to be indicative of the notional volumes to be traded between the parties.

Amended and Restated Master Swap Agreement between the parties dated April 27, 2011. The parties further agree that, except as may be expressly agreed between the parties in writing, any Transaction which is entered into before, on or after the Effective Date shall be governed by this Agreement, and is part of this single integrated agreement between the parties.

22. Second Amended and Restated Agreement. The parties confirm that this Agreement shall supersede and replace the

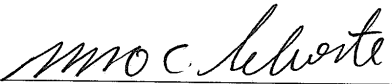
***Signature Page Immediately to Follow***

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered as of the date first above written.

**SHELL ENERGY NORTH AMERICA (CANADA) INC.**

**PLANET ENERGY (ONTARIO) CORP.**

By: \_\_\_\_\_

By: 

Name: \_\_\_\_\_

Name: Nino Silvestri

Title: \_\_\_\_\_

Title: Co-CEO

Shell Energy's Address for Notices:

Planet Energy (Ontario) Corp.'s Address for Notices:


Shell Energy North America (Canada) Inc.  
400-4<sup>TH</sup> Avenue S.W.  
P.O. Box 100, Station M  
Calgary, Alberta T2P 0J4  
Attention: Contracts North America  
Facsimile No.: 403-216-3601  
Telephone No.: 877-504-2491

Planet Energy (Ontario) Corp.  
5255 Yonge Street, Suite 1500  
Toronto, ON, M2N 6P4  
Attention: Nino Silvestri  
Facsimile No.: n/a  
Telephone No.: 416-250-7117  
Email: nsilvestri@planetenergy.ca

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered as of the date first above written.

**SHELL ENERGY NORTH AMERICA (CANADA) INC.**

**PLANET ENERGY (ONTARIO) CORP.**

By:   
Name: A.J. (Drew) Harris  
Title: Senior Vice President

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Shell Energy's Address for Notices:

Shell Energy North America (Canada) Inc.  
400-4<sup>TH</sup> Avenue S.W.  
P.O. Box 100, Station M  
Calgary, Alberta T2P 0J4  
Attention: Contracts North America  
Facsimile No.: 403-216-3601  
Telephone No.: 877-504-2491

Planet Energy (Ontario) Corp.'s Address for Notices:

5255 Yonge St., Suite 1500  
North York, ON M2N 5P8  
Attention: Nino Silvestri and Stephen Plummer  
Email: [Nino.Silvestri@planetenergy.ca](mailto:Nino.Silvestri@planetenergy.ca)  
[splummer@energlobeenergy.com](mailto:splummer@energlobeenergy.com)



**ANNEX I**  
**TO AMENDED AND RESTATED MASTER SWAP AGREEMENT**

**Additional Definitions**

“Affiliate” means any entity controlled, directly or indirectly, by the party, any entity that controls, directly or indirectly, the party or any entity directly or indirectly under common control with the party. Control means ownership of a majority of the voting power of such entity or party. With respect to Shell Energy, “Affiliate” shall mean any subsidiary of Shell Energy for purposes of Section 10 hereof.

“Agreement” means the Amended and Restated Master Swap Agreement and all Confirmations.

“Automatic Exercise” means, with respect to an Option, that it is deemed to be exercised at the Expiration Date if at such time the Buyer is in-the-money.

“Business Day” means a day on which commercial banks are open for business in New York, New York, and in the city in which Counterparty is located; provided, however, that “Business Day” shall not include a Saturday, Sunday, the Friday immediately following the U.S. Thanksgiving holiday or a Federal Reserve Bank Holiday.

“Buyer” means, with respect to an Option, the party paying the Premium to the Seller on the specified Payment Date.

“Calculation Period” means each period specified as such in the Confirmation. If such period is a calendar month, the period commences on the first day of the month and it ends on the last day of the month.

“Call” means a Transaction entitling the Buyer to receive a payment upon exercise if the Floating Price exceeds the Strike Price.

“Change of Law Determination” means it shall be determined by Shell Energy that, as a result of the adoption of, or any change in, any applicable law or regulation after the date on which a Transaction is entered into, (i) it has become unlawful to perform any absolute or contingent obligation to make a payment or receive a payment in respect of such Transaction or to comply with any other material provision of this Agreement relating to such Transaction, (ii) a material adverse change has occurred with respect to the economic risks and benefits incurred by Shell Energy in connection with such Transaction, (iii) any Floating Price relevant to such Transaction has become permanently discontinued or unavailable; or (iv) any Fixed Price relevant to such Transaction has become

subject to a price cap or has otherwise been modified or superseded.

“Confirmation” means the written confirmations exchanged between the parties confirming a Transaction, including by facsimile.

“EO” or “European” means a style of Option that is exercisable only on the Expiration Date.

“Expiration Date” means, with respect to an Option, the date specified in the Confirmation or determined pursuant to a method specified in the Confirmation.

“Fixed Price” means the price per unit specified in the Confirmation.

“Fixed Price Payer” means, in respect of a Swap, a party obligated to make payment of amounts calculated by reference to a Fixed Price.

“Floating Price” means the price per unit determined with reference to a Floating Price Source specified in the Confirmation.

“Floating Price Payer” means, in respect of a Swap, a party obligated to make payment of amounts calculated by reference to a Floating Price.

“Floating Price Source” means the publication or reference, including an exchange (e.g., Alberta Electric System Operator), containing or reporting the Floating Price specified in the Confirmation.

“Global Agreement” means that certain Global Agreement dated as of the date hereof by and among Shell Energy, Shell Energy North America (US), L.P., Shell Trading Risk Management, LLC, Counterparty, any entity that may hereafter become a party thereto as a “Shell Canada Swap Entity”, and any other “Customer Parties” identified therein, as the same may be amended, restated, supplemented or otherwise modified from time to time.

“Guaranty” means, if applicable, any guaranty provided to a party hereto as credit support for the obligations under this Agreement of the other party hereto.

“Insolvency Event” means the party, its Guarantor, if any, or any issuer of a letter of credit provided as credit support hereunder (i) makes a general assignment for the benefit of its creditors, (ii) commences a proceeding under applicable bankruptcy law or other

law for the relief of debtors, (iii) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or readjustment of debts, (iv) a trustee, custodian, conservator, receiver or similar official is appointed for it, or for a substantial part of its property; (v) becomes insolvent or is unable to pay its debts as they become due; or (vi) any involuntary bankruptcy, reorganization, debt arrangement, or other proceeding under any applicable bankruptcy, insolvency or other similar law for the relief of debtors or any dissolution or liquidation proceeding is instituted against the party (including, for greater certainty, a proceeding under a corporate law seeking any relief with respect to any class of creditor).

“Interest Rate” means the Default Rate as defined in the Global Agreement.

“ISO” means any organization that coordinates, controls and monitors the operation of an electrical power system.

“Market Disruption Event” means, with respect to a Floating Price Source, any of the following events (as determined in good faith by Shell Energy): (a) the failure of the Floating Price Source to announce or publish information necessary for determining the Floating Price, (b) the failure of trading to commence or the permanent discontinuance or material suspension of trading in the relevant futures contract, options contract or commodity on the exchange or market (e.g., Alberta Electric System Operator) acting as the Floating Price Source; (c) the temporary or permanent discontinuance or unavailability of any relevant Floating Price Source; (d) the temporary or permanent closing of any exchange acting as the Floating Price Source; (e) a material change in the formula for or the method of determining the Floating Price; or (f) a material change in the content or composition of the commodity or relevant futures contract.

“Merger Event” means, with respect to a party or its Guarantor, if any, that it consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity, and (i) the resulting entity fails to assume all such party’s or Guarantor’s obligations under this Agreement or any Guaranty by operation of law or pursuant to an agreement reasonably satisfactory to the other party; (ii) the creditworthiness of the resulting entity is materially weaker than such party or Guarantor immediately prior to such action, in the reasonable opinion of the other party; or (iii) the benefits of any Guaranty fail to extend to the obligations of such party under this Agreement.

“Notification Time” means 1:00 p.m. eastern prevailing time on a Business Day.

“Notional Quantity” means the quantity, expressed in units, specified in the Confirmation.

“Option” means a Transaction specified as such in the Confirmation, including a Transaction identified as a Call, Put or Swaption.

“Payment Date” means each date specified as such in the Confirmation.

“Premium” means, with respect to an Option, the amount specified in the Confirmation and payable by the Buyer to the Seller.

“Pricing Date” means each date specified in the Confirmation, including (a) where the Floating Price is a price announced or published by an exchange, a day that is a trading day on that exchange, or (b) where not announced or published by an exchange, a day on which the relevant price source published the relevant price.

“Put” means a Transaction entitling the Buyer to receive a payment upon exercise if the Strike Price exceeds the Floating Price.

“Seller” means, with respect to an Option, the party receiving the Premium from the Buyer on the specified Payment Date.

“Settlement Amount” of a Transaction, on any date, means the sum of (i) the amount, as calculated by the non-defaulting party in a commercially reasonable manner, which the non-defaulting party would pay to or receive from a third party in an arm’s-length transaction as consideration for the third party’s entering into a new transaction in which: (a) the non-defaulting party holds the same position as it currently holds in the subject Transaction; (b) the third party holds the same position as the defaulting party holds in the subject Transaction; and (c) the new transaction has economic terms and conditions identical in all respects to the economic terms and conditions of the subject Transaction, except that the date of calculation shall be deemed to be the date of commencement of the new transaction, *plus* (ii) any amounts that would have been owed as Program Fees or Sleeving Fees (each as defined in the Global Agreement) with respect to the subject Transaction. In making such determination, the non-defaulting party may consider, among other things, quotations from leading dealers in the relevant market.

“Strike Price” means, with respect to an Option, the price, expressed as a price per unit, specified in the Confirmation.

“Swap” means a Transaction in which the Floating Price Payer makes a cash payment to the Fixed Price Payer when the Floating Price exceeds the Fixed Price, or a Transaction in which the Fixed Price Payer makes a cash payment to the Floating Price Payer when the Fixed Price exceeds the Floating Price.

“Swaption” means an Option to cause an Underlying Transaction to become effective.

“Transaction” means a Swap, Option or other financially settled derivative transaction entered into between the parties under this Agreement.

“Underlying Transaction” means a Transaction, the terms of which are identified in the Confirmation, which becomes effective upon exercise of the Swaption.

“Unpaid Amounts” means any unpaid amounts due and payable under this Agreement, whether due prior to or after any Early Termination Date (but excluding any Settlement Amounts), including but not limited to attorneys’ fees and other expenses payable pursuant to Section 14(D) hereof.

**ANNEX II**  
**TO AMENDED AND RESTATED MASTER SWAP AGREEMENT**

**Additional Representations**

Alberta:

It is a “Qualified Party” as such term is defined in Alberta Securities Commission Blanket Order 91-503 (Over-the-Counter Derivatives Transactions and Commodity Contracts), as amended, restated, supplemented or replaced from time to time.

British Columbia:

It is a “Qualified Party” as such term is defined in British Columbia Securities Commission Blanket Order 91-501 (Over-the-Counter Derivatives), as amended, restated, supplemented or replaced from time to time.

New Brunswick:

It a “Qualified Party” as such term is defined in New Brunswick Securities Commission Local Rule 91-501 (Derivatives), as amended, restated, supplemented or replaced from time to time.

Quebec:

*If Counterparty is a Canadian bank, registered securities dealer, trust company or insurance company:*

Each party will be deemed to represent to the other party, on the date on which it enters into a Transaction, that it is an “accredited counterparty” within the meaning of the definition of that term in section 3 of the *Derivatives Act* (Quebec) and under the regulations made thereunder, as interpreted by the Autorité des marchés financiers (the “Derivatives Legislation”).

*In all other cases:*

Shell Energy will be deemed to represent to Counterparty, on the date on which it enters into a Transaction, that it is an “accredited counterparty” within the meaning of the definition of that term in section 3 of the *Derivatives Act* (Quebec) and under the regulations made thereunder, as interpreted by the Autorité des marchés financiers (the “Derivatives Legislation”).

Counterparty will be deemed to represent to Shell Energy, on the date on which it enters into a Transaction, that it is an “accredited counterparty” within the meaning of the Derivatives Legislation because:

- (i) *Representation as to status as a hedger.* Counterparty is seeking to “hedge” (within the meaning of “hedging” defined below) its exposure to one or more risks to which it is exposed because of its activities, including supply, credit, exchange and environmental risks and the risk related to fluctuations in the price of an underlying interest, by engaging in a derivatives transaction, or a series of derivatives transactions, where the underlying interest is the underlying interest directly associated with that risk or a related underlying interest;

And, in the case of a derivatives transaction or a series of transactions undertaken by Counterparty which would not come within the definition of “hedging” defined below:

- (ii) *Representation as to accredited counterparty status.* Counterparty has and can establish in a conclusive and verifiable manner that it has:
- (a) the requisite knowledge and experience to evaluate the information provided to it about derivatives, the appropriateness to its needs of proposed derivatives strategies, and the characteristics of the derivatives to be traded on its behalf; and
  - (b) assets consisting of cash, securities, insurance contracts or deposits having an aggregate realizable value, before taxes, but after deduction of the corresponding liabilities, of more than \$10,000,000 or an equivalent amount in another currency.

For purposes of the *Derivatives Act* (Quebec), the term “hedging” means the entering into by Counterparty of a derivatives transaction or series of derivatives transactions (the “Covered Transactions”), and the maintaining of the position or positions resulting from the Covered Transactions if:

1. the intended effect of each Covered Transaction is:
  - (a) to offset or reduce the risk related to fluctuations in the value of an underlying interest or a position, or of a group of underlying interests or positions;

OR

- (b) to substitute a risk to one currency for a risk to another currency provided the aggregate amount of currency risk to which the hedger is exposed is not increased by the substitution;

AND

- 2. the Covered Transaction results in a high degree of negative correlation between the changes in the value of the underlying interest or position or group of underlying interests or positions being hedged and changes in the value of the derivatives with which the value of the underlying interests or positions is hedged;

AND

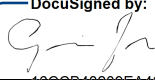
- 3. there are reasonable grounds to believe that the Covered Transaction no more than offsets the effect of price changes in the underlying interest or position, or group of underlying interest or positions being hedged.

If one party ceases, or reasonably believes that it may cease, to be in a position to make the representations made above, such party undertakes to send a written notice to the other party as soon as possible and, in any event, before entering into any Transaction.

Saskatchewan:

It is a "Qualified Party" as such term is defined in the Saskatchewan Financial Services Commission General Order 91-901 (Over-the-Counter-Derivatives), as amended, restated, supplemented or replaced from time to time.

This is Exhibit "D" referred to in the Affidavit of Nino Silvestri sworn by Nino Silvestri of the Town of Oakville, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on May 26, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:  


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10CCB482209F1401  
*Commissioner for Taking Affidavits (or as may be)*

**GAVIN INKSTER LSO# 82737I**

**AMENDED, RESTATED AND ASSIGNED SALES AGENCY AGREEMENT  
CANADA**

**THIS AGREEMENT**, dated as of November 9<sup>th</sup>, 2012, by and between Planet Energy Corp., an Ontario corporation ("PE"), Planet Energy (Ontario) Corp., an Ontario corporation ("PEO"), and Planet Energy (B.C.) Corp., a British Columbia corporation ("PEBC") (PE, PEO and PEBC are collectively referred to herein as "Planet"), and All Communications Network of Canada, Co., a Nova Scotia corporation ("ACN").

**EXPLANATORY STATEMENT**

PE is the holding company for a group of companies, including PEO and PEBC, that together market and sell natural gas and electricity throughout Canada. ACN is a leading network marketing company with relationships with thousands of IBOs throughout Canada. ACN and its affiliates have over the years marketed and sold natural gas and electricity in various geographic areas, both under its own brand and as a sales agent.

PE and ACN have been parties to that certain Sales Agency Agreement initially dated November 19, 2009, which has been amended first on November 30, 2010 and again on April 20, 2011 (the 'SAA'), along with certain of their affiliates, including, as to PE, Planet Energy USA Corp. ("PE USA"), Planet Energy (New York) Corp. ("PE NY"), Planet Energy (Maryland) Corp. ("PE MD"), and Planet Energy (Pennsylvania) Corp. ("PE PA") (PE USA, PE NY, PE MD, and PE PA are together referred to herein as "Planet USA"), and, as to ACN, ACN Opportunity, LLC ("ACN Opp"), ACN Opportunity New York, LLC ("ACN NY", ACN Opportunity Maryland, LLC ("ACN MD"), and ACN Opportunity Pennsylvania, LLC ("ACN PA") (ACN Opp, ACN NY, ACN MD, and ACN PA are collectively referred to herein as "ACN USA"; ACN USA is party to the SAA by prior assignment from LKN Communications, Inc., and ACN Energy, Inc.). PE is, simultaneously with the execution of this Agreement, experiencing a change in control of its outstanding capital stock (the 'Canadian Purchase'), and in connection with that change in control, its shareholder(s) has negotiated certain changes to the SAA that are intended to be evidenced by two separate and distinct amended and restated sales agency agreements; this Agreement to cover the Canadian Territory and the other to cover the US Territory. Under this Agreement, ACN has agreed to waive certain of its rights and the Parties desire for can to continue to deploy its sales and marketing experience and expertise in order to continue to grow Planet's business in Canada. The parties intend that this Agreement be the definitive agreement for ACN to act as a master agent, and for ACN's network of independent sales representatives (the "IBOs") to act as limited agents for Planet to sell electric commodity and natural gas products and related services (the "Energy Products") to retail residential and commercial consumers.

**NOW, THEREFORE**, in consideration of the mutual covenants contained herein and for other good and valuable consideration set forth herein, the sufficiency of which is hereby acknowledged, and intending to be legally bound, the parties hereto agree as follows:

1. **Defined Terms.** The following terms used herein shall have the meaning ascribed to them below:

"Accepted Customer" shall mean those customers produced by ACN whose orders are accepted by Planet and by the applicable local distribution utility.

"ACN Indemnified Person" shall have the meaning ascribed to such term in Section 12 (b).

"ACN Customers" shall mean those customers whose orders are entered into the Online Portal by ACN, or the IBOs, or their customer under this Agreement who become Accepted Customers.

"Agency Period" shall have the meaning ascribed to such term in Section 3(a).

"Business" shall have the meaning given to it in Section 2(a), below.

"Buyout Amount" shall be deleted as a defined term.

"Commissions" shall mean the compensation that ACN pays to the IBOs for producing ACN Customers.

"Energy Products" shall have the meaning ascribed to such term in the Explanatory Statement.

"Energy Subsidiary" shall be deleted as a defined term.

"Gross Margin" shall have the meaning given to it in Section 6(a).

"IBOs" shall have the meaning ascribed to such term in the Explanatory Statement.

"Initial Agency Period" shall have the meaning ascribed to such term in Section 3(a).

"Insolvency Event" shall mean that any of PE, PEO or PEBC:

(a) files any petition or action for relief under any bankruptcy, reorganization, insolvency or moratorium law, or any other law for the relief of, or relating to, debtors, now or hereafter in effect;

(b) applies for or consents to the appointment of a custodian, receiver, trustee, sequestrator, conservator or similar official for it or for a substantial part of its assets;

(c) makes a general assignment for the benefit of creditors;



(d) becomes unable to, or admits in writing its inability to, pay its debts generally as they come due;

(e) takes any action in furtherance of any of the foregoing; or

(f) has filed against it an involuntary petition, which petition is not dismissed or discharged within 60 days of its filing, under any bankruptcy statute now or hereafter in effect, of custodian, receiver, trustee, sequestrator, conservator, assignee for the benefit of creditors or other similar official is appointed to take possession, custody or control of the property of it.

"Liquidity Event" shall be deleted as a defined term.

"Online Portal" shall mean the web-based order entry portal created by Planet pursuant to Section 5(i).

"Planet Indemnified Person" shall have the meaning ascribed to such term in Section 12 (a).

"Standards" shall have the meaning ascribed to such term in Section 2(a).

"Target Margin" shall be determined as follows: Planet and ACN shall agree upon a retail price at which Energy Products will be offered to potential ACN Customers using a formula that A) takes Planet's wholesale energy supply prices and adds an agreed-upon mark up for balancing and various risk premiums to Planet (the "Wholesale Price"), and then B) adds a further agreed-upon mark up that results in a 16% margin (the sum of (A) and (B) is referred to herein as the "Retail Price"). The parties shall meet on a regular basis to determine whether the Retail Price of any particular Energy Product(s) is/are appropriate for market conditions and may mutually agree to increase or decrease the Retail Price for any product(s). The difference between an Energy Product's Wholesale Price and its Retail Price shall be referred to as the "Target Margin" for that Energy Product. For any Energy Product for which the proposed Retail Price is not built on a 16% margin, or existing Energy Product for which the Target Margin is proposed to be reduced below a 16% margin, then ACN must specifically consent in writing to such Energy Product's Retail Price.

"Termination Date" shall have the meaning given to it in Section 3(b).

"Territory" means Ontario—natural gas and electricity markets; British Columbia – natural gas market; –Manitoba -- natural gas market; the Territory may be expanded by mutual agreement of the parties from time to time, and will add by joinder agreement such additional parties to this Agreement as may be necessary to effectuation such expansion.

## 2. Sales Agency.

(a) During the Agency Period, ACN shall provide, or cause to be provided, to Planet ACN's network of IBOs to act as limited agents for Planet to sell Energy Products on behalf of and for the benefit of Planet. ACN shall use its commercially reasonable efforts to cause the IBOs: (i) to sell Energy Products and otherwise promote Planet's retail energy business (the "Business") within the Territory, and (ii) to act as agents for the sale of Energy Products within the Territory, for and on behalf of Planet. Planet shall have the right to cause ACN to direct the IBOs with respect to sales of Energy Products, customer service and regulatory matters in accordance with Planet's licenses or certificates, the statutes, rules, regulations, or policies of the applicable jurisdictions in which Planet has authorized ACN and the IBOs to conduct customer acquisition activities (the "Standards"), but in no event shall it have the right to cause ACN to take any actions (or inaction) with respect to management and oversight of, or the Commissions or other fees paid or payable to, the IBOs.

(b) ACN shall be responsible for directing the IBOs to adhere to the Standards in selling the Energy Products and otherwise in connection with the performance of any obligations of ACN under this Agreement. Neither ACN nor the IBOs shall have the power or authority to act as attorney-in-fact of Planet or bind Planet in any way without the prior written consent of Planet. All customers acquired by the IBOs shall be subject to acceptance by Planet.

(c) ACN's and the IBOs agency on behalf of Planet shall be limited to the following acts: (i) solicitation of customers, (ii) the offering of Planet's Energy Products as set forth in Planet's marketing materials, applications, and sales agreements, or (iii) recommending Planet's Energy Products to retail customers.

(d) ACN's and the IBOs limited agency shall not include (i) the negotiation of prices or rates, terms or conditions of service for Planet's Energy Products, (ii) taking title to Energy Products, (iii) arranging for the purchase, transportation, scheduling or delivery of Energy Products, (iv) interaction or transactions with pipelines, utilities, local distribution companies, other suppliers or marketers, or state or federal energy/utility regulations, or (v) execution of contracts or agreements on behalf of Planet.

(e) Planet shall have the right to cause ACN to take appropriate actions with respect to the conduct of an IBO in order to comply with a notice or inquiry of any applicable Governmental Authority by providing at least 5 days' prior written notice (or such lesser period of notice as may be required by such Governmental Authority) to ACN specifying the applicable remedial or corrective actions required by the Governmental Authority.

(f) ACN shall provide Planet with true and complete copies of all IBO form agreements and updates thereto from time to time, upon Planet's request for same.

(g) In performing this Agreement, ACN agrees to (i)(A) not take any actions that it knows would be harmful in any material respect to the Business of Planet, (B) to use its commercially reasonable efforts to promote the Business in the Territory, and (C) comply with all applicable energy, federal, provincial and local laws, the Standards, and Planet's policies and procedures established in accordance with Section 5(a) hereof as in effect from time to time, and (ii) recognizing that ACN's legal relationship with the IBOs is that of independent contractor, use its commercially reasonable efforts to cause the IBOs to do (or not to do, as applicable) the same within the Territory.

(h) Recognizing ACN's contractual relationship with its IBOs, during the term of this Agreement and/or while an IBO is active with ACN, or for a period of twelve (12) months from the date the IBO became inactive with ACN, Planet will not solicit, recruit, engage, enter into contracts with or otherwise engage in any activity which would allow an IBO to act as a limited agent for Planet as described herein, without the express written consent of ACN. Planet agrees to inform ACN immediately, in the event that an IBO contacts Planet for the purpose of discussing and/or recruitment to act as a limited agent of Planet's. Planet agrees that a breach of this provision would be deemed a material breach of this Agreement and could result in termination of the Agreement, in addition to any other remedies in law or equity that ACN may have.

### **3. Agency Period; Termination; Wind Down Phase.**

(a) This Agreement is effective as of the date hereof and shall continue for a period of two (2) years (the "Initial Agency Period") or until earlier terminated as provided herein. Upon the expiration of the Initial Agency Period, Planet shall have the option to extend the effective term of this Agreement for an additional two (2) years, which it may exercise by providing ACN written notice of its intention to so extend no later than ninety (90) days' prior to the day on which the Initial Agency Period expires. The Initial Agency Period and any successive term(s) shall be together referred to herein as the "Agency Period."

(b) This Agreement may be terminated at any time prior to the expiration of the Agency Period or any successive term, as the case may be, by any of the following:

- (i) by mutual written agreement of the parties;
- (ii) by either party upon the occurrence of a material breach by the other party that remains uncured for a period of thirty (30) days after the breaching party receives written notice describing the breach in reasonable detail from the non-breaching party; or
- (iii) by the giving of proper notice as set forth in Section 3(a), above.

In all cases of notice given to terminate under this Section 3(b), the party giving notice shall specify the date on which this Agreement shall terminate (the "Termination Date").

(c) In the case of termination other than as provided in Section 3(b)(iii), notwithstanding any other provision of this Agreement, any such termination shall be without liability to either party, and shall be managed in compliance with the provisions of Section 3(d), below. Any termination as provided in Section 3(b)(iii) shall be without prejudice to the non-breaching party's right to seek damages for such breach.

(d) Upon termination of this Agreement, this Agreement will enter a wind down phase in which the parties will cooperate to achieve an orderly and gradual cessation (in whatever Agency Period remains) of the IBOs' marketing and making sales of the Energy Products, including the joint and mutually agreeable development of the messaging of such event to the IBOs, and the management of their expectations regarding receiving the Commissions, which will remain ACN's obligation to remit. ACN will cause the IBOs to cease marketing and selling the Energy Products on the Termination Date, but Planet agrees that it will continue to accept, process, provision and make Gross Margin payments to ACN, and continue customary *.xml* file reporting, on all orders entered through the Online Portal up through and including the Termination Date. After the Termination Date, Planet will continue to pay to ACN Gross Margin payments under Section 6 of this Agreement, and provide the customary *.xml* file required by Section 5(e), below, for as long as ACN Customers continue to purchase the Energy Products, and this Agreement will continue in effect as to the remaining 'tail' of these ACN Customers' usage, until there remain no ACN Customers using Energy Products.

(e) Planet agrees that during the time this Agreement remains in effect, including the time during any wind down period and/or after the Termination Date while there remain active ACN Customers, regardless of what Energy Product they consume, regardless of who sold such Energy Product to them, Planet will pay to ACN the Gross Margin payments and, if applicable by circumstances, the Commissions ramp down on their aggregate usage, and will continue to provide the customary *.xml* file required by Section 5(e). Planet will not actively seek to cause ACN Customers to change the Energy Products they purchase (with 'upselling' to additional Energy Products being permitted, but Gross Margin and Commission ramp down payments, if applicable by circumstances, being due thereon), will not change the account numbers or other unique identifier developed inside of Planet's systems to identify customers as ACN Customers, or otherwise attempt to disguise or cull out of the ranks of ACN Customers any faster than they would otherwise out of normal customer-initiated attrition.

**4. Duties of ACN.** ACN will use its commercially reasonable efforts to, within the Territory, cause the IBOs to sell standard offer contracts of the Business as approved by Planet to pre-approved customer credit classes; and will perform the following functions:

(a) ACN will process, reconcile, and make payments to IBOs of commissions out of ACN's Gross Margin share;

(b) ACN will maintain, in accordance with its customary practice, a call center facility with an adequate number of trained CSRs available to answer inbound calls from the IBOs relating to Commissions and other IBO issues;

(c) ACN will give Planet access to ACN's IBO training events and gatherings at which ACN's other training and product/service familiarization is scheduled to occur, as Planet and ACN may mutually agree, so that Planet may assist ACN in training the IBOs about the Energy Products, on Planet's processes and procedures to sell the Energy Products, and in showcasing the Energy Products to the IBOs;

(d) ACN and Planet will from time to time develop together, and Planet will provide to the IBOs, material for presentation through ACN's website area(s) serving the IBOs, including potential links to Planet's website area(s), designed to inform the IBOs about Energy Products available for IBOs to sell;

(e) ACN will use its commercially reasonable efforts to promote the agency relationship created hereunder to the IBOs;

(f) ACN will designate an individual to be the primary interface between ACN and Planet on all issues relating to this Agreement, including understanding the Energy Products, answering energy sales questions and generally assisting with the relationship between the two organizations (ACN and Planet) with respect to activities under this Agreement;

(g) ACN and Planet will together prepare a training package suitable for ACN to use in educating the IBOs on the Energy Products so as to enable them to represent Planet well in the Territory;

(h) ACN will work with Planet to determine and keep current competitive retail prices of the Energy Products using the formula expressed in the definition of Target Margin;

(i) ACN will obtain and maintain any licenses or certificates required to perform its obligations under this Agreement: and

(k) ACN shall, at its own cost and expense, take all actions necessary to obtain all licenses, certificates, approvals, permits, registrations or other authorizations as may be required for the IBOs to sell Energy Products in the Territory. ACN shall comply and shall require its IBOs to comply with all applicable energy laws of the Territory necessary to satisfy the purposes of this Agreement.

5. **Duties of Planet.** Planet shall provide Energy Products for the IBOs to sell in accordance with the following terms:

(a) Planet shall determine all Energy Products, their terms of service, as well as establish the policies and procedures for the IBOs to sell the Energy Products, with all of the foregoing being subject to ACN's input and suggestions;

(b) Planet shall, together with ACN, price the Energy Products for retail sale competitively and keep same current in accordance with the formula set forth in the definition of Target Margin.

(c) Planet shall undertake, be responsible for, and bear all risk on, all business functions relating to ACN Customers, including, but not limited to, order entry, provisioning, billing, collections, energy supply, scheduling and balancing, utility interfaces, and customer tracking;

(d) Planet shall assist ACN in preparing a training package suitable for ACN to use in educating the IBOs on the Energy Products so as to enable them to represent Planet well in the Territory.

(e) Planet shall provide ACN with an *.xml* electronic file of ACN Customer activity and status, including disconnects, no less frequently than four (4) times daily, in a format reasonably satisfactory to ACN and designed by Planet and ACN together to allow ACN access to the information it needs to calculate and verify properly the Commissions, and administer its programs with the IBOs, which file will remain extant and accessible even after an ACN Customer's contract termination and for as long as there remain active ACN Customers;

(f) Planet shall be entitled to provide training for IBOs at such times as may be reasonably acceptable to ACN at ACN's IBO training events and gatherings at which ACN's other training and product/service familiarization is scheduled to occur;

(g) Planet shall provide all product literature, contractual forms, and any other materials needed for the IBOs (including web-based information) to be able to market and sell the Energy Products;

(h) Planet will designate an individual to be the primary interface between ACN and Planet on all issues relating to this Agreement, including understanding the Energy Products, answering energy sales questions and generally assisting with the relationship between the two organizations (ACN and Planet) with respect to activities under this Agreement;

(i) Planet will design, provide and host a mutually agreeable co-branded online order entry portal that the IBOs and their customers will use to place customer orders for acceptance by Planet, which orders shall bear some unique identifier inside of Planet's systems as ACN-sourced as well as the unique identifier or team identification number inside ACN's systems of the IBOs submitting or responsible for such order;

(j) Planet will design, to the mutual satisfaction of Planet and ACN, a 'Gross Margin Report' that details the information called for by Section 6(a), below;

(k) Planet will maintain an adequate number of trained CSRs in a call center setting, separate from Planet's customary call center it maintains, for the purpose of allowing the IBOs to call to obtain answers to technical questions relating to the Energy Products;

(l) Planet will promptly use its best efforts to supply the Energy Products to the ACN Customers;

(m) Planet shall, at its own cost and expense, take all actions necessary to obtain all licenses, certificates, approvals, permits, registrations or other authorizations as may be required to sell Energy Products in the Territory. Planet will comply with all applicable energy laws of the Territory necessary to satisfy the purposes of this Agreement.

#### **6. ACN's Commission.**

(a) Planet shall pay to ACN, as ACN's commission for acting as master agent under this Agreement, the following:

At the conclusion of each calendar month, Planet shall calculate the Target Margin from each ACN Customer's usage across all products in that month, the sum of which shall be the "Gross Margin". Planet shall thereafter pay to ACN by wire transfer one half (1/2) of the Gross Margin for that immediate past month on or before the 30<sup>th</sup> day after the end of such month. If and to the extent that sufficient data is not available to properly calculate the Gross Margin, Planet shall make reasonable estimates of the Gross Margin. If and to the extent that new or final data for calculation of the Gross Margin becomes available or actual payments received from local distribution utilities or ACN Customers varies from calculated amounts, Planet shall re-calculate the Gross Margin and any variances shall be trued-up through subsequent monthly payments or invoices.

(b) All commission payments shall be made by Planet directly to ACN. ACN shall be solely liable for the payment of any and all compensation of whatever kind to the IBOs. To the extent required, ACN shall, in accordance with its normal and customary practice, issue a Revenue Canada Form T4A to each of the IBOs with respect to any Commissions that any of the IBOs are paid by ACN for the sale of Energy Products.

(c) If an ACN Customer disputes the validity of a contract, Planet shall continue to pay any associated Gross Margin payments while that ACN Customer continues to flow; provided, however, if the basis of the dispute relates to or is

connected with the conduct of ACN or its IBOs in securing that ACN Customer contract, then Planet shall withhold any Gross Margin payments until such time as it is determined that that ACN Customer Contract is valid.

7. **Equity Realization.** The parties agree that ACN has waived its equity realization right that was triggered upon Planet's agreement to the Canadian Purchase, which the parties acknowledge was a Liquidity Event, as formerly defined in this Agreement, and ACN agrees that it will not seek to recover the amounts to which it would have been entitled under this section as it was formerly constituted.

8. **Exclusivity.**

(a) The parties agree that, during the Agency Period and in the Territory, ACN shall not market or sell Energy Products on behalf of anyone other than Planet.

(b) The parties agree that, during the Agency Period and in the Territory, Planet shall not appoint or permit any other network marketing or multi-level marketing company (other than Planet itself) to market and sell Energy Products on behalf of Planet or any of its Affiliates.

(c) Subject to the foregoing restrictions in Section 8(a), above, nothing herein or otherwise shall prevent ACN or Planet, as applicable, from pursuing or entering into any relationship of any nature or kind with any other supplier or vendor, of whatever type of product or service.

9. **Audit Rights.**

ACN shall have the right, at any time upon reasonable advance notice to Planet, and during customary business hours, to audit Planet's customer and sales revenue accounting records and applicable transaction documents in order: (i) to verify any report provided to ACN by Planet in connection with this Agreement, (ii) to verify Target Margin calculations, or (iii) to verify any payment of, or proposed payment of, Gross Margin to ACN.. Subject to any restrictions imposed by applicable law, ACN shall also have the right to request customer detail records, and Planet shall promptly provide the same to ACN. Planet shall not delay unduly or otherwise attempt to frustrate ACN's verification efforts. All information provided to ACN by Planet, whether under this Section 9 or otherwise under this Agreement, shall be prepared with full transparency by Planet, and shall be full, complete, truthful and not misleading when delivered to ACN. ACN's rights under this section shall continue and remain in effect until there are no longer any active ACN Customers.

ACN acknowledges that certain of the information that Planet may provide in respect of ACN's audit rights may contain personal information of the ACN Customers and ACN agrees to use its reasonable commercial efforts to protect and maintain the confidentiality of such information, not to disclose the information to any third parties and use such information for the sole and limited purpose of the verifications set out in (i) through (iv) above; and in any event, ACN agrees to treat such



confidential information with the same care that it treats the information of its own, non-Planet related customers similar information.

#### **10. Representations and Warranties.**

Each of the parties hereto represents and warrants to the other that:

(a) it is duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation, and has the requisite power and authority to execute, deliver, and perform this Agreement;

(b) this Agreement, once executed, will constitute a valid and binding agreement of each party, enforceable in accordance with its terms, subject to bankruptcy, insolvency and other similar laws affecting the enforcement of creditors' rights in general, and subject to general principles of equity;

(c) this Agreement has been duly authorized by all necessary action on the part of each party;

(d) it possesses all licenses, certificates, permits or other similar permissions necessary to perform its obligations under this Agreement; and

(e) neither the execution and delivery of this Agreement, nor each of the parties' performance hereunder, will violate any injunction, judgment, order, decree, ruling charge, government restriction, rule or law, nor will they conflict with, result in a material breach of, constitute a default under, or cause or create any acceleration, cancellation, or modification of any other agreement or arrangement to which each party is a party.

#### **11. Confidential Information.**

Each party agrees that any information it receives from the other party (collectively, "Confidential Information") is proprietary, the property of the disclosing party, and shall be kept strictly confidential. The Confidential Information shall not be sold, traded, published, or otherwise disclosed by the receiving party to any person in any manner whatsoever, except as may be expressly provided for herein. The receiving party shall not use the Confidential Information for any purpose, without the consent of the disclosing party, other than for its compliance with the terms of, and performance of this Agreement. The term "person" as used in this Agreement shall be broadly interpreted to include, without limitation, any individual, corporation, company, group, partnership or other entity. Confidential Information does not include any information which: (a) was known to the receiving party prior to the date of its disclosure pursuant to this Agreement and to which there is no existing obligation of confidentiality; or (b) is or becomes generally available to the public other than through the act or omission of the receiving party or its representatives; (c) becomes available to the receiving party on a non-confidential basis from a source other than the disclosing party or its representatives; or (d) is independently developed by the receiving party without

the use of or reliance upon the Confidential Information. Notwithstanding the foregoing, either party may disclose Confidential Information strictly in accordance with the requirements of a valid court order or other legal process requiring such disclosure, provided that the party subject to such process gives the other party prompt notice of such process so that the other party may seek a protective order or other protection of the Confidential Information at its own expense.

In the event of any breach or threatened breach by a party of the terms hereof, the other party shall be entitled to seek injunctive and other equitable relief, and the party shall not plead in defense thereto that there would be an adequate remedy at law. Such remedy shall be cumulative and in addition to all other remedies available. The parties acknowledge that the Confidential Information is valuable and unique and that disclosure in breach of this Agreement may result in irreparable injury to the disclosing party.

## **12. Indemnification.**

(a) ACN hereby agrees to indemnify and hold Planet and its directors, officers, employees, stockholders, affiliates and agents (each, a "Planet Indemnified Person") harmless from and against all damages which any Planet Indemnified Person may sustain, incur or assume as a result of any allegation, claim, civil or criminal action, proceeding, charge or prosecution which may be alleged, made, instituted or maintained against any Planet Indemnified Person arising out of, resulting from or based upon (i) any breach by ACN of any of its representations, warranties, covenants or agreements contained in this Agreement, or (ii) any claim asserted or threatened to be asserted by any third party in connection with ACN, its affiliates or the IBOs, selling the Energy Products or serving or having served pursuant to this Agreement; provided, however, ACN shall not be liable to indemnify and hold any Planet Indemnified Person harmless from any such damages to the extent it is the result of the gross negligence, bad faith, willful misconduct or criminal conduct of, or the breach of this Agreement by, the party seeking indemnification hereunder.

(b) Planet hereby agrees to indemnify and hold ACN and its directors, officers, employees, stockholders, affiliates and agents (each, an "ACN Indemnified Person" and collectively, the "ACN Indemnified Persons") harmless from and against all damages which any ACN Indemnified Person may sustain, incur or assume as a result of any allegation, claim, civil or criminal action, proceeding, charge or prosecution which may be alleged, made, instituted or maintained against any ACN arising out of, resulting from or based upon (i) any breach by Planet of any of its representations, warranties, covenants or agreements contained in this Agreement, or (ii) any claim asserted or threatened to be asserted by any third party in connection with Planet's obligations pursuant to this Agreement, in each case solely to the extent that any such Damages is the direct result of the gross negligence, bad faith, willful misconduct or criminal conduct with respect to any training, sales materials, literature, forms or documents provided by Planet for use by the IBOs of, or the breach of this Agreement by, any of the Planet Indemnified Persons.

(c) Planet acknowledges that the IBOs are third party beneficiaries of this Agreement, and that ACN is permitted to bring any claim under this Agreement that may arise on their behalf.

13. **Independent Contractors.** The parties acknowledge that they are entering into this Agreement as independent contractors and that this Agreement shall not create nor be construed to create a relationship of joint venturers, co-partners, employer and employee, master and servant or any similar relationship among the parties.

14. **Expenses.** Except as otherwise provided for herein, each party will pay its own expenses in connection with this Agreement and the completion of the transactions contemplated hereby.

15. **Expenses Related to Audit Rights.** Wherever either party has an audit right, the party exercising its audit right shall be entitled to reimbursement of its reasonable and customary expenses associated with such audit from the other party in the event such audit results in a determination that there was a material inaccuracy adverse to the party conducting the audit. Further, the party being audited shall be entitled to reimbursement of its reasonable and customary expenses associated with supporting such audit from the party conducting the audit in the event such audit results in a determination that the subject matter audited was materially accurate. Any inaccuracies determined by any such audit shall be corrected in the favor of the party to whom the inaccuracy was adverse.

16. **Force Majeure.** In the event that war, fire, explosion, flood, accident, strike, riot, act of governmental authority, act of terrorism, act of God or other contingency beyond the reasonable control of either party causes cessation or interruption of that party's or the IBOs' performance hereunder, performance shall be temporarily excused for the period of the disability, without liability, provided that the party seeking excuse shall promptly, after it has actual knowledge of the beginning of any excusable delay, notify the other party of such delay, the reason therefore, and the probable duration and consequence thereof. The party seeking excuse shall use its reasonable commercial efforts to resume performance of its obligations hereunder with the least possible delay.

17. **Contractual Nature of Obligations.** ACN acknowledges that its rights to Gross Margin is contractual in nature, is not a traditional security interests and does not specifically attach to or encumber any assets of Planet, including, without limitation, to the ACN Customer contracts. ACN agrees that it will not assert or attempt to assert these rights via any UCC-1 or similar filings.

18. **Insolvency of Planet.** In the event that an Insolvency Event occurs, Planet acknowledges that ACN is a general unsecured creditor of Planet, and agrees that, in consideration for ACN having acknowledged herein that its rights to Gross Margin payments are both unsecured and not attached to any specific assets, Planet will use its best efforts to protect ACN's rights to the fullest extent possible in both the case where the Insolvency Event is instigated by Planet or is suffered by Planet at the hands of any third party. Examples of the best efforts that Planet could use in this instance would

include, but not be limited to, obtaining protection for payments to ACN in any negotiations with other or secured creditors or debtor-in-possession or other post-filing lenders, placing this Agreement high upon the list of contracts to be assumed in any reorganization proceeding offering that option, or otherwise acting to preserve both the relationship created by this Agreement, the payments to ACN hereunder and the ability for ACN to realize the value and equity that its efforts hereunder have created. Planet specifically agrees that ACN shall have the right to intervene in any Insolvency Event proceeding to that same end.

#### 19. **Miscellaneous.**

(a) Entire Agreement; Amendment; Waiver. This Agreement contains the entire understanding of the parties as to the subject matter hereof and fully supersedes all prior agreements and understandings between the parties as to such subject matter. This Agreement may not be amended, supplemented, canceled or discharged, except by a written instrument executed by the party as to whom enforcement is sought. No failure to exercise, and no delay in exercising, any right, power or privilege hereunder shall operate as a waiver thereof. No waiver of any breach of this Agreement shall be deemed to be a waiver of any preceding or succeeding breach of this Agreement.

(b) Severability. The parties acknowledge that the terms of this Agreement are fair and reasonable at the date signed by them. However, in light of the possibility of a change of conditions or differing interpretations by a court of what is fair and reasonable, the parties stipulate as follows: if any one or more of the terms, provisions, covenants or restrictions of this Agreement shall be determined by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated; further, if any one or more of the terms, provisions, covenants, and restrictions contained in this Agreement shall for any reason be determined by a court of competent jurisdiction to be excessively broad as to duration, geographical scope, activity or subject, it shall be construed, by limiting or reducing it, so as to be enforceable to the maximum extent compatible with then applicable law.

(c) Notices. All notices, requests, demands and other communications provided for by this Agreement shall be in writing and mailed in the United States enclosed in a registered or certified post-paid envelope, return receipt requested, or delivered by overnight courier service, and addressed to the addresses of the respective parties as set forth below, or to such changed addresses as such parties may fix by notice in accordance therewith:

To Planet:

Planet Energy Corp.  
800-10 Kingsbridge Garden Circle  
Mississauga, ON L5R 3K6 Canada

Attn: \_\_\_\_\_  
Attn: \_\_\_\_\_

To ACN:

All Communications Network of Canada Co.  
1000 Progress Place  
Concord, NC 28025 USA  
Attn: CEO

Attn:General Counsel

(d) Successors and Assigns. Neither party may assign this Agreement without the prior written consent of the other party; however, either party may assign this Agreement to any affiliate without such consent. Any attempt to assign this Agreement not in conformance with the foregoing sentence shall be void. This Agreement shall be binding upon and inure to the benefit of Planet and its successors and assigns and upon and to the benefit of ACN and its successors and assigns.

(e) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without giving effect to principles of conflict of laws. In the event that any dispute shall have issues needing resolution that arise out of the formation of an ACN Customer Contract, then the laws of the province in which the ACN Customer resides may be applied by the arbitrator, in his sole discretion, solely to answer questions regarding the validity of that ACN Customer Contract, but all other issues shall be governed by and construed in accordance with the laws of the State of New York, without giving effect to principles of conflict of laws.

(f) Arbitration. Any claim, controversy or dispute between the parties shall be resolved by binding arbitration of the issue in accordance with the following procedures:

(i) Either party may request arbitration by giving the other involved party written notice, which notice shall describe, in reasonable detail, the nature of the dispute, controversy or claim. The arbitration shall be governed by the rules of the American Arbitration Association ("AAA") and held in Toronto, ON or other mutually agreed upon location.

(ii) If both parties agree to an arbitrator within 30 days after a request for arbitration is made hereunder, that arbitrator shall be selected to hear the dispute in accordance with AAA rules. If the parties are not able to agree upon an arbitrator within such 30 day period, then that party who requested arbitration may request that the AAA select an arbitrator who has business experience in the sales industry and the selected arbitrator shall hear the dispute in accordance with AAA rules.

(iii) Each of the parties shall bear its own fees, costs and expenses of the arbitration and its own legal expenses, attorneys' fees and costs of all experts and witnesses; provided, however, that if the claim of either party is upheld by the arbitrator in all material respects, the arbitrator may apportion between the parties as the arbitrator may deem equitable the costs incurred by the prevailing party. The fees and expenses of the arbitration procedures, including the fees of the arbitrator, will be shared equally by the parties.

(iv) Any award rendered pursuant to an arbitration proceeding shall be final, conclusive, non-appealable and binding upon the parties, and any judgment thereon may be entered and enforced in any court of competent jurisdiction

(g) Headings. The headings in this Agreement are for convenience of reference only and shall not control or affect the meaning or construction of this Agreement,

(h) Further Assurances. Each party agrees at any time, and from time to time, to execute, acknowledge, deliver and perform, and/or cause to be executed, acknowledged, delivered and performed, all such further acts, deeds, assignments, transfers, conveyances, powers of attorney and/or assurances as may be necessary, and/or proper to carry out the provisions and/or intent of this Agreement.

(i) Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all such counterparts shall constitute one and the same instrument.

(j) Survival. The provisions of Sections 3(d), 3(e), 4(b), 4(i), 5(c), 5(d), 5(e), 5(k), 5(n), 9, 11, 12 and 19 shall survive the termination of this Agreement for as long as there are active ACN Customers.

(20) Assignment and Assumption of SAA. To the extent that any rights or obligations under the SAA are applicable to the Territory and are held by Planet USA, on the one hand, or ACN USA on the other, each of Planet USA, ACN USA, and the Parties desire that such rights and obligations be assigned to and assumed by the Parties as applicable, and that this Agreement constitute a novation of the SAA as applicable to the Territory.

(a) Planet USA hereby assigns all of its rights under the SAA applicable to the Territory to Planet. Planet hereby accepts such assignment and assumes all of Planet USA's obligations under the SAA applicable to the Territory. ACN hereby releases Planet USA from all such obligations. Notwithstanding the foregoing, Planet USA agrees that it will take or refrain from taking any action reasonably requested by Planet Canada or ACN to ensure that the assignment and assumption hereunder is successfully effected.

(b) ACN USA hereby assigns all of its rights under the SAA applicable to the Territory to ACN. ACN hereby accepts such assignment and assumes all of ACN USA's obligations under the SAA applicable to the Territory. Planet hereby releases ACN USA from all such obligations. In addition, acknowledging and accepting that LKN Communications, Inc., and ACN Energy, Inc. previously assigned all of their rights and interest under the SAA to ACN USA, and ACN USA previously assumed all obligations of such entities, Planet hereby releases LKN Communications, Inc., and ACN Energy, Inc., from any and all obligations under this Agreement.

THERE ARE NO EXHIBITS TO THIS AGREEMENT

[signatures on next page]

The following entities sign this Agreement solely for purposes of agreeing to the terms of Section 20 and for no other purpose, and shall not be considered parties to this Agreement in any respect other than to effect the provisions of Section 20 applicable to them:

**PLANET ENERGY USA CORP.**



By: \_\_\_\_\_  
Name: Paul DeVries  
Title: President & CEO

**PLANET ENERGY (NEW YORK) CORP.**



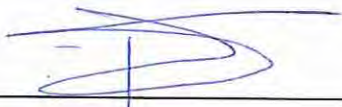
By: \_\_\_\_\_  
Name: Paul DeVries  
Title: President & CEO

**PLANET ENERGY (MARYLAND) CORP.**



By: \_\_\_\_\_  
Name: Paul DeVries  
Title: President & CEO

**PLANET ENERGY (PENNSYLVANIA) CORP.**



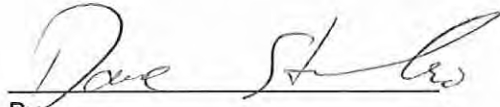
By: \_\_\_\_\_  
Name: Paul DeVries  
Title: President & CEO

**ACN OPPORTUNITY, LLC**

By: \_\_\_\_\_  
Name:



**ALL COMMUNICATIONS NETWORK OF CANADA CO.**

A handwritten signature in blue ink, appearing to read "Dave Stevanuski", written over a horizontal line.

By:  
Name: *Dave Stevanuski*  
Title: *President*

The following entities sign this Agreement solely for purposes of agreeing to the terms of Section 20 and for no other purpose, and shall not be considered parties to this Agreement in any respect other than to effect the provisions of Section 20 applicable to them:

**PLANET ENERGY USA CORP.**

---

By:  
Name:  
Title:

**PLANET ENERGY (NEW YORK) CORP.**

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By:  
Name:  
Title:

**PLANET ENERGY (MARYLAND) CORP.**

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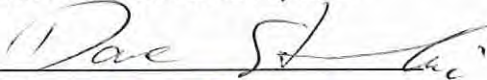
By:  
Name:  
Title:

**PLANET ENERGY (PENNSYLVANIA) CORP.**

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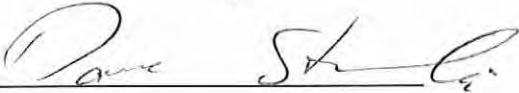
By:  
Name:  
Title:

**ACN OPPORTUNITY, LLC**



By:  
Name: *Dave Stevanovski*  
Title: *President*

**ACN OPPORTUNITY NEW YORK, LLC**



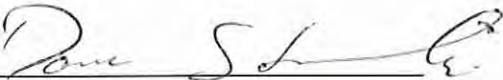
By:  
Name: *Dave Stevanovski*  
Title: *President*

**ACN OPPORTUNITY MARYLAND, LLC**



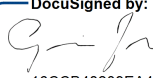
By:  
Name: *Dave Stevanovski*  
Title: *President*

**ACN OPPORTUNITY PENNSYLVANIA, LLC**



By:  
Name: *Dave Stevanovski*  
Title: *President*

This is Exhibit "E" referred to in the Affidavit of Nino Silvestri sworn by Nino Silvestri of the Town of Oakville, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on May 26, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:  


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10CCB48209FA401  
Commissioner for Taking Affidavits (or as may be)

**GAVIN INKSTER LSO# 82737I**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

B E T W E E N:

**PLANET ENERGY CORP., PLANET ENERGY (ONTARIO) CORP., and  
PLANET ENERGY (B.C.) CORP.**

Applicant

and

**ALL COMMUNICATIONS NETWORK OF CANADA, CO.**

Respondent

**AFFIDAVIT OF NINO SILVESTRI  
(sworn May 7, 2021)**

I, Nino Silvestri, of the Town of Oakville, in the Province of Ontario, **MAKE OATH AND SAY:**

1. I am the Chief Executive Officer of the applicants Planet Energy Corp. ("**PEC**"), Planet Energy (Ontario) Corp. ("**PEOC**"), and Planet Energy (B.C.) Corp. ("**PEBC**", and collectively, "**Planet Energy**"). I swear this affidavit in support of Planet Energy's application pursuant to Article 34 of Schedule 1 (the "**Model Law**") of the *International Commercial Arbitration Act, 2017*, S.O. 2017, c. 2, Sched. 5, to set aside the final arbitral award dated February 3, 2021 (the "**Award**"), in whole or in part, in connection with the arbitration presided by Ms. Stephanie Cohen, sole arbitrator (the "**Arbitrator**"), and administered by the International Center for Dispute Resolution (the "**ICDR**") in ICDR Case No. 01-18-001-6527 (the "**Arbitration**"). The claimant in the Arbitration and respondent in this application is All Communications Network of Canada, Co. ("**ACN**").

2. I was the primary individual at Planet Energy responsible for overseeing and instructing external arbitration counsel in respect of the Arbitration, Jonathan Strum, and I was a witness in

that proceeding. Throughout the proceeding, I participated in every conference call with the ICDR and/or the Arbitrator and in all calls between the parties; I read all emails between counsel and all emails with the Arbitrator on a contemporaneous basis; I reviewed all submissions and exhibits prior to and post submission, and I reviewed all Procedural Orders. I attended every session of the final evidentiary hearing and read the transcripts of the hearing. As such, I have personal knowledge of the matters to which I hereinafter depose. To the extent that I am informed by others, I have identified the source of such information and believe it to be true. Where I rely upon information provided to me by counsel, that information is not privileged. In swearing this affidavit, I do not, and do not intend to, waive any privilege that belongs to Planet Energy.

3. The position of Planet Energy is that, in the course of the proceedings, the Arbitrator exceeded her powers, failed to accord equal treatment to Planet Energy, and seriously departed from fundamental rules of procedure by allowing ACN to withhold material evidence while preventing Planet Energy from presenting its case. In the Award, the Arbitrator failed to apply the Parties' contract and the applicable law, ignored Planet Energy's material evidence, and failed to state reasons for decisions, which further prejudiced Planet Energy. Both the manner in which the proceedings were conducted and the resulting Award are also contrary to public policy in Ontario.

4. By way of preliminary example only, the Award orders Planet Energy to pay more than \$5 million to ACN in commission payments that are illegal in Ontario under the *Energy Consumer Protection Act, 2010*, S.O. 2010, c. 8 (the "ECPA"). The illegality of these payments under the ECPA was not seriously contested by ACN at the Arbitration.

5. In advance of the hearing of the Arbitration, in the face of ACN's withholding of material evidence and the Arbitrator's failure to ensure ACN's compliance with document production orders, Planet Energy was forced to bring an application to the Federal District Court for the

Western District of North Carolina (the “**U.S. Court**”) to compel basic and critical document production of some of the missing ACN documents from a former affiliate of ACN, Xoom Energy, LLC (“**Xoom Energy**”), a U.S. based energy retailer, for use in the Arbitration.<sup>1</sup> In the meantime, Planet Energy had to submit its witness statements and principal written submissions on the merits in the absence of this missing evidence.

6. Even after the U.S. Court ordered the production of documents which the Arbitrator had refused to compel from ACN earlier in the proceeding, the Arbitrator denied Planet Energy any practical opportunity to use these documents in the Arbitration, and instead ordered the parties to submit their closing arguments just 48 hours after production was made. Planet Energy was not provided any reasonable opportunity to discover its case or examine ACN's witnesses on these critically important documents. Instead, the Arbitrator generally ignored these documents in the Award and failed to question why the documents which the U.S. Court compelled a third party to produce were not produced by ACN itself. (All of the Xoom Documents (defined below) were email communications between ACN and Xoom Energy, which would have represented roughly 25% of ACN's total production). The Arbitrator frequently accepted assertions from ACN's witnesses as fact, even when such assertions were directly contradicted by contemporaneous documents.

7. Related to this, the Arbitrator rushed to the final hearing while Planet Energy's application in the U.S. Court was pending and rejected Planet Energy's requests for reasonable accommodation in response to the COVID-19 pandemic. Planet Energy requested that the final evidentiary hearing be postponed for a short period to allow Planet Energy, its counsel, witnesses and experts, each of whom had never conducted a virtual hearing, to familiarize themselves with the virtual platform and to prepare for a virtual arbitration while under stay-at-home orders. Notwithstanding the fact that the parties did not contemplate a virtual proceeding when they

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<sup>1</sup> Xoom was sold by ACN to NRG Energy Inc. in 2018 for \$230 Million.

agreed to arbitrate, the Arbitrator denied these requests and ordered the parties to proceed virtually and on an expedited timetable during the early stages of the global pandemic.

8. In this Affidavit, I set out the background to the dispute between Planet Energy and ACN and the Arbitration process more generally, including the process by which the parties appointed the Arbitrator and the Arbitrator's various procedural orders leading up to the hearing, and identify the grounds on which Planet Energy submits the Award should be set aside under the Model Law.

#### **A. My Personal Background**

9. I have spent my entire professional career of thirty-nine years working in the North American energy industry, primarily in marketing, retailing and regulatory capacities, after obtaining my Honours Bachelor of Business Administration degree from Wilfrid Laurier University in May 1982 and my Master of Arts in Economics from York University in June 1986.

10. I started my career in May 1982 working as an economic analyst focused on long-term facilities expansion applications at TransCanada Pipelines ("**TransCanada**"). While in this role, I became interested in energy retailing. As such, I took up employment with TransCanada's marketing affiliate, Western Gas Marketing, in 1986 upon the deregulation of the Canadian natural gas industry, and started working as a sales representative and, later, as manager of sales, selling energy products to large industrial customers and gas utilities in eastern Canada and the United States.

11. After developing some expertise in energy retailing, I joined Direct Energy Marketing ("**DEM**") as its Manager of Sales in April 1992 and was later promoted to Senior Vice-President, Marketing. In that capacity, I was responsible for overseeing all of DEM's retail and marketing efforts in Canada. In May 2000, I decided to start my own consulting company, Silvestri Energy



Services, focused on assisting industry participants with regulatory and marketing issues on wholesale and retail energy matters in Canada.

12. Through my consulting experience, I worked with and ultimately joined Universal Energy Corporation (“**UEC**”), an Ontario based energy retailer, as its Chief Operating Officer in March 2005. My responsibilities included overseeing the operations of UEC, with a primary focus on its retailing, marketing and regulatory operations. In July 2009, UEC was sold to Just Energy and I decided to start another business with my business partner, Steve Plummer, Sunwave Solar and Sunwave Power & Gas, which we sold to Oneenergy in 2011.

13. In 2012, Mr. Plummer and I, along with certain other strategic partners, purchased Planet Energy. We have operated Planet Energy since that time.

## **B. The Parties**

14. Planet Energy is an energy retailer that provides primarily five-year fixed-price electricity and natural gas supply to residential and commercial customers principally in Ontario, but also in other Canadian and U.S. jurisdictions. Almost from inception, Planet Energy engaged with ACN to market and sell Planet Energy products to the friends and family of ACN’s Independent Business Owners (“**IBOs**”). Once it obtains a group of customers, Planet Energy reviews their ordinary energy consumption and purchases long-term energy supply contracts from Shell Energy North America (an affiliate of global energy provider, Shell International B.V.) to supply the energy. Planet Energy generates its profits through the arbitrage between the price it pays to Shell Energy North America and the price it charges to its customers. Planet Energy does not speculate on energy prices.

15. While Planet Energy operates through a number of different corporate entities in North America, PEOC is the parent company of the Planet Energy group of companies. PEC

amalgamated with PEOC in June 2013 and the amalgamated entity was continued as PEOC. PEOC is governed by the *Canada Business Corporations Act*. PEBC is an affiliate of PEOC and is governed by the *Business Corporations Act* (British Columbia).

16. ACN is a Nova Scotia corporation governed by the *Companies Act* (Nova Scotia). It is an indirect subsidiary of ACN, LLC, a global multi-level marketing firm headquartered in Concord, North Carolina. ACN principally operates as a sales agency business by contracting with thousands of IBOs to act as sales agents to refer customers to ACN or other third-party providers of telecommunications, energy and other services, and paying commissions to these IBOs for successful customer referrals. As discussed below, Planet Energy engaged ACN and the IBOs to serve as its sales team in a number of jurisdictions in Canada.

### C. Background to the Arbitration

#### a. The SAA

17. Prior to my involvement with the company, Planet Energy and ACN entered into a Sales Agency Agreement dated November 19, 2009, pursuant to which ACN was to act as Planet Energy's "master agent" and lead sales channel for residential customers and enroll customers in a regulatory compliant manner. A copy of the initial Sales Agency Agreement is attached as **Exhibit 1**.

18. The parties operated in accordance with this agreement for a number of years. Shortly after Mr. Plummer and I and other strategic partners purchased Planet Energy, the Sales Agency Agreement was amended and restated in the Amended, Restated and Assigned Sales Agency Agreement dated November 9, 2012 (the "**SAA**"), a copy of which is attached as **Exhibit 2**.

19. The principal purpose of the SAA, as set out in the Preamble and section 2(a), was to engage ACN to act as a "master agent" to market and retail Planet Energy's products through its IBOs, on behalf of Planet Energy, to potential customers in British Columbia, Manitoba, Ontario

and Quebec (collectively, the “**Territory**”). Section 2(a) of the SAA provided that ACN was to “*provide, or cause to provide to Planet’s ACN’s network of [IBOs] to act as limited agents for Planet to sell Energy Products on behalf of and for the benefit of Planet*”, and to use “*commercially reasonable efforts*” to cause its IBOs to sell and promote Planet Energy’s products and retail energy business within the Territory. Related to this, sections 4(c) and 5(f) of the SAA provided that Planet Energy could access IBO events to inform ACN’s IBOs about its products and promotions.

20. Given Planet Energy’s reliance on ACN and its IBOs to sell Planet Energy’s products, the parties also agreed that ACN would not take “*any actions that it knows would be harmful in any material respect*” to Planet Energy’s retail energy business in section 2(g)(i)(A) of the SAA.

21. While ACN was responsible for marketing and selling Planet Energy’s products, Planet Energy was required to, among other things, provide the products and services and manage all of the business functions relating to the customers referred to it by ACN. Planet Energy also agreed at section 5 of the SAA to provide ACN with certain daily reporting of customer activity and to design and build a mutually agreeable co-branded online portal on ACN’s website where IBOs could refer potential Planet Energy customers to place their orders (the “**ACN Portal**”).

22. The use of the ACN Portal was essential to ACN and Planet Energy. The ACN Portal allowed Planet Energy to track the customers referred to it by the IBOs and remit sales commissions accordingly. Pursuant to section 6 of the SAA, sales commissions were payable by Planet Energy on all products that were used by “*ACN Customers*”, which, in turn, was defined in section 1 of the SAA as “*customers whose orders are entered into the [ACN] Portal by ACN, or the IBOs, or their customer...*” The amount of sales commissions payable was to be calculated based on one half of the Gross Margin, calculated as being “the difference between an Energy

Product's Wholesale Price and its Retail Price" and which is referred to as the "Target Margin" of sixteen percent (16%) across all products sold in a given month.<sup>2</sup>

23. The use of the ACN Portal was also critical to Planet Energy to ensure that all ACN sales were conducted online to promote regulatory compliance. Prior to January 1, 2017, online sales in Ontario did not require third-party verification. Planet Energy insisted on online sales, which were transacted directly by the customer, to avoid IBOs from unduly pressuring or coercing potential customers to enter into energy supply contracts. Accordingly, Planet Energy was adamant that the IBOs direct potential customers to the ACN Portal to purchase any products because Planet Energy did not want (nor could it otherwise control) any potential customers from signing up for products due to any undue pressure or coercion from an IBO. Customer complaints and regulatory problems are costly and not in the best interest of Planet Energy.

24. Given this, in section 12(a) of the SAA, ACN agreed to indemnify Planet Energy for any losses resulting from any complaints, asserted or threatened to be asserted, by any third party, customer or regulatory authority in connection with ACN or the IBOs selling its products. Without a strong indemnity, ACN would not be incentivized to promote regulatory compliance to its IBOs.

25. In addition to the general roles and responsibilities of Planet Energy and ACN under the SAA, the parties also agreed that their relationship would be mutually exclusive. ACN agreed not to "market or sell" through its IBOs or otherwise any energy products in the Territory on behalf of anyone other than Planet Energy, and Planet Energy agreed not to retain any other multi-level marketing company to promote and sell its products in the Territory. ACN also agreed, in section 11 of the SAA, to keep strictly confidential any information it received from Planet Energy.

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<sup>2</sup> Target Margin Definition: "Planet and ACN shall agree upon a retail price at which Energy Products will be offered to potential ACN Customers using a formula that A) takes Planet's wholesale energy supply prices and adds an agreed-upon mark up for balancing and various risk premiums to Planet (the "Wholesale Price"), and then B) adds a further agreed-upon mark up that results in a 16% margin (the sum of (A) and (B) is referred to herein as the "Retail Price")."

26. Lastly, the parties agreed at section 3(d) of the SAA that upon termination of the SAA, the parties would enter a “wind down phase”, pursuant to which the parties would “cooperate to achieve an orderly and gradual cessation” of marketing and sales and a mutual communication plan to the IBOs.

*i. Renewals, Re-Enrollments and Re-Contracting*

27. The terms “renewals”, “re-enrollment” and “re-contract” are relevant to the issues in the Arbitration and this application, there are significant differences between them, and the Arbitrator has conflated these terms in the Award.

28. A *renewal* is a continuation of a customer’s existing contract. It is not a new sale of an energy product. This is an important distinction and is the subject of a very strict regulatory regime in Ontario under the ECPA. For example, under the ECPA, renewals have to be sent to a customer not more than 120 days and not less than 60 days before the customer’s existing term expires, together with a number of prescribed materials regarding the terms of the continued contract. After receiving the renewal information, a customer then has to sign and acknowledge receiving the documents and the renewal contract within a very tight time period. Given this high regulatory hurdle, renewals were typically viewed in the industry as onerous and difficult to obtain. Under the regulatory regime which went into effect on January 1, 2017, whenever a contract term is expiring, a complete set of new paperwork is required – for both renewals and re-contracts.

29. A *re-enrollment* or *re-contract* is when a customer signs up for a new contract that usually includes revised pricing, new Terms and Conditions, a new Disclosure Statement, and a new Price Comparison Form. Unlike a renewal, a re-enrolment or re-contract is considered the sale of a new energy product.<sup>3</sup> Given the stringent timing requirements under the renewal regime of the

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<sup>3</sup> Attached as **Exhibit 3** is a letter from the staff of the Ontario Energy Board confirming this interpretation.

ECPA, re-enrollments or re-contracts were generally the favoured approach for energy retailers to retain customers beyond the term of their existing contract – especially since post January 1, 2017, as all contracts require new paperwork pursuant to the new regulations.

30. After Mr. Plummer and I purchased the business, in May 2013, Planet Energy overhauled its Terms and Conditions to accord with the then prevailing regulatory regime. Virtually every one of Planet Energy's customers existing as of May 2013 and who remained a customer of Planet Energy after their initial contract expired, re-enrolled or re-contracted with Planet Energy and entered into new retail energy contracts with the company. These customers received new pricing and revised terms and conditions. These customers did not renew their existing contracts.

31. After the amendments to the ECPA came into force on January 1, 2017, Planet Energy could not "renew" any of the contracts it had entered into prior to January 1, 2017 under the old terms and conditions and was required to re-enroll or re-contract with its customers in order to meet the new ECPA requirements.

**b. ACN Starts to Compete with Planet Energy Through ACN's Affiliate Xoom Energy**

32. Between 2010 and December 2014, Planet Energy's relationship with ACN was a successful one. ACN was referring an increasing number of customers to Planet Energy through the ACN Portal and both parties were achieving increased profitability. However, this suddenly changed in early 2015 when the number of ACN Customers being referred to Planet Energy started to decline precipitously. In 2014, ACN procured 16,998 net new sales through the ACN Portal. In 2015 and 2016, ACN procured only 10,657 and 4,454 net new sales, respectively. Attached as **Exhibit 4** is a chart depicting the number of new ACN Customers between 2010 and 2016.

33. I did not understand why ACN's sales were declining so significantly in such a short period of time. I was not aware of any material change in the regulatory landscape or any other market change that would have impeded ACN's ability to continue its strong sales trajectory. Furthermore, 2015 and 2016 were an especially critical period for sales and marketing as Planet Energy's initial five-year contracts from 2010 were starting to approach their expiration dates and would be eligible for re-contracting for another five-year term.

34. It simply seemed as though ACN was no longer interested in continuing its successful relationship with Planet Energy without any explanation. For example, Planet Energy historically participated in regional IBO events at which Planet Energy could provide training and information about Planet Energy's products to the IBOs. These events generally helped Planet Energy encourage and engage with ACN's IBOs to drive sales. However, ACN stopped inviting Planet Energy to these events beginning in December 2014 without explanation. To my recollection, this was the first time I started to suspect something was amiss in our relationship with ACN.

35. As Planet Energy's sales continued to decline, in September 2015 I received an email from Robert Stevanovski, the co-founder and Chairman of ACN, who forwarded an email exchange he had with Tom Ulry, who was President of ACN-Affiliate, Xoom Energy (and was a former Vice-President of ACN). In that exchange, Mr. Stevanovski and Mr. Ulry were discussing Bill 112, which was a bill to amend the ECPA, and Mr. Stevanovski referred to it as "*something we should want to understand before we make entry into Ontario.*" A copy of this email and related correspondence is attached as **Exhibit 5**.

36. At the time, I did not appreciate that ACN was actually planning to enter the Canadian market with Xoom to compete against Planet Energy. However, this intention started to become clear by the end of 2015 or early 2016, when Planet Energy started receiving calls from a number of IBOs asking questions about Xoom Energy entering the Canadian market with ACN's

assistance and when Planet Energy would be replaced by Xoom Energy. In an email to me dated November 22, 2013, Xoom Energy was described by Mr. Stevanovski as “basically the same organization” as ACN. A copy of this email is attached as **Exhibit 6**.

37. In June 2016, Planet Energy discovered an online video on ACN's website announcing “ACN-Xoom Enters Canada”. Planet Energy was concerned by ACN's involvement with Xoom Energy in Canada given its covenant in the SAA not to do any harm to Planet Energy within the Territory during the term of the SAA. I specifically raised this concern by email with Tony Palma, the then Vice-President Product Marking and Business Development of ACN, and Mr. Palma advised me that Xoom Energy was entering the Alberta market only. Planet Energy then asked ACN to rename the online video from “ACN-Xoom Enters Canada” to “ACN - Xoom Enters Alberta”, which ACN refused to do. A copy of this email correspondence is attached as **Exhibit 7**.

38. With the benefit of hindsight, I now know that this specific naming of the video was intended to inform the IBOs that Xoom Energy was entering Canada more generally and not only the Alberta market. Moreover, as discussed above, the September 2015 email forwarded to me by Mr. Stevanovski indicated that ACN and Xoom Energy did in fact intend to enter the Ontario energy market.

39. Throughout 2015 and into 2016, it became increasingly clear to Planet Energy that ACN had no intention of continuing commercially reasonable efforts to procure sales for Planet Energy. Mr. Plummer and I were informed unofficially by Mr. Stevanovski in March 2016 that ACN would not renew the SAA and on June 1, 2016, ACN formally advised Planet Energy that the SAA would not be renewed and that the parties would work together to ensure a proper wind down of their relationship (the “**Notice of Expiration**”). A copy of the Notice of Expiration is attached as **Exhibit 8**.



40. I responded to the Notice of Expiration by asking Mr. Palma how ACN intended to advise the IBOs of the expiration of the SAA and how the general wind down process contemplated by the SAA would work. Mr. Palma replied by confirming that ACN would provide a detailed transition plan by August 2016; however, no plan was ever provided. Rather, two weeks later, on June 15, 2016, Mr. Palma directed individuals at ACN not to send any further communications to its IBOs promoting Planet Energy. A copy of Mr. Palma's email and his direction to his staff are attached as **Exhibits 9** and **10**, respectively.

41. Although this email from Mr. Palma is the first direction I have seen after ACN provided notice that it would let the SAA expire, it appears that ACN was actually encouraging its IBOs not to procure renewals (or more likely, re-contracts) with Planet Energy customers months earlier. For example, on February 6, 2016, a senior IBO in Toronto wrote to one of his significant Planet Energy customers that he *"just found out that our own company that is winning awards in the United States Xoom Energy is coming to Canada in October. So I recommend we don't do anything until then and soon as it's here I will contact you and get you some great services and great rates..."* A copy of this email is attached as **Exhibit 11**.

42. Significantly, despite the fact that Planet Energy was not permitted direct contact with the IBO without ACN's direct supervision, and on several occasions ACN stated explicitly to Planet Energy in writing that a wind-down proposal would be provided, the Arbitrator accepted ACN's proposition that no wind-down was required. A copy of these communications from ACN are attached as **Exhibit 12**.

43. Although there were a significant number of ACN Customers whose contracts were scheduled to expire in 2015 and 2016 (as ACN had signed up 53,522 customers in the first two years), ACN took little or no action to encourage or facilitate any re-contracting by its IBOs. As a result, Planet Energy was required to assume the majority of the sales and marketing efforts to

re-contract with these former or expiring ACN Customers. Accordingly, as at April 2016, Planet Energy ceased to pay sales commissions to ACN on the re-contracts that Planet Energy, through its own efforts, entered into with former ACN Customers because these new contracts were neither entered into with ACN's assistance nor submitted through the ACN Portal (and therefore were not ACN Customers under the SAA). While Planet Energy previously paid commissions on the re-contracts it entered into with former ACN Customers (even if they were not entered on the ACN Portal), I specifically advised Mr. Stevanovski in December 2014 (and Mr. Palma in January 2016) that Planet Energy was making these commission payments even though it was not contractually required to do so. A copy of my emails to Mr. Stevanovski and Mr. Palma are attached as **Exhibits 13** and **14**, respectively. No one at ACN, including Mr. Stevanovski and Mr. Palma, responded to my emails.

44. As detailed below, the Arbitrator rewrote the SAA by creating a new definition of "ACN Customers" and awarded ACN approximately \$9 million of sales commissions for re-contracts that were neither obtained by ACN nor were purchased through the ACN Portal. Notably, of that \$9 million, \$7 million was attributed to estimated future sales commissions whose customer contracts were not yet re-contracted, there was no evidence that such contracts would be re-contracted, and, as discussed below, such "future" commission payments are illegal under the ECPA. Importantly, Planet Energy had not received any revenue from such "future" contracts on which to base a commission payment.

45. Throughout 2016, Planet Energy's own six person call centre, operating on a cold-call basis, often outsold ACN's IBOs by a significant margin. As disclosed in the Arbitration, this was in part because the number of IBOs had been dramatically reduced, which ACN failed to disclose to Planet Energy. In 2010, there were approximately 15,000 IBOs, whereas by 2016 that number fell to less than 2,000 IBOs. The Arbitrator ignored this critical evidence and instead determined, in the absence of evidence, that the decline in sales through the ACN Portal was the result of

exogenous factors, such as general market conditions. Notwithstanding that ACN was obligated to use its commercially reasonable efforts to promote Planet Energy products and Planet Energy granted exclusivity to ACN on that basis under the SAA, the Arbitrator essentially determined there was no duty on ACN's part to inform Planet Energy that its sales force had been decimated – even though that obviously would have had a radical impact on ACN's performance under the SAA. A comparison of the sales generated by Planet Energy against those generated by ACN's IBOs is attached as **Exhibit 15**. Furthermore, a copy of the enrolled ACN IBO's is attached as **Exhibit 16**.

46. On July 3, 2016, while the SAA was still in effect, Xoom Energy, through its affiliate Xoom Energy Ont, ULC ("**Xoom Ontario**"), applied to the Ontario Energy Board (the "**OEB**") for a license to retail energy in Ontario through ACN. A copy of Xoom Ontario's application is attached as **Exhibit 17**. Planet Energy opposed Xoom Ontario's application, in part on the basis that ACN's sales agency relationship with Planet Energy continued through November 2016 and would confuse retail customers. A copy of Planet Energy's submission in opposition is attached as **Exhibit 18**.

47. ACN closed the ACN Portal on November 8, 2016 and the SAA officially expired on November 9, 2016.

48. Through February 2018, Planet Energy continued to make commission payments to ACN on ACN Customers in accordance with the terms of the SAA. However, Planet Energy stopped making commission payments in March 2018 after advising ACN of its intention to seek indemnification in excess of \$11 million due to the voluminous number of complaints it received relating to ACN's IBOs (including the costs incurred as a result of an OEB Enforcement Proceeding bearing File No. EB-2017-0007) and early terminations by ACN Customers pursuant to section 12 of the SAA. Planet Energy sought to set-off its indemnification claim against the

commission payments. Attached as **Exhibit 19** is a copy of Planet Energy's Notice of Intent to Invoke Indemnification Clause.

**D. Following Its Own Breaches, ACN Commences Arbitration Against Planet Energy**

49. On April 26, 2018, ACN commenced the Arbitration by delivering a Notice of Arbitration to the ICDR in accordance with section 19 of the SAA, alleging that Planet Energy failed to make certain commission payments to ACN – when it was ACN which had engaged in serial breaches of the SAA. A copy of the Notice of Arbitration is attached as **Exhibit 20**.

50. Section 19 of the SAA includes an arbitration clause pursuant to which the parties agreed that they would resolve any claim, controversy, or dispute between them by binding arbitration in accordance with the detailed procedures set out in the SAA. Among other things, section 19 provides that the arbitration was to be governed by the rules of the American Arbitration Association (the “**AAA**”) and **held in Toronto or another mutually agreed upon location**.

51. On June 12, 2018, Planet Energy filed a Response to the Arbitration and a counterclaim against ACN asserting, among other things:

- a) that ACN violated its fundamental obligations under the SAA by, *inter alia*, failing to use commercially reasonable efforts to promote Planet Energy's products while ACN occupied itself with launching and promoting Xoom Energy in Canada to replace Planet Energy; and
- b) that ACN breached its obligation to indemnify Planet Energy for all damages related to thousands of complaints of IBO misconduct.

A copy of the Response and Counterclaim is attached as **Exhibit 21**.

52. In its counterclaim, Planet Energy also sought to join Xoom Ontario as a third-party respondent in the Arbitration.

53. On June 13, 2018, the ICDR advised the parties that it had determined the Arbitration would be heard and determined by a single arbitrator. A copy of the ICDR's communication is attached as **Exhibit 22**.

54. On July 31, 2018, ACN filed an Answer to Planet Energy's counterclaim and objected to Planet Energy's inclusion of Xoom Ontario as a party to the Arbitration. Xoom Ontario also filed an objection to Planet Energy's proposed inclusion of Xoom Ontario in the Arbitration (the "**Joinder Dispute**"). Copies of ACN's Answer and Xoom Ontario's objection are attached as **Exhibit 23** and **24**, respectively.

55. On August 7, 2018, the Arbitrator was appointed.

56. On September 24, 2018, the parties convened a conference call with the Arbitrator to discuss the Arbitration and certain procedural matters. I attended this call together with Mr. Strum. Shortly thereafter, the Arbitrator issued Procedural Order No. 1 dated September 26, 2018, which provided:

- a) that the applicable arbitration agreement (the "**Arbitration Agreement**") is contained in section 19(f) of the SAA;
- b) the seat of the Arbitration is Toronto, Ontario, Canada;
- c) the applicable arbitration rules are the International Arbitration Rules of the ICDR Rules (the "**ICDR Rules**") of the AAA;

- d) the Arbitration would be bifurcated such that the Joinder Dispute would be argued in writing as a preliminary matter with submissions to be exchanged by the parties in October and November 2018;
- e) ACN is seeking to enforce its audit rights under the SAA and Planet Energy's reporting obligations under the SAA while Planet Energy argues that the Arbitrator should first determine the definition of "Target Margin" under the SAA as that is a gating issue to determine the scope of the audit (the "**Audit Dispute**"); and
- f) the parties would exchange submissions on the Audit Dispute in November 2018.

Attached as **Exhibit 25** is a copy of Procedural Order No. 1.

**E. The Arbitrator Denies Discovery as to Whether Xoom Energy Was ACN's Alter Ego**

57. In the Joinder Dispute, the Arbitrator denied Planet Energy's request for limited discovery of documents related to joinder of ACN's affiliate Xoom Energy as ACN's alter ego – then declined to join Xoom Energy on the ground that Planet Energy had failed to carry its burden of proof.

58. On October 15, 2018, in accordance with Procedural Order No. 1, Planet Energy delivered its submissions on the Joinder Dispute. Planet Energy submitted that:

- a) it should be entitled to pierce the corporate veil of ACN and join Xoom Ontario and certain other Xoom affiliates, such as Xoom Energy in the United States, as parties to the Arbitration;
- b) in the alternative, Planet Energy should be granted limited discovery rights to determine the ownership structure and extent of domination and control of ACN over Xoom Ontario and the scope of injuries that Xoom Ontario caused to Planet Energy; and

- c) in the alternative, Planet Energy should be granted limited discovery rights to determine whether any other Canadian Xoom entities caused injuries to Planet Energy and should be joined as parties to the Arbitration.

59. In this submission, Planet Energy presented substantial evidence in support of its allegation that Xoom Energy was ACN's alter ego, but did not have access to internal ACN and Xoom Energy documents that would demonstrate the extent over which ACN exercised control over Xoom Energy. A copy of Planet Energy's submission (as amended) is attached as **Exhibit 26**. Planet Energy presented evidence in support of its request for discovery concerning whether Xoom Energy was ACN's alter ego and therefore bound by the Arbitration Agreement. While this evidence is detailed in Planet Energy's submission attached as Exhibit 26, for convenience, I summarize some of the more salient evidence put before the Arbitrator below:

- In 2011, ACN started the retail energy supplier Xoom Energy in the United States.
- On November 22, 2013, Robert Stevanovski of ACN advised me that I needed to understand ACN and Xoom Energy "...are basically the same organization..."
- ACN confirmed for the Wall Street Journal that Xoom Energy is "controlled by ACN and its owners."<sup>4</sup> Similarly, CBS MoneyWatch described Xoom Energy as "an ACN-controlled utility."
- Xoom Energy's submissions in the Arbitration identified that the ACN-Xoom Energy relationship of ownership and control in the U.S. was replicated in Canada by virtue of certain amendments to their original Master Agency Agreement ("**MAA**").
- ACN acknowledged in the Arbitration that Mr. Stevanovski "had authority to act on Xoom [Energy]'s behalf as a member of the then-controlling entity of Xoom [Energy]."
- ACN, Xoom Energy and Xoom Ontario shared many current and former officers and directors during the relevant period.
- Mr. Stevanovski sent Planet Energy's PowerPoint presentation on the draft amendments to the ECPA to Xoom Energy's CEO, Tom Ulry (formerly an ACN executive) for comment, whereupon Mr. Stevanovski spoke about ACN and Xoom Energy in the first-person plural

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<sup>4</sup> James Grimaldi and Mark Maremont, *Marketer Paid Trump Millions: Billionaire endorsed multilevel marketing firm ACN that has weathered investigations in three countries*, Wall Street Journal (14 Aug. 2015) (emphasis added), Exh. R34.

tense: “FYI Something we should want to understand before we make an entry into Ontario.”

60. Even the Arbitrator ultimately recognized that ACN and Xoom had a “close corporate relationship” and “alignment of business interests in having Xoom Ontario enter the Ontario energy market.”<sup>5</sup>

61. On November 2, 2018, Xoom Ontario and Xoom Energy (together, “**Xoom**”) and ACN responded to Planet Energy’s submission, arguing (i) Xoom Ontario could not be compelled into an arbitration because it did not exist at the time the SAA was entered into, and (ii) ACN does not control Xoom. Neither ACN nor Xoom addressed Planet Energy’s request for limited discovery rights to reasonably discover its claim. Copies of Xoom Ontario’s and ACN’s submissions are attached as **Exhibit 27** and **28**, respectively.

62. Between November 9 and December 17, 2018, the parties exchanged various additional submissions regarding the Joinder Dispute. A copy of Planet Energy’s rebuttal and Xoom and ACN’s sur-rebuttal submissions are attached as **Exhibit 29, 30, and 31**, respectively. Procedural Order No. 2 is attached as **Exhibit 32**.

63. On December 19, 2018, the Arbitrator heard oral argument on the Joinder Dispute and, nearly three months later on March 6, 2019, dismissed Planet Energy’s application in its entirety (the “**Partial Award**”). The Arbitrator did not allow Planet Energy to join Xoom Energy and/or Xoom Ontario as parties to the Arbitration nor did she allow Planet Energy even limited discovery rights to establish its claim. A copy of the Arbitrator’s Partial Award is attached as **Exhibit 33**.

64. In reaching this decision, the Arbitrator required Planet Energy to prove the substance of its alter ego claim in the Arbitration without affording Planet Energy any basic discovery rights. The Arbitrator’s Partial Award was the first indication that the Arbitrator was not going to provide

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<sup>5</sup> Partial Final Award on Jurisdiction and Decision on Joinder (6 Mar. 2019).



Planet Energy with the discovery rights to which it was entitled and which it required to present its case.

**F. The Arbitrator Grants “Unfettered” Audit Rights to ACN as “Interim Relief”**

65. At the same time the Arbitrator denied Planet Energy any discovery rights on its application to join Xoom as ACN’s alter ego, she granted ACN virtually unlimited exploration of Planet Energy’s files as a form of “interim relief” even though she declined to make any finding of the legality of such an order.

66. On November 9, 2018, ACN filed a motion for interim relief seeking to audit Planet Energy’s books and records. The SAA provides certain audit rights to ACN in the ordinary course of business. Planet Energy did not object to an audit, but requested that the Arbitrator first determine the meaning of “ACN Customer” and “Target Margin” under the SAA, as both interpretations would have a significant impact on the necessity and scope of any audit (*i.e.*, the amount of potential damages for alleged unpaid commissions). Copies of the parties’ submissions are attached as **Exhibits 34** and **35**, respectively.

67. In Procedural Order No. 5 dated March 6, 2019 (the same date of the Partial Award discussed above), the Arbitrator dismissed Planet Energy’s motion and granted ACN’s motion for an immediate audit. In doing so, at paragraph 32, the Arbitrator expressly “disregard[ed]” the applicable law on interim relief. A copy of Procedural Order No. 5 is attached as **Exhibit 36**. In its submission to the Arbitrator, Planet Energy set out that, according to the applicable law, in order for ACN to exercise its audit right in the form of immediate interim relief, ACN should have been required to make a strong showing that the audit was needed to avoid irreparable harm; the audit was needed as a matter of urgency; the burden of the audit on Planet would not outweigh the burden to ACN of waiting to obtain relevant documents through evidentiary procedures; and ACN

had a reasonable chance of success on the merits (but without prejudging the merits). The Arbitrator made no finding that ACN had satisfied these requirements.

68. Rather, the Arbitrator's decision granted what ACN called "unfettered" audit powers to review Planet Energy's databases and other files, including records for non-ACN customers, at Planet Energy's offices at the outset of the arbitration (prior to any discovery), to search for information in support of ACN's case. Planet Energy's powers of discovery, by contrast, were limited to the information exchange procedures under ICDR Rules, which were completely denied by the Arbitrator on the issue of joining Xoom (discussed above) and eventually undermined by the Arbitrator on the merits (discussed further below).

69. As a further consequence, the audit was far more extensive, complicated, and contentious than it would have been if the definition of "ACN Customer" had been first resolved, leading to both increased costs and incorrect accounting by ACN's expert. This led to further prejudice to Planet Energy in the Award when the Arbitrator awarded ACN its costs of \$500,000 on the unnecessarily wide-ranging year long audit.

70. Following contentious competing audit proposals – in which ACN and its auditor, Stout Risius Ross, LLC ("**Stout**"), exhibited a lack of knowledge of the energy marketing business and sought to carry out a digital audit (which was not possible because a significant portion of Planet Energy's documentation only existed in hard copy or was accessible only through the utility database) – on April 16, 2019, the parties agreed to an Audit Plan, which was diarized in Procedural Order No. 7, a copy of which is attached as **Exhibit 37**.

71. The parties had continuing issues with respect to the scope of the audit. On May 14, 2019, the Arbitrator issued Procedural Order No. 8, with provided that:

- a) Planet Energy was to provide ACN with a digital extract of records for more than 140,000 customers in its customer database that relate to identified ACN referrals; and
- b) Upon reasonable advance notice, Planet Energy was to provide Stout with on-site access to its utilities' databases.

A copy of Procedural Order No. 8 is attached as **Exhibit 38**.

72. ACN had requested access to Planet Energy's entire customer database containing the personal information of many customers who are not and have never been ACN Customers. Planet Energy argued this was overbroad and unnecessary. Although the Arbitrator agreed with Planet Energy that access to its entire database was unwarranted, in Procedural Order No. 8 she determined that *"the Arbitrator is persuaded that some access to Planet Energy's entire customer database and is permitted by Section 9 [of the SAA] insofar as it grants access to customer records"* for certain purposes.

73. The Arbitrator also concluded that Stout, on behalf of ACN, was required under the terms of the SAA to do the majority of its work on-site at Planet Energy's office.

74. As I discuss later in this affidavit, Stout ultimately argued at the hearing of the Arbitration that it was not provided adequate time to review certain files during the audit, a position which the Arbitrator accepted in the Award, to the prejudice of Planet Energy, notwithstanding that (i) the Arbitrator set the timetable and framework for the Audit and (ii) dismissed ACN's specific concerns regarding the time-intensive process of having Stout attend Planet Energy's office to conduct the audit in Procedural Orders Nos. 7 and 8.

75. During the audit a number of additional issues arose regarding the scope of documents Stout was entitled to obtain and review. These were addressed in Procedural Orders Nos. 10 and

11, copies of which are attached as **Exhibit 39** and **40**. Throughout the audit process, Planet Energy provided or granted access to all documentation ordered to be produced or accessed by the Arbitrator in a timely manner. Despite this, beginning at paragraph 417 of the Award, the Arbitrator is critical of Planet Energy for failing to produce the “underlying files” supporting the monthly “commission advice” provided to ACN...” and concludes that Stout’s damages analyses could not be criticized for failing to consider them. This is false and ignores critical evidence put before the Arbitrator. The underlying files were always made available to Stout at Planet Energy’s offices. Moreover, Planet Energy produced these underlying files as part of the “**Detailed Commission Files**”<sup>6</sup> that were prepared by Planet Energy at Stout’s request and made the “underlying” data that Stout requested available for review at Planet Energy’s office in accordance with Procedural Order No. 8. If Stout had any issue with the underlying files in the Detailed Commission Files, they were always free to go to the source.

76. The following is a brief list of examples where the Arbitrator ignored the evidence in respect of the Audit and instead gave Stout the benefit of the doubt which, in many cases, was inconsistent with the evidence before her:

- a) At paragraphs 362 and 425-427 of the Award, the Arbitrator accepts Stout’s assertions that it was provided only “limited access to the SPI Billing Files” and therefore could not rely on those files to conduct its damages calculations. This is wrong. Stout’s expert witnesses actually testified at the Arbitration that Planet Energy acted within the parameters of the procedural orders governing the Audit:

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<sup>6</sup> Such files included (i) detailed electricity commission calculation files; (ii) revenue and cost of sales calculation formulae; (iii) electronic revenue detail reports from SPI/Planet Energy; (iv) Shell electricity swaps trade confirmations; and (v) local distribution company commodity purchase records (including HOEP prices). To the extent Stout wanted to review contemporaneous underlying documentation – for example, the Shell electricity swaps trade confirmations which were contained in 16 loose leaf binders at Planet Energy’s office – that information was made available to Stout for inspection and review at Planet Energy’s office in accordance with Procedural Order No. 8.

- Q. But you had full access -- Planet Energy didn't impede your access to the SPI files in any way in October, did they?
- A. Well, sure, I mean, one, we were constrained with the way we could work with those files. Two, we were constrained with what we could take away from those files. We were incredibly constrained with the way we had to work with those files.
- Q. And any of those constraints were all pursuant to the procedural orders in this arbitration; right?
- A. Yeah, I mean I don't think anyone was violating an order. That doesn't mean that we were not constrained with what information we had and how we could use it.
- Q. Planet Energy did not take any action to constrain your access to the SPI files other than -- and provided you with all the -- strike that. Planet Energy provided you all the access to the SPI files as set out in the various procedural orders of this arbitration; is that right?
- A. **I would say Planet Energy provided access to the files pursuant to the procedural orders and that process constrained our ability to use them. Yes.**  
[Emphasis added]

Other relevant excerpts from the transcript of Stout's evidence on cross-examination are attached as **Exhibit 41**.

- b) At paragraph 366 of the Award, the Arbitrator concludes that "Stout had no way to independently confirm the cost of sales used for Target Margin calculations." This is wrong. Planet Energy provided Stout with open access to all of its relevant records including the hard copy records of the Shell confirmations. To any extent Stout did not review certain information it required to reach this conclusion, that was a decision it reached on its own.
- c) At paragraph 366 of the Award, the Arbitrator accepts Stout's assertion that "the Detailed Commission Files could not be independently verified against a third party

source due to an inability to confirm swaps and trade confirmations directly with Shell and Planet [Energy]'s unwillingness to share its hedging and portfolio management strategy." Again, this is fundamentally wrong. The Shell electricity swaps and trade confirmations were contained in 16 loose leaf binders at Planet Energy's office and were made available to Stout to ensure that Stout could review them against the Detailed Commission Files. (The Shell confirmations are only done in hard copy by facsimile). Indeed, during Stout's visit to Planet Energy's premises on August 16-19, 2019, Stout did, in fact, compare the hard copy Shell trade confirmations against the Detailed Commission Files.

- d) At paragraph 421, the Arbitrator accepted Stout's assertion that it initially believed the Detailed Commission Files were historical documents and that "if the parties start to create documents during the time period [of the audit], there's inherently, even unconsciously, potential bias." However, as I mention above, it was Stout that requested the Detailed Commission Files be prepared in connection with its audit. In other words, Stout requested that certain files be prepared for its audit, Planet Energy prepared those files, and the Arbitrator penalized Planet Energy for preparing the very files Stout requested during its audit. First, Stout asked for 30 months of Detailed Commission Files and later asked for 119 months of Detailed Commission Files (59 for electricity and 60 for natural gas).

**G. The Arbitrator Continues to Decline to Enforce Planet's Rights to Present Its Case**

77. In the merits phase, when ACN was finally ordered to produce documents, ACN failed to appropriately respond to 39 out of 43 discovery requests approved by the Arbitrator. Nonetheless, the Arbitrator refused to take any action to compel ACN's compliance. It was obvious that ACN was withholding numerous responsive documents that were "reasonably believed to exist" and

“relevant to the case and material to its outcome.” Yet ACN would never produce those documents and the Award was made in their absence.

78. The parties convened a teleconference with the Arbitrator on August 26, 2019 to discuss the procedure and timetable for the merits phase of the Arbitration. Following this teleconference, the Arbitrator issued Procedural Order No. 12 dated September 17, 2019, which provides, among other things, that:

- a) the governing arbitration law is Ontario’s *International Commercial Arbitration Act* (2017);
- b) the parties were to make targeted document requests by October 14, 2019 and be presented in the form of a “Stern Schedule” (the “**Document Requests**”);
- c) any objections to the Document Requests were to be advanced by October 28, 2019 (the “**Objections**”);
- d) to the extent the Objections could not be resolved, either party may submit the Objection(s) to the Arbitrator for determination by no later than November 12, 2019;
- e) document production for which there was no objection were to be completed by November 15, 2019;
- f) any outstanding document production (such as any documents ordered to be produced by the Arbitrator) was to be completed by December 31, 2019;
- g) by March 20, 2020, the Parties will advise the Arbitrator as to the venue of the hearing, which shall be in Toronto, Canada; and

- h) post-hearing briefs were to be simultaneously exchanged on June 29, 2020

A copy of Procedural Order No. 12 is attached as **Exhibit 42**.

79. On October 14, 2019, each of Planet Energy and ACN served its Stern Schedule<sup>7</sup> on the other identifying its Document Requests, copies of which are attached as **Exhibits 43** and **44**. Under Procedural Order No. 12, rolling production was supposed to begin on October 28, 2019. Planet Energy was ready to begin rolling production on that date but ACN was not. Planet Energy granted ACN a short extension, which was also not met by ACN. Although ACN did not object to many of Planet Energy's Document Requests, ACN neither commenced nor completed its agreed to production of documents by November 15, 2019 in accordance with Procedural Order No. 12.

80. On November 15, 2019, the parties submitted their substantive disputes over their outstanding Document Requests to the Arbitrator during a two-hour teleconference, following which the Arbitrator issued Procedural Order No. 13. In general, Procedural Order No. 13:

- a) denied Planet Energy's request for document production in respect of any relevant ACN documents that were in the possession of Xoom;
- b) denied Planet Energy's request for ACN to use best efforts to obtain and produce relevant documents from Xoom;
- c) denied Planet Energy's request for documents relating to the contractual relationship between ACN and Xoom; and
- d) denied Planet Energy's request to discover certain documents responsive to its pleaded Response to the Notice of Arbitration, stating that Planet Energy could

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<sup>7</sup> A 'Stern Schedule' is a commonly used form in international arbitrations which identifies the various categories of documents requested, the relevance/materiality of the requested documents, the opposing party's objections to the document requests, responses to the opposing party's objections, and the Arbitrator's rulings on the document requests.



simply put in whatever evidence it had on the issue of erroneous commission payments in its direct evidence and “no doubt” ACN would put in whatever responding evidence it had on the topic.

A copy of Procedural Order No. 13 is attached as **Exhibit 45**.

81. In Procedural Order No. 13, the Arbitrator denied Planet Energy’s request for a simple best-efforts undertaking by ACN to produce relevant documents from Xoom, which the co-founder of ACN had described as “basically the same organization” as ACN and which was competing with Planet Energy in the Territory.

82. In Procedural Order No. 13, the Arbitrator also failed to enforce Procedural Order No. 12. The Arbitrator acknowledged ACN's failure to comply with the timelines set out in Procedural Order No. 12 yet simply ordered the parties to make best efforts to substantially complete production of the agreed upon documents by December 10, 2019. Despite this, ACN produced only 8 documents as of December 8, 2019, and only 430 documents as of December 31, 2019. By contrast, Planet had produced over 4,000 documents as of December 31, 2019.

83. In late December 2020 Planet Energy sought an Order from the Arbitrator to compel ACN to produce its customer complaint records in respect of Planet Energy on the basis that such records were directly relevant to Planet Energy’s indemnification claim. At that time, ACN had only produced a non-readily searchable or non-detailed complaint tracker which Planet Energy contended was incomplete and missing unique fields of information and was missing the underlying contract numbers (the “**ACN Complaint Tracker**”).

84. On December 26, 2019, the Arbitrator issued Procedural Order No. 14 requesting further information from the parties in respect of Planet Energy’s request for production of the complaint records. A copy of Procedural Order No. 14 is attached as **Exhibit 46**. The parties responded to

the Arbitrator's inquiries by email a few days later, which submissions are attached as **Exhibit 47**.

85. On January 3, 2020, the Arbitrator issued Procedural Order No. 15, dismissing Planet Energy's request for additional records on the basis that ACN's complaint tracker identifies nearly 4,000 customer complaints and therefore the scope of complaints may not be as "vast or material as Planet [Energy] alleges." However, the Arbitrator had no evidence before her as to whether 4,000 complaints was an expected amount, an excessive amount or even a typical amount for the period at issue. Based on my thirty-nine years of experience in this industry, 4,000 complaints is, in fact, a significant number of customer complaints, especially when all of these complaints related to online sales. In any event, the Arbitrator ordered ACN to provide certain missing fields of information that were omitted from the complaint tracker produced to Planet Energy but refused to make any adverse inferences regarding the omitted information. A copy of Procedural Order No. 15 is attached as **Exhibit 48**.

#### **H. Planet Urges the Arbitrator to Enforce its Discovery Rights and the Arbitrator Refuses**

86. After months of repeatedly following up with ACN to obtain production of its relevant documents pursuant to the Stern Schedule, on January 16, 2020, two weeks after the final due date for production, Planet Energy wrote to the Arbitrator asking for an Order to compel ACN to comply with its production obligations. As indicated above, as of January 16, 2020, ACN had made incomplete or no production with respect to 39 of 43 Document Requests by Planet Energy. For example:

- a) In response to Document Request #29, ACN was requested to provide information regarding Planet Energy's customers who later became Xoom customers through ACN's IBO network. No such document was ever produced by ACN; however, certain documents that Planet Energy later obtained from Xoom Energy in the

1782 Application (defined below) confirm that such documentation exists but was not produced. For example, Planet Energy obtained an email exchange from April 30, 2015 between Mr. Ulry of Xoom Energy and Mr. Palma of ACN in which Mr. Palma provided a spreadsheet entitled “PE gross orders” to Mr. Ulry in response to a request that ACN share its “sales in Ontario in BC by month going back as long as you can...”<sup>8</sup>

- b) In response to Document Request #8, ACN was ordered to produce the CVs of each of the executives, managers and directors of ACN entities, including Xoom. ACN did not produce any documents in response to this request.
- c) In response to Document Requests #20 and #41, ACN was obligated to produce documents, communications, or emails with its IBOs with regard to the “Xoom Video” and the wind down of ACN's relationship with Planet Energy. ACN produced no emails or other documents involving communications with its IBOs other than standard compensation flyers. This lack of production was inconsistent with the fact that Planet Energy had already obtained the February 6, 2016 email referred to in paragraph 41 above which was an email from one of ACN's IBOs identifying that he was aware of Xoom's plans to enter the Canadian market in 2016.
- d) In several instances, ACN produced documents with titles indicating that the same document was updated and produced weekly; despite this, weekly reporting was not produced.

A copy of Planet Energy's submission to the Arbitrator is attached as **Exhibit 49**. Included in the submission was a detailed Addendum setting forth each Document Request that ACN had failed

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<sup>8</sup> Notably, although the email was produced, neither ACN nor Xoom ever provided the attached spreadsheet.

to satisfy (the “**Addendum**”). ACN opposed Planet Energy’s request by email on January 16, 2020, on the grounds that Planet Energy was required to request permission to file such motion, a copy of which is attached as **Exhibit 50**. The Arbitrator then ruled, by email, that Planet Energy could only seek permission to file an objection, which it did on January 17, 2020 and which ACN responded to on the same date. The Arbitrator then denied Planet’s request to file an objection. A copy of the Arbitrator’s ruling in Procedural Order No. 16 is attached as **Exhibit 51**.

87. On January 20, 2020, the Arbitrator issued Procedural Order No. 16 denying Planet Energy’s request to bring a motion to address ACN's deficient production. Instead of simply ordering ACN to produce any outstanding documents, the Arbitrator placed the onus on Planet Energy by ordering it to bring the specific deficiencies to ACN's attention (which it had already in the Addendum served on the Arbitrator and ACN on January 16, 2020).

88. In any event, Planet Energy complied with Procedural Order No. 16 on January 21, 2020, as it delivered a substantial list of deficiencies in ACN's productions (which was an enhanced version of the Addendum previously served). This list identified each Document Request that ACN had failed to adequately respond to; the Arbitrator’s earlier ruling on the Document Request; the relevance of the requested documents; what ACN had produced to date (if anything) and what was outstanding; and why Planet Energy believed such additional documents existed. Planet set a due date of January 31, 2021. ACN produced no new documents by January 31, 2021. A copy of Planet Energy’s letter and deficiency addendum is attached as **Exhibit 52**.

89. On February 24, 2020, ACN responded to the deficiency list by producing an additional 34 documents responsive to only one of Planet Energy’s Document Requests all of which were form documents and 20 of which were from a non-relevant time period. ACN failed to respond to 38 of the 39 document requests and no new emails were produced.

90. Despite this, in the absence of proper production from ACN, the Arbitrator ordered Planet Energy to prepare and deliver its witness statements and legal argument by March 29, 2020. While the Arbitrator did not foreclose the ability of Planet Energy to raise ACN's late production when addressing the issue of costs or to ask for an adverse inference to be drawn at the arbitral hearing, such an Order would not assist Planet Energy in being able to discover its claim and present its case. The Arbitrator simply allowed ACN to continue hiding the ball.

91. While this was ongoing, both of the parties sought leave to extend the timetable for the delivery of the Statement of Claim and Statement of Defence and Counterclaim, which in this proceeding were similar to legal briefs, and supporting witness statements. The Arbitrator issued Procedural Orders Nos. 17 and 18 in response to these submissions, copies of which are attached as **Exhibits 53** and **54**. Planet Energy's submissions in respect of these procedural orders are attached as **Exhibit 55** and ACN's submissions are attached as **Exhibit 56**.

92. On January 28, 2020, ACN delivered its Statement of Claim together with its supporting witness statements from Mr. Palma, Mr. Ulry, Michael Petron (a Managing Director at Stout), and Cristina David (a former employee of Planet Energy). A copy of the Statement of Claim is attached as **Exhibit 57**. The witness statements of Mr. Palma, Mr. Ulry, Mr. Petron and Ms. David are attached as **Exhibits 58, 59, 60, and 61**, respectively. In addition to the witness statements, ACN also filed its expert report (the "**Stout Report**"), a copy of which is attached as **Exhibit 62**.

93. On February 10, 2020, ACN wrote to the Arbitrator seeking additional time to prepare its Reply and to revisit the timetable set in Procedural Order No. 17. The Arbitrator agreed to a three day extension for the delivery of ACN's reply to the Statement of Defence and Counterclaim and a three day extension for the delivery of Planet Energy's Rejoinder in reply to its counterclaim. A copy of Procedural Order No. 19 confirming this decision is attached as **Exhibit 63**.

#### H. Planet Energy Seeks Missing ACN Documents from ACN's Affiliate Xoom

94. Since the Arbitrator's rulings failed to uphold Planet Energy's discovery rights and even to enforce her own Procedural Orders, on February 28, 2020, Planet Energy filed an application in the U.S. Court under 28 U.S.C. §1782 seeking a subpoena for the production of at least some of ACN's missing documents, i.e., communications and documents exchanged between ACN and its affiliate Xoom Energy, insofar as they were also in Xoom's possession (the "**1782 Application**"). A copy of the 1782 Application is attached as **Exhibit 64**.

95. ACN strenuously objected to the 1782 Application and applied to the Arbitrator to stop the 1782 Application and prevent the documents from emerging or, in the alternative, to confirm that the Arbitration would not be adjourned if Planet Energy obtained such documents. A copy of ACN's written submissions is attached as **Exhibit 65**.

96. On March 11, 2020, the Arbitrator issued Procedural Order No. 20 confirming that the 1782 Application "*could yield relevant and material documents essential to [Planet Energy's] case*". Nevertheless, and notwithstanding that the World Health Organization declared COVID-19 a global pandemic that day, the Arbitrator ordered that any relevant and material evidence which might be yielded from the 1782 Application "*shall not be deemed good cause for the extension of any deadlines in this Arbitration, including the evidentiary hearing.*" A copy of Procedural Order No. 20 is attached as **Exhibit 66**.

97. Due to the pandemic and the initial closing of the U.S. Court, the 1782 Application was not heard or determined prior to March 29, 2020, the date Planet Energy was required to deliver its Statement of Defence and Counterclaim along with supporting witness statements. Accordingly, on March 29, 2020, Planet's Statement of Defense and Counterclaim was prepared and submitted in the absence of the full evidentiary record, as the documents that were the subject of the 1782 Application had not yet been produced (and other ACN documents were never

produced). A copy of the Statement of Defence and Counterclaim is attached as **Exhibit 67**. The witness statements of Mr. Stephen Plummer and Jordan Small of Planet Energy, Timothy Zimmerman of RSM Canada LLP ("**RSM**"), Planet Energy's experts, and me are attached as **Exhibits 68, 69 and 70**, respectively. I have reviewed the Statement of Defence and Counterclaim and believe it to be true and I adopt it as part of this affidavit.

98. Planet Energy ultimately prevailed in the 1782 Application, and Xoom was ordered to produce documents that were responsive to Planet Energy's subpoena that presented numerous identical requests for documents as those that the Arbitrator had determined would not be relevant to the case and material to its outcome. However, ACN's intervention, as aided by Procedural Order No. 20, was successful in delaying the production of those documents until the last days of the evidentiary hearing (discussed further below).

**I. The Arbitrator Orders a Virtual Evidentiary Hearing and Denies Planet Sufficient Time to Prepare**

99. The day after Planet Energy submitted its Statement of Defence and Counterclaim and supporting witness statements and while Planet's U.S. Court proceeding was pending, on March 30, 2020, the Arbitrator proposed that the parties convene a status conference to discuss holding the entire evidentiary hearing online, so as not to allow the Covid-19 pandemic to delay the hearing. A copy of the Arbitrator's email is attached as **Exhibit 71**.

100. The following day the parties convened a teleconference to address the issues that had arisen as a result of the global pandemic. I attended that call as I did every call with the Arbitrator and the ICDR throughout the Arbitration.

101. Planet Energy maintained that the Arbitration was required to be held in accordance with the Arbitration Agreement, which provided for an in-person hearing in Toronto unless otherwise mutually agreed. Planet Energy wished to proceed in-person for a number of reasons, including

that it was concerned that videoconferencing would be inadequate for assessing witness credibility. At the same time, Planet was cognizant of the travel and other restrictions due to the pandemic.

102. Planet Energy proposed the following three alternatives which would have alleviated its concerns regarding the assessment of witness credibility virtually while taking into consideration the impact of COVID-19

- a) if the border were to remain closed, the parties could convene the hearing in a different location such as the District of Columbia, Philadelphia, or Delaware, which would limit the required cross-border travel to only counsel for ACN (who, as noted above, could have crossed the board by air travel at that time). Furthermore, for the evidentiary portion of the hearing, Planet Energy also proposed that its witnesses, who were based in Toronto, Ontario, could have testified in Ontario and only Planet Energy's counsel, Mr. Strum, would have had to travel in that case;
- b) the Arbitration could be bifurcated such that issues involving questions of law rather than disputed issues of fact (such as the definition of "ACN Customers" under the SAA for the purposes of calculating commission payments) could be argued over videoconference and factual issues could be narrowed and argued in-person during the summer; and
- c) the parties could attempt to mediate their dispute prior to the evidentiary hearing.

103. Ten days after this teleconference, and while we waited for the Arbitrator's decision, she published an article entitled "Draft Zoom Hearing Procedural Order" in Transnational Dispute Management magazine opining that international arbitrators could compel parties to conduct



virtual hearings under the ICDR Rules and provided a proposed draft order to that effect. A copy of the Arbitrator's publication is attached as **Exhibit 72**.

104. On April 29, 2020 – 28 days after the parties made oral submissions on this issue and a month before the scheduled hearing – the Arbitrator dismissed Planet Energy's proposed alternatives. In Procedural Order No. 23, the Arbitrator declared that, despite the express language of the Arbitration Agreement and noting that "Respondent stated that it wished to proceed with an in-person hearing and objected to the hearing being conducted virtually", Planet Energy did not have a "right" to an in-person hearing and that the Arbitration would proceed virtually. The Arbitrator reached this conclusion based solely on the oral submissions that were made on 24-hour notice before the conference call the Arbitrator requested was convened – no written submissions (such as those relating to the Arbitrator's jurisdiction) were permitted. A copy of Procedural Order No. 23 is attached as **Exhibit 73**.

105. By allowing only 30 days from her Decision to Conduct the Evidentiary Hearing by Videoconference, dated April 29, 2020, to the commencement of the evidentiary hearing on June 1, 2020, the Arbitrator effectively applied the truncated time period provided at Article E-9 of the ICDR's rules for International *Expedited* Procedures. A copy of the ICDR Rules is attached as **Exhibit 74**.

106. Days after making this Order, the Arbitrator again made public statements in a panel presentation, posted on YouTube<sup>9</sup> confirming her position that an Arbitrator could compel the parties into a virtual hearing.

107. The challenge of effectively presenting Planet Energy's case online was multiplied by the very pandemic that the Arbitrator used to justify the online Hearing in the first place, but she

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<sup>9</sup> [https://www.youtube.com/watch?v=0jKZeM9k\\_zA](https://www.youtube.com/watch?v=0jKZeM9k_zA)

refused to grant Planet a reasonable extension of time to prepare.

108. Due to extensions for submission of the Parties' memorials (due to the pandemic), the time period for Planet Energy to prepare for the Hearing following the submission of its Rejoinder was reduced from eight weeks to only three. Meanwhile, ACN was able to prepare for the Hearing from the date of the submission of its Reply – a month earlier than Planet Energy's Rejoinder.

109. Therefore, following the Arbitrator's order to move the entire Hearing online, Planet Energy urged her to push the date of the Hearing by about one month in order to prepare, by reducing the subsequent time allotted for submission of Post-Hearing Briefs, so there would be no delay in issuing the Award. ACN agreed that the time to prepare Post Hearing Briefs could be reduced. However, the Arbitrator granted only one additional week for Planet to prepare for the virtual evidentiary hearing.

110. The Arbitrator's insistence upon Plant Energy preparing for a two-week virtual hearing in only four weeks, when its legal team and client representatives were under restrictions and its U.S. Court proceeding was pending, was without any reasonable justification and severely prejudiced Planet Energy's ability to present its case at the Hearing.

**J. Planet Energy Made Its Final Written Submissions before the Hearing, Still without the Missing Evidence**

111. On April 23, 2020, ACN delivered its Reply and supporting witness statements. The Reply is attached as **Exhibit 75**, and the witness statements of Mr. Palma, Mr. Yauch, Mr. Ulry, Mr. Lofranco and Mr. Merriman are attached as **Exhibits 76, 77, 78, 79, and 80**, respectively.

112. On May 8, 2020, Planet Energy, ACN and Xoom Energy appeared before the U.S. Court in respect of the 1782 Application. During that appearance, the Court advised the parties that it

was “inclined to grant” Planet Energy’s application. Copies of the parties submissions on the 1782 Application are attached as **Exhibits 81, 82, and 83.**

113. Before receiving a decision from the Court on the 1782 Application, however, Planet Energy was required to deliver its Rejoinder submission in the Arbitration on May 11, 2020, which it did together with (i) supplemental witness statements from Mr. Zimmerman, Ms. Greenwald, and me, and (ii) a request for adverse inferences in respect of 20 different categories of documents which ACN made inadequate or no production. Copies of the Rejoinder submission and requested adverse inference chart are attached as **Exhibit 84 and 85**, respectively. A copy of RSM’s reports are attached as **Exhibit 86** and my supplemental witness statement is attached as **Exhibit 87.**

**K. The Arbitrator Denies Planet Any Meaningful Opportunity to Present the Missing Evidence Finally Obtained from Xoom**

114. The evidentiary hearing commenced on June 1, 2020. At this time, Planet Energy had still not received a decision in the 1782 Application and therefore was required to proceed to examine ACN's witnesses without proper document production.

115. On June 5, 2020, after completing more than half of the examinations in the evidentiary hearing, the 1782 Application was granted by the U.S. Court, despite coordinated opposition from ACN and Xoom Energy. Xoom Energy was compelled to produce documents by June 22, 2020 (the “**Xoom Documents**”) in response to virtually identical Document Requests to which ACN was supposed to have produced documents and which the Arbitrator confirmed could be relevant to the Arbitration. A copy of the Court’s endorsement is attached as **Exhibit 88.**

116. On June 19, 2020, the parties advised the Arbitrator that they agreed to closing arguments and post-evidentiary written submissions but were at an impasse with respect to the Xoom Documents. ACN wanted closing arguments to occur on June 24, 2020, even though the Xoom

Documents were only to be delivered two days earlier. Planet Energy argued that it should be entitled to a reasonable opportunity to review the Xoom Documents, exchange written submissions and have an oral hearing, if necessary, in respect of the Xoom Documents before the parties proceeded to closing arguments. Planet Energy's proposal would not have added any extra time to the Arbitration because the time for preparing Post-Hearing Briefs could have simply been shortened to accommodate this request without jeopardizing Planet Energy's right to a fair hearing and to materially use the Xoom Documents in presenting its case. A copy of the parties' correspondence to the Arbitrator is attached as **Exhibit 89**.

117. The Arbitrator refused Planet Energy's request later that day. The Arbitrator determined that Planet Energy was required to identify which Xoom Documents it wanted to admit into the evidentiary record on June 24, 2020 (*i.e.* two days from the date it was to receive the Xoom Documents) and that closing submissions for the Arbitration would nevertheless proceed two days later on June 26, 2020. Planet Energy was not permitted to cross-examine any of ACN's witnesses on the Xoom Documents (the "**June 19 Direction**"). A copy of the June 19 Direction is attached as **Exhibit 90**.

118. At paragraph 101 of the Award the Arbitrator states that neither party argued "that they should be permitted to recall on or more witnesses to testify" in relation to the Xoom Documents. The Arbitrator made it clear on numerous occasions, including in Procedural Order No. 20, that despite the relevance of the Xoom Documents, their production would not form the basis of any adjournment of the Arbitration hearing. The June 19 Direction confirms this to be the Arbitrator's position.

119. On June 22, 2020, Planet Energy received approximately 400 individual files from Xoom pursuant to the 1782 Application. In accordance with the June 19 Direction, Planet Energy immediately undertook a comprehensive review of these documents and, 48 hours later, Planet

Energy identified 122 Xoom Documents which it sought to include in the evidentiary record. An index of these 122 Xoom Documents is attached as **Exhibit 91**.

120. These 122 Xoom Documents consist almost exclusively of relevant and material written communications between ACN and Xoom that ACN had withheld from the Arbitration and failed to produce in response to Planet Energy's Document Requests. Virtually all of the 122 Xoom Documents were emails that were sent to and/or from ACN email addresses. The emails illustrate that ACN (i) shared significant confidential information of Planet Energy with Xoom Energy, (ii) tasked Xoom Energy's marketing team with promoting Xoom in Canada while Planet Energy's sales declined, and (iii) ignored its wind-down obligations to Planet Energy under the SAA.

121. I emphasize that there is no reason to believe that the Xoom Documents include all relevant documents. The requests Planet Energy made to Xoom were only a subset of all the requests for which ACN had made inadequate production. Additionally, Xoom had a very short period of time to respond to the subpoena that it was ordered to comply with by the U.S. Court so that Planet Energy could obtain production prior to the close of the arbitral hearing. Due to this short period of time, Planet Energy further truncated its requests in order to obtain production in time.

122. In one of the Xoom Documents, Mr. Uly, one of ACN's key fact witnesses, sent an email dated April 30, 2015 to Mr. Palma, another of ACN's key fact witnesses, requesting a copy of ACN's *"sales in Ontario and BC by month going back as long as you can..."* Minutes later, Mr. Palma responded with "attached" entitled "PE Gross Orders". Given that ACN was required to exclusively sell Planet Energy products in Ontario and British Columbia under the SAA, disclosure of its sales would have contained information relating to Planet Energy's market share and customers and would have been confidential to Planet Energy. Attached as **Exhibit 92** is a copy of this email exchange.

123. ACN did not produce this email exchange nor the “PE Gross Orders” attachment in the Arbitration. Furthermore, Xoom only produced the email but has never produced the attachment which Planet Energy believes contains its confidential customer list.<sup>10</sup> This along with other Xoom Documents made it abundantly clear that ACN had withheld from production key documents that were highly relevant to Planet Energy’s case.

124. Mr. Strum wrote to the Arbitrator asking to be heard on this matter prior to closing submissions and, particularly, to ask that adverse inferences be drawn against ACN. Once again, the Arbitrator dismissed Planet Energy’s request and concluded that she would review the 122 Xoom Documents and that the parties would proceed to closing arguments as scheduled. A copy of the parties’ exchange with the Arbitrator and her ultimate ruling on this matter is attached as **Exhibit 93**.

#### **L. The Arbitrator Circumscribes Planet Energy’s Closing Arguments**

125. On June 26, 2020, the parties completed their closing arguments and, on July 14, 2020, the parties exchanged page-limited post-hearing submissions addressing the merits, hearing, Xoom Documents, damages, and costs of the Arbitration. A copy of Planet Energy’s closing arguments is attached as **Exhibit 94**.

126. As set out at paragraphs 97 to 102 of the Award, at closing oral argument, the Arbitrator allowed Planet merely to reference, but not actually present, the evidence it had obtained from Xoom as a fraction of its one-hour presentation.

127. Likewise, a significant portion of Planet Energy’s written post-hearing submission – to which the Arbitrator applied an arbitrary page limit (over Planet’s objection) – tried to address the

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<sup>10</sup> I am advised by Mr. Strum that he requested a copy of the “PE Gross Orders” email attachment from Xoom Energy’s counsel; however, Xoom Energy did not produce the attachment on the basis that it could not find it (notwithstanding that it could locate the email which contained the attachment).

Xoom Documents and Planet Energy's request for adverse inferences relating thereto. Planet Energy was not provided any additional pages to cover the significant issues with the assertions of ACN's witnesses, particularly with respect to its involvement in Xoom Energy entering the Canadian market and its failure to produce relevant documents in that regard, even though the Arbitrator refused to grant Planet Energy any prior meaningful opportunity to present these Xoom Documents in written submissions. Given that the Arbitrator refused to provide Planet Energy with any opportunity to cross-examine ACN's witnesses with the relevant Xoom Documents, it was not possible to impeach these witnesses during the hearing with the Xoom Documents.

128. Planet Energy's post-hearing submission is attached as **Exhibit 95** and ACN's post-hearing submission is attached as **Exhibit 96**.

129. After submitting post-hearing submissions, the Arbitrator closed the Arbitration effective July 15, 2020.

**M. After Rushing Planet through the Arbitration, the Arbitrator Substantially Delayed Issuing the Award**

130. Despite closing the Arbitration in July, the Arbitrator unilaterally re-opened the Arbitration on Friday, September 11, 2020 (before her deadline to release the Award on Monday, September 14, 2020 pursuant to the ICDR Rules) ostensibly to request additional information relating to an argument raised by ACN in its post-hearing submission that Stout did not have access to certain damages information. ACN wanted an additional two weeks to obtain such information and would then report to the Arbitrator on its updated damages calculations. A copy of Procedural Order No. 27 dated September 11, 2020, which addresses this request, is attached as **Exhibit 97**.

131. The Arbitrator's delay in releasing her Award and unilaterally re-opening the Arbitration to address an alleged evidentiary gap that ACN did not seek to resolve during or before the evidentiary hearing is to my mind inconsistent with her earlier insistence that the Arbitration not

be delayed for any reason, including due to the 1782 Application, relevant Xoom Documents or the COVID-19 pandemic. Furthermore, after the parties' submissions pursuant to Procedural Order No. 27 were filed on October 10, 2020, the Arbitrator then waited until November 19, 2020 to once again close the Arbitration with, I am advised by Mr. Strum, no communication to counsel during that time period. Copies of each of Planet Energy's and ACN's written submissions in response to the Arbitrator's unilateral decision to re-open the Arbitration are attached as **Exhibit 98**.

**N. The Award Includes Fundamental Errors**

132. On February 3, 2021, the Arbitrator released the Award granting judgment in favour of ACN on every single issue and dismissing almost every claim raised by Planet Energy that she addressed.<sup>11</sup> There were many claims raised by Planet Energy that were not addressed at all.

133. In the end, the Arbitrator ordered Planet Energy to pay ACN a total sum of approximately \$28 million – a massive windfall of 50% on top of all amounts Planet Energy had paid ACN during their entire contractual relationship from 2010 to 2018 – even after ACN's serial breaches of contract decimated Planet's business and funds.

134. To put this windfall in context and leaving aside the approximately \$5 million of illegal commission payments ordered to be paid, the Arbitrator also ordered Planet Energy to pay approximately \$8 million to ACN for certain underpaid commissions during the term of the SAA. However, there were no such underpayments. To justify the amount ordered by the Arbitrator, Planet Energy would have had to generate approximately \$40 million of additional revenue (which translates to \$16 million of gross margin of which ACN would have received half), which it simply

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<sup>11</sup> Other than approximately \$85,000 of damages which were conceded by ACN in connection with Planet Energy's counterclaim, and \$105,930 representing 50% of the costs incurred by Planet Energy defending itself in a proceeding before the OEB in 2017.



did not earn. Planet Energy's auditor, KPMG, which conducts an annual multi-week on-site audit has never identified \$40 million in excess revenue on Planet Energy's financial statements.

135. As I detail below, the Award is rife with errors which, in my view, are the clear result of the unfair process detailed above, especially the Arbitrator's denial of basic discovery rights to Planet Energy. As a result, Planet Energy seeks to set aside the Award based on three overarching issues: (i) the Award is contrary to public policy; (ii) the Arbitrator exceeded her jurisdiction in the Award; and (iii) the Arbitrator prevented Planet Energy from reasonably presenting its case.

a) *The Award is Contrary to Public Policy*

136. Planet Energy's position is that the Award is contrary to public policy because, among other things, (i) the Arbitrator ordered Planet Energy to make more than \$5 million of *illegal* commission payments to ACN under Ontario law, and (ii) the Arbitrator penalized Planet Energy for complying with the terms of her Orders.

i) The Arbitrator Orders Planet Energy to Make Unlawful Payments

137. Beginning at paragraph 399 of the Award, the Arbitrator awarded ACN sales commissions totalling \$5,167,707 in violation of the ECPA even though the Arbitrator specifically acknowledged in the Award that such payments are unlawful in Ontario. The Arbitrator determined that it was not contrary to New York public policy to oblige Planet Energy, an Ontario corporation with the vast majority of its customers based in Ontario, to make payments that are illegal under Ontario law.

138. Glenn Zacher of Stikeman Elliott LLP made submissions during the Arbitration that the ECPA was amended effective January 1, 2017 to provide that no supplier, such as Planet Energy, is permitted to provide remuneration to a salesperson who sells or offers to sell electricity or gas to consumers or who advertises or markets the sale of electricity or gas to consumers on behalf

of the supplier, such as ACN or its IBOs, if the manner of remuneration contravenes the rules provided for in the regulations.

139. The Arbitrator refers to this area as a “novel point of Ontario law” at paragraph 410 of the Award, notwithstanding that Mr. Zacher, who specializes in Canadian Energy law, explained during the Arbitration that such payments under the SAA are unlawful and that *“the statute, the regulations, the pronouncements from the OEB are very, very clear that in respect of contracts entered post January 1, 2017, you can’t pay commissions. And it doesn’t require, you know, an application to obtain a declaratory judgment from a court here in Ontario. That is just plain as day, in my submission, from what I’ve just gone through, and there is also no -- you can’t -- there is no distinction to be drawn between renewal contracts as opposed to new contracts. These are all new contracts.”* Mr. Zacher’s explanation of the law was not contested by ACN.

140. The Arbitrator further ignored the OEB’s confirmation that such payments are unlawful. Planet Energy specifically inquired whether such payments would be unlawful, posing the following question to the OEB:

If, prior to January 1, 2017, a low-volume energy consumer was introduced to Planet Energy products by an ACN IBO and enrolled with Planet Energy; and whose contract terminated after January 1, 2017 and such customer re-enrolled online (or otherwise) with Planet Energy post-January 1, 2017 for a 5 year electricity and/or natural gas contract (recognizing that the re-enrollment would entail new pricing, contract terms and conditions as per prevailing OEB Codes of Conduct and new verification requirements as per the ECPA 2017 regulations), would the re-enrolled customer contract be considered a continuing or a renewed contract, subject to the pre-2017 Amended ECPA Regime, or would the contract(s) be considered a new contract to which the 2017 Amended ECPA Regime applies; and, in which case, Planet Energy would be prohibited from paying value or volume-based commissions to ACN?

141. The OEB Staff responded in no uncertain terms that any re-contracting or “renewals” had to be based on new contracts in compliance with the 2017 ECPA amendments and that

remuneration could not be paid to any salesperson based on value or volume. The OEB Staff responded as follows:

It is staff's view that an energy retailer may only renew or extend a contract if all provisions of the contract comply with O. Reg. 389/10 s. 15. If an energy retailer is unable to meet these conditions, the retailer may instead enter into a new contract with a consumer. In either instance, an energy retailer is required to comply with the ECPA and any applicable code, order or rule issued or made by the Board, which includes among other requirements, the new verification requirements as per the ECPA 2017 regulations.

With respect to remuneration of a salesperson who marketed a contract prior to January 1, 2017, all new, renewed or extended contracts must comply with the ECPA and any applicable code, order or rule issued or made by the Board, including limits on remuneration. It is therefore staff's view that a salesperson, may not be remunerated for any new, renewed or extended contract based on a commission or on the value or volume of sales, including the renewal/extension of contracts entered on or before January 1, 2017.

A copy of this correspondence with the OEB is attached as **Exhibit 99**.

142. The Arbitrator ignores the conclusion of the OEB and, at paragraph 409 of the Award, imports an unsupported and inconsistent assumption at paragraph 409 of the Award that the OEB must have thought that ACN would be engaged in "*some active involvement in re-contracts entered into after January 1, 2017.*" The OEB was very clear that a salesperson may not be remunerated "*for any new, renewed or extended contract based on a commission or on the value or volume of sales, including the renewal/extension of contracts entered on or before January 1, 2017.*"

143. I believe based on Mr. Zacher's recitation of the law, the conclusion of the OEB, and my general understanding of the ECPA and the regulatory regime in Ontario more generally based on my thirty-nine years of experience with energy regulation in Ontario, that if Planet Energy had paid the commission payments ordered by the Arbitrator in respect of the period post-January 1,

2017, Planet Energy would be in violation of the ECPA and both the company and its directors and officers could be subject to significant penalties.

ii) Planet Energy is Penalized for Complying with the Arbitrator's Binding Orders

144. In addition to ordering Planet Energy to make unlawful payments, the Arbitrator also penalized Planet Energy for complying with the terms of arbitral Orders made in Ontario. Specifically, the Arbitrator reprimanded Planet Energy for complying with her Procedural Orders in respect of the ACN's audit and inappropriately admonished Planet Energy for the failure of ACN's expert to conduct its audit in accordance with Procedural Order No. 8.

145. Beginning at paragraph 411 of the Award, the Arbitrator ignored relevant evidence put before her by Planet Energy, including that ACN's referral of customers to Planet Energy were tracked and available to ACN through the utility portals and third party records, and instead favoured the bald assertions of ACN's expert, Stout, that no such information was available in assessing approximately \$4.1 million of damages, plus interest, for alleged underpayments of commissions related to such referrals. Unfortunately, those alleged customer referrals simply never flowed and never generated income, yet the Arbitrator ordered Planet Energy to pay \$4.1 million. Similar to the example I provided in paragraph 134 above, to get to \$4.1 million payable to ACN, Planet Energy would have had to have earned over \$20.5 million of additional unreported revenue (which translates to \$8.2 million of gross margin), which it did not earn. Once again, Planet Energy's auditor, KPMG, has never identified any such additional revenue or gross margin in any of its annual audits of Planet Energy.

146. Planet Energy prepared and sent electronically to Stout the Detailed Commission Files and, due to their size, advised ACN that all of the underlying contemporaneous documents were available for review at Planet Energy's premises in accordance with Procedural Order No. 8. In

other words, Planet Energy produced the documents in the exact manner prescribed by the Arbitrator. However, as I detailed above, the Arbitrator wrongfully penalized Planet Energy for purportedly not producing the contemporaneous files, which is simply inaccurate. And, the Arbitrator failed to acknowledge that it was Stout which asked that these detailed commission files be prepared. Copies of the various requests are attached as **Exhibit 100**.

147. There was nothing precluding Stout from attending Planet Energy's offices and reviewing whatever underlying contemporaneous data it wanted or allegedly required. In fact, as noted above, the Arbitrator specifically directed in Procedural Order No. 8 that that Stout would have to attend at Planet Energy's premises to collect and/or review that data.

148. It was also admitted on cross-examination by Stout that Planet Energy complied with the Arbitrator's Procedural Orders and that it was the Procedural Orders themselves that impacted its ability to properly complete its audit (see paragraph 76.a) above). The Arbitrator ignored this evidence and instead decided that Stout's issues were the result of Planet Energy's alleged misdeeds – which is not grounded in the evidence – and penalized Planet Energy for complying with audit procedures set out in her Procedural Orders.

149. Furthermore, at paragraph 426 of the Award, the Arbitrator accepted Stout's analysis that Planet Energy failed to pay approximately \$4.1 million of commissions based on its review of Planet Energy's customer management system (for customers which never flowed and obviously for which money was never received). However, Planet Energy's customer management system does not track its customers' actual energy consumption or usage. Section 6 of the SAA provided that commissions were payable based on ACN Customers' actual monthly *usage* – and not historical or estimated future usage - Planet Energy made its consumption files available to ACN and Stout, but they chose to ignore that information and instead relied on their own subjective usage estimates while the actual usage was nil.

150. At paragraph 427 of the Award, the Arbitrator also rejected Planet Energy's alternative request that if the Arbitrator decided that Planet Energy had underpaid certain commissions to ACN (which was not the case), that Stout be required to recalculate the commission underpayments based on the detailed commission files and SPI billing files since those files contained the actual monthly usage of ACN Customers. Ignoring the monthly usage information in favour of alternative statistics is inconsistent with the plain language of the SAA.

*b) The Arbitrator Re-Wrote the Contract in Favor of ACN*

151. Beginning at paragraph 386 of the Award, the Arbitrator ignores the plain language and definitions contained in the SAA and instead relied on the subjective opinions of ACN's witnesses to ascertain definitions of "ACN Customers" and "usage" that are unsupported by the language of those definitions under the SAA. The Arbitrator instead relied on the assertions of Mr. Ulry, who testified as to ACN's subjective intentions with respect to the SAA.

152. As discussed above, the definitions of "ACN Customers" and "usage" were of paramount importance to the Arbitration, as the SAA provided that Planet Energy was only required to make commission payments to ACN based on these defined terms. Planet Energy's position is that re-writing the definitions of these terms based on the subjective intentions of one of ACN's witnesses instead of focusing on the plain language and specific words chosen by the parties (or lack of words such as renewals) exceeded the Arbitrator's jurisdiction and it was not the Arbitrator's role to re-write Planet Energy and ACN's commercial bargain. The SAA also contains an exclusionary clause (19a) that "supersedes all prior agreements and understandings".

*c) The Arbitrator Did Not Allow Planet Energy to Present its Case*

153. Planet Energy's position is that the Arbitrator's various Procedural Orders and the manner in which she dealt with the Xoom Documents and the arbitration more generally precluded Planet

Energy from meaningfully presenting its case. The conduct of the arbitration demonstrated that the Arbitrator facilitated ACN's prosecution of its claim and actively prevented Planet Energy from prosecuting its counterclaim. The Arbitrator repeatedly failed to require ACN to meet its discovery obligations, forcing Planet Energy to proceed with the 1782 Application in court. When the 1782 Application was successful, she prevented Planet Energy from using the Xoom Documents in its direct evidence, prevented Planet Energy from cross-examining any ACN witness on the Xoom Documents, and failed to draw any adverse inferences from the fact that the production of the Xoom Documents provided a clear demonstration that ACN had failed to produce highly relevant documents that were in its possession. The Arbitrator repeatedly ignored material evidence placed before her, including certain Xoom Documents, which undermine the conclusions reached in the Award. Practically speaking, the Arbitrator failed to permit Planet Energy to present its case, and in the Award, she failed to even address certain of Planet Energy's claims at all.

154. First, the Arbitrator failed to adequately address Planet Energy's claim for loss of profits in the amount of \$7,795,990 (as submitted and presented by RSM) due to declining enrolments as a result of ACN's conduct throughout 2015 and 2016. Planet Energy claimed that ACN did not use commercially reasonable efforts to market Planet Energy's products and caused harm to Planet Energy. Despite ACN's transparent involvement with Xoom Energy entering the Canadian market to compete against Planet Energy, the Arbitrator concludes, among other things, that "there is no evidence of any 'sales banking' or 'holdbacks' by Xoom Energy." This is wrong. As noted above, on February 2, 2016, one of ACN's IBOs specifically advised one of its Planet Energy customers to wait for Xoom Energy to enter the Ontario market, which he expected would occur in October. Planet Energy only obtained this email from another litigation with a customer.

155. The Arbitrator's finding that ACN did not breach this obligation simply ignores the evidence put before her by Planet Energy. Among other things:

- a) The documents and testimony unequivocally illustrate that ACN's marketing team, who was tasked with promoting Planet Energy, stopped running promotions for Planet Energy, canceled weekly meetings with Planet Energy, and generally were occupied with promoting the launch of Xoom Energy in Canada.
- b) Beginning in 2015, ACN no longer allowed Planet Energy to attend IBO events to promote Planet Energy, which was Planet Energy was entitled to do under the SAA. These events had historically engaged IBOs and generated a significant volume of sales for Planet Energy.
- c) ACN, through Mr. Palma's email referenced at paragraph 40 above, directed its IBOs to stop promoting ACN's product before the end of the sales agency period.

156. Second, the Arbitrator incorrectly found that ACN did not breach its obligation to cooperate with Planet Energy to facilitate an orderly wind-down of the SAA on the basis that "ACN leadership emphasized internally that ACN would continue to provide the same level of services to Planet until the end of the agency period." This did not occur. Mr. Palma's email of June 15, 2016, described in paragraph 40 above, was unequivocal -- no emails were to go to the IBOs with regard to Planet Energy and the wind-down as contemplated by the SAA was geared to the IBOs, who sold Planet Energy products, not ACN's internal mechanisms. An orderly wind-down would have included proper messaging to the IBOs and a promotion to close out the relationship. The Arbitrator plainly ignores the uncontroverted evidence that ACN did not engage in any orderly wind-down or transition planning with Planet Energy. Instead, ACN baldly advised me that it would engage in an orderly wind-down but then (i) failed to do so despite my requests to facilitate a transition plan and (ii) affirmatively directed its staff not to promote Planet Energy's products to its IBOs for the last five (5) months of the agency period. Attached as **Exhibit 101** is my correspondence with ACN.



157. *Third*, the Arbitrator ignored Planet Energy's evidence in support of its claim for indemnification from ACN in the amount of \$2,056,627 due to the IBOs misconduct. Instead, the Arbitrator concludes that the "indemnity tracker" – prepared by Planet Energy on the basis of contemporaneous evidence – was not itself prepared contemporaneously and therefore Planet Energy was asking for the benefit of the doubt. The indemnity tracker summarized thousands of customer complaints of IBO misconduct for which Planet Energy was seeking compensation. Given the volume of complaints, Planet Energy advised the Arbitrator and ACN at paragraph 191 of its Statement of Defence and Counterclaim that it was providing the tracker as a convenience and reference tool and to the extent that the Arbitrator wanted to review the underlying data, it would provide it on request.

158. The indemnity tracker outlined three main categories of IBO misconduct: (i) disputed registrations; (ii) misrepresentations; and (iii) agent misconduct. As explained in the Statement of Defence, disputed registrations were those where the customer did not have knowledge of the enrolment or where the IBO enrolled a customer without authority to do so; misrepresentations were situations where IBOs made untrue statements or omitted to tell the customer material facts relating to Planet Energy's product; and agent misconduct was a catch-all category for all complaints about an IBO from a Planet Energy customer.

159. In addition to the indemnity tracker, the Statement of Defence summarized in significant detail the specific bases upon which it was seeking indemnification. These are summarized at paragraphs 191-202 of the Statement of Defence, which includes citations to the relevant witness statements. I adopt those paragraphs in this affidavit.

160. Planet Energy was not asking either the Arbitrator or ACN for the benefit of the doubt. Planet Energy was asking the Arbitrator to review the evidence put before her. Attached as **Exhibit 102** is a copy of the indemnity tracker submitted to ACN and the Arbitrator. In any event,

Planet Energy also filed detailed the Customer Complaint Responses (“**CCRs**”) that it received from the OEB during the term of the SAA with the Arbitrator. With the exception of a few CCRs received from the OEB during 2017, ACN did not dispute the contents of the CCRs.

161. Fourth, the Arbitrator did not reasonably consider Planet Energy’s claim for indemnification from ACN in the amount of \$1,229,367 in respect of counsel fees incurred by Planet Energy to defend itself before the Ontario Energy Board in a proceeding arising out of the misconduct of an ACN IBO. The Arbitrator essentially ignored paragraphs 199 to 202 of the Statement of Defence which delineate the specific basis and legal authorities for its claim for indemnification, together with citations to the relevant witness statements. Moreover, the Arbitrator failed to apply or even discuss the purpose of the indemnity clause which was to shift the risk of loss for IBO actions – over which Planet Energy had no control – from Planet Energy to ACN.<sup>12</sup>

162. Fifth, the Arbitrator ignored the bulk of the uncontroverted evidence in respect of ACN disclosing confidential Planet Energy information and internal documentation to Xoom Energy, which Planet Energy alleged was a breach of the confidentiality provision contained in section 11 of the SAA. The Arbitrator incorrectly concludes that there was no such breach, while failing to consider the following evidence and ACN concessions that were before her:

- a) Planet Energy sent a request to Mr. Stevanovski for comment on Planet Energy’s confidential draft presentation to the Government of Ontario concerning certain proposed rules for paying IBO commissions, which Mr. Stevanovski forwarded to Mr. Ulry, the Chief Executive Officer of Xoom Energy. Mr. Ulry then forwarded the

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<sup>12</sup> SAA Article 12(a): “ACN hereby agrees to indemnify and hold Planet and its directors, officers, employees, stockholders, affiliates and agents (each, a “Planet Indemnified Person”) **harmless from and against all damages** which any Planet Indemnified Person may sustain, incur or assume as a result **of any allegation**, claim, civil or criminal action, proceeding, charge or prosecution which **may be alleged, made, instituted** or maintained against any Planet Indemnified Person arising out of, resulting from or based upon (i) any breach by ACN of any of its representations, warranties, covenants or agreements contained in this Agreement, or (ii) any claim asserted or threatened to be asserted by any third party in connection with ACN, its affiliates or the IBOs, selling the Energy Products or serving or having served pursuant to this Agreement . . . (emphasis added)

presentation to Ms. Harding as well. Both Ms. Harding and Mr. Ulry provided comments on the presentation on behalf of ACN. A copy of this correspondence, which is a breach of section 11 of the SAA, is attached as **Exhibit 103**.

b) ACN conceded at paragraph 165 of its Reply that it “occasionally shared information concerning the way in which the ACN-Planet [Energy] relationship had operated for the past several years”, and provided specific references to the following:

- i) Xoom Energy asked ACN whether Planet Energy typically conducted credit checks and customer verification calls, which ACN answered;
- ii) Xoom Energy asked ACN to see examples of Ontario and British Columbia bills and asked whether Planet Energy had experienced any major billing issues; and
- iii) Xoom Energy asked ACN for an example of a “Canada badge”.

c) The Xoom Documents, which were only obtained through the 1782 Application process and, as I have stated throughout this affidavit, were not available to Planet Energy until its closing arguments, depict the following:

- i) On April 30, 2015, at Mr. Ulry’s request, Mr. Palma provided confidential sales information belonging to Planet Energy sales in Ontario and British Columbia to Mr. Ulry. This is the email referred to at paragraph 122 above.
- ii) On December 10, 2015, Jackie Whitman of Xoom Energy (formerly employed by ACN) requested that ACN provide her with a list of utilities which Planet Energy services in Canada. Brenda Jones of ACN replied, “I

don't think we have a "list" but do believe we can create something using reporting we receive". Mr. Palma later sent an emailing confirming that he "took care of" it. While these emails were produced in the Xoom Documents, Mr. Palma's email on or around December 10, 2015 containing the requested list of utilities was not. A copy of this email exchange is attached at **Exhibit 104**.

- iii) On December 12, 2015, at Mr. Ulry's request, Mr. Palma provided Xoom Energy with details of Planet Energy's total customer base. A copy of this email is attached as **Exhibit 105**.
- iv) On June 30, 2016, at Mr. Ulry's request, Mr. Palma provided Xoom Energy a document illustrating a breakdown of Planet Energy's customers electric and gas customers. A copy of this email is attached as **Exhibit 106**.

163. Notwithstanding the extensive exchange of Planet Energy documents between ACN and Xoom Energy, the Arbitrator simply concludes – without considering the above documents – that to the extent any information was shared, "the evidence was that it was occasional, trivial, and not commercially sensitive or harmful to Planet [Energy]." Leaving aside that the SAA expressly defined "confidential" as "any information" that ACN received from Planet Energy, as I stated in my first witness statement, based on my thirty-nine year career in the energy industry in Canada, Xoom Energy received a significant advantage entering into a new market (and new country) with a completely different regulatory landscape by obtaining Planet Energy information from ACN. At a bare minimum, having information relating to customer purchasing trends (*i.e.* Planet Energy's sales information), would have given Xoom Energy a head start before entering the market blind; such information is obviously not trivial, is commercially sensitive and disclosing it to a new market competitor was harmful to Planet Energy.

**O. Conclusion**

164. As a result of the foregoing, it is the position of Planet Energy that it was not afforded reasonable procedural or substantive fairness throughout the conduct of this Arbitration. This has resulted in (i) the conduct of the proceedings and the Award being contrary to the public policy of Ontario, including by directing Planet Energy to make payments that are unlawful under Ontario law; (ii) an Award that exceeds the Arbitrator’s jurisdiction by rewriting the SAA; and (iii) Planet Energy being unable to present its case, as a result of the Arbitrator’s failure to accord equal treatment to Planet Energy, failure to compel ACN to meet its discovery obligations, failure to permit Planet Energy to properly present the Xoom Documents, failure to sanction ACN for its failure to produce relevant documents when it was demonstrated beyond a doubt by the production of the Xoom Documents, and failure to grant reasonable accommodations as a result of the 1782 Application and the COVID-19 pandemic.

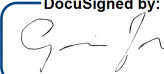
SWORN BEFORE ME by  
videoconference at the City of Toronto  
on the 7<sup>th</sup> day of May, 2021

DocuSigned by:  
*Jordana Kroft*  
392175F7C186473...  
Commissioner for taking Affidavits

DocuSigned by:  
*Nino Silvestri*  
1532792BC3CB420...

**NINO SILVESTRI**

This is Exhibit "F" referred to in the Affidavit of Nino Silvestri sworn by Nino Silvestri of the Town of Oakville, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on May 26, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:  


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Commissioner for Taking Affidavits (or as may be)

**GAVIN INKSTER LSO# 82737I**

**INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION**  
International Arbitration Tribunal

**ALL COMMUNICATIONS NETWORK OF CANADA, CO.,**

Claimant/Counter-Respondent

v.

**ICDR Case No. 01-18-0001-6527**

**PLANET ENERGY CORP.,  
PLANET ENERGY (ONTARIO) CORP.,  
PLANET ENERGY (B.C.) CORP.,**

Respondents/Counter-Claimants

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**FINAL AWARD**

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I, THE UNDERSIGNED ARBITRATOR, having been designated in accordance with the arbitration agreement contained in the Amended, Restated and Assigned Sales Agency Agreement Canada entered into by and among Planet Energy Corp., Planet Energy (Ontario) Corp., and Planet Energy (B.C.) Corp., and All Communications Network of Canada, Co., dated as of November 9, 2012, and having duly heard the proofs and allegations of the Parties, do hereby AWARD as follows:

1. This is a final award ("**Final Award**") in an arbitration among All Communications Network of Canada, Co. ("**ACN**" or "**Claimant**"), Planet Energy Corp. ("**PE**"), Planet Energy (Ontario) Corp. ("**PEO**"), and Planet Energy (B.C.) Corp. ("**PEBC**") (each of PE, PEO, and PEBC is a "**Respondent**" and collectively they are referred to as "**Planet,**" "**Planet Energy,**" or "**Respondent**").
2. On March 7, 2019, the ICDR notified the Parties via e-mail of a partial final award on jurisdiction and decision on joinder dated March 6, 2019 ("**Partial Final Award**"). The Partial Final Award is incorporated by reference in this Final Award and terms not otherwise defined herein have the meaning ascribed to them in the Partial Final Award.
3. This arbitration arises out of an Amended, Restated and Assigned Sales Agency Agreement Canada, dated as of November 9, 2012, entered into by and among PE, PEO, and PEBC, on the one hand, and ACN on the other (the "**SAA**").
4. According to ACN, its case against Planet is a simple one for non-payment of commissions due under the SAA. According to Planet, ACN violated all of its fundamental obligations under the SAA, including by sacrificing Planet sales to

launch and grow a competitor’s customer base, and by failing to indemnify it for misconduct by sales representatives. For the reasons that follow, ACN has generally prevailed on the merits of both its claims and Planet’s counterclaims. First, however, this Final Award sets out the procedural history of this matter in some detail because: (i) the evidentiary hearing on the merits was preceded by an extensive audit of Planet by ACN that is central to the Parties’ dispute about unpaid commission payments; and (ii) Planet made serious—but ultimately unfounded—allegations that ACN wrongfully withheld documents and obfuscated evidence that prevented Planet from presenting its case at the hearing.

## **I. Case Participants**

5. Except as set forth below, the Parties, their representatives, and the Arbitrator are as identified in Paragraphs 7-9 and 15 of the Partial Final Award.
6. On March 12, 2020, Respondent gave notice that Glenn Zacher of Stikeman Elliot LLP in Toronto (located at 5300 Commerce Court West, 199 Bay St., Toronto, Ontario, M5L 1B9, Canada) would join its counsel team.
7. Beginning with Respondent’s Statement of Defense and Counterclaim dated March 29, 2020, Sara Salama and Yurica Ramos Montes of Flex Arbitri, PLLC also appeared on behalf of Respondent.

## **II. The Arbitration Proceedings**

8. The procedural history of this matter from commencement of the arbitration until the Partial Final Award dated March 6, 2019 is set forth in the Partial Final Award and not repeated herein. Accordingly, after summarizing the issues decided in the Partial Final Award, the remainder of this Section II describes the procedural history of the arbitration since March 6, 2019 (i.e., from the date of the Partial Final Award).

### **A. The Partial Final Award**

9. In the Partial Final Award, the Arbitrator held there was no jurisdiction over Xoom Energy Ontario, ULC, which was initially named by Claimant as a respondent party in the arbitration, and dismissed all claims against it. In addition, the Arbitrator denied requests by Planet: (i) to join additional parties to the arbitration, including Xoom Energy, LLC, Xoom Alberta, Xoom Canada (unless the context requires specificity, together with Xoom Energy Ontario, ULC, these entities are collectively referred to as “**Xoom**,” and individually may be referred to as Xoom) and NRG Energy, Inc.; and (ii) for discovery to determine whether these entities or others should be joined to the arbitration.
10. In support of its position on jurisdiction and joinder, ACN submitted sworn affidavits from two witnesses who were not then subject to cross-examination:



- a. the affidavit of Thomas L. Ulry, former Chief Executive Officer (“**CEO**”) of Xoom Energy LLC, the parent corporation of Xoom Energy Ontario, ULC, sworn November 1, 2018 (the “**Ulry Affidavit**”); and
  - b. the affidavit of Peter Juroe, Chief Financial Officer of LKN Communications, Inc. (d/b/a ACN, Inc.<sup>1</sup>), the operating parent company of ACN, sworn November 2, 2018.
11. However, one of those witnesses, Thomas Ulry, later gave a witness statement concerning the merits of the Parties’ dispute and was cross-examined at the evidentiary hearing. The affidavit of Mr. Juroe, who was never cross-examined during the course of the arbitration, had no bearing on the Arbitrator’s determination of any issues on the merits of the Parties’ dispute.<sup>2</sup>

## **B. The Audit**

12. On March 7, 2019, the Arbitrator issued Procedural Order No. 5 resolving requests that each Party made for interim relief, which primarily pertained to the timing, nature, and scope of ACN’s right to conduct an audit under Section 9 of the SAA.
13. In support of their respective positions, both Parties submitted sworn affidavits from witnesses who were not subject to cross-examination at the time, but who later gave witness statements concerning the merits of the Parties’ dispute and were cross-examined at the evidentiary hearing. Those affidavits include:
- a. on behalf of Claimant
    - i. the affidavit of Cristina David, former Operations Analyst and Operations Manager at Planet,<sup>3</sup> sworn November 8, 2018 (“**David Affidavit**”);

<sup>1</sup> At times, and unless the context requires specificity, the term “**ACN**” may be used to refer solely to either Claimant or its parent, ACN, Inc., or to the two entities collectively.

<sup>2</sup> Notably, Juroe’s Affidavit was not relied upon by either Party in its pre-hearing submissions on the merits or at the evidentiary hearing. Further, although Respondent did refer to Juroe’s Affidavit in its Post-Hearing Brief and asserted that it was “misleading” or “patently false” in light of Xoom’s production of documents after the presentation of the evidence but before oral closing submissions (as described further below), Respondent contended that Juroe’s Affidavit was “to the same effect (word for word)” as the Ulry Affidavit. Respondent’s Post-Hearing Brief dated July 14, 2020 at ¶¶ 16-17. Given that Juroe’s evidence was duplicative of Ulry’s and not subject to cross-examination, when analyzing the merits of the Parties’ dispute, the Arbitrator considered and weighed Ulry’s evidence regarding the ACN-Xoom relationship and disregarded the Juroe Affidavit.

<sup>3</sup> Although there was diverging testimony as to Ms. David’s precise title and whether she was “operations manager” or manager of “*processing* operations,” Ms. David testified consistently at the hearing about the nature of her interactions with ACN and her specific duties at Planet. See Hearing Transcript (“**Tr.**”) at 675, 690 (David), 1605 (Plummer). Accordingly, the Arbitrator does not consider any such discrepancies to be material or that they undermined Ms. David’s credibility as a witness.

- ii. the affidavit of David Merriman, Executive Vice President of ACN, Inc. (ACN's ultimate parent company) sworn November 9, 2018 ("**Merriman Affidavit**"); and
    - iii. the affidavit of Michael Petron of Stout Risius Ross, LLC, sworn November 24, 2018 ("**Petron Affidavit**"); and
  - b. on behalf of Respondent
    - i. the affidavit of Stephen Plummer, Co-CEO of Planet, sworn November 26, 2018 ("**First Plummer Affidavit**"); and
    - ii. the affidavit of Stephen Plummer, sworn December 12, 2018 ("**Second Plummer Affidavit**").
- 14. Among other things, the Arbitrator ruled in Procedural Order No. 5 that in accordance with Section 9 of the SAA: (i) ACN could conduct an audit of Planet's customer and sales revenue accounting records and applicable transaction documents; and (ii) the Parties were to meet and confer regarding an audit plan to be proposed by ACN.
- 15. Between March and November 2019, the Parties made numerous submissions concerning highly contentious disputes about the nature and scope of ACN's audit right under Section 9 of the SAA and the Arbitrator convened multiple, lengthy telephone conferences with the Parties and, sometimes, also their respective auditors or experts, before ruling on those disputes.
- 16. The following procedural orders were issued in connection with the audit:
  - a. Procedural Order No. 6 dated March 21, 2019 dealt with scheduling a telephone status conference to resolve any disagreements about ACN's proposed audit plan;
  - b. Procedural Order No. 7 dated April 16, 2019 reported on broad agreement reached by the Parties as to how to proceed with respect to various matters in dispute;
  - c. Procedural Order No. 8 dated May 14, 2019 recorded certain agreements between the Parties about records that Planet would provide for purposes of the audit; resolved a dispute about the terms of a confidentiality regime governing the audit; and resolved disputes about ACN's right of access to: (i) the database of customers Planet identified as customers who were enrolled by referral from ACN at some point during the Parties' relationship; (ii) Planet's database for other customers; (iii) Planet's utilities' databases; and (iv) digital copies of records, so as to permit ACN's audit team to work off-

site;

- d. Procedural Order No. 9 dated June 20, 2019 reported on updates from the Parties about the anticipated time frame for completing the audit and established steps to be taken to plan for the remainder of the arbitration following the audit;
  - e. Procedural Order No. 10 dated August 16, 2019 resolved disputes about: (i) the manner in which ACN's auditor would be permitted to query a read-only copy of Planet's "SQL database"; (ii) ACN's right of access to audited financial statements; and (iii) ACN's right of access to billing records from Planet's third party billing provider SPI; and
  - f. Procedural Order No. 11 dated 6 September 2019 resolved ongoing disputes about the release of ACN's auditors' work product and certain Planet Energy records identified during the audit.
17. On November 22, 2019, Respondent informed the Arbitrator that there was an outstanding dispute between the Parties regarding the release of all files identified by ACN's auditors during an auditor site visit from October 28-November 1, 2019, and on November 26, 2019, Claimant informed the Arbitrator that the Parties had reached an agreement to release the files.
18. The audit culminated in a report by ACN's auditors that was submitted with ACN's Statement of Claim on January 28, 2020 and then critiqued by Planet, as detailed further below.

**C. Timetable and Procedures for the Conduct of the Pre-Hearing Phase of the Arbitration**

19. While the audit was ongoing and expected to be nearing completion, a preparatory conference was held by telephone on August 26, 2019 to discuss the appropriate procedures and timetable for the conduct of the remainder of the arbitration.
20. Prior to the conference, the Parties provided written comments on various procedural and logistical matters relating to how the arbitration should be conducted.
21. On September 17, 2019, after inviting the Parties to comment on a draft order, the Arbitrator issued Procedural Order No. 12 establishing how the remainder of the arbitration would be conducted.
22. The timetable under Procedural Order No. 12 was subsequently adjusted and/or reconsidered as follows:

- a. Procedural Order No. 17 dated January 22, 2020 denied a request by each Party, over the objection of the other Party, for an extension of time to submit its initial pre-hearing written submission;
- b. Procedural Order No. 18 dated February 7, 2020<sup>4</sup> and Procedural Order No. 19 dated February 13, 2020 extended certain deadlines in consideration of disputed requests for extensions made by each Party;
- c. Procedural Order No. 21 dated March 17, 2020 and Procedural Order No. 22 dated March 26, 2020 modified the timetable as agreed by the Parties; and
- d. Procedural Order No. 23 dated April 29, 2020 moved the hearing start date from May 26, 2020 until June 1, 2020.

#### **D. Pre-Hearing Document Disputes**

23. During the course of the arbitration, the Arbitrator ruled on various disputes about document disclosure. Because Planet contends as part of its case on the merits that adverse inferences should be drawn against ACN for its alleged failure to produce documents, details regarding document production orders and alleged deficiencies are provided below.
24. In Procedural Order No. 13 dated November 27, 2019, the Arbitrator compelled the production of various documents in response to disputed requests for production. In doing so, the Arbitrator underscored that no determinations were being made as to the merits of any claim, counterclaim, or defense, and further stated:
 

[T] he Parties shall not plead or allege that any decision to uphold or deny a request (in whole or in part) is indicative of a view or finding either in their favor or against them. If a request is denied, for example, that does not mean that the requesting Party may assume its own burden of proof has been discharged.

... If a Party fails to produce documents on any issue for which it bears the burden of proof, then such Party runs the risk of having the issue resolved in due course as not proven.<sup>5</sup>
25. As part of its counterclaims, Planet alleges that numerous customer complaints of misconduct by independent business operators (“IBOs”) for ACN were reported to ACN but not shared with Planet, and that these complaints could have resulted in canceled contracts and/or other damages to Planet that are indemnifiable under Section 12 of the SAA. To support these allegations, several of Planet’s requests, including Request Nos. 1-6, sought documents relating to complaints that ACN

<sup>4</sup> Procedural Order No. 18 also denied a request for leave by ACN to submit a motion for interim relief.

<sup>5</sup> Procedural Order No. 13 at ¶¶ 5, 8.

received from Planet customers during the term of the SAA, including records relating to Planet from the “ACN Customer Service database,” “IBO Services database,” and “ACN Compliance database.”

26. In e-mails dated November 22 and 24, 2019, ACN represented that it did not have a dedicated “complaints” or “compliance” database, explained what records of customer complaints were likely to exist and where, and stated how it proposed to search for information in response to Planet’s requests to generate a “detailed spreadsheet capturing each and every compliance case which references ‘PE’ or ‘Planet Energy.’”
27. As part of Procedural Order No. 13, ACN was compelled to comply with its undertaking to produce documents as described in these e-mails, and Planet was permitted to make reasonable, supplemental requests arising from that production within a certain time period.
28. ACN subsequently generated and produced a spreadsheet that came to be referred to as the “**ACN Complaint Tracker.**”
29. Following receipt of the ACN Complaint Tracker, and within the time limit granted by Procedural Order No. 13, Planet alleged that the spreadsheet was incomplete and not readily searchable and asserted that it should be given a “[f]ull copy of the ACN Database so Planet can conduct its own search.”
30. On December 26, 2019, as a preliminary step in considering the deficiencies and relief requested by Planet, the Arbitrator issued Procedural Order No. 14 directing ACN to respond to certain questions about the content of the ACN Complaint Tracker.
31. Following further submissions from the Parties relating to the ACN Complaint Tracker, the Arbitrator issued Procedural Order No. 15 dated January 3, 2020 directing ACN to provide a revised version of the ACN Complaint Tracker with certain additional information. However, the Arbitrator denied Planet’s request for a “full extract of [ACN’s] database of Planet Energy accounts related to customer complaints,” reasoning:

While it appears likely at this stage of the arbitration that there will prove to be certain discrepancies between the Parties’ records of customer complaints, it is not apparent that the differences between the Parties’ records will be as vast or material as Planet alleges.<sup>6</sup> Furthermore, the potential number and nature of alleged discrepancies between Planet and ACN records of customer complaints are not plainly indicative of a failure by

<sup>6</sup> Reasons for alleged discrepancies between the Parties’ records or within ACN’s records may be appropriate issues for the Parties’ pre-hearing submissions and/or cross-examination at the hearing and the Arbitrator makes no determinations regarding such reasons or discrepancies at this time.

ACN to search for and produce records of customer complaints in good faith nor are such discrepancies clearly without any reasonable explanation.

In these circumstances, and whereas ACN represents that it searched for and compiled a list of all cases of Planet-related customer complaints from its complaints software, ACN should be presumed to have acted in good faith and Planet's speculation to the contrary does not establish a compelling need for it to be given a "full extract" of ACN's "database" to conduct its own searches. *See* ICDR Rules, arts. 21(6), (8). This is especially true given that Planet would not be searching for documents that are known to be relevant and material to the outcome of the case, but only for documents that *might* have been withheld from Planet and that *might* have resulted in customer cancellations and/or other damages to Planet. Thus the Arbitrator is not persuaded by alleged deficiencies in the number and nature of cases in the ACN Tracker that such documents (i.e., records of withheld complaints leading to cancellation or other damages) are reasonably believed to exist and to be relevant and material to the outcome of the case, justifying further time and expense associated with additional information exchange. *See* ICDR Rules, arts. 21(4), (8).<sup>7</sup>

32. On January 20, 2020, the Arbitrator issued Procedural Order No. 16 denying a request by Planet Energy for leave to make an application for an order compelling ACN to produce certain documents that it contended were missing from ACN's production and for "related, appropriate relief under the relevant ICDR Rules," "without prejudice" to Planet Energy's right to seek appropriate relief later in the arbitration. The Arbitrator stated:

To the extent that Planet has identified documents that it believes ACN should have produced under the Arbitrator's existing orders (Procedural Orders 13 and 14) but did not, it should draw those deficiencies directly to ACN's attention, in order that ACN may correct any omissions and supplement its production. If ACN makes a significant supplemental production, Planet may ask the Arbitrator to take the late production into account when deciding costs in the arbitration, and/or may ask the Arbitrator to consider such other relief as may be appropriate in light of the nature and timing of the supplemental production.

To the extent that ACN disputes alleged deficiencies raised by Planet, such deficiencies will be appropriate subjects for the Parties' pre-hearing submissions and/or cross-examination at the evidentiary hearing. If Planet succeeds in establishing that ACN failed to produce responsive documents, Planet may invite the Arbitrator to draw adverse inferences and/or grant

<sup>7</sup> Procedural Order No. 15 at ¶¶ 8-9.

such other relief as may be appropriate.<sup>8</sup>

33. On March 3, 2020, Planet Energy gave notice that on February 28, 2020, it had submitted an application for discovery to the District Court for the Western District of North Carolina (the “**District Court**”) under 28 U.S.C. § 1782 seeking documents from Xoom Energy, LLC for use in the arbitration (the “**1782 Application**”).
34. Broadly speaking, the 1782 Application sought documents from Xoom Energy LLC relating to the entry of Xoom USA and its subsidiaries into the Canadian retail energy market with the alleged involvement of ACN. Planet asserted that ACN’s document production in this regard was grossly inadequate and contrary to the Arbitrator’s orders of production, necessitating that Planet seek documents from Xoom directly.
35. ACN subsequently asked the Arbitrator to issue an order compelling Planet to cease and desist with the 1782 Application, which the Arbitrator declined to do in Procedural Order No. 20 dated March 11, 2020. Noting that Planet had continued to allege serious deficiencies with ACN’s production, the Arbitrator stated:
 

[I]t *appears* that one of two situations is likely: either the documents Planet expects ACN to have produced do not exist or they were withheld by ACN. If the former is true, the Application is a waste of time and resources and will not lead to evidence that is relevant and material to the outcome of the case. If the latter is true, the Application could potentially yield relevant and material documents essential to Planet’s case. This possibility weighs against compelling Planet to withdraw its Application and in favor of deferring to the District Court to resolve the Application as it sees fit.<sup>9</sup>
36. However, because Planet breached applicable procedures by failing to seek leave to make the 1782 Application and ACN raised legitimate concerns about procedural delay and the impact of the 1782 Application on the proceedings, the Arbitrator also determined that the 1782 Application should not be allowed to dictate the schedule of the proceedings, declaring that “[p]resumptively, any delay or impasse that might arise in connection with the Application shall not be deemed good cause for the extension of any deadlines in this arbitration, including the evidentiary hearing.”<sup>10</sup>
37. As discussed below, Planet’s 1782 Application was ultimately granted and Xoom produced documents during the evidentiary hearing.

<sup>8</sup> Procedural Order No. 16 at ¶¶ 5-6.

<sup>9</sup> Procedural Order No. 20 at ¶ 13.

<sup>10</sup> Procedural Order No. 20 at ¶ 17(g).

**E. Pre-Hearing Requests to Compel the Attendance of Involuntary Witnesses**

38. Pursuant to Paragraph 34 of Procedural Order No. 12, on December 2, 2019, both Parties made requests for leave to take the necessary steps to compel the testimony of witnesses at the arbitration hearing who might not present a witness statement or appear voluntarily. Almost all of the requested witnesses were employees or personnel of the other Party.
39. Following a telephone conference on December 12, 2019 to discuss the Parties' requests, the Arbitrator directed the Parties to confer about whether any identified witnesses would appear voluntarily and to apprise the Arbitrator if any further action was requested.
40. On December 20, 2019, Respondent e-mailed an update regarding the willingness of witnesses to appear voluntarily. Among other things, Respondent stated that it wished to "add as involuntary witnesses the person(s) at ACN responsible for document production and the person(s) responsible for assembling the ACN Complaint Tracker." In reply that same day, Claimant's Counsel stated: "In respect of the new witness request, I advised [Respondent's Counsel] that I will review and get back to him next week."
41. Neither Party followed-up with the Arbitrator regarding Planet's request for a witness to address the ACN Complaint Tracker and/or document production issues, and Planet made no mention of a specific request for an information technology ("IT") witness from ACN.
42. However, as recited in Procedural Order No. 24, during a pre-hearing conference on May 15, 2020, Planet renewed requests from December 2019 for the appearance of ACN personnel Robert Stevanovski ("**R. Stevanovski**") and Lyndsie Wise, neither of whom submitted a witness statement in the arbitration. ACN stated no objection.
43. Planet also asserted that in accordance with Procedural Order Nos. 15 and 16, which noted that Respondent would have the opportunity to challenge ACN's representations about the ACN Complaint Tracker and deficiencies in ACN's document production at the hearing, Claimant should identify a competent witness to testify. Planet did not specifically request that an IT witness testify.
44. Claimant undertook to identify such a witness, but noted that personnel from more than one department were involved with the ACN Complaint Tracker and that it might request a reciprocal witness from Respondent to address deficiencies with Respondent's document production.
45. Accordingly, Procedural Order No. 24 directed the Parties to identify such additional witnesses and provide a summary of agreed matters about which the witnesses



would testify by May 27, 2020.<sup>11</sup> It also expressly provided that the scope of direct and cross-examination of these witnesses would be limited to those matters.<sup>12</sup>

46. As reflected in Procedural Order No. 24.1 dated May 28, 2020, Claimant designated Merriman to testify about issues concerning the ACN Complaint Tracker.
47. Later on May 28, 2020, Respondent submitted the topics to be addressed on cross-examination with each of R. Stevanovski and Wise. In general, Wise was designated to testify about customer “**renewals**”<sup>13</sup> and Xoom’s launch into Canada and Ontario, and R. Stevanovski was designated to testify about matters such as the relationship between Xoom and ACN, his role with Xoom, the wind-down of the SAA, and IBO recruitment.
48. Respondent also submitted a list of topics to be addressed by an “ACN IT person” and objected to Claimant’s designation of Merriman to testify about that list of topics. Respondent declared that it would cross-examine Merriman about the “process used to come up with the [ACN] Complaint Tracker,” but he was “not acceptable to Planet as an IT person.”
49. Respondent identified the following areas of cross-examination for the IT person:
  1. Nature and Capacity of the SAP system – for example, what data the system captures; what queries it can run;
  2. Xml and csv reporting;
  3. How query’s [*sic*] are put to the system in general;
  4. What was put to the system for the purpose of the Complaint tracker (not seeking the actual query) just the idea of what went into them;
  5. Databases or sections queried for the complaint tracker.
50. Between May 28-31, 2020, the Parties exchanged various e-mails about Planet’s request for an IT witness and Merriman’s competency to testify to the identified issues. Asserting that Merriman’s knowledge base “seem[ed] appropriate” to address each of the five topics identified by Respondent, ACN proposed that “Respondent question Mr. Merriman and, to the extent that there are questions he is unqualified to answer, and which the [A]rbitrator deems relevant and worthy of

<sup>11</sup> Procedural Order No. 24 at ¶¶ 20, 75; *see also* Procedural Order No. 24.1 (amending Procedural Order No. 20) at ¶¶ 20, 75 (substantially similar).

<sup>12</sup> Procedural Order No. 24 at ¶ 75; *see also* Procedural Order No. 24.1 (amending Procedural Order No. 20) at ¶ 75 (substantially similar).

<sup>13</sup> For convenience, and unless the context requires a more precise term, this Final Award generally uses the term “renewal” to refer to continuation of a customer’s existing relationship with Planet as that is the term that the Parties used most frequently during the agency period of the SAA. However, although the terms “renewal,” “re-enrollment,” and “re-contract” were sometimes used interchangeably by the Parties, from an Ontario regulatory perspective, these terms have distinct meanings and in most instances, the continuation of a customer’s contractual relationship with Planet entailed entering into a new contract. *See generally* Silvestri First WS at ¶¶ 24-27, 32.

further inquiry, ACN ... make best efforts to find the suitable person to answer such questions, and ... make such person available as part of its case in chief.”

51. In response, on May 31, 2020, Planet stated that “without waiving any rights to require an IT person to testify, we will proceed with Mr. Merriman,” and “[i]f Mr. Merriman is unable to respond to our questions, we will seek to have an IT person ordered to appear.”

#### **F. Pre-Hearing Written Submissions**

52. In accordance with Procedural Order No. 12 and amendments to the timetable as described above, prior to the evidentiary hearing, the Parties exchanged comprehensive written submissions detailing the facts and law being relied upon in support of their respective claims and defenses, together with more than 450 documentary exhibits, fact witness statements, expert reports, and cited legal authorities.
53. On January 28, 2020, Claimant submitted its “**Statement of Claim**,” together with legal authorities, documentary exhibits, and fact witness statements by:
- a. Anthony J. Palma, former Vice President Agency of ACN, dated January 24, 2020 (“**First Palma WS**”);
  - b. Thomas L. Ulry, former CEO of Xoom Energy LLC, dated January 24, 2020 (“**First Ulry WS**”); and
  - c. Cristina David, former Operations Analyst and Operations Manager of Planet, dated January 28, 2020 (“**David WS**”).
54. Claimant also submitted a witness statement from its testifying expert Michael Petron, Managing Director with Stout Risius Ross, LLC (“**Stout**”) dated January 28, 2020, and a report setting forth Stout’s findings and procedures in connection with the audit (the “**Stout Audit Report**”) (C3 and its exhibits). The Stout Audit Report was prepared by Mr. Petron with colleagues Jason Wright and Mike Vitale.
55. On March 29, 2020, Respondent submitted its “**Statement of Defense and Counterclaims**,” together with legal authorities, documentary exhibits, and fact witness statements by:
- a. Nino Silvestri, Co-CEO of Planet, dated March 29, 2020 (“**First Silvestri WS**”);

- b. Stephen Plummer, Co-CEO of Planet, dated March 28, 2020 (“**Third Plummer WS**”)<sup>14</sup>;
  - c. Stephen Plummer, Co-CEO of Planet, dated March 29, 2020 (“**Fourth Plummer WS**”); and
  - d. Jordan Small, Vice President of Planet with responsibility for regulatory affairs compliance, dated March 27, 2020 (“**Small WS**”).
56. Respondent also submitted a witness statement dated March 28, 2020 from its testifying expert Timothy Zimmerman, a partner at RSM Canada LLP (“**RSM**”), as well as two expert reports authored by Zimmerman with a second testifying expert from RSM, Stephanie Greenwald:
- a. a report opining on the calculation of damages suffered by Planet due to alleged breaches of the SAA by ACN (“**RSM Damages Report**”), dated March 28, 2020; and
  - b. a report reviewing and critiquing the methodology and conclusions in the Stout Audit Report (“**RSM Audit Report**”).
57. On April 23, 2020, Claimant submitted its “**Reply**,” together with legal authorities, documentary exhibits, and fact witness statements by:
- a. Anthony J. Palma, dated April 22, 2020 (“**Second Palma WS**”);
  - b. Thomas L. Ulry, dated April 21, 2020 (“**Second Ulry WS**”);
  - c. David Merriman, Executive Vice President of ACN, Inc., dated April 22, 2020 (“**Merriman WS**”); and
  - d. Franco Lofranco, an independent business owner (“**IBO**”) with the position of Senior Vice President in the ACN compensation plan, dated April 22, 2020 (“**Lofranco WS**”).
58. With respect to expert testimony, Claimant also submitted:
- a. a witness statement from its testifying expert, Brady F. Yauch, Manager, Markets and Regulatory, with Power Advisory LLC (“**Power Advisory**”),

<sup>14</sup> As recited above, in connection with requests by the Parties for interim relief, Plummer previously submitted written testimony in the form of two “affidavits” as opposed to “witness statements.” To be consistent with references made by Planet, however, the Arbitrator refers to the two witness statements submitted by Plummer with the Statement of Defense and Counterclaims as the “Third” and “Fourth” Plummer Witness Statements.

dated April 22, 2020;

- b. a report by Power Advisory, authored by Yauch and colleague Jason Chee-Aloy, analyzing issues in the Ontario energy markets (“**Power Advisory Report**”) (C130);
  - c. a report by Stout entitled, “Rebuttal of RSM’s Review and Critique of the Stout Audit Report,” and dated April 22, 2020 (“**Stout Audit Rebuttal**”) (C131 with its exhibits);
  - d. a report by Stout entitled, “Rebuttal of Planet Energy’s Alleged Economic Losses, and dated April 22, 2020 (“**Stout Damages Rebuttal**”) (C129 with its exhibits); and
  - e. a letter report by Stout estimating the present value of future commissions (“**Stout Present Value Letter**”) (C128 with its exhibits).
59. On May 11, 2020, Respondent submitted its “**Rejoinder**,” together with legal authorities, documentary exhibits, and three supplemental submissions:
- a. a chart setting forth requests for adverse inferences against ACN based upon alleged failures to produce documents (“**Adverse Inferences Chart**”<sup>15</sup>);
  - b. a document entitled, “Planet Response to ACN C124 and Paragraph 198 of the ACN Reply,” and generally addressing Planet’s indemnity claims for complaints made to the Ontario Energy Board (“**OEB**”) (“**Planet’s C124 Response**”); and
  - c. a document entitled, “Planet Response to ACN C125 and Paragraph 207 of the ACN Reply,” and generally addressing Planet’s indemnity claims for other customer complaints (“**Planet’s C125 Response**”).
60. In addition, Respondent submitted the following fact witness statements and expert reports dated May 11, 2020:
- a. a witness statement by Nino Silvestri (“**Second Silvestri WS**”);
  - b. an expert report by RSM entitled, “Response to Stout’s Rebuttal of Planet Energy’s Economic Losses” (“**RSM Damages Response**”) (R286 with its exhibits); and

<sup>15</sup> Since Planet subsequently updated this chart as part of its Post-Hearing Brief (*see below*), in the final analysis, the Arbitrator has looked to the revised version and unless stated otherwise, any reference to the “Adverse Inferences Chart” refers to that revised version.

- c. an expert report by RSM entitled, “Response to Stout’s Rebuttal of RSM’s Review and Critique of Stout Audit Report” (“**RSM Audit Response**”) (R288 with its exhibits).

### **G. Respondent’s Objections to a Virtual Hearing**

61. On March 30, 2020, the Arbitrator proposed a status conference with the Parties to discuss a contingency plan in the event that all or some case participants were unable to physically convene in Toronto on the scheduled evidentiary hearing dates commencing May 26, 2020 due to continuing governmental restrictions on public life and travel arising from the COVID-19 pandemic.
62. Such a conference took place on April 1, 2020. The Parties disagreed about potential contingency plans, including whether the evidentiary hearing should be convened via videoconference (a “**virtual hearing**”) or postponed to a later date.
63. Given the Parties’ diverging views and evolving circumstances related to the pandemic, the Arbitrator inquired whether it was reasonable to defer any determination about how to proceed until one month before the hearing. The Parties agreed, and a further conference was scheduled for April 27, 2020.
64. Following that conference, on April 29, 2020, the Arbitrator issued Procedural Order No. 23, determining that the evidentiary hearing would be conducted via videoconference and that the hearing start date would be adjourned until the following week.
65. In deciding to hold a virtual hearing, the Arbitrator considered an objection by Respondent that it had a “right” to an in-person hearing because the Arbitration Agreement allegedly specifies that a hearing take place in Toronto and determined that: (i) she had authority under the Arbitration Agreement and Articles 17, 20, and 23 of the ICDR Rules to decide, over Respondent’s objection, that the evidentiary hearing be convened via videoconference rather than physically in-person in Toronto;<sup>16</sup> and (ii) in such circumstances, the arbitration would be deemed to have been “made at” or “held” in Toronto, as the place of arbitration.<sup>17</sup> With respect to her authority to determine whether to proceed via videoconference, the Arbitrator reasoned:

By its plain terms, Section 9(f) of the SAA provides that “the arbitration” (not “the hearing” or “any hearing”) be “held” in Toronto. It does not contain any

<sup>16</sup> As noted in Paragraph 40 of Procedural Order No. 23, no submissions were made that a virtual hearing would be contrary to any mandatory rule of law in Ontario, and the Arbitrator is not aware of any such law.

<sup>17</sup> Ultimately, the virtual hearing was “held” in Toronto. As recited below, the Parties subsequently agreed that a third party vendor located in Toronto would host the hearing on Zoom and engaged Arbitration Place to do so. In addition, multiple case participants (including at least Claimant’s Counsel, Respondent’s corporate representatives (who were also fact witnesses), and Respondent’s expert witnesses) connected to the virtual hearing from locations in Toronto.

specific language about the manner in which any hearing is to be convened (such as references to “in-person,” “physical presence,” or to modes of communication like telephone or videoconference). Nor does it contain any specific language that would make clear that in agreeing that “the arbitration” be “held” in Toronto or other mutually agreed location, the Parties were agreeing that the conduct of an evidentiary hearing would be a mandatory or minimal procedural protection, or that they were otherwise restricting an arbitrator’s procedural discretion (e.g., language expressly precluding an award from being made based on documents alone).

In these circumstances, *at best*, the Parties’ agreement that “the arbitration” be “held” in Toronto could be read as an *implied* agreement that an evidentiary hearing must physically take place in Toronto, unless agreed otherwise by the Parties. However, the Parties also incorporated the ICDR Rules into their Arbitration Agreement and those Rules provide:

- a. “[t]he tribunal may meet at any place it deems appropriate for any purpose, including to conduct hearings, hold conferences, hear witnesses, inspect property or documents, or deliberate, and, if done elsewhere than the place of arbitration, the arbitration shall be deemed made at the place of arbitration;”<sup>18</sup>
- b. the “arbitral tribunal may conduct the arbitration in whatever manner it considers appropriate, provided that the parties are treated with equality and that each party has the right to be heard and is given a fair opportunity to present its case;”<sup>19</sup>
- c. “[t]he tribunal shall conduct the proceedings with a view to expediting the resolution of the dispute. . . . In establishing procedures for the case, the tribunal and the parties may consider how technology, including electronic communications, could be used to increase the efficiency and economy of the proceedings;”<sup>20</sup>
- d. “[t]he tribunal shall determine the manner in which witnesses are examined and who shall be present during witness examination;”<sup>21</sup>  
and
- e. “[t]he tribunal may direct that witnesses be examined through means that do not require their physical presence.”<sup>22</sup>

<sup>18</sup> Article 17(2).

<sup>19</sup> Article 20(1).

<sup>20</sup> Article 20(2).

<sup>21</sup> Article 23(3).

<sup>22</sup> Article 23(5).

Notably, the Arbitration Agreement contains no language expressly stating an intention to “opt-out” or exclude application of any particular provision in the Rules. Yet, if the Arbitrator were to adopt Respondent’s interpretation of the Arbitration Agreement as requiring an in-person hearing in Toronto (or other mutually agreed location), that interpretation would be inconsistent with *at least* Articles 17(2) and 20(1), and, arguably, all the other provisions quoted above as well.

In the alternative, the Parties’ agreement that “the arbitration” be “held” in Toronto could be understood as an implied agreement that the legal place of arbitration would be Toronto (unless agreed by the Parties otherwise).<sup>23</sup> Since such a reading would not require that the Arbitrator “read out” any provisions of the ICDR Rules, it must be preferred, and Respondent’s interpretation should be rejected. Indeed, as recited above, the Parties previously confirmed in this case that pursuant to the Arbitration Agreement, they had agreed that the place of arbitration is Toronto.<sup>24</sup>

66. Apart from challenging the Arbitrator’s authority to convene a virtual hearing, Respondent raised various general objections to such a proceeding, including that: the use of video is disfavored over in-person examination; video is inadequate for assessing witness credibility; convening a virtual hearing would require a significant number of “ground rules” to be worked out about matters such as how witness testimony can proceed with assurance that no one else is present whether the witness is testifying; and, its counsel was inexperienced conducting an entire hearing by videoconference and it would have insufficient time to prepare.
67. Addressing these objections, Procedural Order No. 23 noted that: Respondent failed to state any specific objections relating to this particular dispute and its unsuitability for a video hearing; any difficulties in transitioning from an in-person hearing to a virtual hearing would affect the Parties equally and there was no apparent disadvantage to Respondent over Claimant; as Respondent itself noted, significant guidance had emerged about how to conduct virtual hearings, including guidance from the ICDR; and, any practical concerns relating to videoconferencing could be mitigated through discussion by the Parties and then with the Arbitrator, possibly working with a third party service provider to facilitate the hearing, and/or conducting “test runs” of the technology prior to the hearing.
68. Weighing Respondent’s objections to a virtual hearing against other circumstances, the Arbitrator concluded:

In consideration of the Parties’ submissions and the unique circumstances of this case, current restrictions on travel and public life in light of the COVID-19 pandemic, future uncertainty about when all or most case participants can

<sup>23</sup> As noted above, the Parties previously confirmed this agreement.

<sup>24</sup> Procedural Order No. 23 at ¶¶ 35-38.

legally and safely convene in one location for an in-person hearing, Claimant's interest in having this matter heard and determined promptly and in accordance with the previously set schedule for this case, as well as Respondent's objection to a virtual hearing, ...

- it is appropriate to convene the evidentiary hearing via videoconference;
- such technology will afford the Parties fair and reasonable opportunity to present their cases and will not prejudice or disadvantage either Party over the other;
- postponing the hearing would risk excessive delay and material prejudice to the Parties' abilities to present their cases; and
- reasonable steps can be taken in advance of the hearing to anticipate and address any concerns about the use of videoconferencing technology and to ensure the fairness and integrity of these proceedings.

This determination is made without prejudice to the Arbitrator's discretion not to proceed with a videoconference hearing, to terminate a hearing that is in-progress, and/or to take such other steps as may be necessary to ensure the fairness and integrity of the proceedings if she later deems it unfair to any Party. . .

As concerns Respondent's objection that it has insufficient time to prepare for a hearing conducted via videoconference, the Arbitrator finds that an adjournment of the hearing start date until the following week is an appropriate accommodation.<sup>25</sup>

#### **H. Procedures for the Conduct of the Evidentiary Hearing**

69. An initial pre-hearing conference was held by telephone on May 15, 2020. Prior to the conference, the Parties were invited to confer and consider a pre-hearing checklist of procedural and logistical matters relating to the conduct of the virtual hearing. Among other things, the Parties agreed that the hearing would be hosted and facilitated by third party service provider Arbitration Place in Toronto, using the videoconferencing platform, Zoom.
70. On May 20, 2020, Arbitration Place provided a demonstration of the Zoom platform and the services that would be provided during the hearing.
71. A second pre-hearing conference was held on May 22, 2020 via Zoom, hosted by the ICDR, to discuss outstanding issues from the initial pre-hearing conference.

<sup>25</sup> Procedural Order No. 23 at ¶¶ 41-42, 44.



72. On May 24, 2020, the Arbitrator issued Procedural Order No. 24 reporting on the pre-hearing conferences and establishing the procedures for conduct of the evidentiary hearing, including procedures intended to optimize the effectiveness of videoconferencing technology, and especially the Zoom platform, for witness testimony. The Order expressly noted:

If the Arbitrator deems it unfair to any Party to continue the Zoom hearing because of a technical failure or otherwise determines that the platform does not permit the Parties to adequately present their cases, she may terminate the videoconference at any time and take such other steps as may be necessary to ensure the fairness and integrity of the proceedings.<sup>26</sup>

73. Between May 25-27, 2020, the Parties made various comments about, and/or raised objections to, the content of Procedural Order No. 24. In consideration of such comments and objections, on May 28, 2020, the Arbitrator issued a revised version, Procedural Order No. 24.1.

74. Among other things, Procedural Order No. 24.1 established that:

- a. a witness' written witness statement(s) and/or expert report(s) would constitute part of the witness' direct testimony at the hearing;
- b. there being no objections by the Parties to any of the exhibits exchanged with their written submissions, all such exhibits would be deemed admissible and authentic, subject to the Arbitrator's determination of the relevance, materiality, and weight of all evidence in accordance with Article 20(6) of the ICDR Rules;
- c. a handful of new exhibits proposed by each Party would also be admitted to the record on this basis (while one new proposed exhibit was not admitted); and
- d. no new exhibits would be admitted at the hearing, except for demonstrative exhibits within the scope of further provisions of the Order, any exhibit offered as impeachment evidence and admitted after consideration of any objection, and any exhibit admitted for exceptional good cause, in the Arbitrator's discretion.

### **I. The Evidentiary Hearing**

75. Commencing on June 1, 2020 and continuing on June 2-5, 8-11, 23, and 26, 2020, the evidentiary hearing was convened via videoconference, hosted by Arbitration Place in Toronto, Ontario using the Zoom platform, and facilitated by one of Arbitration Place's hearing technicians. The proceedings were transcribed by a stenographer

<sup>26</sup> Procedural Order No. 24 at ¶ 93; *see also* Procedural Order No. 24.1 at ¶ 93.

and not otherwise recorded.

76. Although there were a few minor technical incidents over eleven hearing days,<sup>27</sup> the technological aspects of the hearing proceeded smoothly. No Party ever objected during the hearing or following it that either the use of videoconferencing technology or any technical incident affected the fairness of the hearing, its ability to present its case, or that holding the hearing via videoconference rather than in-person prejudiced it in any other way. Nor does the Arbitrator so find.
77. Attendees on behalf of ACN included: (i) its Counsel, Mr. Borg-Olivier, and law clerk Jacqueline Cummins; (ii) corporate representatives Jeremy Smuckler, Kevin Rust, Robert Stevanovski (who, at Respondent's request, also testified as a fact witness but did not submit a witness statement), and Dave Stevanovski; (iii) non-testifying experts from Stout, Jason Wright and Mike Vitale; (iv) all fact and expert witnesses who submitted pre-hearing witness statements or expert reports for ACN, as recited above; and (v) fact witness Lyndsie Wise of ACN, who did not submit a witness statement but appeared for oral testimony at Respondent's request.
78. Attendees on behalf of Planet included: (i) its Counsel (Strum, Mellske, Zacher, Salama, and Ramos Montes); (ii) corporate representatives and fact witnesses Silvestri and Plummer; (iii) non-testifying experts from RSM, Brendan Cape, Stephanie Dexter, and Dawn Ellis; and (iv) all fact and expert witnesses who submitted pre-hearing witness statements or expert reports for Planet, as recited above.
79. The Parties presented oral and closing statements and oral testimony was heard from all of the witnesses who submitted witness statements or expert reports. In addition, Wise and R. Stevanovski testified about the limited scope of issues specified by Planet prior to the hearing (*see* Paragraph 46 above), and in accordance with Paragraph 75 of Procedural Order Nos. 24 and 24.1. In addition to testifying about matters raised in his written witness statement, Merriman also testified on this basis (*see* Paragraph 47 above).
80. By agreement of the Parties and as contemplated by Procedural Order No. 24.1, the Parties relied on certain demonstrative exhibits that were admitted into the record and marked sequentially as "C-Dem1" or "R-Dem1" and following.<sup>28</sup>

<sup>27</sup> For instance, during a rainstorm, ACN's Counsel had an unreliable internet connection during cross-examination, occasionally froze, and required a break to re-connect with a mobile hotspot. *See* Tr. at 1097-1115 (Small cross).

<sup>28</sup> *See* C-Dem1 (Claimant's opening presentation); C-Dem2 (overview of Stout evidence); C-Dem3 (overview of Petron evidence re RSM damages report); R-Dem1 (Respondent's opening presentation); R-Dem2 (sample detailed commission file); R-Dem3 (RSM damages testimony). Respondent also used two PowerPoint presentations for its closing submission that were used without objection, but inadvertently not formally marked as R-Dem4 (Planet Closing re EPCA and OEB 26 June 20 Final) and R-Dem5 (Planet Closing 26 Jun 20 Final).

81. As detailed below, a few notable procedural matters and scheduling adjustments arose during the hearing.

### 1. Planet Requests an ACN IT Witness Testify

82. On June 1, 2020, after Merriman testified, Planet’s Counsel stated that he would like to “question someone who has technical knowledge of whether or not ACN could have provided a . . . list of Planet customers who became Xoom customers,” asserting, “I don’t think that he has the expertise to determine whether or not that kind of query could be made” and he didn’t know the “technical details.”<sup>29</sup> Planet added that in agreeing to cross-examine Merriman, it did not “waive” its “rights” to ask for an IT person.<sup>30</sup>
83. ACN objected that Planet was making a request for “new issues in the middle of a hearing” with respect to “something that could easily have been dealt with previously.”<sup>31</sup> ACN also argued that to the extent an IT person was previously requested by Planet, it was not to testify about whether or not ACN could have provided a list of Planet customers who became Xoom customers, but rather about the five topics that Planet identified before the hearing (*see* Paragraph 49 above).<sup>32</sup>
84. The Arbitrator sustained ACN’s objection and denied Planet’s request. In doing so, the Arbitrator noted: ACN’s technical ability to cross-reference Planet and Xoom customers was not among the list of issues previously identified by Planet as matters for which it sought an ACN witness to testify; the request was untimely; Planet was free to question other ACN witnesses about the capabilities of ACN’s systems;<sup>33</sup> and, although Planet had previously objected to ACN offering Merriman as a witness to testify about the topics it identified, since it did not name a specific ACN person, there needed to be a “reasonable balance” to let ACN identify who within its company was competent to testify about the issues Planet had identified.<sup>34</sup>

### 2. Planet’s Damages Expert Requires an Adjournment

85. On June 5, 2020, Respondent advised that its testifying expert regarding the audit, Zimmerman, would likely be unable to testify as scheduled due to the ill health of a

<sup>29</sup> Tr. at 255-56, 259 (Post-Merriman).

<sup>30</sup> Tr. at 259 (Post-Merriman).

<sup>31</sup> Tr. at 256-57 (Post-Merriman).

<sup>32</sup> Tr. at 256-57 (Post-Merriman).

<sup>33</sup> Notably, Planet intimated that an ACN IT person was not the only witness from whom it could have proffered testimony about whether ACN had the technical ability to provide a cross-referenced list of Xoom and Planet customers. *See* Tr. at 257 (“Mr. Merriman is not an IT expert ... every single person that we have discussed this with tells me that they can find that information. They have very powerful SAP software. They have very powerful Oracle systems. It is simply not true.”).

<sup>34</sup> Tr. at 257-261 (Post-Merriman); *see also* Paragraphs 38-51 above; Procedural Order No. 12 at ¶ 34; Procedural Order Nos. 24 and 24.1 at ¶¶ 20, 75

family member.<sup>35</sup> This subsequently proved to be the case.

86. Because Procedural Order No. 24.1 contemplated that the Parties' respective experts on the audit would testify back-to-back, after all other testimony was completed, on June 11, 2020, the hearing was adjourned with the agreement of the Parties until June 23, 2020, when both Petron and Zimmerman could testify (which they did).

### 3. Xoom Produces Documents under Court Order

87. On June 8, 2020, Respondent advised that the District Court granted its 1782 Application on June 5, 2020 and compelled Xoom to produce certain documents by June 22, 2020 (the "**Xoom Documents**").
88. At that point in the hearing, it had not yet been determined whether the hearing would be completed by June 12 as scheduled or whether it would need to be adjourned to accommodate Zimmerman.
89. Respondent argued that in order to allow Planet time to review the Xoom Documents and ACN time to comment on them, it would be appropriate to extend the time for post-hearing submissions from June 29, 2020 until roughly two weeks later.
90. The Arbitrator invited Claimant to consider Respondent's proposal and the Parties to confer about how they would like to proceed.
91. On June 19, 2020, Respondent e-mailed that the Parties had agreed that there should be both closing arguments and post-hearing written submissions, but that they were at an impasse about dealing with the Xoom Documents.
92. Planet proposed a schedule whereby oral argument would be bifurcated between legal issues (on June 24) and closing arguments (on July 10); the Parties would exchange written submissions on the Xoom Documents on July 2 and 6; any necessary oral hearing on the Xoom Documents would take place on July 8; and the Parties would submit post-hearing briefs including final comments on the Xoom Documents on July 14, 2020.
93. In response, Claimant stated its understanding from Xoom's Counsel that the Xoom Documents would likely be produced on Saturday, June 20 rather than Monday, June 22 as required, and that the production would comprise around 200 documents. Claimant asserted that there was "no reason" why Planet could not identify any documents to be admitted into the record in advance of closings (even by Monday, if Xoom produced over the weekend) and make any related submissions during

<sup>35</sup> See Tr. at 1251-53 (Post-Silvestri).

closing argument and in written submissions.

94. Claimant also pointed to Procedural Order No. 20, in which the Arbitrator stated the 1782 Application could not be allowed to dictate the schedule for the arbitration, noting that “Planet waited until a late stage of the arbitration to assert the necessity of a Section 1782 application, at a time when waiting for the Application to be resolved could jeopardize the dates of further written submissions and/or the evidentiary hearing.”
95. ACN concluded that it would not object “to Planet’s ability to introduce new documents if it determines that it is necessary to do so,” but that it was concerned that the Xoom Documents were being used as a basis to open up “new fronts at a late stage (as reflected in its proposed timetable, which provides for additional briefing and even oral submissions on the Xoom [D]ocuments).” Accordingly, Claimant submitted that expert evidence should proceed on June 23, followed by closings on June 24, and written submissions by July 10.
96. Planet countered that it should not be required to review the Xoom Documents until after expert testimony on June 23 and asserted that “ACN’s continued communication and coordination with Xoom’s document production casts serious doubt on the propriety of that production.”
97. In an e-mail the same day, the Arbitrator ruled:

Under Procedural Order No. 24.1, the burden on a party seeking to introduce new documentary evidence during the hearing is high; specifically, Paragraph 33 provides that no new exhibits shall be admitted, but for “exceptional good cause, in the Arbitrator’s discretion.”

To the extent that Planet seeks to make an application to introduce new evidence based upon Xoom’s production, it is incumbent upon it to review the production and make any such application without delay. This is particularly so given the stage of the proceedings and the Arbitrator’s admonition in Procedural Order No. 20 that its Section 1782 Application would not be allowed to dictate the schedule for the proceedings. It is also a reasonable expectation given the anticipated scope of Xoom’s production.

At the same time, the possibility exists that Xoom will imminently produce documents that should have been produced by ACN during the arbitration and that such documents will be relevant and material to the outcome of the dispute. Given that Xoom may not make its production before the June 22 deadline for it to do so, it would be unreasonable to require Planet to make any application to admit new evidence by that same day, as ACN proposes. On the other hand, Planet’s request for 10 days from the June 22 deadline for Xoom’s production of documents is patently disproportionate to the task at hand.

In these circumstances, the Arbitrator determines as follows:

1. If Planet seeks to have new documents admitted into the evidentiary record from Xoom's forthcoming production, it shall submit PDF copies of such documents, marked with proposed exhibit numbers, no later than June 24.
  2. ACN shall have until June 25 to state any objection.
  3. If there is no objection to Planet's application: (i) closing submissions shall proceed on June 26 at 1 p.m. and the Parties shall address the relevance and materiality of the new documents, any impact on Planet's requests for adverse inferences, and such other arguments as may be appropriate during their closings; and (ii) post-hearing submissions and requests for costs shall be made by July 14.
  4. If there is an objection to Planet's application, the Arbitrator will hear oral argument from the Parties regarding whether the documents should be admitted into the record on June 26 at 1 p.m. and shall consider what further directions may be appropriate.
  5. Following review of any new documents that may be admitted into the record, the Arbitrator will consider appropriate directions regarding the scope of post-hearing submissions, including potential page limits . . .
98. On June 24, 2020, Respondent proposed that 122 Xoom Documents be admitted into the record (as R300-R421) from among 400+ documents produced by Xoom. Respondent also submitted a chart purporting to compare documents ACN was compelled to produce under Procedural Order No. 13 with the categories of documents Xoom was compelled to produce by the District Court ("**Xoom Spreadsheet**") as well as a copy of the District Court's June 5, 2020 Order compelling production of the Xoom Documents and a comparison of document requests ordered to be produced in the arbitration with document requests ordered by the District Court ("**1782 Subpoena/Stern Schedule Comparison**").
  99. On June 25, 2020, ACN asserted that Planet's e-mail contained numerous false and misleading statements such as that Xoom produced 400+ documents when the production comprised approximately 200 documents and 500 pages (as evidenced by Bates stamps). Nonetheless, ACN stated that it did not object to any of the proffered documents being made exhibits and was prepared to move forward with closings.
  100. Shortly thereafter, the Arbitrator confirmed that the proposed exhibits were admitted into the record and that oral closings would take place the following afternoon, on June 26, 2020.

101. At no time before or after the Arbitrator admitted the Xoom Documents into the record did either Party ever argue that they should be permitted to recall one or more witnesses to testify or to seek the appearance of any new witness.
102. As part of oral closings, the Parties made certain comments about the Xoom Documents, after which a discussion ensued about whether ACN could rebut Planet's assertions that it failed to produce certain Xoom Documents without seeking to admit new exhibits from its document production.<sup>36</sup> In the course of that discussion, Planet agreed to provide ACN with a copy of the Xoom Spreadsheet so that ACN could add columns with its comments, including the Bates numbers of any documents within its production that it believes correspond to Xoom Documents Planet contends ACN should have produced but did not.
103. On June 29, 2020, the Arbitrator issued Procedural Order No. 25 directing Respondent to submit a copy of its Xoom Spreadsheet (reflecting any updates) by July 2, 2020, and Claimant to submit its comments on the Xoom Spreadsheet by July 9, 2020.

#### **4. Fire Alarms Cause Adjournment**

104. On June 10, 2020, as Greenwald (Planet's testifying expert on damages) prepared to testify, a fire alarm repeatedly sounded at the place where she was testifying.<sup>37</sup> With the agreement of the Parties, the hearing was adjourned until the following day when Greenwald testified without incident.

#### **5. Closing Arguments**

105. The Parties made oral closing arguments on June 26, 2020.
106. In anticipation of those closing arguments and the Parties' post-hearing submissions, on June 16, 2020, the Arbitrator e-mailed the Parties a list of legal issues to be considered.

### **J. Post-Hearing Requests and Submissions**

#### **1. Planet Seeks to Admit New Exhibits**

107. On June 23, 2020, after all fact and expert testimony was completed, but before closing submissions, Planet sent an e-mail stating "[l]ast week you had asked about how Planet knew of an email sent by Mr. Stevanovski to Mr. Ulry in September 2015" and purported to attach "a copy of the full exchange by which Planet had

<sup>36</sup> Tr. at 2576-85 (Planet Closing).

<sup>37</sup> See Tr. at 1875 (Greenwald).

received the email.”

108. In response the same day, the Arbitrator inquired whether Planet was requesting that the attachment be admitted as a new exhibit. Planet did not reply.
109. On July 8, 2020, in the post-hearing submission phase, Planet e-mailed that it wished to submit two additional exhibits into the record, “[i]n response to specific questions raised by you and [ACN’s Counsel] at the Hearing.” One of the proposed documents, marked R422, was the same document as the attachment to Planet’s June 23 e-mail.
110. That same day, ACN “strenuously” objected to “Planet’s attempt to submit two new exhibits into the record at this stage of the proceeding.” With respect to R423 in particular, Claimant argued that the “prejudice to ACN is obvious” and that ACN would have prosecuted its case differently if the document had been designated as an exhibit; likely by cross-examining Silvestri about it, asking Palma and others from ACN related questions; and asking that Planet make Parent<sup>38</sup> available as a witness at the hearing. ACN also protested that Planet should have known by the time of Silvestri’s preparation for his testimony (if not earlier) that this document had been “inadvertently” excluded from its exhibits and sought to remedy the omission then.
111. Prior to ruling on the admissibility of the two exhibits, the Arbitrator sought clarification as to whether the documents were previously produced to ACN and why they were not previously submitted as Reliance Documents. Respondent stated that both documents were part of its document production, but did not answer why it failed to mark either as a Reliance Document prior to the hearing.
112. On July 9, 2020, the Arbitrator informed the Parties that R422 and R423 would be admitted as exhibits, with Claimant’s objection duly noted.

## 2. Post-Hearing Submissions

113. In accordance with Procedural Order No. 25, on July 2 and 9, 2020, the Parties submitted versions of the Xoom Spreadsheet commenting on the Xoom Documents (“**Planet Xoom Spreadsheet**” and “**ACN Xoom Spreadsheet**”).
114. Also in accordance with Procedural Order No. 25, on July 14, 2020, the Parties made post-hearing written submissions on the merits and the costs of arbitration.
115. Claimant submitted a brief entitled, “**ACN’s Closing Submissions,**” together with five legal authorities and two appendices with its Prejudgment Interest Calculations (“**ACN Appendix A**”) and Cost Summary (“**ACN Appendix B**”).

<sup>38</sup> Parent was among the potential “involuntary witnesses” that ACN identified in December 2019, but neither Party sought to compel his testimony. See Paragraph 38 above.



116. Planet submitted “**Respondent’s Post-Hearing Brief,**” together with fifteen legal authorities, an updated version of its Adverse Inferences Chart, and a new exhibit marked R424.
117. On July 15, 2020, the Arbitrator noted that Respondent attached a new exhibit (R424) to its Post-Hearing Brief without providing any justification, let alone good cause, for seeking to introduce the exhibit with its brief when Claimant would have no opportunity to respond in the context of its own submission and the exhibit plainly could have been introduced earlier. On this basis, the Arbitrator informed the Parties that R424 was inadmissible and would be disregarded.

#### **K. Further NPV Submissions and Closure of Hearing**

118. On July 26, 2020, the Arbitrator issued Procedural Order No. 26 confirming that pursuant to Article 27 of the ICDR Rules, the arbitral hearing was closed and all issues to be determined in the arbitration would be taken under advisement by the Arbitrator.
119. On September 11, 2020, the Arbitrator issued Procedural Order No. 27 re-opening the hearing pursuant to Article 27(2) of the Rules in order to obtain further submissions regarding ACN’s claim for future commissions as detailed in the Stout Present Value Letter (C128) and accompanying exhibits.<sup>39</sup> Specifically, in Paragraph 109 of ACN’s Closing Submissions, ACN submitted that Stout’s net present value (“NPV”) calculation of future commissions did not include ‘non-ACN Customers with an ACN connection’ as found by Stout because Stout did not have access to the necessary data from Planet, and ACN requested that if the Arbitrator were to find that ACN is entitled to such commissions, Planet be required to provide updated files for Stout to provide updated NPV calculations. Procedural Order No. 27 required such data to be provided, allowed ACN to submit revised NPV calculations by Stout with supporting exhibits, and gave Planet and RSM the opportunity to comment on such calculations.
120. In consideration of e-mail correspondence submitted by the Parties, on September 14, 2020, the Arbitrator modified deadlines established under Procedural Order No. 27 for such further submissions and confirmed the procedural direction that in submitting revised NPV calculations, Stout use the same methodology as set forth in C128, subject to corrections made during Petron’s direct testimony at the hearing.<sup>40</sup>
121. Noting that the hearing was re-opened for the discrete purpose defined in Procedural Order No. 27, the Arbitrator also denied a request by Planet to submit additional evidence and/or argument on document production issues (unrelated to

<sup>39</sup> As noted in Procedural Order No. 27 by citations to the record, the possibility of additional NPV calculations was raised by ACN prior to and during the hearing. See C-Dem-2 at p. 30; C128 at 0751; Tr. at 2479:23-2480:23 (ACN Closing).

<sup>40</sup> See C-Dem-3 at p. 27; Tr. 2331:3-21 (Petron).

the subject-matter of Procedural Order No. 27 and addressed by the Parties in prior submissions), for lack of good cause.

122. Pursuant to Procedural Order No. 27, on September 24, 2020, Planet submitted an excel spreadsheet with data needed by Stout to make revised NPV calculations. Planet also made comments by e-mail regarding certain alleged discrepancies with the data.
123. On September 28, 2020, ACN objected that Planet's comments raised new issues outside the scope of Procedural Order No. 27 and that Planet already had "plenty of opportunity" to "spot check" the data and raise discrepancies with it. Accordingly, ACN submitted that pursuant to Procedural Order No. 27, on October 1, 2020, it would submit revised NPV calculations and information as directed, and that it did not intend to respond to any of the new discrepancies alleged by Planet. To that end, on October 1, 2020, ACN submitted an updated summary of the total damages being claimed by ACN together with an amended summary of its NPV calculations and amended and supplemental exhibits to the Stout Present Value Letter ("**ACN's P.O. 27 Submission**").
124. On October 8, 2020, Respondent submitted its response with supporting schedules and comments on ACN's summary of damages being claimed ("**Planet's P.O. 27 Response**").
125. On October 9, 2020, over Planet's objection, ACN sought and was granted leave to respond to allegations by Planet that, contrary to Procedural Order No. 27, Stout used a different methodology in its revised NPV calculations than it did originally. That same day, ACN submitted an e-mail purporting to explain consistency in the methodology used by Stout for its original and revised NPV calculations.
126. On October 10, 2020, Planet asked for leave to respond to ACN, attaching its proposed response. Though objecting to Planet's response, ACN quickly replied with a substantive comment in reply.
127. Pursuant to Procedural Order No. 28, the hearing was closed under Article 27 of the ICDR Rules on November 19, 2020.
128. By letter dated January 15, 2021, pursuant to Article 30 of the ICDR Rules, the ICDR extended the deadline for the Final Award for an additional 30 days until February 17, 2021.

### III. Choice-of-law

129. The SAA is governed by New York law, without giving effect to principles of conflict of laws.<sup>41</sup>

### IV. Pleadings and Final Requests for Relief

130. In its Notice of Arbitration dated April 26, 2018, ACN claimed that:

- a. Planet wrongfully withheld certain monthly Gross Margin payments due to ACN under the SAA and wrongfully asserted a right to withhold further monthly Gross Margin payments as they become due and owing to ACN pursuant to a wrongful claim of indemnification;<sup>42</sup>
- b. such conduct constitutes a breach of the SAA and/or a breach of the SAA in bad faith, or, in the alternative, violates Planet's duty of good faith and fair dealing and unjustly enriched Planet;<sup>43</sup>
- c. if not remedied, such conduct would tortiously interfere with ACN's relationship with its IBOs;<sup>44</sup>
- d. Planet breached the SAA by failing to provide reporting required under the SAA;<sup>45</sup> and
- e. Planet breached the SAA by not permitting ACN to conduct an audit as specified in the SAA.

131. ACN sought the following relief:

- a. a decree and award that Planet (i) breached the SAA; (ii) caused reputational, monetary, and/or other injuries to ACN, including any damages caused to ACN's relationship with its IBOs or the damage (including interest) ACN suffered by redirecting other business funds to compensate its IBOs; and (iii) failed to provide the requisite reporting information required under the SAA;<sup>46</sup>
- b. an award of damages in an amount to be proven and in excess of CAD \$1,244,000;<sup>47</sup>

<sup>41</sup> See Partial Final Award at ¶¶ 23-25, citing SAA §19(e).

<sup>42</sup> Notice of Arbitration at ¶¶ 54-55.

<sup>43</sup> Notice of Arbitration at ¶ 54.

<sup>44</sup> Notice of Arbitration at ¶ 57.

<sup>45</sup> Notice of Arbitration at ¶ 58.

<sup>46</sup> Notice of Arbitration at ¶ 60.

<sup>47</sup> Notice of Arbitration at ¶ 61.

- c. a decree that it is entitled to exercise the audit rights as specified in the SAA, or, in the alternative, an accounting under New York law;<sup>48</sup>
  - d. a decree that Planet is required to provide reporting required under the SAA;<sup>49</sup>
  - e. a decree that ACN is not liable for any indemnity towards Planet, or, in the alternative, that the amounts claimed by Planet Energy are not justified under the SAA and/or the alleged conduct giving rise to the indemnification is not indemnifiable;<sup>50</sup>
  - f. a decree that Planet is not entitled to withhold Gross Margin payments from ACN as a setoff or credit against contingent and/or unliquidated and/or disputed indemnity obligations and/or that Gross Margin payments are due and owing to ACN in the amounts and on the schedule provided in the SAA, regardless of any claim to indemnity asserted by Planet;<sup>51</sup> and
  - g. any other relief it deems fair and just to compensate it, including but not limited to an award of attorneys' fees, interest as permitted under applicable law, and costs for the arbitration.<sup>52</sup>
132. Although ACN did not formally amend its pleadings, it was anticipated that the Parties would amend or supplement their claims and counterclaims after ACN completed the audit, and, in fact, ACN's claims were narrowed and its requests for relief were amended over the course of the arbitration.<sup>53</sup>
133. Ultimately, ACN withdrew claims for reputational injury and reporting information and asserted only claims for breaches of the SAA,<sup>54</sup> with the amount being claimed increasing significantly from the Notice of Arbitration. As reflected in its Closing Submissions<sup>55</sup> and ACN's P.O. 27 Submission, ACN's final request for relief is for:

<sup>48</sup> Notice of Arbitration at ¶¶ 59, 62.

<sup>49</sup> Notice of Arbitration at ¶¶ 58, 63.

<sup>50</sup> Notice of Arbitration at ¶¶ 56, 64.

<sup>51</sup> Notice of Arbitration at ¶¶ 55, 65.

<sup>52</sup> Notice of Arbitration at ¶¶ 60-66.

<sup>53</sup> See Procedural Order No. 12 at ¶¶ 4-6 (acknowledging any potential amendments or supplements after completion of the audit would be subject to Article 9 of the ICDR Rules); Arbitrator's e-mail of December 12, 2019 (recapping a status conference and noting "following submission of the audit report, the Parties will confer about anticipated amendments or supplements to their claims and counterclaims and seek guidance from the Arbitrator as necessary so as not to disrupt the existing schedule").

<sup>54</sup> ACN expressly confirmed at the hearing that it was no longer pursuing a claim for alleged reputational, monetary, and/or other injuries to ACN or seeking reporting information under the SAA. See Tr. 77:24-78:7 ("THE ARBITRATOR: "[O]n the request for relief, I just had wanted to confirm . . . we are no longer dealing . . . with any claims in connection with requisite reporting under the Sales Agency Agreement or for damages caused to reputational relationship with the IBOs. MR. BORG-OLIVIER: Correct.").

<sup>55</sup> In Procedural Order No. 25 (at ¶ 8), the Parties were directed to clearly state their final requests for relief in their post-hearing submissions.

- a. a decree that Planet breached the SAA;
  - b. a decree that Planet was not entitled to withhold Gross Margin payments from ACN as a set-off or credit against contingent and/or unliquidated and/or disputed indemnity obligations;<sup>56</sup>
  - c. a decree that Planet is obliged to continue making Gross Margin commission payments to ACN in respect of any customer referred by ACN, for as long as such customer remains a Planet customer, irrespective of the means by which the customer renews their account and regardless of what energy product(s) the customer consumes;
  - d. an award of damages for non-payment/ underpayment of commissions through June 2020, in the total amount of CAD \$19,114,272.00, inclusive of prejudgment interest;
  - e. an order that Planet pay ACN on account of future commissions in a total amount of CAD \$7,080,652.00, or, in the alternative, an order that Planet continue payment of commissions in accordance with sub-paragraph (c) above;
  - f. an order that Planet pay ACN CAD \$961,409.00, plus its pro rata share of the Arbitrator's fees, as reimbursement for the reasonable and customary expenses incurred by ACN in connection with the audit of Planet;
  - g. an order that Planet pay ACN CAD \$2,080,351.00 as reimbursement of its costs incurred in connection with the arbitration;<sup>57</sup> and
  - h. any other relief that the Arbitrator deems fair and just to compensate ACN.
134. Planet's counterclaims also evolved over the course of the arbitration. At the outset of the arbitration, in its Response and Counterclaim dated June 12, 2018, Planet sought a decree and award that:

<sup>56</sup> Notwithstanding that ACN maintained this request for relief, in its oral closing, it argued that its claim of improper set-off was "more important at the outset when ACN was attempting to have funds escrowed" and that it had become moot except with respect to Planet's entitlement to prejudgment interest. Tr. at 2403-2404. Accordingly, the Arbitrator has addressed arguments with respect to interest below but does not otherwise deem it necessary to address substantive legal arguments made by the Parties regarding Planet's purported set-off of disputed indemnity claims against commission payments otherwise owed to ACN. The Arbitrator also deems it unnecessary to address such arguments given that Planet has been ordered to pay ACN a lump sum for future commissions, rendering impossible any potential future dispute about set-off.

<sup>57</sup> ACN notes that it seeks Stout's fees (CAD \$23,128.00) and CAD \$40,000.00 in Paliare Roland fees in connection with both (f) and (g) and thus that if requests for audit expenses and arbitration costs are granted, such amounts should not be double-counted. See ACN's Closing Submissions at n.149 and ACN's P.O. 27 Submission.

- a. ACN must indemnify Planet for all losses incurred as a result of any or all actions taken or not taken by ACN and its IBOs under Section 12 of the SAA;
- b. Planet is entitled to indemnification from ACN under Section 12(a) of the SAA in an amount to be proven and in excess of CAD \$11 million;
- c. ACN and its IBOs actions or inaction(s) caused reputational, monetary, and/or other injuries to Planet, including any damages caused to Planet's relationship to its energy supplier(s), its customers and potential customers, the Ontario Energy Board and the Canadian Export Development Corporation (including increased costs of finance), all monetary damages Planet incurred as a result of having to focus on OEB hearings rather than growing its business;
- d. ACN breached the SAA, including by: (i) failing to engage with Planet Energy in an orderly wind-down period; (ii) entering the Canadian and/or Ontario market prior to termination of the SAA; (iii) failing to use its best efforts to market Planet Energy's products during the entire term of the contract;
- e. ACN and Xoom tortiously interfered with the SAA;
- f. Planet has the right to set-off its legitimate and provable damages against any or all amounts due to ACN under the Gross Margin provision of the SAA;
- g. the total Gross Margin due to ACN under the SAA is 8% (half of 16%) and that any amounts paid above that to ACN should be refunded to Planet; namely, CAD \$29,579,511.00 or such other amount to be proven;
- h. ACN is not entitled to any tail remuneration for any renewals of energy contracts made by Planet as opposed to ACN IBOs (as those renewals do not meet the definition of an ACN customer under the SAA) and a refund of all prior funds paid to ACN for such renewals;
- i. the only post-termination reporting Planet is required to provide ACN under the SAA is the "customary .xml reporting" which Planet Energy has and is providing to ACN;
- j. ACN is liable for CAD \$33,900.00 for breach of the Services Agreement plus fees, costs, and expenses or in an amount to be proven; and
- k. Planet is entitled to such other relief as it deems fair and just to compensate it, including but not limited to an award of attorneys' fees, interest as permitted under applicable law, and costs for the arbitration.<sup>58</sup>

<sup>58</sup> Response and Counterclaim at ¶¶ 156(a)-(h), 157-160, 163-165.

135. In addition, Planet asked for a decree, award, and/or order requiring ACN to utilize a third party auditor to conduct an audit, declaring that certain documents not be required to be provided, and specifying that the audit be conducted by use of Dropbox or similar mechanism for the delivery of materials requested and that such audit not be conducted until a determination by the Arbitrator on the amount of the Target Margin.<sup>59</sup>
136. In its Answer to Counterclaims dated July 31, 2018, ACN asserted that the Arbitrator should grant ACN's claims and deny all of Planet's counterclaims.<sup>60</sup>
137. As the final request for relief in its Post-Hearing Brief, Planet requested an award:
- a. declaring that ACN materially breached its obligations under the SAA as of at least July 19, 2016 (or other date chosen by the Arbitrator, as early as April 30, 2015, with the calculation date being August 1, 2016) and that Planet is entitled to recover all amounts paid to ACN from that date forward, less 8% in the sum of no less than CAD \$12,203,69.00 (including harmonized sales tax or "HST");
  - b. declaring that Planet is entitled to an order of costs as set forth above;
  - c. declaring that ACN intentionally breached its fiduciary duty to Planet and committed unfair trade practices by misappropriating Planet Energy's trade secrets and confidential information and award appropriate damages including punitive damages of CAD \$3,000,000.00;
  - d. declaring that the 'subject matter audited was materially accurate' in Planet's payments to ACN, and that as such, under Article 15 of the SAA, Planet is entitled to reimbursement of RSM's fees in preparing the RSM Audit Report, as well as in preparing and delivering testimony on that subject at the hearing, along with Planet's other reasonable and customary expenses including counsel fees and expenses related to ACN's/Stout's Article 9 audit in the sum of CAD \$500,000.00;
  - e. if the Arbitrator finds any overpayment/shortfall in payments pursuant to the audit it shall order it paid as appropriate;
  - f. declaring that ACN should repay Planet all payments made over the term of the SAA in excess of one-half Gross Margin (Target Margin): CAD \$36,473,000.00 (including HST), with this amount subsuming the amount under subparagraph (a);

<sup>59</sup> Response and Counterclaim at ¶¶ 161-162.

<sup>60</sup> Answer to Counterclaims at ¶ 46.

- g. declaring that ACN breached its obligation under the Services Agreement to make payment for certain billed revenue reports (“**Billed Revenue Reports**”) in the amount of CAD \$33,900.00, unless the Arbitrator finds for Planet on subparagraph (a) above, in which case the request is withdrawn;
- h. declaring that Planet is entitled to recover the costs of the 1782 Application in the amount of at least US\$150,000.00 for failure of ACN to make appropriate document production; and
- i. if the Arbitrator determines that there is an underpayment pursuant to summary of findings 6 and 10 in the Stout Report,<sup>61</sup> Stout should be required to re-calculate on the basis of the detailed commission files and/or the SPI data and not the EMS database, as the EMS database does not contain consumption/usage records and the SAA requires payment be made based on usage.<sup>62</sup>

## V. Factual Background

138. Based on the documentary evidence and witness testimony submitted by the Parties, the Arbitrator finds the relevant facts are as follows.

### A. The Parties

- 139. ACN is a Canadian subsidiary of LKN Communications, Inc. d/b/a ACN, Inc.<sup>63</sup>
- 140. ACN is a direct selling company of telecommunications, energy, and other residential and commercial services that contracts with thousands of independent business owners (“**IBOs**”) in Canada to refer retail and commercial customers to the providers of those services.<sup>64</sup>
- 141. Planet is a natural gas and electricity retailer.<sup>65</sup> Planet’s business model primarily entails offering fixed price energy to its customers.<sup>66</sup>

### B. The 2009 SAA

142. The Parties’ contractual relationship dates back to 2009 when they entered into a sales agency agreement dated November 19, 2009 (the “**2009 SAA**”).<sup>67</sup>

<sup>61</sup> See Stout Audit Report, Figure 3; C-Dem2 at p. 7.

<sup>62</sup> Planet Post-Hearing Brief at 98 (a)-(i).

<sup>63</sup> Merriman Affidavit at ¶ 1; R127.

<sup>64</sup> C2 (explanatory statement); Merriman WS at ¶¶ 6, 10, 12.

<sup>65</sup> C2 (explanatory statement); First Silvestri WS at ¶ 14.

<sup>66</sup> First Silvestri WS at ¶ 7.

<sup>67</sup> C1. Claimant’s parent company, ACN, Inc., was also a party to the 2009 SAA.



143. In early 2009, in his role as a Senior Vice President of Business Development for North America at ACN, Inc., Thomas Ulry was tasked with seeking opportunities in the Canadian energy market.<sup>68</sup>
144. After investigating other options, ACN decided to partner with Planet because Planet recognized that ACN and its network of IBOs had the potential to have “a very large impact on Planet and its growth and the value creation associated with that,” and Planet was willing to “split the value equally” with ACN.<sup>69</sup> At the time, Planet had been selling mostly to commercial customers and it was looking to move into the residential energy market.<sup>70</sup>
145. Ulry negotiated the terms of the 2009 SAA with two of Planet’s then principals, Paul DeVries and Chris Gaffney.<sup>71</sup> In addition to being one of Planet’s founders, Gaffney was also Planet’s legal counsel.<sup>72</sup>
146. According to Ulry, DeVries made clear his intention was to eventually exit the business, and the “basic concept” behind the deal was that the two companies would work together to create value and share the margins associated with the services being sold “all the way through to the eventual exit.”<sup>73</sup> Although DeVries was not willing to give up equity, he was willing to have a contractual arrangement whereby, upon an exit, Planet would split with ACN whatever value Planet extracted from customers that ACN acquired.<sup>74</sup>
147. Although Ulry does not recall any specific discussion about customer renewals, he says that the “whole premise of the relationship as it was being formed and contracted” was that ACN would be paid its 50/50 share for as long as customers were taking that service.<sup>75</sup> Indeed, according to him, Planet was “fully aware and equally excited that ACN was going to go out and pledge to the IBOs that they were going to get paid for the life of these customers. That was all part of the excitement and creating momentum in the channel and they were in full support of that.”<sup>76</sup>

### **C. The SAA**

148. In November 2012, Planet’s owners changed hands, with Nino Silvestri and Stephen Plummer taking control of the company, and the Parties entered into an amended

<sup>68</sup> Tr. 279:18-25 (Ulry); First Ulry WS at ¶¶ 4-5.

<sup>69</sup> Tr. 280:3-281:13, 282:8-22 (Ulry).

<sup>70</sup> First Ulry WS at ¶ 7.

<sup>71</sup> Tr. 281:14-282:3 (Ulry).

<sup>72</sup> First Ulry WS at ¶ 8.

<sup>73</sup> Tr. 282:8-283:9 (Ulry).

<sup>74</sup> Tr. 282:23-283:5 (Ulry).

<sup>75</sup> Tr. 285:8-24 (Ulry direct).

<sup>76</sup> Tr. 285:8-17 (Ulry direct); First Ulry WS at ¶ 13.

contract—the SAA, which is the subject of this arbitration.<sup>77</sup> Relevant provisions to this arbitration, including with respect to the Target Margin and Gross Margin, are identical in the 2009 SAA and the SAA.<sup>78</sup>

149. However, like the 2009 SAA, the SAA was negotiated by Planet’s original owners. Silvestri explained that neither he nor Plummer participated directly in any negotiations, but that they provided input to Gaffney and DeVries behind the scenes who kept them informed of the negotiations.<sup>79</sup>
150. No one who was involved with direct negotiation of the 2009 SAA or the SAA on behalf of Planet testified.
151. Prior to entering into the SAA, Gaffney proposed to ACN that the Parties’ amendment “**confirm** that ACN’s right to its 50% margin share continues for the life of the customers” (emphasis added).<sup>80</sup>
152. As set forth in the explanatory statement to the SAA, “[t]he [P]arties intend[ed] that [the SAA] be the definitive agreement for ACN to act as a master agent, and for ACN’s network of independent sales representatives (the ‘IBOs’) to act as limited agents for Planet to sell electric commodity and natural gas products and related services (the ‘Energy Products’) to retail residential and commercial consumers.” The Parties agreed that this sales agency relationship would be mutually exclusive.<sup>81</sup>
153. General terms of the sales agency relationship are set forth in Section 2 of the SAA. As provided in Section 2(a), ACN was required “to provide, or cause to provide, to Planet ACN’s network of [IBOs] to act as limited agents for Planet to sell Energy Products on behalf of and for the benefit of Planet,” and to “use its commercially reasonable efforts” to cause the IBO’s to sell Energy Products and promote Planet’s retail energy business within the “**Territory**” of Ontario, British Columbia, Manitoba and Quebec.”<sup>82</sup> Other provisions of Section 2 specified that ACN and the IBOs’ agency on behalf of Planet would be limited to soliciting customers, offering Planet’s Energy Products, and recommending them to retail customers,<sup>83</sup> and would not include negotiating prices or rates or the execution of contracts or agreements on behalf of Planet.<sup>84</sup>

<sup>77</sup> C2 (explanatory statement); First Silvestri WS at ¶¶ 1, 5. Although there were also earlier amendments to the 2009 SAA (see C2, explanatory statement), they are not material to this arbitration.

<sup>78</sup> C1; C2.

<sup>79</sup> Tr. 1217 (Silvestri).

<sup>80</sup> C4.

<sup>81</sup> C2 at § 8.

<sup>82</sup> C2 at §§ 1 (defining Territory), 2(a). See also C2 at §§ 2(g) (“In performing this Agreement, ACN agrees to (i) ... (B) to use its commercially reasonable efforts to promote [Planet’s retail energy business] in the Territory”) and 4(e).

<sup>83</sup> C2 at § 2(c).

<sup>84</sup> C2 at § 2(d).

154. The Parties further agreed in Section 2 that Planet would “have the right to cause ACN to direct the [IBOs] with respect to sales of Energy Products, customer service and regulatory matters in accordance with Planet’s licenses or certificates, the statutes, rules, regulations, or policies of the applicable jurisdictions (the “**Standards**”),<sup>85</sup> and that ACN would be “responsible” for directing the IBOs to adhere to the Standards.<sup>86</sup>
155. In performing the SAA, ACN also agreed under Section 2(g)(i)(A) to “not take any actions that it knows would be harmful in any material respect to [Planet’s retail energy business].”
156. Planet was required to provide Energy Products for sale in accordance with the terms set forth in Section 5 of the SAA. In addition to determining all Energy Products and their terms of service,<sup>87</sup> Planet undertook “to be responsible for, and bear all risk on, all business functions relating to ACN Customers, including, but not limited to order entry, provisioning, billing, collections, energy supply, scheduling and balancing, interfaces, and customer tracking,”<sup>88</sup> to provide ACN with certain daily reporting of customer activity and status as well as a Gross Margin Report in accordance with Section 6(a),<sup>89</sup> and to “design, provide and host a mutually agreeable co-branded online order entry portal that the IBOs and their customers [would] use to place customer orders for acceptance by Planet” (the “**Online Portal**”), “which orders [would] bear some unique identifier inside of Planet’s systems as ACN-sourced as well as the unique identifier or team identification number inside ACN’s systems of the IBOs submitting or responsible for such order.”<sup>90</sup>
157. “**ACN Customers**,” was defined to mean “those customers whose orders are entered into the Online Portal by ACN, or the [IBOs], or their customer under this Agreement who become Accepted Customers,”<sup>91</sup> and “**Accepted Customer[s]**” was defined to mean “those customers produced by ACN whose orders are accepted by Planet and by the applicable local distribution utility.”<sup>92</sup>
158. Both Parties had certain responsibilities relating to IBO training under the SAA:
- ACN was required “to give Planet access to ACN’s IBO training events and gatherings at which ACN’s other training and product/service familiarization is scheduled to occur, as Planet and ACN may mutually agree, so that Planet may assist ACN in training the IBOs about the Energy Products, on Planet’s processes

<sup>85</sup> C2 at § 2(a).

<sup>86</sup> C2 at § 2(b). *See also* C2 at § 4(k).

<sup>87</sup> C2 at § 5(a).

<sup>88</sup> C2 at § 5(c).

<sup>89</sup> C2 at §§ 5(e), (j).

<sup>90</sup> C2 at §§ 5(i), 1 (defining Online Portal).

<sup>91</sup> C2 at § 1.

<sup>92</sup> C2 at § 1.

and procedures to sell the Energy Products, and in showcasing the Energy Products to the IBOs”<sup>93</sup> and Planet was “entitled to provide training for IBOs at such times as may be reasonably acceptable to ACN at ACN’s IBO training events and gathering at which ACN’s other training and product/service familiarization is scheduled to occur;”<sup>94</sup>

- from time to time, both Parties were to “develop together,” and Planet was to provide to the IBOs, “material for presentation through ACN’s website area(s) serving the IBOs, including potential links to Planet’s website area(s), designed to inform the IBOs about Energy Products available for IBOs to sell;”<sup>95</sup>
- together, the Parties were to “prepare a training package suitable for ACN to use in educating the IBOs on the Energy Products;”<sup>96</sup> and
- Planet was to “establish the policies and procedures for the IBOs to sell the Energy Products,” subject to ACN’s input and suggestions.<sup>97</sup>

159. The Parties provided for commission payments to ACN in Section 6 of the SAA. Section 6(a) obligated Planet to calculate the “**Target Margin**,” to be determined as specified in Section 1, and to pay commissions to ACN as follows:

(a) Planet shall pay to ACN, as ACN’s commission for acting as master agent under this Agreement, the following:

At the conclusion of each calendar month, Planet shall calculate the Target Margin from each ACN Customer’s usage across all products in that month, the sum of which shall be the ‘**Gross Margin**.’ Planet shall thereafter pay to ACN by wire transfer one half (1/2) of the Gross Margin for that immediate past month on or before the 30<sup>th</sup> day after the end of such month. If and to the extent that sufficient data is not available to properly calculate the Gross Margin, Planet shall make reasonable estimates of the Gross Margin. If and to the extent that new or final data for calculation of the Gross Margin becomes available or actual payments received from local distribution utilities or ACN Customers varies from calculated amounts, Planet shall recalculate the Gross Margin and any variances shall be trued-up through subsequent monthly payments or invoices.

(Emphasis added to defined term “Gross Margin”).

<sup>93</sup> C2 at § 4(c).

<sup>94</sup> C2 at § 5(f).

<sup>95</sup> C2 at § 4(d); *see also* § 5(g).

<sup>96</sup> C2 at §§ 4(g), 5(d).

<sup>97</sup> C2 at § 5(a).

160. Section 1 provides for the Target Margin to be determined as follows:

Planet and ACN shall agree upon a retail price at which Energy Products will be offered to potential ACN Customers using a formula that A) takes Planet's wholesale energy supply prices and adds an agreed-upon mark up for balancing and various risk premiums to Planet (the "**Wholesale Price**"), and then B) adds a further agreed-upon mark up that results in a 16% margin (the sum of (A) and (B) is referred to herein as the "**Retail Price**"). The parties shall meet on a regular basis to determine whether the Retail Price of any particular Energy Product(s) is/are appropriate for market conditions and may mutually agree to increase or decrease the Retail Price for any product(s). The difference between an Energy Product's Wholesale Price and its Retail Price shall be referred to as the "Target Margin" for that Energy Product. For any Energy Product for which the proposed Retail Price is not built on a 16% margin, then ACN must specifically consent in writing to such Energy Product's Retail Price.

(Emphasis added to defined terms "Wholesale Price" and "Retail Price").

161. As set forth in Sections 4 and 5, the Parties agreed that they would work together "to determine and keep current competitive retail prices of the Energy Products so as to enable them to represent Planet well in the Territory,"<sup>98</sup> and to keep pricing "current in accordance with the formula set forth in the definition of Target Margin."<sup>99</sup>
162. In the event of termination, the Parties agreed under Section 3(d) that they would enter a "wind down phase in which the parties [would] cooperate to achieve an orderly and gradual cessation" of marketing and sales, "including the joint and mutually agreeable development of the messaging of such event to the [IBOs]," with the IBOs ceasing to market and sell Energy Products on the Termination Date.
163. They also agreed in Section 3(d) that "[a]fter the Termination Date, Planet [would] continue to pay to ACN Gross Margin payments under Section 6 of this Agreement ... for as long as ACN Customers continue to purchase the Energy Products, and this Agreement will continue in effect as to the remaining 'tail' of these ACN Customers' usage, until there remain no ACN Customers using Energy Products."<sup>100</sup> Section 3(e) provides:

Planet agrees that during the time this Agreement remains in effect, including the time during any wind down period and/or after the Termination Date while there remain active ACN Customers,

<sup>98</sup> C2 at § 4(h).

<sup>99</sup> C2 at § 5(b).

<sup>100</sup> C2 at § 3(d).

regardless of what Energy Product they consume, regardless of who sold such Energy Product to them, Planet will pay to ACN the Gross Margin payments ... Planet will not actively seek to cause ACN Customers to change the Energy Products they purchase (with 'upselling' to additional Energy Products being permitted, but Gross Margin and Commission ramp down payments, if applicable by circumstances, being due thereon), will not change the account numbers or other unique identifier developed inside of Planet's systems to identify customers as ACN Customers, or otherwise attempt to disguise or cull out of the ranks of ACN Customers any faster than they would otherwise out of normal customer-initiated attrition.

164. Under Section 9, the Parties agreed that ACN would have "the right, at any time upon reasonable advance notice to Planet, and during customary business hours, to audit Planet's customer and sales revenue accounting records and applicable transaction documents in order: (i) to verify any report provided to ACN by Planet in connection with this Agreement, (ii) to verify Target Margin calculations, or (iii) to verify any payment of, or proposed payment of Gross Margin to ACN."
165. Section 19(j) expressly provides for the survivability of certain provisions of the SAA post-termination, "for as long as there are active ACN Customers," including Sections 3(d) and (e) providing for tail commissions and ACN's audit rights under Section 9.
166. While Section 14 generally provides that "each party will pay its own expenses in connection with this Agreement and the completion of the transactions contemplated thereby," the Parties agreed in Section 15 that expenses related to audit rights would be recoverable on the following terms:

Wherever either party has an audit right, the party exercising its audit right shall be entitled to reimbursement of its reasonable and customary expenses associated with such audit from the other party in the event such audit results in a determination that there was a material inaccuracy adverse to the party conducting the audit. Further, the party being audited shall be entitled to reimbursement of its reasonable and customary expenses associated with supporting such audit from the party conducting the audit in the event such audit results in a determination that they subject matter audited was materially accurate. Any inaccuracies determined by any such audit shall be corrected in the favor of the party to whom the inaccuracy was adverse.
167. The Parties also agreed as follows regarding the allocation of costs for an arbitration, in Section 19(f)(iii):

Each of the parties shall bear its own fees, costs and expenses of the arbitration and its own legal expenses, attorneys' fees and costs of all experts and witnesses; provided, however, that if the claim of either party is upheld by the arbitrator in all material respects, the arbitrator may apportion between the parties as the arbitrator may deem equitable the costs incurred by the prevailing party. The fees and expenses of the arbitration procedures, including the fees of the arbitrator, will be shared equally by the parties.

168. Pursuant to Section 11, subject to certain exceptions, the Parties agreed that any information received from the other party would constitute "**Confidential Information**" to be kept strictly confidential and that the receiving party would not use the Confidential Information "for any purpose, without the consent of the disclosing party, other than for its compliance with the terms of, and performance of this Agreement."

169. Section 12 gave the Parties' certain indemnification rights. For its part, ACN agreed in Section 12(a) to:

indemnify and hold Planet . . . harmless from and against all damages which any Planet Indemnified Person may sustain, incur or assume as a result of any allegation, claim, civil or criminal action, proceeding, charge or prosecution which may be alleged, made, instituted or maintained against any Planet Indemnified Person arising out of, resulting from or based upon ... (ii) any claim asserted or threatened to be asserted by any third party in connection with ACN, its affiliates or the IBOs, selling the Energy Products or serving or having served pursuant to this Agreement; provided however, ACN shall not be liable to indemnify and hold any Planet Indemnified Person harmless from any such damages to the extent it is the result of the gross negligence, bad faith, willful misconduct or criminal conduct of, or the breach of this Agreement by, the party seeking indemnification hereunder.

170. The Parties agreed to a force majeure clause in Section 16 of the SAA, which provides:

In the event that war, fire, explosion, flood, accident, strike, riot, act of governmental authority, act of terrorism, act of God or other contingency beyond the reasonable control of either party causes cessation or interruption of that party's or the IBOs; performance hereunder, performance shall be temporarily excused for the period of the disability, without liability, provided that the party seeking excuse shall promptly, after it has actual knowledge of the beginning of any excusable delay, notify the other party of such delay, the reason therefore, and the probable duration and consequence thereof. The party seeking excuse shall use its reasonable commercial efforts to resume performance of its obligations hereunder with the least possible delay.

171. The SAA does not include any guarantees regarding sales figures or a minimum number of IBOs that would make sales on Planet's behalf.<sup>101</sup>

#### **D. Reporting of Commissions**

172. During the agency period, Planet paid ACN commissions based on an average Gross Margin<sup>102</sup> calculation of 39%.<sup>103</sup> According to Silvestri, through December 2019, Planet paid ACN a total of CAD \$57,597,057.00, including, in Planet's view, an overpayment of the Gross Margin by CAD \$36,473,663.00 (including HST).
173. During the agency period, Planet provided ACN with ".xml reports" comprised of customer data from the gas and electric utilities and a daily ".csv report" showing drops and adds to the list of customers enrolled through the Online Portal.<sup>104</sup> Planet also provided ACN with monthly Gross Margin and commission reports.<sup>105</sup> Planet continues to provide ACN with .xml and .csv reports.<sup>106</sup>
174. At ACN's request, Planet also provided ACN with Billed Revenue Reports during the agency period that ACN used to assist with calculating payments due to its IBOs.<sup>107</sup> Merriman explained that the Billed Revenue Reports were essential to ACN because they were the only reports that tied revenue to a specific IBO.<sup>108</sup>
175. Because the Parties disputed whether these reports were required under the SAA, for a period after the SAA terminated, ACN agreed to pay Planet \$10,000 per month to continue receiving these reports for a period of time.<sup>109</sup>
176. According to ACN, without the continuing benefit of the Billed Revenue Reports, it has been calculating IBO commissions based on an average of the previous 12 months' worth of revenue.<sup>110</sup>
177. According to Planet, ACN failed to pay Planet CAD \$33,900.00 for Billed Revenue Reports dated 2 April, 4 May, and 6 June 2018.<sup>111</sup> However, Planet did not submit any evidence supporting amounts allegedly due and unpaid by ACN for Billed Revenue Reports. In addition, the expert evidence relating to Planet's calculation of

<sup>101</sup> Tr. 1339-1341, 1468-1469 (Silvestri).

<sup>102</sup> In this arbitration, Planet contends that it overpaid ACN's Gross Margin share. Use of the defined term "Gross Margin" here is not intended to imply that Planet's calculation of the amounts paid was necessarily contractually correct, which is an issue decided in this Final Award.

<sup>103</sup> C2. See also Silvestri First WS at ¶ 77.

<sup>104</sup> Silvestri First WS at ¶ 79.

<sup>105</sup> Silvestri First WS at ¶ 80.

<sup>106</sup> Tr. 896 (R. Stevanovski).

<sup>107</sup> Silvestri First WS at ¶¶ 81, 107; Tr. 181 (Merriman).

<sup>108</sup> Tr. 182-84 (Merriman).

<sup>109</sup> First Silvestri WS at ¶ 107.

<sup>110</sup> Tr. 184 (Merriman).

<sup>111</sup> Statement of Defense and Counterclaims at ¶ 412.



commission fees revealed that during the post-termination period that Planet continued to pay commission fees to ACN, from December 2016 through February 2018, Planet deducted CAD \$11,300.00 per month for Billed Revenue Reports and raised serious questions about whether Planet continued to deduct such fees from the commission payments that it reported to ACN as owing from March through July 2018.<sup>112</sup>

### E. IBO Compensation, Recruitment, and Attrition

178. ACN compensates IBOs utilizing a customer points system for each of its products and services, with IBOs earning points and commissions based on customers they personally acquire and by building a team of IBOs that do the same.<sup>113</sup> They do not earn one-time commissions for signing customers up, but get compensated for ongoing usage of the product or service by the customers they acquire.<sup>114</sup>
179. The duration of “customer points” and commissions for all Planet products listed on the IBO compensation plan as of January 1, 2016 was the “Life of Customer,”<sup>115</sup> which Merriman explained to mean that Planet would continue to pay commissions for as long as a customer remained on the service.<sup>116</sup>
180. At an ACN IBO event in February 2013, Jason Wong of Planet declared that after an initial five years of residual income for referring a customer to Planet, “that customer has the ability to renew at the end of that term, which essentially translates to ten years, fifteen years, over twenty years of residual income for you!”<sup>117</sup>
181. Most IBOs work on a part-time basis for supplemental income and many of them are not experienced salespeople.<sup>118</sup> Merriman, who oversees ACN’s IBOs globally, explained that typically the first people IBOs talk to are friends or family, including,

<sup>112</sup> See C3 (Stout Report) at p. 57, n.107 (“Stout is aware that the Services Agreement called for Planet Energy to continue providing certain reporting on ACN-referred customers after the termination of the SAA in consideration of ACN paying a monthly fee. **There is some dispute as to the amount and timing of these payments.** Nevertheless, Stout acknowledges that it did not incorporate those monthly payments as an offset into its reconciliation of payments due and owed. **Planet Energy provided information claiming the payments began in December 2016 and ran through July 2018,** totaling [CAD] \$226,000 (\$11,300 per month.)” (emphasis added); R297.09 (RSM summary of total commissions owed and paid claiming deductions of \$11,300 per month from December 2016 through July 2018 for Billed Revenue Reports, including for months in 2016-2018 for which no claim for unpaid Billed Revenue Reports is made); Tr. at 1907, 2051-2052, 2058-2059 (Greenwald).

<sup>113</sup> Tr. 144 (Merriman); Lofranco WS at ¶ 4(a); C104.

<sup>114</sup> Merriman WS at ¶ 6.

<sup>115</sup> C104.

<sup>116</sup> Tr. 149 (Merriman).

<sup>117</sup> C4.

<sup>118</sup> Tr. 145, 154 (Merriman); Merriman WS at ¶ 5.

for example, acquaintances from their church or a social group.<sup>119</sup> Thereafter, IBOs may get referrals from some of those same customers to the people that those customers know.<sup>120</sup>

182. Palma characterized this sales model, largely predicated on relationships with friends and family, and prohibiting marketing to strangers, as a “warm channel model.”<sup>121</sup>
183. Because the model depends upon IBOs feeling comfortable selling a service to a friend or family member, successful customer acquisition depends upon IBOs feeling that they are selling a good quality and competitively priced service.<sup>122</sup> Thus IBOs are directly affected by customer dissatisfaction and tend to reduce their efforts or stop working if they encounter constant frustrations.<sup>123</sup>
184. The average annual attrition rate for ACN’s IBOs in Canada is typically 65-75%.<sup>124</sup>
185. Between 2009 and 2019, ACN’s IBO enrollments steadily declined in Canada.<sup>125</sup>
186. Despite this trend, IBO paid enrollments significantly increased in 2016 and 2017 in Alberta.<sup>126</sup> This was around the time period when Xoom launched in Alberta, as well as some internet products and services.<sup>127</sup>
187. As for Ontario, while the overall number of IBO enrollments remained strong from 2009 to 2013, it started to decline significantly from the early years of the ACN-Planet relationship beginning in around 2014.<sup>128</sup> In 2010, for example, there were 14,445 IBOs in Ontario and 25,013 in Canada, whereas by 2019, there were only 729 in Ontario and 5407 in Canada.<sup>129</sup>
188. Lofranco, one of ACN’s most successful upline IBOs,<sup>130</sup> talked about why it is difficult to keep IBOs, and said that the majority “last 30 days.”<sup>131</sup> He explained:

Basically what happens is there are ebbs and flows, so the problem with our business and ACN is its services and sometimes the services are competitively priced and sometimes they’re not. Sometimes

<sup>119</sup> Tr. 143, 145 (Merriman); Merriman WS at ¶ 3.

<sup>120</sup> Tr. 146 (Merriman).

<sup>121</sup> Tr. 758 (Palma); Merriman WS at ¶ 6; Tr. 428 (Lofranco).

<sup>122</sup> Tr. 150, 154-55 (Merriman).

<sup>123</sup> Merriman WS at ¶¶ 7-8.

<sup>124</sup> Tr. 198 (Merriman).

<sup>125</sup> R287.

<sup>126</sup> R287; Tr. 197 (Merriman).

<sup>127</sup> R287; Tr. 197 (Merriman).

<sup>128</sup> Tr. 151 (Merriman); C116; Merriman WS at ¶ 10.

<sup>129</sup> R287.

<sup>130</sup> Tr. 397 (Lofranco).

<sup>131</sup> Tr. 483-484 (Lofranco).

there's issues like we had in Canada or specifically in Ontario with installations, which crushes – people wanted to get customers and it kills the momentum and sometimes it's fine. Sometimes the CRTC comes out with a great decision like it did last November, and all of a sudden the pricing got great. Bell Canada and Rogers sues everybody and then now the pricing we're back to not being good again. So it's just the—it's the nature of the services business. It ebbs and flows and sometimes it's good and sometimes it's not good and a lot of it is out of our hands and it's frustrating.<sup>132</sup>

189. Based upon his experience, which has included recruiting teams all across North America, in Australia, and in Europe, ACN's experience with such ebbs and flows in IBO recruitment and retention in Ontario has been no different than the recruitment and retention of IBOs in other jurisdictions.<sup>133</sup>
190. Like Merriman, Lofranco emphasized the importance of competitive pricing to IBOs in driving sales. From his perspective, IBOs are primarily motivated to sell products by the ACN compensation plan (which rewards IBOs for customer acquisition), and they can only be successful under that plan if they are motivated by the product being sold in terms of quality, pricing, and customer service.<sup>134</sup>
191. Merriman attributed the Ontario decline in IBO enrollments during the agency period to IBO frustrations with the products being offered by ACN, including energy (through Planet, and then Xoom) and high-speed internet.<sup>135</sup> In particular, he testified that in the 2015-2016 timeframe, ACN received complaints about the pricing of Planet services (relative to the incumbent utility) and about the quality of customer service.<sup>136</sup> ACN was also offering Bell Canada internet service at this time but had "notorious" issues with internet connections and competitive pricing.<sup>137</sup>
192. In all of these instances, Merriman emphasized that because the IBO customer acquisition model depends upon IBOs favorably recommending services to friends and family, these IBO frustrations would have negatively impacted both customer enrollments and IBO enrollments and recruitment.<sup>138</sup>
193. Merriman opined that these circumstances explain why all of ACN's sales for products and services in Ontario declined during the same period as Planet's sales, with the trend of declining sales continuing after the agency period ended, when Xoom entered Ontario in 2017.<sup>139</sup> Merriman illustrated with the following chart

<sup>132</sup> Tr. 483-485 (Lofranco).

<sup>133</sup> Tr. 484-485 (Lofranco).

<sup>134</sup> Lofranco WS at ¶ 4.

<sup>135</sup> Merriman WS at ¶¶ 11-16.

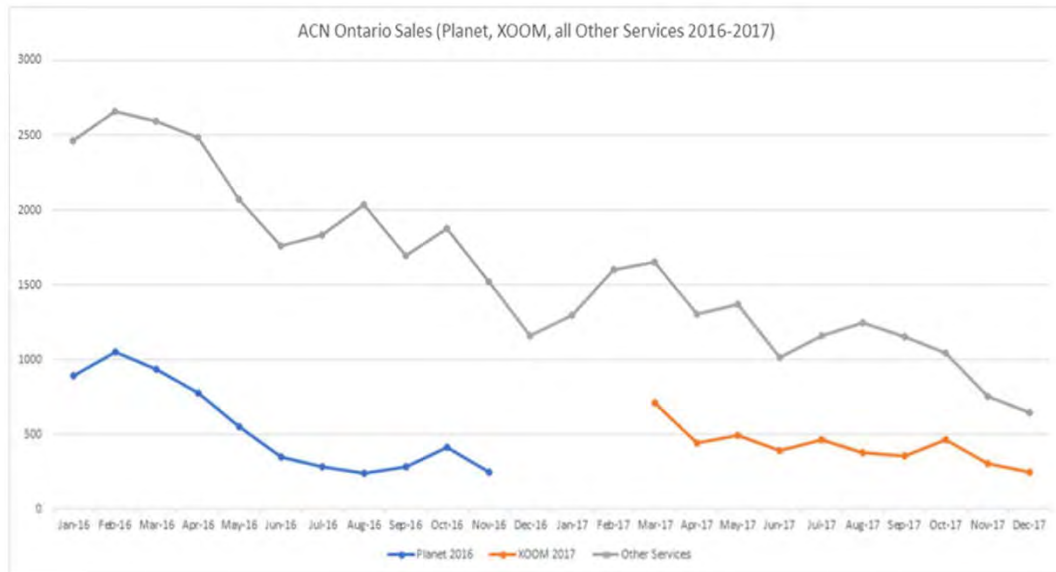
<sup>136</sup> Tr. 151 (Merriman).

<sup>137</sup> Tr. 152 (Merriman).

<sup>138</sup> Tr. 154 (Merriman); Merriman WS at ¶ 16.

<sup>139</sup> Merriman WS at ¶ 18. .

showing ACN's overall Ontario sales in 2016-2017 compared to its sales for Planet and Xoom.<sup>140</sup>



194. Small acknowledged that IBOs “always made very clear to me that Ontario is definitely a challenging market.”<sup>141</sup>
195. ACN did nothing differently in building its IBO base in Ontario at any time since January 2015,<sup>142</sup> nor did it change the IBO compensation plan.<sup>143</sup>
196. Although ACN continually works to build its base in all markets, since it relies on IBOs for recruitment, it does not have a budget for recruitment.<sup>144</sup> IBOs recruit other IBOs and, as Lofranco put it, ACN “creates the environment for us to make it attractive to recruit teams.”<sup>145</sup>

## F. Pricing and Sales of Planet Energy Products

197. Planet’s co-CEO, Silvestri, contended that ACN “on occasion made up complaints about pricing”<sup>146</sup> and that it was not until June 2016, after Planet complained to ACN about a decline in sales that ACN sought to revive old complaints about pricing as justification.<sup>147</sup>

<sup>140</sup> Merriman WS.

<sup>141</sup> Tr. 1024 (Small).

<sup>142</sup> Merriman WS at ¶ 27.

<sup>143</sup> Tr. 239 (Merriman); Lofranco WS at ¶ 7.

<sup>144</sup> Merriman WS at ¶ 27; Tr. 237 (Merriman).

<sup>145</sup> Tr. 404 (Lofranco).

<sup>146</sup> Silvestri First WS at ¶ 72.

<sup>147</sup> Silvestri First WS at ¶ 74.

198. According to Silvestri, throughout the agency period, Planet was largely competitive on price and terms with similarly situated energy retailers.<sup>148</sup> To show this during the last year of the SAA, Planet submitted a one-page report by Energysshop.com with a historical price comparison between Planet and Enbridge Gas Distribution, Inc. from 2015-2016.<sup>149</sup> Silvestri also pointed to monthly price comparisons against other retailers that were given to ACN during the agency period and pointed to R101 (for the period of May – October 2015) as an example.<sup>150</sup>
199. In 2017, however, Silvestri told the OEB a different story, when he testified during a compliance hearing that the majority of customers enrolled with Planet through ACN were not with other *retailers*, but the *utility*.<sup>151</sup>
200. According to Silvestri’s sample monthly rate comparison for May-October 2015, Planet’s rates were 29% higher than the utility, based upon an assumption that the average user consumes 50% of its energy at off-peak times.<sup>152</sup>
201. The utility’s general pricing advantage in Ontario compared to Planet and other retailers is generally attributable to a charge to consumers known as the “**Global Adjustment.**”
202. Around 2004, Ontario’s electricity agencies signed long-term power purchase agreements (“**PPAs**”) for nearly all newly installed capacity in Ontario, guaranteeing a certain level of revenue so as to ensure generators recover the long-term fixed capital costs associated with installing the new capacity in the province.<sup>153</sup> These payments are recovered through what is known as the “Global Adjustment” charge to consumers.<sup>154</sup>
203. Contracted rates offered by electricity retailers like Planet focus only on wholesale market costs, which account for just one part of the total bill paid by customers.<sup>155</sup> The Global Adjustment charge is fixed by the Ontario Energy Board (“**OEB**”) and one component of the wholesale market costs, the other being time of use rates.<sup>156</sup>
204. Decline in demand in the wake of the 2008-2009 financial crisis and an increase in installed capacity over the last decade have resulted in higher Global Adjustment

<sup>148</sup> Silvestri First WS at ¶ 72.

<sup>149</sup> R118; Silvestri First WS at ¶ 72.

<sup>150</sup> Silvestri First WS at ¶ 72.

<sup>151</sup> R179 at p. 154; Tr. 1351-1356 (Silvestri).

<sup>152</sup> Silvestri First WS at ¶ 72, citing R101; Tr. 1358-1359 (Silvestri). Although Silvestri contended that Planet actually targeted customers consuming more at on-peak and mid-peak times rather than off-peak times, no evidence was presented with respect to how this change in assumption would affect the competitiveness of Planet’s pricing compared to the utility. Tr. 1358-1359 (Silvestri).

<sup>153</sup> C130 at ¶ 15.

<sup>154</sup> C130 at ¶ 15.

<sup>155</sup> C130 at ¶¶ 17, 19.

<sup>156</sup> Tr. 638-639, 643 (Yauch).

charges for consumers, with the result that since 2010, the monthly Global Adjustment charge has accounted for an increasingly larger share of the overall wholesale cost and, since 2011, has also accounted, in increasingly larger amounts, for the majority of the wholesale charge paid by consumers.<sup>157</sup> In 2016, the Global Adjustment accounted for more than 85% of the total cost paid by electricity consumers.<sup>158</sup>

205. Lofranco testified that by 2016, sales of Planet products dropped for two reasons: (i) pricing was “out of whack” compared to the utilities; and (ii) IBOs like himself had lost confidence in Planet’s products due to customer service issues.<sup>159</sup> In terms of pricing, Lofranco testified that when he started selling Planet products, the Global Adjustment was very little—“like a cent or two”—and that we “were very very competitive” versus the utilities, but that when it started to creep up to over 4-6 cents, IBOs starting having trouble capturing customers against the utilities and existing customers would get sticker shock after they found themselves stuck in a fixed price contract and the price wasn’t what they were expecting.<sup>160</sup>
206. Electricity and gas retailers in Ontario lost customers at a compound annual rate of 19.2% between 2011 and 2018 and overall electricity and gas retail customers decreased by 25.6% year over year in 2015.<sup>161</sup>
207. Silvestri testified that while there were questions from time to time about the Global Adjustment, he was not aware of it being raised as a sales impediment until the evidentiary hearing.<sup>162</sup> When testifying before the OEB in 2017, however, Silvestri said that the Global Adjustment had been “very frustrating and a very difficult thing to have to work with, since customers aren’t able to make an apples-to-apples comparison” and it’s an item that customers pay that isn’t separately identified.<sup>163</sup>
208. Silvestri also testified that the Global Adjustment was “the number one complaint” that customers called Planet about.<sup>164</sup>
209. Palma testified that he frequently raised pricing concerns with Planet during weekly calls between ACN and Planet.<sup>165</sup> As the Parties discussed mechanics for renewals in August 2014, for example, Palma noted that they should “discuss pricing, specifically if the current PE pricing is competitive for electricity and gas, variable and fixed.”<sup>166</sup>

<sup>157</sup> C130 at ¶¶ 22-24.

<sup>158</sup> Stout Damages Rebuttal at p. 19.

<sup>159</sup> Tr. 402-405 (Lofranco); Lofranco WS at ¶¶ 6-18.

<sup>160</sup> Tr. 405-406, 439-441 (Lofranco).

<sup>161</sup> Stout Damages Rebuttal at p. 20.

<sup>162</sup> Tr. 1271 (Silvestri).

<sup>163</sup> R179 at pp. 98-99; Tr. 1393-1394 (Silvestri).

<sup>164</sup> R179 at pp. 98-99; Tr. 1393-1394 (Silvestri).

<sup>165</sup> Tr. 792-793 (Palma).

<sup>166</sup> C90.

210. On another occasion, in June 2015, Palma wrote:

ACN has been lax in discussing pricing, when our contract states that we will meet to determine if pricing is appropriate for market conditions. Your proposed June pricing is a significant increase from May, when we were 29% & 38% over utility for elec. & gas. How would this position us? We are actually taking the opposite approach for electricity in the US this month. Also, I know PE/ACN margin has been running at [around] 25%, much higher than the 16% floor in our contract. What would July bundled and standalone pricing look like?<sup>167</sup>

211. And on or around December 2015, ACN asked Planet to provide additional information for IBOs about dealing with the Global Adjustment.<sup>168</sup>

212. When Xoom entered the Ontario market in 2017, Merriman says that pricing concerns experienced with Planet continued to prevail.<sup>169</sup> In R. Stevanovski's words, "Xoom failed in Canada for the same reason Planet couldn't get customers because the Ontario market is impossible for retailers."<sup>170</sup>

213. Ulry, Xoom's former CEO, explained that price is always a "primary driver" for customers and that Ontario proved to be a difficult jurisdiction for Xoom because although it has been competitive with other retailers, it was not always easy to beat the utility price, slowing customer acquisition more than hoped.<sup>171</sup> In particular, Ulry explained that there is a charge known as the "Global Adjustment" in Ontario which is "designed for the market to raise money for infrastructure" that can "make retailers appear to be uncompetitive" against utility pricing.<sup>172</sup>

214. Because Planet mainly sells fixed-price energy products, during the polar vortex in the winter of 2013-2014, Planet was one of the few energy retailers whose customers were not subject to increased rates.<sup>173</sup>

### **G. IBO Regional Trainings**

215. As one of ACN's leading upline IBOs, Lofranco testified that he interacts regularly with thousands of IBOs across Canada and the United States and other markets.<sup>174</sup> Throughout the agency period, Lofranco organized weekly Saturday trainings in

<sup>167</sup> R108.

<sup>168</sup> R75; Tr.1266-1268 (Silvestri).

<sup>169</sup> Merriman WS at ¶ 15.

<sup>170</sup> Tr. 957 (R. Stevanovski).

<sup>171</sup> Second Ulry WS at ¶¶ 27-28.

<sup>172</sup> Tr. 305-307 (Ulry).

<sup>173</sup> First Silvestri WS at ¶ 70.

<sup>174</sup> Tr. 398ff (Lofranco).

Toronto for existing IBOs and new prospects and more advanced Friday night “leadership” events that would change as to subject, but might sometimes focus on a product training or a leadership training such as how to build an organization.<sup>175</sup> In all cases, it was important to generate enthusiasm.<sup>176</sup>

216. Prior to December 2014, ACN sometimes allowed Planet to attend these Toronto weekly IBO events.<sup>177</sup> These trainings were not mandatory and Planet understood it could not rely on them for regulatory compliance training because it was not possible to know who would attend.<sup>178</sup>
217. Although Palma contended that these events had no real impact on IBO knowledge or preparedness, which was rather dependent upon the compliance training and testing process,<sup>179</sup> Small said he generally attended the training sessions on behalf of Planet and asserted that the IBOs were always “super excited” to see Planet and that “every time” Planet attended a training, “we always saw an increase in sales.”<sup>180</sup> However, Planet failed to establish that such increases typically occurred or that there was any causal connection between Planet’s attendance at these events and increases in sales.<sup>181</sup>
218. The evidence also established that ACN typically held national IBO events four times a year, and some international events, and that throughout the agency period, Planet was invited to attend those national and international events on the same basis as ACN’s other sales partners.<sup>182</sup> Ulry testified that when working with ACN, it was unusual for Xoom to have access to IBOs except for two or three training conventions where Xoom would have an onsite booth.<sup>183</sup> Lofranco similarly testified that Xoom had never been invited to local training sessions in Toronto, but only “big international events,” and that Planet’s participation in the weekly Toronto trainings was unique.<sup>184</sup>

## H. Billing and Customer Service Issues

219. Lofranco testified that over time, issues with customers being unable to cancel contracts when moving without penalty, delays in billing (resulting in delayed

<sup>175</sup> Tr. 400-401, 424-426 (Lofranco).

<sup>176</sup> Tr. 425-426 (Lofranco).

<sup>177</sup> Second Palma WS at ¶ 22; First Silvestri WS at ¶¶ 89, 106; Tr. 410-412 (Lofranco).

<sup>178</sup> Tr. 1111 (Small), 1381 (Silvestri).

<sup>179</sup> Second Palma WS at ¶ 24.

<sup>180</sup> Tr. 1024-1025 (Small).

<sup>181</sup> For example, given a regulatory delay between the time that an IBO makes a sale and when the utility enrolls a customer, cross-examination of Small and Zimmerman strongly suggested that rather than Small’s attendance of an IBO event in March 2014, an increase in April 2014 sales was likely attributable to sales generated in January and February 2014 by the polar vortex. *See* Tr. 1199-1202 (Small) & 2220-2222 (Zimmerman).

<sup>182</sup> Tr. 827-828, 868-869 (R. Stevanovski); 482-483 (Lofranco); 1112-1113 (Small).

<sup>183</sup> Tr. 381 (Ulry).

<sup>184</sup> Tr. 420-421, 482-483 (Lofranco).



commission payments), and instances where customer renewals were not credited to ACN for commission unless there was a direct complaint made by the IBO or ACN resulted in IBO distrust and frustration with Planet.<sup>185</sup>

220. In December 2013, Lofranco wrote to Silvestri about significant issues with IBOs not getting paid and asked for help in resolving issues with ACN.<sup>186</sup> In the interim, Lofranco said “[u]ntil then it’s best we don’t have you come to our product trainings. It will hurt us.”<sup>187</sup>
221. Small testified that he learned from both IBOs and Jones at ACN that ACN was telling IBOs that Planet was to blame for the billing errors,<sup>188</sup> but the reality was that Hydro One had changed its billing systems and for a period of time did not bill customers.<sup>189</sup> As a result, individual customer receivables were not being reflected in Billed Revenue Reports sent to ACN, and although Planet was still paying ACN based on aggregate customer data from Hydro One, ACN did not pay its IBOs. Though Small says that the billing debacle, which was resolved by February 2014,<sup>190</sup> was Hydro One’s fault and the IBO non-payment an ACN systems issue, the damage to Planet was done.<sup>191</sup>
222. However, in the immediate aftermath of the Hydro One debacle, Online Portal sales by IBOs were about as robust as Planet had seen, owing to a spike in sales from the polar vortex, and Planet was attending trainings again by March 2014.<sup>192</sup>
223. Over time, ACN came to notice that there were “significant anomalies” in the Billed Revenue Report that Planet provided ACN to calculate IBO residual commissions.<sup>193</sup> Silvestri told Palma that this was attributable to the fact that the Planet employee responsible for the billing had quit.<sup>194</sup> As a result of the anomalies, IBO commissions were often miscalculated or missing billed revenues, which resulted in significant frustration and distrust of Planet by the IBOs.<sup>195</sup>
224. For example, ACN would sometimes receive calls from an IBO about customers “disappearing” from its revenue stream and failing to receive commissions for a customer introduced to Planet.<sup>196</sup> Palma testified that the problem became more

<sup>185</sup> Lofranco WS at ¶¶ 14-15; Tr. 406-409 (Lofranco).

<sup>186</sup> R129.

<sup>187</sup> R129.

<sup>188</sup> R39A and R39B.

<sup>189</sup> Small WS at ¶¶ 33-36.

<sup>190</sup> R73A.

<sup>191</sup> Small WS at ¶ 45.

<sup>192</sup> Tr. 1092-1093, 1198-1201 (Small).

<sup>193</sup> Second Palma WS at ¶ 27.

<sup>194</sup> Second Palma WS at ¶ 27.

<sup>195</sup> Second Palma WS at ¶ 28.

<sup>196</sup> First Palma WS at p. 5.

prevalent around the time that ACN advised Planet that it did not intend to renew the SAA beyond November 2016.<sup>197</sup>

225. On November 25, 2014, ACN informed Planet that, effective immediately, it would not be allowing any partners to participate in weekly leadership training meetings.<sup>198</sup> According to Palma, this was partly because Planet's attendance changed the mood of the events from positivity and excitement to "bitch sessions," and partly because by late 2014, the relationship between Planet and ACN had begun to deteriorate.<sup>199</sup>
226. When Silvestri inquired of R. Stevanovski as to the reasons for this change, R. Stevanovski replied that ACN had never had partners in regular trainings, but made an exception for Planet, and that their relationship had been a rocky one . . .<sup>200</sup>
227. On September 22, 2015, Silvestri wrote to ACN to propose an extension of the SAA, saying that although there had been challenges, both companies had done very well and attaching a cumulative summary of earned commissions.<sup>201</sup> At the hearing, Silvestri acknowledged that at this point in time the issue with Hydro One had taken place, Planet had been excluded from IBO trainings nine months previously, and that he was aware of IBO attrition numbers and difficulties with respect to renewals of customer contracts.<sup>202</sup>

## I. Renewals

228. Because most energy contracts in Ontario were five-year terms when the Parties entered into the 2009 SAA, the earliest ACN Customers introduced by Planet to ACN in 2010 would reach the end of their terms in 2015.<sup>203</sup>
229. In August 2014, Palma, a former ACN executive, and his ACN colleague Mike Duni met with Silvestri, Plummer, and others at Planet to address handling renewals.<sup>204</sup>
230. Silvestri testified that Planet first learned at that time that ACN would not be driving renewals.<sup>205</sup> Palma was surprised that Silvestri did not realize this and explained that the reason why Planet would have to drive renewals was because Planet, not

<sup>197</sup> First Palma WS at p. 5.

<sup>198</sup> Second Palma WS at ¶ 22; R142.

<sup>199</sup> Second Palma WS at ¶ 23; Tr. 410-412 (Lofranco).

<sup>200</sup> R142.

<sup>201</sup> C115.

<sup>202</sup> Tr. 1486-1487 (Silvestri).

<sup>203</sup> First Palma WS at p. 2.

<sup>204</sup> First Palma WS at p. 2; Tr. 1569 (Plummer).

<sup>205</sup> Tr. 1328 (Silvestri). For the first time in the arbitration, Silvestri also alleged at the hearing that people associated with ACN previously represented that ACN would be responsible for all sales, including renewals, and said he recalled a meeting in the spring of 2014 with Lofranco at his home in Arizona. Tr. 1329-1336 (Silvestri). None of these alleged facts were included in Silvestri's witness statements and were asserted after Lofranco testified. There was no corroboration for these allegations.

ACN, had the direct relationship with existing customers.<sup>206</sup> He further explained that due to normal IBO attrition, for most customers, the IBO who initiated the relationship was no longer active.<sup>207</sup> Thus the relationship upon which the initial acquisition was based no longer existed.<sup>208</sup>

231. Although Planet would have to drive renewals, Palma and Duni told Planet that ACN would share information and work together with Planet to promote renewals through all available channels; for example, by implementing a rewards card program directed at all customers, and not just those with an active IBO.<sup>209</sup>
232. At the hearing, Small agreed that in order to complete an online enrollment for a renewal as required by Ontario regulation, some form of contact with the customer would be required to get them interested in the product and to go to the portal and enroll.<sup>210</sup> Similarly, Silvestri agreed that “cold calls” without customer contact is a much more difficult way to make sales.<sup>211</sup>
233. Beginning on August 5, 2014, Palma and Small exchanged a series of e-mails about the mechanics of the renewal process.<sup>212</sup> For regulatory reasons, Planet advised ACN that all customer re-enrollments with Planet would need to be completed online. Small explained that for an existing contract to “renew” with Planet, that customer would actually need to sign a new contract, and Planet would overwrite the existing agreement with the new one.<sup>213</sup> He further explained:

The reason for this is that renewals in Ontario have specific rules and timelines, which makes things more complicated, while signing a new agreement is simple and easy to process and administrate. However, there is one exception which is natural gas agreements, to which we can auto-renew as a negative option, with the consumer, for a one year term at the same rate which they are currently under.<sup>214</sup>

234. Palma agreed to communicate the renewal process to upline IBOs, but emphasized that Planet would need to “drive renewal customer contacts and renewals” and that he would need to understand the “implications on VIP, Billed Revenue and the Commission statement.”<sup>215</sup>

<sup>206</sup> First Palma WS at p. 3; Second Palma WS at ¶ 11.

<sup>207</sup> First Palma WS at p. 3; Second Palma WS at ¶¶ 13-14; Tr. at 848-849 (Palma).

<sup>208</sup> Second Palma WS at ¶ 14.

<sup>209</sup> First Palma WS at p. 3.

<sup>210</sup> Tr. 1046 (Small).

<sup>211</sup> Tr. 1472-1473 (Silvestri).

<sup>212</sup> C9; C10.

<sup>213</sup> C90.

<sup>214</sup> C90.

<sup>215</sup> C90.

235. Because Planet insisted that online customer enrollment would be the “easiest way” “under the regulation,” the Parties strategized about a streamlined online portal that would pre-populate the customer’s information and Planet agreed to begin developing the streamlined portal in August 2014.<sup>216</sup>
236. According to Small, Planet agreed to this course of action out of “survival” mode because it had an exclusive relationship with ACN.<sup>217</sup> However, at another point in his testimony, he said that Planet was trying to promote a mutually beneficial relationship because ACN had been a “great partner” and “we were coming off between 2012, 2103, 2014 ... [t]hose were our best sales years.”<sup>218</sup>
237. On August 14, 2014, Palma followed-up with Small about the new renewal portal, noting again that he needed to validate that the “original IBO# will automatically carry forward, and implications on VIP status and billed revenue file.”<sup>219</sup> Small assured Palma that original IBO numbers would be tracked for all renewals, explaining: “As for the IBO number, to start everyone would be going to the portal for ‘renewals,’ so the matter of IBO numbers via that matter is already taken care of. **However with the additional tool we’re working on, I understand and agree and we’ll do a walkthrough first with it as well as a number of tests**” (emphasis added).<sup>220</sup>
238. Palma testified that he does not recall anybody from Planet ever suggesting that the means through which a customer renewed (whether through the Online Portal or otherwise) was relevant to ACN’s entitlement to commissions and emphasized that if he thought that ACN would not be entitled to commissions for renewals unless they were completed that way, he would have approached the matter differently and insisted that they all take place via the Online Portal.<sup>221</sup> Palma explained that all of his personal compensation incentives were based on revenue and margin and that Planet was his biggest source of business in Canada.<sup>222</sup>
239. Small admitted that he never told Palma that commissions would be depend on enrollments being made through the Online Portal, as that would “not be his purview.”<sup>223</sup>
240. Plummer coordinated creation of the separate enrollment portal, which Planet began working on in October 2014 and finished by March 2015.<sup>224</sup>

<sup>216</sup> C10; Tr. 1078-1081 (Small).

<sup>217</sup> Tr. 1047 (Small).

<sup>218</sup> Tr. 1081 (Small).

<sup>219</sup> C90.

<sup>220</sup> C90.

<sup>221</sup> First Palma WS at pp. 4-5.

<sup>222</sup> Tr. 760-761 (Palma).

<sup>223</sup> Tr. 1054 (Small).

<sup>224</sup> Tr. 1571-1572 (Plummer).

241. In December 2014, Silvestri asserted to R. Stevanovski that Planet had undertaken certain actions that were not contractually required, saying that Planet had provided Billed Revenue Reports and a reconciliation of same, and that Planet “offered to share 50% of the gross margins to ACN for renewal customers.”<sup>225</sup>
242. ACN did not reply to this e-mail. According to R. Stevanovski, he didn’t see any need to respond to Silvestri’s remark because Silvestri said that Planet had always paid the 50% share and would continue to pay it.<sup>226</sup> Internally, Palma expressed surprise at Silvestri’s comment (“They are not contractually obligated to share 50% gross margin for renewals?”) and he testified that he and others were “pretty taken aback by it because that was not any of our understanding” but “I don’t know how concerned we were, given that they said they were going to continue.”<sup>227</sup>
243. Palma says that although there were some frustrations with the renewal process on both sides, the joint goal was to achieve renewals through whatever channels were available.<sup>228</sup>
244. Small testified that he does not believe Palma had the same goal as Planet of maximizing renewals and that although ACN said they would send e-mails to active IBOs, they never clarified who they made contact with or what they did, and ACN “was not interested in re-contracting expiring customers.”<sup>229</sup>
245. In 2015-2016, Lyndsie Wise was responsible for managing marketing programs across all products for ACN and in that capacity, played a supporting role dealing with renewals for the ACN-Planet relationship.<sup>230</sup>
246. Contrary to Small’s testimony, Wise detailed how ACN helped with renewals by encouraging active IBOs to work on customer renewals through “**AiA**” (ACN in Action) flyers and targeted e-mail communications; collaboration with Planet on a gift card promotion for which ACN absorbed half the cost (C55); and crafting “template” communications with Planet to customers to encourage renewals (C60).<sup>231</sup>
247. Wise explained that in order to send targeted e-mails to active IBOs to renew customers (providing an e-mail activation link to the re-enrollment portal), Planet began generating weekly “renewal reports” with a list of customers whose contracts were about to expire so that ACN could look them up in their system and match it to active IBOs who they could then e-mail them about the process for renewing.<sup>232</sup> The

<sup>225</sup> R142.

<sup>226</sup> Tr. 943 (R. Stevanovski).

<sup>227</sup> R142; Tr. 819-820 (Palma).

<sup>228</sup> First Palma WS at p.p. 4-5.

<sup>229</sup> Small WS at ¶ 27; Tr. 1041-1043 (Small).

<sup>230</sup> Tr. 504-506 (Wise).

<sup>231</sup> Second Palma WS at ¶ 15; Tr. 505-510 (Wise).

<sup>232</sup> Tr. 507-508 (Wise).

renewal reports also included information such as how many customers actually renewed or cancelled which helped ACN to gauge how successful its e-mail renewal programs were.<sup>233</sup>

248. When ACN first requested renewal reports from Planet in October 2014, Planet agreed that the request seemed “relatively simple” and “shouldn’t be a problem.”<sup>234</sup>
249. Palma testified that in many instances, ACN encountered “resistance and foot-dragging” from Planet in finalizing renewal communications, which was frustrating.<sup>235</sup> On January 21, 2016, for example, Palma wrote to Silvestri asking for a response on a detailed proposal for renewal processes that Wise sent on December 21, and was still pushing for responses from Small on implementation two weeks later.<sup>236</sup>
250. Around this same time, on January 21, 2016, Silvestri asserted to Palma: “While our agreement does not require Planet to engage in renewal activities for ACN enrolled customers, we have almost exclusively taken on the task of renewals, and the associated costs of doing so. To date, approximately 90% of renewals have been done directly by Planet, with only 10% being completed via the ACN Portal.”<sup>237</sup>
251. Small testified as to his understanding that the alleged 90/10 division of labor was calculated based on enrollments through the Online Portal.<sup>238</sup>
252. In or around March 2016, Planet learned that ACN did not intend to renew the SAA.<sup>239</sup> On cross-examination, Silvestri asserted for the first time that on April 5, 2016, he instructed Parent to tell ACN that Planet would no longer be allocating margins to ACN for renewals that Planet conducted, but that he was not copied on the e-mail and that Planet had been unable to find a copy because Parent had left the company and his e-mail box was corrupted.<sup>240</sup>
253. After all testimony was completed but before oral closings, Planet submitted an e-mail chain dated April 5, 2016 marked as R423, stating that it was the April 5, 2016 e-mail referred to by Silvestri in his testimony.<sup>241</sup> However, that e-mail chain contains no “instruction” by Silvestri to Parent to tell ACN that Planet would be allocating less margin payments to ACN going forward. According to the e-mail chain, after ACN noted a discrepancy with the commission tracking for the renewal of an expired contract, Parent inquired of Silvestri and Plummer what Planet’s

<sup>233</sup> Tr. 516-518 (Wise).

<sup>234</sup> C18.

<sup>235</sup> Second Palma WS at ¶ 15.

<sup>236</sup> C59; C60.

<sup>237</sup> R25.

<sup>238</sup> Tr. 1038-1039 (Small).

<sup>239</sup> Tr. 1430 (Silvestri).

<sup>240</sup> Tr. 1435-1436, 1451-1455 (Silvestri).

<sup>241</sup> See Paragraphs 109-112 above; Planet’s 8 July 2020 e-mail.

“party line” should be to ACN on similar situations going forward.<sup>242</sup> To this, Silvestri responded: “I **suggest** we inform ACN that once a contract is dropped/expired, and is renewed by Planet Energy without any involvement or effort by the IBO or ACN, then ACN does not receive any commission. This is consistent with the Agency Agreement” (emphasis added).<sup>243</sup> That Silvestri took this view internally is not evidence that Planet ever told ACN that it was changing how it was allocating margins for renewals.

254. Indeed, no further internal Planet communications on this subject were produced and there is no evidence that Planet ever informed ACN of its re-allocations. In fact, nearly one month later, on May 3, 2016, Silvestri represented to Palma that “ACN still receives 50% of the gross margin” for the renewal effort.<sup>244</sup>
255. On June 1, 2016, ACN gave formal notice that the SAA would not be renewed.<sup>245</sup>
256. On June 16, 2016, Planet informed ACN that “[g]iven that we are in a transition phase,” it would not be issuing the weekly renewal report as it was not referenced in the termination letter and was not a contractual requirement.<sup>246</sup> Palma subsequently instructed Wise: “do not send any further communications to our channel promoting Ont. Renewals.”<sup>247</sup> Wise confirmed at the hearing that she subsequently ceased doing so.<sup>248</sup>
257. Palma testified that he does not recall what precipitated him sending that e-mail, but that as the relationship wound down, Planet had simply become more difficult to deal with and there was no good reason for Planet to refuse to provide the renewal reports.<sup>249</sup>
258. In October 2016, Planet again expressed frustration with its share of the work on renewals.<sup>250</sup>
259. Palma contended that work involved to renew a contract is “minuscule” compared to the work involved in, and the importance of, the initial customer acquisition.<sup>251</sup> Palma argued that a company like Planet agrees to pay ACN commissions for acquiring customers because customer acquisition is not easy, yet absolutely critical to the business, and working with ACN is often the most efficient way to acquire

<sup>242</sup> R423.

<sup>243</sup> R423.

<sup>244</sup> C69.

<sup>245</sup> R143.

<sup>246</sup> R70.

<sup>247</sup> Second Palma WS at ¶ 17; R70; Tr. 518-519 (Wise).

<sup>248</sup> Tr. 519 (Wise).

<sup>249</sup> Second Palma WS at ¶ 17.

<sup>250</sup> C18.

<sup>251</sup> Second Palma WS at ¶ 9.

customers.<sup>252</sup> It is then up to the company to turn that acquisition into a long-term relationship.<sup>253</sup>

#### J. Database Manipulation

260. Former Planet employee Cristina David testified that prior to 2016, if Planet renewed a customer, it would remain as an ACN account in Planet's customer relationship management system (known as the "**EMS Database**"), as denoted by the agent code 10.<sup>254</sup> Around March 2016, at Plummer's direction, Planet created an agent code 20 that it used to code ACN accounts that were approaching an expiration or drop and that could be automatically moved to the internal Planet agent code.<sup>255</sup>
261. Initially, Plummer directed that only a small percentage of accounts with non-active accounts be moved, so as not to alert ACN.<sup>256</sup>
262. On occasions when IBOs raised questions about missing commissions for a customer renewal, Plummer instructed her to make up an excuse, such as that it "was a system issues or some sort of things, many other things," and that then she would correct it, apologize, and assign the commission to them."<sup>257</sup>
263. Plummer characterized David as a difficult and disgruntled employee who had no understanding of the ACN-Planet contractual relationship.<sup>258</sup> He denied that he ever instructed her to lie to ACN or drop flowing customers.<sup>259</sup> His testimony lacked credibility.
264. According to Plummer, around March 2016, after ACN told Planet it would not renew the SAA, Planet realized there was no requirement in the SAA to allocate renewals to them, so the VPs decided in an informal meeting to allocate less re-contracting to ACN going forward.<sup>260</sup> The consensus was that they should not cut off ACN completely because they were needed to keep selling to keep the infrastructure profitable.<sup>261</sup> Plummer detailed the initial process for making the changes in an e-mail to David and others.<sup>262</sup>

<sup>252</sup> Second Palma WS at ¶ 7.

<sup>253</sup> Second Palma WS at ¶ 8.

<sup>254</sup> Tr. 664 (David).

<sup>255</sup> Tr. 665 (David).

<sup>256</sup> Tr. 667-668 (David).

<sup>257</sup> Tr. 676, 680:8-681:12 (David); C28; C25; David WS at p. 1.

<sup>258</sup> Tr. 1604-1606 (Plummer).

<sup>259</sup> Tr. 1612-1613 (Plummer).

<sup>260</sup> Tr. 1609 (Plummer); Fourth Plummer WS at ¶¶ 12-13.

<sup>261</sup> Tr. 1616 (Plummer).

<sup>262</sup> C23; Tr. 1609-1611 (Plummer).



265. According to David, further instructions were often given by e-mail, generally on a weekly basis, and, in turn, she gave e-mail instructions to IT personnel on how to implement those instructions.<sup>263</sup> According to Plummer, most instructions would have been given informally in the hallway or on a whiteboard.<sup>264</sup>
266. Plummer acknowledged reviewing a letter from ACN's Counsel asserting that Planet had failed to produce all of David's documents, following which he said that he spent about 2-3 hours looking for correspondence, but discovered that David had "sanitized" her inbox.<sup>265</sup>
267. By August 2016, Planet says that it stopped allocating any renewals to ACN.<sup>266</sup> There is no evidence that it communicated this to ACN.
268. In November 2016, when the contract terminated, David says she was instructed to move all accounts in Ontario with an ACN sales channel to Planet under 100 status, which means that they are in the process for enrollment.<sup>267</sup>
269. In January 2017, David updated Silvestri on the conversion of accounts from November 30, 2016 to January 25, 2017, noting that of 896 converted accounts, 237 were active (or "**flowing**") customers at the time of the change.<sup>268</sup>

#### **K. Wind-down Period**

270. On June 1, 2016, ACN sent Planet a "notice of expiration" formally confirming that the SAA would not be renewed or extended after the expiration date of November 9, 2016 and stating that the Parties would work together to ensure a proper wind down of their relationship.<sup>269</sup>
271. That same day, Silvestri acknowledged receipt and asked how and when ACN would advise the IBOs to discontinue marketing and how that process would work.<sup>270</sup> Palma told Silvestri that he had talked with R. Stevanovski and that ACN would provide a detailed transition plan by August.<sup>271</sup>
272. At the hearing, R. Stevanovski testified that he did not recall discussing a detailed transition plan any further.<sup>272</sup>

<sup>263</sup> Tr. 667 (David); C23.

<sup>264</sup> Tr. 1634-1635 (Plummer).

<sup>265</sup> C154; Tr. 1689 (Plummer).

<sup>266</sup> Tr. 1631-1632 (Plummer).

<sup>267</sup> C32; David WS at p. 1; Tr. 673 (David).

<sup>268</sup> C39.

<sup>269</sup> R143.

<sup>270</sup> R75.

<sup>271</sup> R62.

<sup>272</sup> Tr. 934-935 (R. Stevanovski).

273. Documents that were not included in ACN's production but that were produced by Xoom revealed that, in the interim, ACN forwarded Silvestri's notice to Ulry, with R. Stevanovski explaining that he was "interested in the timing for you to go into Ontario so we can work backwards with winding down Planet and building up Xoom."<sup>273</sup>
274. Ulry replied, "Last date I got from the team was Jan 2017 but there are still a lot of details we are working through," and asked for a week to vet "best and worst case scenarios."<sup>274</sup> Stevanovski replied they could wait a week or two before replying to Silvestri.<sup>275</sup>
275. Palma does not recall making a detailed transition plan, but testified that the wind-down was a relatively simple process of communicating an end date to IBOs and taking down the training and Online Portal access on the termination date.<sup>276</sup>
276. The Online Portal was closed the day before the termination date.<sup>277</sup>
277. Silvestri testified no plan was ever received and that he also never followed-up.<sup>278</sup>
278. On June 14, 2016, Silvestri e-mailed Palma about a video on ACN's website titled "Xoom Energy in Canada."<sup>279</sup> Silvestri asked why the video was not called "Xoom Energy in Alberta" and informed Palma that Planet believed the title conflicted with the definition of Territory in the SAA and should be changed.<sup>280</sup> Within minutes, Palma responded that the video announced expansion into Canada but only communicated Alberta availability and that ACN's back office was clear with respect to IBO training and ordering of energy in Ontario and British Columbia via Planet and in Alberta via Xoom.<sup>281</sup>
279. After Silvestri escalated his concern to R. Stevanovski, R. Stevanovski assured him that Xoom was not planning to be in any Territory handled by Planet anytime in 2016 and that until the SAA ended in November, ACN was "not planning on changing any marketing practices in any province that Planet is currently providing for ACN, so no change in points, pay or comp plan. I believe that is our mutual goal to leave everything during the contract time."<sup>282</sup>

<sup>273</sup> R351; R350.

<sup>274</sup> R352.

<sup>275</sup> R352.

<sup>276</sup> Tr. 836 (Palma).

<sup>277</sup> Tr. 1461 (Silvestri).

<sup>278</sup> Tr. 1296 (Silvestri).

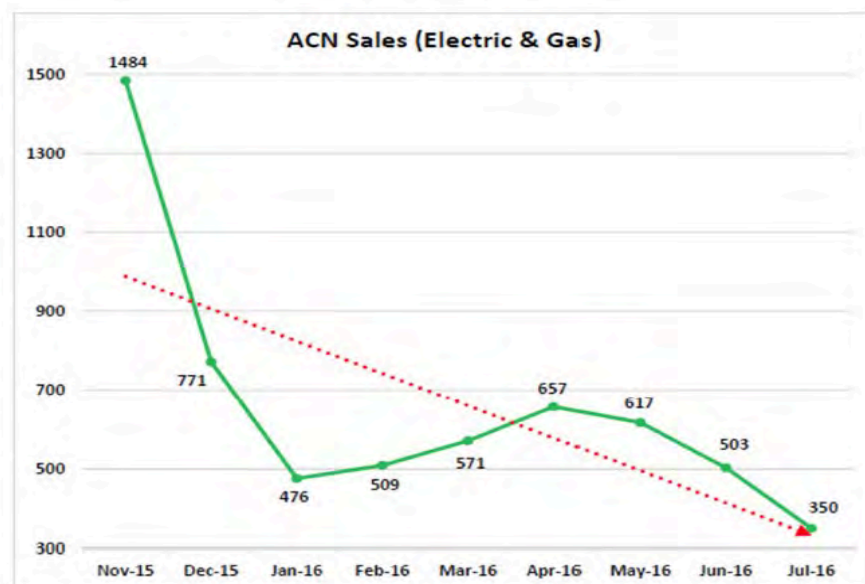
<sup>279</sup> R14.

<sup>280</sup> R14.

<sup>281</sup> R14.

<sup>282</sup> R14.

280. At the hearing, R. Stevanovski testified that he believed Silvestri was being “petty” because the decision had been made not to renew the SAA, but that he did speak to the marketing department to inquire about the rationale for the language in the video and that they explained to his satisfaction that it made sense to refer to Canada in addition to Alberta because it was Xoom’s first market in the country.<sup>283</sup>
281. On July 16, 2016, Silvestri sent R. Stevanovski an e-mail alleging that ACN was not using commercially reasonable efforts as required by the SAA and that this was being driven by ACN’s notice that it would not be renewing the SAA coupled with the announcement of Xoom’s entrance into the Canadian market.<sup>284</sup> Silvestri further alleged that this had resulted in a significant decline in sales via the Online Portal since November 2015, and included the following graph:



282. The following day, R. Stevanovski replied that the reasons for the reduction in sales were “simple” and that Planet would not find “ANY communications to any IBO in Ontario or anywhere . . . in the last 12 months than any other time in our relationship.”<sup>285</sup> He listed the following reasons for the decline in sales:

1. Pricing is not good in Ontario, it’s hard to get customers when you/us are charging much more than the Utility
2. There have been a ton of customer service and billing issues (a big part of them being the Global Adjustment) that have angered IBOs and Customers

<sup>283</sup> Tr. 878-879 (R. Stevanovski).

<sup>284</sup> R15/R70.

<sup>285</sup> R15.

3. And what I think is most likely the biggest factor, is our entire business is way down in Ontario, ALL our services we sell are considerably lower than they used to be and of course Energy is no different, that is a part of our business, its cyclical and it has its ups and downs, our new IBO numbers and all Services are way down in Ontario.<sup>286</sup>

283. On July 21, 2016, Silvestri re-asserted that Planet's decline in sales was related to Xoom's entry into Canada and informed ACN that it had learned that Xoom applied for its OEB natural gas and electricity retail licenses with services in Ontario as of September 1, 2016.<sup>287</sup> Silvestri went on to inform R. Stevanovski that Planet considered ACN to be in material breach of the SAA and would be intervening in Xoom's OEB application.<sup>288</sup>
284. ACN continued to send AiAs to IBOs until the SAA terminated.<sup>289</sup>
285. Wise explained that AiAs were sent once or twice per week across all services and that there was no set frequency for a particular service; rather, it was a question of balance.<sup>290</sup>
286. On October 19, 2016, ACN circulated an AiA stating: "Important changes to ACN energy offerings in Canada. ACN's partnership with Planet Energy to market energy services in Ontario and British Columbia will end November 8, 2016. All orders received through November 8 will be processed by Planet Energy and IBOs will continue to receive points and commissions on all active customers. ACN is working hard to provide new energy sales opportunities in Ontario, British Columbia and throughout Canada."<sup>291</sup> Wise, who was involved in preparing this document, explained that there was no mention of Xoom in Ontario in the document because it was too early to confirm anything.<sup>292</sup>

#### **L. Xoom Launches in Alberta and Plans for Ontario**

287. In 2011, Ulry left ACN to join Xoom.<sup>293</sup>
288. For a short transition period thereafter (in 2011), at R. Stevanovski's request, Ulry continued to interface with Planet on behalf of ACN, since ACN otherwise lacked energy expertise.<sup>294</sup> Although Xoom's legal counsel suggested to Gaffney, Ulry, and

<sup>286</sup> R15.

<sup>287</sup> R15.

<sup>288</sup> R15.

<sup>289</sup> Second Palma WS at ¶ 17.

<sup>290</sup> Tr. 537, 554-555 (Wise).

<sup>291</sup> C112.

<sup>292</sup> Tr. 528-529 (Wise).

<sup>293</sup> Tr. 278-79 (Ulry).

<sup>294</sup> R159.

- R. Stevanovski that it would be prudent for ACN, Planet, and Xoom to sign a limited waiver and release agreement in light of Ulry's transitional role, they never did.<sup>295</sup>
289. When Xoom was originally created, the founders of ACN were primary owners or shareholders of Xoom, and R. Stevanovski was one of its board members.<sup>296</sup> R. Stevanovski remained on Xoom's board until it was sold to NRG.<sup>297</sup>
290. Although Ulry is now the CEO of Bluegreen Energy, an energy retailer with operations in Japan and Europe, Ulry was the CEO of Xoom in 2016 when it launched in Alberta and in 2017 when it launched in Ontario.<sup>298</sup> R. Stevanovski is also on Bluegreen's board.<sup>299</sup>
291. Ulry testified that as CEO of Xoom, he had ultimate authority in terms of Xoom's expansion,<sup>300</sup> and that as a Xoom board member and investor, R. Stevanovski had the opportunity to provide input from time to time on strategic decisions and investments that were "socialized and discussed and decided as a board," but did not have the authority to act on behalf of Xoom.<sup>301</sup> R. Stevanovski testified that he thought it "fair to say that my input was probably important, but I worked really hard to allow Michelle and Jackie and Tom to run the business as they saw fit," since they were the energy experts.<sup>302</sup>
292. At the time, Xoom was available in over 100 markets and it recognized Ontario as an attractive market.<sup>303</sup> Although Xoom worked with multiple sales channels, its relationship with ACN was one of its most important.<sup>304</sup> Since Xoom knew that ACN's exclusive relationship with Planet would end in November 2016, it believed that it would make sense to enter the Ontario market at or after the time that relationship came to an end.<sup>305</sup>
293. Although Xoom initially targeted the fall of 2016 for an Ontario launch, it did not take place until March 2017, after the SAA was terminated.<sup>306</sup>

<sup>295</sup> Tr. 365-370 (Ulry).

<sup>296</sup> Tr. 316 (Ulry), 899 (R. Stevanovski).

<sup>297</sup> Tr. 898 (R. Stevanovski).

<sup>298</sup> Second Ulry WS at ¶ 5.

<sup>299</sup> Tr. 898 (R. Stevanovski).

<sup>300</sup> Tr. 287 (Ulry).

<sup>301</sup> Tr. 326-327 (Ulry).

<sup>302</sup> Tr. 901 (R. Stevanovski).

<sup>303</sup> Second Ulry WS at ¶ 6.

<sup>304</sup> Second Ulry WS at ¶ 7.

<sup>305</sup> Second Ulry WS at ¶ 7.

<sup>306</sup> Second Ulry WS at ¶ 9; C118.

294. In the interim, Xoom decided to enter Canada with a launch in Alberta, where there was no restriction on working with ACN.<sup>307</sup> Thus in early 2016, Xoom focused on the Alberta launch, which took place at the end of May 2016.<sup>308</sup>
295. Around that time, Xoom prepared a video called “Xoom Energy in Canada” that was posted to Xoom and ACN’s websites.<sup>309</sup>
296. Ulry testified that as the CEO of Xoom, overseeing more than 100 markets, the ACN-Planet relationship was “of little relevance” beyond when the exclusive relationship came to an end.<sup>310</sup> However, because Planet took steps to try and block Xoom’s entry into Ontario, Ulry and ACN leadership did have discussions from time to time about when Xoom would be able to launch.<sup>311</sup>
297. Most notably, on July 21, 2016, Ulry, R. Stevanovski and D. Stevanovski e-mailed about allegations Silvestri raised with R. Stevanovski that Planet’s sales were in decline, coinciding with Xoom’s entry into Canada and an OEB application to provide services in Ontario beginning in September 2016.<sup>312</sup> In that contemporaneous correspondence between ACN and Xoom, Ulry explained that since obtaining a license was the first in a multi-step process for Xoom to launch, it had a “65% confidence level that these steps lead to a mid/late January launch,” assuming that the OEB issues the license by September.<sup>313</sup> Ulry concluded: “So Nino’s argument that XOOM intends to launch in September is baseless.”<sup>314</sup>
298. In response, D. Stevanovski suggested, “[p]erhaps [Nino] doesn’t know the process,” to which R. Stevanovski replied: “It’s really not up to us to educate him, although I did in the email I sent him, **the bottom line is we do not intend to sell anything in any Planet Area until after Nov**” (emphasis added).<sup>315</sup>
299. D. Stevanovski also suggested running a promo for Planet, to which R. Stevanovski said “[l]et’s see how it goes.”<sup>316</sup> At the hearing, R. Stevanovski explained that a few weeks prior, he had spoken with Silvestri and told him to let ACN know if Planet wanted to run any promotions, but that Silvestri never followed-up.<sup>317</sup> He also invited suggestions as to promotions via e-mail on June 21, 2016.<sup>318</sup>

<sup>307</sup> Second Ulry WS at ¶ 8; Tr. 289 (Ulry).

<sup>308</sup> Second Ulry WS at ¶ 8.

<sup>309</sup> R141.

<sup>310</sup> Second Ulry WS at ¶¶ 12-15.

<sup>311</sup> Second Ulry WS at ¶ 13.

<sup>312</sup> C95.

<sup>313</sup> C95; Tr. 293-297 (Ulry).

<sup>314</sup> C95; Tr. 293-297 (Ulry).

<sup>315</sup> C97; Second Ulry WS at ¶ 16; C96.

<sup>316</sup> C96.

<sup>317</sup> Tr. 884 (R. Stevanovski); R14.

<sup>318</sup> R14; Tr. 885 (R. Stevanovski).

300. There was also some coordination between ACN and Xoom with respect to reading ACN to be Xoom’s referral agent in Ontario.<sup>319</sup> However, Ulry says that most of that work was done in the days and weeks preceding the launch and that Xoom did not work extensively with ACN “a year or more” before the Ontario launch, as Silvestri alleged in his witness statement.<sup>320</sup>
301. Ulry testified that because Xoom was already in one hundred markets across North America with the same basic business model by the time it launched in Ontario in March 2017, launching in Ontario was a relatively “cookie-cutter” process, subject to adaptation based on the unique regulatory requirements of the province.<sup>321</sup> For example, Xoom runs all of its operations out of Charlotte, North Carolina and did not open an office or hire staff in Ontario for its Ontario operations.<sup>322</sup>
302. Ulry maintained that Xoom “knows the retail energy business intimately” and did not need any confidential information from Planet to launch in Ontario, which it had already done in “countless other markets.”<sup>323</sup>
303. Though he was aware that PwC audited Planet on behalf of ACN in 2015, Ulry denied that he ever received a copy of the audit report.<sup>324</sup> There was no evidence that he ever did.
304. Wise was involved with coordinating the marketing programs to support the Xoom launch in Alberta and Ontario.<sup>325</sup> She began to participate in meetings to prepare for the Xoom launch in Alberta in the beginning of January 2016.<sup>326</sup>
305. On or around March 25, 2016, ACN circulated the first version of a “business requirements document” to personnel or (“stakeholders”) who would be required to make business decisions about IBO compensation and reporting for Xoom.<sup>327</sup> As of April 18, 2016, the document stated:

Our existing energy vendor in the US (XOOM Energy) is going to start offering service to customers in Canada. Plan to begin with Alberta only around May/June timeframe. Ontario and British Columbia are tentatively scheduled to launch in November 2016. There will be no impact to the existing Planet Energy processes. We will continue to support as we do today until otherwise stated.<sup>328</sup>

<sup>319</sup> Second Ulry at ¶ 24.

<sup>320</sup> Second Ulry WS at ¶ 25; First Silvestri WS at ¶ 169.

<sup>321</sup> Second Ulry WS at ¶¶ 17-20, 22-24; Tr. 289-90 (Ulry).

<sup>322</sup> Second Ulry WS at ¶ 19.

<sup>323</sup> Second Ulry WS at ¶ 21.

<sup>324</sup> Tr. 36-362 (Ulry).

<sup>325</sup> Tr. 519-520 (Wise).

<sup>326</sup> R76.

<sup>327</sup> R61A; Tr. 218-222 (Merriman).

<sup>328</sup> R61A at 1.1. *See also* C64 (April 18, 2016 business requirements document).

306. Wise explained that the purpose of the business requirements document was to outline the IT requirements for ACN's IT team to integrate Xoom data into its system, such as customer or sales data.<sup>329</sup>
307. According to Wise, it is typical for ACN to wait until "very close" to the launch of a particular product to announce it to the channel (i.e., to IBOs) "because the date is fluid, so things could happen like your system couldn't be ready and you might not hit a certain date. So we usually send it very close to the actual launch date."<sup>330</sup> R. Stevanovski also testified that it was typical for ACN to "pre-market" a product or service "a week or two, or 30 or 40 days" before its launch.<sup>331</sup> For the Alberta launch, which occurred at the end of May 2016, Wise worked on an AiA draft announcement around May 26, 2016.<sup>332</sup>
308. On June 21, 2016, ACN let Planet know that it had told some of its top upline IBOs that Xoom would not be ready to go to Ontario until the first quarter of 2017.<sup>333</sup> R. Stevanovski testified that this would have included the top two or three IBOs in the region, including Lofranco.<sup>334</sup>
309. On October 5, 2016, Wise sent Palma a list of "marketing priorities as of 10/5" listing all of the marketing projects coming up across different products with proposed approaches and status notes.<sup>335</sup> Item 30 listed "Xoom Energy Ontario launch Canada," which Wise explained was a placeholder for the launch, since it was listed with a status of "not started."<sup>336</sup>
310. On March 15, 2017, ACN announced Xoom's launch in Ontario in an AiA.<sup>337</sup> At the time, Xoom was available in 4 electric utility markets and 2 gas utility markets.<sup>338</sup> By the end of 2017, it was likely available in 10-13 different distribution systems that would have represented about 75-80% of available consumers for electric service.<sup>339</sup>
311. Both Palma and Lofranco refuted Planet's theory that ACN limited Planet sales in anticipation of Xoom's entry into Ontario, given the commissions that Planet sales would have generated for ACN and IBOs.<sup>340</sup> Lofranco put it this way: "it would be inconceivable that IBOs would ever agree to hold off on selling a product, thus

<sup>329</sup> Tr. 520-521 (Wise).

<sup>330</sup> Tr. 523-524 (Wise).

<sup>331</sup> Tr. 921-922 (R. Stevanovski).

<sup>332</sup> C82; Tr. 523-524 (Wise).

<sup>333</sup> R14.

<sup>334</sup> Tr. 924 (R. Stevanovski).

<sup>335</sup> C102; Tr. 524-527 (Wise).

<sup>336</sup> C102; Tr. 527 (Wise).

<sup>337</sup> C118; Tr. 307-309 (Ulry).

<sup>338</sup> C118.

<sup>339</sup> Tr.307-309 (Ulry).

<sup>340</sup> Second Palma WS at ¶ 32; Lofranco WS at ¶¶ 25-27.



depriving themselves of certain compensation, simply in the hope that they might be able to sell an equivalent product several months later, for exactly the same compensation.”<sup>341</sup>

312. In addition, ACN leadership, including R. Stevanovski, stressed internally that it was important to continue selling Planet until the end of the relationship and to ensure an orderly wind-down.<sup>342</sup> And Lofranco testified that ACN never discouraged IBOs from selling Planet products because of Xoom but rather continued to encourage such sales just as it always had.<sup>343</sup>
313. In his first witness statement, Silvestri testified that Planet received a copy of an e-mail in another litigation involving a former commercial customer of Planet’s, Canada Fruit, and Paul Sobel, who Silvestri alleged was a “senior ACN IBO.”<sup>344</sup> In the e-mail, dated February 6, 2016, Sobel e-mailed Steven Weinstein of Canada Fruit: “I just found out that our own company that is winning awards in the United States Xoom Energy is coming to Canada in October. So I recommend we don’t do anything until then and soon as it’s here I will contact you and get you some great service and great rates!”<sup>345</sup>
314. In its opening statement at the hearing, Planet asserted that Sobel clearly had been given information by Lofranco or ACN that was not public about Xoom’s entry into Ontario and that Sobel’s e-mail was evidence that news about the launch caused IBOs not to renew or sell Planet products but to “bank sales” and “holdback” for Xoom.<sup>346</sup>
315. However, as detailed below, the evidence established no factual basis for Silvestri’s assertion that Sobel was a senior IBO or that ACN or its IBOs shared any information about Xoom’s launch in Ontario with Sobel or that Sobel engaged in a “holdback” because of Xoom.
316. According to Lofranco, Sobel is a relatively junior IBO in Toronto who often attended Lofranco’s Saturday morning sessions, and Lofranco was not one of Sobel’s uplines.<sup>347</sup>
317. During Lofranco’s cross-examination, Respondent’s Counsel represented that Sobel’s e-mail was sent on a Saturday and asked how Sobel would have known about Xoom’s entry into Canada unless it came from someone higher up at ACN. Lofranco’s response was candid:

<sup>341</sup> Lofranco WS at ¶ 27.

<sup>342</sup> Second Palma WS at ¶ 33.

<sup>343</sup> Lofranco WS at ¶ 21; Tr. 453 (Lofranco).

<sup>344</sup> First Silvestri WS at ¶¶ 167-168.

<sup>345</sup> R77.

<sup>346</sup> Tr. 101-104, 111 (Planet’s opening).

<sup>347</sup> Tr. 432-436 (Lofranco).

That's a great question because I didn't know that and so how the heck he would know that, I have no idea. . . . Like, who would he be talking to because he doesn't have access to the people I have, that's for sure, to have this inside information.<sup>348</sup>

318. Lofranco went on to opine that it did appear that Sobel was holding back on his customer from making a renewal or plan switch with Planet, even though Lofranco couldn't understand the logic behind doing something like that.<sup>349</sup>
319. On Silvestri's cross-examination, however, Planet's theory was completely undermined by e-mails from the litigation in which the Sobel e-mail was produced to Planet.<sup>350</sup> Contrary to Planet's assertion that Sobel was holding back on having Canada Fruit buy or renew Planet products, those e-mails strongly suggest that for nearly a year prior, Canada Fruit had been trying to cancel its account with Planet and even filed a complaint with the OEB against Planet in October 2015.<sup>351</sup>
320. Furthermore, despite being a top upline for ACN, Lofranco was adamant that he did not know of any plans for Xoom in Ontario as of February 2016 (when Sobel e-mailed Canada Fruit).<sup>352</sup> Although he could not remember when precisely he was told about Ontario, he also testified that he only learned about it from a call R. Stevanovski had with the Canadian Circle of Champions (i.e., ACN's top uplines), even though he spoke with R. Stevanovski regularly.<sup>353</sup>
321. R. Stevanovski testified that he did not know who Sobel was and that he did not tell any IBOs in February 2016 that Xoom was coming to Ontario, noting that at the time of Sobel's e-mail, he was not even sure that a decision had been made about entering Ontario.<sup>354</sup>
322. Both Merriman and Wise were cross-examined about ACN's ability to cross-reference who at Planet later became a Xoom customer and described the difficulties in doing so because of differences in how partner data is provided.<sup>355</sup>

<sup>348</sup> Tr. 434-435 (Lofranco).

<sup>349</sup> Tr. 436-438 (Lofranco).

<sup>350</sup> Tr. 1418-1426 (Silvestri).

<sup>351</sup> Tr. 1418-1426 (Silvestri); R231.

<sup>352</sup> Tr. 439 (Lofranco).

<sup>353</sup> Tr. 480-481 (Lofranco).

<sup>354</sup> Tr. 887-888 (R. Stevanovski).

<sup>355</sup> Tr. 250-253 (Merriman), 533-535 (Wise).

### M. Ontario Regulatory Changes

323. In an e-mail dated September 24, 2015, R. Stevanovski told Silvestri that ACN did not then know if it would renew the relationship with Planet.<sup>356</sup>
324. A few days later, Planet invited ACN to comment on a draft presentation that Planet had prepared to file with the OEB about a proposed bill that would “not allow commissions to be paid to energy sales agents/IBOs.”<sup>357</sup>
325. The bill (or a version of it) eventually became a set of regulations known as the “ECPA amendment,” which took effect January 1, 2017 (the “ECPA”).<sup>358</sup>
326. Among other things, the 2015 presentation, which was prepared by a consulting firm with Silvestri’s input, commented on Planet’s complaints record and noted that from September 1, 2014 to June 30, 2015, Planet had a complaint/contact ratio of less than 1% and that “very few” complaints related to the enrollment process or conduct of IBOs; rather, “most” related to matters “such as the Global Adjustment—over which Planet Energy has no control.”<sup>359</sup>
327. R. Stevanovski told Silvestri that he would refer the presentation to Ulry, “our Energy expert.”<sup>360</sup> Ulry understood R. Stevanovski was bringing him into the conversation to get the benefit of Xoom’s experience dealing with regulators,<sup>361</sup> and replied that he would provide comments the next day.<sup>362</sup>
328. Silvestri expressed no concern that the document was confidential or should not be provided to Ulry<sup>363</sup> and incorporated some comments made by Ulry in the ultimate presentation.<sup>364</sup>
329. Separately, R. Stevanovski e-mailed Ulry “we need to understand before we make an entry into Ontario,”<sup>365</sup> which he explained at the hearing referred to Xoom.<sup>366</sup>
330. In December 2016, Planet informed ACN that the bill received royal assent.<sup>367</sup>
331. Although Planet alleges in this arbitration that commissions for renewals made post January 1, 2017 do not comply with the ECPA, it did not give notice to ACN that it

<sup>356</sup> R103.

<sup>357</sup> R6; C109.

<sup>358</sup> Tr. 309 (Ulry).

<sup>359</sup> C109 at p. 5.

<sup>360</sup> R5.

<sup>361</sup> Tr. 304 (Ulry).

<sup>362</sup> R7A.

<sup>363</sup> Tr. 1413-1415 (Silvestri).

<sup>364</sup> R8; Tr. 1415-1416 (Silvestri).

<sup>365</sup> R104; Tr.

<sup>366</sup> Tr. 915 (R. Stevanovski).

<sup>367</sup> Tr. 1491 (Silvestri).

would be unable to pay any commissions to ACN as of January 1, 2017, nor did it attempt to make reasonable commercial efforts to modify the payment structure to be compliant with the ECPA.<sup>368</sup>

332. Xoom reviewed the ECPA prior to its Ontario launch in order to make sure that its services would be compliant with the ECPA, including commission payments to sales channels like ACN.<sup>369</sup>
333. Xoom's commission structure is not directly comparable to the commission structure under the SAA because Xoom pays ACN a percentage of its revenue, which is equivalent to usage times rate.<sup>370</sup>

#### **N. Post-Termination, Planet Withholds Commission Payments and Asserts Indemnity Claims**

334. The SAA expired by its terms in November 2016.<sup>371</sup>
335. Although Planet initially continued to pay some commissions to ACN post-termination, on March 2, 2018, Planet sent ACN a letter asserting that it was entitled to indemnity for an Ontario Energy Board proceeding that began in February 2017 (the "**2017 OEB Proceeding**") and for unspecified "compliance inspections by the OEB" during the previous eight years, in an amount in excess of CAD \$11 million.<sup>372</sup>
336. Since then, Planet has withheld commission payments from ACN while continuing to provide monthly commission files and other reporting.<sup>373</sup> According to those contemporaneous files, as of May 2019, ACN was due payments of CAD \$7,379,524.<sup>374</sup> Between June and December 2019, Planet reported via e-mail correspondence that ACN was due payments of CAD \$2,392,275, for a total of CAD \$9,771,799.<sup>375</sup> Silvestri testified that Planet has been withholding commission payments for all customer contracts entered through the Online Portal and for all renewals that Planet did itself but allocated to ACN up until August 1, 2016.<sup>376</sup>
337. Small testified regarding preparation of Planet's "**Indemnity Tracker**"<sup>377</sup> summarizing accounts for which Planet seeks indemnity, based on accounts it says meet the following criteria: (i) there was an allegation of IBO misconduct; (ii) there was a premature cancellation; (iii) the customer failed to pay early termination

<sup>368</sup> Tr. 1489-, 1493-1494 (Silvestri).

<sup>369</sup> Tr. 310-11 (Ulry).

<sup>370</sup> Tr. 319-20 (Ulry).

<sup>371</sup> C2 at § 3(a).

<sup>372</sup> C39.

<sup>373</sup> Statement of Defense and Counterclaims at ¶ 218.

<sup>374</sup> Stout Report at Figure 46.

<sup>375</sup> Stout Report at Figure 46.

<sup>376</sup> Tr. 1498-1499 (Silvestri).

<sup>377</sup> C121.

charges; and (iv) the complaint involved a third party such as the OEB, a lawyer, a member of Parliament, the Ontario Superior Court, or ACN.<sup>378</sup> Small's testimony included responding to critiques made by ACN in spreadsheets commenting on a subset of complaints from the OEB (C124) and a subset of complaints relating to commercial accounts (C125), with reference to responsive exhibits Small prepared for Planet's Rejoinder (R246 and R225).<sup>379</sup>

338. Small was not the primary author of the Indemnity Tracker, which was created for the purpose of litigation.<sup>380</sup> ACN was not sent periodic updates or bills or invoices for any indemnification claims during the agency period, though it was occasionally involved in discussions about individual cases.<sup>381</sup>
339. According to Small, by early 2013, he was spending the majority of his time on renewals and compliance issues, which he said related to ACN as virtually all of Planet's customers in Ontario came via the ACN channel.<sup>382</sup> However, Planet also interacted with customers about sales in a variety of contexts. For instance, Planet representatives communicated with customers in relation to plan switches, in which case they would direct the customers to effect the changes through the Online Portal (prior to November 2016) or, after November 2016, via an activation e-mail that would bring the customer to a Planet portal.<sup>383</sup> After a customer was enrolled using the Online Portal, Planet also conducted quality assurance calls to verify enrollments and steps would be taken to cancel if there were a concern about "slamming" (signing up a customer without consent).<sup>384</sup>
340. Planet created the training and testing materials for IBOs and ACN implemented the system designed by Planet.<sup>385</sup> These materials were geared to internet enrollments, not in-person sales contracts, because of strict regulations governing in-person sales.<sup>386</sup> Since Planet had the industry knowledge as an Ontario energy retailer, ACN relied on Planet for the substance of the training and testing materials.<sup>387</sup>
341. According to Silvestri's First Witness Statement, complaints against IBOs constituted the vast majority of complaints to Planet's call center and related to disputed enrollments (or slamming) and misrepresentation.<sup>388</sup> However, Silvestri told a different story to the OEB in 2017 when he testified that the Global

<sup>378</sup> Tr. 974-976 (Small).

<sup>379</sup> Tr. 977 (Small).

<sup>380</sup> Tr. 1127 (Small).

<sup>381</sup> Tr. 1128 (Small).

<sup>382</sup> Small WS at ¶ 4.

<sup>383</sup> Tr. 1035-1036 (Small).

<sup>384</sup> Tr. 1151-1153 (Small).

<sup>385</sup> Second Palma WS at ¶ 19; First Silvestri WS at ¶¶ 84, 100, 102-103; R186; R281.

<sup>386</sup> First Silvestri WS at ¶ 94.

<sup>387</sup> Second Palma WS at ¶¶ 19-20.

<sup>388</sup> First Silvestri WS at ¶¶ 117, 120.

Adjustment was “the number one complaint” that customers have called Planet about.<sup>389</sup>

342. In May 2016, Silvestri told Palma that “many customers conveniently claim slamming to the OEB in order to get out of the energy contract, and avoid having to pay early termination charges – even when the initial complaint dealt with, for example, billing issues such as the Global Adjustment.”<sup>390</sup> Silvestri also noted that out of a sample of 48 complaints Planet investigated, it determined that only 2 were valid.<sup>391</sup>
343. Similarly, when testifying before the OEB in 2017, Silvestri said that following a 2015 investigation into 109 allegations of non-compliance, none were ultimately determined to be justified.<sup>392</sup> Silvestri purported to explain at the arbitration hearing that what actually happened was that Planet settled with most of the customers so the OEB dropped the complaint.<sup>393</sup>
344. For each OEB complaint, Planet was required to submit a response through an OEB portal known as the “**CCR**” or customer complaint response.<sup>394</sup> Planet produced these documents to ACN.<sup>395</sup>
345. On September 20, 2018, the OEB issued a decision with respect to the allegations addressed in the 2017 OEB Proceeding and made an order for compliance, restitution and payment of an administrative penalty relating to the conduct of two IBOs and their training/testing.<sup>396</sup> In its findings, the OEB stated:
- a. its view that the “most serious deficiencies were in respect of training and testing;”
  - b. the two IBOs whose conduct was at issue provided misleading information to consumers;
  - c. “both the training material and the training test were deficient,” while enumerating four specific flaws in the training manual, including a lack of information with respect to Global Adjustment and early termination charges;
  - d. the omissions from the manual were problematic because the training manual “was all there was” and there was no requirement to attend any training sessions; and

<sup>389</sup> R179 at pp. 98-99; Tr. 1393-1394 (Silvestri).

<sup>390</sup> C69.

<sup>391</sup> C69.

<sup>392</sup> R179 at p. 125

<sup>393</sup> Tr. 1405-1407 (Silvestri).

<sup>394</sup> Tr. 1129 (Small).

<sup>395</sup> Tr. 1128-1129 (Small).

<sup>396</sup> R117.

- e. the two IBOs did not even read the training manual but proceeded directly to the online test.<sup>397</sup>
346. The OEB ordered Planet to pay an administrative penalty of CAD \$155,000.00, reimburse 26 affected customers for their electricity commodity bill while they flowed with Planet in the amount of CAD \$39,500.00 and pay assessed costs of CAD \$72,252.34.<sup>398</sup> The administrative penalty was further broken down as follows:
- (a) \$100,000 for the contraventions relating to Planet Energy's training and testing program
  - (b) \$50,000 for the contraventions relating to providing false, misleading or incomplete information to consumers; the failure to wear an identification badge and to provide a business card; the failure to provide the required documentation and to obtain the required signatures; and the failure to conduct contract verification
  - (c) \$5,000 for providing R.A. with incorrect cancellation information.<sup>399</sup>
347. The Divisional Court confirmed the OEB's findings on appeal, noting "the Board enforcement staff did not allege systemic deficiencies" and that the "Board concluded the inadequate training of the two IBOs lay at the heart of the case."<sup>400</sup>
348. Following the OEB enforcement proceeding, Planet's rating with the Better Business Bureau was downgraded to not rated.<sup>401</sup>
349. Early termination charges are part of Planet's customer contract and are collected by Planet (without ACN's involvement) regardless of whether it experiences a gain or loss.<sup>402</sup>
350. When a customer cancels its agreement, the consumer is invoiced directly for termination charges by Planet and any collected amounts are not included in commission payments sent to ACN as there is no margin.<sup>403</sup> Further, the success rate for recovering early termination fees is less than 20% and would only "cover the mark to market losses."<sup>404</sup> In order to determine whether Planet had a loss or

<sup>397</sup> R117 at p. 15.

<sup>398</sup> First Silvestri WS at ¶ 160.

<sup>399</sup> R117 at pp. 19-20.

<sup>400</sup> R155.

<sup>401</sup> Second Silvestri WS at ¶ 86; Tr. 1483-1484 (Silvestri).

<sup>402</sup> Tr. 1126 (Small).

<sup>403</sup> C48.

<sup>404</sup> C48.

gain (i.e., whether Planet was on the “right” side of the market), it would be necessary to analyze each claim and Small was not aware of any such analysis.<sup>405</sup><sup>406</sup>

351. Although Planet uses a collection company to recover early termination charges, and Small admitted that Planet would have received a report about collections from the company, Planet submitted no documentary evidence showing claimed early termination charges were unpaid.<sup>407</sup>

## O. The Audit

352. According to Stout’s audit<sup>408</sup> of Planet pursuant to Section 9 of the SAA, Planet failed to provide accurate or complete reports in connection with the SAA.<sup>409</sup> The following is a summary of some of Stout’s key findings.
353. The earliest data made available to Stout was from October 2012 and the latest ranged to either February 2018, February 2019, or December 2019, depending on the data source.<sup>410</sup>
354. Planet’s contemporaneous Gross Margin calculations and commission payments were based upon “**Remittance Commission Files**” that estimated commissions due to ACN.<sup>411</sup> During the audit, Planet created “**Detailed Commission Files**” to “true up” its previous commission payments.<sup>412</sup> Since the Detailed Commission Files were not created contemporaneously in the ordinary course of business but for purposes of the arbitration, Stout determined that they were not reliable evidence for purposes of an audit.<sup>413</sup>
355. No independent, third-party system accessible to Stout logged the referrals of customers from ACN to Planet besides Planet’s customer relationship management system (i.e., the EMS Database), which contained inconsistent and contradictory data.
356. The population of customers identified by Planet in the EMS Database as ACN-referred customers, from its ACN Customer Database and Collections Customers, was an incomplete universe of all ACN-referred customers according to verification against contemporaneous reports from the ordinary course of business, including customer load files, daily reports, and the Remittance Commission Files.<sup>414</sup> The

<sup>405</sup> C48.

<sup>406</sup> Tr. 1148-1149 (Small).

<sup>407</sup> Tr. 1149-1150 (Small).

<sup>408</sup> See generally C3; Tr. 1733ff. (Petron).

<sup>409</sup> C3, Summary of Findings 1.

<sup>410</sup> C3 at p. 8, Figures 1, 2, 4.

<sup>411</sup> C3 at pp. 31-32.

<sup>412</sup> C3 at pp. 31-32.

<sup>413</sup> C3 at pp. 31-32; Stout Rebuttal Report at pp. 17-21 and Exhibits 2A and 2B thereto.

<sup>414</sup> Tr. 1745-1747 (Petron).



reliability of the EMS Database was further undermined based on verification against “**SPI Billing Files**,” a collection of files provided by the utilities to Planet, and “**Gas Billing Files**.”<sup>415</sup>

357. Planet’s internal system of using a contract number (with agent codes) to identify ACN-referred customers was inconsistent and incomplete.<sup>416</sup>
358. Stout identified active customers (i.e., “flowing” accounts) within the ACN Customers or Collections Customers that were not included in the Remittance Commission Files, resulting in an estimated underpayment of CAD\$0.4 million.<sup>417</sup>
359. Stout determined that 13,268 ACN-referred customers became Planet customers and either (i) never formed the basis for a commission to ACN; or (ii) continued to be a Planet customer after the point at which Planet ceased paying any commission to ACN on those customers, resulting in an estimated underpayment of commissions of approximately CAD\$2.1 million.<sup>418</sup> Stout’s Petron testified as to his understanding that ACN-referred customers whose contracts were renewed by Planet would fall into this category.<sup>419</sup>
360. Planet’s Customer Status History extract in the EMS Database indicated there were certain active, flowing customers with no corresponding records in the Remittance Commission Files, resulting in an estimated underpayment of CAD \$4.1 million in commissions.<sup>420</sup> Petron acknowledged that determining flow dates based on the EMS Database (derived from utility information) rather than according to actual consumption could lead to some discrepancies but explained that it was necessary to make a reasonable estimate due to the difficulty of analyzing SPI Billing Files and that any such discrepancies should be offset at the other end (i.e., when billing may continue though flow has stopped).<sup>421</sup>
361. Thus Stout did a corresponding analysis of inactive and non-flowing customers according to Planet’s Customer Status History and determined that there was an overpayment of commissions to ACN of approximately CAD \$1.8 million.<sup>422</sup>
362. Petron explained that the decision to rely on the EMS Database to determine a customer’s usage period stemmed from the fact that it was used to generate contemporaneous reports to ACN, there was limited access to the SPI Billing Files,

<sup>415</sup> Tr. 1751-1753.

<sup>416</sup> C3, Summary of Finding 5.

<sup>417</sup> C3, Summary of Finding 6.

<sup>418</sup> C3, Summary of Finding 9.

<sup>419</sup> Tr/ 1754-1755 (Petron).

<sup>420</sup> C3, Summary of Finding 10.

<sup>421</sup> Tr. 1757-1759 (Petron).

<sup>422</sup> Tr. 1760 (Petron); C3, Summary of Findings 11.

and even Planet initially pointed to the EMS Database as an appropriate means to confirm the accuracy of commission calculations.<sup>423</sup>

363. Stout identified customers on which commissions were paid, but that were not part of the ACN Customers and Collections Customers population, representing an estimated overpayment of less than CAD \$0.4 million.<sup>424</sup>
364. Stout determined that the costs of sales associated with the energy consumption of some customers was higher than the associated revenue, resulting in negative commissions that reduced the amounts paid to ACN in the same amount.<sup>425</sup>
365. Stout found material differences in revenue, consumption, and adjusted predicted value between what Planet claimed as the underlying source of the revenue component for the Target Margin calculations (the SPI Billing Files and the Gas Billing Files) and those contained in the Remittance Commission Files.<sup>426</sup> Stout found this was the basis for a potentially material understatement of revenue, but took a conservative approach and did not quantify any underpayment based on this finding.<sup>427</sup>
366. Stout had no way to independently confirm the cost of sales used for Target Margin calculations.<sup>428</sup> Ultimately, Stout determined that it would give Planet the benefit of the doubt and assume that the costs used by Planet in its calculations were accurate.<sup>429</sup> Before taking this approach, Stout took into consideration that: (i) Remittance Commission Files had only summary level information regarding costs; (ii) the Detailed Commission Files could not be independently verified against a third party source due to an inability to confirm swaps and trade confirmations directly with Shell and Planet's unwillingness to share its hedging and portfolio management strategy; and (iii) there were inconsistencies in the swap detail contained within the Detailed Commission Files.<sup>430</sup>
367. Planet failed to make timely and accurate payments of identified Gross Margin payments to ACN, resulting in payments that were CAD\$0.4 million less than what the Remittance Commission Files indicated was due, on a net basis.<sup>431</sup>
368. Planet failed to settle outstanding commission amounts totaling approximately CAD \$9.8 million, including HST for March 2018 through December 2019.<sup>432</sup> This total

<sup>423</sup> Tr. 1776-1778 (Petron); Stout Rebuttal Report at pp. 16-17; Strum letter dated July 31, 2019.

<sup>424</sup> C3, Summary of Finding 12.

<sup>425</sup> C3, Summary of Finding 13.

<sup>426</sup> C3, Summary of Finding 14.

<sup>427</sup> Tr. 1765-1777 (Petron).

<sup>428</sup> C3, Summary of Finding 15.

<sup>429</sup> Tr. 1773 (Petron).

<sup>430</sup> Tr. 1768-1773 (Petron).

<sup>431</sup> C3, Summary of Finding 16.

<sup>432</sup> C3, Summary of Finding 17.

represents amounts that Planet admits it has withheld and was not independently audited by Stout.<sup>433</sup> In addition, Planet admits that it failed to settle outstanding commission amounts totaling approximately CAD \$1.3 million including HST for the months of January through June 2020.<sup>434</sup> Again, this amount was not audited by Stout.<sup>435</sup>

369. The following is an updated version of Figure 3 from the Stout Report that was submitted with ACN's Closing (Appendix A) and includes all amounts summarized above.

Summary of Estimated Underpayments and Overpayments with Prejudgment Interest				
Summary of Findings Reference	Description	Amount (CAD)	Interest (CAD)	Amount + Interest (CAD)
<b>Estimated Underpayments</b>				
6	ACN Customers and Collections Customers not in Commission Files (October 2012 to February 2019)	\$ (406,049)	\$ (193,459)	\$ (599,507)
9	Non-ACN Customers with ACN Connection - Gas	(406,428)	(102,017)	(508,445)
9	Non-ACN Customers with ACN Connection - Electric	(1,679,198)	(367,338)	(2,046,536)
9	Subtotal (October 2012 to February 2019)	(2,085,626)	(469,356)	(2,554,982)
10	ACN Customers Flowing per EMS Database, but Without Commission Payments (October 2012 to February 2019)	(4,057,814)	(1,587,478)	(5,645,292)
16	Amount Received by ACN and the Amount Due as Indicated by Commission Files (February 2013 to February 2018) [1]	(415,551)	(3,937)	(419,488)
17	Commissions Withheld (March 2018 to June 2020) [1] [2]	(11,170,010)	(1,428,823)	(12,598,833)
	Subtotal	(11,585,561)	(1,432,760)	(13,018,321)
	<b>Total Estimated Underpayments</b>	<b>(18,135,050)</b>	<b>(3,683,053)</b>	<b>(21,818,102)</b>
<b>Estimated Overpayments</b>				
11	ACN Customers Not Flowing per EMS, but with Commission Payments	1,837,045	823,815	2,660,860
12	Payment of Commissions on Non-ACN Customers	39,528	3,441	42,970
	<b>Total Estimated Overpayments (October 2012 to February 2019)</b>	<b>1,876,573</b>	<b>827,257</b>	<b>2,703,831</b>
	<b>Total Estimated Over/(Under) Payments</b>	<b>\$ (16,258,477)</b>	<b>\$ (2,855,796)</b>	<b>\$ (19,114,272)</b>

[1] Month listed represents payment month  
[2] This category has been updated since the Stout Audit Report to extend through June 2020  
Note: Stout previously listed SOF 6, SOF 9, SOF 10, and SOF 11&12 with a date range of October 2010 to February 2019. This table accurately reflects the correct date range of October 2012 to February 2019

## VI. Reasons for Decision

370. The Arbitrator has fully considered the Parties' arguments, evidence, and legal authorities in reaching a decision on the issues determined in this Final Award. For clarity, however, the Arbitrator refers only to the arguments, evidence, and authorities that are relevant and material to her decision.

### A. Non-Payment of Commissions

371. It is undisputed that shortly after the SAA terminated, Planet ceased making any commission payments to ACN. ACN says that Planet has wrongfully withheld and/or underpaid commissions due and payable to it pursuant to Sections 6 and

<sup>433</sup> C3, Summary of Finding 17.

<sup>434</sup> Tr. 1775 (Petron).

<sup>435</sup> Tr. 1775 (Petron).

3(d) of the SAA, whereas Planet disputes any obligation to pay ACN commissions and/or the amount that is due and owing.

372. Two points of contract interpretation underlie ACN's claim for non-payment and are therefore considered at the outset: (i) determination of the Gross Margin based upon calculation of the Target Margin; and (ii) ACN's entitlement to commissions for renewals of ACN Customers.

### 1. General Principles of Contract Construction

373. In construing the SAA, the Arbitrator has applied the following general principles of contract interpretation under New York law.
374. A contract is to be construed in accordance with the parties' intent, and the best evidence of what parties to a written agreement intend is what they say in their writing.<sup>436</sup> Thus, a written agreement that is complete, clear, and unambiguous on its face must be enforced according to the plain meaning of its terms,<sup>437</sup> and "language whose meaning is otherwise plain is not ambiguous merely because the parties urge different interpretations in the litigation."<sup>438</sup> To determine whether language is ambiguous, it must be read in the context of the entire agreement, which "safeguard[s] against adopting an interpretation that would render any individual provision superfluous."<sup>439</sup> An ambiguity exists only if the language is reasonably susceptible of more than one meaning.<sup>440</sup>
375. Although extrinsic evidence—evidence that is beyond the four corners of the agreement—may not be admitted to *create an ambiguity* in a written agreement that is complete and clear on its face,<sup>441</sup> or to add to or vary the agreement,<sup>442</sup> if an ambiguity exists, extrinsic evidence may be considered to determine the parties' intent as to the meaning of the ambiguous term.<sup>443</sup>
376. Furthermore, under the doctrine of practical construction, if the parties have engaged in a consistent or uniform course of conduct under an ambiguous contract,

<sup>436</sup> Statement of Claim at ¶ 84, *citing Brad H. v. City of New York*, 17 N.Y.3d 180,185 (2011); Statement of Defense and Counterclaims at ¶ 354, *citing Slatt v. Slatt*, 64 N.Y.2d 966 (N.Y. 1985); *Slamow v. Del Col*, 79 N.Y.2d 1016 (N.Y. 1992).

<sup>437</sup> Rejoinder at ¶ 332, *citing W.W.W. Assocs v. Giancontieri*, 77 N.Y.2d 157 (N.Y. 1990); Statement of Defense and Counterclaims at ¶ 354, *citing Greenfield v. Philles Records*, 98 N.Y.2d 562, 569 (N.Y. 2002).

<sup>438</sup> Statement of Claim at ¶ 84, *citing Metropolitan Life Ins. Co. v. RJR Nabisco, Inc.*, 906 F.2d 884, 889 (2d Cir. 1990).

<sup>439</sup> *Sayers v. Rochester Telephone Corp.*, 7 F.3d 1091, 1095 (2d Cir. 1993) (CL6 & RLA72).

<sup>440</sup> Statement of Claim at ¶ 84, *citing Brad H. v. City of New York*, 17 N.Y.3d 180,185 (2011).

<sup>441</sup> Rejoinder at ¶ 334, *citing Intercontinental Planning v. Daystrom*, 24 N.Y.2d 372 (N.Y. 1969).

<sup>442</sup> *W.W.W. Assocs v. Giancontieri*, 77 N.Y.2d 157 (N.Y. 1990) (RLA82).

<sup>443</sup> *Care Travel Co., Ltd. v. Pan American World Airways, Inc.*, 944 F.2d 983, 987-88 (2d Cir. 1991), *cited in* Rejoinder at n.228; Statement of Claim at ¶ 89, *citing Brooklyn Pub. Library v. City of New York*, 250 N.Y. 495, 501 (1929).

the contract should be interpreted as having the meaning consistent with the parties' conduct.<sup>444</sup>

377. Notably, that the SAA contains a merger and integration clause in Section 19(a) does not alter this analysis. Although the clause and rules of New York contract interpretation plainly preclude reliance on extrinsic evidence to amend or supplement the contract (e.g., to introduce terms that were not expressed or as to what might be preferable) once a legal determination is made that contract language is ambiguous, they do not bar evidence as to the intended meaning of the ambiguous language.<sup>445</sup>

## 2. Gross Margin Payments

378. The Parties dispute how ACN's Gross Margin payments under Section 6(a) of the SAA are to be calculated. According to ACN, it is entitled to one-half of the sum of the actual margins generated by each Energy Product.<sup>446</sup> According to Planet, ACN is entitled to a flat 8% margin above the wholesale price for each Energy Product (i.e., one-half of the sum of a 16% margin for each Energy Product).<sup>447</sup> Both Parties base their calculation of ACN's Gross Margin share on the underlying definition of the Target Margin and contend that relevant contractual provisions are clear and unambiguous.
379. For the reasons that follow, the Arbitrator finds that the SAA is clear and unambiguous with respect to the determination of the Target Margin and Gross Margin, and that ACN correctly asserts that Section 6(a) provides for commission payments to ACN equal to one-half the sum of the actual margins generated by each Energy Product, and not a flat 8% margin for each Energy Product as Planet contends.
380. By its plain terms, Section 6(a) obligates Planet to pay ACN one half of the Gross Margin each calendar month ("**Planet shall thereafter pay to ACN by wire transfer one half (1/2) of the Gross Margin** for that immediate past month on or before the 30<sup>th</sup> day after the end of such month.") and specifies that the Gross Margin is "the sum of the Target Margin from each ACN Customer's usage across all products in that month."
381. According to Planet, the Target Margin is "16% above the wholesale price of the energy products."<sup>448</sup> In support of this interpretation, Planet points to the bolded language below:

<sup>444</sup> Statement of Claim at ¶ 89, citing *Brooklyn Pub. Library v. City of New York*, 250 N.Y. 495, 501 (1929).

<sup>445</sup> See Rejoinder at ¶¶ 329-336; Planet's Post-Hearing Brief at ¶ 63.

<sup>446</sup> Reply at ¶¶ 47-53, 68-70.

<sup>447</sup> Statement of Defense and Counterclaims at ¶¶ 49-55.

<sup>448</sup> Statement of Defense and Counterclaims at ¶ 51.

Planet and ACN shall agree upon a retail price at which Energy Products will be offered to potential ACN Customers using a formula that A) takes Planet's wholesale energy supply prices and adds an agreed-upon mark up for balancing and various risk premiums to Planet (the "Wholesale Price"), and then B) **adds a further agreed-upon mark up that results in a 16% margin (the sum of (A) and (B) is referred to herein as the "Retail Price")**. The parties **shall meet on a regular basis to determine whether the Retail Price of any particular Energy Product(s) is/are appropriate for market conditions** and may mutually agree to increase or decrease the Retail Price for any product(s). **The difference between an Energy Product's Wholesale Price and its Retail Price shall be referred to as the "Target Margin" for that Energy Product**. For any Energy Product for which the proposed Retail Price is not built on a 16% margin, then ACN must specifically consent in writing to such Energy Product's Retail Price.

(Emphasis added).<sup>449</sup>

382. Although the first sentence of the paragraph establishes a formula for determining a "Retail Price" that results in a 16% margin, at no point does the provision state that this 16% margin is the same as the Target Margin. Rather, the provision specifies that "[t]he difference between an Energy Product's Wholesale Price and its Retail Price shall be referred to as the 'Target Margin' for that Energy Product," with the remainder of the paragraph making clear that the Retail Price need not be built upon a 16% margin, but could be more or less than 16% ("For any Energy Product for which the proposed Retail Price is not built on a 16% margin ..."). If the Target Margin were a fixed 16% rate as Planet suggests, this last sentence would be inconsistent and make no sense. Moreover, since both the Target Margin and Gross Margin would be 16%, there would be no need for the two distinct terms.
383. Planet's interpretation also ignores that in establishing a formula for determining Retail Price, Section 1 states that such formula is to be used by the Parties to "agree upon a retail price at which Energy Products will be offered to potential ACN Customers." This language plainly conveys the Parties' intention to calculate the Target Margin according to actual retail prices for Energy Products offered to ACN Customers, and thus according to the actual margins realized by Planet, rather than a fixed margin of 16%.
384. Consequently, the Arbitrator concludes that ACN's entitlement under Section 6(a) to be paid "one half of the Gross Margin" is equal to one-half of the sum of the actual margins generated by each Energy Product.
385. Because the Arbitrator finds that the contractual meanings of Gross Margin and Target Margin are clear from the plain language of the SAA, the Arbitrator does not consider any extrinsic evidence with respect to the Parties' intent and does not

<sup>449</sup> R-Dem 1 at p. 30.

reach ACN's alternative submissions concerning modification of the contract or equitable estoppel.<sup>450</sup>

### 3. Commissions for Renewals

386. It is undisputed that ACN is entitled to receive commissions under Section 6(a) for "ACN Customers," which are defined in Section 1 as "those customers whose orders are entered into the Online Portal by ACN, or their customer under this Agreement who become Accepted Customers." However, once a customer becomes an "ACN Customer," the Parties disagree about whether ACN is entitled to commission payments for *all* of that customer's renewals (regardless of whether the renewal is completed by ACN or Planet), or only those renewals that are completed through the Online Portal.<sup>451</sup> It is common ground that the SAA does not deal with renewals explicitly.
387. According to ACN, once a customer becomes an ACN Customer (through the Online Portal), ACN is entitled to receive commissions for as long as that customer continues to purchase Energy Products from Planet, regardless of what products are purchased or who sold them.<sup>452</sup> According to Planet, ACN is only entitled to commissions on orders entered through the Online Portal, and there is no exception made for renewals or "re-contracting."<sup>453</sup> Thus once an ACN Customer's initial contract term ends, it ceases to be an ACN Customer (and ACN's entitlement to commissions ends) unless that customer is renewed through the Online Portal.<sup>454</sup>
388. The key point of contention between the Parties is what was intended by Sections 3(d) and (e) of the SAA.
389. Section 3(d) provides for ACN to continue receiving "Gross Margin payments under Section 6" post-termination. ACN emphasizes language in this provision stating that these payments are to continue "for as long as ACN Customers continue to purchase the Energy Products" and "until there remain no ACN Customers using Energy Products."<sup>455</sup>
390. ACN also relies on Section 3(e), which is not limited to the post-termination period, but provides more broadly for Planet to pay ACN Gross Margin payments "during the time this Agreement remains in effect, including the time during any wind down period and/or **after the Termination Date** while there remain active ACN Customers, **regardless of what Energy Product they consume, regardless of who sold such Energy Product to them**" (emphasis added). ACN says that this

<sup>450</sup> Reply at ¶¶ 54-65, 71-90; Rejoinder at ¶¶ 346-350.

<sup>451</sup> See C-Dem-1 at Slide 4.

<sup>452</sup> Statement of Claim at ¶¶ 85-87.

<sup>453</sup> Statement of Defense and Counterclaim at ¶¶ 319-358; Rejoinder at ¶¶ 207-214.

<sup>454</sup> Rejoinder at ¶ 338.

<sup>455</sup> Statement of Claim at ¶ 86.

language makes clear that ACN's commissions were intended to continue for the life of the customer's relationship with Planet.<sup>456</sup>

391. ACN also points to the remainder of Section 3(e), which prohibits Planet from taking actions that might cull the ranks of ACN Customers (for example, by changing unique identifiers for ACN Customers in Planet's systems) "any faster than they would otherwise out of customer-initiated attrition." ACN argues that the plain meaning of this language is that ACN's commissions are to continue until there are no more customers as a result of customer-initiated attrition, which is readily understood as a reduction in numbers as a result of resignation, retirement, or death and simply does not encompass any circumstance in which a customer elects to stay with Planet when its initial contract term is winding down (i.e. to "renew").<sup>457</sup>
392. For its part, Planet argues that Section 3(d) merely concerns "tail" payments for contracts entered into through the Online Portal prior to termination of the SAA, ensuring, for example, that a five-year contract entered into through the Online Portal on November 8, 2016 (prior to termination on November 9) would generate commissions through November 8, 2021.<sup>458</sup> Planet argues that since the definition of "ACN Customer" plainly requires an order to be completed through the Online Portal and no mention is made of renewals or re-contracting in the SAA, ACN's entitlement to commissions for a renewal must depend upon it being made through the Online Portal.<sup>459</sup>
393. As for Section 3(e), Planet argues that the clear intent of the paragraph is to provide that Planet may not interfere with ACN's entitlement to commissions during any wind-down or post-termination.<sup>460</sup> It also argues that insofar as Section 3(e) specifies that Planet not actively seek to cause ACN Customers to "change the Energy Products they purchase," there is no reason to include such wording unless the intent was to preclude Planet from taking action (encouraging entry into a new contract for a different product) that would put an end to that customer being identified as an ACN Customer.<sup>461</sup>
394. Planet raises a good question as to which ACN offers no response. However, Planet likewise fails to contend with ACN's arguments about "customer-initiated attrition" or language specifying entitlement to commissions "regardless of who sold such Energy Product to them." Coupled with the fact that the SAA does not state an express intention to treat renewals differently than initial enrollments, which plainly must be done through the Online Portal, the Arbitrator considers that the

<sup>456</sup> Tr. 21 (ACN Opening).

<sup>457</sup> Tr. 22-24 (ACN Opening), 2404 (ACN Closing).

<sup>458</sup> Rejoinder at ¶ 86.

<sup>459</sup> Rejoinder at ¶¶ 86, 207.

<sup>460</sup> Rejoinder at ¶ 341.

<sup>461</sup> Tr. 2508-2509 (Planet Closing).



SAA is reasonably susceptible to more than one meaning and, therefore, that it is ambiguous.

395. In these circumstances, the Arbitrator turns to consider the extrinsic evidence presented of the Parties' intent with respect to commissions for renewals.
396. In consideration of the SAA's negotiation history and the Parties' words and conduct during the course of their relationship, which evidence a consistent and uniform course of conduct with respect to ACN's entitlement to commissions for renewals, the Arbitrator concludes that for any customer referred by ACN to Planet through the Online Portal (an "ACN Customer"), ACN is entitled to continue receiving commissions for as long as that customer remains with Planet, regardless of the means by which the relationship with Planet was renewed.<sup>462</sup> The following is compelling support for this interpretation of the SAA:
- a. Ulry was the only witness directly involved in negotiation of the 2009 SAA, which mirrors the SAA in all relevant respects. His uncontradicted evidence was that the "whole premise of the relationship as it was being formed and contracted" was that the two companies would work together to create value and split whatever value Planet extracted from the customers that ACN acquired.<sup>463</sup> Though Planet contends ACN's position is an attempt to get a windfall of commissions for itself and upline IBOs,<sup>464</sup> it offered no evidence to rebut ACN's version of the Parties' contract negotiations. Notably, although Gaffney, who was directly involved in negotiations for Planet, was available and willing to testify, Planet did not call him to offer an alternative account.<sup>465</sup>
  - b. Ulry's evidence was corroborated by Gaffney's pre-SAA e-mail proposing that the Parties amend the SAA to "confirm" that ACN's 50/50 margin share "continues for the life of the customers."<sup>466</sup> Though Planet argues that no amendment to relevant language in the 2009 SAA was ultimately incorporated in the SAA (e.g., to add language clarifying the ambiguous Section 3(e) with express reference to renewals),<sup>467</sup> this e-mail evinces Gaffney's understanding of the Parties' deal as it already existed under the 2009 SAA (i.e., that ACN was entitled to commissions for the life of the customers).
  - c. During the agency period, both Parties messaged to IBOs that they would receive commissions for a customer referred to ACN for the life of the

<sup>462</sup> See Statement of Claim at ¶ 42; Tr. 2404ff. (ACN Closing).

<sup>463</sup> See Paragraph 147 above.

<sup>464</sup> Planet's Post-Hearing Brief at ¶ 66.

<sup>465</sup> Planet's Post-Hearing Brief at n.66.

<sup>466</sup> C4.

<sup>467</sup> Planet's Post-Hearing Brief at ¶ 65.

customer; for example, in ACN's IBO compensation plan<sup>468</sup> and in Planet's presentation to IBOs in February 2013 about residual income.<sup>469</sup>

- d. In the summer of 2014, when the five-year contracts of the earliest customers referred to Planet by ACN were about to expire, the Parties worked together to devise a plan for a streamlined renewal process that contemplated enrollments made through means other than the Online Portal. At the time, Planet never suggested ACN's entitlement to renewals depended upon orders being completed through the Online Portal; rather, steps were taken to ensure original IBO numbers would be incorporated in the new portal for commission purposes.<sup>470</sup>
- e. Although Planet *later* asserted, once in December 2014 and again in January 2016, that it was not required to pay ACN commissions on *any* renewals, it also said that it would continue to share commissions for all renewals nonetheless.<sup>471</sup> And Planet kept paying ACN commissions on all renewals without regard to whether they were made through the Online Portal or due to Planet's efforts until mid-2016, when ACN gave notice that the SAA would expire and Planet stopped making payments gradually and surreptitiously so as to prevent ACN from finding out.<sup>472</sup> As ACN argues, this conduct is not consistent with a party asserting its known contractual rights.<sup>473</sup>

397. Consequently, the Arbitrator confirms that a customer who is initially referred by ACN through the Online Portal, thereby becoming an ACN Customer, remains an ACN Customer for the life of its relationship with Planet.

398. Because the Arbitrator finds that there is overwhelming evidence that the Parties intended ACN to be paid commissions for renewals of all customers initially referred by ACN through the Online Portal, for as long as they remain with Planet and without regard to whether the renewals were completed through the Online Portal or Planet's efforts, the Arbitrator does not reach ACN's alternative argument that the relevant terms of the contract were modified by the conduct of the Parties.<sup>474</sup>

#### 4. Planet's Force Majeure Argument

399. Notwithstanding the findings above with respect to ACN's entitlement to commissions for renewals of ACN Customers, Planet says that the ECPA constitutes a force majeure event under Section 16(a) of the SAA which excuses Planet from paying commissions to ACN for any ACN Customers whose renewals became

<sup>468</sup> C104.

<sup>469</sup> C4; Paragraph 180 above.

<sup>470</sup> See Paragraphs 233-239 above.

<sup>471</sup> See Paragraphs 241, 242, 250, 254 above.

<sup>472</sup> See Paragraph 264 above.

<sup>473</sup> Tr. 2409 (ACN Closing).

<sup>474</sup> See Statement of Claim at ¶¶ 93ff.

effective on or after January 1, 2017.<sup>475</sup>

400. Section 16(a) provides that if an “act of governmental authority ... beyond the reasonable control of either party causes cessation or interruption of that party’s performance,” performance will be temporarily excused **provided that** the party seeking excuse promptly notifies the other party “after it has actual knowledge of the beginning of any excusable delay” and uses “its reasonable commercial efforts to resume performance of its obligations hereunder with the least possible delay.”
401. The first question that arises from this provision is whether the ECPA is an act of governmental authority that precludes Planet from paying ACN commissions for renewals (or re-contracts) after January 1, 2017.
402. Effective as of 1 January 2017, Section 9.3 of the ECPA provides: “No supplier shall provide remuneration to a salesperson who sells or offers to sell electricity or gas to consumers or who advertises or markets the sale of electricity or gas to consumers on behalf of the supplier if the manner of remuneration contravenes the rules provided for in the regulations.” For the purposes of Section 9.3, “the remuneration provided to a salesperson must not include any remuneration that is based on a commission or on the value or volume of sales.”<sup>476</sup>
403. The ECPA defines a “salesperson” as a person “who, for the purpose of effecting sales” of gas or electricity conducts gas or electricity marketing “on behalf of a retailer or makes one or more representations to one or more consumers on behalf of a retailer, where as an employee of the retailer or not.”<sup>477</sup>
404. Planet argues that there is no dispute that commissions under the SAA are based on the value or volume of sales and further argues that ACN falls within the definition of a salesperson based upon findings made by the OEB in respect of the 2017 OEB Proceedings and guidance from OEB staff in the form of a 2012 interpretation bulletin and an inquiry Planet made through the OEB Industrial Relations process.<sup>478</sup>
405. ACN counters that there are no court decisions or authoritative rulings concerning application of this aspect of the ECPA and that interpretation of the regulation, if need be, should be left to an Ontario court upon an application by Planet.<sup>479</sup>

<sup>475</sup> Statement of Defense and Counterclaim at ¶¶ 359ff.; Rejoinder at ¶¶ 254ff; Post-Hearing Brief at ¶¶ 67ff; R-Dem 4 (Zacher Closing).

<sup>476</sup> ECPA at § 10.1.

<sup>477</sup> R-Dem 4 at p. 7, citing definition of “salesperson.”

<sup>478</sup> R-Dem 4 at pp.7-11; R79 (“a supplier using a multilevel marketing business model is engaging in retailing or marketing and [those] persons acting on the supplier’s behalf are “salespersons”); R155 (identifying two IBOs as “salespersons” on behalf of Planet); R213 and R214 (exchange with OEB staff).

<sup>479</sup> Tr. 2412 (ACN’s Closing).

406. ACN also argues that its entitlement to commissions for renewals post January 1, 2017 does not run afoul of the ECPA because it arises based on ACN's initial acquisition of the customer, and not based on any role it has in the marketing and signing of new, subsequent contracts to customers, of which it has none. It says this interpretation is supported by Section 3(e) of the SAA, which makes clear that the entitlement to commissions arises "regardless of who sold such Energy Product to them," and which permits Planet to "upsell" additional Energy Products to customers (i.e., to sell directly to existing customers without any ACN/IBO involvement).
407. As an initial matter, the Arbitrator confirms that questions arising from Planet's force majeure defense, including the alleged unlawfulness of the SAA's commission structure for renewals made after January 1, 2017, are issues that fall within the scope of the Arbitration Agreement and that were submitted for determination in this arbitration. As such, the Arbitrator finds no basis to decline to rule on these issues in favor of another forum, as ACN urges.
408. Turning to whether the ECPA precludes Planet from paying ACN commissions for renewals made after January 1, 2017, the Arbitrator finds that it does not.
409. The Arbitrator reaches this conclusion based upon ACN's analysis of Section 3(e) and the fact that the OEB guidance relied upon by Planet does not appear to have taken into account the terms of Section 3(e) or that for all renewals entered post January 1, 2017, customer contact rests exclusively with Planet. In particular, in opining that "a salesperson may not be remunerated for any new, renewed or extended contract based on a commission or on the value or volume of sales, including the renewal/extension of contracts entered on or before January 1, 2017," the Arbitrator notes that OEB staff stated that the basis for their view was their understanding that "the MLM [ACN] would be '**conduct[ing] retailing** on behalf of the retailer" for the "purpose of **effecting sales** of energy contracts" (emphasis added).<sup>480</sup> Although the SAA does not contemplate that ACN will engage in *any* marketing activity for any new contract entered after January 1, 2017, this language implies the OEB staff's understanding that ACN would have some active involvement in re-contracts entered into after January 1, 2017. The requirement that there be some active marketing activity by ACN in order for the regulation to apply would make sense given that the ECPA is a consumer protection statute.<sup>481</sup>
410. Even if the Arbitrator's decision on this novel point of Ontario law is mistaken, Planet's force majeure defense must fail for the additional reason that it fails to meet the other criteria of Section 16(a). Though Planet argues it gave sufficient notice to ACN when it informed ACN that the ECPA had received royal assent, Planet did not notify ACN prior to this arbitration that it was intending to rely upon the ECPA and the force majeure clause to excuse performance under the SAA. Such notice is not a

<sup>480</sup> R213 and R214 (see April 27, 2020 correspondence).

<sup>481</sup> See R-Dem4 at p. 4.

trivial requirement because Section 16(a) requires a party seeking to excuse its performance to use “reasonable commercial efforts” to resume performance, which, in these circumstances, would include attempting to negotiate a compliant payment structure.<sup>482</sup>

### 5. Correction of Inaccuracies Determined by Audit

411. Section 15 of the SAA provides that any inaccuracies determined by a Section 9 audit “shall be corrected in the favor of the party to whom the inaccuracy was adverse.”
412. ACN acknowledges that it has the ultimate burden of proof as claimant in respect of its direct claims. However, it contends that based upon the language of Section 15, which it says contains no provision for a counter-audit or even a challenge to or dispute to an audit, Stout’s audit is entitled to a *prima facie* presumption of correctness as to its results.<sup>483</sup> Further, if the correctness of the audit is rebuttable, the contract language should operate to shift the burden of proof on this issue to Planet.<sup>484</sup>
413. In support of this position, ACN points to a case in which the Southern District of New York considered an audit report generated as part of a court-supervised consent judgment.<sup>485</sup> In *Audiovisual*, the court stated:

[W]hatever presumptive correctness [the] report may have does not shift the ultimate burden of proof in this matter from plaintiff to defendant. However, with respect to accounting issues, the report constitutes a *prima facie* showing that the defendant’s royalty statement was in error ... and at least shifts to defendant the burden of going forward.<sup>486</sup>

<sup>482</sup> Tr. 2412-2413 (ACN’s Closing); Statement of Defense and Counterclaim at ¶¶ 369-371. Though Planet suggests in the slightly different context of ACN’s alternative claim for unjust enrichment that any payment to ACN of amounts calculated based on the existing commission structure would violate the law (*see* Rejoinder at ¶¶ 293ff), the Arbitrator is not persuaded as an underlying principle that even if Section 3(e) were contrary to the ECPA its enforcement (or an alternative compensation structure negotiated under Section 16(a)) would violate New York public policy. *See* CL27, *Globaltex Grp. Ltd. v. Trends Sportswear Ltd.*, 2010 U.S. Dist. LEXIS 39085, at \*6-8 (E.D.N.Y. Apr. 20, 2010) (finding dismissal of breach of contract claims on grounds of illegality unwarranted where illegality was not central to or a dominant part of the performance of the contract but arose in connection with the passing of merchandise through customs, noting that the existence of criminal and civil regulatory penalties protect the underlying public policy and that defendants’ invocation of the illegality doctrine would be for “personal gain rather than a shield for the public good” and thus confer a windfall).

<sup>483</sup> ACN’s Closing Submissions at ¶ 33.

<sup>484</sup> ACN’s Closing Submissions at ¶ 33.

<sup>485</sup> *Audiovisual Prod. v. Cenco*, 964 F.Supp. 861 (S.D.N.Y. 1977), *aff’d in relevant part, vacated in part on other grounds*, 185 F.3d 92 (2d Cir. 1999).

<sup>486</sup> *Audiovisual Prod.*, *supra*

414. According to Planet, the SAA does not provide for an “unfettered” audit and nowhere is ACN’s audit entitled to a “presumption of validity.”<sup>487</sup> It says that ACN is required to prove its allegations of any underpayment and not for Planet to disprove them, but, in any event, RSM has “disproven” the Stout Report, which is based on bad methodology.<sup>488</sup>
415. The Arbitrator finds that the plain language of Section 15 conveys the Parties’ intention to be bound by the determinations of any audit under Section 9. Although Planet rightly argues that this cannot mean that it lacks any ability to challenge the audit in arbitration or, implicitly, that the Arbitrator can merely defer to the auditor’s conclusions (she does not), Planet offers no argument as to why the approach taken by the court in *Audiovisual* of applying a presumption of correctness to the audit should not also be taken here.
416. In any event, having studied the testimony of the Parties’ experts and their written reports in detail, and weighed relevant fact witness testimony by Plummer and David, the Arbitrator finds that Stout’s methodology was reasonable (if not conservative), its conclusions are reliable and accurate, and that the criticisms leveled by RSM and Plummer are unfounded.<sup>489</sup> Accordingly, and insofar as Stout’s analysis is consistent with the Arbitrator’s findings herein concerning the meaning of ACN Customer, Target Margin, Gross Margin, and entitlement to commissions for renewals, the Arbitrator has adopted Stout’s findings as summarized in Section V(O) above. In particular, the Arbitrator finds that Planet failed to provide ACN accurate and complete reports in connection with the SAA and that Planet materially underpaid commissions owed to ACN in the amounts determined by Stout as set forth in the chart at Paragraph 369 above.
417. The most serious criticism asserted by Planet is that Stout opted to rely on the Remittance Commission Files rather than the Detailed Commission Files that Plummer/Planet prepared. This criticism is misplaced not least because payments were made during the ordinary course of business based upon the Remittance Commission Files, not the Detailed Commission Files.<sup>490</sup> This makes the Remittance Commission Files the “most important source of information” in an audit of the completeness and accuracy of commission reports and calculations made in the ordinary course of business.<sup>491</sup>
418. According to Greenwald, Stout should have relied on the Detailed Commission Files because:

<sup>487</sup> Planet’s Post-Hearing Brief at ¶¶ 8, 69.

<sup>488</sup> Planet’s Post-Hearing Brief at ¶¶ 8, 69.

<sup>489</sup> See Statement of Defense and Counterclaim at ¶¶ 413ff.; Planet’s Post-Hearing Brief at ¶¶54 ff.

<sup>490</sup> Tr. 1983 (Greenwald), 1738-1739 (Petron).

<sup>491</sup> Tr. 1983 (Greenwald), 1738-1739 (Petron).

Planet Energy spent significant amounts of time preparing ... [them] in order to adhere to the procedural order. Most notably in making sure that the commission files provided, included the cost of sales information, in order to audit the target margins and the cost of sales ... And in preparing these detailed commission files, they sort of had the chance to go back and they did discover many errors in their remittance commission files that had been provided in the normal course of business and they were able to correct those errors when putting together the detailed commission files.<sup>492</sup>

419. Planet's protestations that the Detailed Commission Files should have been relied upon because of Procedural Order No. 8 mischaracterizes that order. In Procedural Order No. 8, Planet was directed to provide the "**underlying files**" supporting the **monthly "commission advice"** provided to ACN via e-mail, including, for example, with respect to electricity: "(i) detailed electricity commission calculation files; (ii) revenue and cost of sales calculation formulae; (iii) electronic commission detail reports from SPI/Planet Energy; (iv) shell electricity swaps trade confirmations; and (v) local distribution company commodity purchase records (including HOEP prices)" (emphasis added).
420. Procedural Order No. 8 contemplated that Planet would provide existing, contemporaneous documents supporting its historical calculations of commission payments, including costs data. Nowhere did it direct Planet, the company under audit, to *create* any documents or to prepare any kind of reconciliation. And it certainly did not purport to order Stout to rely on any particular sources of information or to refrain from exercising its independent judgment about the ultimate reliability of any particular sources.
421. Petron compellingly described his reservations about the reliability of the Detailed Commission Files, explaining that when he first received a Detailed Commission File, he believed that it was a historical document and only subsequently learned that it was being created contemporaneously with the audit.<sup>493</sup> Petron further explained that, wherever possible, he seeks to "audit things to independent sources" and noted that "if parties start to create documents during the time period, there's inherently, even unconsciously, a potential bias."<sup>494</sup>
422. RSM failed to approach Planet's work product with any like-minded skepticism and largely submitted reports that adopted Planet's work and representations without any (or with only limited) attempts at independent verification, entitling RSM's critiques of the Stout Report and Rebuttal Report to little weight.<sup>495</sup> Indeed, although Planet alleges that the Detailed Commission Files show that ACN was "paid

<sup>492</sup> Tr. 1890-1891 (Greenwald).

<sup>493</sup> Tr. 1783 (Petron).

<sup>494</sup> Tr. 1783 (Petron).

<sup>495</sup> See ACN's Closing Submissions at ¶¶ 35ff.

properly” (but for an alleged underpayment of CAD \$415,551) and that Stout is mistaken about its alleged underpayments,<sup>496</sup> RSM could not provide any comfort that the Detailed Commission Files were not simply reverse engineered to match up to commissions paid to ACN.<sup>497</sup> Petron explained:

I find it hard to believe that there’s \$4.3 million in underpayments not in the remittance files which are what the payments were based upon but could now suddenly appear in the detailed commission files. To me, that doesn’t make the detailed commission files accurate; it makes me very suspicious about what that information is, where it was derived and what payments were made and for whom.<sup>498</sup>

423. Such suspicion is particularly warranted here given the evidence that Planet already *surreptitiously manipulated* database information to deprive ACN of commission payments (in material breach of Section 3(e)) and Planet’s obvious self-interest in having the Arbitrator find that there were no material inaccuracies in its reports and calculations.
424. Planet’s other main criticism of the Stout Report is Stout’s reliance on the EMS Database to determine a customer’s usage period.<sup>499</sup> Although Planet contends that Stout’s analysis is fundamentally flawed because Section 6(a) allegedly requires calculation of “usage (i.e., actual consumption)” and the EMS Database does not track actual consumption, Section 6(a) refers only to “usage” and does not state any definition or refer to “actual consumption.” Nor does Section 6(a) specify what records or source are to be used to determine “usage” when calculating the Target Margin. Accordingly, it was open to Stout to calculate usage based upon the data and manner it considered to be most reliable.
425. Stout’s rationale for relying on the EMS Database to determine customer usage period was persuasive. Petron explained that the decision stemmed from it having been used to generate contemporaneous reports to ACN, there was limited access to the SPI Billing Files, and even Planet initially pointed to the EMS Database as an appropriate means to confirm the accuracy of commission calculations.<sup>500</sup>
426. Petron also acknowledged that determining flow dates based on the EMS Database rather than according to actual utility data could lead to some discrepancies but explained that it was necessary to make a reasonable estimate due to the difficulty of analyzing SPI Billing Files and that any such discrepancies could be offset at the other end (i.e., when billing may continue though flow has stopped).<sup>501</sup> Thus Stout did both an analysis of active and flowing customers and of inactive and non-flowing

<sup>496</sup> See Planet’s Post-Hearing Brief at ¶ 55.

<sup>497</sup> Tr. 2012-2013 (Greenwald).

<sup>498</sup> Tr. 1800 (Petron).

<sup>499</sup> Planet’s Post-Hearing Brief at ¶ 77.

<sup>500</sup> Tr. 1776-1778 (Petron); Stout Rebuttal Report at pp. 16-17; Strum letter dated July 31, 2019.

<sup>501</sup> Tr. 1757-1759 (Petron).



customers and set them off against each other.<sup>502</sup> Petron was persuasive that in these circumstances, it was reasonable to rely on flow dates in the EMS Database as a proxy for actual consumption dates and that doing so did not undermine the ultimate reliability of the calculation.

427. In light of the above, the Arbitrator finds that: (i) the subject matter audited was materially inaccurate; (ii) pursuant to Section 15 of the SAA, Planet shall pay ACN the amounts found to be due and owing by Stout for underpaid commissions and withheld commissions through June 2020; and (iii) Planet's request for an order requiring Stout to re-calculate underpayments based on Detailed Commission Files and SPI Billing Files, and not the EMS Database, is denied.

### **6. Expenses Related to Audit Rights**

428. Under Section 15 of the SAA, if an audit results in a determination that there was a material inaccuracy adverse to the party conducting the audit, the party exercising its audit right shall be entitled to reimbursement of its reasonable and customary expenses associated with such audit from the other party.
429. Both Parties have sought recovery of audit-related expenses on this basis, including attorneys' fees and the fees and expenses of their auditor.<sup>503</sup> In addition, ACN seeks to recover a pro rata share of the Arbitrator's fees in connection with time spent resolving disputes over the audit.<sup>504</sup> And Planet seeks to recover executive and employee compensation.<sup>505</sup>
430. In light of the Arbitrator's findings above, ACN is entitled to reimbursement under Section 15 of its reasonable and customary expenses associated with the audit.
431. Because the amounts claimed in relation to the audit for Stout's fees and expenses and ACN's legal fees are also included in ACN's claim for arbitration costs, and that claim is granted below, no amount is awarded for these costs to avoid double recovery.
432. Planet stated no objections in its submissions to ACN's request for a pro rata share of the Arbitrator's fees related to the audit as part of its request under Section 15, and the request is granted.
433. Based upon a review of contemporaneous time records associated with the procedural orders relating to the audit as summarized in Section II(B) above, the Arbitrator estimates US\$21,100 in fees related to the conduct of the audit and the decision on interim measures. As the Arbitrator's fees are otherwise to be split

<sup>502</sup> Tr. 1760 (Petron); C3, Summary of Findings 11.

<sup>503</sup> Planet's Post-Hearing Brief at ¶ 96; ACN's Closing Submissions at ¶ 57ff.

<sup>504</sup> Statement of Claim at ¶ 100; ACN's Closing Submissions at ¶ 59.

<sup>505</sup> Rejoinder at ¶ 375.

equally pursuant to Section 19(f)(iii) of the SAA, ACN is entitled to recover half of this amount from Planet, or **US \$10,550.00.**

## 7. Future Commissions

434. For future commissions due under the SAA, ACN seeks an order for either continued payment of commissions or the net present value of the future commissions. ACN contends that the net present value is the standard approach that is taken by damages experts of having one lump payment on judgment as opposed to continuing to have the parties involved in a relationship ad infinitum (i.e., as opposed to an order of specific performance).<sup>506</sup>
435. Planet contends that Stout's NPV calculation should be disregarded because commissions should be calculated based on monthly customer consumption during the term of the customer contract.<sup>507</sup> Planet did not acknowledge or respond to ACN's argument that its calculation is in lieu of an order of specific performance, and that the former is preferable to an ongoing relationship.
436. Planet also argues that Stout's NPV calculation should be disregarded in light of its arguments about: (i) ACN's entitlement to commissions for renewals for the life of the customer; (ii) force majeure and the ECPA; and (iii) misplaced reliance on the EMS Database and Remittance Commission Files in calculating unpaid commissions.<sup>508</sup>
437. Given the Arbitrator's prior findings on the latter three issues, the Arbitrator determines that whereas ACN is entitled to ongoing commissions under the SAA for the life of the ACN Customers and a lump sum payment is preferable to an order for specific performance, ACN's claim for the net present value of future commissions is granted. The Arbitrator considers that an NPV payment is to be preferred over an ongoing relationship in this situation given, in particular, the database manipulation that has taken place contrary to Section 3(e) of the SAA and the likelihood of future disputes between these Parties.
438. When calculating NPV for the evidentiary hearing, Stout did not have necessary data from Planet to calculate future commissions for "non-ACN Customers with an ACN connection" as identified in the Stout audit, because those customers were not within the ACN Customer Database and Customer Collections population for which Stout had commission data.<sup>509</sup> Following the hearing, Stout was provided with the missing data and submitted a revised NPV calculation and summary of damages pursuant to Procedural Order No. 27, upon which Planet had opportunity to comment.

<sup>506</sup> Tr. 24 (ACN's Opening), 2483-2484 (ACN's Closing); C128; ACN's PO27 Submission.

<sup>507</sup> Rejoinder at ¶ 382.

<sup>508</sup> Rejoinder at ¶¶ 381-382.

<sup>509</sup> Tr. 2380-2383 (Petron).

439. In consideration of the Parties' submissions, the Arbitrator finds that for future commissions owed under the SAA, as determined by Stout, Planet shall make one lump-sum payment to ACN in the amount of **CAD \$7,080,653**, inclusive of 13% HST.<sup>510</sup> As detailed below, such award includes the amount of CAD \$2,290,515 for commissions payable on renewals made after January 1, 2017.

**All Communications Network of Canada, Co. v. Planet Energy, et al.**  
**Estimated Total Future Commissions**  
**Summary**

Summary of Present Value of Estimated Future Commissions				
Stout Calculation	Before 1/1/2017	On or After 1/1/2017	Total	Source
<i>Original PV Calculation</i>	\$ 1,447,440	\$ 2,877,192	\$ 4,324,631	Exhibit 3 + 5
<i>Non-ACN Customers with ACN Connections</i>	465,506	2,290,515	2,756,021	Exhibit 8B, 8C + 10
<b>Total</b>	<b>\$ 1,912,946</b>	<b>\$ 5,167,707</b>	<b>\$ 7,080,653</b>	

### B. Planet's Counterclaim for Excess Gross Margin Payments

440. Because Planet contends that the Gross Margin payments to ACN over the term of the SAA exceeded that to which ACN is contractually entitled, it seeks repayment of the alleged amount in excess in the amount of CAD \$36,473,000.00 (including HST). In light of the Arbitrator's findings above regarding ACN's contractual entitlement to Gross Margin payments, Planet's counterclaim is denied in its entirety.

### C. Planet's Counterclaim for Billed Revenue Report Payments

441. For the reasons given in Paragraph 177 above, Planet failed to prove that it is owed any amounts by ACN for Billed Revenue Reports.

### D. Other Defenses and Counterclaims

442. According to Planet, it has no obligation to pay ACN any commissions because: (i) ACN materially breached the SAA and/or its fiduciary duty, relieving Planet of any obligation to pay (or, in the alternative, relieving Planet of any obligation to pay any amount over one half the Target Margin after the material breach); and/or (ii) it was entitled to "set off" its obligations against indemnity counterclaims.

<sup>510</sup> C-Dem4 at p. 28.

### 1. ACN's Document Production and Planet's Request for Adverse Inferences

443. According to Planet, ACN failed to produce material evidence in violation of the Arbitrator's document production orders and ACN's own agreements to produce documents.<sup>511</sup> It also says that Xoom's production in response to the 1782 Application resulted in "scores" of documents that ACN should have produced, but withheld, and it seeks various adverse inferences against ACN.<sup>512</sup> Planet further alleges that the Xoom Documents show:
- ACN's intertwined relationship with Xoom created a conflict of interest with ACN's obligations under the SAA;
  - ACN freely shared Planet's confidential information with Xoom for their mutual benefit;
  - ACN abdicated its responsibilities to Planet in favor of the Xoom Canada launch; and
  - ACN deliberately omitted a transition plan required for an orderly wind-down.<sup>513</sup>
444. According to Planet, this post-hearing non-party production prevented it from "presenting its case on these documents in its principal pleadings and at the hearing."<sup>514</sup>
445. ACN denies all of these allegations.<sup>515</sup> It says that throughout this proceeding, Planet made repeated, unfounded allegations about ACN's document production, insisting that the lack of documentary evidence supporting its "speculative theory of the case" could only have resulted from ACN withholding documents, and taking the "extraordinary" step of making a Section 1782 Application.<sup>516</sup>
446. Despite this "overreaching," ACN says that the balance of the Xoom Documents put forth as new exhibits by Planet (ultimately, 100 that Planet contends ACN should have produced)<sup>517</sup> were non-responsive and irrelevant to the matters at issue in the arbitration. Further, while it admits to a "small number" that were responsive to one of the Stern Schedule requests and should have been produced, far from substantiating Planet's theory of the case, ACN argues the Xoom Documents:
- confirmed evidence in the arbitration to the effect that Xoom began considering expansion into Canada in 2015 but did not ramp up its work in that regard until early 2016, starting with Alberta;

<sup>511</sup> Adverse Inferences Chart; Planet's Post-Hearing Brief at ¶¶ 1, 4-7.

<sup>512</sup> Adverse Inferences Chart; Planet's Post-Hearing Brief at ¶¶ 1, 4-7.

<sup>513</sup> Planet's Post-Hearing Brief at ¶ 6.

<sup>514</sup> Planet's Post-Hearing Brief at ¶ 6.

<sup>515</sup> ACN's Closing Submissions at ¶¶ 68 ff.

<sup>516</sup> ACN's Closing Submissions at ¶¶ 68, 71.

<sup>517</sup> Planet's Post-Hearing Brief at ¶ 5.

- confirmed that ACN’s document production was largely complete (acknowledging that the production, like any large document production, was imperfect); and
  - did not support any of Planet’s theories about scheming and coordination between Xoom and ACN aimed at promoting Xoom in Ontario at Planet’s expense.<sup>518</sup>
447. Having reviewed the complete collection of Xoom Documents prior to oral closing arguments and then again post-hearing against Planet’s Xoom Spreadsheet and ACN’s Xoom Spreadsheet, Planet’s Adverse Inferences Chart, the 1782 Subpoena/Stern Schedule Comparison, as well as the Parties’ submissions concerning the evidence adduced at the hearing, the Arbitrator finds that Planet’s claims that ACN failed to produce material evidence or that any adverse inferences are warranted must be rejected.
448. The Arbitrator has summarized the factual evidence in this case in great detail above, which plainly shows that Planet’s theory of the case as it pertains to Xoom and ACN is without merit and that Planet’s protestations about being unable to present its case due to alleged misconduct by ACN with respect to its document production are inflammatory and untrue. Out of the 100 Xoom Documents that Planet says ACN should have produced, the Arbitrator identified three that are highly relevant, though they are all part of the same e-mail chain and concern the same subject (R350-R352). ACN concedes that these particular documents were responsive and should have been produced.<sup>519</sup> But they do not change the Arbitrator’s view of the case or reasonably give rise to an inference that they were purposefully withheld from production. Quite simply, the Xoom Documents contain no “game changers” or “smoking guns.” Nor do they put any different light on the evidence that was presented at the hearing or suggest that ACN has been concealing documents or that it conspired with Xoom to Planet’s detriment or shared Planet’s confidential information.

## **2. ACN’s Alleged Breaches as Master Sales Agent**

449. According to Planet, ACN violated all of its fundamental obligations under the SAA, causing substantial and material injury and damage to Planet:
- ACN failed to use “commercially reasonable efforts” to promote, market and sell Planet Energy through ACN IBOs, pursuant to Sections 2(a) and 4(e) of the SAA;
  - ACN failed to “invite Planet Energy to IBO events” pursuant to Section 4(c);
  - ACN failed to ensure IBO compliance with applicable laws and regulations pursuant to Sections 2(b) and 4(k);
  - ACN failed to cooperate with Planet on pricing issues pursuant to Section

<sup>518</sup> ACN’s Closing Submissions at ¶¶ 72, 74, 75, 76.

<sup>519</sup> ACN’s Xoom Spreadsheet, R350-R352.

4(h);

- ACN failed to uphold the SAA’s confidentiality provision in Section 11;
- ACN failed to abide by the exclusivity clause in Section 8(a) when it marketed its “affiliate” (and a Planet competitor) among IBOs in the Territory;
- ACN failed to engage in an orderly wind-down under Section 3(d);
- ACN failed to fulfil the duty of good faith and fair dealing, including by failing to recruit and retain sufficient IBOs to sell Planet’s products;
- ACN failed to indemnify Planet for “all damages” related to “allegations” of IBO misconduct under Section 12(a);
- ACN failed to fulfil its fiduciary duty as master agent under the SAA explanatory statement and Section 2(a), which included the obligation of utmost loyalty to Planet; and
- ACN breached its obligations not to take actions harmful to Planet under Section 2(g).<sup>520</sup>

450. Planet says that these serial, continuous and cumulative breaches ran from at least 2014 to 2016, culminating in ACN’s material breach of the SAA no later than July 21, 2016 when Planet informed ACN that ACN was in material breach.<sup>521</sup>

451. A material breach is one that “goes to the root of the agreement” and is “so substantial that it defeats the object of the parties in making the contract.”<sup>522</sup>

452. Putting aside Planet’s indemnity claims, which are addressed separately below, the evidence does not support a finding that: (i) ACN materially failed to perform under the SAA; (ii) Planet suffered damages as a result of any alleged breach of contract or fiduciary duty by ACN; or (iii) ACN committed unfair trade practices by misappropriating Planet’s trade secrets and confidential information.<sup>523</sup> As detailed in Section V above:

- The SAA contains no guarantees regarding sales of Energy Products or minimum IBO recruitment or retention numbers.

<sup>520</sup> Planet’s Post-Hearing Brief at ¶ 2.

<sup>521</sup> R15; Planet’s Post-Hearing Brief at ¶ 3.

<sup>522</sup> Statement of Defense and Counterclaim at ¶ 278; ACN’s Closing Submissions at ¶ 101; *Felix Frank Assocs., Ltd. v. Austin Drugs, Inc.*, 111 F.3d 284, 289 (2d Cir. 1997).

<sup>523</sup> There can be no breach of fiduciary duty in any event because the Parties agreed that they were entering the SAA as “independent contractors” under Section 13 and disclaimed the creation of higher relationships, including, for example, joint ventures and partnerships. See *Northeast General Corp. v. Wellington Advertising, Inc.*, 82 N.Y.2d 158 (1993) (if parties “do not create their own relationship of higher trust, courts should not ordinarily transport them to the higher realm of relationship and fashion the stricter duty for them.”), cited in ACN’s Closing Submissions at ¶ 97. See also Statement of Defense and Counterclaims at ¶¶ 264-273; Rejoinder at ¶¶ 128-137, 317-319; Planet’s Post-Hearing Brief at ¶ 50ff.

- Planet’s access to ACN’s IBO training events under Section 4(c) requires mutual agreement. In any event, Planet was invited to attend national and international IBO conventions throughout the agency period.<sup>524</sup> Weekly training events run by IBOs in Toronto were not mandatory or attended by any of ACN’s other sales partners (including Xoom once it launched in Ontario) and Planet knew it could not rely upon them for training and compliance.<sup>525</sup>
- Because the IBO network is a warm sales channel, it is important that they remain motivated and enthusiastic about the products and services they are selling.<sup>526</sup> As time went on and there were frequent billing and customer service issues, Planet’s attendance at weekly IBO events generated negative energy.<sup>527</sup>
- ACN did not make any changes to its marketing or sales strategies for IBOs during the agency period or in anticipation of Xoom’s launch in Ontario (such as a change to IBO compensation structure).<sup>528</sup> Nor is there evidence that any marketing outside the Territory of Xoom’s “entry into Canada” changed or influenced how IBOs made sales of Planet products and services.
- During the wind-down phase and when working internally on Xoom expansion, ACN leadership emphasized internally that ACN would continue to provide the same level of services to Planet until the end of the agency period.<sup>529</sup>
- As late as June 2016, senior ACN personnel including Palma and R. Stevanovski lacked any certainty about the timing of an Ontario launch for Xoom.<sup>530</sup>
- During the agency period, ACN made minimal preparations for an Ontario launch of Xoom, reserving marketing activities until after the termination of the SAA, and closer to the launch in spring 2017.<sup>531</sup> Even in October 2016, when ACN reminded its IBOs of the pending expiration of the SAA in an AiA, ACN advised that it was “working hard to provide new energy sales opportunities in Ontario, British Columbia, and throughout Canada,” without making any reference to Xoom.<sup>532</sup>

<sup>524</sup> See Paragraph 218 above.

<sup>525</sup> See Paragraphs 216 and 218 above.

<sup>526</sup> See Paragraphs 182 and 232 above.

<sup>527</sup> See Paragraphs 219, 223-225, and 230-232 above.

<sup>528</sup> See Paragraph 195 above.

<sup>529</sup> See Paragraphs 298, 301, and 305 above.

<sup>530</sup> See Paragraph 270 above.

<sup>531</sup> See Paragraphs 304-307 and 309 above.

<sup>532</sup> C112.

- There is no evidence of any “sales banking” or “holdbacks” by Xoom.<sup>533</sup> Contrary to Planet’s allegations, Sobel was not a senior IBO and Canada Fruit had long been trying to get out of its relationship with Planet.<sup>534</sup> Moreover, given the compensation structure for IBOs, a “holdback” sales strategy would make no sense.<sup>535</sup>
- Any decline in sales during the agency period can be attributed to a variety of market forces, including rising IBO distrust and frustration with Planet due to billing and service issues, lack of competitive pricing compared to the utility and/or consumer misunderstanding of the Global Adjustment charge. At the time, all ACN products and services were experiencing a decline.<sup>536</sup>
- As an experienced energy retailer in more than 100 markets, Xoom did not need any confidential information from Planet to launch in Ontario or gain competitive advantage.<sup>537</sup> To the extent that ACN shared Planet’s information with Xoom, the evidence was that it was occasional, trivial, and not commercially sensitive or harmful to Planet.<sup>538</sup> Contrary to Planet’s assertions, there is no evidence that the PwC audit report or customer lists were ever shared.
- The Parties were mutually obligated under Section 3(d) of the SAA to coordinate an orderly wind down. When Silvestri failed to receive a detailed transition plan, he never followed-up,<sup>539</sup> as would be expected if such a plan were important to Planet.
- The SAA does not allocate responsibility for customer renewals. As between the Parties, Planet had ongoing customer relationships whereas ACN generally did not, making Planet best positioned to drive renewals.<sup>540</sup> Nonetheless, in August 2014, the Parties worked to devise a joint plan and ACN was proactive in driving renewals.<sup>541</sup> After Planet refused to keep sending renewal reports that ACN had been using to send targeted emails to active IBOs, Palma instructed Wise to cease promoting renewals; however, ACN did nothing to discourage them and there is no factual basis to conclude that ACN ceasing efforts to actively drive Ontario renewals in the final months of the SAA had a material impact on Planet’s sales.<sup>542</sup>

<sup>533</sup> See Paragraphs 311-312 above.

<sup>534</sup> See Paragraphs 313-321 above.

<sup>535</sup> See Paragraphs 311 and 318 above.

<sup>536</sup> See Paragraphs 193-196, 205-213, and 282 above.

<sup>537</sup> See Paragraph 302 above.

<sup>538</sup> See ACN’s Closing Submissions at ¶¶ 77-79.

<sup>539</sup> See Paragraph 277 above.

<sup>540</sup> See Paragraph 230 above.

<sup>541</sup> See Paragraphs 233-237 above.

<sup>542</sup> See Paragraphs 251, 256, and 312 above.



- Xoom had substantial experience establishing itself in new energy markets when it entered Canada and there is no evidence that either its sales partner ACN or ACN's leadership (in particular, R. Stevanovski) controlled or directed Xoom's entry into Ontario.<sup>543</sup> Multiple e-mails show that key ACN personnel were in the dark about Xoom's timing for entering Ontario.<sup>544</sup>

### 3. Indemnity Claims

453. Planet seeks indemnity under Section 12 of the SAA for various costs that it says arose from allegations of IBO misconduct, including for:
- a. lost profits on disputed enrollments due to customer complaints and cancellations by (i) large commercial customers and (ii) other customers;
  - b. refunds on contracts declared void by the OEB;
  - c. customer settlements and reimbursements;
  - d. OEB enforcement hearing damages;
  - e. OEB costs;
  - f. legal and professional fees related to OEB matters; and
  - g. an allocation of administrative and management salaries.<sup>545</sup>
454. Planet summarized its indemnity claims in the Indemnity Tracker described in Section V(N) above and submitted the RSM Damages Report in support of the amounts being claimed. Upon consideration of the Stout Rebuttal, Planet revised its indemnity claims as set forth in the RSM Damages Response and as reflected in R-Dem 3 about which Zimmerman of RSM testified at the hearing. Although Planet initially claimed CAD \$9,820,309 for its indemnity claims, as of the hearing, it reduced those claims to CAD \$6,512,846. The following is a summary of the final amounts claimed:

<sup>543</sup> See Paragraphs 291 and 297-302 above.

<sup>544</sup> C95; R350; R351.

<sup>545</sup> R-Dem 3, Overview of Indemnity Claim (Schedule 2), as revised, Slide 7. See Statement of Defense and Counterclaims at ¶¶ 285ff.

## Overview of Indemnity Claim (Schedule 2)

	As Claimed Planet Energy's Master Tracker	Initial Report (March 28)	Responding Report (May 11)	Revised Calculations	
				Total Losses	Portion After June 11/2012
<b>Loss of Profit on Disputed Enrollments:</b>					
Large Commercial Customers	\$ 919,795	\$ 814,687	\$ 814,687	\$ 785,835	\$ 785,835
Other Customers	1,356,465	1,225,411	1,241,940	1,240,050	777,798
	<u>2,276,260</u>	<u>2,040,098</u>	<u>2,056,627</u>	<u>2,025,885</u>	<u>1,563,633</u>
<b>Additional Costs:</b>					
Refunds on Contracts Declared Void by OEB	39,553	39,553	39,553	39,553	39,553
Customer Settlements and Reimbursements	45,636	45,179	45,179	32,679	32,679
OEB Enforcement Hearing	213,940	211,878	211,878	211,878	211,878
Legal & Professional Fees	1,278,732	1,248,633	1,248,633	1,229,367	1,229,367
OEB Costs	2,357,991	1,228,742	1,228,742	1,228,742	1,228,742
Administrative Salaries	<i>(incl. below)</i>	297,848	297,848	297,848	297,848
	<u>3,935,852</u>	<u>3,071,832</u>	<u>3,071,832</u>	<u>3,040,066</u>	<u>3,040,066</u>
<b>Management Salary Allocation</b>	<u>1,840,000</u>	<u>2,046,230</u>	<u>1,909,147</u>	<u>1,909,147</u>	<u>1,909,147</u>
<b>Total - Excluding Contingency Costs</b>	<b><u>8,052,112</u></b>	<b><u>\$ 7,158,160</u></b>	<b><u>\$ 7,037,606</u></b>	<b><u>\$ 6,975,098</u></b>	<b><u>\$ 6,512,846</u></b>
Contingency Costs	<u>1,768,197</u>				
<b>Total - Including Contingency Costs</b>	<b><u>\$ 9,820,309</u></b>				

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455. Under New York law, an obligation to indemnify must be “clearly implied from the language and purpose of the entire agreement and the surrounding facts and circumstances” and a contractual indemnification provision will be strictly enforced so as “to avoid reading into it a duty which the parties did not intend to be assumed.”<sup>546</sup> Courts will not interpret an indemnity agreement “to include damages which are neither expressly within its terms nor of such character that it is reasonable to infer that they were intended to be covered under the contract.”<sup>547</sup>
456. Planet argues that the indemnity clause here provides broad coverage for IBO-related complaints.<sup>548</sup> It emphasizes that ACN agreed in Section 12(a)(i) of the SAA to indemnify Planet “against **all damages ... as a result of any allegation**, claim, civil or criminal action, **proceeding**, charge or prosecution which may be alleged, made, instituted, or maintained . . . **arising out of, resulting from or based upon ...** (ii) any claim asserted or threatened to be asserted by **any third party** in connection with **ACN, its affiliates or the IBOs** selling the Energy Products ...”

<sup>546</sup> *Tonking v. Port Auth. of N.Y. & N.J.*, 3 N.Y.3d 486, 490 (2004) (quoting *Hooper Assocs. v. AGS Computers, Ltd.*, 74 N.Y.2d 487, 491 (1989)), CL21. See Reply at ¶¶ 259ff.

<sup>547</sup> *McKay v. Weeden*, 148 A.D.3d 1718, 1722 (N.Y. App. Div. 1<sup>st</sup> Dept 2017).

<sup>548</sup> Statement of Defense and Counterclaims at ¶ 286.

457. ACN, by contrast, says that the indemnification clause “only” refers to indemnification for “all damages,” and does not expressly include other types of liabilities, costs, or expenses of the indemnitee. It argues this provision must also be read in conjunction with Section 14, which expressly provides that “[e]xcept as otherwise provided for herein, each party will pay its own expenses in connection with this Agreement and the completion of the transactions contemplated hereby.” According to ACN, this language limits Planet’s entitlement to legal fees and general and administrative expenses.<sup>549</sup>
458. ACN also asserted that Planet’s indemnity claims failed to take account of New York’s six-year limitation period under New York law, which ACN says has the effect of barring any claims arising six years before Planet’s Response and Counterclaim claiming indemnification for the first time (i.e., before June 12, 2012).<sup>550</sup> Planet represents that it has now excluded from its claim any amounts arising before that time.<sup>551</sup>

**a. Disputed Enrollments**

459. Planet’s claims for disputed enrollments suffer from a number of deficiencies.
460. At the outset, there is the matter of the evidentiary foundation for the disputed enrollments identified in the Indemnity Tracker. According to Planet, it has documented tens of thousands of customer allegations of IBO misconduct and ensured that each contract being claimed for meets necessary criteria for indemnification, such as involvement of a third party.<sup>552</sup> According to ACN, in the case of most individual complaints, Planet failed to produce any documents that establish the basis of the complaint, its resolution, the basis for the calculation of the ETC fee, whether the ETC was waived, and, irrespective of the claimed ETC, any actual losses suffered by Planet as a result of the contract cancellation.<sup>553</sup>
461. The issue here is that Planet essentially asks for the benefit of the doubt that its claim was properly prepared. But the Indemnity Tracker is not something that was prepared contemporaneously and in the ordinary course of business, but solely for the purposes of this arbitration in an effort to substantiate a multi-million dollar claim that Planet suddenly asserted as justification for stopping commission payments otherwise due and owing. While the Arbitrator does not expect Planet to have sought to prove a claim of this size on a line-by-line (or contract-by-contract basis), it bears the burden of proof, and on this basis must surely make some showing that the approach it took to its claim preparation was reasonable.

<sup>549</sup> Reply at ¶ 287.

<sup>550</sup> Reply at ¶ 268.

<sup>551</sup> R-Dem3 at Slide 7.

<sup>552</sup> Planet’s Post-Hearing Brief at ¶ 295.

<sup>553</sup> Statement of Claim at ¶ 192.

462. In this regard, Planet has failed to persuade.
- a. Although Planet contends that the Indemnity Tracker references abundant documentation, ACN says (and Planet did not dispute) that it was not provided with underlying documentation for most of the disputed enrollments, which meant that ACN and its expert were unable to fully test the veracity of the claim preparation.
  - b. Although Small testified in support of the steps taken by Planet to prepare the Indemnity Tracker, he did not have primary responsibility for its preparation.
  - c. Although RSM submitted a report supporting Planet's indemnification claim, it stated that it relied on the Indemnity Tracker "without independent audit or verification"<sup>554</sup> and reviewed only a sampling. Even then, this did not entail consideration of whether Planet actually failed to collect ETCs, which could have been verified through Planet's collection agency, since one of RSM's stated assumptions was that ETCs were never collected.<sup>555</sup>
  - d. The evidence established that Planet assumed any complaints about enrollment necessarily related to an IBO but that there are various circumstances in which Planet would have occasion to deal with customer enrollment, including, for example, in the case of upselling.<sup>556</sup>
  - e. The evidence established that complaints of IBO misconduct were greatly exaggerated by Planet and often pretextual.<sup>557</sup> While the SAA does not require that an "allegation" of IBO misconduct be valid, where a clearly pretextual allegation of IBO misconduct was made, it cannot be said that any losses from contract cancellation reasonably arise from an allegation of IBO misconduct, triggering a right to indemnity.<sup>558</sup>
463. In addition to these foundational issues, there are general concerns about the reasonableness and reliability of Planet's damages analysis insofar as: (i) RSM failed to consider that ETCs were a proxy for the cost of the commodity supply and not a loss of profit; and (ii) RSM failed to evaluate whether the early terminations resulted in either a gain or loss to Planet and whether the ETC would have covered the supply cost for a customer.<sup>559</sup>
464. For all of these reasons, Planet's indemnity claim for disputed enrollments is denied.

<sup>554</sup> RSM Damages Report at ¶17(m).

<sup>555</sup> See Section V(N) above; RSM Damages Report at ¶ 22.

<sup>556</sup> See Section V(N) above.

<sup>557</sup> See Section V(N) above.

<sup>558</sup> ACN's Closing Submissions at ¶ 82.

<sup>559</sup> Stout Damages Rebuttal at p. 7.

### b. Refunds on Contracts Declared Void

465. Planet's claim for refunds is directly tied to electricity contracts declared void by the OEB as a result of the 2017 OEB Proceeding and RSM verified the amounts paid total **CAD \$39,553.00**.<sup>560</sup> ACN concedes that this is recoverable under Section 12.<sup>561</sup>

### c. Settlements and Reimbursements

466. RSM verified the amount claimed for settlements and reimbursements in the amount of **CAD \$45,636.00** and ACN concedes that this is recoverable under Section 12.<sup>562</sup>

### d. OEB Enforcement Hearing

467. It is undisputed that ACN's responsibility under the indemnity clause for any damages arising from the 2017 OEB Proceedings should be allocated based upon an assessment of relative liability for IBO misconduct and deficient training materials.
468. Planet was required to pay costs to the OEB for the 2017 OEB Proceeding as well as the administrative penalty set out in Paragraph 346 above. Planet does not seek to recover the CAD \$5000 portion of the penalty, but ACN's share for the remaining penalty of CAD \$150,000. RSM has verified the amounts claimed were incurred.
469. In consideration of the Parties' submissions concerning the 2017 OEB Proceeding (see Section V(N) above), the Arbitrator considers that based on the shared responsibility for training under the SAA (where Planet bears responsibility for preparing the materials and ACN for implanting the training) and the OEB decision and appeal, a 50/50 allocation between the Parties is appropriate. Accordingly, Planet is entitled to recover half of the total amount claimed for the OEB Enforcement Hearing (50% of CAD \$211,878 = **CAD \$105,939**).

### e. Legal & Professional Fees

470. The Parties dispute whether the indemnity clause should be construed as a matter of New York law to permit the recovery of attorneys' fees that were paid to Stikeman Elliott LLP in connection with the 2017 OEB Proceedings and other OEB regulatory matters, given there is no express language referring to "attorneys' fees" or "counsel fees."

<sup>560</sup> RSM Damages Report at p. 13.

<sup>561</sup> ACN's Closing Submissions at ¶ 83.

<sup>562</sup> ACN's Closing Submissions at ¶ 83; RSM Damages Report at p. 14.

471. As a matter of New York law, the Arbitrator finds that reference to “all damages” in Section 12 is insufficient to find that the Parties intended ACN to indemnify Planet for attorneys’ fees.<sup>563</sup>

#### f. OEB Costs; Salaries

472. Planet claims costs that the OEB assigns to electricity retailers based on their average number of customers and their average number of complaints over the past three years.<sup>564</sup>
473. Small’s testimony established that dealing with customer complaints and compliance is part of the cost of doing business as an energy retailer in a highly regulated industry. Under Section 14 of the SAA, such costs are not recoverable.
474. Planet’s claims for costs for administrative salaries and an allocation of management salaries are also not recoverable for this reason.<sup>565</sup>
475. Further, insofar as Planet argued that IBO misconduct and exclusion of Planet from IBO trainings led to a spike in OEB complaints, such allegations are circumstantial at best and do not provide a sound basis for treating these costs as an exception to the ordinary course.<sup>566</sup>

#### g. Summary of Indemnity Coverage

476. In sum, Planet is entitled to be indemnified under Section 12 in the amount of **CAD \$191,128**, which is the total of amounts awarded for: refunds on contracts declared void (CAD \$39,553); settlements and reimbursements (CAD \$45,636); and for the OEB enforcement hearing (CAD \$105,939).

#### E. Interest and Exchange Rate

477. The Parties agree that prejudgment interest should be awarded from the date of loss based on New York’s statutory rate of 9% simple interest per annum.<sup>567</sup> In the case of damages calculated and determined herein for Planet’s counterclaims, Planet submits that interest should run from the time of the Final Award.<sup>568</sup>

<sup>563</sup> *One Flint Street, LLC v. Exxon Mobil Corp.*, 169 A.D.3d 1392 (N.Y. App. Div. 4<sup>th</sup> Dep’t 2019), CL26, cited in ACN’s oral closing submissions (*see* Tr. at 2472) and in its Reply at n.178 (“all claims” language in indemnity clause was insufficient to state an intention to cover attorneys’ fees). *See also* Rejoinder at ¶¶ 351-361 (not mentioning *One Flint*); *Hooper Assocs. v. AGS Computers, Ltd.*, 74 N.Y.2d 487, 491 (1989), CL21 (intent to provide coverage for attorneys’ fees must be “unmistakably clear from the language of the promise.”).

<sup>564</sup> RSM Damages Report at p. 15.

<sup>565</sup> *See* RSM Damages Report at ¶¶ 97-103.

<sup>566</sup> ACN’s Closing Submissions at n. 94.

<sup>567</sup> ACN’s Closing Submissions at ¶105; Statement of Defense and Counterclaims at ¶¶ 377, 426.

<sup>568</sup> Planet’s Statement of Defense and Counterclaims at ¶ 426 (seeking interest on damages “as finally calculated at the time of the Final Award”).

478. However, ACN argues that to the extent that the Arbitrator determines that Planet is entitled to any damages in respect of its counterclaims, no interest should be applicable to such damages given that Planet impermissibly “set off” those amounts and has always retained the funds in its possession.<sup>569</sup> Planet did not dispute this point in oral closings or its Post-Hearing Brief.
479. Accordingly, the Arbitrator has awarded ACN interest as calculated by Stout (and upon which Planet/RSM had the opportunity to comment and stated no objections) and awards no interest to Planet.
480. To the extent that the USD-CAD exchange rate is relevant, ACN proposed that CAD \$1.35 to US \$1.00 would be an appropriate rate.<sup>570</sup>

#### F. Costs of the Arbitration

481. Pursuant to Section 19(f)(iii) of the SAA, ACN’s claims have been upheld in all material respects and ACN is the prevailing party in the arbitration. Accordingly, as agreed by the Parties in Section 19(f)(iii), the Arbitrator may apportion ACN’s “fees, costs and expenses of the arbitration and its own legal expenses, attorneys’ fees and costs of all experts and witnesses.” However, the provision also provides “[t]he fees and expenses of the arbitration procedures, including the fees of the arbitrator, will be shared equally by the parties.”
482. On this basis, ACN seeks reimbursement of its legal fees, third party document management costs, and expert fees of Stout, in the total amount of CAD \$2,080,351, including taxes.<sup>571</sup> ACN does not ask for an apportionment of the ICDR’s administrative costs or the Arbitrator’s fees and compensation pursuant to Section 19(f)(iii).<sup>572</sup>
483. A breakdown of fees, expenses, and taxes incurred on a monthly basis for each category of costs claimed by ACN was submitted in Appendix B to ACN’s Closing Submissions. Counsel agreed that it would not be necessary to submit detailed invoices.<sup>573</sup>
484. Following Procedural Order No. 27, ACN updated the amount being claimed to account for Stout’s additional work which is included in the above-stated claim for reimbursement and was converted by ACN from United States to Canadian dollars at

<sup>569</sup> ACN’s Closing Submissions at ¶105. Although the Parties disputed the legality of Planet’s set-off at the time, the Arbitrator understands that such issues are now moot and no further analysis or rulings on set-off is required. Tr. 2403 (ACN’s closing).

<sup>570</sup> ACN’s Closing Submissions at ¶108.

<sup>571</sup> The Arbitrator assumes that amounts listed under “taxes” for invoices listed on ACN’s Appendix B are for HST, but this was not expressly clarified.

<sup>572</sup> ACN’s Closing Submissions at ¶108.

<sup>573</sup> ACN’s Closing Submissions at n. 143.

the exchange rate set forth in Section VI(E) above.<sup>574</sup>

485. Planet also makes a claim for costs and attorneys' fees, asserting that aside from the relative success of the parties, the Arbitrator should consider the reasonableness of the costs claimed by the successful party, the procedural behavior of the parties, whether the parties conducted the arbitration in an expeditious and cost-effective manner; and whether the successful party declined a reasonable settlement offer.<sup>575</sup> Planet makes no mention of Section 19(f)(iii) but points to the Arbitrator's authority to apportion costs under the ICDR Rules (see Article 34).<sup>576</sup>
486. Here, Planet says that the Arbitrator should award Planet all of its legal fees and expenses because of ACN's alleged misconduct in relation to document production and the Section 1782 Proceeding, or, at a minimum US \$150,000. It also seeks the costs of preparing for a hearing which allegedly could have been avoided if ACN engaged in serious settlement discussions, RSM's non-audit related fees and expenses (in addition to claiming under Section 15 for audit-related costs), and ICDR administrative costs and Arbitrator fees and compensation, in a total amount of approximately US \$1 million.<sup>577</sup>
487. In consideration of these positions, Section 19(f)(iii) of the SAA, and the ICDR Rules, the Arbitrator determines that as the non-prevailing party, Planet shall reimburse ACN for ACN's own costs and expenses of the arbitration, including its reasonable attorneys' fees and costs, third party document management costs, and the expert fees of Stout, in the total amount of **CAD \$2,080,351.00**. The Arbitrator is satisfied that this amount is reasonable given the nature, complexity, and duration of this case, and in consideration of the relative amounts being claimed by Respondents. The Arbitrator notes, in particular, that Stout's scope of work was more extensive than RSM's.
488. The administrative fees and expenses of the ICDR and the Arbitrator's compensation shall be split equally by the Parties. (The Arbitrator had no expenses.)

## VII. Award

489. For the reasons stated above, the undersigned Arbitrator hereby AWARDS as follows:
- a. Respondents Planet Energy Corp., Planet Energy (Ontario) Corp., and Planet Energy (B.C.) Corp., materially breached the Amended, Restated and Assigned Sales Agency Agreement Canada entered into by and among Planet Energy Corp., Planet Energy (Ontario) Corp., and Planet Energy (B.C.) Corp.,

<sup>574</sup> ACN's PO27 Submission, Summary of Damages Claimed.

<sup>575</sup> Planet's Post-Hearing Brief at ¶ 92.

<sup>576</sup> Planet's Post-Hearing Brief at ¶ 90.

<sup>577</sup> Planet's Post-Hearing Brief at ¶¶ 94-98.



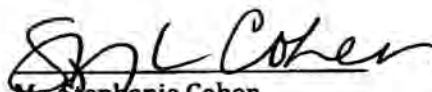
and All Communications Network of Canada, Co., dated as of November 9, 2012 (the “SAA”).

- b. Respondents Planet Energy Corp., Planet Energy (Ontario) Corp., and Planet Energy (B.C.) Corp. were not entitled to withhold Gross Margin payments under the SAA from Claimant All Communications Network of Canada, Co. as a set-off or credit against disputed indemnity obligations.
- c. The SAA requires Respondents Planet Energy Corp., Planet Energy (Ontario) Corp., and Planet Energy (B.C.) Corp. to continue making Gross Margin commission payments to Claimant All Communications Network of Canada, Co. in respect of any customer referred by Claimant All Communications Network of Canada, Co., for as long as such customer remains a customer under the SAA, irrespective of the means by which the customer renews their account and regardless of what energy product(s) the customer consumes.
- d. For non-payment/ underpayment of commissions under the SAA through June 2020, Respondents Planet Energy Corp., Planet Energy (Ontario) Corp., and Planet Energy (B.C.) Corp. are jointly and severally liable to pay Claimant All Communications Network of Canada, Co. damages in the total amount of **CAD \$19,114,272.00**, inclusive of prejudgment interest through June 2020 and HST.
- e. For future commissions due under the SAA, Respondents Planet Energy Corp., Planet Energy (Ontario) Corp., and Planet Energy (B.C.) Corp. shall pay Claimant All Communications Network of Canada, Co. damages in the total amount of **CAD \$7,080,652.00**, inclusive of HST. Such amount also includes the amount of CAD \$2,290,515.00 inclusive of HST which is payable for future commissions on renewals made after January 1, 2017.
- f. For the reasonable and customary expenses incurred by Claimant All Communications Network of Canada, Co. in connection with the audit of Planet under the SAA and not otherwise recoverable hereunder, Respondents Planet Energy Corp., Planet Energy (Ontario) Corp., and Planet Energy (B.C.) Corp. are jointly and severally liable to reimburse Claimant All Communications Network of Canada, Co. its pro rata share of the Arbitrator’s compensation relating to the audit, in the total amount of **US \$10,550.00**.
- g. For damages arising under Section 12 of the SAA, ACN shall indemnify Planet in the amount of **CAD \$191,128.00**.
- h. As reimbursement of its costs incurred in connection with the arbitration, including attorneys’ fees and expenses, Respondents Planet Energy Corp., Planet Energy (Ontario) Corp., and Planet Energy (B.C.) Corp. are jointly and severally liable to pay Claimant All Communications Network of Canada, Co. the total amount of **CAD \$2,080,351.00**.

- i. Respondents Planet Energy Corp., Planet Energy (Ontario) Corp., and Planet Energy (B.C.) Corp. shall bear their own costs and attorneys' fees and expenses in connection with the arbitration.
- j. The administrative fees and expenses of the International Centre for Dispute Resolution totaling US \$63,722.85 shall be borne equally, and the compensation and expenses of the Arbitrator totaling US \$234,350.00 shall be borne equally. Therefore, All Communications Network of Canada, Co. has to pay Planet Energy Corp., Planet Energy (Ontario) Corp., and Planet Energy (B.C.) Corp. an amount of **US \$1,334.29**.
- k. Any amounts stated in US currency herein shall be converted to Canadian currency at the rate of CAD \$1.35 to US \$1.00.
- l. Prejudgment interest shall continue to accrue at the rate of 9% per annum on any amounts awarded herein to All Communications Network of Canada, Co. that are not paid within 30 days of the date of this Final Award, except that such interest under subparagraph (f) shall be limited to interest on the amount awarded in subparagraph (f) less the amount set forth in subparagraph (j).
- m. This Final Award is in full settlement of all claims and counterclaims submitted to this arbitration and any and all other claims or counterclaims not expressly granted herein are denied.

I hereby certify that, for the purposes of Article I of the New York Convention of 1958 on the Recognition and Enforcement of Foreign Arbitral Awards, this Final Award is deemed to have been made in TORONTO, ONTARIO, CANADA.

Date: Feb. 3/21

  
Ms. Stephanie Cohen  
Sole Arbitrator

Sworn to me this 3<sup>rd</sup> day of February, 2021.



TARYN S. HYSON  
Notary Public - State of New York  
No. 01HY6376914  
Qualified in Queens County  
My Commission Expires June 18, 2022

State of NEW YORK

County of Kings

)  
) SS:  
)

I, Stephanie Cohen, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my Final Award.

Feb. 3/21  
Date

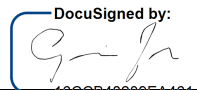
Stephanie Cohen  
Stephanie Cohen  
Sole Arbitrator

On this 3<sup>rd</sup> day of February 2021 before me personally came and appeared Stephanie Cohen, to me known and known to me to be the individual described in and who executed the foregoing instrument and she acknowledged to me that she executed the same.

Taryn S. Hyson  
Notary Public

TARYN S. HYSON  
Notary Public - State of New York  
No. 01HY6376914  
Qualified in Queens County  
My Commission Expires June 18, 2022

This is Exhibit "G" referred to in the Affidavit of Nino Silvestri sworn by Nino Silvestri of the Town of Oakville, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on May 26, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:  


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10CCB48289FA401...  
*Commissioner for Taking Affidavits (or as may be)*

**GAVIN INKSTER LSO# 82737I**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

B E T W E E N:

**PLANET ENERGY CORP., PLANET ENERGY (ONTARIO) CORP., and  
PLANET ENERGY (B.C.) CORP.**

Applicant

and

**ALL COMMUNICATIONS NETWORK OF CANADA, CO.**

Respondent



**APPLICATION UNDER** Article 4 of the Schedule of the *International Commercial Arbitration Act* and Section 97 of the *Courts of Justice Act*, and Rules 14.05(2) and (3) of the *Rules of Civil Procedure*.

**NOTICE OF APPLICATION**

TO THE RESPONDENT

A LEGAL PROCEEDING HAS BEEN COMMENCED by the Applicant. The claim made by the Applicant appears on the following page.

THIS APPLICATION will come on for a hearing on a date to be set before a judge presiding over the Commercial List at 330 University Avenue, 9th Floor, Toronto ON M5G 1R7.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the *Rules of Civil Procedure*, serve it on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS

APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date March 4<sup>5</sup>, 2021

Issued by Maggie Sawka  
Local Registrar

Digitally signed by Maggie Sawka  
DN: cn=Maggie Sawka, o=Ministry of the  
Attorney General, ou=Superior Court of  
Justice, email=maggie.sawka@ontario.ca,  
c=CA  
Date: 2021.03.05 09:24:20 -05'00'

Address of court office: Superior Court of Justice  
330 University Avenue, 9th Floor  
Toronto ON M5G 1R7

TO: **ALL COMMUNICATIONS NETWORK OF CANADA, CO.**  
**c/o Paliare Roland Rosenberg Rothstein LLP**  
155 Wellington Street West  
35<sup>th</sup> Floor  
Toronto, ON M5V 3H1

**Kris Borg-Olivier LSO# 53041R**  
Tel: (416) 646-6401  
Fax: (416) 646-4301  
Email: *kris.borg-olivier@paliareroland.com*

## APPLICATION

1. The applicants, Planet Energy Corp., Planet Energy (Ontario) Corp. (“**PEOC**”) and Planet Energy (B.C.) Corp. (collectively, “**Planet Energy**”), make application for:

- (a) an Order pursuant to Article 34 of Schedule 1 (the “**Model Law**”) to the *International Commercial Arbitration Act, 2017*, S.O. 2017, c. 2, Sched. 5 (the “**Act**”) setting aside the final arbitral award dated February 3, 2021 (the “**Award**”), in whole or in part, in connection with the arbitration administered by the International Center for Dispute Resolution (the “**ICDR**”) in ICDR Case No. 01-18-0001-6527 (the “**Arbitration**”);
- (b) an Order pursuant to Article 36 of Schedule 1 to the Act refusing to recognize or enforce the Award, in whole or in part;
- (c) an Order pursuant to Articles 14 and 15 of the Model Law removing Stephanie Cohen (the “**Arbitrator**”), a lawyer licensed in Ontario and New York, as arbitrator and directing the parties to agree on the appointment of a new arbitrator;
- (d) the costs of this proceeding; and
- (e) such further and other relief as to this Honourable Court may deem just.

2. The grounds for the application are:

### Overview

- (a) Planet Energy brings this application to set aside the Award, wherein the Arbitrator awarded, *inter alia*:
  - (i) \$19,114,272.00 in damages payable by Planet Energy to the respondent, All Communications Network of Canada, Co. (“**ACN**”), for non-payment or underpayment of commissions,

- (ii) \$7,080,652.00 in damages payable by Planet Energy to ACN for future commissions,
  - (iii) US \$10,550.00 payable by Planet Energy to ACN for expenses incurred in connection with an audit of Planet, and
  - (iv) \$2,080,351.00 payable by Planet Energy to ACN for costs of the Arbitration;
- (b) In the Award, the Arbitrator also dismissed, with limited consideration and in some cases no reasons at all, Planet Energy's counterclaims for breach of contract and indemnification as a result of ACN's:
- (i) failure to use commercially reasonable efforts to sell and renew Planet Energy's products, resulting in a dramatic decline in sales and profits,
  - (ii) sharing of Planet Energy's confidential information with an ACN affiliate that competes with Planet Energy,
  - (iii) marketing its affiliate in Ontario,
  - (iv) failing to ensure that its IBOs (defined below) complied with applicable laws and regulations,
  - (v) deliberately failing to engage in an orderly wind-down, and
  - (vi) taking actions that ACN knew would harm Planet Energy's business;
- (c) Under Article 34(2)(a)(ii) of the Model Law, this Court may set aside the Award, in whole or in part, upon finding that Planet Energy was not able to present its case;
- (d) Under Article 34(2)(a)(iv) of the Model Law, this Court may set aside the Award, in whole or in part, upon finding that fundamental aspects of the arbitral procedure were not in accordance with the parties' agreement;
- (e) Under Article 34(2)(b)(ii) of the Model Law, this Court may also set aside the Award, in whole or in part, upon finding that recognition or enforcement of the Award would be contrary to the public policy of Ontario;



- (f) The Arbitrator did not treat Planet Energy equally and did not provide it adequate opportunity to present its case, failed to conduct the Arbitration in accordance with the agreement of the parties, and rendered an Award that is contrary to public policy in Ontario;
  
- (g) Throughout the proceedings, the Arbitrator preferred ACN at every opportunity by:
  - (i) refusing to grant Planet Energy reasonable or timely discovery rights to prosecute its case,
  - (ii) penalizing Planet Energy for not having evidence to support its case, even though such evidence was in the possession of ACN and its affiliates and, in many cases, not produced by ACN,
  - (iii) refusing to delay the hearing of the Arbitration when Planet Energy obtained an order from a U.S. court for the discovery rights that the Arbitrator refused to grant in respect of documents that ACN refused to produce,
  - (iv) pushing forward with an expedited virtual hearing, over the objections of Planet Energy, in the early days of a global pandemic, without regard to the reasonable accommodations proposed by Planet Energy,
  - (v) failing to take remedial action in the face of ACN's withholding of material evidence or make adverse inferences against ACN for failures to disclose relevant documents while holding Planet Energy to high evidentiary thresholds it could not meet without access to ACN's documents,
  - (vi) penalizing Planet Energy for abiding by the terms of the Procedural Orders issued by the Arbitrator with respect to the audit of Planet Energy by ACN, and
  - (vii) failing to address key aspects of Planet Energy's counterclaims and defenses;
  
- (h) The result of the incomplete documentary record, exacerbated by the expedited virtual hearing, is an Award that is highly prejudicial to Planet Energy, awarding over \$28 million to ACN;
  
- (i) These amounts include commissions that Planet Energy was not required to pay under the plain language of the parties' agreement, including:

- (i) over \$5 million of commissions that are prohibited under the *Energy Consumer Protection Act, 2010*, S.O. 2010, c. 8 (the “**ECPA**”),
  - (ii) over \$4 million for commissions that were never received by Planet Energy, and
  - (iii) over \$7 million for “future commissions” that Planet Energy may never receive;
- (j) The over 100-page Award betrays repeated and unjustified animosity by the Arbitrator towards Planet Energy, its counsel and its witnesses; a complete failure to sanction ACN for its obvious failures to produce relevant documents; a disregard of both New York and Ontario law, to the point of awarding unlawful payments; and an indifference towards Planet Energy’s counterclaim to the extent it is barely addressed in the Award, even though ACN’s serial breaches of contract were what initiated this dispute;

#### **The Parties**

- (k) PEOC is a corporation governed by the *Canada Business Corporations Act* and is the parent company of the Planet Energy group of companies;
- (l) Planet Energy (B.C.) Inc. is a corporation governed by the *Business Corporations Act* (B.C.) and is not currently active;
- (m) Planet Energy Corp. is no longer an active corporation;
- (n) Planet Energy operates in Ontario and other Canadian and United States jurisdictions as an energy retailer that provides fixed-price electricity and natural gas supply to residential and commercial customers;

- (o) ACN is a Nova Scotia corporation governed by the *Companies Act* (Nova Scotia) and is a subsidiary of ACN, LLC, a global, multi-level marketing firm headquartered in Concord, North Carolina;
- (p) ACN principally operates a sales agency business by contracting with thousands of independent contractors or independent business owners (“**IBOs**”) to act as sales agents to refer customers to ACN or other third-party providers of telecommunications, energy and other services, paying monthly commissions to these IBOs for successful customer referrals;

#### **The Procedural Background to the Arbitration**

- (q) The Arbitration arose out of a dispute between Planet Energy and ACN regarding the terms of an Amended, Restated and Assigned Sales Agency Agreement Canada, dated as of November 9, 2012, entered into by Planet Energy and ACN (the “**SAA**”);
- (r) Under the SAA, ACN’s overarching obligation was to act as a master agent for the promotion and sale of Planet Energy’s energy products (electricity and natural gas supply) in Ontario, Manitoba and British Columbia (the “**Territory**”);
- (s) The vast majority of customers in the Territory are located in Ontario;
- (t) As master agent, ACN committed itself to cause its network of “thousands of IBOs throughout Canada” to promote and sell the energy products on behalf of Planet Energy by referring potential customers to the “ACN Portal”;
- (u) ACN was obliged to train its IBOs, ensure that its IBOs adhered to applicable regulations and contractual Standards (as defined in the SAA) for the sale of energy products, give Planet Energy access to IBO events to present its products

to the IBOs, and cooperate with Planet Energy in an orderly wind-down at the conclusion of the term;

- (v) Planet Energy operates in a highly regulated environment – if the activities of ACN's IBOs in selling Planet Energy's energy products prompted any complaints, asserted or threatened to be asserted, by any third party, customer or regulatory authority, ACN agreed to indemnify Planet Energy for associated losses;
- (w) Planet Energy was obligated under the SAA to "provide Energy Products for the IBOs to sell" and remit sales commissions to ACN to compensate ACN and its IBOs for their efforts to procure orders for the products;
- (x) Planet Energy committed to price its products competitively, prepare a training package and other materials for ACN to educate the IBOs on the energy products, provide certain reporting for ACN to be able to verify the commissions, and maintain a customer service call centre;
- (y) Planet Energy was also required to create an ACN "Online Portal" through which customers referred by the IBOs could place an order for Planet Energy's products;
- (z) Planet Energy was obligated to remit a portion of profits to ACN, as commissions, on energy products that Planet Energy sold to "ACN Customers", that is, "customers whose orders are entered into the Online Portal";
- (aa) ACN agreed not to market energy products on behalf of anyone other than Planet Energy in the Territory while the SAA was in force, and took a business version of the Hippocratic oath to do no harm: ACN expressly committed "not [to] take any actions that it knows would be harmful in any material respect to the Business of Planet";

- (bb) Once Planet Energy demonstrated outstanding profitability, and conferred abundant extra-contractual benefits on ACN, ACN sought to have ACN's affiliate energy company, Xoom Energy, LLC ("**Xoom**"), take Planet Energy's place in the Territory;
- (cc) Using insight and business intelligence obtained from Planet Energy, ACN worked diligently with Xoom to create, launch, and start promoting Planet Energy's replacement in Canada, and all but abandoned its efforts to promote Planet Energy in the Territory;
- (dd) While the SAA requires ACN to use commercially reasonable efforts to cause its IBOs to promote Planet Energy, as well as to include Planet Energy at IBO events and gatherings, and, upon notice of termination of the SAA, to coordinate with Planet Energy to accomplish an orderly wind-down, ACN fulfilled none of these obligations in the final two years of the SAA, causing a precipitous decline in Planet Energy's sales, lost market value, and market share which were transferred from Planet Energy to Xoom and, ultimately, to ACN and its owners;
- (ee) Meanwhile, thousands of customer allegations of unlawful misconduct by ACN's IBOs resulted in many canceled contracts with Planet Energy and enforcement proceedings and compliance inspections by the Ontario Energy Board ("**OEB**") against Planet Energy, with attendant costs;
- (ff) In one of those proceedings, which went to a full hearing before the OEB, ACN's IBOs admitted under oath that they fraudulently signed up customers, contrary to the training and testing established by Planet Energy, for which under the express terms of the SAA, ACN is obligated to indemnify Planet Energy;

- (gg) In light of ACN's breaches of the SAA, Planet Energy was compelled to engage a sales force of its own to re-contract customers, especially in the final two years of the SAA's Agency Period;
- (hh) In light of ACN's material breaches of the SAA, Planet Energy began to withhold commissions in March 2018 as a set-off;
- (ii) Section 19 of the SAA includes an arbitration clause (the "**Arbitration Agreement**") pursuant to which the parties agreed that they would resolve any claim, controversy or dispute between them by binding arbitration in accordance with the procedures set out in the SAA;
- (jj) Among other things, the parties agreed that the Arbitration would be governed by the rules of the American Arbitration Association (the "**AAA**") and held in Toronto or another mutually agreed upon location;
- (kk) On April 26, 2018, ACN commenced the Arbitration by delivering a Notice of Arbitration in accordance with section 19 of the SAA, alleging that Planet Energy failed to make certain commission payments to ACN;
- (ll) On June 12, 2018, Planet Energy filed a Response to the Notice of Arbitration and a counterclaim against ACN asserting, among other things:
  - (i) that ACN violated fundamental obligations under the SAA by, *inter alia*, failing to use commercially reasonable efforts to promote Planet Energy's products while ACN occupied itself with launching and promoting ACN's affiliate Xoom Energy, LLC ("**Xoom**") in Canada to replace Planet Energy, and
  - (ii) that ACN breached its obligation to indemnify Planet for all damages related to thousands of complaints of IBO misconduct indemnity obligations,

- (mm) Planet Energy sought to include Xoom as a party to the Arbitration in its Response pursuant to the ICDR Rules;
- (nn) On June 15, 2018, the ICDR confirmed that Xoom had been added as a party to the Arbitration and that it had extended the deadline for the parties to file their arbitrator selection materials to allow Xoom to participate in that process;
- (oo) On July 31, 2018, ACN filed an Answer to Planet Energy's counterclaim and an Objection to Planet Energy's inclusion of Xoom as a party to the Arbitration;
- (pp) Also on July 31, 2018, Xoom delivered a response to Planet Energy's counterclaim objecting to the jurisdiction and authority of the Arbitrator to decide any claims asserted against Xoom in the Arbitration (the "**Joinder Dispute**");
- (qq) On August 7, 2018, the Arbitrator was appointed;
- (rr) On September 24, 2018, following a conference call with representatives from Planet Energy, ACN and Xoom, the Arbitrator issued Procedural Order No. 1 (the "**First Procedural Order**"), which confirmed, *inter alia*, that:
  - (i) the Arbitration Agreement is provided in the SAA,
  - (ii) the seat of the Arbitration is Toronto, Ontario, Canada,
  - (iii) the applicable rules for the Arbitration are the International Arbitration Rules of the ICDR of the AAA, as amended and effective June 1, 2014,
  - (iv) the governing arbitration law is the Act,
  - (v) the governing law under the SAA is New York law,
  - (vi) the governing law under the Services Agreement is Ontario law, and
  - (vii) the Arbitration would be bifurcated such that the Joinder Dispute would be argued in writing as a preliminary matter with submissions to be exchanged in October and November 2018 (although replies and sur-replies were later permitted in subsequent procedural orders);

**The Unfair Treatment Begins: the Arbitrator Applies Wrong Test to Joinder Dispute**

- (ss) In the Joinder Dispute, Planet Energy argued, among other things:
- (i) it should be entitled to pierce the corporate veil of ACN and name Xoom and certain of Xoom's affiliates, such as its U.S. counterpart, Xoom Energy LLC, as parties to the Arbitration,
  - (ii) in the alternative, Planet Energy should be granted limited discovery rights to determine the ownership structure and extent of domination and control of ACN over Xoom and the scope of injuries that Xoom caused to Planet Energy, and
  - (iii) Planet Energy should be granted limited discovery rights to determine whether any other Canadian Xoom entities (Xoom Alberta and Xoom Canada) caused injuries to Planet Energy and should be joined as parties to the Arbitration;
- (tt) On March 6, 2019, the Arbitrator released the "Partial Final Award" on the Joinder Dispute dismissing each of Planet Energy's claims (the "**Partial Final Award**");
- (uu) In the Partial Final Award the Arbitrator dismissed Planet Energy's joinder claim and related requests for relief, establishing the pattern that would persist throughout the Arbitration, whereby she denied Planet Energy fair treatment and adequate procedural fairness by refusing to grant Planet Energy the ability to obtain basic documentary production relevant to the fact-intensive question whether Xoom should be joined on the basis that it was ACN's alter ego;

**The Arbitrator Undermines Planet Energy's Attempts at Document Discovery and Penalizes Planet Energy for Complying with Arbitrator's Orders**

- (vv) On May 14, 2019 and June 20, 2019, the Arbitrator issued Procedural Orders Nos. 8 and 9, respectively, regarding an audit of Planet Energy by ACN pursuant to the SAA;



- (ww) Planet Energy complied with these Procedural Orders, including the timetable for the production of information and documents and the access and systems to be made available, set by the Arbitrator;
- (xx) Despite this, at the arbitral hearing ACN's damages expert took the position that he was not provided adequate time to review certain files produced during the audit and was forced to use different (and inadequate) records to determine the scope of damages, which the arbitrator accepted uncritically notwithstanding that she set the timetable and scope for production and ACN's expert admitted that Planet Energy abided by the Arbitrator's Procedural Orders;
- (yy) After releasing the Partial Final Award and the Procedural Orders in respect of ACN's audit, the Arbitrator issued Procedural Order No. 12 on September 17, 2019 setting out, *inter alia*, the following procedures and timetable for document production for the merits phase of the Arbitration:
- (i) the parties were to make targeted document requests by October 14, 2019 (the "**Document Requests**"),
  - (ii) any objections to the Document Requests were to be advanced by October 28, 2019 (the "**Objections**"),
  - (iii) answers to the Document Requests were to be completed by November 15, 2019, and
  - (iv) any outstanding document production (such as any documents ordered to be produced by the Arbitrator) was to be completed by December 31, 2019,
  - (v) there would be no depositions / oral examinations for discovery permitted, and
  - (vi) the parties were to convene a pre-hearing conference on May 5, 2020 to discuss procedural directions concerning the hearing scheduled for May 26-29 and June 1-5, 2020;
- (zz) ACN failed to produce documents in accordance with Procedural Order No. 12;

- (aaa) On November 27, 2019, the Arbitrator issued Procedural Order No. 13 adjudicating each party's Objections to some of the Document Requests. Among other things, the Arbitrator:
- (i) denied Planet Energy's request for document production of any relevant ACN documents that were in the possession of Xoom,
  - (ii) denied Planet Energy's request for ACN to use best efforts to obtain and produce relevant documents from Xoom,
  - (iii) denied Planet Energy's request for documents relating to the contractual relationship between ACN and Xoom in Ontario, and
  - (iv) denied Planet Energy's request to discover certain documents responsive to its pleaded Response to the Notice of Arbitration, stating that Planet Energy could put in whatever evidence it had on the issue of erroneous commission payments in its direct evidence and "no doubt" ACN would put in whatever responding evidence it had on the topic;
- (bbb) After Procedural Order No. 13, ACN continued to fail to comply with the timetable contemplated by Procedural Order No. 12 and many documents remained outstanding;
- (ccc) Among other things, ACN produced its first set of documents (8 documents in total) more than three weeks after the November 15<sup>th</sup> deadline on December 8, 2019, and by December 31, 2019 it had only produced 385 documents compared to the thousands of documents produced by Planet Energy;
- (ddd) Frustrated by ACN's failure to meet its discovery obligations, on January 16, 2020, Planet Energy wrote to the Arbitrator asking for assistance to compel ACN to comply with its production obligations given that it had made incomplete or no production with respect to 39 of 43 Document Requests;
- (eee) In response, the Arbitrator issued Procedural Order No. 16 and directed Planet Energy to identify the deficiencies in ACN's document production to ACN such that

ACN could correct any omissions and supplement its production, but did not issue any further order to ACN or seek any judicial assistance;

- (fff) Planet Energy complied with the Arbitrator's Order, provided ACN with a full list of items missing from the ACN production and set January 31, 2020 as the due date;
- (ggg) On February 28, 2020, given the Arbitrator's earlier refusal to allow Planet Energy to discover documents from Xoom, followed by ACN's deficient production, and then the Arbitrator's failure to deal with ACN's deficient production, Planet Energy was compelled to file an application in the federal District Court for the Western District of North Carolina (the "**District Court**") under 28 U.S.C. §1782 seeking a subpoena for the production of documents from Xoom for use in the arbitration (the "**1782 Application**");
- (hhh) On March 11, 2020 (the same day that the World Health Organization declared COVID-19 a global pandemic), the Arbitrator issued Procedural Order No. 20 confirming that the 1782 Application "could potentially yield relevant and material documents essential to [Planet Energy's] case", yet inexplicably ordered that any relevant and material evidence which might be yielded from the 1782 Application "shall not be deemed good cause for the extension of any deadlines in this Arbitration, including the evidentiary hearing";

#### **The Arbitral Procedure Was Inconsistent with the Arbitration Agreement**

- (iii) On March 30, 2020, the Arbitrator contacted the parties and suggested that the parties consider conducting the Arbitration virtually in light of the governmental restrictions on public life and travel;

- (jjj) On April 1, 2020, Planet Energy objected to a virtual hearing, citing numerous sources and authorities that, *inter alia*, (i) videoconferencing was inadequate to assess witness credibility required for Planet's case, and (ii) Planet's counsel was inexperienced in virtual hearings and the current timetable of only three weeks would not provide him sufficient time to prepare for the anticipated two-week on-line hearing;
- (kkk) The Arbitration Agreement provided for the arbitration to be held in Toronto or another mutually agreeable location;
- (lll) In recognition of the unique circumstances created by the global pandemic, Planet Energy proposed three reasonable alternatives to an entirely virtual hearing:
- (i) convening the arbitration hearing at another location, such as the District of Columbia, Philadelphia or Delaware, on mutual agreement, if the US-Canada border remained closed,
  - (ii) bifurcating the hearing such that issues involving questions of law rather than disputed issues of fact could be argued over videoconference and resolved by the arbitrator, or
  - (iii) that the dispute be mediated prior to the evidentiary hearing;
- (mmm) While this matter was under reserve, on April 10, 2020, the Arbitrator published an article entitled "Draft Zoom Hearing Procedural Order" in the Transnational Dispute Management opining that international arbitrators could compel parties to conduct virtual hearings under the ICDR Rules, effectively committing herself to decide against Planet on this issue in the Arbitration;
- (nnn) On April 29, 2020 – 28 days after the parties made oral submissions on the issue and a month before the scheduled hearing – the Arbitrator dismissed each of Planet Energy's proposed alternatives and issued Procedural Order No. 23 declaring that, despite the express language of the SAA – that the Arbitration be

held in Toronto – the Arbitrator was empowered to compel the parties to proceed virtually;

- (ooo) The Arbitrator then allowed Planet only four weeks to prepare for the two-week virtual hearing, when the very pandemic that she relied on to justify her order made it unduly onerous for Planet to prepare;

### **Planet Energy is Prevented from Presenting its Case**

- (ppp) Even though the 1782 Application remained outstanding – with the U.S. Court “inclined to grant” Planet’s application as of May 8, 2020 – when the hearing commenced, on June 1-5, 8-11, 23 and 26, 2020, examinations and cross-examinations of the parties’ witnesses were conducted over videoconference;
- (qqq) On June 8, 2020, Planet Energy’s 1782 Application was granted by the District Court – despite coordinated opposition from ACN and Xoom – and Xoom was compelled to produce certain documents by June 22, 2020 (the “**Xoom Documents**”);
- (rrr) On June 19, 2020, the parties advised the Arbitrator that they agreed to closing arguments and post-evidentiary written submissions but were at an impasse with respect to the Xoom Documents, in part because ACN wanted closing arguments to occur on June 24, 2020 whereas Planet Energy wanted a reasonable opportunity to review the Xoom Documents, exchange written submissions and have an oral hearing, if necessary, in respect of those documents before closing arguments;
- (sss) The Arbitrator refused to postpone the scheduled closing arguments and instead ordered that Planet Energy was permitted to introduce Xoom Documents into

evidence by June 24, 2020 (*i.e.* 48 hours after receiving them), that ACN could object to the introduction of any such documents the following day, that Planet Energy could request adverse inferences with respect to the Xoom Documents (although no such inferences were ultimately made by the Arbitrator), and that closing arguments would proceed on June 26, 2020 at 1pm;

- (ttt) Obviously this did not provide Planet Energy with any ability to question ACN's witnesses based on the Xoom Documents, which demonstrated that ACN's witnesses had not been truthful in their written and oral testimony;
- (uuu) On June 22, 2020, Planet Energy received over 200 documents divided amongst approximately 400 individual files from Xoom pursuant to the 1782 Application, yet the Arbitrator only granted Planet 48 hours to review, organize, and summarize the documents;
- (vvv) Over 120 Xoom Documents were admitted into the evidentiary record on June 24, 2020;
- (www) The Xoom Documents show extensive relevant written communications between ACN and Xoom that ACN failed to produce in the Arbitration, showing that ACN shared abundant confidential Planet information with Xoom, tasked its marketing team with Xoom Canada promotion while Planet's sales flatlined, and deliberately ignored its wind-down obligations, including at least one potentially incriminating email attachment that should have been produced by both ACN and Xoom but was still withheld, all showing ACN's clear breaches of the SAA;

- (xxx) On June 26, 2020, the parties completed their oral closing arguments, and, on July 14, 2020, the parties exchanged limited post-hearing written submissions to cover the merits, hearing, Xoom Documents, damages, and costs of the Arbitration;
- (yyy) On July 26, 2020, the Arbitrator advised the parties that the arbitral hearing was closed and all issues to be determined in the Arbitration would be taken under reserve by the Arbitrator;
- (zzz) In its post hearing submission, Planet Energy was required to address the Xoom Documents within the restricted page limitations set by the Arbitrator, which were half of what Planet Energy had requested;
- (aaaa) The ICDR Rules provide that the Award should be issued within 60 days of the close of the hearing;
- (bbbb) The Arbitrator released her Award on February 3, 2021, 200 days after the completion of the main hearing;
- (cccc) The Arbitrator's delay in issuing the Award stands in stark contrast to her refusal to grant any reasonable accommodation to Planet Energy in the early days of the global pandemic at a time when it was seeking, and obtaining, orders from the District Court to compel documents relevant to Planet Energy's case that ACN had refused to provide and which the Arbitrator refused to compel, despite acknowledging their relevance;

### **The Award is Contrary to the Public Policy of Ontario**

- (dddd) The Arbitrator's refusal to grant Planet Energy any meaningful discovery rights, reasonably provide Planet Energy an opportunity to establish and present its case, or accord Planet Energy equal treatment, and instead to push ahead with an

expedited virtual hearing in the early days of a global pandemic in the face of an incomplete documentary record, led to an Award that is rife with errors and contrary to the public policy of Ontario:

- (i) The Award requires Planet Energy to pay to ACN commissions totaling \$5,167,707 in violation of the ECPA, in circumstances where the Arbitrator acknowledged that such payments are illegal in Ontario but determined that it was not contrary to New York public policy to oblige Planet Energy to make unlawful payments,
- (ii) The Arbitrator ignored the plain language of the SAA and, in violation of the governing New York law, relied on extrinsic evidence in the absence of a contractual ambiguity to, among other things, craft her own definitions of “ACN Customers” and “usage”, contrary to the SAA, with respect to the calculation of ACN commissions to justify an award of damages against Planet Energy – and a windfall to ACN – in the amount of \$19,114,272,<sup>1</sup>
- (iii) The Arbitrator ignored the exculpatory evidence put before her by Planet Energy, including that ACN's referrals of customers to Planet Energy were tracked and available to ACN through the utility portals and third party records, and instead favoured the bald assertions of ACN that no such information was available in assessing approximately \$4.1 million of damages for underpayments of commissions related to such referrals,
- (iv) The Arbitrator failed to adequately address Planet Energy's claim for loss of profit of \$7,795,990 due to declining enrolments as a result of ACN's breaches of contract in, *inter alia*, failing to use commercially reasonable efforts to market Planet Energy's products, failing to ensure its IBOs complied with applicable regulations, preventing Planet Energy from promoting its products at IBO events, marketing Xoom among IBOs in the Territory, deliberately failing to engage in an orderly wind-down, and taking actions that ACN knew would be harmful to Planet Energy's business,
- (v) The Arbitrator ignored Planet Energy's evidence in support of its claim for indemnification from ACN in the amount of \$1,563,633 as a result of the misconduct of ACN's IBOs, and falsely claimed at paragraph 461 of the Award that Planet Energy failed to prove its case with contemporaneous documents, despite the fact that Planet Energy had produced to ACN contemporaneous documents in full support of its claim, and
- (vi) The Arbitrator did not reasonably consider Planet Energy's claim for indemnification from ACN in the amount of \$1,229,367 in respect of counsel fees incurred by Planet Energy to defend itself at the OEB in a

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<sup>1</sup> “ACN Customers” is defined in the SAA as “those customers whose orders are entered into the ACN Online Portal by ACN, or the IBOs, or their customer under this Agreement who become Accepted Customers”, yet the Arbitrator determined that the definition of “ACN Customers” includes customers who renew their energy contract “without regard” to whether their renewal order is entered into the ACN Online Portal.



proceeding arising out of the misconduct of ACN IBOs and failed to provide any adequate reasons for her conclusion that the parties did not intend for the term “all damages” to include attorney’s fees, contrary to New York law.

### **The Award Should be Set Aside and a New Arbitrator Appointed**

(eeee) As a result of the above, the Award should be set aside on the grounds that:

- (i) Planet Energy was unable to present its case due to the Arbitrator’s refusal to (1) grant meaningful discovery rights to Planet Energy, (2) compel ACN to abide by its discovery obligations, (3) allow Planet Energy adequate time to prepare for the presentation of its case in the face of a global pandemic, (4) support (or at least not impede) Planet’s pursuit of parallel court proceedings to compel production of some of the missing documents from Xoom, and (5) allow Planet to present the Xoom Documents, once obtained, at a meaningful time and in a meaningful manner,
- (ii) the arbitral hearing was not conducted in accordance with the Arbitration Agreement of the parties as it was not held in Toronto, was not held in person, there was no mutual agreement to these changes, and, in any case, the Arbitrator refused to afford Planet Energy a reasonable amount of time to prepare under the circumstances,
- (iii) the Award is contrary to the public policy of Ontario because (1) it compels Planet Energy to make payments that are contrary to the mandatory law of Ontario as set out in the ECPA, (2) the Arbitrator disregarded the terms of the SAA and its governing law in several instances, (4) failed to state coherent reasons or else stated no reasons at all for her decisions on Planet Energy’s counterclaims, and (5) the Arbitrator failed to accord equal treatment to Planet Energy and denied it reasonable procedural and substantive fairness;

(ffff) The Arbitrator’s failure to provide procedural and substantive fairness to Planet Energy and failure to accord equal treatment to the parties should serve to disqualify her as Arbitrator and necessitates the appointment of a new arbitrator;

(gggg) Rules 14.05(3), 38 and 39 of the *Rules of Civil Procedure*;

(hhhh) Articles 14, 15, 18, 34 and 35 of the Model Law;

(iiii) The ICDR Rules; and

(jjjj) Such further and other grounds as counsel may advise.

***Affidavit or Other Evidence to be used in Support of this Application***

3. The following documentary evidence will be used at the hearing of the application:
- (a) Affidavit of Nino Silvestri, to be sworn; and
  - (b) Such further and other evidence as counsel may advise and this Honourable Court may permit.

5  
March 4, 2021

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Lawyers for the Applicants

**PLANET ENERGY CORP., ET AL.**

-and-

**ALL COMMUNICATIONS NETWORK  
OF CANADA, CO.**

Court File No. CV-21-00658223-00CL

Applicants

Respondent

**347**

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**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding Commenced at Toronto

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**NOTICE OF APPLICATION**

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Lawyers for the Applicants

This is Exhibit "H" referred to in the Affidavit of Nino Silvestri sworn by Nino Silvestri of the Town of Oakville, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on May 26, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:



---

Commissioner for Taking Affidavits (or as may be)

**GAVIN INKSTER LSO# 82737I**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

BETWEEN:

**ALL COMMUNICATIONS NETWORK OF CANADA, CO.**

Applicant

and

**PLANET ENERGY CORP., PLANET ENERGY (ONTARIO) CORP., and  
PLANET ENERGY (B.C.) CORP.**

Respondents

**APPLICATION UNDER** Article 4, and Article 35 of Schedule 2, of the *International Commercial Arbitration Act*, and Rule 14.05(2) of the *Rules of Civil Procedure*.

**NOTICE OF APPLICATION**

TO THE RESPONDENTS

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following page.

THIS APPLICATION will come on for a hearing (*choose one of the following*)

- In person
- By telephone conference
- By video conference

on a date to be set before a judge presiding over the Commercial List at 330 University Avenue, 9<sup>th</sup> Floor, Toronto, ON M5G 1R7.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.



IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date 18 MARCH 2021 Issued by \_\_\_\_\_  
Local Registrar  
Address of court office: 330 University Avenue 9th Floor  
Toronto Ontario  
M5G 1R7

TO: PLANET ENERGY CORP.  
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**APPLICATION**

1. The Applicant, All Communications Network of Canada Co. (“ACN”) makes application for:
  - (a) A judgment recognizing and enforcing the final arbitral award of the arbitrator Stephanie Cohen (the “Arbitrator”), dated February 3, 2021 (the “Award”), in an arbitration administered by the International Centre for Dispute Resolution (the “ICDR”) bearing ICDR Case No. 01-18-0001-6527 (the “Arbitration”);
  - (b) An order requiring the respondents to post security in the total amount of the damages awarded against them and in favour of the applicant, or in some other appropriate amount, prior to an application for setting aside or suspension of the Award being heard;
  - (c) In the event post-judgment interest is not awarded in accordance with the terms of the Award, post-judgment interest in accordance with the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
  - (d) the costs of this proceeding, plus all applicable taxes; and
  - (e) such further relief as this Honourable Court deems just.



**The grounds for the application are:****A. Overview**

2. ACN and the respondents, Planet Energy Corp., Planet Energy (Ont.) Corp., and Planet Energy (B.C.) Corp. (collectively, “Planet Energy”), engaged in a lengthy and comprehensive arbitral proceeding, culminating in an eleven day hearing on the merits in June 2020, in front of an experienced international arbitrator.
3. ACN was the successful party in the Arbitration, with Planet Energy ordered to pay ACN in excess of CAD \$28,000,000, comprising damages, interest, and costs.
4. Pursuant to the *International Commercial Arbitration Act*, this court is obliged to recognize and enforce the Award unless the party opposing such recognition and enforcement can furnish proof that one of a list of discrete grounds for refusing recognition and enforcement is present.
5. None of those discrete grounds is present here. The Award should be recognized and enforced.
6. The *International Commercial Arbitration Act* also empowers this court to order the party opposing recognition and enforcement to provide appropriate security. This court should exercise its discretion to make such an order here, where Planet Energy’s opposition is devoid of merit, certain to fail, and a transparent attempt to delay its payment obligations, and where Planet Energy has a demonstrated track record of misconduct and subterfuge.

**B. Parties**

7. ACN is a leading direct selling company organized under the laws of Nova Scotia.
8. Planet Energy markets and sells natural gas and electricity throughout Canada.
9. ACN has contractual relationships with thousands of independent business owners, known as “IBOs”, in Canada. IBOs are independent contractors of ACN, typically individual entrepreneurs or small business owners, who contract with ACN for the opportunity to earn additional income by referring customers for the telecommunications, energy, and other residential and commercial services provided by ACN or by third party providers with which ACN contracts (such as Planet Energy).
10. ACN and Planet Energy had a contractual relationship pursuant to which ACN used its IBOs to refer customers for Planet Energy’s energy products. In return for ACN’s efforts, Planet Energy was obligated to make monthly “Gross Margin” commission payments to ACN.

**C. The Arbitration**

11. The Arbitration between ACN and Planet Energy arose out of the Amended, Restated and Assigned Sales Agency Agreement Canada, dated February 9, 2012 (the “SAA”), between the parties.
12. The SAA provided that any claim, controversy, or dispute between the parties was to be resolved by binding arbitration in accordance with certain enumerated

procedures, and that “[a]ny award rendered pursuant to an arbitration proceeding shall be final, conclusive, non-appealable and binding upon the parties, and any judgment thereon may be entered and enforced in any court of competent jurisdiction.”

13. ACN commenced the Arbitration as a result of Planet Energy’s breaches of the SAA, principally related to Planet Energy’s failure to pay “Gross Margin” commissions due to ACN under the SAA. In response, Planet Energy asserted a number of counterclaims against ACN.
14. The Arbitration, including the lengthy pre-hearing procedures and the merits hearing, was conducted in accordance with the ICDR Rules.
15. The Arbitrator issued a Partial Final Award dated March 6, 2019, in which she denied Planet Energy’s request to join certain non-parties to the SAA as additional parties to the Arbitration.
16. Over the course of the Arbitration proceeding, the Arbitrator issued 28 procedural orders, many of which dealt with various pre-hearing disputes.
17. The Arbitration culminated with a hearing on the merits via Zoom video-conference over eleven days in June 2020. During the hearing, the parties presented opening and closing statements, and a total of fourteen witnesses (including four expert witnesses) provided oral testimony (twelve of the fourteen had also provided sworn witness statements and/or expert reports).

18. On September 11, 2020, following the closure of the hearing, the Arbitrator re-opened the hearing to obtain further submissions from the parties on a single discrete issue.

**D. *The Award***

19. On February 3, 2021, the Arbitrator issued the Award, in which she found that “ACN’s claims have been upheld in all material respects and ACN is the prevailing party in the arbitration.”
20. The substantive terms of the Award, set out at paragraph 489 of the Award, included the following:
  - (a) For non-payment / underpayment of commissions under the SAA through June 2020, [the Planet Energy entities] are jointly and severally liable to pay [ACN] damages in the total amount of CAD \$19,114,272.00, inclusive of prejudgment interest through June 2020 and HST;
  - (b) For future commissions due under the SAA, [Planet Energy] shall pay [ACN] damages in the total amount of CAD \$7,080,652.00, inclusive of HST;
  - (c) For the reasonable and customary expenses incurred by [ACN] in connection with the audit of [Planet Energy] under the SAA and not otherwise recoverable hereunder, [the Planet Energy entities] are jointly and severally liable to reimburse [ACN] its pro rata share of the Arbitrator’s compensation relating to the audit, in the total amount of US \$10,550.00;

- (d) For damages arising under Section 12 of the SAA, ACN shall indemnify [Planet Energy] in the amount of CAD \$191,128.00;
  - (e) As reimbursement of its costs incurred in connection with the arbitration, including attorneys' fees and expenses, [the Planet Energy entities] are jointly and severally liable to pay [ACN] the total amount of CAD \$2,080,351.00;
  - (f) [The Planet Energy entities] shall bear their own costs and attorneys' fees and expenses in connection with the arbitration;
  - (g) The administrative fees of the ICDR, and the compensation and expenses of the Arbitrator, shall be borne equally. Therefore, [ACN] has to pay [the Planet Energy entities] an amount of US \$1,334.29;
  - (h) Any amounts stated in US currency shall be converted to Canadian currency at the rate of CAD \$1.35 to US \$1.00;
  - (i) With one enumerated exception, prejudgment interest shall continue to accrue at the rate of 9% per annum on any amounts awarded to [ACN] that are not paid within 30 days of the date of the Award.
21. Netting the amounts awarded to ACN against the amounts awarded to Planet Energy (with conversion of the USD amounts to CAD on the basis of a 1.35 to 1 exchange rate) results in Planet Energy owing ACN a total amount of \$28,096,588.20.

22. The interest on the amount owing, calculated on the basis of a 9% interest rate in accordance with the Award, is \$6,927.93 per day.
23. As noted in the Arbitrator's Procedural Order No. 12, the parties to the Arbitration agreed that the governing arbitration law is Ontario's *International Commercial Arbitration Act* (2017).
24. Pursuant to Article 35 of the Model Law incorporated into the *International Commercial Arbitration Act*, the Award shall be recognized as binding and, upon application in writing to the competent court, shall be enforced, subject only to the provisions of Articles 35 and 36 of the Model Law.
25. None of the grounds for refusing recognition or enforcement enumerated in Article 36 of the Model Law is present here.

***E. Planet Energy Should Be Required to Post Security***

26. Although more than a month has elapsed since the issuance of the Award, Planet Energy has paid no part of the Award made against it.
27. Planet Energy has now commenced a separate application seeking to have the Award set aside, and/or opposing recognition and enforcement of the Award.
28. Planet Energy's application has no realistic prospect of success, and is clearly intended to delay its payment obligations.
29. Moreover, Planet Energy has a demonstrated history of misconduct and subterfuge, targeted at depriving ACN of funds due to it. Among other things:

- (a) Since March 2018, Planet Energy has refused to pay over \$11 million in commissions that it acknowledged were owing to ACN, ostensibly as a set-off against a range of claims that were almost uniformly found by the Arbitrator to be without merit;
  - (b) As part of the Arbitration, ACN engaged in an extensive audit of Planet Energy pursuant to audit rights granted to it under the SAA. Although Planet Energy sought to frustrate the audit at every turn, ACN's auditors ultimately determined, and the Arbitrator accepted, that over the course of the parties' relationship Planet Energy had covertly underpaid ACN to the tune of several million dollars (over and above the amounts openly withheld since March 2018);
  - (c) The Arbitrator found as a fact that starting in 2016, following ACN's decision not to renew its relationship with Planet Energy, Planet Energy began to surreptitiously manipulate database information to deprive ACN of commission payments without detection, in material breach of the SAA.
30. Under the circumstances, this court should exercise the discretion granted to it by Article 36 of the Model Law and order Planet Energy to provide security in the total amount owing under the Award, prior to hearing Planet Energy's application.
31. Article 4, and Article 35 of Schedule 2, of the *International Commercial Arbitration Act*.
32. Rule 14.05(2) of the *Rules of Civil Procedure*.

33. Such further and other grounds as the lawyers may advise.

**The following documentary evidence will be used at the hearing of the application:**

- (a) The affidavit of Jeremy Smuckler, to be sworn, and the exhibits thereto, including a copy of the Award; and
- (b) such further and other evidence as the lawyers may advise and this Honourable Court may permit.

DATE: March ~~16~~<sup>18</sup>, 2021

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Lawyers for the Applicant



**ALL COMMUNICATIONS NETWORK OF CANADA, CO.** -and-  
Applicant

Court File No. CV-21-00659022-00CL  
**PLANET ENERGY CORP., et al.**  
Respondent

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**ONTARIO  
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT  
TORONTO

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**NOTICE OF APPLICATION**

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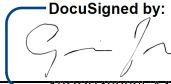
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Lawyers for the Applicant

This is Exhibit "I" referred to in the Affidavit of Nino Silvestri sworn by Nino Silvestri of the Town of Oakville, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on May 26, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:



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Commissioner for Taking Affidavits (or as may be)

**GAVIN INKSTER LSO# 82737I**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

B E T W E E N:

**ALL COMMUNICATIONS NETWORK OF CANADA, CO.**

Applicant

and

**PLANET ENERGY CORP., PLANET ENERGY (ONTARIO) CORP., and  
PLANET ENERGY (B.C.) CORP.**

Respondents

**APPLICATION UNDER** Article 4, and Article 35 of Schedule 2, of the *International Commercial Arbitration Act*, and Rule 14.05(2) of the *Rules of Civil Procedure*.

**FACTUM OF THE APPLICANT  
(Application for Security)**

DATE: July 23, 2021

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Lawyers for the Respondents

## PART I. INTRODUCTION AND OVERVIEW

1. The Applicant, All Communications Network of Canada, Co. (“ACN”), and the Respondents, Planet Energy Corp., Planet Energy (Ontario) Corp., and Planet Energy (B.C.) Corp. (collectively, “Planet Energy”), engaged in a lengthy and comprehensive arbitral proceeding, culminating in an eleven day hearing on the merits in June 2020 (the “Arbitration”), in front of an experienced international arbitrator, Stephanie Cohen (the “Arbitrator”).
2. The Arbitrator rendered her award on February 3, 2021 (the “Award”).
3. ACN was the successful party in the Arbitration, with Planet Energy ordered to pay ACN in excess of CAD \$28,000,000, comprising damages, interest, and costs.
4. ACN has applied to this court for enforcement and recognition of the Award. Its application is scheduled to be heard on August 20, 2021.
5. Planet Energy has commenced a separate application in which it seeks an order setting aside the Award, removing the Arbitrator, and directing the parties to agree on the appointment of a new arbitrator – in other words, Planet Energy seeks to restart the arbitral process from scratch. Planet Energy’s application is also scheduled to be heard, together with ACN’s application, on August 20, 2021.
6. The Arbitration was an international arbitration governed by Ontario’s *International Commercial Arbitration Act, 2017* (the “Act”).
7. Subject to the *Act*, the Convention on the Recognition and Enforcement of Foreign Arbitral Awards and the Model Law on International Commercial Arbitration

both have force of law in Ontario. The Convention and the Model Law both empower this court to order that a party seeking to set aside an arbitral award provide appropriate security as a condition of its application.

8. By this application, ACN seeks an order directing that Planet Energy post security in the amount of \$10,000,000 prior to, or as a condition of, its set-aside application being heard. The amount sought as security is approximately 36% of the total payable by Planet Energy under the Award, and is an amount that Planet Energy has specifically accrued as a liability and as cash for liabilities to ACN.

9. The relief sought by ACN on this application is not extraordinary relief. To the contrary, because the enforcement and recognition of international arbitral awards is intended to be a relatively simple, efficient process subject only to a limited set of jurisdictional and procedural objections, the posting of security has been treated as, effectively, the cost of doing business for a party seeking to set aside such an award.

10. An order directing that Planet Energy post security would be particularly appropriate in this case, where the Arbitrator found that Planet Energy engaged in serious misconduct and subterfuge over the course of a number of years, with the aim of depriving ACN of funds to which it was contractually entitled. While Planet Energy is undoubtedly entitled to pursue its application, an order directing that it post security would facilitate ACN's collection of a portion of the Award if its application for enforcement and recognition of the Award is granted, thus ensuring that the set-aside application was not a consequence-free "free shot" for Planet Energy.

11. ACN has no interest in bankrupting Planet Energy or harming its business. Indeed, it would not be in ACN's interests to do so. It has therefore limited its request for security to the specific amount earmarked by Planet Energy for the very purpose of accounting for liabilities to ACN. ACN's request is fair and reasonable in all the circumstances and, for the reasons set out below, it should be granted.

## **PART II. SUMMARY OF FACTS**

### **A. *A Brief Procedural History of the Arbitration***

12. ACN is a direct selling company organized under the laws of Nova Scotia.<sup>1</sup>

13. Planet Energy markets and sells natural gas and electricity in Canada. Of the named Planet Energy entities, only Planet Energy (Ont.) Corp. remains active and, either directly or through its subsidiaries or affiliates, continues to operate in Ontario and other Canadian and American jurisdictions.<sup>2</sup>

14. ACN has contractual relationships with thousands of independent business owners, known as "IBOs", in Canada. IBOs are independent contractors of ACN, typically individual entrepreneurs or small business owners, who contract with ACN for the opportunity to earn additional income by referring customers for the telecommunications, energy, and other residential and commercial services provided by ACN or by third party providers with which ACN contracts (such as Planet Energy).<sup>3</sup>

15. ACN and Planet Energy had a contractual relationship pursuant to which ACN used its IBOs to refer customers for Planet Energy's energy products. In return for

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<sup>1</sup> Affidavit of Jeremy Smuckler, affirmed April 21, 2021, Application Record Tab 2 ["Smuckler Affidavit"], para. 3.

<sup>2</sup> Smuckler Affidavit, para. 4.

<sup>3</sup> Smuckler Affidavit, para. 5.

ACN's efforts, Planet Energy was obligated to make monthly "Gross Margin" commission payments to ACN.<sup>4</sup>

16. The Arbitration between ACN and Planet Energy arose out of the Amended, Restated and Assigned Sales Agency Agreement Canada, dated November 9, 2012 (the "SAA"), between the parties.<sup>5</sup>

17. The SAA provided that any claim, controversy, or dispute between the parties was to be resolved by binding arbitration in accordance with certain enumerated procedures, and that "[a]ny award rendered pursuant to an arbitration proceeding shall be final, conclusive, non-appealable and binding upon the parties, and any judgment thereon may be entered and enforced in any court of competent jurisdiction."<sup>6</sup>

18. ACN commenced the Arbitration as a result of Planet Energy's breaches of the SAA, principally related to Planet Energy's failure to pay "Gross Margin" commissions due to ACN under the SAA. In response, Planet Energy asserted a number of counterclaims against ACN.<sup>7</sup> The Arbitrator summarized the parties' respective positions as follows:

According to ACN, its case against Planet is a simple one for non-payment of commissions due under the SAA. According to Planet, ACN violated all of its fundamental obligations under the SAA, including by sacrificing Planet sales to launch and grow a competitor's customer base, and by

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<sup>4</sup> Smuckler Affidavit, para. 6.

<sup>5</sup> Smuckler Affidavit, para. 7 and Exhibit A.

<sup>6</sup> SAA, section 19(f).

<sup>7</sup> Smuckler Affidavit, para. 9.



failing to indemnify it for misconduct by sales representatives.<sup>8</sup>

19. The Arbitrator was appointed by the International Centre for Dispute Resolution (the “ICDR”) following a consultative process with the parties. The Arbitrator provided a disclosure statement and the parties were provided with the opportunity to object to the appointment on any grounds. No such objections were made, and the Arbitrator’s appointment was duly confirmed.<sup>9</sup>

20. The Arbitration, including the lengthy pre-hearing procedures and the merits hearing, was conducted under the ICDR Rules. The procedural history of the Arbitration leading up to the evidentiary hearing is set out in some detail at paragraphs 8-74 of the Award. As described in the Award, over the course of the Arbitration proceeding, the Arbitrator issued 28 procedural orders, many of which dealt with various pre-hearing disputes.<sup>10</sup>

21. The Arbitrator issued a Partial Final Award dated March 6, 2019, in which she denied Planet Energy’s request to join certain non-parties to the SAA as additional parties to the Arbitration.<sup>11</sup>

22. The Arbitration culminated with a hearing on the merits via Zoom video-conference over eleven days in June 2020. During the hearing, the parties presented opening and closing statements, and a total of fourteen witnesses (including four expert

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<sup>8</sup> Award, para. 4.

<sup>9</sup> Smuckler Affidavit, para. 10.

<sup>10</sup> Smuckler Affidavit, para. 11.

<sup>11</sup> Smuckler Affidavit, para. 12 and Exhibit C.

witnesses) provided oral testimony (twelve of the fourteen had also provided sworn witness statements and/or expert reports).<sup>12</sup>

23. On September 11, 2020, following the closure of the hearing, the Arbitrator reopened the hearing to obtain further submissions from the parties on a single discrete issue.<sup>13</sup>

**B. The Award**

24. On February 3, 2021, the Arbitrator issued the Award, in which she found that “ACN’s claims have been upheld in all material respects and ACN is the prevailing party in the arbitration.”<sup>14</sup>

25. ACN has supplied the court with a signed, notarized copy of the Award in its application record.<sup>15</sup>

26. The Award is lengthy and comprehensive, containing a detailed recitation of the parties’ respective claims and evidence, and a clear analysis of the factual and legal findings underpinning the decision.

27. In sum, the Arbitrator’s rulings result in Planet Energy owing ACN a total amount of \$28,096,588.20, plus interest that continues to accrue.<sup>16</sup>

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<sup>12</sup> Smuckler Affidavit, para. 13.

<sup>13</sup> Award, para. 119.

<sup>14</sup> Award, para. 481.

<sup>15</sup> Smuckler Affidavit, Exhibit D.

<sup>16</sup> Award, para. 489.

28. ACN moved promptly to apply for recognition and enforcement of the Award in Ontario. That recognition and enforcement is now effectively on hold pending resolution of Planet Energy's application to set aside the Award.

**C. Planet Energy's Pattern of Evading Its Financial Obligations to ACN**

29. Throughout the course of its relationship with ACN, and continuing through the arbitration, Planet Energy has consistently sought to avoid its financial obligations to ACN.

30. The chronology of the case, as set out in detail in the Award, is rife with examples of Planet Energy attempting to evade its financial obligations, including through the assertion of spurious legal claims and through misconduct and subterfuge. Most notably:

- (a) Starting in March 2018, Planet Energy began to withhold commissions that it acknowledged were owing to ACN, ostensibly as a set-off against a range of claims. As of June 2020, the quantum of commissions that Planet Energy acknowledged were due, but refused to pay, had exceeded \$11 million. That figure continues to rise with each passing month.<sup>17</sup>

The Arbitrator found that Planet Energy's claims were almost uniformly without merit.<sup>18</sup>

Planet Energy's counterclaims, including its claims for indemnification (which were the ostensible basis for Planet Energy's refusal to pay the

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<sup>17</sup> Smuckler Affidavit, para. 21.

<sup>18</sup> Award, paras. 440-476.

over \$11 million in commissions owing to ACN), evolved over the course of the arbitration.<sup>19</sup>

At the outset of the Arbitration, it quantified its counterclaims at an amount in excess of \$40 million. By the end of the Arbitration, Planet Energy quantified its counterclaims at an amount in excess of \$52 million.<sup>20</sup>

Ultimately, the Arbitrator found that Planet Energy was entitled to indemnification in the total amount of \$191,128 (a significant portion of which ACN had readily conceded). She found that none of its other counterclaims, including the balance of its indemnification claims, had merit.<sup>21</sup>

- (b) As part of the Arbitration, ACN engaged in an extensive audit of Planet Energy pursuant to audit rights granted to it under the SAA.

ACN proffered expert evidence from Michael Petron of Stout Risius Ross, LLC (“Stout”). Stout conducted an audit of Planet Energy’s customer and sales revenue accounting records and applicable transaction documents. Stout’s conduct of the audit was frequently contentious, requiring the Arbitrator to issue numerous procedural orders to resolve disputes between the parties.<sup>22</sup>

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<sup>19</sup> Award, para. 134.

<sup>20</sup> Award, para. 137.

<sup>21</sup> Award, para. 462.

<sup>22</sup> Award, paras. 12-18.

Stout's audit determined that Planet Energy "failed to provide accurate or complete reports in connection with the SAA."<sup>23</sup> In total, Stout concluded that Planet Energy had covertly underpaid ACN by approximately \$6.5 million, over and above the amounts that Planet Energy had openly withheld since March 2018.<sup>24</sup>

The Arbitrator found that Stout's methodology "was reasonable (if not conservative)" and that its conclusions were "reliable and accurate".<sup>25</sup>

In particular, the Arbitrator found that Planet Energy "failed to provide ACN accurate and complete reports in connection with the SAA and that Planet materially underpaid commissions owed to ACN in the amounts determined by Stout."

- (c) The Arbitrator found as a fact that starting in 2016, following ACN's decision not to renew its relationship with Planet Energy, Planet Energy began to surreptitiously manipulate database information to deprive ACN of commission payments without detection, in material breach of the SAA.<sup>26</sup>

In particular, the Arbitrator credited the testimony of Cristina David, a former Planet Energy employee, who explained a process implemented by Planet Energy to "transfer" ACN-coded customer accounts (i.e., customers

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<sup>23</sup> Award, para. 352.

<sup>24</sup> Award, para. 369.

<sup>25</sup> Award, para. 416.

<sup>26</sup> Award, para. 423.

who had been referred to Planet Energy by an ACN IBO) in Planet Energy's database to a newly-created code that would result in ACN no longer receiving commissions in connection with the account.<sup>27</sup>

Ms. David also testified that she was instructed to lie to ACN if it ever raised questions about missing commissions. The Arbitrator found that the testimony of Planet Energy's co-CEO Stephen Plummer, who "denied that he ever instructed [Ms. David] to lie to ACN or drop flowing customers ... lacked credibility."<sup>28</sup>

### PART III. LAW AND ARGUMENT

31. Enforcement and recognition of an arbitral award is intended to be a simple, efficient process, in which the court's role is highly circumscribed. Having elected to arbitrate their dispute, the parties are not entitled to another bite at the apple in court.

32. As one author has described the applicable process under the *Act*:

The domestic court is to enforce the award, subject to a limited set of defences in Article V. The defences are largely jurisdictional and procedural. Was this a proper tribunal, set up under a binding agreement? Did it follow appropriate procedure? Did it respect its mandate? If so, the award is enforced. There is no review for alleged errors of fact or substantive law relating to the merits.<sup>29</sup>

33. In a final desperate attempt to evade its obligations to ACN, Planet Energy has now applied for an order setting aside the Award, removing the Arbitrator, and directing

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<sup>27</sup> Award, para. 260-269.

<sup>28</sup> Award, para. 263.

<sup>29</sup> Maureen Irish, "The Review of International Commercial Arbitral Awards and the *New York Convention*: Breaking the Link to Administrative Law" (2021) 52:2 Ottawa Law Review 157, 2021 CanLIIDocs 1683, <https://canlii.ca/t/t9g7>, at 162.

the parties to agree on the appointment of a new arbitrator. In effect, after over two years of intense preparation by the parties and their respective lawyers, experts, and witnesses, all at a cost to the parties of millions of dollars, culminating in a two-week hearing with testimony from fourteen witnesses and a 108-page arbitral award, Planet Energy is now asking that the process be re-set and the parties directed back to the start line for a complete do-over.

34. Although the *Act* provides very limited and narrow grounds upon which an arbitral award may be set aside, Planet Energy's application is in the nature of a *de novo* appeal seeking court review of virtually every substantive and procedural decision made by the Arbitrator throughout the two-year arbitral process.

35. Planet Energy's application is speculative at best, and unlikely to succeed. Nevertheless, it has had the inevitable effect of complicating and lengthening the enforcement and recognition process, an effect that will be multiplied should Planet Energy choose to appeal any decision of this court.

**A. *Planet Energy Should Be Required to Post Security***

36. Planet Energy should be required to provide "appropriate security" as a condition of its application to set aside the Award.

37. Article 36(2) of the Model Law on International Commercial Arbitration, which has force of law in Ontario through the *Act*, provides as follows:

If an application for setting aside or suspension of an award has been made to a court referred to in paragraph (1)(a)(v) of this article, the court where recognition or enforcement is sought may, if it considers it proper, adjourn its decision and

may also, on the application of the party claiming recognition or enforcement of the award, order the other party to provide appropriate security.<sup>30</sup>

38. There is a small number of Canadian cases that have considered applications for security in these circumstances.<sup>31</sup>

39. From those cases, certain clear principles can be gleaned:

- (a) The state of the set-aside proceeding, the likelihood of success of that proceeding, and the financial situation of the party against which enforcement is sought are all relevant to the analysis;<sup>32</sup>
- (b) Posting of security is intended, among other things, to give the posting party incentive to expedite its set-aside proceeding and to avoid any future steps that might delay matters;<sup>33</sup>
- (c) The party seeking an order of security need not show a risk of non-payment. Such an order would compel the party ordered to post security to “show *bona fides*” in pursuing its remedy in a timely fashion and can be seen as a *quid pro quo* for an enforcement application being opposed and delayed;<sup>34</sup>

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<sup>30</sup> *International Commercial Arbitration Act*, 2017, S.O. 2017, c. 2, Sched. 5, Schedule 2, Article 36(2).

<sup>31</sup> See, e.g., *Powerex Corp. v. Alcan Inc.*, 2004 BCSC 876 (CanLII) [“*Powerex*”]; *Wires Jolley LLP v. Wong*, 2010 BCSC 391 (CanLII) [“*Wires Jolley*”]; *Empresa Minera Los Quenuales S.A. v. Vena Resources*, 2015 ONSC 4408 (CanLII) [“*Empresa Minera*”].

<sup>32</sup> *Empresa Minera*, para. 45.

<sup>33</sup> *Empresa Minera*, para. 41.

<sup>34</sup> *Wires Jolley*, para. 27, referencing *Powerex*.



- (d) Although a risk of non-payment need not be shown for an order to be granted, security should not be ordered if it would prejudice the ability of the party seeking the set-aside order to pursue its remedies;<sup>35</sup>
- (e) Securing of the judgment may be appropriate “so as to facilitate execution.”<sup>36</sup>

40. In each of the cases cited above, the court to which the set-aside application was made (a court located in the seat of the arbitration) was different from the court in which enforcement of the award was sought (a court in which the losing party had assets to satisfy the award made against it). As a result, the enforcement court was asked to adjourn or delay its proceeding to permit the set-aside application to be heard in a different court.

41. In this case, by contrast, the same court is being asked to hear the set-aside application (because Toronto was the seat of the Arbitration) and the enforcement application (because Planet Energy is based in Toronto). Nevertheless, the same general principles apply, as the set-aside application (plus any appeals that might follow) has inevitably interfered with and delayed ACN’s ability to have its judgment enforced and recognized, and as the justification for requiring Planet Energy to establish its *bona fides* and the appropriateness of facilitating execution for ACN are equally powerful in this case.

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<sup>35</sup> *Wires Jolley*, para. 29.

<sup>36</sup> *Wires Jolley*, para. 28.

42. The factors outlined above all support the making of an order for security in this case. In particular:

- (a) Planet Energy's set-aside application is unlikely to succeed. It is styled almost entirely as a *de novo* attack on every substantive and procedural decision made by the Arbitrator;
- (b) ACN is not seeking an amount of security that would prejudice Planet Energy's ability to pursue its legal remedies or imperil its business. As described in more detail below, the amount being requested is limited to cash explicitly set aside and accrued on Planet Energy's books "for liabilities to ACN";
- (c) Particularly in light of the "kitchen sink" approach taken by Planet Energy in its set-aside application, and in light of the clear history of Planet Energy seeking to avoid paying its financial obligations to ACN, it would be appropriate for Planet Energy to post security, both to show Planet Energy's *bona fides*, and to facilitate ACN's execution in the event the set-aside application is unsuccessful and ACN's enforcement and application enforcement application is successful.

43. As outlined above, Planet Energy has asked this court to impose an extreme remedy, setting aside the Award and directing that the process be restarted from step one, despite the thousands of hours and millions of dollars devoted to the Arbitration in the first instance. The *Act* empowers this court to require Planet Energy to post security,

thus ensuring that Planet Energy's set-aside application is not a "free shot" without any consequences in the event it is found to be without merit.

44. It is noteworthy that in the *Empresa Minera* case, this court ordered the party against which enforcement was sought to post security even though its set-aside application had already been argued and "nothing further [was] to be done except to await the decision", and even though the party's current liabilities "greatly exceeded" its current assets. In this case, by contrast, the set-aside application has not yet been argued, and there is no question that Planet Energy's assets exceed its liabilities. An order requiring Planet Energy to post security before its set-aside application is considered would be entirely fair and appropriate.

**B. *The Quantum of Security Sought is Fair and Reasonable***

45. In accordance with the principles espoused in the cases detailed above, ACN is not seeking an order directing Planet Energy to post an amount that would prejudice its ability to pursue its legal remedy or that would cripple the business.

46. Although ACN, in its Notice of Application, originally sought an order requiring Planet Energy to post security "in the total amount of the damages awarded against them and in favour of the applicant, or in some other appropriate amount", ACN has reviewed and considered Planet Energy's responding materials and now only seeks an order for security in the amount of \$10 million, a substantial discount from the \$28 million award made in ACN's favour.

47. As Nino Silvestri, Planet Energy's CEO, explained in his affidavit, Planet Energy "has accrued as a liability and as cash the sales commissions to which ACN claimed

entitlement following Planet Energy's decision to cease paying such commissions following Planet Energy's decision to cease paying such commissions in March 2018".<sup>37</sup>

48. On its own evidence, the amount that Planet Energy has accrued for liabilities to ACN is approximately \$10 million.<sup>38</sup> The amounts accrued by Planet Energy do not include the approximately \$6.5 million in commissions that Planet Energy covertly withheld from ACN throughout the course of their relationship, as uncovered by the Stout audit, nor the balance of the damages and costs payable to ACN under the Award. Although the \$10 million represents only 36% of the total amount owed to ACN under the Award, ACN is content to limit its request for security to these funds that have been accrued and set aside for this precise purpose, and that could and should have been paid to ACN on a monthly basis since March 2018.

49. ACN is aware of and alive to Planet Energy's stated concerns with respect to the impact of any order for security on its business, and in particular on its relationship with Shell, which is the company's exclusive energy supplier and its most important creditor. ACN has no interest in, or intention of, harming Planet Energy or its critical business relationships.

50. The importance of the Shell relationship is reflected in the "restricted cash" model described in Planet Energy's financial statements. In summary, all payments received by Planet Energy (including all its customer payments) are paid "to a specific lockbox" from which amounts are first paid to Shell in satisfaction of all amounts due to Shell,

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<sup>37</sup> Responding Affidavit of Nino Silvestri, sworn June 23, 2021 ["Silvestri Affidavit"], para. 7(d).

<sup>38</sup> Report of Richter Advisory Group, dated June 23, 2021, Responding Application Record, Tab 2 ["Richter Report"], p. 8.

with the balance then “released” to Planet Energy.<sup>39</sup> Mr. Silvestri described the process as follows on cross-examination:

A: I would describe it a bit differently. On the 25<sup>th</sup> of each month, Shell ... the terminology we use is “sweep”. They sweep the blocked account to cover the previous delivery month’s commodity costs, and then, what is remaining, they transfer it to our operating account.

Q: Okay. And, so, the amounts that show up on the financial statement, in the “Cash” line, I take it those are funds that have been released by Shell, for lack of a better word; is that fair?

A: That’s correct, yes.<sup>40</sup>

51. Planet Energy’s financial statements reflect that, as of September 30, 2020, the company held \$12,298,000 in cash – all of which had been “released” by Shell, and approximately \$10,000,000 of which it was holding in respect of the corresponding accrued liability for ACN commissions.<sup>41</sup> In other words, Shell has no claim to, or interest in, the cash amounts accrued by Planet Energy which ACN now seeks to have posted as security.

52. Planet Energy’s materials also describe a key metric for its relationship with Shell, known as “Modified Working Capital”. Planet Energy is apparently required to maintain a minimum Modified Working Capital amount or risk being in breach of its agreement with Shell.<sup>42</sup> As explained in the report of the Richter Advisory Group, “any

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<sup>39</sup> Planet Energy (Ontario) Corp. Consolidated Financial Statements As At and for the Years Ended September 30, 2020 and 2019 [“Planet Financial Statements”], Silvestri Affidavit Exhibit A, Note 7, p. 20.

<sup>40</sup> Cross-Examination of Nino Silvestri, July 14, 2021, Q. 26-27.

<sup>41</sup> Planet Financial Statements, p. 4.

<sup>42</sup> Richter Report, p. 8.

payment to ACN up to \$10.00MM will equally reduce cash and the ACN accrual, thereby leaving the calculation of Modified Working Capital unchanged.”<sup>43</sup>

53. In short, the order requested should have no impact whatsoever on Planet Energy’s relationship with, or obligations to, Shell.

54. Although the Richter report contains a number of hypothetical alternative scenarios in which posting of security in an amount exceeding \$4 million could imperil Planet Energy’s ability to maintain operations, there is no evidence that any of those scenarios would in fact come to pass if Planet Energy was ordered to post security in the amount that it has been accruing since March 2018 for the very purpose of satisfying (a portion of its) obligations to ACN.

55. In summary, ACN’s request is fair and reasonable, and poses no realistic risk to Planet Energy. The quantum that ACN seeks to have posted as security is an amount that Planet Energy itself calculated it owed to ACN, and that would have been paid to ACN in the normal course had Planet Energy not made the fateful and baseless decision to begin withholding ACN’s commissions in March 2018.

#### **PART IV. ORDER REQUESTED**

56. ACN therefore respectfully requests an order:

- (a) requiring Planet Energy to post security in the total amount of \$10,000,000, or in some other appropriate amount, prior to or as a

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<sup>43</sup> Richter Report, p. 8.

condition of its application to set aside or suspend the Award being heard,  
with such security to be held pending further order of this court; and

(b) awarding ACN its costs of this application.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 23<sup>rd</sup> day of July, 2021

A handwritten signature in blue ink, appearing to read "Kris Borg-Olivier", is written over a light blue rectangular background.

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Kris Borg-Olivier

## SCHEDULE "A"

1. *Powerex Corp. v. Alcan Inc.*, 2004 BCSC 876 (CanLII).
2. *Wires Jolley LLP v. Wong*, 2010 BCSC 391 (CanLII).
3. *Empresa Minera Los Quenuales S.A. v. Vena Resources*, 2015 ONSC 4408 (CanLII).



**SCHEDULE “B”***International Commercial Arbitration Act, 2017***Application of Convention**

**2** (1) Subject to this Act, the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, adopted by the United Nations Conference on International Commercial Arbitration in New York on 10 June 1958 and set out in Schedule 1, has force of law in Ontario in relation to arbitral awards or arbitration agreements in respect of differences arising out of commercial legal relationships.

**Application of Model Law**

**5** (1) Subject to this Act, the Model Law on International Commercial Arbitration, adopted by the United Nations Commission on International Trade Law on 21 June 1985, as amended by the United Nations Commission on International Trade Law on 7 July 2006, set out in Schedule 2, has force of law in Ontario.

**SCHEDULE 2****UNCITRAL MODEL LAW ON INTERNATIONAL COMMERCIAL ARBITRATION**CHAPTER VII.  
RECOURSE AGAINST AWARD*Article 34. Application for setting aside as exclusive recourse against arbitral award*

(1) Recourse to a court against an arbitral award may be made only by an application for setting aside in accordance with paragraphs (2) and (3) of this article.

(2) An arbitral award may be set aside by the court specified in article 6 only if:

(a) the party making the application furnishes proof that:

(i) a party to the arbitration agreement referred to in article 7 was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of this State; or

(ii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iii) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted,

only that part of the award which contains decisions on matters not submitted to arbitration may be set aside; or

(iv) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Law from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Law; or

(b) the court finds that:

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law of this State; or

(ii) the award is in conflict with the public policy of this State.

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the award or, if a request had been made under article 33, from the date on which that request had been disposed of by the arbitral tribunal.

(4) The court, when asked to set aside an award, may, where appropriate and so requested by a party, suspend the setting aside proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the arbitral tribunal's opinion will eliminate the grounds for setting aside.

#### CHAPTER VIII. RECOGNITION AND ENFORCEMENT OF AWARDS

##### *Article 35. Recognition and enforcement*

(1) An arbitral award, irrespective of the country in which it was made, shall be recognized as binding and, upon application in writing to the competent court, shall be enforced subject to the provisions of this article and of article 36.

(2) The party relying on an award or applying for its enforcement shall supply the original award or a copy thereof. If the award is not made in an official language of this State, the court may request the party to supply a translation thereof into such language.

##### *Article 36. Grounds for refusing recognition or enforcement*

(1) Recognition or enforcement of an arbitral award, irrespective of the country in which it was made, may be refused only:

(a) at the request of the party against whom it is invoked, if that party furnishes to the competent court where recognition or enforcement is sought proof that:

(i) a party to the arbitration agreement referred to in article 7 was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or

(ii) the party against whom the award is invoked was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iii) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or

(iv) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or

(v) the award has not yet become binding on the parties or has been set aside or suspended by a court of the country in which, or under the law of which, that award was made; or

(b) if the court finds that:

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law of this State; or

(ii) the recognition or enforcement of the award would be contrary to the public policy of this State.

(2) If an application for setting aside or suspension of an award has been made to a court referred to in paragraph (1)(a)(v) of this article, the court where recognition or enforcement is sought may, if it considers it proper, adjourn its decision and may also, on the application of the party claiming recognition or enforcement of the award, order the other party to provide appropriate security.

**ALL COMMUNICATIONS NETWORK OF CANADA, CO.** -and-  
Applicant

Court File No. CV-21-00659022-00CL

**PLANET ENERGY CORP., et al.**  
Respondent

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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

PROCEEDING COMMENCED AT  
TORONTO

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**FACTUM OF THE APPLICANT**

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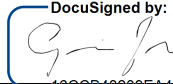
Fax: 416.646.4301

Email: [kris.borg-olivier@paliareroland.com](mailto:kris.borg-olivier@paliareroland.com)

Lawyers for the Applicant

This is Exhibit "J" referred to in the Affidavit of Nino Silvestri sworn by Nino Silvestri of the Town of Oakville, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on May 26, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:



10CCB18209FA101

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Commissioner for Taking Affidavits (or as may be)

**GAVIN INKSTER LSO# 82737I**

**INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION**  
International Arbitration Tribunal

**ALL COMMUNICATIONS NETWORK OF CANADA, CO.,**

Claimant/Counter-Respondent

v.

**ICDR Case No. 01-18-0001-6527**

**PLANET ENERGY CORP.,  
PLANET ENERGY (ONTARIO) CORP.,  
PLANET ENERGY (B.C.) CORP.,**

Respondents/Counter-Claimants

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**PROCEDURAL ORDER NO. 5**  
**(DECISION AND ORDER ON REQUESTS FOR INTERIM RELIEF)**

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1. This Order resolves requests made by each Party for certain interim relief.
2. The Parties briefed their requests in writing according to a schedule that was set by the Arbitrator in consultation with the Parties, and made oral submissions during a telephonic hearing on December 19, 2018.<sup>1</sup>

**ACN's Application for Interim Relief**

3. As set forth in ACN's "Submissions in Support of its Request for Interim Relief Concerning ACN's Audit Rights and Planet Energy's Reporting Obligations," dated November 9, 2018 ("**ACN's Audit Request**"), ACN seeks an order:
  - a. permitting it to conduct an audit of Planet Energy's customer and sales revenue accounting records and applicable transaction documents, in accordance with Section 9 of the SAA;
  - b. directing that the audit commence at a time to be agreed by the Parties, but within three weeks of this Order;

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<sup>1</sup> Procedural Order No. 1, dated September 26, 2018, established a schedule for the Parties to make written submissions and to request an oral hearing by telephone in connection with their respective requests. That schedule was subsequently modified and supplemented as requested by the Parties by Procedural Order No. 3 dated November 15, 2018, Procedural Order No. 4 dated November 30, 2018, and e-mail directions from the Arbitrator dated November 28 and 30, 2018.

- c. directing Planet Energy to pay into escrow the amounts that it has reported and will report as payable to ACN as monthly commissions; and
  - d. directing Planet Energy's immediate compliance with ACN's request for complete and accurate reporting of all information required by ACN to calculate and verify the commissions payable by ACN to its IBO's, in accordance with Section 5(e) of the SAA.<sup>2</sup>
4. Planet Energy opposes the requests for an immediate audit and for escrow payments and asks instead for an order:
- i. requiring ACN to provide Planet Energy with a third party audit plan to be agreed between the Parties, or, in the alternative, decided by the Arbitrator;
  - ii. determining that prior to any audit, the Arbitrator shall make all the determinations required to make an audit efficient and productive and to lessen the specter of multiple audits; and
  - iii. confirming that Planet Energy is providing all the reporting it is required to provide under the terms of the SAA.<sup>3</sup>
5. On December 13, 2018, ACN submitted its "Rebuttal Submissions to Planet Energy's Opposition to ACN's Request for Interim Relief Concerning ACN's Audit Rights and Planet Energy's Reporting Obligations" ("**ACN's Audit Rebuttal**"), together with Exhibit C7.

### **Planet Energy's Application for Interim Relief**

6. In its November 9, 2018 "Submission in Support of its Request [for] Interim Relief in the Form of a Determination of the Target Margin" ("**Planet Energy's Target Margin Request**"), Planet Energy requests that the definition of Target Margin be determined: (i) prior to any audit of Planet Energy; and (ii) as a matter of interim relief.
7. On November 26, 2018, ACN opposed Planet Energy's requests.<sup>4</sup>

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<sup>2</sup> ACN's Audit Request was submitted together with the Affidavit of Cristina David, sworn November 8, 2018 and marked as Exhibit CX3, as well as the Affidavit of Dave Merriman, sworn November 9, 2018 and marked as Exhibit CX4.

<sup>3</sup> On November 28, 2018, Planet Energy submitted its "Opposition to ACN's Submission in Support of its Request for Interim Relief regarding ACN's Audit Rights and Planet Energy's Reporting Obligations" ("**Planet Energy's Audit Response**") together with Exhibits RX17-21. Planet Energy's Counsel represented that he transmitted this submission to all case participants on November 26, 2018 via e-mail and also uploaded it to the ICDR website. As this transmission was apparently unsuccessful, Planet Energy submitted it again on November 28, 2018, which is the date it was received by the Arbitrator.

<sup>4</sup> On November 26, 2018, ACN made its "Submissions in Response to Planet Energy's Request for a Threshold Determination of the Definition of Target Margin" ("**ACN's Target Margin Response**") together with the

8. On December 13, 2018, Planet Energy submitted its “Rebuttal to ACN’s Opposition in Support of its Request [for] Interim Relief in the Form of a Determination of the Target Margin” (“**Planet Energy’s Target Margin Rebuttal**”), together with Exhibits RX23 and RX24.
9. On December 17, 2018, ACN objected to the scope of Planet Energy’s Rebuttal and asked that it be struck in its entirety, or, in the alternative, that the Arbitrator disregard any portions which do not directly respond to ACN’s submissions concerning preliminary determination of the Target Margin.
10. Planet Energy responded to this objection during oral argument on December 19, 2018.

### **Discussion**

11. Before turning to the Parties’ specific requests for interim relief, it is necessary to address ACN’s objection to the admissibility and/or scope of Planet Energy’s Rebuttal.
12. ACN objects that Planet Energy’s Rebuttal strays beyond the scope of permissible reply on the issue of Target Margin determination (Planet Energy’s request for relief) to address the broader issue of ACN’s audit rights (ACN’s request for relief). ACN argues that the Parties’ respective requests were subject to separate briefing schedules, with each to receive the last word on its request, and that the following requests for relief and legal arguments were raised for the first time in Planet Energy’s Rebuttal and have nothing to do with determination of the Target Margin:
  - i. Planet Energy argues that any information sought by ACN must be pursued under the ICDR Rules as a request for production of evidence;
  - ii. any analysis of Planet Energy’s books and records should be made by a Tribunal-appointed expert rather than an auditor chosen by ACN; and
  - iii. ACN’s audit rights have been extinguished as a result of an alleged material breach of the SAA.
13. According to ACN: (i) Planet Energy could and should have raised these new arguments in the context of its response to ACN’s Audit Request; (ii) Planet Energy’s new allegation that ACN lost any contractual right to audit because of a material breach is inconsistent with prior statements by Planet Energy that ACN is entitled to conduct an audit under the SAA; and (iii) responding to Planet Energy’s arguments

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Affidavit of Michael Petron of Stout Risius Ross, LLC, sworn November 24, 2018 and marked as Exhibit CX5 (“**Petron Affidavit**”), and Exhibit CX6.



about material breach would unfairly require another round of submissions, which would also be timely and expensive.

14. During oral argument, Planet Energy argued that the Petron Affidavit, which ACN submitted with its Target Margin Response, generally “opened the door” to the issues addressed in Planet Energy’s Rebuttal.
15. Having considered the Parties’ written and oral submissions, the Arbitrator finds that some, but not all, of Planet Energy’s Rebuttal exceeded the permissible scope of rebuttal and should be disregarded.
16. Procedural Order No. 1 fixed separate briefing schedules for the Parties’ respective requests for interim relief and Procedural Order No. 4 limited the Parties’ rebuttals to “each other’s interim relief responses.”<sup>5</sup>
17. In this regard, there can be no doubt that there are some overlapping questions about the appropriate timing and scope of any audit in connection with both ACN’s Audit Request and Planet Energy’s Target Margin Request. This can be seen, for example, from Planet Energy’s opening statement in support of its Target Margin Request, which directly explains how it believes the Parties’ respective requests for interim relief are “closely intertwined” in terms of timing (Planet Energy asserts the definition of Target Margin “is required prior to the onset of any audit”) and scope (the “auditors need to be aware of what they are looking for”).<sup>6</sup> It is equally apparent from the fact that both ACN’s Audit Request and its Target Margin Response, supported by the Petron Affidavit, address the proposed “focus” of an audit as well as a draft preliminary audit plan.<sup>7</sup>
18. However, neither Planet Energy’s argument that ACN lost any contractual right to audit because of a material breach nor its argument that ACN’s request for interim relief must be made as a request for production of evidence under the ICDR Rules—both of which were made for the first time in Planet Energy’s Rebuttal—concern such overlapping questions, nor do they respond, as Planet Energy asserts, to matters raised in the Petron Affidavit, which is largely concerned with the scope of any audit. Indeed, they have nothing to do with whether the definition of Target Margin should be determined prior to any audit, and Planet Energy has not attempted to argue that they do.
19. Instead, the essence of these new arguments is whether ACN has a *right* or *entitlement* to conduct any audit. This is an issue that arises solely in connection with ACN’s Audit Request, as Planet Energy acknowledged at the outset of its Target

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<sup>5</sup> P.O. #4 at ¶ 1.

<sup>6</sup> Planet Energy’s Target Margin Request at ¶ 1(a).

<sup>7</sup> See, e.g., ACN’s Audit Request at ¶¶ 19, 21 (addressing the focus of draft preliminary audit plan and ACN’s right to audit Planet Energy’s records “at any time upon reasonable advance notice”); ACN’s Target Margin Response at ¶¶ 3(a), 7, 13 (addressing timing of audit), 9-12 & Petron Affidavit (addressing impact of Target Margin definition on proposed scope of audit).

Margin Request when it drew attention to the “closely intertwined” questions of timing and scope and yet reserved comment on “ACN’s Argument for an Audit” (i.e., ACN’s alleged right to an immediate audit) until the “appropriate time.”<sup>8</sup>

20. Thus it is clear that:
- i. Planet Energy understood the procedural expectation, based on the briefing schedule established by the Arbitrator in consultation with the Parties, that it should make any arguments about ACN’s right to conduct any audit in the context of its Audit Response;<sup>9</sup>
  - ii. to the extent that Planet Energy contends ACN is no longer entitled to any audit as a matter of contract and/or is only entitled to seek access to Planet Energy’s books and records in the context of the arbitration as a request for documents under the ICDR Rules, Planet Energy could and should have argued these points in its Audit Response; and
  - iii. it was beyond the permissible scope of Planet Energy’s Target Margin Rebuttal to raise these points in that submission.
21. Planet Energy’s request for the appointment of a third party auditor (or “Tribunal-appointed expert”) is on a slightly different footing.
22. Like the other two arguments that ACN asserts exceed the scope of proper rebuttal, Planet Energy’s argument with respect to appointment of a third party auditor was not made in Planet Energy’s Target Margin Request.
23. It is not correct, however, that the notion of a third party audit was raised by Planet Energy for the first time in its Target Margin Rebuttal. In its “Response and Counterclaim in Arbitration Against All Communications Network of Canada and Joinder Request and Third Party Claim Against Xoom Energy in Arbitration” dated June 12, 2018, Planet Energy states that it “seeks an order requiring ACN to utilize a third party auditor to conduct an audit and that certain documents not be required to be provided.”<sup>10</sup> Then, in its Audit Response, Planet Energy asks for an order “denying ACN an immediate audit and an order requiring ACN to provide Planet Energy with a third party audit plan to be agreed to between the parties.”<sup>11</sup>

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<sup>8</sup> See, e.g., ACN’s Audit Request at ¶¶ 2-3 (discussing ACN’s “rights under the SAA to audit”); Planet Energy’s Target Margin Request at ¶ 1 & n. 3 (“Planet will respond to ACN’s Argument for an Audit as interim relief at the appropriate time”).

<sup>9</sup> See also Planet Energy’s Audit Response at ¶ 93 (arguing a request for escrowed funds by ACN should be rejected because it was not contemplated by Procedural Order No. 1, in which the Arbitrator outlined the requests for interim relief that each Party had asked to make).

<sup>10</sup> Planet Energy’s Response, Counterclaim, and Third Party Claim at ¶ 161.

<sup>11</sup> Planet Energy’s Audit Response at p. 25, prayer for relief ¶ 1.

24. That Planet Energy raised the issue of a third party auditor in its Audit Response and not in connection with its Target Margin Request indicates that Planet Energy itself viewed the matter as an issue that properly arises as a response to ACN's request for an audit, and not in connection with Planet Energy's request for determination of the definition of Target Margin.
25. However, even if Planet Energy's arguments about appointment of a third party auditor could be seen as proper response to the Petron Affidavit, insofar as Planet Energy argues that the proposed scope of ACN's audit (as described in the Petron Affidavit) shows why any audit should be conducted by a third party auditor and not an ACN-appointed auditor, it would still be problematic that when it first raised the issue of a third party auditor in its Audit Response, Planet Energy failed to state any supporting arguments whatsoever and waited until its Target Margin Rebuttal to make any such arguments. In particular, Planet Energy argued for the first time in its Target Margin Rebuttal that the Arbitrator's authority to appoint a third party auditor arises from the authority set forth in Article 25 of the Rules to appoint a Tribunal-appointed expert and that "ACN's request effectively seeks production of documents and appointment of an expert."<sup>12</sup> These arguments do not depend on anything said in the Petron Affidavit.
26. Given Planet Energy's complete failure in the first instance to support its request for appointment of a third party auditor, it is difficult to see Planet Energy's detailed discussion about Article 25 of the Rules and explanation as to why any audit should not be conducted by an ACN-appointed auditor but a Tribunal-appointed auditor as proper counterargument to any points made by ACN, rather than as untimely new argument to support a request that Planet Energy previously raised in passing but left wholly unsupported.
27. In this respect, it is notable that even though Planet Energy asserted in oral argument that the Petron Affidavit opened the door to the three arguments ACN contends are beyond the scope of permissible rebuttal, when Planet Energy introduced its arguments about document requests and a Tribunal-appointed expert in its brief, it stated that it recognized it was taking a "slight variant" of the position it took in its Audit Response, and justified the change of position not by referring to arguments made by ACN in the Petron Affidavit or ACN's Target Margin Response, but rather based upon "reflection, additional research and re-reading the ICDR Rules."<sup>13</sup> This is not good cause for making new arguments in a closing submission.
28. In all of these circumstances, the Arbitrator concludes that Planet Energy exceeded the scope of permissible rebuttal without good cause by making new arguments

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<sup>12</sup> Planet Energy's Target Margin Rebuttal at ¶ 23.

<sup>13</sup> Planet Energy's Target Margin Rebuttal at ¶ 6. Notably, although Planet Energy also asserts in a footnote that "the ACN Target Margin Response strayed a bit beyond the confines of the Target Margin issue – to which Planet has no objection. Planet too shall stray slightly," (*see id.* at n.1), it failed to substantiate this assertion.

regarding material breach, access to Planet Energy books and records through document requests, and as to why a third party auditor should be appointed.

29. The question then becomes whether Planet Energy's Target Margin Rebuttal should be disregarded in whole or in part, as ACN requests.
30. As part of this analysis, the Arbitrator has considered the submissions made about whether it would be appropriate to remedy this situation by permitting ACN to submit a new brief in response, and finds that:
  - i. Planet Energy's new arguments contesting ACN's right under the SAA to conduct an audit is not a slight variation in position but an about-face that is inconsistent with the position it has otherwise taken since the commencement of the arbitration and in all of its other submissions on interim relief;<sup>14</sup>
  - ii. it would be procedurally unfair and prejudicial to ACN to allow Planet Energy to contest ACN's contractual right to any audit at the close of briefing interim relief requests and after repeatedly taking an inconsistent position;<sup>15</sup>
  - iii. responding to Planet Energy's material breach argument would likely require ACN to research and analyze significant questions of fact and law;
  - iv. allowing further briefing would be unduly disruptive of the proceedings and wasteful of time and costs; and
  - v. given the absence of good cause for Planet Energy's injection of new arguments in rebuttal, allowing further briefing would wrongly signal to the Parties that compliance with procedural rules in this arbitration is optional.
31. At the same time, although it would be impractical to parse Planet Energy's submission line-by-line to identify what constitutes proper rebuttal, the Arbitrator does not accept that the entirety of Planet Energy's submission, including comments in direct response to the Petron Affidavit,<sup>16</sup> was improper.

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<sup>14</sup> See Planet Energy's Response and Counterclaim at ¶ 88 ("Planet Energy recognizes that ACN is entitled under the Sales Agency Agreement to conduct an audit), Procedural Order No. 1 at ¶ 8 ("Planet does not dispute that ACN has audit rights, but argues that the Arbitrator should first determine the definition of Target Margin"); Planet Energy's Target Margin Request at n.3 ("Planet believes that that Audit request, though clearly within ACN's rights, was clearly asserted for retaliatory purposes. ... the audit needs to be appropriately defined"); Planet Energy's Audit Response at ¶ 21 ("As indicated in all Planet submissions, Planet recognizes ACN's right to an audit.").

<sup>15</sup> See ACN's objection letter dated December 17, 2018 at pp. 2-3.

<sup>16</sup> See, e.g., Planet Energy's Target Margin Rebuttal at ¶ 38, describing "numerous additional issues with the Petron Affidavit."

32. Accordingly, although the Arbitrator will not disregard the entirety of Planet Energy's Target Margin Rebuttal, it is appropriate to generally disregard the new arguments discussed above.
33. In making this determination, the Arbitrator notes that pursuant to Article 20(7) of the ICDR Rules, the "parties shall make every effort to avoid unnecessary delay and expense in the arbitration" and the "arbitral tribunal may allocate costs, draw adverse inferences, and *take such steps as are necessary to protect the efficiency and integrity of the arbitration*" (emphasis added).
34. Turning now to consider the interim relief requested by each Party, it is uncontroversial that the Arbitrator's authority to grant interim measures arises under Article 24(1) of the ICDR Rules, which provides that an arbitral tribunal may order or award any "interim or conservatory measures it deems necessary, including injunctive relief and measures for the protection or conservation of property."<sup>17</sup>
35. There is some debate about what circumstances warrant the Arbitrator's exercise of discretion under Article 24(1).
36. In its Target Margin Rebuttal and in oral argument, Planet Energy argued that ACN's request for an immediate audit should not be granted because ACN did not make a "strong showing" of the criteria arbitral tribunals "generally require" requesting parties to show before they will grant interim relief (those criteria being "(i) a risk of serious or irreparable harm to the requesting party; (ii) urgency; and (iii) no prejudgment of the merits").<sup>18</sup>
37. By contrast, neither of Planet Energy's prior submissions (i.e., its Target Margin Request or its Audit Response) made any mention of these criteria or an applicable standard for granting interim relief. Meanwhile, ACN's Audit Request emphasized that an arbitrator has broad discretion to order interim relief and that arbitrators have authority to order interim relief to prevent their final award from becoming meaningless.<sup>19</sup>
38. The Arbitrator finds the considerations emphasized by the Parties in their initial submissions notable as up until Planet Energy's Target Margin Rebuttal, there was no dispute between the Parties as to ACN's contractual right to conduct an audit under Section 9 of the SAA, but only ancillary disputes about matters such as the appropriate scope and timing of any audit and whether the definition of Target

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<sup>17</sup> See ACN's Request for Audit at ¶ 13; Planet Energy's Target Margin Rebuttal at ¶ 3.

<sup>18</sup> Planet Energy's Target Margin Rebuttal at ¶ 11.

<sup>19</sup> See, e.g., ACN's Audit Request at ¶¶ 14-15, quoting *British Ins. Co., Cayman v. Water Street Ins. Co.*, 93 F. Supp.2d 506 (S.D.N.Y. 2000).

Margin should be determined first.<sup>20</sup> In this context, the Parties' arguments in relation to whether there should be an immediate audit and whether the definition of Target Margin should be determined as a preliminary matter focused not on whether there is a strong showing of the factors that Planet Energy says tribunals typically require before granting interim relief, but rather on overall case management considerations, with the Parties arguing that the Arbitrator should consider when the audit should take place in relation to broader issues to be determined at an evidentiary hearing and the impact of timing of an audit on the likelihood and scope of future audits, evidentiary hearings, and/or arbitration proceedings.

39. Thus ACN argues, for example, that:

- “the audit is likely to disclose information of direct relevance to a determination of both liability and damages;”
- its Notice of Arbitration expressly reserves the right to seek additional damages from Planet Energy if it determines from an audit that Planet Energy's Gross Margin payments or reporting concerning ACN customer renewals was inaccurate; and
- “[i]t would, frankly, make no sense whatsoever for information of this nature to come to light only after the arbitration, as such would likely give rise to the need for a further proceeding.”<sup>21</sup>

40. Meanwhile, Planet Energy submits:

- the definition of the Target Margin is “required prior to the onset of any audit—as the auditors need to be aware of what they are looking for;”
- “[i]f the proper definition of the Target Margin is found to be sixteen percent (16%) the audit, regardless of when conducted, will be far simpler, less expensive, and quicker;”
- “[t]he anticipated primary evidentiary hearing on ACN's underlying claim and Planet Energy's counterclaims is anticipated to be a drawn out process” and “[t]he more outstanding issues which can be narrowed at the outset, the less convoluted and drawn out the evidentiary hearing will be;” and

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<sup>20</sup> See, e.g., Planet Energy's Audit Response at ¶ 15 (“ACN appears to argue that Planet Energy should simply allow ACN access to all of Planet's books and records without any plan, without any framework and without concern for third parties to whom Planet Energy owes a legal obligation.”).

<sup>21</sup> ACN's Request for Audit at ¶¶ 23-24.

- “it would be premature and inappropriate for an audit to be ordered prior to the multiple determinations that will be required for the audit to be efficient and appropriate. Otherwise, we will be left with the specter of multiple audits.”<sup>22</sup>

41. In this context, the Arbitrator is persuaded for the following reasons that an audit under Section 9 of the SAA should take place now, prior to any evidentiary hearing, and that it is unnecessary to determine the definition of Target Margin (or any other contractual terms) prior to such audit:
- up until Planet Energy’s Target Margin Rebuttal, it was entirely undisputed that an audit pursuant to Section 9 of the SAA would be required *at some point* to resolve the Parties’ dispute, with ACN arguing for an immediate audit, and Planet Energy arguing for an audit only after an initial evidentiary hearing to determine the definition of Target Margin (and other contractual terms), which would subsequently be followed by further proceedings on damages;<sup>23</sup>
  - the right to conduct an audit under Section 9 of the SAA is unequivocally granted to ACN (as opposed, for example, to an auditor agreed by the Parties);
  - the purpose of an audit is to permit ACN to verify certain reports, calculations, and payments by Planet Energy;
  - although determination of the contractual definitions of the Target Margin and/or an ACN Customer will ultimately affect the Arbitrator’s findings on liability and damages,<sup>24</sup> it is not obvious that they are required in order to permit ACN to verify underlying information such as for which customers Planet Energy has been paying commissions and the cost components that make up the Planet Energy pricing model;<sup>25</sup>
  - as such, it is not apparent either that prior determination of the definition of the Target Margin and/or ACN Customer would narrow or otherwise affect the scope of any audit<sup>26</sup> and Planet Energy does not adequately explain why it contends failure to determine these definitions in advance of an audit could lead to multiple future audits;<sup>27</sup>

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<sup>22</sup> Planet Energy’s Target Margin Request at ¶¶ 1(a), (c), (f); Planet Energy’s Audit Response at ¶ 22.

<sup>23</sup> See Planet Energy’s Audit Response at ¶ 36.

<sup>24</sup> The Arbitrator does not accept Planet Energy’s submissions that if ACN is permitted to proceed with its proposed audit, the auditor would somehow usurp the Arbitrator’s role. See Planet Energy’s Target Margin Rebuttal. While both Parties will have the opportunity to present expert opinion testimony stemming from the results of any audit, determinations of liability and damages will be made solely by the Arbitrator, and not by any auditor (regardless of whether such auditor is party-appointed or Tribunal-appointed).

<sup>25</sup> ACN’s Target Margin Response at ¶¶ 9-10 & Petron Affidavit at p. 4.

<sup>26</sup> These issues are addressed by the Petron Affidavit.

<sup>27</sup> See Planet Energy’s Audit Response at ¶ 22.

- vi. ACN has presented colorable evidence in the form of the David Affidavit<sup>28</sup> that Planet Energy may have attempted to change identifiers in its systems of customers it deems to be ACN Customers, which favors conducting an audit before an evidentiary hearing so that any related, relevant information may be considered at the hearing rather than potentially requiring further proceedings; and
  - vii. Planet Energy fails to persuade that the (disputed)<sup>29</sup> results of a prior audit by PwC (which Planet Energy says did not find any material inaccuracies) impose any limitation on ACN's contractual right to audit.<sup>30</sup>
42. ACN's requests for certain reporting and for escrowed funds are denied.
43. As concerns ACN's request for reporting, the Arbitrator concludes that any order granting the requested measure would risk improperly pre-judging the merits of the Parties' dispute over what reporting is required and is not persuaded that determination of Planet Energy's reporting obligations, which will require resolution of disputed issues of contract interpretation potentially involving consideration of prior contractual history and the Parties' course of conduct,<sup>31</sup> is necessary on an interim basis. This is particularly so given that ACN is being granted the right to audit Planet Energy's books and records pursuant to Article 9 of the SAA.
44. The Arbitrator is also not persuaded that this is an appropriate case to grant ACN's request for escrowed funds as a matter of interim relief. Though the Parties debate the propriety of Planet Energy's withholding of certain funds, resolution of this arbitration will require the determination of a multiplicity of claims and counterclaims which make it highly speculative that any award would ultimately require the payment of funds by Planet Energy to ACN,<sup>32</sup> and there is no evidence that without such an order, ACN would likely be unable to enforce any ultimate award.
45. For the reasons stated above, the Arbitrator orders and directs as follows:
- i. ACN shall be permitted to conduct an audit of Planet Energy's customer and sales revenue accounting records and applicable transaction documents, in accordance with Section 9 of the SAA;

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<sup>28</sup> The Arbitrator notes that Planet Energy raises a series of questions about the accuracy and credibility of the David Affidavit in its Audit Response (*see* ¶¶ 4-9) and that no determination is being made at this stage of the proceedings about the ultimate weight, relevance, or credibility of her testimony, which may be subject to cross-examination at an evidentiary hearing.

<sup>29</sup> *See* ACN's Audit Response at ¶¶ 17-19.

<sup>30</sup> Planet Energy's Target Margin Request at ¶ 1(b).

<sup>31</sup> *See* Planet Energy's Audit Response at ¶¶ 54ff; ACN Audit Rebuttal at ¶¶ 17-22.

<sup>32</sup> *See* Planet Energy's Audit Response at ¶ 99.



- ii. the audit shall commence at a time to be agreed by the Parties, but no later than March 28, 2019;
- iii. ACN shall provide Planet Energy with a draft of its proposed audit plan at a time to be agreed by the Parties, but no later than March 14, 2019;
- iv. the Parties shall meet and confer regarding ACN's proposed audit plan and attempt to resolve any disagreements that may arise between them with respect to implementation of the plan, including any concerns that Planet Energy may raise with respect to confidentiality and/or legal obligations owed to third parties;
- v. by March 11, 2019, the Parties shall confer and advise the Arbitrator of one or more mutually convenient times they wish to reserve for a conference call with the Arbitrator on March 19, 21, 22, 25, and/or 26, 2019 to resolve any disagreements relating to the conduct of the audit that the Parties are unable to resolve on their own;
- vi. the Parties shall bear their own costs and expenses of the audit, which costs and expenses shall be subject to later reallocation in accordance with the terms of the SAA and the ICDR Rules;
- vii. within one month of commencing the audit, ACN shall advise the Arbitrator as to how long it estimates it will take to complete the audit and shall thereafter provide such updates as may be ordered by the Arbitrator;
- viii. upon notice of completion of the audit, the Arbitrator shall invite the Parties to attend a further preparatory conference by telephone to establish a schedule for the remainder of the proceedings, which schedule shall include a deadline for the Parties to amend or supplement their claims and counterclaims;
- ix. in the interim, if the Parties wish the Arbitrator to reserve potential dates for an evidentiary hearing (without prejudice to determination of different hearing dates following the audit), they are invited to propose mutually agreeable dates to the Arbitrator by March 15, 2019; and

- x. all requests for interim relief that were made by the Parties but not granted herein are hereby denied.

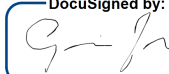
Place of Arbitration: Toronto, Ontario (Canada)



**Stephanie Cohen**  
**Arbitrator**

March 6, 2019

This is Exhibit "K" referred to in the Affidavit of Nino Silvestri sworn by Nino Silvestri of the Town of Oakville, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on May 26, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:  


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10CCB40209E4401  
Commissioner for Taking Affidavits (or as may be)

**GAVIN INKSTER LSO# 82737I**

**INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION**  
International Arbitration Tribunal

**ALL COMMUNICATIONS NETWORK OF CANADA, CO.,**

Claimant/Counter-Respondent

v.

**ICDR Case No. 01-18-0001-6527**

**PLANET ENERGY CORP.,  
PLANET ENERGY (ONTARIO) CORP.,  
PLANET ENERGY (B.C.) CORP.,**

Respondents/Counter-Claimants

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**PROCEDURAL ORDER NO. 17  
(PLANET'S FURTHER EXTENSION REQUEST;  
ACN'S INTERIM RELIEF REQUEST)**

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**Planet's Extension Request**

1. By letter dated February 1, 2020, Planet requests a 7-week extension of its time to respond to the Stout Report until April 15, 2020 (when its Rejoinder is currently due), asserting that this will still give ACN six weeks before the hearing to consider Planet's expert's report, and that the Parties will have the opportunity to respond to each other's expert reports in their post-hearing submissions. Alternatively, Planet proposes that the schedule, including the evidentiary hearing dates, be pushed forward by 8 weeks.
2. Less than two weeks prior, in response to a request for extension made by ACN, on January 21, Planet requested an extension of time to submit its Statement of Defense and Counterclaim (including its expert's response to the Stout Report) until March 13, 2020 (an extension of roughly 2 ½ weeks). The Arbitrator denied both extension requests in Procedural Order No. 17, noting with respect to Planet's request that it had failed to "persuade that there is any prejudice to compelling it to respond to the Stout Report within the time frame that was originally ordered or that there is otherwise good cause for an extension."
3. ACN submitted its Statement of Claim, with the Stout Report, on January 28, 2020. Having reviewed the Stout Report, Planet now contends it should be granted an extension because:

- a. the Stout Report contains 21 exhibits comprised of 54,628 pages;
  - b. native excel files in connection with the Stout Report were not provided on January 28;
  - c. Stout has “been working on this report in some fashion or another since at least November 2018 (Mr. Petron’s first affidavit in this matter) and Stout first began to review Planet Energy’s database in May 2019;”
  - d. Stout has had all materials from the audit since the end of November 2019;
  - e. Planet estimates Stout spent 802 person hours working on this matter and contends that its expert, RSM, “cannot be expected to respond to that much effort and time by Stout in the three weeks it will have by the time it receives the Stout exhibits in excel;” and
  - f. without additional time, RSM will not be able to “properly present Planet’s affirmative counterclaims or defenses.”
4. In a supporting letter, RSM states it must “re-trace Stout’s approach and calculations by reviewing their worksheets against the original source documents, and compare and comment on Stout’s approach to RSM’s own approach.” RSM further says it is “impossible” to complete its review and provide a “reasoned and supportable response by February 25, 2020 – and certainly not while finishing our report on Planet Energy’s damages in this matter.” RSM contends that it “familiarized itself with the same database and other files that Planet provided to Stout” and that eight weeks from the receipt of Stout’s excel files to complete a responsive report “does not include any work now that RSM could have done before.”
5. ACN opposes any extension in its letter of February 4, 2020. It argues:
- a. Planet refused ACN’s January 19 scheduling proposal, which would have provided ACN with an additional 8 days for its Statement of Claim and an additional 17 days to Planet for its Statement of Defense and Counterclaim, and Planet should not now be permitted to seek an extension it rejected;
  - b. the Arbitrator denied both Parties’ requests for extensions in Procedural Order No. 17 and there is no basis to revisit that ruling;
  - c. Stout provided native excel files to Planet on February 3, 2020;
  - d. the time that Stout took to prepare its report highlights efforts by Planet to obstruct the audit; and
  - e. whereas limitations imposed by Planet “invariably delayed the release of work product to Stout,” RSM will have had no limitations placed on its ability

to work with Planet's records and Planet had actual knowledge of what Stout was reviewing and analyzing.

6. Planet's refusal to accept ACN's scheduling proposal, which would have meant an extension for ACN as well as for Planet, is not a reason to reject Planet's request for an extension. Although an agreement regarding adjustments to the timetable would have avoided time and costs spent on applications to the Arbitrator, Planet was not obligated to agree to ACN's proposal and it gave a reasoned explanation for its disagreement. Quite simply, Planet's refusal does not speak to whether there is good cause for an extension.
7. Planet points to new information, unavailable at the time of its original request, in support of its renewed and revised extension request. This new information warrants consideration of whether there is now good cause to grant Planet an extension.
8. Delayed receipt of Stout's native excel files supports a one week extension. Planet demonstrated its diligence in seeking the files within two days of receiving the Stout Report, and ACN promptly complied with Planet's request. Nevertheless, Planet was without the files for nearly one week and it is reasonable for Planet to be credited for that time.
9. As concerns Planet's arguments about the time spent by Stout and the volume of exhibits appended to the Stout Report, it is indisputable that Stout has spent significant time working on this matter and that the exhibits are voluminous. However, RSM has also been working on this matter for a long period of time and Planet was fully apprised prior to receiving the Stout Report of the purposes of the audit and of all documents being analyzed by Stout.
10. The Arbitrator also notes that all disputes submitted to the Arbitrator concerning the conduct of the audit were resolved before the timetable for the merits phase of the arbitration was fixed in Procedural Order No. 12, based upon a schedule proposed by the Parties. As a result, it cannot be said that Planet was unfairly surprised by the scope of Stout's work when it received the Stout Report or under a reasonable misapprehension about the nature of the work that would be required from its expert in response when it concurred with the timetable in Procedural Order No. 12.
11. In all of these circumstances, the Arbitrator finds that Planet grossly misrepresents the true state of affairs when it asserts that it is being expected to respond to "that much effort and time by Stout in . . . three weeks," and the Arbitrator is not persuaded by Planet that its time to submit a responsive report should be extended to 11-weeks, because 4-weeks for a responsive submission is unfair or unreasonable.

12. Planet's request is also disfavored because it would eliminate any pre-hearing comment on RSM's report by ACN prior to the hearing, diminishing the Arbitrator's ability to familiarize herself before the hearing with the Parties' positions on central issues in the case.
13. This being said, the Arbitrator recognizes that responding to the Stout Report is a significant task and ascertains no prejudice to ACN if the schedule is modified to afford Planet a further extension of time to prepare a responsive report, so long as the hearing dates are preserved. As the Arbitrator does not consider it efficient to break up Respondent's Statement of Defense and Counterclaim into two parts, such extension should apply to Respondent's Statement of Defense and Counterclaim as a whole. The Arbitrator considers that roughly a 3 ½ week extension can reasonably be accommodated.
14. In light of this extension, the timetable shall be further modified as specified in Exhibit A to this Order.

#### **ACN's Request for Leave to Move for Interim Relief**

15. In its February 4 letter, ACN asks that it be permitted to bring a motion for an order directing that Planet immediately pay ACN the commissions Planet has admitted would be owed but for their claimed set-off, in addition to all net underpayments determined by Stout and ACN's fees and costs in connection with the audit. ACN contends these are "non-contingent obligations." Alternatively, ACN seeks an order directing that: (a) Planet pay funds into escrow or post a bond sufficient to cover such amounts; (b) Planet demonstrate it has reserved such amounts on its books and preserved sufficient funds to cover such amounts if ordered; or (c) Planet be ordered to pay at least such amounts that exceed the amount of Planet's claimed set-off.
16. ACN contends that Planet has no right under the contract or applicable law to set-off indemnity claims and that the SAA calls for inaccuracies identified by the audit to be corrected in ACN's favor, without any requirement that an objection to the audit be resolved. It also says Planet's non-contingent obligations exceed amounts Planet alleges it is owed for indemnification, and that Planet's other claims are contingent and speculative. Further, it asserts it is reasonable to conclude that Planet may lack sufficient funds to pay amounts owed to ACN, and that since the terms of the SAA allegedly dictate that Planet should pay ACN immediately, ACN should not bear the risk of recovery.
17. By letter dated February 5, 2020, Planet submits that ACN is attempting to bypass adjudication of the merits of the arbitration through a motion for interim relief and that ACN's request should be rejected without further briefing, with an award of costs to Planet for having to respond to the motion. Planet also says that the relief being requested is fundamentally the same as the interim relief that the Arbitrator

denied in Procedural Order No. 5 and that absent any new facts, ACN's request should be denied.

18. In addition, Planet:
  - a. denies that there is any basis for ACN's allegation that Planet is going out of business or that it is in danger of collapse;
  - b. disputes any suggestion that Stout's audit is not subject to review or objection and identifies certain findings by Stout that it already expects to challenge;
  - c. disputes that it has no right to set-off;
  - d. asserts that it has in excess of CAD \$9M of liquidated damages arising from indemnity claims that are not contingent claims;
  - e. says that claims for lost profits and Xoom related damages will likely surpass the indemnity claims in size and scope; and
  - f. contends that there is no risk of irreparable harm to ACN, no urgency, and that an order granting the requested interim relief would pre-judge the merits.
19. ACN's request for leave to submit a motion for interim relief is denied.
20. ACN gives no indication that there are any new facts which would tend to support the conclusion that Planet will be unable to satisfy any award in ACN's favor, or that an order of interim measures is otherwise "necessary" within the meaning of the ICDR Rules. This is particularly so given the late stage of this arbitration and proximity to an evidentiary hearing at which the merits will be fully adjudicated.
21. Planet's request for an order for costs in connection with responding to ACN's request for leave is denied, without prejudice to the Arbitrator's ultimate allocation of costs in this matter.

Place of Arbitration: Toronto, Ontario (Canada)



**Stephanie Cohen**  
Arbitrator

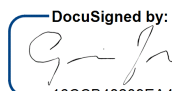
February 7, 2020



**EXHIBIT A****Timetable**

<b>Date</b>	<b>Procedural Task or Event</b>
March 3, 2020	Submit comments on adjustments, if any, to hearing length and dates
March 10, 2020	Notify Arbitrator of hearing venue agreement
March 20, 2020	Respondent's Statement of Defense and Counterclaim
April 10, 2020	Claimant's Reply
May 1, 2020	Respondent's Rejoinder
May 5, 2020	Notification of names of witnesses who (a) the Parties will present for examination (b) the Parties wish to be present at the hearing for cross-examination
May 5, 2020	Exchange exhibit lists
May 6, 2020 at 9:30 a.m. ET	Pre-hearing conference
May 12, 2020	Submit joint exhibits to Arbitrator
May 26-29 and June 1-5, 2020	Evidentiary hearing
June 29, 2020	Post-hearing submissions
No later than August 28, 2020	Anticipated date for Final Award (60 days from closure of hearing under Article 27 of the Rules)

This is Exhibit "L" referred to in the Affidavit of Nino Silvestri sworn by Nino Silvestri of the Town of Oakville, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on May 26, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:  


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Commissioner for Taking Affidavits (or as may be)

**GAVIN INKSTER LSO# 82737I**

Court File No. CV-00658223-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

B E T W E E N:

**PLANET ENERGY CORP., PLANET ENERGY (ONTARIO) CORP., and  
PLANET ENERGY (B.C.) CORP.**

Applicant

and

**ALL COMMUNICATIONS NETWORK OF CANADA, CO.**

Respondent

**RESPONDING AFFIDAVIT OF NINO SILVESTRI  
(sworn June 23, 2021)**

I, Nino Silvestri, of the Town of Oakville, in the Province of Ontario, **MAKE OATH AND SAY:**

1. I am the Chief Executive Officer of the applicants Planet Energy Corp., Planet Energy (Ontario) Corp., and Planet Energy (B.C.) Corp. (collectively, "**Planet Energy**"). I have personal knowledge of the matters to which I hereinafter depose. To the extent that I am informed by others, I have identified the source of such information and believe it to be true.

2. I swear this affidavit in response to the application (the "**ACN Application**") of All Communications Network of Canada ("**ACN**") seeking to enforce the final arbitral award dated February 3, 2021 (the "**Award**") in connection with an arbitration presided by Ms. Stephanie Cohen (the "**Arbitrator**") and administered by the International Center for Dispute Resolution in ICDR Case No. 01-18-001-6527 (the "**Arbitration**").

3. I previously swore an affidavit dated May 7, 2021 (my "**First Affidavit**") in support of Planet Energy's application to set aside the Award pursuant to Article 34 of Schedule 1 of the

*International Commercial Arbitration Act, 2017*. Capitalized terms not defined in this affidavit have the meaning ascribed to them in my First Affidavit.

4. I have reviewed the affidavit of Jeremy Smuckler sworn April 21, 2021 (the “**Smuckler Affidavit**”). Planet Energy relies on my First Affidavit in response to the ACN Application. In this affidavit, I will respond to certain points raised in the Smuckler Affidavit, and in particular, address the request in the ACN Application for an order requiring Planet Energy to post security in the total amount of the Award, \$28,096,588.20 CAD, an amount which vastly exceeds the book value and liquidation value of Planet Energy.

5. Planet Energy is unable to pay the amount of the Award and an order requiring Planet Energy to post security in the amount of the Award would be an insolvency event for Planet Energy and prejudicial to all of its creditors.

**A. ACN is an Unsecured Creditor**

6. As set out in the Award, the Arbitrator found that Planet Energy was required to pay ACN in respect of what she determined to be past and future sales commissions. Sections 17 and 18 of the SAA provides that the payment of sales commissions is an unsecured obligation of Planet Energy and that ACN has no right to assert a security interest over any of Planet Energy’s assets:

17. **Contractual Nature of Obligations.** ACN acknowledges that its rights to Gross Margin is contractual in nature, is not a traditional security interests [*sic*] and does not specifically attach to or encumber any assets of Planet [Energy], including, without limitation, to the ACN Customer contracts. ACN agrees that it will not assert or attempt to assert these rights via any UCC-1 or similar filings.

18. **Insolvency of Planet.** In the event that an Insolvency Event occurs, Planet acknowledges that ACN is a general unsecured creditor of Planet, and agrees that, in consideration for ACN having acknowledged herein that its rights to Gross Margin payments are both unsecured and not attached to any specific assets, Planet will use its best efforts to protect ACN’s rights to the fullest extent possible in both the case where the Insolvency Event is instigated

by Planet or is suffered by Planet at the hands of any third party. Examples of the best efforts that Planet could use in this instance would include, but not be limited to, obtaining protection for payments to ACN in any negotiations with other or secured creditors or debtor-in-possession or other post-filing lenders, placing this Agreement high upon the list of contracts to be assumed in any reorganization proceeding offering that option, or otherwise acting to preserve both the relationship created by this Agreement, the payments to ACN hereunder and the ability for ACN to realize the value and equity that its efforts hereunder have created. Planet specifically agrees that ACN shall have the right to intervene in any Insolvency Event proceeding to that same end.

**B. Planet is Unable to Pay the Security Sought**

7. Planet Energy does not have sufficient cash or liquid assets to pay the amount of the Award, or any amount close to the amount of the Award. This is the case even though Planet Energy:

- (a) is a going concern with positive cash flow;
- (b) has not made any distributions or paid any dividends to shareholders since fiscal 2018, the period in which the Arbitration was commenced;
- (c) has not paid any bonuses to directors and officers since fiscal 2018; and
- (d) has accrued as a liability and as cash the sales commissions to which ACN claimed entitlement following Planet Energy's decision to cease paying such commissions in March 2018 due to ACN's flagrant breach of the SAA.

8. An order requiring Planet Energy to pay the amount of the Award as security would render Planet Energy insolvent and preclude it from pursuing the application to set aside the Award other than as part of an insolvency proceeding. This is because the Arbitrator not only dismissed Planet Energy's claims and determined that Planet Energy is required to pay the sales commissions accrued by Planet Energy, but also orders Planet Energy to pay:

- a) approximately \$5 million in sales commissions that are illegal under the ECPA;
- b) approximately \$8 million in so-called underpaid sales commissions in respect of phantom revenues that Planet Energy never earned or received because the customers never flowed;
- c) approximately \$7 million in “future” sales commissions in respect of revenues Planet Energy has not yet – and may never – earn or receive.

9. Stikeman Elliott LLP, counsel to Planet Energy, retained Karen Kimel, a partner at Richter LLP, one of Canada’s largest independent financial consulting firms, to assess the financial condition of Planet Energy. Ms. Kimel has provided a report dated June 23, 2021 (the “**Richter Report**”) setting out her opinion on the impact of the payment of security, either in the full amount of the Award or some reduced amount, on Planet Energy’s solvency, the risk that Planet Energy would commit an event of default under its governing security agreements, and prejudice to other creditors of Planet Energy.

10. I have reviewed the Richter Report. The Richter Report is based on financial information supplied by Planet Energy. I personally supervised the provision of this financial information to Ms. Kimel. This financial information was prepared by Planet Energy’s accounting team. I hereby attest to the accuracy of the financial and business information provided to Ms. Kimel and referenced in the Richter Report and adopt it as part of this affidavit.

11. Planet Energy’s fiscal year ends September 30. Its auditor is KPMG LLP. A copy of Planet Energy’s audited financial statements for the period ended September 30, 2020 are attached as **Exhibit A**.

12. Planet Energy's accounting team also prepared unaudited financial statements as of April 30, 2021, in order to provide Ms. Kimel with more up-to-date information on the financial condition of Planet Energy. These unaudited financial statements are attached as **Exhibit B**.

13. Planet Energy has also prepared a forecast for the period Fiscal Year 2021 to 2025. This information is included at Exhibits VII to XII of the Richter Report. I have reviewed those exhibits and attest that they are an accurate reflection of Planet Energy's current forecast for this period.

14. As discussed in more detail in the Richter Report, Planet Energy is party to an Amended and Restated Global Agreement with Shell Energy North America (Canada) Inc. ("**Shell**") and various other Shell entities which became effective October 1, 2017 (the "**Shell Agreement**"). Shell is a secured creditor of Planet Energy and pursuant to the Shell Agreement, Planet Energy is required to maintain certain financial covenants and maintain certain financial reporting obligations. A copy of the Shell Agreement is attached as **Exhibit C**.

**C. Planet Energy is Not Dissipating Assets**

15. As set out in the Richter Report, Planet Energy is operating in the ordinary course and generating positive cash flows, before taking into account the Award. As noted above, Planet Energy has not made any distributions or issued any dividends to shareholders since Fiscal 2018, nor has it paid any bonuses to directors or officers since Fiscal 2018.

16. At paragraph 21 of his affidavit, Mr. Smuckler states that "[t]he Arbitrator's findings support ACN's view that Planet Energy has a demonstrated history of attempting to deprive ACN of funds due to it, including through misconduct and subterfuge." Planet Energy disputes all of these findings in its application to set aside the Award. Mr. Smuckler provides three examples which I will address in turn.

17. First, at subparagraph 21(a) of his affidavit, Mr. Smuckler states that "[s]ince March 2018,

Planet Energy has refused to pay over \$11 million in commissions that it acknowledged were owing to ACN, ostensibly as a set-off against a range of claims". This does not amount to "misconduct and subterfuge" – Planet Energy never acknowledged that these amounts were owing to ACN, and in any event made clear that even if such amounts were owing to ACN under the terms of the SAA, it was setting off such commission payments as a result of ACN's flagrant breaches of the SAA, which became the subject of the Arbitration. Planet Energy's position with respect to the Arbitrator's decision on those claims is addressed in my First Affidavit. As set out in the Richter Report, Planet Energy has continued to accrue a liability in respect of those commission payments and retained an equivalent amount of cash.

18. Second, at subparagraph 21(b), Mr. Smuckler refers to the Arbitrator's acceptance of the determination by Stout, ACN's expert during the Arbitration, that "Planet Energy had covertly underpaid ACN by approximately \$6.5 million, over and above the amounts that Planet Energy had openly withheld since March 2018". The determination of Stout, and the Arbitrator's acceptance of it, are unsupportable and disputed in Planet Energy's application to set aside the Award. As addressed at paragraph 134 of my First Affidavit, if Stout's determination, accepted by the Arbitrator, were correct, Planet Energy would have had to generate approximately \$40 million of additional revenue (which translates to \$16 million of gross margin, of which ACN would have received half), which it simply did not earn, and which is not reflected on Planet Energy's audited financial statements.

19. Third, at subparagraph 21(c), Mr. Smuckler states that "Planet Energy began to surreptitiously manipulate database information to deprive ACN of commission payments without detection, in material breach of the SAA." Planet Energy did not surreptitiously manipulate any database information. Planet Energy made a determination that under the terms of the SAA, customers recontracted by Planet Energy, rather than ACN, were not "ACN Customers" as defined in the SAA. Planet Energy's position in its application to set aside the Award is that the



Arbitrator's determination to the contrary was outside her jurisdiction and bears no relation to the plain language of the SAA.

20. Mr. Smuckler supports his statement at subparagraph 21(c) by referencing the testimony of Ms. Christina David, a former disgruntled employee of Planet Energy, who testified that she was instructed to lie to ACN if it ever raised questions about missing commission payments. However, Ms. David was never instructed to lie to ACN. This was confirmed in the witness statement of Mr. Stephen Plummer, the former co-Chief Executive Officer of Planet Energy. While the Arbitrator states that Mr. Plummer's testimony "lacked credibility", she provided no reasons for discrediting Mr. Plummer's evidence and ignored Ms. David's inconsistent evidence on cross-examination. In particular, during cross-examination, Ms. David confirmed that Planet Energy was not hiding or withholding commissions payable to ACN Customers as initially stated in her witness statement. A copy of the relevant excerpt of Ms. David's cross-examination is attached as **Exhibit D**.

21. All of the examples of alleged "misconduct and subterfuge" relate to issues that were directly at issue, and in dispute, in the Arbitration, and are a subject of Planet Energy's application to set aside the Award.

22. While the Award was issued on February 3, 2021, ACN did not deliver its application record in support of its request for security until over three months later, on May 13, 2021.

23. On the same day, Kris Borg-Olivier of Paliare Roland Rosenberg Rothstein LLP, counsel to ACN, delivered a letter (the "**May 13 Letter**") to Shell, a secured creditor of Planet Energy, and Fulcrum Capital Partners ("**Fulcrum**"), a shareholder of Planet Energy, which was labelled "Confidential". In the May 13 Letter, Mr. Borg-Olivier (among other things):

- a) Attached a copy of the Award;

- b) Informed Shell and Fulcrum that a “motion for enforcement of the award in Ontario is scheduled to be heard on August 20, 2021”, without informing them that Planet Energy had applied to set aside the Award, which application would be heard on the same day, or that ACN was seeking cash security in the amount of the Award and that the hearing in respect of that request was scheduled for August 10, 2021;
- c) Despite being an unsecured creditor, says that “ACN desires to work with Shell and Fulcrum and any other creditors of Planet to find an appropriate resolution that protects both ACN’s interests and those of Planet’s creditors”;
- d) Asks Shell and Fulcrum “to exercise control” and “prohibit Planet (i) from making any distributions or other payments to its owners or any of their affiliates, and (ii) transferring funds from Planet’s bank accounts except to pay arms-length unaffiliated vendors in the ordinary course of business”.

A copy of the May 13 Letter is attached as **Exhibit E**.

24. Fulcrum forwarded the May 13 Letter to me. I consider the May 13 Letter to be offensive, defamatory, and an improper interference in Planet Energy’s business. Daniel Murdoch of Stikeman Elliott LLP, counsel to Planet Energy, responded to the May 13 Letter with a letter dated May 27, 2021, which is attached as **Exhibit F**. No response has been delivered by Mr. Borg-Olivier.

SWORN BEFORE ME by  
videoconference at the City of Toronto  
on the 23<sup>rd</sup> day of June, 2021

DocuSigned by:

*Ben Smith*

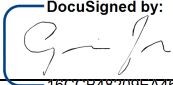
Commissioner for taking Affidavits

DocuSigned by:

*Mno Silvestri*

NINO SILVESTRI

This is Exhibit "M" referred to in the Affidavit of Nino Silvestri sworn by Nino Silvestri of the Town of Oakville, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on May 26, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:  


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Commissioner for Taking Affidavits (or as may be)

**GAVIN INKSTER LSO# 82737I**

JUNE 23, 2021 **420**

# RICHTER

## PLANET ENERGY REPORT ON FINANCIAL POSITION AND CASH AVAILABILITY



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## COMPANY BACKGROUND AND PURPOSE OF REPORT

1. COMPANY BACKGROUND AND ENGAGEMENT OVERVIEW
2. EXECUTIVE SUMMARY
3. CURRENT FINANCIAL POSITION
4. OVERVIEW OF PLANET'S APR-21 FORECAST
5. SENSITIZED FORECAST ASSUMPTIONS
6. EXHIBITS

### Background

Planet (defined below) and All Communications Network of Canada Co. (“**ACN**”) were parties to an arbitration relating to an Amended, Restated and Assigned Sales Agency Agreement dated November 9, 2012 (the “**SAA**”). On February 3, 2021, the arbitrator issued an arbitral award (the “**Arbitration Award**”) directing that Planet Pay ACN a net amount of \$28,096,588.21.

On March 4, 2021, Planet issued a notice of application seeking to set aside the Arbitration Award (the “**Set Aside Application**”).

On March 18, 2021, ACN issued a notice of application seeking to enforce the Arbitration Award (the “**Enforcement Application**”) and together with the Set Aside Application, the “**Applications**”). In its Enforcement Application, ACN also requests that the court order security to be paid by Planet in the full amount of the Arbitration Award while the Applications are pending.

### Purpose of this Report

Stikeman Elliott LLP (“**Stikeman**”), counsel to Planet, has engaged Richter Advisory Group Inc. (“**Richter**”) as Financial Advisor, to prepare a report (this “**Report**”), providing an analysis of the following:

- Planet’s current financial position;
- Planet’s cash flow projections, including underlying assumptions;
- Planet’s forecast financial covenants and liquidity requirements; and
- An assessment of Planet’s ability to post cash security.

On June 4, 2021, Planet provided Richter with its internal unaudited financial statements to April 30, 2021 (the “**Apr-21 Financials**”). On June 7, 2021, Planet provided Richter with its financial forecast for the period F21-F25 (the “**Apr-21 Forecast**”). Richter was also provided with audited financial statements for fiscal years ending 2018 to 2020. We note that Planet’s fiscal year end is September 30.

Richter has reviewed the Apr-21 Financials as well as the Apr-21 Forecast, including the key assumptions used by Planet’s Management (“**Management**”), and Richter’s findings and observations in respect thereof are summarized herein.

Planet has confirmed the accuracy of information provided in the affidavit of Nino Silvestri, CEO.

This Report is subject to the restrictions and qualifications outlined in **Exhibit I**.

For an explanation of the abbreviations and the definition of the capitalized words used herein please refer to **Exhibit II**. The Apr-21 Forecast is presented on a monthly basis in **Exhibits VII – XI** and year over year in **Exhibit XII**.

All figures in this Report are reflected in Canadian dollars unless otherwise indicated.

# CORPORATE STRUCTURE

1. COMPANY BACKGROUND AND ENGAGEMENT OVERVIEW
2. EXECUTIVE SUMMARY
3. CURRENT FINANCIAL POSITION
4. OVERVIEW OF PLANET'S APR-21 FORECAST
5. SENSITIZED FORECAST ASSUMPTIONS
6. EXHIBITS

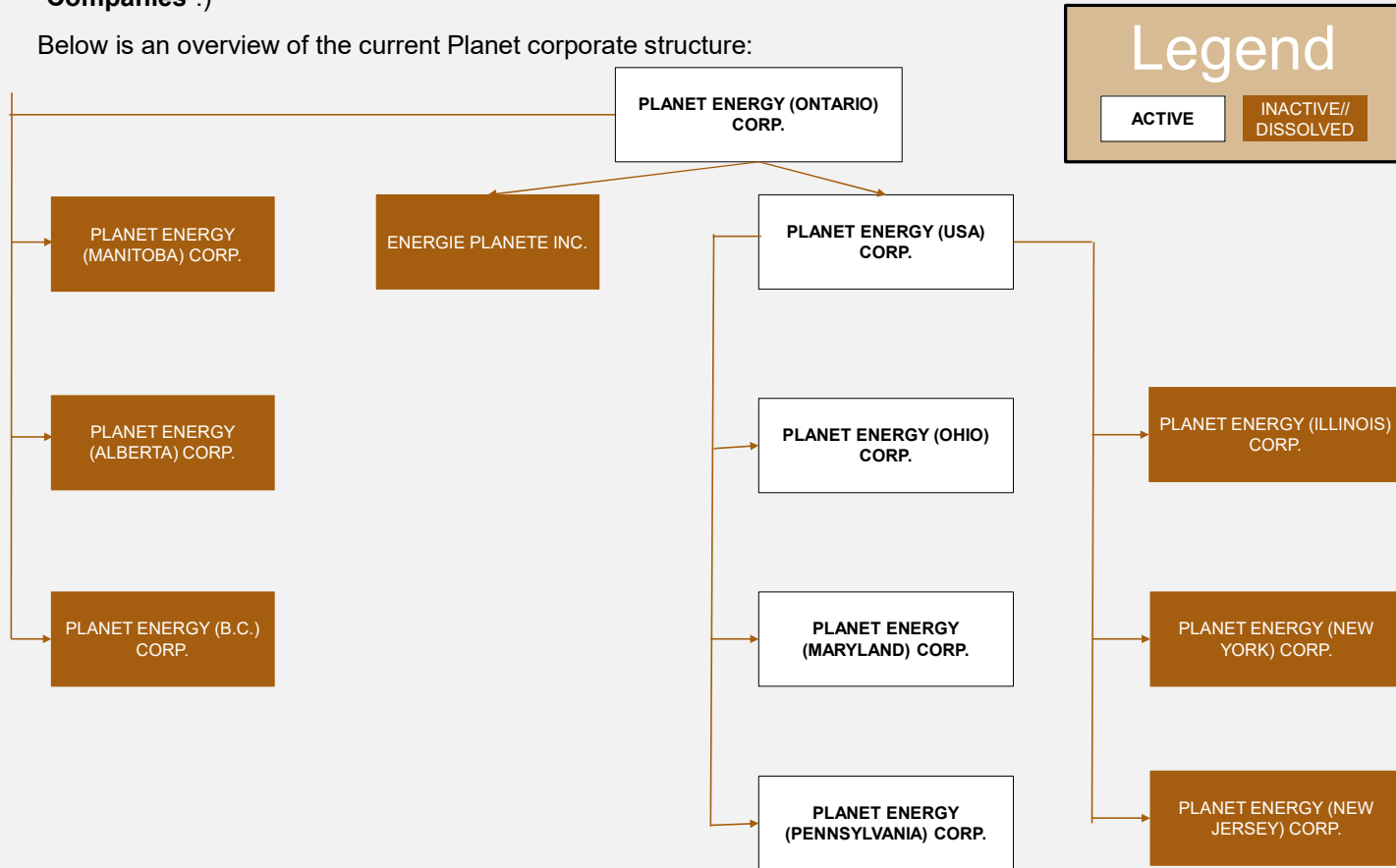
Planet Energy (Ontario) Corp. is a natural gas and electricity retailer which offers mostly fixed-price energy supply options to its customers in Canada and the United States (“U.S.”).

Canadian customers have historically been serviced directly through Planet Energy (Ontario) Corp. as well as its Canadian subsidiaries which have included Planet Energy (B.C.) Corp. (inactive), Planet Energy (Alberta) Corp. (now dissolved), Planet Energy (Manitoba) Corp. (inactive) and Energie Planete Inc. (now dissolved) (collectively the “Canadian Planet Companies”).

U.S. customers have historically been serviced through Planet Energy (USA) Corp., a subsidiary of Planet Energy (Ontario) Corp., along with Planet Energy (USA) Corp.’s subsidiaries which include Planet Energy (Maryland) Corp., Planet Energy (New York) Corp., Planet Energy (Ohio) Corp., Planet Energy (Pennsylvania) Corp., Planet Energy (Illinois) Corp. and Planet Energy (New Jersey) Corp. (collectively the “U.S. Planet Companies”).

(The Canadian Planet Companies and the U.S. Planet Companies are collectively referred to as “Planet” or the “Companies”.)

Below is an overview of the current Planet corporate structure:



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## ANALYSIS OF CASH AVAILABILITY

1. COMPANY BACKGROUND AND ENGAGEMENT OVERVIEW
2. EXECUTIVE SUMMARY
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4. OVERVIEW OF PLANET'S APR-21 FORECAST
5. SENSITIZED FORECAST ASSUMPTIONS
6. EXHIBITS

### Assessment of Planet's Cash Situation

Richter has been asked to assess Planet's ability to post cash security, if so ordered, while considering:

- Planet's need to maintain sufficient working capital for operations;
- Planet's financial/other covenants with the Shell Parties, as defined in the Shell Agreement (as defined later in this Report);
- Whether providing security would prejudice other creditors; and
- Whether the posting of security could cause an insolvency event.

As per Planet's internal unaudited financial statements at April 30, 2021, Planet held approximately \$12.8MM of cash on hand and minimal additional working capital. An order directing Planet to post security in the full amount of the Arbitration Award (\$28.5MM) would render Planet insolvent.

Richter has reviewed Planet's current financial position and forecast cash flows to September 2025.

Richter's assessment of cash availability has been considered under three scenarios as follows:

- a) Planet continues to operate and requires sufficient cash for forecast operations and to meet its covenants with the Shell Parties;
- b) An insolvency of Planet; and
- c) The Shell Parties no longer provide credit to Planet as a result of either a breach or default under the Shell Agreement.

### A. Maintain Sufficient Cash For Operations:

Management's Assumptions and Richter Analysis (see Section 4 and Exhibits IV-VI)

Planet operates in the electricity and gas sectors in both Canada and the U.S. According to its F20 financial statements, Planet's Canadian revenue made up approximately 73% of its total revenue of \$26MM in that year.

Canadian revenues are forecast to decline as existing contracts are not renewed/expire as legislation in the Canadian market has made new customer acquisitions difficult.

U.S. revenues are forecast to decline in F21-F23 as attrition outpaces new customer acquisition due to the lingering effects of COVID-19, which restricted in-person customer acquisition. In F24-F25, Planet is forecasting growth in new customer acquisition in the U.S. which is projected to outpace attrition of existing U.S. contracts.

The forecast growth in the US market is not enough to offset the lost revenue in the Canadian market until F24-F25.

As revenues and gross margin decline in F21-F23, Planet expects a corresponding reduction in SG&A costs, which will assist in stabilizing its EBITDA.

## ANALYSIS OF CASH AVAILABILITY

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**A. Maintain Sufficient Cash For Operations Cont:**

Projected Income Statement (see Section 4 and Exhibits IV)

The Apr-21 Forecast outlines Planet's expectations over the next 5 fiscal years as shown in the summary below:

	Sep-19 FY19	Sep-20 FY20	Sep-21 FY21	Sep-22 FY22	Sep-23 FY23	Sep-24 FY24	Sep-25 FY25
<b>Residential Consumer Equivalents</b>							
RCE's - ELECTRICITY	48,720	36,250	31,200	30,193	30,525	32,394	35,496
RCE's - GAS	12,127	6,596	4,482	4,022	3,734	3,683	3,830
<b>TOTAL RCE's</b>	<b>60,847</b>	<b>42,846</b>	<b>35,683</b>	<b>34,215</b>	<b>34,259</b>	<b>36,077</b>	<b>39,326</b>
<b>TOTAL REVENUE</b>	<b>40,108,807</b>	<b>26,065,534</b>	<b>19,803,751</b>	<b>19,226,054</b>	<b>19,984,930</b>	<b>21,857,458</b>	<b>24,849,550</b>
<b>TOTAL COST OF GOODS SOLD</b>	<b>28,309,103</b>	<b>16,819,778</b>	<b>13,619,956</b>	<b>13,357,674</b>	<b>14,169,429</b>	<b>15,964,673</b>	<b>18,610,080</b>
<b>TOTAL GROSS MARGIN</b>	<b>11,799,704</b>	<b>9,245,756</b>	<b>6,183,795</b>	<b>5,868,380</b>	<b>5,815,501</b>	<b>5,892,785</b>	<b>6,239,470</b>
<b>Total Gross Margin %</b>	<b>29.4%</b>	<b>35.5%</b>	<b>31.2%</b>	<b>30.5%</b>	<b>29.1%</b>	<b>27.0%</b>	<b>25.1%</b>
<b>TOTAL S, G &amp; A</b>	<b>9,999,639</b>	<b>8,385,806</b>	<b>5,737,487</b>	<b>4,969,432</b>	<b>4,869,014</b>	<b>4,963,408</b>	<b>5,211,355</b>
<b>EBITDA</b>	<b>1,800,065</b>	<b>859,951</b>	<b>446,308</b>	<b>898,948</b>	<b>946,487</b>	<b>929,378</b>	<b>1,028,115</b>
Finance Costs	57,887	134,337	91,606	79,680	79,680	79,680	79,680
Change in Fair Value of Derivative Contracts	(3,179,702)	(2,201,879)	101,882	-	-	-	-
Other Expense	(17,874)	22,935	294,415	-	-	-	-
Depreciation - Fixed assets	113,791	169,759	105,640	-	-	-	-
Amortization - Intangible assets	5,456,002	1,024,666	13,322	-	-	-	-
Income tax expense - cash paid taxes	731,475	104,409	152,768	269,684	283,946	278,813	308,435
Deferred tax expense	(386,646)	378,672	127,838	-	-	-	-
<b>Net Income/(Loss)</b>	<b>(974,868)</b>	<b>1,227,052</b>	<b>(441,162)</b>	<b>549,583</b>	<b>582,861</b>	<b>570,884</b>	<b>640,001</b>

Management projects EBITDA over the Forecast Period, as defined to remain stagnant ranging from \$0.4MM to \$1.0MM.

The Apr-21 Forecast excludes amortization and depreciation, over the Forecast Period which are non-cash items.

The Apr-21 Forecast continues to assume an accrual for commissions to ACN until November 2021.

## Projected Cash flow

As a result of the forecast decline in revenues in F21-F23, Planet will need to manage its cashflow to support its fixed cost base over the Forecast Period.

As shown below, excluding potential payments to ACN, Planet projects generating approximately \$1.7MM in cash flow from its April 30, 2021 cash balance of \$12.8MM to F25 forecasted cash balance of \$14.5MM.

	Sep-19 FY19	Sep-20 FY20	Sep-21 FY21	Sep-22 FY22	Sep-23 FY23	Sep-24 FY24	Sep-25 FY25
<b>CASH FLOW STATEMENT</b>							
Cash provided by/(used in) operating activities	5,459,042	2,047,088	(247,124)	564,875	560,851	519,711	564,876
Cash used in investing activities	(932,840)	540,596	124,781	-	-	-	-
Cash provided by financing activities	4,308	(21,083)	138,133	-	-	-	-
<b>NET INCR/(DECR) IN CASH</b>	<b>4,530,510</b>	<b>2,566,601</b>	<b>15,790</b>	<b>564,875</b>	<b>560,851</b>	<b>519,711</b>	<b>564,876</b>
<b>CASH , BEGINNING OF PERIOD</b>	<b>5,200,419</b>	<b>9,730,929</b>	<b>12,297,531</b>	<b>12,313,321</b>	<b>12,878,196</b>	<b>13,439,047</b>	<b>13,958,758</b>
<b>CASH , END OF PERIOD</b>	<b>9,730,929</b>	<b>12,297,531</b>	<b>12,313,321</b>	<b>12,878,196</b>	<b>13,439,047</b>	<b>13,958,758</b>	<b>14,523,633</b>

Planet's financial statements indicate a significant increase in cash since F18, as shown in **Exhibit XII**. The primary reason for the increase in cash is the discontinuation of commission payments to ACN since March 2018. Since March 2018, Planet has accrued a liability for ACN commissions and hold cash in respect of same resulting in Planet's increasing cash balance. In addition to discontinuing commission payments, Planet has not made any distribution, dividend or bonus payments to directors, officers or shareholders since F18.

The forecast cash generated of \$1.7MM is primarily the result of EBITDA generated from operations.

Based on the analyses presented herein, Management's assumptions appear consistent with historical levels, expectations about future contract renewals, changes in the market and Planet's business plans.

Because Planet's forecast is significantly dependent on customer attrition, new customer acquisitions, consumption, and gross margin, Planet's net monthly RCE and revenue generation may vary significantly from forecast. Actual results may be materially different than projected.

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### A. Maintain Sufficient Cash For Operations Cont:

Management's gross margin assumptions are based primarily on historical margins received. The gross margin rates assumed are used to forecast cost of sales given fluctuations in future commodity pricing.

The Apr-21 Forecast also assumes that Planet can reduce its expenses as sales decline.

Given the execution and market risks associated with some of Management's key assumptions, a sensitivity analysis has been provided in Section 5.

#### Shell Covenants:

Planet's operations are supported by its key supplier relationships including its relationship with the Shell Parties which is governed by the Shell Agreement. Planet purchases physical and financial power and natural gas and related products and services from the Shell Parties, and the Shell Parties have agreed to provide certain credit support arrangements to Planet.

The relationship between Planet and the Shell Parties is governed by the Shell Agreement. In accordance with the Shell Agreement, Planet is required to maintain certain covenants and reporting requirements as summarized in Section 4.

The Shell Agreement includes two Financial Metrics, as defined later in this Report, or covenants, which are to be maintained which include:

- A monthly Minimum Modified Working Capital as defined later in this Report,; and
- A quarterly Positive Run and Maintain as defined later in this Report,.

Below is a forecast of Planet's Financial Metrics based on the Apr-21 Forecast:

	Sep-19 FY19	Sep-20 FY20	Sep-21 FY21	Sep-22 FY22	Sep-23 FY23	Sep-24 FY24	Sep-25 FY25
Covenants							
Modified Working Capital	2,884,303	3,210,735	3,256,352	3,805,936	4,388,796	4,959,681	5,599,681
Minimum Modified Working Capital	2,200,000	2,200,000	2,200,000	2,200,000	2,200,000	2,200,000	2,200,000
Run and Maintain (Qtr End)	1,422,725	467,248	70,479	126,216	109,165	108,618	122,236

As Planet's Canadian operations are projected to retract due to customer attrition, Planet's ability to achieve a Positive Run and Maintain covenant on a quarterly basis becomes difficult to achieve compared to historical periods. In particular, Q3 of each fiscal year is forecast close to break-even levels.

The Shell Agreement provides that the Positive Run and Maintain metric shall not apply, and no event of default shall result, if the Modified Working Capital at the end of such fiscal quarter is at least twice the Modified Working Capital then required.

Given that Planet is forecasting to operate at break-even levels in many of its forecast quarters, in our view, Planet should aim to maintain Modified Working Capital of at least \$4.4MM (two times the current Minimum Modified Working Capital) in order to avoid a covenant breach under the Shell Agreement.

#### Estimated Cash Available:

The draft Modified Working Capital at April 30, 2021 is \$2.9MM. Planet has currently accrued approximately \$10.0MM for liabilities to ACN. Any payment to ACN up to \$10.0MM will equally reduce cash and the ACN accrual, thereby leaving the calculation of Modified Working Capital unchanged at \$2.9MM.

Any payment by Planet in excess of the amount of ACN accrual (\$10MM), will result in a corresponding reduction to Planet's Modified Working Capital and put Planet at risk of breaching its agreement with the Shell Parties.

The maximum amount at April 30, 2021 that Planet could pay while maintaining Modified Working Capital of \$2.2MM, which is the Minimum Modified Working Capital requirement, would be \$10.7MM. Any amount over \$10.7MM at April 30, 2021 would result in a breach, by Planet, of the Minimum Modified Working Capital covenant.

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### A. Maintain Sufficient Cash For Operations Cont:

#### Default under Shell Agreement

In addition to the Financial Metrics and Reporting Requirements, as defined later in this Report, section 7 of the Shell Agreement includes a list of events which constitute a default under the Shell Agreement.

Section 7(k) of the Shell Agreement provides that it constitutes an event of default if Planet suffers a final judgment against it which, within 30 days from the date such judgment is entered, has not been satisfied or otherwise discharged or execution thereof stayed pending appeal, and the aggregate amount of all such judgments suffered during any Fiscal Year which are not adequately covered by insurance exceeds CAD\$200,000 or the Equivalent Amount in US\$, as defined in the Shell Agreement.

### B. Insolvency and Prejudice to Creditors

The solvency of Planet is currently at risk should either:

- the Arbitration Award be enforced; or
- Planet be in breach or default of the Shell Agreement.

In the event of insolvency proceedings under the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”), realizations from Planet's assets would be distributed to creditors subject to priorities as set out in the BIA.

The analysis assumes that ACN is treated as an unsecured creditor.

As per Section 17 of the SAA, ACN acknowledges that its right to gross margin is contractual in nature, is not a traditional security interest and does not specifically attach to or encumber any assets of Planet.

In addition, pursuant to Section 18 of the SAA, in the event of an insolvency event, Planet acknowledges that ACN is a general unsecured creditor.

#### Current Financial Position (see Section 3)

#### Estimated Realizations

The book value of Planet's assets at April 30, 2021 is approximately \$15.8MM, of which approximately \$12.8MM is cash on hand.

Estimated realizations in a liquidation are approximately \$14.8MM including \$12.8MM cash on hand, approximately \$0.6MM from corporate tax refunds receivable which Planet advised was received in May, 2021 and accounts receivable of approximately \$1.4MM.

We have not performed a valuation of the customer contracts and therefore not included any realizations from a liquidation of same.

#### Secured Creditors

Planet's current secured creditors at April 30, 2021 include:

- Shell Parties for:
  - approximately \$2.2MM for amounts under the swap agreements to account for the fair value (i.e. derivative liabilities on the financial statements);
  - approximately US\$0.5MM or CDN\$0.6MM in off balance sheet collateral posted by the Shell Parties on behalf of Planet to suppliers in the U.S. market; and
  - approximately \$0.8MM for amounts due for electricity and gas.
- Scotiabank letters of credit (“**LC's**”) issued in the amount of approximately US\$2.2MM (CDN\$2.8MM) which have been guaranteed by the Export Development Corporation (“**EDC**”). The maximum LC's available is US\$3MM or approximately CDN\$3.7MM.

As a result of the above, in a liquidation or insolvency of Planet, approximately \$8.4MM would be required to discharge the claims of Planet's secured creditors.

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### B. Insolvency and Prejudice to Creditors Cont:

#### Costs of Administration

Costs of administering the insolvency proceedings are estimated at approximately \$0.5MM - \$1MM.

The remaining approximately \$7.4MM (the “**Distributable Funds**”) would be available for distribution to creditors other than the secured creditors noted above.

#### Unsecured and Preferred Creditors

In addition to ACN, Planet’s unsecured creditors (the “**Non-ACN Unsecured Creditors**”) include:

- approximately \$0.6MM to unsecured trade creditors;
- landlords for remaining lease payments which at April 30, 2021, are approximately \$174K and \$180K in Canada and the US respectively; and
- deferred tax accruals of approximately \$182K.

The Non-ACN Unsecured Creditors represent approximately 10% of the total unsecured creditors accrued by Planet or approximately 4% based on the full amount of the Arbitration Award. Accordingly, it appears reasonable that a minimum of \$740,000, or 10%, of the Distributable Funds be available to the Non-ACN Unsecured Creditors.

#### Estimated Cash Available:

Based on the above analyses, any amount of cash posted as security which exceeds \$6.66MM may prejudice existing creditors.

It should be noted that the derivative liabilities due to the Shell Parties of \$2.2MM, which account for the mark to market differences in the fair value of commodities, can fluctuate significantly from month to month. These financial contracts cannot be disclaimed under the BIA, and in any given month the liability could be higher than the \$2.2MM accrued at April 30, 2021.

### C. Discharge of Shell Liabilities and Continued Operations:

In the event of a breach under the Shell Agreement, Shell is entitled to a full payout of amounts owing to the Shell Parties. In this scenario, Planet may be required to operate without credit.

#### Estimated Cash Available:

Under this scenario, the approximately \$12.8MM in cash on hand at April 30, 2021, would be reduced by \$3.6MM to be paid to the Shell Parties and a further \$2.8MM to be posted as cash collateral for the LC’s provided by Scotiabank and guaranteed by EDC.

This would leave approximately \$6.4MM cash for operations.

Assuming Planet is unable to obtain credit, Planet could be required to purchase gas and electricity in advance. A two-month supply of gas and electricity is estimated to cost approximately \$2MM. If a further one-month cash to cover SG&A costs is required which is estimated at approximately \$0.4MM, Planet would have \$4MM cash remaining.

#### Summary

Based on the three scenarios presented, it appears that any requirement to post cash security that exceeds \$4MM could impact Planet’s ability to maintain operations, put Planet at risk of defaulting under the Shell Agreement, and potentially prejudice existing secured and unsecured creditors.

# 3

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## CURRENT FINANCIAL POSITION AT APR 30, 2021

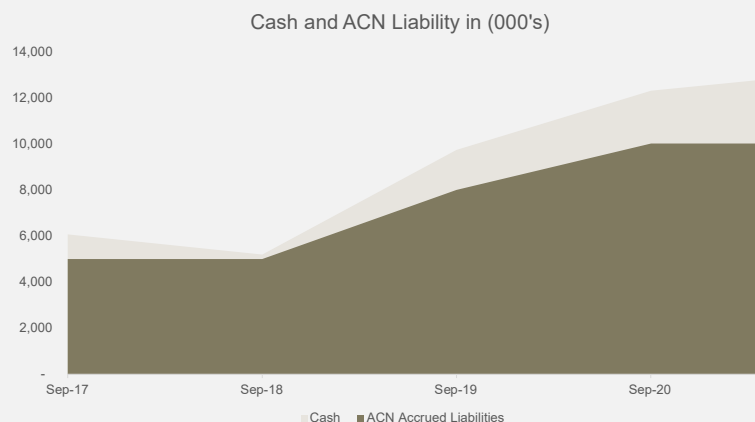
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The table on the right provides a summary of Planet's balance sheet at April 30, 2021, including the breakdown between the Canadian Planet Companies and the U.S. Planet Companies. It should be noted that the balance sheet presentation is based on the format used from Planet's monthly consolidation workbook (the "**Consolidation Workbook**") and that certain accounts may be mapped differently than in the Apr-21 Forecast, however the overall result should be the same.

**Cash:**

At April 30, 2021, the Companies had approximately \$12.8MM in cash on hand (excluding restricted cash);

The chart below shows Planet's cash and ACN accrual from September 2017 to April 2021.



Management has advised that the last payment made to ACN was in February 2018. Planet has been accruing commissions since March 2018 and increasing its cash on hand for this obligation accordingly.

**Restricted Cash:**

Restricted cash of approximately \$112K relates to cash held in blocked accounts with Scotiabank as well as cash collateral posted to cover a US\$50K irrevocable letter of credit issued by Planet to Travelers Insurance. The letter of credit is off balance sheet.

Planet CDN\$ at Apr 30, 2021	Canadian Planet Companies	US Planet Companies	Elimination/ Consolidation Entries	Consolidated Planet
<b>Current Assets:</b>				
Cash	12,442,038	408,525	(61,425)	12,789,137
Restricted cash	46,371	3,930	61,425	111,726
Accounts receivable	(423,103)	1,006,453	-	583,351
Inventories	-	1,248	-	1,248
Gas delivered in excess of consumption	(75,433)	7,060	-	(68,374)
Other current assets	122,218	224,904	-	347,122
<b>Total Current Assets</b>	<b>12,112,091</b>	<b>1,652,121</b>	<b>-</b>	<b>13,764,211</b>
<b>Property and equipment</b>				
Property and equipment	286,696	162,751	-	449,448
Investments	2,817,936	62	(2,817,998)	-
Intercompany	3,525,879	(3,532,739)	6,860	-
Intangible assets	94,558	141,430	-	235,988
Deferred tax assets	584,615	30,088	-	614,703
<b>Total Assets</b>	<b>19,421,775</b>	<b>(1,546,288)</b>	<b>(2,811,137)</b>	<b>15,064,350</b>
<b>Current Liabilities</b>				
Trade and other payables	10,772,065	662,645	-	11,434,710
Corporate taxes payable	(597,243)	34,631	-	(562,612)
Deferred revenue	(46,949)	-	-	(46,949)
Revolving credit facility	-	-	-	-
Current portion of lease liability	39,660	124,191	-	163,851
Current portion of derivative liabilities	1,416,830	41,921	-	1,458,751
<b>Total Current Liabilities</b>	<b>11,584,364</b>	<b>863,387</b>	<b>-</b>	<b>12,447,751</b>
<b>Deferred tax liability</b>				
Deferred tax liability	182,322	-	-	182,322
<b>Lease liability</b>				
Lease liability	91,973	53,537	-	145,509
<b>Derivative liabilities</b>				
Derivative liabilities	789,264	19,346	-	808,610
<b>Total Liabilities</b>	<b>12,647,923</b>	<b>936,270</b>	<b>-</b>	<b>13,584,193</b>
<b>Shareholders equity:</b>				
<b>Total shareholder's equity</b>	<b>6,773,852</b>	<b>(2,482,558)</b>	<b>(2,811,138)</b>	<b>1,480,157</b>
<b>Total Liabilities + Shareholders Equity</b>	<b>19,421,775</b>	<b>(1,546,288)</b>	<b>(2,811,138)</b>	<b>15,064,349</b>

## CURRENT FINANCIAL POSITION AT APR 30, 2021

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**Accounts Receivable:**

A breakdown of the accounts receivable at April 30, 2021 is shown below:

Planet CDN\$ at Apr 30, 2021	Canadian		
	Planet Companies	US Planet Companies	Consolidated Planet
Accounts receivable	642,471	881,263	1,523,733
AR accrual - electricity	(1,183,858)	-	(1,183,858)
Other	118,285	125,191	243,475
<b>Accounts receivable</b>	<b>(423,103)</b>	<b>1,006,453</b>	<b>583,351</b>

The Canadian Planet Companies show a -\$1.2MM of accrued electricity receivables. Management has advised that customers do not pay in advance and therefore this amount would not be negative and is the result of a posting error. After correction the balance is estimated to be approximately +\$109K.

The trade A/R at April 30, 2021 is comprised of the following:

Canadian Planet Companies A/R at Apr 30, 2021	A/R at Apr 30, 2021				Current		
	1-30	31-60	61-90	>90	Credits	Total	% of Total
1 Enbridge Gas Distribution	141,336					141,336	22%
2 Alectra Utilities Corporation	113,608					113,608	18%
3 Toronto Hydro Electric Systems	117,551				(5,023)	112,528	18%
4 Hydro One Networks	173,548				(116,456)	57,092	9%
5 Hydro Ottawa	25,800			11,623	(2,238)	35,184	5%
6 Union Gas	32,681		0			32,681	5%
7 Hamilton Hydro					(26,084)	(26,084)	-4%
Other 61 Accounts	117,323	10,437	(0)	101,153	(52,788)	176,124	27%
<b>Total</b>	<b>721,847</b>	<b>10,437</b>	<b>-</b>	<b>112,776</b>	<b>(202,589)</b>	<b>642,471</b>	<b>100%</b>
% of Total	112%	2%	0%	18%	-32%	100%	

US Planet Companies A/R at Apr 30, 2021 CDN\$	A/R at Apr 30, 2021				Current		
	1-30	31-60	61-90	>120	Credits	Total	% of Total
1 PPL Electric Utilities	148,933	-	68	1,030	1,332	151,363	17%
2 Allegheny West Pen Power	66,105	32,538	-	2,759	(5,473)	95,929	11%
3 CEI-Dist	(557)	(5,572)	1,537	90,873	-	86,281	10%
4 Penelec Distribution	59,591	24,948	150	-	(18)	84,671	10%
5 PECO Energy Company	74,572	5,915	269	1,773	(518)	82,011	9%
6 Ohio Edison (First Energy)	(3,242)	(5,750)	1,360	86,495	-	78,863	9%
7 Penn Power	46,753	23,031	-	-	-	69,784	8%
Other 12 Accounts	46,508	(5,697)	24,997	171,606	(1,962)	235,453	27%
<b>Total</b>	<b>438,662</b>	<b>69,412</b>	<b>28,382</b>	<b>354,536</b>	<b>(6,639)</b>	<b>884,353</b>	<b>100%</b>
% of Total	50%	8%	3%	40%	-1%	100%	

Management has advised that certain credits are the result of 2017 receipts not tagged to proper purchase orders/invoices and some of these older credits will not likely be applied by its customers.

While it appears that CEI Dist and Ohio Edison are overdue, Management has advised that this was caused from an issue in allocating receipts to invoices. These accounts are current and not considered to be a collection issue.

Planet CDN\$ at Apr 30, 2021	Canadian Planet Companies	US Planet Companies	Elimination/ Consolidation Entries	Consolidated Planet
<b>Current Assets:</b>				
Cash	12,442,038	408,525	(61,425)	12,789,137
Restricted cash	46,371	3,930	61,425	111,726
Accounts receivable	(423,103)	1,006,453	-	583,351
Inventories	-	1,248	-	1,248
Gas delivered in excess of consumption	(75,433)	7,060	-	(68,374)
Other current assets	122,218	224,904	-	347,122
<b>Total Current Assets</b>	<b>12,112,091</b>	<b>1,652,121</b>	<b>-</b>	<b>13,764,211</b>
<b>Property and equipment</b>				
Property and equipment	286,696	162,751	-	449,448
Investments	2,817,936	62	(2,817,998)	-
Intercompany	3,525,879	(3,532,739)	6,860	-
Intangible assets	94,558	141,430	-	235,988
Deferred tax assets	584,615	30,088	-	614,703
<b>Total Assets</b>	<b>19,421,775</b>	<b>(1,546,288)</b>	<b>(2,811,137)</b>	<b>15,064,350</b>
<b>Current Liabilities</b>				
Trade and other payables	10,772,065	662,645	-	11,434,710
Corporate taxes payable	(597,243)	34,631	-	(562,612)
Deferred revenue	(46,949)	-	-	(46,949)
Revolving credit facility	-	-	-	-
Current portion of lease liability	39,660	124,191	-	163,851
Current portion of derivative liabilities	1,416,830	41,921	-	1,458,751
<b>Total Current Liabilities</b>	<b>11,584,364</b>	<b>863,387</b>	<b>-</b>	<b>12,447,751</b>
<b>Deferred tax liability</b>				
Deferred tax liability	182,322	-	-	182,322
Lease liability	91,973	53,537	-	145,509
Derivative liabilities	789,264	19,346	-	808,610
<b>Total Liabilities</b>	<b>12,647,923</b>	<b>936,270</b>	<b>-</b>	<b>13,584,193</b>
<b>Shareholders equity:</b>				
Total shareholder's equity	<b>6,773,852</b>	<b>(2,482,558)</b>	<b>(2,811,138)</b>	<b>1,480,157</b>
<b>Total Liabilities + Shareholders Equity</b>	<b>19,421,775</b>	<b>(1,546,288)</b>	<b>(2,811,138)</b>	<b>15,064,349</b>



## CURRENT FINANCIAL POSITION AT APR 30, 2021

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**Other Current Assets:**

Other current assets in the Canadian Planet Companies of \$122K relate prepaid expenses including prepaid insurance.

Other current assets in the US Planet Companies of \$225K are broken down by entity as follows:

**US Planet Companies**

Planet Energy USA Corp	76,943
Planet Energy (New York) Corp.	88,464
Planet Energy (Pennsylvania) Corp.	42,912
Planet Energy (Ohio) Corp.	16,585
<b>Total Prepaid Expenses</b>	<b>224,904</b>

Planet USA Corp – current assets in USA Corp primarily relate to a retainer to US Counsel in the ACN matter.

Planet New York – Management has advised that this is an old balance and should be written off.

Planet Pennsylvania – these are primarily comprised of prepaid amounts for rent.

Planet Ohio – this balance represents a security deposit with Duke Energy a supplier.

**Property Plant and Equipment:**

Property plant and equipment of approximately \$449K primarily consists of right of use (“ROU”) assets and leasehold improvements.

**Intangible Assets:**

Intangible assets in the Canadian Planet Companies relate to the following:

**Canadian Planet Companies**

Customer Information System	50,344
Customer Portal	45,048
<b>Total</b>	<b>95,392</b>

Intangible assets of approximately \$141K in the U.S. Planet Companies relate to unamortized commissions. When commissions are paid on acquiring new contracts, they are capitalized and amortized over the life of the contract.

Planet CDN\$ at Apr 30, 2021	Canadian Planet Companies	US Planet Companies	Elimination/ Consolidation Entries	Consolidated Planet
<b>Current Assets:</b>				
Cash	12,442,038	408,525	(61,425)	12,789,137
Restricted cash	46,371	3,930	61,425	111,726
Accounts receivable	(423,103)	1,006,453	-	583,351
Inventories	-	1,248	-	1,248
Gas delivered in excess of consumption	(75,433)	7,060	-	(68,374)
Other current assets	122,218	224,904	-	347,122
<b>Total Current Assets</b>	<b>12,112,091</b>	<b>1,652,121</b>	<b>-</b>	<b>13,764,211</b>
<b>Property and equipment</b>				
Property and equipment	286,696	162,751	-	449,448
Investments	2,817,936	62	(2,817,998)	-
Intercompany	3,525,879	(3,532,739)	6,860	-
Intangible assets	94,558	141,430	-	235,988
Deferred tax assets	584,615	30,088	-	614,703
<b>Total Assets</b>	<b>19,421,775</b>	<b>(1,546,288)</b>	<b>(2,811,137)</b>	<b>15,064,350</b>
<b>Current Liabilities</b>				
Trade and other payables	10,772,065	662,645	-	11,434,710
Corporate taxes payable	(597,243)	34,631	-	(562,612)
Deferred revenue	(46,949)	-	-	(46,949)
Revolving credit facility	-	-	-	-
Current portion of lease liability	39,660	124,191	-	163,851
Current portion of derivative liabilities	1,416,830	41,921	-	1,458,751
<b>Total Current Liabilities</b>	<b>11,584,364</b>	<b>863,387</b>	<b>-</b>	<b>12,447,751</b>
<b>Deferred tax liability</b>				
Deferred tax liability	182,322	-	-	182,322
Lease liability	91,973	53,537	-	145,509
Derivative liabilities	789,264	19,346	-	808,610
<b>Total Liabilities</b>	<b>12,647,923</b>	<b>936,270</b>	<b>-</b>	<b>13,584,193</b>
<b>Shareholders equity:</b>				
<b>Total shareholder's equity</b>	<b>6,773,852</b>	<b>(2,482,558)</b>	<b>(2,811,138)</b>	<b>1,480,157</b>
<b>Total Liabilities + Shareholders Equity</b>	<b>19,421,775</b>	<b>(1,546,288)</b>	<b>(2,811,138)</b>	<b>15,064,349</b>

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**Deferred Tax Assets:**

Deferred tax assets in the Canadian Planet Companies are the result of taxes that are deferred on the mark to market fair value derivatives/long term hedges of Planet's electricity swaps. These liabilities result from the difference between the cost base and the tax base of the assets.

The deferred tax assets are calculated as follows:

**Electricity Swaps**

Current portion of derivative liabilities	1,416,830
Derivative liabilities	789,264
<b>Total Derivative Liabilities</b>	<b>2,206,094</b>
Statutory tax rate	26.50%
<b>Deferred Tax Asset</b>	<b>584,615</b>

Deferred tax assets in the U.S. Planet Companies of approximately \$30K relate to the unrealized fair value loss on US derivatives.

Planet's non-current assets cannot be easily liquidated and/or are required for use in its operations. As a result, long-term assets cannot be used to generate cash to post security.

Planet CDN\$ at Apr 30, 2021	Canadian Planet Companies	US Planet Companies	Elimination/ Consolidation Entries	Consolidated Planet
<b>Current Assets:</b>				
Cash	12,442,038	408,525	(61,425)	12,789,137
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**Trade and Other Payables:**

Trade and other payables of \$11.4MM at Apr 30, 2021 are broken down as shown:

Trade and other payables		Notes
Accrued commissions payable	9,807,365	1
Accrued liabilities	750,562	2
Accounts payable - electricity	469,613	3
Accounts payable	365,999	4
Accounts payable - gas	29,319	5
Withholding tax payable	8,306	6
GST payable	3,545	7
<b>Trade and other payables</b>	<b>11,434,710</b>	

1. The accrued commission payable of \$9.8MM relates to amounts accrued for ACN which have not been paid since March 2018
2. Accrued liabilities of \$751K relate to approximately \$417K for legal and audit accruals, \$174K for ACN commissions and \$160K in the U.S. Planet Companies for accrued Gross Receipts Tax ("GRT") in Pennsylvania which is a result of 5.9% sales tax payable March 2022.
3. The \$470K relates to amounts owing to Shell for electricity purchases for April 2021.
4. The \$366K in trade payables are broken down as follows:

		1-30	>120	Total
Planet Energy (Ontario) Corp.	Shell (N.A.)	324,525		324,525
Planet Energy (Ontario) Corp.	ERTH Business Technologies II	41,545		41,545
Planet Energy (Manitoba) Corp.	ACN	31,090		31,090
Other trade accounts	72 accounts	-	(35,370)	(35,370)
<b>Total Planet Canadian Companies</b>		<b>397,160</b>	<b>(35,370)</b>	<b>361,790</b>
<b>Total Planet US Companies in CDN\$</b>	13 accounts	-	4,551	4,551
<b>Total Trade A/P</b>		<b>397,160</b>	<b>(30,819)</b>	<b>366,342</b>

5. The \$29K relates to amounts owing to for gas purchases.
6. Withholding tax payable relates to amounts booked in 2018. Planet uses a 3<sup>rd</sup> party service provider for payroll and Management has advised that all amounts are current and this liability does not exist.
7. Management has advised that the last sales tax return filed for Planet Energy (Manitoba) Corp. was January 2020 and Energie Planete Inc. was dissolved in January 2019. As a result, these amounts should be written off and are nil.

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## CURRENT FINANCIAL POSITION AT APR 30, 2021

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**Corporate Taxes Payable**

Planet's notice of assessment for FY20 corporate taxes provide for a refund of \$580K. Management has confirmed that this amount was received in May 2021.

**Deferred Revenue:**

Deferred revenue relates to unbilled gas is a receivable from gas revenue from customers.

**Current portion of Lease Liability:**

This account represents the current portion of the lease liabilities for ROU assets as required by IFRS.

**Lease Liability:**

Right of use leases, including the office building rentals, have been accrued in accordance with IFRS.

The present value of the unamortized lease liability relating to the Canadian Planet Companies at April 30, 2021 is approximately \$132K. Lease payments are currently \$3,525/month and increase to \$3,699/month by the end of the lease in April 2025.

The present value of the unamortized lease liability relating to the U.S. Planet Companies at Apr 30, 2021 is approximately US\$131K. Lease payments are currently US\$8,510/month and increase to US\$8,765/month by the end of the lease in September 30, 2022.

**Derivative Liabilities (Current and Long Term):**

A fair value mark to market valuation of the swap agreements is completed at each month end. The fair market valuation of the liability at April 30, 2021 is approximately \$2.3MM.

**Deferred Tax Liability**

Deferred tax liability is comprised of the following:

	Amount	Tax Rate	Deferred Tax Liability
Electricity Unbilled Reserve	(973,410)	26.50%	(257,954)
Capital Assets (NBV over UCC)	13,641	26.50%	3,615
Excess of ROU Asset over ROU Liability	9,243	26.50%	2,449
Other	1,638,535	26.50%	434,212
<b>Total Deferred Tax Liability</b>	<b>688,009</b>		<b>182,322</b>

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<b>Total Liabilities + Shareholders Equity</b>	<b>19,421,775</b>	<b>(1,546,288)</b>	<b>(2,811,138)</b>	<b>15,064,349</b>

**Deferred Tax Liability (Cont)**

Management has advised that the "Other" deferred tax liability represents a reserve required by Planet's auditors in 2014 and 2015 in the event certain expenses were disallowed in relation to support services provided by the Canadian Planet Companies and charged to the U.S. Planet Companies.

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# OVERVIEW OF PLANET'S FINANCIAL PROJECTIONS

## INTRODUCTION

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### General

- The Apr-21 Forecast provides internal unaudited results up to April 30, 2021 and forecast from May 1, 2021 to September 30, 2025 including relevant assumptions (the "**Apr-21 Forecast**").
- The period October 1 2020 – September 30, 2025 (the "**Forecast Period**").
- The Apr-21 Forecast has been included in **Exhibits VII to XI**. A year over year summary including FY17 and FY18 has been included in **Exhibit XII**.
- Planet has a September 30th year end.
- Management advises that the Apr-21 Forecast was prepared using a bottom-up approach to build sales, cost of sales and expenses in the forecast income statement as well as working capital assumptions to forecast Planet's cash flow and balance sheet. Certain balance sheet accounts including restricted cash, other assets, and deferred tax liability were forecast to remain unchanged as future fluctuations in these accounts may not be predicted by Management or are expected to be immaterial. The Apr-21 Forecast does not include forecasted depreciation or amortization which are non-cash items.

### COVID-19

- F20 and F21 financial results were highly impacted by the COVID-19 pandemic and, as a result, certain analyses with respect to various assumptions by Management refer to F19 as Planet's historical comparable.
- **Exhibit IV** provides an overview of the impact of the pandemic on Planet's F20 and F21 financial results.

### Methodology

- Richter has reviewed the Apr-21 Forecast for the following:
  - comparison to historical results, trends and current market/company insights provided by Planet;
  - understanding of the underlying forecast assumptions;
  - determining the impact of key assumption drivers over the Forecast Period; and
  - calculating the estimated working capital required over the Forecast Period to meet Planet's financial covenants.
- A sensitivity analysis of the Apr-21 Forecast has been provided in Section 5 of this Report.

# OVERVIEW OF PLANET'S FINANCIAL PROJECTIONS

## PROJECTED P&L

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The following table provides an overview of Planet's historical and projected financial results.

	Sep-19 FY19	Sep-20 FY20	Sep-21 FY21	Sep-22 FY22	Sep-23 FY23	Sep-24 FY24	Sep-25 FY25
<b>Residential Consumer Equivalents</b>							
RCE's - ELECTRICITY	48,720	36,250	31,200	30,193	30,525	32,394	35,496
RCE's - GAS	12,127	6,596	4,482	4,022	3,734	3,683	3,830
<b>TOTAL RCE's</b>	<b>60,847</b>	<b>42,846</b>	<b>35,683</b>	<b>34,215</b>	<b>34,259</b>	<b>36,077</b>	<b>39,326</b>
<b>Income Statement</b>							
Electricity Revenue	29,950,702	20,905,196	17,161,894	16,776,730	17,697,372	19,610,669	22,485,697
Electricity - Cost of goods sold	21,689,124	13,556,708	11,967,253	11,753,157	12,682,256	14,518,076	17,105,392
<b>Electricity Gross Margin</b>	<b>8,261,578</b>	<b>7,348,487</b>	<b>5,194,641</b>	<b>5,023,573</b>	<b>5,015,115</b>	<b>5,092,593</b>	<b>5,380,304</b>
<b>Electricity - GM %</b>	<b>27.6%</b>	<b>35.2%</b>	<b>30.3%</b>	<b>29.9%</b>	<b>28.3%</b>	<b>26.0%</b>	<b>23.9%</b>
Gas Revenue	10,158,105	5,160,338	2,641,856	2,449,324	2,287,558	2,246,789	2,363,853
Gas Cost of goods sold	6,619,979	3,263,069	1,652,703	1,604,518	1,487,173	1,446,597	1,504,688
<b>Gas Gross Margin</b>	<b>3,538,126</b>	<b>1,897,269</b>	<b>989,154</b>	<b>844,807</b>	<b>800,386</b>	<b>800,192</b>	<b>859,165</b>
<b>Gas GM%</b>	<b>34.8%</b>	<b>36.8%</b>	<b>37.4%</b>	<b>34.5%</b>	<b>35.0%</b>	<b>35.6%</b>	<b>36.3%</b>
<b>TOTAL REVENUE</b>	<b>40,108,807</b>	<b>26,065,534</b>	<b>19,803,751</b>	<b>19,226,054</b>	<b>19,984,930</b>	<b>21,857,458</b>	<b>24,849,550</b>
<b>TOTAL COST OF GOODS SOLD</b>	<b>28,309,103</b>	<b>16,819,778</b>	<b>13,619,956</b>	<b>13,357,674</b>	<b>14,169,429</b>	<b>15,964,673</b>	<b>18,610,080</b>
<b>TOTAL GROSS MARGIN</b>	<b>11,799,704</b>	<b>9,245,756</b>	<b>6,183,795</b>	<b>5,868,380</b>	<b>5,815,501</b>	<b>5,892,785</b>	<b>6,239,470</b>
<b>Total Gross Margin %</b>	<b>29.4%</b>	<b>35.5%</b>	<b>31.2%</b>	<b>30.5%</b>	<b>29.1%</b>	<b>27.0%</b>	<b>25.1%</b>
<b>SELLING, GENERAL &amp; ADMIN EXPENSES</b>							
Residual commissions	4,028,255	1,175,576	433,429	35,862	-	-	-
Upfront Commission - Electricity	138,291	15,343	6,670	-	-	-	-
Upfront Commission - Gas	-	-	-	-	-	-	-
Call centre costs	858,000	827,400	865,021	832,911	819,058	839,314	892,520
Back office compensation	2,495,069	2,159,483	2,196,479	2,097,810	2,080,585	2,105,771	2,171,928
Variable operating expenses	1,822,699	3,735,462	2,013,324	1,744,981	1,711,503	1,760,454	1,889,037
Rent	625,280	442,275	179,002	217,173	217,173	217,173	217,173
Insurance	32,045	30,267	43,561	40,695	40,695	40,695	40,695
<b>TOTAL S, G &amp; A</b>	<b>9,999,639</b>	<b>8,385,806</b>	<b>5,737,487</b>	<b>4,969,432</b>	<b>4,869,014</b>	<b>4,963,408</b>	<b>5,211,355</b>
<b>EBITDA</b>	<b>1,800,065</b>	<b>859,951</b>	<b>446,308</b>	<b>898,948</b>	<b>946,487</b>	<b>929,378</b>	<b>1,028,115</b>
Finance Costs	57,887	134,337	91,606	79,680	79,680	79,680	79,680
Change in Fair Value of Derivative Contracts	(3,179,702)	(2,201,879)	101,882	-	-	-	-
Other Expense	(17,874)	22,935	294,415	-	-	-	-
Depreciation - Fixed assets	113,791	169,759	105,640	-	-	-	-
Amortization - Intangible assets	5,456,002	1,024,666	13,322	-	-	-	-
Income tax expense - cash paid taxes	731,475	104,409	152,768	269,684	283,946	278,813	308,435
Deferred tax expense	(386,646)	378,672	127,838	-	-	-	-
<b>Net Income/(Loss)</b>	<b>(974,868)</b>	<b>1,227,052</b>	<b>(441,162)</b>	<b>549,583</b>	<b>582,861</b>	<b>570,884</b>	<b>640,001</b>
<b>SALES BY PRODUCT</b>							
Electricity Sales/Ave RCE/Mnth	535	500	520	547	581	619	657
Gas Sales/Ave RCE/Mnth	660	557	521	579	592	606	627
<b>SALES PER RCE</b>	<b>562</b>	<b>510</b>	<b>520</b>	<b>550</b>	<b>582</b>	<b>618</b>	<b>654</b>
<b>ELECTRICITY SALES BY GEOGRAPHY</b>							
Canada	21,704,944	14,121,011	9,963,304	8,992,508	7,732,610	6,649,230	5,717,637
US	8,229,704	6,507,965	7,198,590	7,784,222	9,964,762	12,961,439	16,768,059
<b>TOTAL</b>	<b>29,934,648</b>	<b>20,628,976</b>	<b>17,161,894</b>	<b>16,776,730</b>	<b>17,697,372</b>	<b>19,610,669</b>	<b>22,485,697</b>
<b>GAS SALES BY GEOGRAPHY</b>							
Canada	9,610,529	4,887,654	2,303,714	2,001,419	1,669,448	1,392,540	1,161,562
US	563,634	426,313	338,142	447,905	618,110	854,249	1,202,291
<b>TOTAL</b>	<b>10,174,163</b>	<b>5,313,968</b>	<b>2,641,856</b>	<b>2,449,324</b>	<b>2,287,558</b>	<b>2,246,789</b>	<b>2,363,853</b>
<b>TOTAL SALES</b>	<b>40,108,811</b>	<b>25,942,943</b>	<b>19,803,751</b>	<b>19,226,054</b>	<b>19,984,930</b>	<b>21,857,458</b>	<b>24,849,550</b>

### General

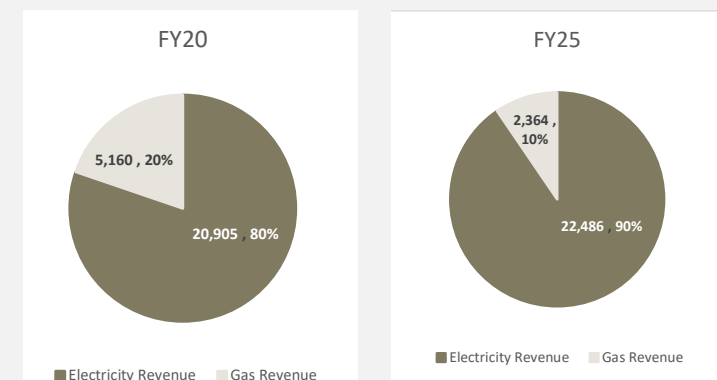
Management's key P&L assumptions are presented in **Exhibit IV**.

Sales and gross margins are based on the following key assumptions:

- Forecast attrition rates;
- Forecast new customer acquisitions;
- Forecast consumption per unit for electricity and gas;
- Growth margin for electricity and gas; and
- Management's planned SG&A.

The underlying sales and gross margin assumptions are subject to execution and market risk and, as such, actual results may vary materially from the Apr-21 Forecast.

In F20, electricity revenues made up approximately 80% of total revenue. By F25, Planet is forecasting an increase in electricity revenues as a percent of total revenue. This is based on attrition and acquisition assumptions discussed more fully later in this Report.



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# OVERVIEW OF PLANET'S FINANCIAL PROJECTIONS

## PROJECTED P&L

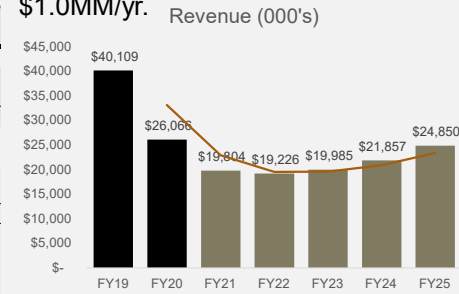
- COMPANY BACKGROUND AND ENGAGEMENT OVERVIEW
- EXECUTIVE SUMMARY
- CURRENT FINANCIAL POSITION
- OVERVIEW OF PLANET'S APR-21 FORECAST
- SENSITIZED FORECAST ASSUMPTIONS
- EXHIBITS

The following table provides an overview of Planet's historical and projected financial results.

	Sep-19 FY19	Sep-20 FY20	Sep-21 FY21	Sep-22 FY22	Sep-23 FY23	Sep-24 FY24	Sep-25 FY25
<b>Residential Consumer Equivalents</b>							
RCE's - ELECTRICITY	48,720	36,250	31,200	30,193	30,525	32,394	35,496
RCE's - GAS	12,127	6,596	4,482	4,022	3,734	3,683	3,830
<b>TOTAL RCE's</b>	<b>60,847</b>	<b>42,846</b>	<b>35,683</b>	<b>34,215</b>	<b>34,259</b>	<b>36,077</b>	<b>39,326</b>
<b>Income Statement</b>							
Electricity Revenue	29,950,702	20,905,196	17,161,894	16,776,730	17,697,372	19,610,669	22,485,697
Electricity - Cost of goods sold	21,689,124	13,556,708	11,967,253	11,753,157	12,682,256	14,518,076	17,105,392
<b>Electricity Gross Margin</b>	<b>8,261,578</b>	<b>7,348,487</b>	<b>5,194,641</b>	<b>5,023,573</b>	<b>5,015,115</b>	<b>5,092,593</b>	<b>5,380,304</b>
<b>Electricity - GM %</b>	<b>27.6%</b>	<b>35.2%</b>	<b>30.3%</b>	<b>29.9%</b>	<b>28.3%</b>	<b>26.0%</b>	<b>23.9%</b>
Gas Revenue	10,158,105	5,160,338	2,641,856	2,449,324	2,287,558	2,246,789	2,363,853
Gas Cost of goods sold	6,619,979	3,263,069	1,652,703	1,604,518	1,487,173	1,446,597	1,504,688
<b>Gas Gross Margin</b>	<b>3,538,126</b>	<b>1,897,269</b>	<b>989,154</b>	<b>844,807</b>	<b>800,386</b>	<b>800,192</b>	<b>859,165</b>
<b>Gas GM%</b>	<b>34.8%</b>	<b>36.8%</b>	<b>37.4%</b>	<b>34.5%</b>	<b>35.0%</b>	<b>35.6%</b>	<b>36.3%</b>
<b>TOTAL REVENUE</b>	<b>40,108,807</b>	<b>26,065,534</b>	<b>19,803,751</b>	<b>19,226,054</b>	<b>19,984,930</b>	<b>21,857,458</b>	<b>24,849,550</b>
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### Overview

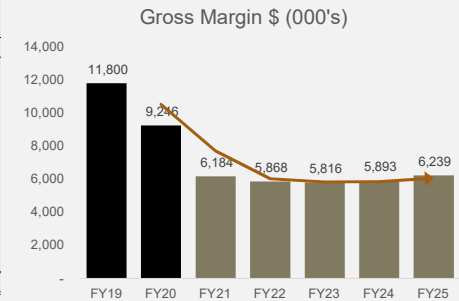
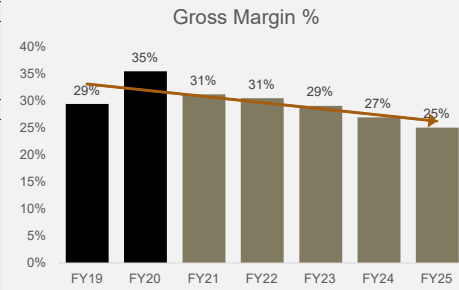
Planet's Apr-21 Forecast EBITDA ranges from \$0.4MM - \$1.0MM/yr.



F20 revenue was impacted by diversion of resources to the ACN arbitration as well as the impact of COVID-19 on sales.

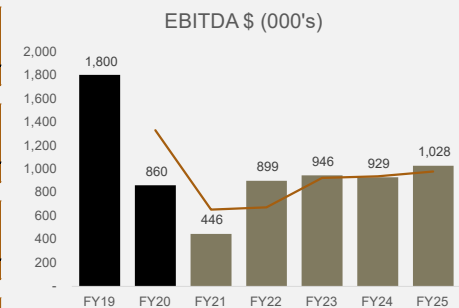
Canadian sales are expected to decline due to expiration and attrition and legislation which prohibits door-to-door sales.

U.S. sales are expected to grow as the impact of COVID on sales reduces.



The Apr-21 Forecast assumes gross margins consistent with prior year historical results.

Gross margin \$ are projected to decrease in F21-F23 as RCE's reduce due to attrition and then increase in F24-F25 as new acquisitions in the US outpace attrition.



Planet plans to reduce SG&A in line with sales reductions in F21-23, keeping EBITDA fairly consistent.



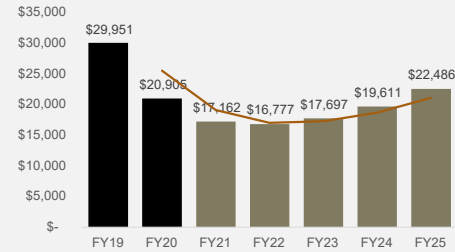
# OVERVIEW OF PLANET'S FINANCIAL PROJECTIONS

## PROJECTED P&L

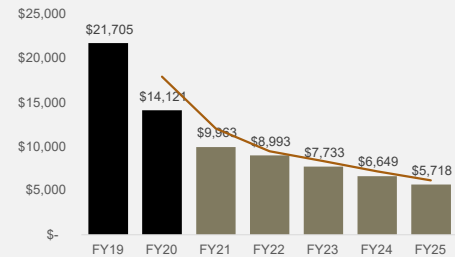
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<b>Electricity Gross Margin</b>	<b>8,261,578</b>	<b>7,348,487</b>	<b>5,194,641</b>	<b>5,023,573</b>	<b>5,015,115</b>	<b>5,092,593</b>	<b>5,380,304</b>
<b>Electricity - GM %</b>	<b>27.6%</b>	<b>35.2%</b>	<b>30.3%</b>	<b>29.9%</b>	<b>28.3%</b>	<b>26.0%</b>	<b>23.9%</b>
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<b>Gas Gross Margin</b>	<b>3,538,126</b>	<b>1,897,269</b>	<b>989,154</b>	<b>844,807</b>	<b>800,386</b>	<b>800,192</b>	<b>859,165</b>
<b>Gas GM%</b>	<b>34.8%</b>	<b>36.8%</b>	<b>37.4%</b>	<b>34.5%</b>	<b>35.0%</b>	<b>35.6%</b>	<b>36.3%</b>
<b>TOTAL REVENUE</b>	<b>40,108,807</b>	<b>26,065,534</b>	<b>19,803,751</b>	<b>19,226,054</b>	<b>19,984,930</b>	<b>21,857,458</b>	<b>24,849,550</b>
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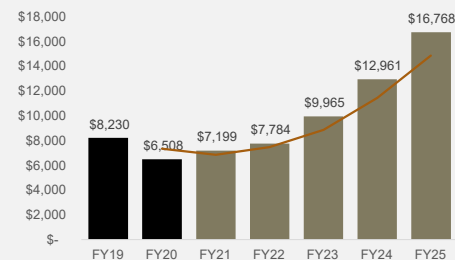
Total Electricity Revenue (000's)



Canadian Electricity Revenue (000's)



US Electricity Revenue (000's)



The decline in Canadian electricity sales is primarily based on Managements assumed attrition rate of 1.25%/month. Management believes many contracts will expire without renewal.

No new customer acquisitions are forecast for Canada as Planet is no longer allowed to use brokers or make door to door sales.

The initial decline in U.S. electricity sales is primarily based on Management's assumed attrition rate of 2%/month.

New customer growth is projected to commence and outpace attrition in May-22 post-Covid.

# OVERVIEW OF PLANET'S FINANCIAL PROJECTIONS

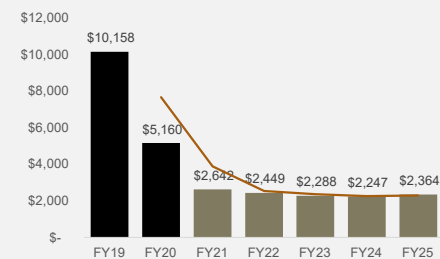
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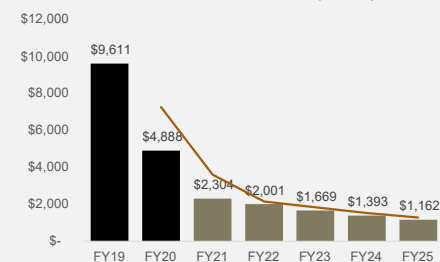
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<b>TOTAL RCE's</b>	<b>60,847</b>	<b>42,846</b>	<b>35,683</b>	<b>34,215</b>	<b>34,259</b>	<b>36,077</b>	<b>39,326</b>
<b>Income Statement</b>							
Electricity Revenue	29,950,702	20,905,196	17,161,894	16,776,730	17,697,372	19,610,669	22,485,697
Electricity - Cost of goods sold	21,689,124	13,556,708	11,967,253	11,753,157	12,682,256	14,518,076	17,105,392
<b>Electricity Gross Margin</b>	<b>8,261,578</b>	<b>7,348,487</b>	<b>5,194,641</b>	<b>5,023,573</b>	<b>5,015,115</b>	<b>5,092,593</b>	<b>5,380,304</b>
<b>Electricity - GM %</b>	<b>27.6%</b>	<b>35.2%</b>	<b>30.3%</b>	<b>29.9%</b>	<b>28.3%</b>	<b>26.0%</b>	<b>23.9%</b>
Gas Revenue	10,158,105	5,160,338	2,641,856	2,449,324	2,287,558	2,246,789	2,363,853
Gas Cost of goods sold	6,619,979	3,263,069	1,652,703	1,604,518	1,487,173	1,446,597	1,504,688
<b>Gas Gross Margin</b>	<b>3,538,126</b>	<b>1,897,269</b>	<b>989,154</b>	<b>844,807</b>	<b>800,386</b>	<b>800,192</b>	<b>859,165</b>
<b>Gas GM%</b>	<b>34.8%</b>	<b>36.8%</b>	<b>37.4%</b>	<b>34.5%</b>	<b>35.0%</b>	<b>35.6%</b>	<b>36.3%</b>
<b>TOTAL REVENUE</b>	<b>40,108,807</b>	<b>26,065,534</b>	<b>19,803,751</b>	<b>19,226,054</b>	<b>19,984,930</b>	<b>21,857,458</b>	<b>24,849,550</b>
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<b>SELLING, GENERAL &amp; ADMIN EXPENSES</b>							
Residual commissions	4,028,255	1,175,576	433,429	35,862	-	-	-
Upfront Commission - Electricity	138,291	15,343	6,670	-	-	-	-
Upfront Commission - Gas	-	-	-	-	-	-	-
Call centre costs	858,000	827,400	865,021	832,911	819,058	839,314	892,520
Back office compensation	2,495,069	2,159,483	2,196,479	2,097,810	2,080,585	2,105,771	2,171,928
Variable operating expenses	1,822,699	3,735,462	2,013,324	1,744,981	1,711,503	1,760,454	1,889,037
Rent	625,280	442,275	179,002	217,173	217,173	217,173	217,173
Insurance	32,045	30,267	43,561	40,695	40,695	40,695	40,695
<b>TOTAL S, G &amp; A</b>	<b>9,999,639</b>	<b>8,385,806</b>	<b>5,737,487</b>	<b>4,969,432</b>	<b>4,869,014</b>	<b>4,963,408</b>	<b>5,211,355</b>
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Finance Costs	57,887	134,337	91,606	79,680	79,680	79,680	79,680
Change in Fair Value of Derivative Contracts	(3,179,702)	(2,201,879)	101,882	-	-	-	-
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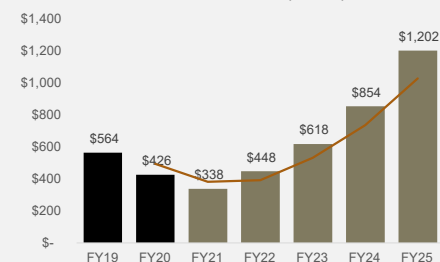
Total Gas Revenue (000's)



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The decline in Canadian gas sales is primarily based on Managements assumed attrition rate of 1.5%/month.

No new customer acquisitions are forecast for Canada as Planet is no longer allowed to use brokers or make door to door sales.

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New customer growth is projected to commence and outpace attrition in May-22 when door to door sales resume post-Covid.

# OVERVIEW OF PLANET'S FINANCIAL PROJECTIONS

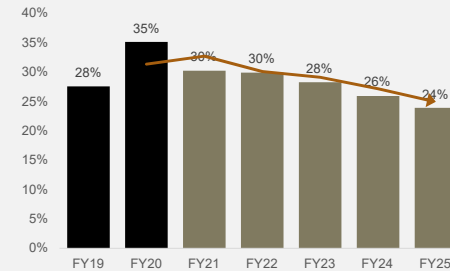
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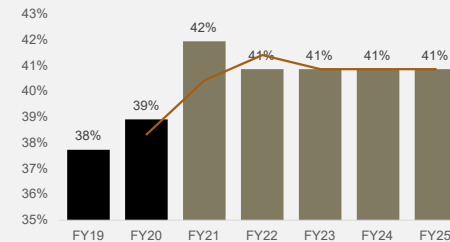
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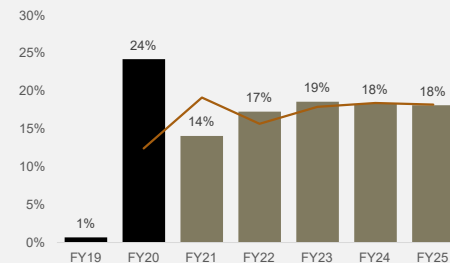
Electricity Gross Margin %



Canadian Electricity Gross Margin \$ (000's)



US Electricity Gross Margin \$ (000's)



Planet's forecast provides for an assumed gross margin given the price and cost of electricity fluctuates. Assumed gross margin for electricity in Canada is approximately 41%.

Management has advised that U.S. electricity margins in F19 and F20 appear abnormal due to an accounting issue.

Assumed gross margin for electricity in the U.S. is forecast to range from 16% to 20% per month.

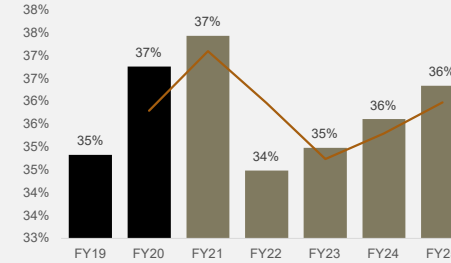
# OVERVIEW OF PLANET'S FINANCIAL PROJECTIONS

## PROJECTED P&L

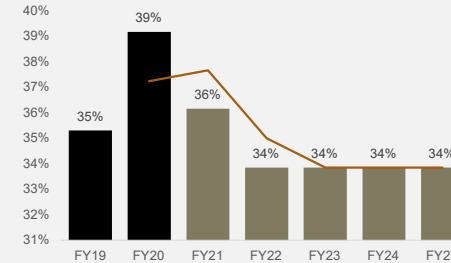
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<b>TOTAL COST OF GOODS SOLD</b>	<b>28,309,103</b>	<b>16,819,778</b>	<b>13,619,956</b>	<b>13,357,674</b>	<b>14,169,429</b>	<b>15,964,673</b>	<b>18,610,080</b>
<b>TOTAL GROSS MARGIN</b>	<b>11,799,704</b>	<b>9,245,756</b>	<b>6,183,795</b>	<b>5,868,380</b>	<b>5,815,501</b>	<b>5,892,785</b>	<b>6,239,470</b>
<b>Total Gross Margin %</b>	<b>29.4%</b>	<b>35.5%</b>	<b>31.2%</b>	<b>30.5%</b>	<b>29.1%</b>	<b>27.0%</b>	<b>25.1%</b>
<b>SELLING, GENERAL &amp; ADMIN EXPENSES</b>							
Residual commissions	4,028,255	1,175,576	433,429	35,862	-	-	-
Upfront Commission - Electricity	138,291	15,343	6,670	-	-	-	-
Upfront Commission - Gas	-	-	-	-	-	-	-
Call centre costs	858,000	827,400	865,021	832,911	819,058	839,314	892,520
Back office compensation	2,495,069	2,159,483	2,196,479	2,097,810	2,080,585	2,105,771	2,171,928
Variable operating expenses	1,822,699	3,735,462	2,013,324	1,744,981	1,711,503	1,760,454	1,889,037
Rent	625,280	442,275	179,002	217,173	217,173	217,173	217,173
Insurance	32,045	30,267	43,561	40,695	40,695	40,695	40,695
<b>TOTAL S, G &amp; A</b>	<b>9,999,639</b>	<b>8,385,806</b>	<b>5,737,487</b>	<b>4,969,432</b>	<b>4,869,014</b>	<b>4,963,408</b>	<b>5,211,355</b>
<b>EBITDA</b>	<b>1,800,065</b>	<b>859,951</b>	<b>446,308</b>	<b>898,948</b>	<b>946,487</b>	<b>929,378</b>	<b>1,028,115</b>
Finance Costs	57,887	134,337	91,606	79,680	79,680	79,680	79,680
Change in Fair Value of Derivative Contracts	(3,179,702)	(2,201,879)	101,882	-	-	-	-
Other Expense	(17,874)	22,935	294,415	-	-	-	-
Depreciation - Fixed assets	113,791	169,759	105,640	-	-	-	-
Amortization - Intangible assets	5,456,002	1,024,666	13,322	-	-	-	-
Income tax expense - cash paid taxes	731,475	104,409	152,768	269,684	283,946	278,813	308,435
Deferred tax expense	(386,646)	378,672	127,838	-	-	-	-
<b>Net Income/(Loss)</b>	<b>(974,868)</b>	<b>1,227,052</b>	<b>(441,162)</b>	<b>549,583</b>	<b>582,861</b>	<b>570,884</b>	<b>640,001</b>
<b>SALES BY PRODUCT</b>							
Electricity Sales/Ave RCE/Mnth	535	500	520	547	581	619	657
Gas Sales/Ave RCE/Mnth	660	557	521	579	592	606	627
<b>SALES PER RCE</b>	<b>562</b>	<b>510</b>	<b>520</b>	<b>550</b>	<b>582</b>	<b>618</b>	<b>654</b>
<b>ELECTRICITY SALES BY GEOGRAPHY</b>							
Canada	21,704,944	14,121,011	9,963,304	8,992,508	7,732,610	6,649,230	5,717,637
US	8,229,704	6,507,965	7,198,590	7,784,222	9,964,762	12,961,439	16,768,059
<b>TOTAL</b>	<b>29,934,648</b>	<b>20,628,976</b>	<b>17,161,894</b>	<b>16,776,730</b>	<b>17,697,372</b>	<b>19,610,669</b>	<b>22,485,697</b>
<b>GAS SALES BY GEOGRAPHY</b>							
Canada	9,610,529	4,887,654	2,303,714	2,001,419	1,669,448	1,392,540	1,161,562
US	563,634	426,313	338,142	447,905	618,110	854,249	1,202,291
<b>TOTAL</b>	<b>10,174,163</b>	<b>5,313,968</b>	<b>2,641,856</b>	<b>2,449,324</b>	<b>2,287,558</b>	<b>2,246,789</b>	<b>2,363,853</b>
<b>TOTAL SALES</b>	<b>40,108,811</b>	<b>25,942,943</b>	<b>19,803,751</b>	<b>19,226,054</b>	<b>19,984,930</b>	<b>21,857,458</b>	<b>24,849,550</b>

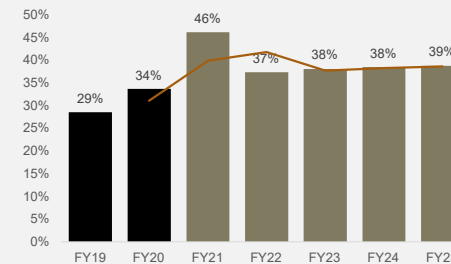
Gas Gross Margin %



Canadian Gas Gross Margin \$ (000's)



US Gas Gross Margin \$ (000's)



Planet's forecast provides for an assumed gross margin given the price and cost of gas fluctuates. Assumed gross margin for gas in Canada is approximately 34%.

Assumed gross margin for gas in the U.S. is forecast to range from 38% to 39% per month.

- COMPANY BACKGROUND AND ENGAGEMENT OVERVIEW
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# OVERVIEW OF PLANET'S FINANCIAL PROJECTIONS

## PROJECTED P&L

The following table provides an overview of Planet's historical and projected financial results.

	Sep-19 FY19	Sep-20 FY20	Sep-21 FY21	Sep-22 FY22	Sep-23 FY23	Sep-24 FY24	Sep-25 FY25
<b>Residential Consumer Equivalents</b>							
RCE's - ELECTRICITY	48,720	36,250	31,200	30,193	30,525	32,394	35,496
RCE's - GAS	12,127	6,596	4,482	4,022	3,734	3,683	3,830
<b>TOTAL RCE's</b>	<b>60,847</b>	<b>42,846</b>	<b>35,683</b>	<b>34,215</b>	<b>34,259</b>	<b>36,077</b>	<b>39,326</b>
<b>Income Statement</b>							
Electricity Revenue	29,950,702	20,905,196	17,161,894	16,776,730	17,697,372	19,610,669	22,485,697
Electricity - Cost of goods sold	21,689,124	13,556,708	11,967,253	11,753,157	12,682,256	14,518,076	17,105,392
<b>Electricity Gross Margin</b>	<b>8,261,578</b>	<b>7,348,487</b>	<b>5,194,641</b>	<b>5,023,573</b>	<b>5,015,115</b>	<b>5,092,593</b>	<b>5,380,304</b>
<b>Electricity - GM %</b>	<b>27.6%</b>	<b>35.2%</b>	<b>30.3%</b>	<b>29.9%</b>	<b>28.3%</b>	<b>26.0%</b>	<b>23.9%</b>
Gas Revenue	10,158,105	5,160,338	2,641,856	2,449,324	2,287,558	2,246,789	2,363,853
Gas Cost of goods sold	6,619,979	3,263,069	1,652,703	1,604,518	1,487,173	1,446,597	1,504,688
<b>Gas Gross Margin</b>	<b>3,538,126</b>	<b>1,897,269</b>	<b>989,154</b>	<b>844,807</b>	<b>800,386</b>	<b>800,192</b>	<b>859,165</b>
<b>Gas GM%</b>	<b>34.8%</b>	<b>36.8%</b>	<b>37.4%</b>	<b>34.5%</b>	<b>35.0%</b>	<b>35.6%</b>	<b>36.3%</b>
<b>TOTAL REVENUE</b>	<b>40,108,807</b>	<b>26,065,534</b>	<b>19,803,751</b>	<b>19,226,054</b>	<b>19,984,930</b>	<b>21,857,458</b>	<b>24,849,550</b>
<b>TOTAL COST OF GOODS SOLD</b>	<b>28,309,124</b>	<b>16,819,778</b>	<b>13,619,956</b>	<b>13,357,674</b>	<b>14,169,429</b>	<b>15,964,673</b>	<b>18,610,080</b>
<b>TOTAL GROSS MARGIN</b>	<b>11,799,704</b>	<b>9,245,756</b>	<b>6,183,795</b>	<b>5,868,380</b>	<b>5,815,501</b>	<b>5,892,785</b>	<b>6,239,470</b>
<b>Total Gross Margin %</b>	<b>29.4%</b>	<b>35.5%</b>	<b>31.2%</b>	<b>30.5%</b>	<b>29.1%</b>	<b>27.0%</b>	<b>25.1%</b>
<b>SELLING, GENERAL &amp; ADMIN EXPENSES</b>							
Residual commissions	4,028,255	1,175,576	433,429	35,862	-	-	-
Upfront Commission - Electricity	138,291	15,343	6,670	-	-	-	-
Upfront Commission - Gas	-	-	-	-	-	-	-
Call centre costs	858,000	827,400	865,021	832,911	819,058	839,314	892,520
Back office compensation	2,495,069	2,159,483	2,196,479	2,097,810	2,080,585	2,105,771	2,171,928
Variable operating expenses	1,822,699	3,735,462	2,013,324	1,744,981	1,711,503	1,760,454	1,889,037
Rent	625,280	442,275	179,002	217,173	217,173	217,173	217,173
Insurance	32,045	30,267	43,561	40,695	40,695	40,695	40,695
<b>TOTAL S, G &amp; A</b>	<b>9,999,639</b>	<b>8,385,806</b>	<b>5,737,487</b>	<b>4,969,432</b>	<b>4,869,014</b>	<b>4,963,408</b>	<b>5,211,355</b>
<b>EBITDA</b>	<b>1,800,065</b>	<b>859,951</b>	<b>446,308</b>	<b>898,948</b>	<b>946,487</b>	<b>929,378</b>	<b>1,028,115</b>
Finance Costs	57,887	134,337	91,606	79,680	79,680	79,680	79,680
Change in Fair Value of Derivative Contracts	(3,179,702)	(2,201,879)	101,882	-	-	-	-
Other Expense	(17,874)	22,935	294,415	-	-	-	-
Depreciation - Fixed assets	113,791	169,759	105,640	-	-	-	-
Amortization - Intangible assets	5,456,002	1,024,666	13,322	-	-	-	-
Income tax expense - cash paid taxes	731,475	104,409	152,768	269,684	283,946	278,813	308,435
Deferred tax expense	(386,646)	378,672	127,838	-	-	-	-
<b>Net Income/(Loss)</b>	<b>(974,868)</b>	<b>1,227,052</b>	<b>(441,162)</b>	<b>549,583</b>	<b>582,861</b>	<b>570,884</b>	<b>640,001</b>

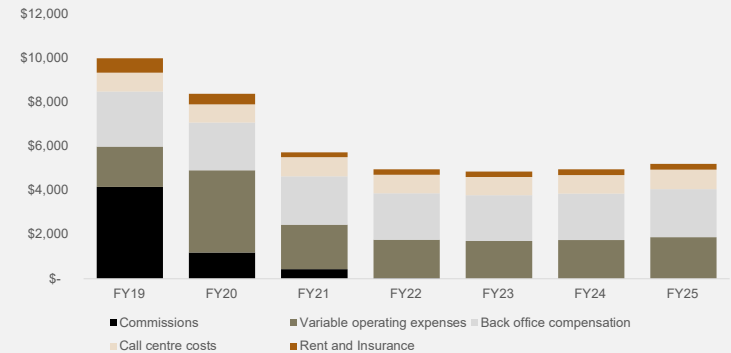
<b>SALES BY PRODUCT</b>							
Electricity Sales/Ave RCE/Mnth	535	500	520	547	581	619	657
Gas Sales/Ave RCE/Mnth	660	557	521	579	592	606	627
<b>SALES PER RCE</b>	<b>562</b>	<b>510</b>	<b>520</b>	<b>550</b>	<b>582</b>	<b>618</b>	<b>654</b>

<b>ELECTRICITY SALES BY GEOGRAPHY</b>							
Canada	21,704,944	14,121,011	9,963,304	8,992,508	7,732,610	6,649,230	5,717,637
US	8,229,704	6,507,965	7,198,590	7,784,222	9,964,762	12,961,439	16,768,059
<b>TOTAL</b>	<b>29,934,648</b>	<b>20,628,976</b>	<b>17,161,894</b>	<b>16,776,730</b>	<b>17,697,372</b>	<b>19,610,669</b>	<b>22,485,697</b>

<b>GAS SALES BY GEOGRAPHY</b>							
Canada	9,610,529	4,887,654	2,303,714	2,001,419	1,669,448	1,392,540	1,161,562
US	563,634	426,313	338,142	447,905	618,110	854,249	1,202,291
<b>TOTAL</b>	<b>10,174,163</b>	<b>5,313,968</b>	<b>2,641,856</b>	<b>2,449,324</b>	<b>2,287,558</b>	<b>2,246,789</b>	<b>2,363,853</b>

<b>TOTAL SALES</b>	<b>40,108,811</b>	<b>25,942,943</b>	<b>19,803,751</b>	<b>19,226,054</b>	<b>19,984,930</b>	<b>21,857,458</b>	<b>24,849,550</b>
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SG&amp;A Costs (000's)



**RESIDUAL COMMISSIONS:** The SAA expired in November 2016. As a result, customers contracts that were enrolled by ACN will expire by November 2021 and Planet has not accrued commissions post Nov-21.

**Call Centre costs:** These costs are for handling renewals, customer calls etc. These costs are primarily variable based on the number of RCE's. Call centre costs also includes US\$85K for rent related to the call centre.

**Back Office Compensation:** consist of both fixed and variable staff salaries. Management estimates fixed compensation of approximately \$1.2MM and variable compensation of approximately \$900K based on RCE's.

**Variable Operating Expense:** includes back office audit fees, consulting fees, etc. These are expected to be reduced as revenues decline.

**RENT:** The lower rent in FY21 is the result of rental subsidies of approximately \$2,400/month received since October 2020. Subsidies are not forecast go-forward. Also, Planet moved its head office to a smaller location in September 2020. From March 2017 until April 2020, Planet received rent from subletting ranging from \$2,454/month to \$2708/month. In September 2020, rent expense was reclassified in accordance with IFRS as a lease liability and is amortized monthly.

# OVERVIEW OF PLANET'S FINANCIAL PROJECTIONS

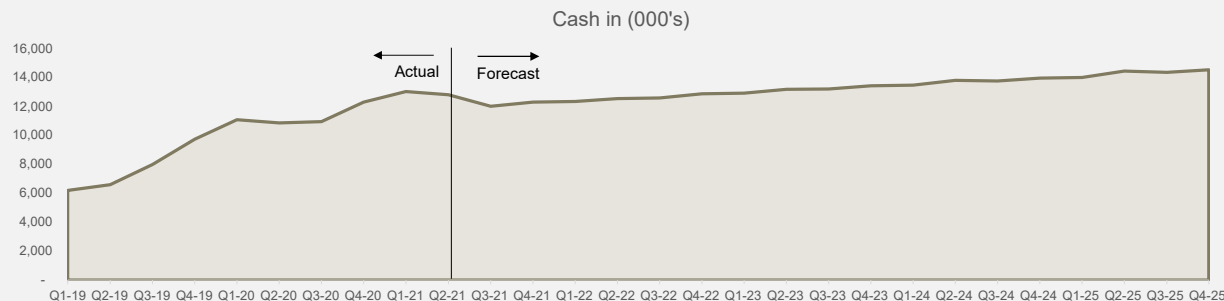
## PROJECTED CASH FLOW

The following table provides an overview of Planet's historical and projected cash flow.

	Sep-19 FY19	Sep-20 FY20	Sep-21 FY21	Sep-22 FY22	Sep-23 FY23	Sep-24 FY24	Sep-25 FY25
<b>CASH FLOW STATEMENT</b>							
<b>OPERATING ACTIVITIES</b>							
Net income/(loss) from Income Statement	(974,868)	1,227,052	(441,162)	549,583	582,861	570,884	640,001
Add back: Income Taxes	(386,646)	378,672	127,838	-	-	-	-
Add back: Depreciation - fixed assets	113,791	169,759	105,640	-	-	-	-
Add back: Amortization - intangible assets	5,456,002	1,024,666	13,322	-	-	-	-
Add back: Finance Costs	-	-	-	-	-	-	-
Add back: Change in Fair Value of Derivative Contracts	(3,179,702)	(2,201,879)	101,882	-	-	-	-
Change in operating assets and liabilities	4,430,465	1,448,818	(154,643)	15,291	(22,010)	(51,173)	(75,125)
Cash provided by/(used in) operating activities	5,459,042	2,047,088	(247,124)	564,875	560,851	519,711	564,876
<b>INVESTING ACTIVITIES</b>							
Customer Acquisition Costs	(847,493)	-	-	-	-	-	-
Property and equipment additions	(0)	(180,565)	3	-	-	-	-
Intangible assets additions	(0)	(70,187)	1	-	-	-	-
Change in Restricted cash	(85,347)	791,348	124,778	-	-	-	-
Cash used in investing activities	(932,840)	540,596	124,781	-	-	-	-
Cash provided by financing activities	4,308	(21,083)	138,133	-	-	-	-
<b>NET INCR/(DECR) IN CASH</b>	<b>4,530,510</b>	<b>2,566,601</b>	<b>15,790</b>	<b>564,875</b>	<b>560,851</b>	<b>519,711</b>	<b>564,876</b>
<b>CASH , BEGINNING OF PERIOD</b>	<b>5,200,419</b>	<b>9,730,929</b>	<b>12,297,531</b>	<b>12,313,321</b>	<b>12,878,196</b>	<b>13,439,047</b>	<b>13,958,758</b>
<b>CASH , END OF PERIOD</b>	<b>9,730,929</b>	<b>12,297,531</b>	<b>12,313,321</b>	<b>12,878,196</b>	<b>13,439,047</b>	<b>13,958,758</b>	<b>14,523,633</b>

### Cash on Hand

At Apr 30, 2021, Planet's unrestricted cash balance was approximately \$12.8MM. The Apr-21 Forecast estimates cash to increase approximately \$1.7MM to \$14.5MM by the end of FY25.



Management's key cash flow assumptions are presented in **Exhibit V**.

### Cash from Operating Activities

Management's cash from operations assume stagnant EBITDA as operating costs are managed with changes in sales and margins. As noted previously, given the execution and market risk associated with Planet's forecast, certain key assumptions have been sensitized (see Section 5 of this Report).

### Cash from Working Capital

Cash flow from working capital in F21-F25 is assumed to be less than \$150/year.

### Cash from Investing

Planet's Apr-21 Forecast does not assume any investment in new capital expenditures.

### Cash from Financing

No cash from financing has been assumed in the Apr-21 Forecast.

Please refer to **Exhibit VI** for a summary of the forecast balance sheet.

# OVERVIEW OF PLANET'S FINANCIAL PROJECTIONS

## PROJECTED COVENANT COMPLIANCE

1. COMPANY BACKGROUND AND ENGAGEMENT OVERVIEW
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4. OVERVIEW OF PLANET'S APR-21 FORECAST
5. SENSITIZED FORECAST ASSUMPTIONS
6. EXHIBITS

### Planets Required Covenants Pursuant to the Shell Agreement

Planet's relationship with the Shell Parties is governed by an Amended and Restated Global Agreement which became effective October 1, 2017 (the "**Shell Agreement**"). Pursuant to the Shell Agreement, Planet purchases, from the Shell Parties, physical and financial power and natural gas and related products and services, and the Shell Parties have agreed to provide certain credit support arrangements to Planet.

Under the terms of the Shell Agreement, Planet must, among other terms, comply with:

- reporting requirements (the "**Reporting Requirements**");
- financial metrics (the "**Financial Metrics**"), which include Minimum Modified Working Capital and Positive Run and Maintain;
- specified risk policy and adherence to required and permitted hedges (the "**Risk Policy**"); and
- other covenants and conditions of default, as set out in the Shell Agreement.

### Reporting Requirements

The Reporting Requirements are outlined in Appendix D-1 of the Shell Agreement. The Reporting Requirements are extensive and require, among other things, Planet to provide:

- audited consolidated financial statements including auditors report and reconciliation to the Financial Metrics (annual);
- the Companies consolidated monthly financial statements and year to date statements, including reconciliation to the Financial Metrics, variance analysis from the Companies projections both monthly and year to date with relevant explanations for variances (monthly);
- calculation of the Performance Assurance Amount, as defined in the Shell Agreement (monthly);
- reports showing daily actual usage, amounts purchased from the Shell Parties;
- physical fixed price and contract basis position report;
- trailing twelve month volume of gas and power deliveries;
- pro-forma business plan for the next 24-months; and
- a certificate of compliance with respect to IFRS, Financial Metrics, Risk Policy and Credit Policy.

# OVERVIEW OF PLANET’S FINANCIAL PROJECTIONS

## PROJECTED COVENANT COMPLIANCE

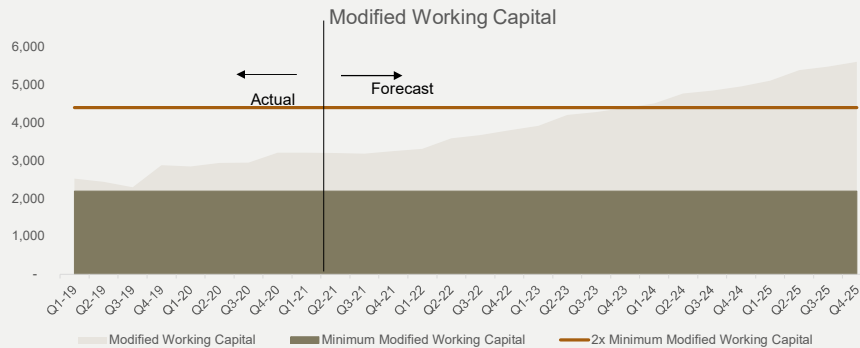
- 1. COMPANY BACKGROUND AND ENGAGEMENT OVERVIEW
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### Minimum Modified Working Capital

**Minimum Modified Working Capital** – Planet must maintain Modified Working Capital determined as of the last day of each month equal to an amount which is based on the below table (the “**Minimum Modified Working Capital**”):

Financing Level	US Pooled Facility Amount	Canadian Pooled Facility Amount	Trailing 12 Months US volumes delivered	Required Modified Working Capital
1	US\$10,000,000	CAD\$1,000,000	< 2,000,000 MWh	CAD\$2,200,000
2	US\$20,000,000	CAD\$1,000,000	2,000,000-2,999,999 MWh	CAD\$4,200,000
3	US\$30,000,000	CAD\$1,000,000	3,000,000-3,999,999 MWh	CAD\$6,200,000
4	US\$40,000,000	CAD\$1,000,000	>4,000,001 MWh	CAD\$8,200,000

Below is an analysis of Planet’s forecast Modified Working Capital relative to the Minimum Modified Working Capital. Based on the above table, Planet’s Minimum Modified Working Capital is \$2.2MM.



Modified Working Capital is calculated as:

- + current assets less current liabilities, prepared on a Modified Consolidated Basis<sup>1</sup>;
- + the current portion (if any) of Subordinated Indebtedness owing from Planet to shareholders/others;
- + current portion (if any) of Fulcrum Indebtedness.

As shown in the above table, based on Management’s assumptions, Planet is projected to remain compliant with the Minimum Modified Working Capital covenant throughout the Forecast Period.

Modified Working Capital at April 30, 2021 was \$2.9MM as reported by Planet to Shell.

<sup>1</sup>Modified Consolidated Basis – consolidated financial position as determined in accordance with IFRS; without giving effect to

- i. Any election requirement to value any derivative based asset or debt at “fair value” or
- ii. The unamortized portion of any intangible assets including accrued commission expense, deferred taxes or goodwill.



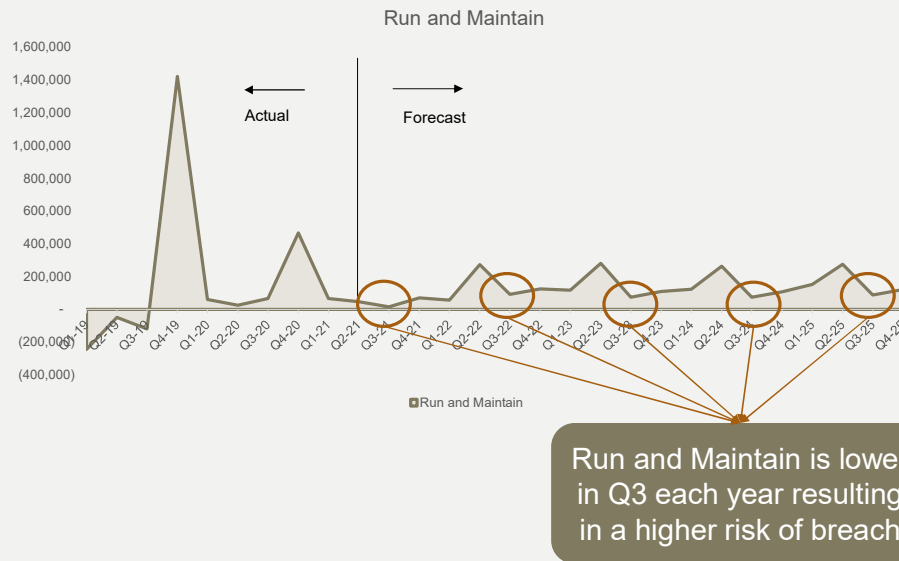
## OVERVIEW OF PLANET'S FINANCIAL PROJECTIONS

### PROJECTED COVENANT COMPLIANCE

#### Positive Run and Maintain

**Positive Run and Maintain** Planet must maintain a positive (greater than zero) Run and Maintain calculation for each fiscal quarter (“**Positive Run and Maintain**”). If this covenant is breached, and Planet has twice the required Minimum Modified Working Capital, there is no breach.

Below is an analysis of the forecast Run and Maintain Financial Metric:



Run and Maintain is calculated as:

- + Net income
- + Depreciation & Amortization
- +/- Adjustments related to equity-based compensation
- +/- Fair value accounting adjustments related to derivative instruments
- +/- if Net Added Customers is positive, sales and marketing x (1-(Attrition Customers / Gross New Customers))
- +/- Change in provision for deferred income taxes

Management has advised that Planet has not historically breached the Positive Run and Maintain Financial Metric, however Planet has experienced difficulty in Q3 of each fiscal year and expects these Q3 difficulties to continue during the Forecast Period, as shown above. The lower Run and Maintain experienced in Q3 is the result of seasonality, (i.e. less needs for electricity and natural gas in spring). Management has advised that Planet has historically accrued certain expenses relating to Q3 from earlier more profitable quarters to Q3 to even out Planet's quarterly results.

As shown above, the forecast Run and Maintain Financial Metric for each Q3 of the Forecast Period is close to break-even and there is risk that Planet could breach this covenant in Q3 of each forecast fiscal year.

The Shell Agreement provides that the Positive Run and Maintain metric shall not apply, and no event of default shall result from the failure to satisfy the Positive Run and Maintain metric, if the Modified Working Capital at the end of such fiscal quarter is at least twice the Modified Working Capital then required.

Given that Q3 of each forecast fiscal year is close to break-even, it appears reasonable that Planet maintain a Modified Working Capital of at least \$4.4MM (two times the Minimum Modified Working Capital).

## OVERVIEW OF PLANET'S FINANCIAL PROJECTIONS

### PROJECTED COVENANT COMPLIANCE

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#### Risk Policy Covenants

Planet is required to enter supply purchase transactions reasonably approximated to match the forecasted daily commodity sales on all months for the term of the Energy Customer Contracts, as defined in the Shell Agreement, taking into consideration historical consumption, customer load forecasts, attrition rates, weather influences and other factors utilized to forecast consumption.

Planet cannot enter into any purchase agreement or commodity hedge for speculative purposes and shall enter contracts solely for the purpose of minimizing the fixed price, basis or index premium risk of its portfolio.

**Fixed price Energy Customer Contracts** (both power and gas) shall be hedged at a minimum of 95% and a maximum of 105% of monthly forecasted sales for the term of such Energy Contract.

**Non-fixed price month-to-month Energy Customer Contracts** shall be hedged for forward exposure within the following minimum and maximum percentages:

Forecast Load Term (with month 0 (zero) being the current delivery month)	Minimum Hedge Percentage of Forecasted Load		Minimum Hedge Percentage of Forecasted Load (Peak and non-Peak Months)
	Peak Month	Non-Peak Month	
1 <sup>st</sup> forward month	75%	50%	105%
2 <sup>nd</sup> forward month	50%	20%	105%
3 <sup>rd</sup> forward month	25%	5%	105%
4 <sup>th</sup> forward month	10%	0%	105%
Beyond 4 <sup>th</sup> forward month	0%	0%	25% for two immediate peak seasons but not beyond 18 forward months (with additional hedges to be considered on a case-by-case basis)

For non-fixed price month-to-month Energy Customer Contracts for gas, Planet shall hedge 100% of the first forward month forecasted gas volumes prior to the month of delivery.

Planet cannot enter fixed price contracts that fix the price thereunder for a term of more than 36 months in the U.S. Management advises this is a Shell modification introduced in October 2017 from its previous ability to enter fixed price contracts for 60 months in both the U.S. and Canada.

Management has advised that the supply team works to meet the above hedging requirements. Planet's Apr-21 Forecast assumes perfect hedging (i.e., supply is purchased to meet demand and the gross margin per unit is fixed given that price fluctuations cannot be forecast in advance.)

## OVERVIEW OF PLANET'S FINANCIAL PROJECTIONS

### PROJECTED COVENANT COMPLIANCE

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#### Other Shell Covenants

(Defined terms below are as defined in the Shell Agreement)

In addition to the Financial Metrics and Reporting Requirements discussed, among other covenants, the Shell Agreement requires that Planet not:

- incur, create, assume or permit any Indebtedness except Permitted Indebtedness;
- make any additional borrowings under the Fulcrum Indebtedness, or reborrow any amounts under the Fulcrum Indebtedness;
- create, incur, assume or permit to exist any Lien on any of their properties or assets or on any of their income or revenues or rights in respect of any thereof, except Permitted Liens;
- sell, transfer, lease or otherwise dispose of any of its assets other than:
  - i. In the ordinary course of business,
  - ii. The sale or disposition of surplus, obsolete or worn-out equipment and
  - iii. The transfer of assets between the Planet companies
- pay or declare any Restricted Payment if, immediately after it would not be in compliance with the Modified Working Capital requirement;
- enter any arrangement, directly or indirectly whereby it shall sell or transfer any property used or useful in its business, and thereafter rent or lease such property for substantially the same purpose;
- Modify the Fulcrum Indebtedness, any Subordinated Indebtedness or Permitted Indebtedness;

Based on the above, the posting of cash security may be a breach of the above covenant that Planet not create, incur, assume or permit any Lien on their properties or assets.

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## SENSITIZED FORECAST ASSUMPTIONS

### IMPACT OF ATTRITION RATES ON REVENUES AND GROSS MARGINS

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As discussed throughout this Report, the Apr-21 Forecast is subject to execution and market risk. As a result, certain key assumptions have been sensitized to understand the potential impact to the Forecast Period.

#### Customer Attrition

**Exhibit IV** provides a summary of Managements income statement assumptions including attrition rates. Below is a sensitivity analysis of the attrition rates on revenues and gross margins.

		Electricity Revenues F21-F25							
		Canada - Electricity Attrition Rate							
		0.25%	0.50%	0.75%	1.00%	1.25%	1.50%	1.75%	2.00%
US Electricity - Attritic	1.25%	110,222	107,489	104,978	102,671	100,549	98,595	96,794	95,133
	1.50%	107,795	105,061	102,551	100,244	98,122	96,168	94,367	92,706
	1.75%	105,527	102,794	100,283	97,976	95,854	93,900	92,099	90,438
	2.00%	103,406	100,672	98,162	95,855	93,732	91,778	89,978	88,316
	2.25%	101,420	98,686	96,176	93,869	91,746	89,792	87,991	86,330
	2.50%	99,558	96,825	94,314	92,007	89,885	87,931	86,130	84,469
	2.75%	97,812	95,078	92,568	90,261	88,138	86,184	84,384	82,723
	3.00%	96,172	93,438	90,928	88,621	86,498	84,544	82,744	81,083

		Gas Revenues F21-F25							
		Canada - Gas Attrition Rate							
		1.00%	1.25%	1.50%	1.75%	2.00%	2.25%	2.50%	2.75%
US Gas - Attrition Rate	1.00%	13,210	12,746	12,318	11,924	11,560	11,223	10,911	10,622
	1.25%	13,039	12,575	12,148	11,753	11,389	11,052	10,740	10,452
	1.50%	12,880	12,417	11,989	11,595	11,231	10,894	10,582	10,293
	1.75%	12,733	12,270	11,842	11,448	11,083	10,747	10,435	10,146
	2.00%	12,597	12,133	11,706	11,311	10,947	10,610	10,298	10,010
	2.25%	12,469	12,006	11,578	11,184	10,819	10,483	10,171	9,882
	2.50%	12,351	11,887	11,460	11,065	10,701	10,364	10,052	9,764
	2.75%	12,240	11,777	11,349	10,955	10,590	10,253	9,942	9,653

		Electricity Gross Margin F21-F25							
		Canada - Electricity Attrition Rate							
		0.25%	0.50%	0.75%	1.00%	1.25%	1.50%	1.75%	2.00%
US Electricity - Attritic	1.25%	27,943	26,826	25,800	24,857	23,989	23,190	22,454	21,775
	1.50%	27,491	26,374	25,347	24,404	23,537	22,738	22,002	21,323
	1.75%	27,069	25,951	24,925	23,982	23,114	22,316	21,580	20,901
	2.00%	26,674	25,557	24,531	23,588	22,720	21,921	21,185	20,506
	2.25%	26,305	25,188	24,162	23,219	22,351	21,552	20,816	20,137
	2.50%	25,960	24,842	23,816	22,873	22,005	21,207	20,471	19,792
	2.75%	25,636	24,519	23,493	22,549	21,682	20,883	20,147	19,468
	3.00%	25,332	24,215	23,189	22,246	21,378	20,579	19,843	19,164

		Gas Gross Margin F21-F25							
		Canada - Gas Attrition Rate							
		1.00%	1.25%	1.50%	1.75%	2.00%	2.25%	2.50%	2.75%
US Gas - Attrition Rate	1.00%	3,895	3,738	3,593	3,460	3,337	3,223	3,117	3,019
	1.25%	3,839	3,682	3,538	3,404	3,281	3,167	3,061	2,964
	1.50%	3,787	3,630	3,486	3,352	3,229	3,115	3,009	2,911
	1.75%	3,738	3,581	3,437	3,303	3,180	3,066	2,960	2,863
	2.00%	3,692	3,535	3,391	3,257	3,134	3,020	2,914	2,817
	2.25%	3,649	3,492	3,348	3,214	3,091	2,977	2,871	2,774
	2.50%	3,609	3,452	3,307	3,174	3,050	2,936	2,831	2,733
	2.75%	3,571	3,414	3,269	3,136	3,012	2,898	2,793	2,695

As shown above, a 0.5% increase in the attrition rates for electricity and gas in both Canada and the U.S. would result in a revenue and gross margin loss over the Forecast Period of approximately \$8.6MM and \$2.6MM respectively.

## SENSITIZED FORECAST ASSUMPTIONS

### IMPACT OF NEW CUSTOMER ACQUISITIONS ON REVENUES AND GROSS MARGINS

#### New Customer Acquisitions

**Exhibit IV** provides a summary of Management's income statement assumptions, including new customer acquisition rates.

Planet's Apr-21 Forecast assumes no new customer acquisitions in Canada throughout the Forecast Period. The table below provides an illustration of the addition of 1,000 RCE's in FY22 and the corresponding increase in revenue and gross margin respectively.

	Revenue	Gross Margin
Canada – Electricity	1,369	495
Canada – Gas	985	461
<b>Total</b>	<b>2,354</b>	<b>957</b>

Planet's Apr-21 Forecast assumes customer acquisitions in the US for electricity and gas of 29,700 and 2,100 respectively. Below is a sensitivity analysis providing the impact of an increase or decrease in new customer acquisitions on revenues and gross margins.

		US Revenues F21-F25						
		US - Electricity Acquisition Rate						
		-30%	-20%	-10%	0%	10%	20%	30%
US Gas - Acquisitin Rate	-30%	47,708	50,995	54,281	57,568	60,855	64,142	67,428
	-20%	47,898	51,185	54,471	57,758	61,045	64,331	67,618
	-10%	48,088	51,374	54,661	57,948	61,235	64,521	67,808
	0%	48,278	51,564	54,851	58,138	61,425	64,711	67,998
	10%	48,467	51,754	55,041	58,328	61,614	64,901	68,188
	20%	48,657	51,944	55,231	58,518	61,804	65,091	68,378
	30%	48,847	52,134	55,421	58,707	61,994	65,281	68,568

		US Gross Margin F21-F25						
		US - Electricity Acquisition Rate						
		-30%	-20%	-10%	0%	10%	20%	30%
US Gas - Acquisitin Rate	-30%	9,012	9,596	10,180	10,764	11,347	11,931	12,515
	-20%	9,087	9,671	10,254	10,838	11,422	12,005	12,589
	-10%	9,161	9,745	10,329	10,912	11,496	12,080	12,664
	0%	9,235	9,819	10,403	10,987	11,570	12,154	12,738
	10%	9,310	9,894	10,477	11,061	11,645	12,228	12,812
	20%	9,384	9,968	10,552	11,135	11,719	12,303	12,887
	30%	9,458	10,042	10,626	11,210	11,793	12,377	12,961

As shown above, a 10% increase or decrease in customer acquisitions in the US for electricity and gas would result in a revenue and gross margin increase/decrease over the Forecast Period of approximately \$3.5MM and \$0.7MM respectively.

## SENSITIZED FORECAST ASSUMPTIONS

### IMPACT OF CONSUMPTION RATES ON REVENUES AND GROSS MARGINS

#### Consumption Rates

**Exhibit IV** provides a summary of Management's income statement assumptions, including consumption rates. Below is a sensitivity analysis of the consumption rates on revenues and gross margins.

Electricity Revenues (000's) F21-F25								
Canada Electricity Consumption								
	-30%	-20%	-10%	0%	10%	20%	30%	
US Electricity Consumption	-30%	68,592	71,928	75,265	78,601	81,937	85,274	88,610
	-20%	73,636	76,972	80,309	83,645	86,981	90,318	93,654
	-10%	78,680	82,016	85,352	88,689	92,025	95,361	98,698
	0%	83,723	87,060	90,396	93,732	97,069	100,405	103,741
	10%	88,767	92,103	95,440	98,776	102,112	105,449	108,785
	20%	93,811	97,147	100,484	103,820	107,156	110,493	113,829
	30%	98,855	102,191	105,527	108,864	112,200	115,536	118,873

Gas Revenues (000's) F21-F25								
Canada Gas Consumption								
	-30%	-20%	-10%	0%	10%	20%	30%	
US Gas Consumption	-30%	9,027	9,696	10,365	11,034	11,703	12,372	13,041
	-20%	9,345	10,014	10,683	11,352	12,021	12,691	13,360
	-10%	9,664	10,333	11,002	11,671	12,340	13,009	13,678
	0%	9,982	10,651	11,320	11,989	12,658	13,328	13,997
	10%	10,301	10,970	11,639	12,308	12,977	13,646	14,315
	20%	10,619	11,288	11,957	12,626	13,296	13,965	14,634
	30%	10,938	11,607	12,276	12,945	13,614	14,283	14,952

Electricity Gross Margin (000's) F21-F25								
Canada Electricity Consumption								
	-30%	-20%	-10%	0%	10%	20%	30%	
US Electricity Consumption	-30%	15,904	17,268	18,632	19,995	21,359	22,723	24,087
	-20%	16,812	18,176	19,540	20,904	22,267	23,631	24,995
	-10%	17,720	19,084	20,448	21,812	23,176	24,539	25,903
	0%	18,628	19,992	21,356	22,720	24,084	25,448	26,811
	10%	19,537	20,900	22,264	23,628	24,992	26,356	27,720
	20%	20,445	21,809	23,172	24,536	25,900	27,264	28,628
	30%	21,353	22,717	24,081	25,444	26,808	28,172	29,536

Gas Gross Margin (000's) F21-F25								
Canada Gas Consumption								
	-30%	-20%	-10%	0%	10%	20%	30%	
US Gas Consumption	-30%	2,440	2,666	2,893	3,119	3,346	3,572	3,799
	-20%	2,562	2,788	3,015	3,241	3,468	3,694	3,921
	-10%	2,684	2,911	3,137	3,363	3,590	3,816	4,043
	0%	2,806	3,033	3,259	3,486	3,712	3,939	4,165
	10%	2,928	3,155	3,381	3,608	3,834	4,061	4,287
	20%	3,050	3,277	3,503	3,730	3,956	4,183	4,409
	30%	3,172	3,399	3,625	3,852	4,078	4,305	4,531

As shown above, a 10% change in consumption for electricity and gas in both Canada and the U.S. would result in a revenue and gross margin loss over the Forecast Period of approximately \$9.4MM and \$2.6MM respectively.

## SENSITIZED FORECAST ASSUMPTIONS

### IMPACT OF GROSS MARGINS

#### Gross Margin Assumptions

**Exhibit IV** provides a summary of Management's income statement assumptions, including gross margin rates.

Below is a sensitivity analysis of the impact of a 1% change in gross margin on gross margins dollars.

	Impact on forecast gross margins (000's) of 1% change in GM%				
	FY21	FY22	FY23	FY24	FY25
Canada – Electricity	100	90	77	66	57
Canada – Gas	23	20	17	14	12
US – Electricity	72	78	100	130	168
US – Gas	3	4	6	9	12
<b>All</b>	<b>198</b>	<b>192</b>	<b>200</b>	<b>219</b>	<b>248</b>

#### Variable Operating Costs

**Exhibit IV** provides a summary of Management's income statement assumptions, including variable operating costs assumptions.

Below is a sensitivity analysis of the impact of a 10% change in certain variable operating costs.

	Impact of 10% Change in Call Centre Costs				
	(000's)	FY21	FY22	FY23	FY24
Canada	67	61	54	48	42
US	20	22	28	36	47
<b>Total Impact</b>	<b>86</b>	<b>83</b>	<b>82</b>	<b>84</b>	<b>89</b>

	Impact of 10% Change in Back Office Costs				
	(000's)	FY21	FY22	FY23	FY24
Canada	189	182	173	165	159
US	24	28	35	45	58
<b>Total Impact</b>	<b>213</b>	<b>210</b>	<b>208</b>	<b>211</b>	<b>217</b>

	Impact of 10% Change in Operating Costs				
	(000's)	FY21	FY22	FY23	FY24
Canada	134	120	102	88	75
US	47	54	69	89	114
<b>Total Impact</b>	<b>181</b>	<b>174</b>	<b>171</b>	<b>176</b>	<b>190</b>

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## EXHIBIT I

### RESTRICTIONS, QUALIFICATIONS AND ASSUMPTIONS

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#### Restrictions and Qualifications

This Report is issued subject to the following restrictions and qualifications.

This Report has been prepared for information purposes only, for Stikeman. This Report is not intended for general circulation or publication and may not be reproduced or referred to in whole or in part without our prior written permission. We will not assume any responsibility or liability for losses occasioned by the reader or any other parties as a result of the circulation, publication, reproduction or use of our Report contrary to the provisions of this paragraph.

Richter did not conduct an audit, valuation, or appraisal of any of the financial information contained in this Report but relied on reported financial information, explanations and representations provided by Management and third parties. As the terms of our engagement do not require the external verification of information relied upon by us, we do not express an opinion as to the accuracy, reliability or completeness of same.

We reserve the right to revise our conclusions, if any additional information affecting our conclusions becomes known to us or if any existing information has changed. Notwithstanding the foregoing, we shall not be obliged to update our Report as a result of subsequent events.

In completing this engagement, we assume that the information and documentation supplied by Management is accurate and complete. We are entitled to rely on the opinion of Management and third parties.

Richter does not make any representation or warranty as to the accuracy or completeness of this Report and shall have no liability for any representations expressed or implied or for any omissions.

As financial forecasts and projections relate to future events which are indeterminable by nature, variances will occur, which may be material. Accordingly, we do not express an opinion regarding the likelihood of materialization of any financial projections referenced herein.

#### Restrictions and Qualifications (Cont'd)

Operational and financial performance is subject to the ongoing impact of COVID-19 for which the full scope and duration remain uncertain and indeterminable by nature, and may have a material effect on Planet's operations, financial performance and liquidity in F21-F25.

#### General Assumptions

Our Report is based upon the following general assumptions.

All of the information and documentation supplied by the Company and third parties are accurate and complete.

Management has informed us of all significant factors, undertakings and agreements affecting the results to date, variances, and forecasted results and actions.

#### Legal Opinion

In no means is this Report intended to be a legal opinion on the merit of any of the issues being challenged.

## EXHIBIT II

### GLOSSARY OF TERMS AND ABBREVIATIONS

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#### Financial Periods

Fiscal Year Ending September 30, 2018	"F18"
Fiscal Year Ending September 30, 2019	"F19"
Fiscal Year Ending September 30, 2020	"F20"
Fiscal Year Ending September 30, 2021	"F21"
Fiscal Year Ending September 30, 2022	"F22"
Fiscal Year Ending September 30, 2023	"F23"
Fiscal Year Ending September 30, 2024	"F24"
Fiscal Year Ending September 30, 2025	"F25"
Financial Projections received on June 7, 2021	"Apr-21 Forecast"
Year-over-year	"YoY"

#### Quarters

October to December	"Q1"
January to March	"Q2"
April to June	"Q3"
July to September	"Q4"

#### Financial and Other Terms

Capital Expenditure	"CAPEX"
Compound Annual Growth Rate	"CAGR"
Days Payables Outstanding	"DPO"
Earning before Interest, Taxes, and Depreciation	"EBITDA"
Gross Margin	"GM"
International Financial Reporting Standards	"IFRS"
Management of Planet	"Management"
Residential Customer Equivalent	"RCE"
Selling, General, and Administration	"SG&A"

## EXHIBIT III

### IMPACT OF THE PANDEMIC ON PLANET'S FINANCIAL RESULTS

The following table provides an overview of Planet's recent historical financial results.

Planet Financial Results	May 1, 2019 - Apr 2020	May 1, 2020 - Apr 2021	\$ Variance	% Variance
<b>Residential Consumer Equivalents</b>				
AVE MONTHLY RCE's - ELECTRICITY	47,517	35,795	(11,722)	-25%
AVE MONTHLY RCE's - GAS	11,754	6,216	(5,538)	-47%
<b>AVERAGE MONTHLY TOTAL RCE's</b>	<b>59,270</b>	<b>42,011</b>	<b>(17,259)</b>	<b>-29%</b>
<b>Income Statement</b>				
Electricity Revenue	23,559,887	18,404,382	(5,155,505)	-22%
Electricity - Cost of goods sold	15,850,469	12,466,002	(3,384,467)	-21%
<b>Electricity Gross Margin</b>	<b>7,709,418</b>	<b>5,938,380</b>	<b>(1,771,038)</b>	<b>-23%</b>
<b>Electricity - GM %</b>	<b>32.7%</b>	<b>32.3%</b>	<b>-0.5%</b>	<b>-1%</b>
Gas Revenue	6,156,106	2,800,158	(3,355,948)	-55%
Gas Cost of goods sold	3,683,578	1,834,157	(1,849,421)	-50%
<b>Gas Gross Margin</b>	<b>2,472,528</b>	<b>966,000</b>	<b>(1,506,528)</b>	<b>-61%</b>
<b>Gas GM%</b>	<b>40.2%</b>	<b>34.5%</b>	<b>-5.7%</b>	<b>-14%</b>
<b>TOTAL REVENUE</b>	<b>29,715,993</b>	<b>21,204,539</b>	<b>(8,511,453)</b>	<b>-29%</b>
<b>TOTAL COST OF GOODS SOLD</b>	<b>19,534,047</b>	<b>14,300,160</b>	<b>(5,233,888)</b>	<b>-27%</b>
<b>TOTAL GROSS MARGIN</b>	<b>10,181,946</b>	<b>6,904,380</b>	<b>(3,277,566)</b>	<b>-32%</b>
<b>Total Gross Margin %</b>	<b>34.3%</b>	<b>32.6%</b>	<b>-1.7%</b>	<b>-5%</b>
<b>SELLING, GENERAL &amp; ADMIN EXPENSES</b>				
Residual commissions	2,763,806	141,347	(2,622,459)	-95%
Upfront Commission - Electricity	(540,460)	(49,212)	491,248	-91%
Upfront Commission - Gas	-	-	-	0%
Call centre costs	807,900	882,700	74,800	9%
Back office compensation	2,273,154	2,193,354	(79,801)	-4%
Variable operating expenses	2,568,677	2,886,535	317,858	12%
Rent	739,606	210,264	(529,342)	-72%
Insurance	36,808	31,781	(5,028)	-14%
<b>TOTAL S, G &amp; A</b>	<b>8,649,491</b>	<b>6,296,768</b>	<b>(2,352,723)</b>	<b>-27%</b>
<b>EBITDA</b>	<b>1,532,455</b>	<b>607,612</b>	<b>(924,843)</b>	<b>-60%</b>
Finance Costs	87,874	134,955	47,081	54%
Change in Fair Value of Derivative Contracts	(1,438,732)	(1,311,041)	127,691	-9%
Other Expense	(99,915)	483,040	582,955	-583%
Interest expense on LT Debt	-	-	-	0%
Depreciation - Fixed assets	84,071	240,774	156,703	186%
Amortization - Intangible assets	3,184,395	485,488	(2,698,907)	-85%
Income tax expense - cash paid taxes	238,053	(76,164)	(314,217)	-132%
Deferred tax expense	(889,106)	330,513	1,219,620	-137%
<b>Net Income/(Loss)</b>	<b>365,816</b>	<b>320,046</b>	<b>(45,770)</b>	<b>-13%</b>

#### Results over COVID-19 period to prior period

As noted in the adjacent table, Planet generated approximately \$0.6MM EBITDA in the 12-months post-COVID compared to \$1.5MM EBITDA in the pre-COVID period. This represents an erosion of approximately \$0.9MM.

Management has advised that the profitability erosion is mainly attributable to the significant disruption brought on by the COVID-19 pandemic which contributed to the significant decline in RCE's.

Electricity and Gas RCE's declined by approximately 25% and 47% respectively which contributed to Planet's revenue decline of 22% and 55% for electricity and gas respectively.

Gross margin for electricity was consistent in both the pre- and post-COVID periods. Gross margin for gas declined by approximately 5.7%.

Reduced sales and gross margin for gas resulted in overall lower gross margin of approximately \$3.3MM.

Planet was able to reduce its SG&A by approximately \$2.4MM to offset the gross margin loss resulting in a net EBITDA erosion of approximately \$0.9MM.

SG&A expenses were reduced by approximately \$2.35MM as a result of:

- \$2.6MM reduction in residual commissions;
- \$0.5MM reduction in rent; offset by
- \$0.5MM<sup>1</sup> increase in electricity commissions; and
- \$0.3MM increase in variable operating costs.

<sup>1</sup>The upfront commissions for electricity in the pre-Covid period are negative due to the reversal of costs. On an annual basis, Planet capitalizes the upfront commissions on the balance sheet to be amortized.

## EXHIBIT IV

### REVIEW OF P&L ASSUMPTIONS

1. COMPANY BACKGROUND AND ENGAGEMENT OVERVIEW
2. EXECUTIVE SUMMARY
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4. OVERVIEW OF PLANET'S APR-21 FORECAST
5. SENSITIZED FORECAST ASSUMPTIONS
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#### Projected Attrition Assumptions

- Planet's Apr-21 Forecast projects a net gain of 2,168 RCE's or 6% over the Forecast Period from 37,158 at April 30, 2021 to 39,326 at the end of September 30, 2025. The net gain of 2,168 is the result of 29,632 projected RCE's lost and new RCE acquisitions of 31,800.

	Attrition Rate	RCE's at Apr-21	Contracts Lost from Attrition/Expiry					Contracts Lost	Contracts Acquired	% Lost	Contracts at End F25
			FY21	FY22	FY23	FY24	FY25				
Canada – Electricity	1.25%	23,528	1,434	3,095	2,662	2,289	1,968	11,448	-	49%	12,080
Canada – Gas	1.50%	4,309	314	663	553	461	385	2,375	-	55%	1,934
US – Electricity	2.00%	8,796	889	2,412	3,006	3,842	4,929	15,079	29,700	39%	23,417
US – Gas	1.50%	525	38	97	136	190	269	730	2,100	28%	1,895
<b>Total RCE's</b>		<b>37,158</b>	<b>2,675</b>	<b>6,268</b>	<b>6,356</b>	<b>6,782</b>	<b>7,551</b>	<b>29,632</b>	<b>31,800</b>	<b>43%</b>	<b>39,326</b>
Forecast Attrition from New Contracts Signed			44	717	1,731	2,922	4,324	9,738			
<b>Forecast Attrition from Existing RCE's</b>			<b>2,631</b>	<b>5,551</b>	<b>4,625</b>	<b>3,860</b>	<b>3,227</b>	<b>19,894</b>			

#### Attrition:

Attrition of existing RCEs 19,894

Attrition of new RCEs 9,738

Total Attrition 29,632

Note: FY21 includes attrition/acquisitions from May-21 onwards.

- Below is a summary of expiring contracts assuming they are not renewed:

	Planet Contract Expirations					
	FY21	FY22	FY23	FY24	FY25	Total
Canada - Electricity	1,811	5,085	3,600	3,771	2,987	17,255
Can - Gas	507	750	619	256	1,038	3,171
US - Electricity	1,397	4,906	1,435	890	-	8,628
US - Gas	29	346	137	4	-	516
<b>Total</b>	<b>3,744</b>	<b>11,087</b>	<b>5,792</b>	<b>4,921</b>	<b>4,026</b>	<b>29,570</b>

Note: some large commercial accounts don't have flow end dates or expiry terms so they aren't included in the above.

- Management's forecast attrition of existing RCE's results in approximately 46% of existing RCE's remaining at the end of F25 and a loss of approximately 67% of the expiring contracts in the Forecast Period (33% renewal of all contracts over the Forecast Period) as shown below:

	Customer Acquisition	RCE's at Apr-21	Forecast Lost RCE's on RCE's Existing at Apr-21					RCEs Lost	Contract Remaining	% RCE's Remaining	Contract Expirations per Below	% Forecast Lost Compared to Expiring
			FY21	FY22	FY23	FY24	FY25					
Canada – Electricity	1.25%	23,528	1,434	3,095	2,662	2,289	1,968	11,448	12,080	51%	17,255	66%
Canada – Gas	2.40%	4,309	314	663	553	461	385	2,375	1,934	45%	3,171	75%
US – Electricity	2.00%	8,796	845	1,712	1,343	1,054	827	5,781	3,015	34%	8,628	67%
US – Gas	1.50%	525	38	81	67	56	47	289	236	45%	516	56%
<b>Total Contracts</b>		<b>37,158</b>	<b>2,631</b>	<b>5,551</b>	<b>4,625</b>	<b>3,860</b>	<b>3,227</b>	<b>19,894</b>	<b>17,264</b>	<b>46%</b>	<b>29,570</b>	<b>67%</b>

- Management has advised that, as there is no automatic renewal for gas contracts in Ontario, approximately 20% of these contracts are historically renewed.

	Attrition and Expiring/Maturing			
	FY18	FY19	FY20	FY21 to Apr-21
Canada – Electricity	14,895	20,118	18,299	9,916
Canada – Gas	5,589	7,003	7,345	2,418
US – Electricity	8,295	10,764	7,699	2,829
US – Gas	116	1,164	551	72
<b>Total Contracts</b>	<b>28,896</b>	<b>39,049</b>	<b>33,895</b>	<b>15,236</b>

## EXHIBIT IV

### REVIEW OF P&L ASSUMPTIONS (CONT'D)

#### Projected Customer Acquisition Assumptions

A breakdown of the customer acquisitions over the historical period and Forecast Period is shown below:

	Contracts Acquired									
	FY18	FY19	FY20	FY21 to Apr-21	FY21 from May-21	FY22	FY23	FY24	FY25	Contracts Acquired
Canada – Electricity	3,829	9,108	7,124	5,024	-	-	-	-	-	-
Canada – Gas	700	922	2,116	721	-	-	-	-	-	-
US – Electricity	6,524	11,350	6,404	3,795	1,200	4,500	6,000	8,000	10,000	<b>29,700</b>
US – Gas	182	1,581	249	7	-	300	400	600	800	<b>2,100</b>
<b>Total Contracts</b>	<b>11,234</b>	<b>22,960</b>	<b>15,893</b>	<b>9,547</b>	<b>1,200</b>	<b>4,800</b>	<b>6,400</b>	<b>8,600</b>	<b>10,800</b>	<b>31,800</b>

- Management's assumption on Canadian acquisitions for electricity and gas may be conservative, as the Company has generated new acquisitions in F20 and F21.
- US acquisitions appear conservative, but ramp up over the Forecast Period such that F25 is consistent with pre-Covid acquisition rates in F19.

## EXHIBIT IV

### REVIEW OF P&L ASSUMPTIONS (CONT'D)

#### Customer Consumption

- Planet's historical and forecast consumption rates for gas and electricity by geography is shown below:

	Consumption				
	FY18	FY19	FY20	F21 to Apr-21	Forecast
Canada – Electricity kWh	9,769	9,444	8,317	8,058	10,000
Canada – Gas m3	2,623	2,913	2,662	3,326	2,815
US – Electricity kWh	7,642	8,920	9,031	10,584	8,900
US – Gas m3	259	233	251	359	100

- Based on the above, Managements assumptions for:
  - Canadian electricity of 10,000 kWh. This is approximately 11% higher than 9,000 kWh estimated by the Ontario Energy Board. Planet has advised that historically, its customers have consumed more than 9,000 kWh (see F18 and F19 above)
  - Canadian gas of 2,815 is consistent with historical consumption rates
  - US electricity of 8,900 is consistent with historical consumption rates
  - US gas of 100 may be low compared to historical rates
- The estimated impact of consumption rates on revenues and gross margins is outlined in Section 5 of this Report.
- Planet's US historical gas consumption is measured in therm, which is approximately the energy equivalent of burning 100 cubic feet (2.83 cubic metres) of natural gas. Since natural gas meters measure volume and not energy content, a therm factor is used by natural gas companies to convert the volume of gas used to its heat equivalent, and thus calculate the actual energy use. The therm factor is usually expressed in units of therms per 100 cubic feet, which will vary based on the mix of hydrocarbons in the natural gas. Natural gas with a higher than average concentration of ethane, propane or butane will have a higher therm factor. Impurities, such as carbon dioxide or nitrogen, lower the therm factor. One therm can also be provided by about 96.7 cubic feet (2.74 m3) of natural gas.

<sup>1</sup> The April 14, 2016 report of the Ontario Energy Board "Defining Ontario's Typical Electricity Customer" indicates that the average residential consumption is approximately 750kWh per month or 9,000 kWh per year.

## EXHIBIT IV

### REVIEW OF P&L ASSUMPTIONS (CONT'D)

1. COMPANY BACKGROUND AND ENGAGEMENT OVERVIEW
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#### Gross Margin

- When new customers are added, a notice is sent to the utility provider who then provides Planet with an acceptance notice. On the next billing cycle, the new price point established by Planet with its customer is used by Enbridge to bill and collect from the customer. Consumption and billing data are sent to Planet through ERT, a data provider.
- Management's ability to achieve the forecasted margins depends on gas price fluctuations and Planet's ability to purchase and hedge its risk appropriately.
- Below is a summary of the gross margins for both electricity and gas split by geography.

	Forecast Gross Margins								
	FY17	FY18	FY19	FY20	FY21	FY22	FY23	FY24	FY25
Canada – Electricity	40%	38%	38%	39%	42%	41%	41%	41%	41%
Canada – Gas	37%	35%	35%	39%	36%	34%	34%	34%	34%
US – Electricity	36%	25%	1%	24%	14%	17%	19%	18%	18%
US – Gas	45%	45%	29%	34%	46%	37%	38%	38%	39%
<b>All</b>	<b>39%</b>	<b>35%</b>	<b>29%</b>	<b>35%</b>	<b>31%</b>	<b>31%</b>	<b>29%</b>	<b>27%</b>	<b>25%</b>

Note: Management has advised that US electricity margins in FY18 and FY19 are the result of accounting errors.

#### Gas:

- With respect to the retailing of gas products, Management purchases long-term gas contracts from Shell in advance and this gas inventory is provided to the utility providers such as Enbridge.
- Where consumption is greater than inventory on hand plus purchases, Enbridge advances the shortage to Planet until Planet covers the inventory shortage in the ordinary course.

#### Gas Inventory:

Opening Gas Inventory  
 + Gas purchases  
 - Gas consumption  
 = Ending Gas Inventory

#### Electricity:

- Electricity supply arrangements are managed through swap arrangements with Shell.
- Planet locks in a contract price with Shell for electricity purchases based on the Risk Policy outlined in Section 4 of this Report.
- As an example, Planet could make purchases which are 2-3 years out. If Planet locks in a purchase price with Shell for \$12 for purchases over the next few years, each month a mark to market liability is provided for on the balance sheet (i.e. the derivative liability). If the market price is \$10, the \$2 (discounted at a rate of 15%) would be recorded as a derivative liability on the balance sheet. The amount of the liability will fluctuate each month depending on Planet's purchase commitments and current market rates.
- Upon settlement, Shell would charge for the difference (i.e. Shell would invoice for the realized liability that in the above case, would be \$2).
- In the above example where Planet locks in a price of \$12 and the current market price is \$10, Planet would pay \$2 to Shell when settled and \$10 to the utility provider. If the current market price is \$14, Planet would pay \$14 to the utility provider and receive \$2 from Shell.



## EXHIBIT IV

### REVIEW OF P&L ASSUMPTIONS (CONT'D)

The following table provides an overview of Planet's recent historical financial results.

	Sep-17 FY17	Sep-18 FY18	Sep-19 FY19	Sep-20 FY20	Sep-21 FY21	Sep-22 FY22	Sep-23 FY23	Sep-24 FY24	Sep-25 FY25
<b>SELLING, GENERAL &amp; ADMIN EXPENSES</b>									
Residual commissions	7,023,640	5,168,662	4,028,255	1,175,576	433,429	35,862	-	-	-
Upfront Commission - Electricity	2,124,377	410,639	138,291	15,343	6,670	-	-	-	-
Upfront Commission - Gas	-	-	-	-	-	-	-	-	-
Call centre costs	594,942	918,750	858,000	827,400	865,021	832,911	819,058	839,314	892,520
Back office compensation	3,168,554	2,557,679	2,495,069	2,159,483	2,196,479	2,097,810	2,080,585	2,105,771	2,171,928
Variable operating expenses	1,459,415	2,366,264	1,822,699	3,735,462	2,013,324	1,744,981	1,711,503	1,760,454	1,889,037
Rent	691,605	667,941	625,280	442,275	179,002	217,173	217,173	217,173	217,173
Insurance	49,788	38,954	32,045	30,267	43,561	40,695	40,695	40,695	40,695
<b>TOTAL S, G &amp; A</b>	<b>15,112,321</b>	<b>12,128,889</b>	<b>9,999,639</b>	<b>8,385,806</b>	<b>5,737,487</b>	<b>4,969,432</b>	<b>4,869,014</b>	<b>4,963,408</b>	<b>5,211,355</b>

#### Selling, General and Administrative Expenses

##### 1- Residual and Upfront Commissions

###### Assumptions

Planet will discontinue accruing residual commissions for ACN at November 2021 in line with when it believes the last ACN sourced customer contracts expire from the date of termination of the SAA.

Any commissions to be accrued or paid to ACN is being dealt with through ongoing litigation and, therefore, has not been considered/assessed.

##### 2- Call Centre Costs

###### Assumptions

Call centre costs consist of approximately US\$85K annual rent and variable salary depending on the number of RCE's. Management has assumed that the variable cost of the call centre costs over the Forecast Period is \$1.72/RCE/month. Below is a summary of total fixed and variable costs per RCE per month over the Forecast Period.

Monthly Per RCE	Call Centre							
	FY19	FY20	FY21 Oct- Apr	FY21 May-Sep	FY22	FY23	FY24	FY25
Monthly per RCE	1.00	1.35	1.83	1.98	1.99	1.99	1.98	1.96

Call centre costs appear to be in line with historical financial statements and Management's assumption that RCE's are expected to decline in F21-F23, as a result of attrition, and increase in F24-F25.

## EXHIBIT IV

### REVIEW OF P&L ASSUMPTIONS (CONT'D)

The following table provides an overview of Planet's recent historical financial results.

	Sep-17 FY17	Sep-18 FY18	Sep-19 FY19	Sep-20 FY20	Sep-21 FY21	Sep-22 FY22	Sep-23 FY23	Sep-24 FY24	Sep-25 FY25
<b>SELLING, GENERAL &amp; ADMIN EXPENSES</b>									
Residual commissions	7,023,640	5,168,662	4,028,255	1,175,576	433,429	35,862	-	-	-
Upfront Commission - Electricity	2,124,377	410,639	138,291	15,343	6,670	-	-	-	-
Upfront Commission - Gas	-	-	-	-	-	-	-	-	-
Call centre costs	594,942	918,750	858,000	827,400	865,021	832,911	819,058	839,314	892,520
Back office compensation	3,168,554	2,557,679	2,495,069	2,159,483	2,196,479	2,097,810	2,080,585	2,105,771	2,171,928
Variable operating expenses	1,459,415	2,366,264	1,822,699	3,735,462	2,013,324	1,744,981	1,711,503	1,760,454	1,889,037
Rent	691,605	667,941	625,280	442,275	179,002	217,173	217,173	217,173	217,173
Insurance	49,788	38,954	32,045	30,267	43,561	40,695	40,695	40,695	40,695
<b>TOTAL S, G &amp; A</b>	<b>15,112,321</b>	<b>12,128,889</b>	<b>9,999,639</b>	<b>8,385,806</b>	<b>5,737,487</b>	<b>4,969,432</b>	<b>4,869,014</b>	<b>4,963,408</b>	<b>5,211,355</b>

#### 3- Back Office Compensation

##### Assumptions

Management has assumed that back office compensation over the Forecast Period is comprised of \$2.14/RCE/Month in variable costs plus \$1.2MM in fixed costs. Below is an analysis of historical monthly back office costs per RCE compared to forecast.

Monthly Per RCE	Back Office							
	FY19	FY20	FY21 Oct- Apr	FY21 May-Sep	FY22	FY23	FY24	FY25
Monthly per RCE	2.91	3.52	4.74	4.90	5.01	5.05	4.96	4.76

Due to the approximately \$1.2MM in fixed costs forecast, back office compensation per RCE increases as average RCE's decrease in F21-F23. Average back office compensation begins to decrease in F24-F25 as RCE's are forecast to increase.

#### 4- Variable Operating Costs

##### Assumptions

Variable operating costs consist of consulting, legal and accounting fees. Management has assumed that variable operating costs are \$4.16/RCE/Month over the Forecast Period.

#### 4- Variable Operating Costs (cont.)

Monthly Per RCE	Variable Operating Expenses							
	FY19	FY20	FY21 Oct- Apr	FY21 May-Sep	FY22	FY23	FY24	FY25
Monthly per RCE	2.13	6.09	5.73	4.16	4.16	4.16	4.16	4.16

Variable operating costs appear to be lower than recent historical financial results.

#### 5- Rent & Insurance

##### Assumptions

Planet downsized its head office space in September 2020. Rent over the Forecast Period is based on Planet's current lease agreements.

Insurance is expected to continue at historical levels.

Based on the lease information provided by Management, rent expenses appear to be reasonable. Based on historical information provided, insurance expenses appear to be reasonable.

## EXHIBIT V

### REVIEW OF CASH FLOW ASSUMPTIONS

#### Forecast Cash Flow Forecast

The following table provides an overview of Planet's recent historical financial results.

	Sep-19 FY19	Sep-20 FY20	Sep-21 FY21	Sep-22 FY22	Sep-23 FY23	Sep-24 FY24	Sep-25 FY25
<b>CASH FLOW STATEMENT</b>							
<b>OPERATING ACTIVITIES</b>							
Net income/(loss) from Income Statement	(974,868)	1,227,052	(441,162)	549,583	582,861	570,884	640,001
Add back: Income Taxes	(386,646)	378,672	127,838	-	-	-	-
Add back: Depreciation - fixed assets	113,791	169,759	105,640	-	-	-	-
Add back: Amortization - intangible assets	5,456,002	1,024,666	13,322	-	-	-	-
Add back: Finance Costs	-	-	-	-	-	-	-
Add back: Change in Fair Value of Derivative Contracts	(3,179,702)	(2,201,879)	101,882	-	-	-	-
Change in operating assets and liabilities	4,430,465	1,448,818	(154,643)	15,291	(22,010)	(51,173)	(75,125)
Cash provided by/(used in) operating activities	5,459,042	2,047,088	(247,124)	564,875	560,851	519,711	564,876
<b>INVESTING ACTIVITIES</b>							
Customer Acquisition Costs	(847,493)	-	-	-	-	-	-
Property and equipment additions	(0)	(180,565)	3	-	-	-	-
Intangible assets additions	(0)	(70,187)	1	-	-	-	-
Change in Restricted cash	(85,347)	791,348	124,778	-	-	-	-
Cash used in investing activities	(932,840)	540,596	124,781	-	-	-	-
Cash provided by financing activities	4,308	(21,083)	138,133	-	-	-	-
<b>NET INCR/(DECR) IN CASH</b>	<b>4,530,510</b>	<b>2,566,601</b>	<b>15,790</b>	<b>564,875</b>	<b>560,851</b>	<b>519,711</b>	<b>564,876</b>
<b>CASH , BEGINNING OF PERIOD</b>	<b>5,200,419</b>	<b>9,730,929</b>	<b>12,297,531</b>	<b>12,313,321</b>	<b>12,878,196</b>	<b>13,439,047</b>	<b>13,958,758</b>
<b>CASH , END OF PERIOD</b>	<b>9,730,929</b>	<b>12,297,531</b>	<b>12,313,321</b>	<b>12,878,196</b>	<b>13,439,047</b>	<b>13,958,758</b>	<b>14,523,633</b>

#### Operations/EBITDA

- An analysis of EBITDA was provided earlier in this Report. EBITDA is forecast to remain stagnant as both sales and costs are forecast to decline.

#### Receivables

- Accounts receivable are forecast at one month sales. Collection is historically in the following month.

#### Inventory

- Inventory represents gas delivered to the utility providers in excess of consumption.
- Inventory has been forecast on a monthly basis as follows:

#### Gas Inventory:

+ Opening Gas Inventory  
 + New deliveries = Forecast Delivered Volume x Ave. Cost  
 - Gas consumption (based on RCE's & monthly consumption)  
 = Ending Gas Inventory

- Cost of gas is derived from the gross margin assumption and assumed gas price
- New Deliveries are calculated as RCE's x Annual Consumption / 365 x # Days in the month
- Monthly Consumption is calculated by taking the Forecast Annual Consumption and applying a load factor which takes into account historical seasonality.

#### Payables

- Accounts payable is current months cost of sales plus the accrual to ACN.
- Planet pays for gas/swaps on a monthly basis.

#### Investing and Financing Activities

- Management has advised that it does not have any planned capex over the Forecast Period.
- Planet does not forecast any new capital injections from either debt or equity over the Forecast Period.
- No dividends are projected over the Forecast Period.

## EXHIBIT VI

### PROJECTED BS

1. COMPANY BACKGROUND AND ENGAGEMENT OVERVIEW
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The following table provides an overview of Planet's historical and projected balance sheet.

	Sep-19 FY19	Sep-20 FY20	Sep-21 FY21	Sep-22 FY22	Sep-23 FY23	Sep-24 FY24	Sep-25 FY25
<b>Balance Sheet</b>							
<b>ASSETS</b>							
Cash	9,730,929	12,297,531	12,313,321	12,878,196	13,439,047	13,958,758	14,523,633
Restricted cash	1,027,856	236,506	111,725	111,725	111,725	111,725	111,725
Accounts Receivable	2,116,947	1,156,118	1,447,899	1,464,281	1,548,531	1,713,448	1,943,816
Gas Delivered in Excess of Consumptions	416,957	227,018	320,890	319,739	326,345	351,148	383,901
Other current assets	966,515	765,844	945,614	945,614	945,614	945,614	945,614
<b>Current Assets</b>	<b>14,259,204</b>	<b>14,683,017</b>	<b>15,139,449</b>	<b>15,719,555</b>	<b>16,371,262</b>	<b>17,080,693</b>	<b>17,908,690</b>
Property and equipment	165,369	555,924	449,448	449,448	449,448	449,448	449,448
Intangible assets	1,202,954	248,476	235,988	235,988	235,988	235,988	235,988
Deferred tax assets	1,190,635	602,176	614,703	614,703	614,703	614,703	614,703
<b>Total Assets</b>	<b>16,818,161</b>	<b>16,089,593</b>	<b>16,439,587</b>	<b>17,019,693</b>	<b>17,671,401</b>	<b>18,380,831</b>	<b>19,208,829</b>
<b>LIABILITIES</b>							
Trade and other payables	10,744,825	11,060,452	11,279,813	11,300,575	11,391,193	11,544,053	11,747,198
Corporate taxes payable	11,835	11,919	-	-	-	-	-
Deferred Revenue	618,241	399,910	427,644	401,543	379,772	365,458	350,310
Other payables	-	-	175,640	211,501	211,501	211,501	211,501
Current portion of lease liability	-	163,851	39,660	39,660	39,660	39,660	39,660
Current portion of derivative liabilities	3,182,588	1,450,539	1,416,830	1,416,830	1,416,830	1,416,830	1,416,830
<b>Current Liabilities</b>	<b>14,557,489</b>	<b>13,086,671</b>	<b>13,339,587</b>	<b>13,370,109</b>	<b>13,438,956</b>	<b>13,577,502</b>	<b>13,765,499</b>
Long-term debt	-	214,982	-	-	-	-	-
Long term portion of lease liability	-	78,028	269,700	269,700	269,700	269,700	269,700
Derivative liabilities	960,786	757,601	789,264	789,264	789,264	789,264	789,264
Deferred tax liability	391,985	137,456	182,322	182,322	182,322	182,322	182,322
<b>Total Liabilities</b>	<b>15,910,261</b>	<b>14,274,737</b>	<b>14,580,873</b>	<b>14,611,396</b>	<b>14,680,242</b>	<b>14,818,788</b>	<b>15,006,785</b>
<b>EQUITY</b>							
<b>Total Equity</b>	<b>907,901</b>	<b>1,814,857</b>	<b>1,858,714</b>	<b>2,408,298</b>	<b>2,991,158</b>	<b>3,562,043</b>	<b>4,202,043</b>
<b>TOTAL LIABILITIES &amp; EQUITY</b>	<b>16,818,161</b>	<b>16,089,594</b>	<b>16,439,587</b>	<b>17,019,693</b>	<b>17,671,401</b>	<b>18,380,831</b>	<b>19,208,829</b>

### Cash

Based on the Apr-21 Forecast, cash is expected to increase by approximately \$1.7MM from Apr-21 to Sep-25. The cash increase is significantly less than historical periods, as attrition continues to impact customer contracts particularly in the Canadian market.

### Working Capital

Planet's working capital is projected to increase primarily as a result of the increase in cash.

No other significant changes in working capital have been forecast.

### Long Term Assets

Planet has not forecast any capex over the Forecast Period and non-cash items such as depreciation and amortization have not been included in the forecast. As a result, long term assets are forecast to remain unchanged throughout.

### Derivative Liabilities

Planet has assumed that the current amount accrued for derivative liabilities remains unchanged throughout the Forecast Period. Given that this amount represents an adjustment made on a monthly basis to account for mark-to-market fair values, Management would not be able to forecast, with any certainty, changes in this amount. It is, therefore, reasonable to leave the derivative liability accrual unchanged throughout the Forecast Period.

### Equity

Changes in equity each month are a result of the forecast net income of Planet. No equity injections or dividends are assumed throughout the Forecast Period.

# EXHIBIT VII

## PLANET'S F21 FINANCIAL PROJECTIONS – INCOME STATEMENT

Planet Apr-21 Forecast - FY21

	Oct-20	Nov-20	Dec-20	Jan-21	Feb-21	Mar-21	Apr-21	May-21	Jun-21	Jul-21	Aug-21	Sep-21	TOTAL
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- COMPANY BACKGROUND AND ENGAGEMENT OVERVIEW
- EXECUTIVE SUMMARY
- CURRENT FINANCIAL POSITION
- OVERVIEW OF PLANET'S APR-21 FORECAST
- SENSITIZED FORECAST ASSUMPTIONS
- EXHIBITS

**Residential Consumer Equivalents**

RCE's - ELECTRICITY	35,425	34,787	34,541	34,332	33,510	33,147	32,324	32,004	31,838	31,674	31,512	31,200	
RCE's - GAS	6,239	5,743	5,716	5,215	5,134	4,875	4,834	4,761	4,690	4,620	4,550	4,482	
<b>TOTAL RCE's</b>	<b>41,664</b>	<b>40,530</b>	<b>40,257</b>	<b>39,547</b>	<b>38,644</b>	<b>38,022</b>	<b>37,158</b>	<b>36,765</b>	<b>36,528</b>	<b>36,294</b>	<b>36,062</b>	<b>35,683</b>	

**Income Statement**

Electricity Revenue	1,262,316	1,365,602	1,575,476	1,710,459	1,509,977	1,383,407	1,124,229	1,242,150	1,551,252	1,693,727	1,540,681	1,202,618	17,161,894
Electricity - Cost of goods sold	849,242	893,865	1,059,207	1,137,303	1,189,864	999,481	816,194	861,855	1,095,689	1,167,852	1,065,027	831,674	11,967,253
<b>Electricity Gross Margin</b>	<b>413,074</b>	<b>471,737</b>	<b>516,269</b>	<b>573,156</b>	<b>320,113</b>	<b>383,926</b>	<b>308,035</b>	<b>380,294</b>	<b>455,563</b>	<b>525,875</b>	<b>475,654</b>	<b>370,944</b>	<b>5,194,641</b>
<b>Electricity - GM %</b>	<b>32.7%</b>	<b>34.5%</b>	<b>32.8%</b>	<b>33.5%</b>	<b>21.2%</b>	<b>27.8%</b>	<b>27.4%</b>	<b>30.6%</b>	<b>29.4%</b>	<b>31.0%</b>	<b>30.9%</b>	<b>30.8%</b>	<b>30.3%</b>
Gas Revenue	127,404	234,832	339,770	417,825	425,722	344,217	223,407	192,371	110,734	75,929	73,866	75,779	2,641,856
Gas Cost of goods sold	88,324	153,269	201,167	253,572	256,483	216,936	135,275	126,785	72,833	49,872	48,471	49,715	1,652,703
<b>Gas Gross Margin</b>	<b>39,080</b>	<b>81,563</b>	<b>138,603</b>	<b>164,253</b>	<b>169,239</b>	<b>127,281</b>	<b>88,132</b>	<b>65,586</b>	<b>37,901</b>	<b>26,057</b>	<b>25,395</b>	<b>26,064</b>	<b>989,154</b>
<b>Gas GM%</b>	<b>30.7%</b>	<b>34.7%</b>	<b>40.8%</b>	<b>39.3%</b>	<b>39.8%</b>	<b>37.0%</b>	<b>39.4%</b>	<b>34.1%</b>	<b>34.2%</b>	<b>34.3%</b>	<b>34.4%</b>	<b>34.4%</b>	<b>37.4%</b>
<b>TOTAL REVENUE</b>	<b>1,389,720</b>	<b>1,600,434</b>	<b>1,915,247</b>	<b>2,128,284</b>	<b>1,935,699</b>	<b>1,727,624</b>	<b>1,347,636</b>	<b>1,434,520</b>	<b>1,661,986</b>	<b>1,769,656</b>	<b>1,614,548</b>	<b>1,278,397</b>	<b>19,803,751</b>
<b>TOTAL COST OF GOODS SOLD</b>	<b>937,566</b>	<b>1,047,134</b>	<b>1,260,374</b>	<b>1,390,875</b>	<b>1,446,347</b>	<b>1,216,417</b>	<b>951,469</b>	<b>988,641</b>	<b>1,168,522</b>	<b>1,217,724</b>	<b>1,113,498</b>	<b>881,389</b>	<b>13,619,956</b>
<b>TOTAL GROSS MARGIN</b>	<b>452,154</b>	<b>553,300</b>	<b>654,873</b>	<b>737,409</b>	<b>489,352</b>	<b>511,207</b>	<b>396,167</b>	<b>445,880</b>	<b>493,464</b>	<b>551,932</b>	<b>501,049</b>	<b>397,008</b>	<b>6,183,795</b>
<b>Total Gross Margin %</b>	<b>32.5%</b>	<b>34.6%</b>	<b>34.2%</b>	<b>34.6%</b>	<b>25.3%</b>	<b>29.6%</b>	<b>29.4%</b>	<b>31.1%</b>	<b>29.7%</b>	<b>31.2%</b>	<b>31.0%</b>	<b>31.1%</b>	<b>31.2%</b>

**SELLING, GENERAL & ADMIN EXPENSES**

Residual commissions	55,498	63,842	57,894	57,072	41,395	35,210	22,312	20,821	19,995	22,530	20,406	16,454	433,429
Upfront Commission - Electricity	2,268	2,287	2,030	(38)	182	(32)	(27)	-	-	-	-	-	6,670
Call centre costs	63,700	92,950	63,700	63,700	94,250	63,700	63,700	72,806	72,265	71,859	71,458	70,933	865,021
Back office compensation	243,390	165,349	164,279	169,446	169,097	225,092	170,476	179,041	178,368	177,863	177,365	176,712	2,196,479
Variable operating expenses	236,290	29,333	349,030	250,355	36,901	295,612	383,493	(8,590)	151,335	150,367	150,367	149,097	2,013,324
Rent	20,102	22,767	(11,685)	18,633	35,519	6,010	(2,833)	18,098	18,098	18,098	18,098	18,098	179,002
Insurance	2,724	3,380	2,057	2,057	5,856	5,060	4,732	3,391	3,391	3,391	3,391	3,391	43,561
<b>TOTAL S, G &amp; A</b>	<b>623,972</b>	<b>379,908</b>	<b>628,044</b>	<b>561,226</b>	<b>383,200</b>	<b>630,651</b>	<b>641,853</b>	<b>285,568</b>	<b>282,217</b>	<b>445,077</b>	<b>441,086</b>	<b>434,685</b>	<b>5,737,487</b>
<b>EBITDA</b>	<b>(171,818)</b>	<b>173,392</b>	<b>26,829</b>	<b>176,183</b>	<b>106,152</b>	<b>(119,444)</b>	<b>(245,686)</b>	<b>160,312</b>	<b>211,248</b>	<b>106,855</b>	<b>59,963</b>	<b>(37,677)</b>	<b>446,308</b>
Finance Costs	5,551	12,871	8,809	8,196	7,000	7,714	8,265	6,640	6,640	6,640	6,640	6,640	91,606
Change in Fair Value of Derivative Contracts	(241,098)	270,081	508,879	(327,771)	(102,230)	100,430	(106,410)	-	-	-	-	-	101,882
Other Expense	6,259	90,859	58,567	(11,470)	28,192	35,763	86,244	-	-	-	-	-	294,415
Depreciation - Fixed assets	5,818	25,375	14,994	14,996	14,933	14,859	14,665	-	-	-	-	-	105,640
Amortization - Intangible assets	1,784	2,618	1,784	1,784	1,784	1,784	1,784	-	-	-	-	-	13,322
Income tax expense - cash paid taxes	(24,333)	(22,554)	(18,736)	65,624	70,656	(44,612)	(23,486)	48,094	63,374	32,056	17,989	(11,303)	152,768
Deferred tax expense	68,700	89,851	(185,334)	95,748	44,764	(26,614)	40,723	-	-	-	-	-	127,838
<b>Net Income/(Loss)</b>	<b>5,501</b>	<b>(295,709)</b>	<b>(362,134)</b>	<b>329,077</b>	<b>41,052</b>	<b>(208,769)</b>	<b>(267,471)</b>	<b>105,578</b>	<b>141,233</b>	<b>68,158</b>	<b>35,334</b>	<b>(33,014)</b>	<b>(441,162)</b>

**Covenants**

Modified Working Capital	2,705,114	3,195,796	3,208,094	3,300,590	3,310,307	3,204,911	2,939,062	3,044,640	3,185,874	3,254,032	3,289,366	3,256,352	
Minimum Modified Working Capital	2,200,000	2,200,000	2,200,000	2,200,000	2,200,000	2,200,000	2,200,000	2,200,000	2,200,000	2,200,000	2,200,000	2,200,000	
Run and Maintain	-	-	66,796	-	-	48,313	-	-	16,347	-	-	70,479	

**SALES BY PRODUCT**

Electricity Sales per RCE	36	39	46	50	45	42	35	39	49	53	49	39	520
Gas Sales per RCE	20	41	59	80	83	71	46	40	24	16	16	17	521
<b>TOTAL SALES PER RCE</b>	<b>56</b>	<b>80</b>	<b>105</b>	<b>130</b>	<b>128</b>	<b>112</b>	<b>81</b>	<b>79</b>	<b>72</b>	<b>70</b>	<b>65</b>	<b>55</b>	<b>520</b>

**ELECTRICITY SALES BY GEOGRAPHY**

Canada	816,830	878,633	882,831	909,195	814,738	758,305	631,318	735,737	843,059	1,034,642	931,589	726,427	9,963,304
US	445,486	486,969	692,645	801,263	695,239	625,103	492,911	506,412	708,193	659,086	609,092	476,191	7,198,590
<b>TOTAL</b>	<b>1,262,316</b>	<b>1,365,602</b>	<b>1,575,476</b>	<b>1,710,459</b>	<b>1,509,977</b>	<b>1,383,407</b>	<b>1,124,229</b>	<b>1,242,150</b>	<b>1,551,252</b>	<b>1,693,727</b>	<b>1,540,681</b>	<b>1,202,618</b>	<b>17,161,894</b>

**GAS SALES BY GEOGRAPHY**

Canada	122,214	220,289	287,950	356,494	361,888	291,313	197,602	178,018	97,921	65,049	61,864	63,112	2,303,714
US	5,190	14,544	51,820	61,331	63,834	52,904	25,804	14,353	12,813	10,880	12,002	12,667	338,142
<b>TOTAL</b>	<b>127,404</b>	<b>234,832</b>	<b>339,770</b>	<b>417,825</b>	<b>425,722</b>	<b>344,217</b>	<b>223,407</b>	<b>192,371</b>	<b>110,734</b>	<b>75,929</b>	<b>73,866</b>	<b>75,779</b>	<b>2,641,856</b>

<b>TOTAL SALES</b>	<b>1,389,720</b>	<b>1,600,434</b>	<b>1,915,247</b>	<b>2,128,284</b>	<b>1,935,699</b>	<b>1,727,624</b>	<b>1,347,636</b>	<b>1,434,520</b>	<b>1,661,986</b>	<b>1,769,656</b>	<b>1,614,548</b>	<b>1,278,397</b>	<b>19,803,751</b>
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## EXHIBIT VII

### PLANET'S F21 FINANCIAL PROJECTIONS – CASH FLOW

1. COMPANY BACKGROUND AND ENGAGEMENT OVERVIEW
2. EXECUTIVE SUMMARY
3. CURRENT FINANCIAL POSITION
4. OVERVIEW OF PLANET'S APR-21 FORECAST
5. SENSITIZED FORECAST ASSUMPTIONS
6. EXHIBITS

	Planet Apr-21 Forecast - FY21												
	Oct-20	Nov-20	Dec-20	Jan-21	Feb-21	Mar-21	Apr-21	May-21	Jun-21	Jul-21	Aug-21	Sep-21	TOTAL
<b>CASH FLOW STATEMENT</b>													
<b>OPERATING ACTIVITIES</b>													
Net income/(loss) from Income Statement	5,501	(295,709)	(362,134)	329,077	41,052	(208,769)	(267,471)	105,578	141,233	68,158	35,334	(33,014)	(441,162)
Add back: Income Taxes	68,700	89,851	(185,334)	95,748	44,764	(26,614)	40,723	-	-	-	-	-	127,838
Add back: Depreciation - fixed assets	5,818	25,375	14,994	14,996	14,933	14,859	14,665	-	-	-	-	-	105,640
Add back: Amortization - intangible assets	1,784	2,618	1,784	1,784	1,784	1,784	1,784	-	-	-	-	-	13,322
Add back: Change in Fair Value of Derivative C	(241,098)	270,081	508,879	(327,771)	(102,230)	100,430	(106,410)	-	-	-	-	-	101,882
<b>Changes in non-cash working capital items</b>													
Change in A/R - Electricity	184,707	(1,014)	(248,745)	(307,603)	283,231	341,985	65,361	(949,271)	(309,103)	(142,475)	153,046	338,063	(591,816)
Change in A/R - Gas	(11,500)	(35,633)	111,667	(1,425)	42,174	(2,850)	44,118	(29,648)	81,637	34,805	2,062	(1,913)	233,495
Change in A/R - Other	49,699	36,392	35,984	(23,575)	18,564	(79,409)	23,692	5,193	-	-	-	-	66,540
Change in Inventory - Gas in Storage (incl Gas	(84,401)	(13,863)	53,823	95,988	132,342	35,902	167	48,371	(73,818)	(99,393)	(98,555)	(90,435)	(93,872)
Change in Other current assets	(21,921)	9,914	(13,864)	66,967	56,241	(279,652)	25,063	-	-	-	-	-	(157,251)
Change in Trade and other payables	(33,516)	125,460	416,144	162,948	(150,606)	(95,196)	24,457	(26,824)	199,876	71,733	(83,820)	(215,655)	395,001
Change in Corporate taxes payable	12,802	(655)	(433)	89	(176)	(204)	11,288	(34,631)	-	-	-	-	(11,919)
Change in Accrued Gas	144,486	(477)	(83,788)	(157,065)	(194,287)	(119,828)	(11,505)	(28,611)	89,249	125,459	125,786	115,761	5,180
Change in operating assets and liabilities	240,357	120,125	270,788	(163,675)	187,482	(199,252)	182,642	(1,015,420)	(12,159)	(9,872)	98,520	145,821	(154,643)
<b>Cash provided by/(used in) operating activities</b>	<b>81,062</b>	<b>212,341</b>	<b>248,977</b>	<b>(49,842)</b>	<b>187,786</b>	<b>(317,562)</b>	<b>(134,067)</b>	<b>(909,842)</b>	<b>129,075</b>	<b>58,287</b>	<b>133,854</b>	<b>112,808</b>	<b>(247,124)</b>
<b>INVESTING ACTIVITIES</b>													
Change in Restricted cash	115,149	(117,330)	108,384	(39,056)	(22,787)	28,885	51,533	-	-	-	-	-	124,778
<b>Cash used in investing activities</b>	<b>115,149</b>	<b>(117,330)</b>	<b>108,384</b>	<b>(39,055)</b>	<b>(22,786)</b>	<b>28,885</b>	<b>51,534</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>124,781</b>
<b>FINANCING ACTIVITIES</b>													
Interco transfers	5,308	(5,308)	0	(0)	(0)	1	(1)	-	-	-	-	-	(0)
Dividends Paid	-	-	-	-	-	-	-	-	-	-	-	-	-
Translation Adjustment	(2,031)	54,205	34,109	(21,338)	9,414	12,912	50,862	-	-	-	-	-	138,133
<b>Cash provided by financing activities</b>	<b>3,277</b>	<b>48,897</b>	<b>34,109</b>	<b>(21,338)</b>	<b>9,414</b>	<b>12,913</b>	<b>50,861</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>138,133</b>
<b>NET INCR/(DECR) IN CASH</b>	<b>199,488</b>	<b>143,909</b>	<b>391,470</b>	<b>(110,235)</b>	<b>174,413</b>	<b>(275,764)</b>	<b>(31,672)</b>	<b>(909,842)</b>	<b>129,075</b>	<b>58,287</b>	<b>133,854</b>	<b>112,808</b>	<b>15,790</b>
<b>CASH , BEGINNING OF PERIOD</b>	<b>12,297,531</b>	<b>12,497,019</b>	<b>12,640,927</b>	<b>13,032,398</b>	<b>12,922,163</b>	<b>13,096,576</b>	<b>12,820,813</b>	<b>12,789,140</b>	<b>11,879,298</b>	<b>12,008,373</b>	<b>12,066,660</b>	<b>12,200,514</b>	<b>12,297,531</b>
<b>CASH , END OF PERIOD</b>	<b>12,497,019</b>	<b>12,640,928</b>	<b>13,032,397</b>	<b>12,922,163</b>	<b>13,096,576</b>	<b>12,820,813</b>	<b>12,789,141</b>	<b>11,879,298</b>	<b>12,008,373</b>	<b>12,066,660</b>	<b>12,200,514</b>	<b>12,313,321</b>	<b>12,313,321</b>

## EXHIBIT VII

### PLANET'S F21 FINANCIAL PROJECTIONS – BALANCE SHEET

1. COMPANY BACKGROUND AND ENGAGEMENT OVERVIEW
2. EXECUTIVE SUMMARY
3. CURRENT FINANCIAL POSITION
4. OVERVIEW OF PLANET'S APR-21 FORECAST
5. SENSITIZED FORECAST ASSUMPTIONS
6. EXHIBITS

	Oct-20	Nov-20	Dec-20	Jan-21	Feb-21	Planet Apr-21 Forecast - FY21		May-21	Jun-21	Jul-21	Aug-21	Sep-21
						Mar-21	Apr-21					
<b>Balance Sheet</b>												
<b>ASSETS</b>												
Cash	12,497,019	12,640,927	13,032,398	12,922,163	13,096,576	12,820,813	12,789,140	11,879,298	12,008,373	12,066,660	12,200,514	12,313,321
Restricted cash	121,357	238,687	130,302	169,358	192,145	163,260	111,725	111,725	111,725	111,725	111,725	111,725
Accounts Receivable	693,256	933,466	1,034,560	1,367,163	1,023,194	763,468	630,297	1,604,022	1,831,488	1,939,158	1,784,049	1,447,899
Gas Delivered in Excess of Consumptions	311,419	325,282	271,459	175,471	43,129	7,226	7,060	(41,312)	32,506	131,900	230,455	320,890
Other current assets	791,776	800,370	814,233	747,266	691,025	970,677	945,614	945,614	945,614	945,614	945,614	945,614
<b>Current Assets</b>	<b>14,414,827</b>	<b>14,938,732</b>	<b>15,282,953</b>	<b>15,381,421</b>	<b>15,046,069</b>	<b>14,725,444</b>	<b>14,483,836</b>	<b>14,499,348</b>	<b>14,929,706</b>	<b>15,195,056</b>	<b>15,272,357</b>	<b>15,139,449</b>
Property and equipment	183,043	523,897	508,902	493,906	478,973	464,113	449,448	449,448	449,448	449,448	449,448	449,448
Intangible assets	246,692	244,908	243,124	241,340	239,556	237,772	235,988	235,988	235,988	235,988	235,988	235,988
Deferred tax assets	499,626	574,507	757,392	666,600	628,812	655,426	614,703	614,703	614,703	614,703	614,703	614,703
<b>Total Assets</b>	<b>15,344,189</b>	<b>16,282,043</b>	<b>16,792,371</b>	<b>16,783,266</b>	<b>16,393,409</b>	<b>16,082,754</b>	<b>15,783,974</b>	<b>15,799,486</b>	<b>16,229,845</b>	<b>16,495,195</b>	<b>16,572,496</b>	<b>16,439,587</b>
<b>LIABILITIES</b>												
Trade and other payables	11,258,988	11,152,396	11,568,540	11,731,488	11,580,882	11,440,265	11,434,710	11,387,065	11,566,946	11,616,148	11,511,922	11,279,813
Corporate taxes payable	24,722	24,066	23,634	23,723	23,547	23,342	34,631	-	-	-	-	-
Deferred Revenue	426,003	566,473	482,685	325,620	131,333	11,505	-	(28,611)	60,638	186,097	311,883	427,644
Other payables	-	-	-	-	-	45,420	75,433	96,254	116,249	138,779	159,186	175,640
Current portion of lease liability	-	39,660	39,660	39,660	39,660	39,660	39,660	39,660	39,660	39,660	39,660	39,660
Current portion of derivative liabilities	1,347,659	1,528,506	1,678,097	1,587,128	1,583,903	1,585,362	1,416,830	1,416,830	1,416,830	1,416,830	1,416,830	1,416,830
<b>Current Liabilities</b>	<b>13,057,372</b>	<b>13,311,102</b>	<b>13,792,616</b>	<b>13,707,619</b>	<b>13,359,325</b>	<b>13,145,555</b>	<b>13,001,264</b>	<b>12,911,198</b>	<b>13,200,323</b>	<b>13,397,515</b>	<b>13,439,481</b>	<b>13,339,587</b>
Long term portion of lease liability	-	319,793	310,066	300,186	290,245	279,938	269,700	269,700	269,700	269,700	269,700	269,700
Derivative liabilities	657,610	759,335	957,463	749,800	730,033	829,004	789,264	789,264	789,264	789,264	789,264	789,264
Deferred tax liability	137,456	182,322	182,322	182,322	182,322	182,322	182,322	182,322	182,322	182,322	182,322	182,322
<b>Total Liabilities</b>	<b>13,852,438</b>	<b>14,572,552</b>	<b>15,242,467</b>	<b>14,939,928</b>	<b>14,561,925</b>	<b>14,436,820</b>	<b>14,242,550</b>	<b>14,152,484</b>	<b>14,441,609</b>	<b>14,638,801</b>	<b>14,680,767</b>	<b>14,580,873</b>
<b>EQUITY</b>												
Share Capital	7,364,210	7,364,210	7,364,210	7,364,210	7,364,210	7,364,210	7,364,210	7,364,210	7,364,210	7,364,210	7,364,210	7,364,210
Contributed Surplus	3,540,888	3,540,888	3,540,888	3,540,888	3,540,888	3,540,888	3,540,888	3,540,888	3,540,888	3,540,888	3,540,888	3,540,888
Unrealized Gain/Loss on power swaps	(80,887)	(93,378)	67,781	38,643	(40,595)	(40,595)	61,267	61,267	61,267	61,267	61,267	61,267
Retained Earnings, OCI	(1,832,460)	(1,602,228)	(1,922,976)	(1,600,403)	(1,533,019)	(1,718,570)	(1,924,941)	(1,819,363)	(1,678,130)	(1,609,971)	(1,574,637)	(1,607,651)
Dividends	(7,500,000)	(7,500,000)	(7,500,000)	(7,500,000)	(7,500,000)	(7,500,000)	(7,500,000)	(7,500,000)	(7,500,000)	(7,500,000)	(7,500,000)	(7,500,000)
<b>Total Equity</b>	<b>1,491,751</b>	<b>1,709,492</b>	<b>1,549,903</b>	<b>1,843,338</b>	<b>1,831,484</b>	<b>1,645,933</b>	<b>1,541,424</b>	<b>1,647,002</b>	<b>1,788,236</b>	<b>1,856,394</b>	<b>1,891,728</b>	<b>1,858,714</b>
<b>TOTAL LIABILITIES &amp; EQUITY</b>	<b>15,344,189</b>	<b>16,282,044</b>	<b>16,792,370</b>	<b>16,783,266</b>	<b>16,393,409</b>	<b>16,082,753</b>	<b>15,783,974</b>	<b>15,799,486</b>	<b>16,229,845</b>	<b>16,495,195</b>	<b>16,572,495</b>	<b>16,439,587</b>

# EXHIBIT VIII

## PLANET'S F22 FINANCIAL PROJECTIONS – INCOME STATEMENT

Planet Apr-21 Forecast - FY22

	Oct-21	Nov-21	Dec-21	Jan-22	Feb-22	Mar-22	Apr-22	May-22	Jun-22	Jul-22	Aug-22	Sep-22	TOTAL
<b>1. COMPANY BACKGROUND AND ENGAGEMENT OVERVIEW</b>													
Residential Consumer Equivalents													
RCE's - ELECTRICITY	30,967	30,962	30,956	30,950	30,941	30,930	30,693	30,457	30,448	30,439	30,429	30,193	
RCE's - GAS	4,430	4,394	4,358	4,324	4,290	4,257	4,209	4,161	4,129	4,098	4,067	4,022	
<b>TOTAL RCE's</b>	<b>35,397</b>	<b>35,355</b>	<b>35,315</b>	<b>35,274</b>	<b>35,231</b>	<b>35,187</b>	<b>34,902</b>	<b>34,618</b>	<b>34,577</b>	<b>34,537</b>	<b>34,497</b>	<b>34,215</b>	
<b>2. EXECUTIVE SUMMARY</b>													
Income Statement													
Electricity Revenue	1,201,284	1,326,153	1,499,964	1,539,857	1,371,993	1,263,646	1,213,449	1,255,458	1,601,581	1,711,536	1,566,124	1,225,684	16,776,730
Electricity - Cost of goods sold	838,580	927,892	1,068,227	1,078,859	965,360	875,732	837,161	878,511	1,139,035	1,192,402	1,094,297	857,100	11,753,157
<b>Electricity Gross Margin</b>	<b>362,704</b>	<b>398,261</b>	<b>431,737</b>	<b>460,998</b>	<b>406,633</b>	<b>387,913</b>	<b>376,288</b>	<b>376,947</b>	<b>462,547</b>	<b>519,133</b>	<b>471,828</b>	<b>368,584</b>	<b>5,023,573</b>
<b>Electricity - GM %</b>	<b>30.2%</b>	<b>30.0%</b>	<b>28.8%</b>	<b>29.9%</b>	<b>29.6%</b>	<b>30.7%</b>	<b>31.0%</b>	<b>30.0%</b>	<b>28.9%</b>	<b>30.3%</b>	<b>30.1%</b>	<b>30.1%</b>	<b>29.9%</b>
<b>3. CURRENT FINANCIAL POSITION</b>													
Gas Revenue													
Gas Revenue	90,639	190,502	284,499	462,556	368,042	345,069	244,177	164,659	96,470	67,128	66,489	69,095	2,449,324
Gas Cost of goods sold	59,239	124,281	185,793	302,761	241,221	226,489	160,817	108,309	63,249	43,908	43,398	45,050	1,604,518
<b>Gas Gross Margin</b>	<b>31,400</b>	<b>66,221</b>	<b>98,705</b>	<b>159,795</b>	<b>126,821</b>	<b>118,580</b>	<b>83,360</b>	<b>56,350</b>	<b>33,221</b>	<b>23,219</b>	<b>23,091</b>	<b>24,045</b>	<b>844,807</b>
<b>Gas GM%</b>	<b>34.6%</b>	<b>34.8%</b>	<b>34.7%</b>	<b>34.5%</b>	<b>34.5%</b>	<b>34.4%</b>	<b>34.1%</b>	<b>34.2%</b>	<b>34.4%</b>	<b>34.6%</b>	<b>34.7%</b>	<b>34.8%</b>	<b>34.5%</b>
<b>4. OVERVIEW OF PLANET'S APR-21 FORECAST</b>													
<b>5. SENSITIZED FORECAST ASSUMPTIONS</b>													
<b>6. EXHIBITS</b>													
<b>SELLING, GENERAL &amp; ADMIN EXPENSES</b>													
Residual commissions	16,048	19,814	-	-	-	-	-	-	-	-	-	-	35,862
Upfront Commission - Electricity	-	-	-	-	-	-	-	-	-	-	-	-	-
Call centre costs	70,361	70,080	70,009	69,938	69,866	69,792	69,509	69,019	68,740	68,671	68,602	68,325	832,911
Back office compensation	176,001	175,651	175,563	175,475	175,386	175,293	174,941	174,333	173,986	173,899	173,813	173,469	2,097,810
Variable operating expenses	147,715	147,035	146,864	146,694	146,519	146,339	145,655	144,473	143,799	143,631	143,463	142,794	1,744,981
Rent	18,098	18,098	18,098	18,098	18,098	18,098	18,098	18,098	18,098	18,098	18,098	18,098	217,173
Insurance	3,391	3,391	3,391	3,391	3,391	3,391	3,391	3,391	3,391	3,391	3,391	3,391	40,695
<b>TOTAL S, G &amp; A</b>	<b>431,614</b>	<b>434,069</b>	<b>413,925</b>	<b>413,597</b>	<b>413,260</b>	<b>412,913</b>	<b>411,594</b>	<b>409,314</b>	<b>408,014</b>	<b>407,690</b>	<b>407,367</b>	<b>406,076</b>	<b>4,969,432</b>
<b>EBITDA</b>	<b>(37,510)</b>	<b>30,413</b>	<b>116,517</b>	<b>207,196</b>	<b>120,194</b>	<b>93,580</b>	<b>48,055</b>	<b>23,982</b>	<b>87,754</b>	<b>134,662</b>	<b>87,551</b>	<b>(13,448)</b>	<b>898,948</b>
Finance Costs	6,640	6,640	6,640	6,640	6,640	6,640	6,640	6,640	6,640	6,640	6,640	6,640	79,680
Change in Fair Value of Derivative Contracts	-	-	-	-	-	-	-	-	-	-	-	-	-
Other Expense	-	-	-	-	-	-	-	-	-	-	-	-	-
Depreciation - Fixed assets	-	-	-	-	-	-	-	-	-	-	-	-	-
Amortization - Intangible assets	-	-	-	-	-	-	-	-	-	-	-	-	-
Income tax expense - cash paid taxes	(11,253)	9,124	34,955	62,159	36,058	28,074	14,416	7,195	26,326	40,399	26,265	(4,034)	269,684
Deferred tax expense	-	-	-	-	-	-	-	-	-	-	-	-	-
<b>Net Income/(Loss)</b>	<b>(32,897)</b>	<b>14,649</b>	<b>74,922</b>	<b>138,397</b>	<b>77,496</b>	<b>58,866</b>	<b>26,998</b>	<b>10,148</b>	<b>54,788</b>	<b>87,624</b>	<b>54,646</b>	<b>(16,053)</b>	<b>549,583</b>
<b>Covenants</b>													
Modified Working Capital	3,223,456	3,238,105	3,313,027	3,451,424	3,528,920	3,587,786	3,614,784	3,624,932	3,679,719	3,767,343	3,821,989	3,805,936	
Minimum Modified Working Capital	2,200,000	2,200,000	2,200,000	2,200,000	2,200,000	2,200,000	2,200,000	2,200,000	2,200,000	2,200,000	2,200,000	2,200,000	
Run and Maintain	-	-	56,674	-	-	274,759	-	-	91,934	-	-	126,216	
<b>SALES BY PRODUCT</b>													
Electricity Sales per RCE	39	43	48	50	44	41	40	41	53	56	51	41	547
Gas Sales per RCE	20	43	65	107	86	81	58	40	23	16	16	17	579
<b>TOTAL SALES PER RCE</b>	<b>59</b>	<b>86</b>	<b>114</b>	<b>157</b>	<b>130</b>	<b>122</b>	<b>98</b>	<b>81</b>	<b>76</b>	<b>73</b>	<b>68</b>	<b>58</b>	<b>550</b>
<b>ELECTRICITY SALES BY GEOGRAPHY</b>													
Canada	695,342	760,261	787,813	879,950	769,105	761,631	665,405	632,656	724,942	889,683	801,068	624,651	8,992,508
US	505,942	565,891	712,151	659,907	602,889	502,015	548,045	622,802	876,639	821,853	765,056	601,033	7,784,222
<b>TOTAL</b>	<b>1,201,284</b>	<b>1,326,153</b>	<b>1,499,964</b>	<b>1,539,857</b>	<b>1,371,993</b>	<b>1,263,646</b>	<b>1,213,449</b>	<b>1,255,458</b>	<b>1,601,581</b>	<b>1,711,536</b>	<b>1,566,124</b>	<b>1,225,684</b>	<b>16,776,730</b>
<b>GAS SALES BY GEOGRAPHY</b>													
Canada	68,597	137,247	212,142	368,752	304,702	296,156	225,148	148,490	81,679	54,260	51,603	52,644	2,001,419
US	22,042	53,255	72,357	93,804	63,340	48,913	19,029	16,169	14,791	12,868	14,887	16,451	447,905
<b>TOTAL</b>	<b>90,639</b>	<b>190,502</b>	<b>284,499</b>	<b>462,556</b>	<b>368,042</b>	<b>345,069</b>	<b>244,177</b>	<b>164,659</b>	<b>96,470</b>	<b>67,128</b>	<b>66,489</b>	<b>69,095</b>	<b>2,449,324</b>
<b>TOTAL SALES</b>	<b>1,291,923</b>	<b>1,516,655</b>	<b>1,784,463</b>	<b>2,002,413</b>	<b>1,740,036</b>	<b>1,608,714</b>	<b>1,457,627</b>	<b>1,420,117</b>	<b>1,698,052</b>	<b>1,778,663</b>	<b>1,632,614</b>	<b>1,294,779</b>	<b>19,226,054</b>



## EXHIBIT VIII

### PLANET'S F22 FINANCIAL PROJECTIONS – CASH FLOW

1. COMPANY BACKGROUND AND ENGAGEMENT OVERVIEW
2. EXECUTIVE SUMMARY
3. CURRENT FINANCIAL POSITION
4. OVERVIEW OF PLANET'S APR-21 FORECAST
5. SENSITIZED FORECAST ASSUMPTIONS
6. EXHIBITS

	Oct-21	Nov-21	Dec-21	Jan-22	Feb-22	Mar-22	Apr-22	May-22	Jun-22	Jul-22	Aug-22	Sep-22	TOTAL
Planet Apr-21 Forecast - FY22													
<b>CASH FLOW STATEMENT</b>													
<b>OPERATING ACTIVITIES</b>													
Net income/(loss) from Income Statement	(32,897)	14,649	74,922	138,397	77,496	58,866	26,998	10,148	54,788	87,624	54,646	(16,053)	549,583
Add back: Income Taxes	-	-	-	-	-	-	-	-	-	-	-	-	-
Add back: Depreciation - fixed assets	-	-	-	-	-	-	-	-	-	-	-	-	-
Add back: Amortization - intangible assets	-	-	-	-	-	-	-	-	-	-	-	-	-
Add back: Change in Fair Value of Derivative C	-	-	-	-	-	-	-	-	-	-	-	-	-
<b>Changes in non-cash working capital items</b>													
Change in A/R - Electricity	1,334	(124,868)	(173,811)	(39,893)	167,864	108,348	50,197	(42,009)	(346,123)	(109,954)	145,411	340,440	(23,066)
Change in A/R - Gas	(14,860)	(99,863)	(93,996)	(178,057)	94,513	22,973	100,891	79,518	68,189	29,343	638	(2,605)	6,684
Change in A/R - Other	-	-	-	-	-	-	-	-	-	-	-	-	-
Change in Inventory - Gas in Storage (incl Gas	(83,410)	(11,696)	46,754	164,532	117,091	89,845	29,331	(26,797)	(66,154)	(88,441)	(88,240)	(81,665)	1,150
Change in Other current assets	-	-	-	-	-	-	-	-	-	-	-	-	-
Change in Trade and other payables	32,478	174,168	201,847	127,600	(175,039)	(104,360)	(104,243)	(11,158)	215,463	34,027	(98,616)	(235,545)	56,623
Change in Corporate taxes payable	-	-	-	-	-	-	-	-	-	-	-	-	-
Change in Accrued Gas	113,466	36,300	(35,499)	(194,759)	(149,905)	(127,344)	(64,232)	15,295	74,445	104,649	104,922	96,560	(26,101)
Change in operating assets and liabilities	49,009	(25,959)	(54,706)	(120,577)	54,525	(10,538)	11,943	14,851	(54,180)	(30,376)	64,116	117,185	15,291
<b>Cash provided by/(used in) operating activit</b>	<b>16,112</b>	<b>(11,310)</b>	<b>20,216</b>	<b>17,820</b>	<b>132,021</b>	<b>48,328</b>	<b>38,941</b>	<b>24,998</b>	<b>608</b>	<b>57,247</b>	<b>118,762</b>	<b>101,132</b>	<b>564,875</b>
<b>INVESTING ACTIVITIES</b>													
Change in Restricted cash	-	-	-	-	-	-	-	-	-	-	-	-	-
<b>Cash used in investing activities</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>FINANCING ACTIVITIES</b>													
Interco transfers	-	-	-	-	-	-	-	-	-	-	-	-	-
<b>Cash provided by financing activities</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>NET INCR/(DECR) IN CASH</b>	<b>16,112</b>	<b>(11,310)</b>	<b>20,216</b>	<b>17,820</b>	<b>132,021</b>	<b>48,328</b>	<b>38,941</b>	<b>24,998</b>	<b>608</b>	<b>57,247</b>	<b>118,762</b>	<b>101,132</b>	<b>564,875</b>
<b>CASH , BEGINNING OF PERIOD</b>	<b>12,313,321</b>	<b>12,329,433</b>	<b>12,318,123</b>	<b>12,338,339</b>	<b>12,356,159</b>	<b>12,488,179</b>	<b>12,536,508</b>	<b>12,575,449</b>	<b>12,600,447</b>	<b>12,601,055</b>	<b>12,658,302</b>	<b>12,777,064</b>	<b>12,313,321</b>
<b>CASH , END OF PERIOD</b>	<b>12,329,433</b>	<b>12,318,123</b>	<b>12,338,339</b>	<b>12,356,159</b>	<b>12,488,179</b>	<b>12,536,508</b>	<b>12,575,449</b>	<b>12,600,447</b>	<b>12,601,055</b>	<b>12,658,302</b>	<b>12,777,064</b>	<b>12,878,196</b>	<b>12,878,196</b>

## EXHIBIT VIII

### PLANET'S F22 FINANCIAL PROJECTIONS – BALANCE SHEET

1. COMPANY BACKGROUND AND ENGAGEMENT OVERVIEW
2. EXECUTIVE SUMMARY
3. CURRENT FINANCIAL POSITION
4. OVERVIEW OF PLANET'S APR-21 FORECAST
5. SENSITIZED FORECAST ASSUMPTIONS
6. EXHIBITS

	Planet Apr-21 Forecast - FY22											
	Oct-21	Nov-21	Dec-21	Jan-22	Feb-22	Mar-22	Apr-22	May-22	Jun-22	Jul-22	Aug-22	Sep-22
<b>Balance Sheet</b>												
<b>ASSETS</b>												
Cash	12,329,433	12,318,123	12,338,339	12,356,159	12,488,179	12,536,508	12,575,449	12,600,447	12,601,055	12,658,302	12,777,064	12,878,196
Restricted cash	111,725	111,725	111,725	111,725	111,725	111,725	111,725	111,725	111,725	111,725	111,725	111,725
Accounts Receivable	1,461,425	1,686,156	1,953,964	2,171,914	1,909,537	1,778,216	1,627,128	1,589,619	1,867,553	1,948,165	1,802,116	1,464,281
Gas Delivered in Excess of Consumptions	404,299	415,995	369,241	204,709	87,618	(2,228)	(31,558)	(4,761)	61,393	149,834	238,074	319,739
Other current assets	945,614	945,614	945,614	945,614	945,614	945,614	945,614	945,614	945,614	945,614	945,614	945,614
<b>Current Assets</b>	<b>15,252,496</b>	<b>15,477,614</b>	<b>15,718,883</b>	<b>15,790,121</b>	<b>15,542,674</b>	<b>15,369,836</b>	<b>15,228,358</b>	<b>15,242,644</b>	<b>15,587,340</b>	<b>15,813,640</b>	<b>15,874,593</b>	<b>15,719,555</b>
Property and equipment	449,448	449,448	449,448	449,448	449,448	449,448	449,448	449,448	449,448	449,448	449,448	449,448
Intangible assets	235,988	235,988	235,988	235,988	235,988	235,988	235,988	235,988	235,988	235,988	235,988	235,988
Deferred tax assets	614,703	614,703	614,703	614,703	614,703	614,703	614,703	614,703	614,703	614,703	614,703	614,703
<b>Total Assets</b>	<b>16,552,635</b>	<b>16,777,752</b>	<b>17,019,022</b>	<b>17,090,260</b>	<b>16,842,812</b>	<b>16,669,974</b>	<b>16,528,497</b>	<b>16,542,782</b>	<b>16,887,479</b>	<b>17,113,779</b>	<b>17,174,731</b>	<b>17,019,693</b>
<b>LIABILITIES</b>												
Trade and other payables	11,296,243	11,450,597	11,652,444	11,780,044	11,605,005	11,500,645	11,396,402	11,385,245	11,600,708	11,634,735	11,536,119	11,300,575
Corporate taxes payable	-	-	-	-	-	-	-	-	-	-	-	-
Deferred Revenue	541,110	577,411	541,911	347,152	197,247	69,903	5,671	20,966	95,412	200,061	304,983	401,543
Other payables	191,688	211,501	211,501	211,501	211,501	211,501	211,501	211,501	211,501	211,501	211,501	211,501
Current portion of lease liability	39,660	39,660	39,660	39,660	39,660	39,660	39,660	39,660	39,660	39,660	39,660	39,660
Current portion of derivative liabilities	1,416,830	1,416,830	1,416,830	1,416,830	1,416,830	1,416,830	1,416,830	1,416,830	1,416,830	1,416,830	1,416,830	1,416,830
<b>Current Liabilities</b>	<b>13,485,531</b>	<b>13,695,999</b>	<b>13,862,347</b>	<b>13,795,188</b>	<b>13,470,244</b>	<b>13,238,540</b>	<b>13,070,064</b>	<b>13,074,202</b>	<b>13,364,111</b>	<b>13,502,787</b>	<b>13,509,094</b>	<b>13,370,109</b>
Long term portion of lease liability	269,700	269,700	269,700	269,700	269,700	269,700	269,700	269,700	269,700	269,700	269,700	269,700
Derivative liabilities	789,264	789,264	789,264	789,264	789,264	789,264	789,264	789,264	789,264	789,264	789,264	789,264
Deferred tax liability	182,322	182,322	182,322	182,322	182,322	182,322	182,322	182,322	182,322	182,322	182,322	182,322
<b>Total Liabilities</b>	<b>14,726,817</b>	<b>14,937,286</b>	<b>15,103,633</b>	<b>15,036,474</b>	<b>14,711,530</b>	<b>14,479,826</b>	<b>14,311,351</b>	<b>14,315,489</b>	<b>14,605,398</b>	<b>14,744,073</b>	<b>14,750,380</b>	<b>14,611,396</b>
<b>EQUITY</b>												
Share Capital	7,364,210	7,364,210	7,364,210	7,364,210	7,364,210	7,364,210	7,364,210	7,364,210	7,364,210	7,364,210	7,364,210	7,364,210
Contributed Surplus	3,540,888	3,540,888	3,540,888	3,540,888	3,540,888	3,540,888	3,540,888	3,540,888	3,540,888	3,540,888	3,540,888	3,540,888
Unrealized Gain/Loss on power swaps	61,267	61,267	61,267	61,267	61,267	61,267	61,267	61,267	61,267	61,267	61,267	61,267
Retained Earnings, OCI	(1,640,548)	(1,625,899)	(1,550,977)	(1,412,579)	(1,335,084)	(1,276,218)	(1,249,219)	(1,239,072)	(1,184,284)	(1,096,660)	(1,042,014)	(1,058,067)
Dividends	(7,500,000)	(7,500,000)	(7,500,000)	(7,500,000)	(7,500,000)	(7,500,000)	(7,500,000)	(7,500,000)	(7,500,000)	(7,500,000)	(7,500,000)	(7,500,000)
<b>Total Equity</b>	<b>1,825,817</b>	<b>1,840,467</b>	<b>1,915,389</b>	<b>2,053,786</b>	<b>2,131,282</b>	<b>2,190,148</b>	<b>2,217,146</b>	<b>2,227,294</b>	<b>2,282,081</b>	<b>2,369,705</b>	<b>2,424,351</b>	<b>2,408,298</b>
<b>TOTAL LIABILITIES &amp; EQUITY</b>	<b>16,552,635</b>	<b>16,777,752</b>	<b>17,019,022</b>	<b>17,090,260</b>	<b>16,842,812</b>	<b>16,669,974</b>	<b>16,528,497</b>	<b>16,542,782</b>	<b>16,887,479</b>	<b>17,113,778</b>	<b>17,174,731</b>	<b>17,019,693</b>

# EXHIBIT IX

## PLANET'S F23 FINANCIAL PROJECTIONS – INCOME STATEMENT

Planet Apr-21 Forecast - FY23

	Oct-22	Nov-22	Dec-22	Jan-23	Feb-23	Mar-23	Apr-23	May-23	Jun-23	Jul-23	Aug-23	Sep-23	TOTAL
<b>Residential Consumer Equivalents</b>													
RCE's - ELECTRICITY	30,032	30,173	30,312	30,448	30,578	30,705	30,527	30,349	30,472	30,593	30,711	30,525	
RCE's - GAS	3,983	3,963	3,945	3,927	3,909	3,892	3,855	3,818	3,801	3,785	3,769	3,734	
<b>TOTAL RCE's</b>	<b>34,015</b>	<b>34,137</b>	<b>34,257</b>	<b>34,374</b>	<b>34,487</b>	<b>34,596</b>	<b>34,382</b>	<b>34,166</b>	<b>34,273</b>	<b>34,378</b>	<b>34,480</b>	<b>34,259</b>	
<b>Income Statement</b>													
Electricity Revenue	1,238,153	1,371,576	1,583,024	1,597,823	1,431,520	1,297,536	1,274,652	1,343,122	1,749,757	1,822,686	1,674,920	1,312,604	17,697,372
Electricity - Cost of goods sold	873,279	969,572	1,136,494	1,131,339	1,017,573	910,236	910,209	972,378	1,286,100	1,314,165	1,211,071	949,841	12,682,256
<b>Electricity Gross Margin</b>	<b>364,874</b>	<b>402,004</b>	<b>446,530</b>	<b>466,484</b>	<b>413,948</b>	<b>387,300</b>	<b>364,444</b>	<b>370,743</b>	<b>463,657</b>	<b>508,521</b>	<b>463,848</b>	<b>362,763</b>	<b>5,015,115</b>
<b>Electricity - GM %</b>	<b>29.5%</b>	<b>29.3%</b>	<b>28.2%</b>	<b>29.2%</b>	<b>28.9%</b>	<b>29.8%</b>	<b>28.6%</b>	<b>27.6%</b>	<b>26.5%</b>	<b>27.9%</b>	<b>27.7%</b>	<b>27.6%</b>	<b>28.3%</b>
Gas Revenue	87,153	188,409	277,279	437,366	341,620	314,449	213,988	146,075	88,438	62,914	63,441	66,426	2,287,558
Gas Cost of goods sold	56,441	121,622	179,300	283,904	222,282	205,119	140,418	95,656	57,608	40,837	41,056	42,928	1,487,173
<b>Gas Gross Margin</b>	<b>30,712</b>	<b>66,786</b>	<b>97,979</b>	<b>153,462</b>	<b>119,338</b>	<b>109,329</b>	<b>73,570</b>	<b>50,419</b>	<b>30,830</b>	<b>22,077</b>	<b>22,385</b>	<b>23,498</b>	<b>800,386</b>
<b>Gas GM%</b>	<b>35.2%</b>	<b>35.4%</b>	<b>35.3%</b>	<b>35.1%</b>	<b>34.9%</b>	<b>34.8%</b>	<b>34.4%</b>	<b>34.5%</b>	<b>34.9%</b>	<b>35.1%</b>	<b>35.3%</b>	<b>35.4%</b>	<b>35.0%</b>
<b>TOTAL REVENUE</b>	<b>1,325,306</b>	<b>1,559,984</b>	<b>1,860,303</b>	<b>2,035,188</b>	<b>1,773,140</b>	<b>1,611,985</b>	<b>1,488,640</b>	<b>1,489,197</b>	<b>1,838,195</b>	<b>1,885,600</b>	<b>1,738,361</b>	<b>1,379,030</b>	<b>19,984,930</b>
<b>TOTAL COST OF GOODS SOLD</b>	<b>929,720</b>	<b>1,091,194</b>	<b>1,315,794</b>	<b>1,415,243</b>	<b>1,239,854</b>	<b>1,115,356</b>	<b>1,050,627</b>	<b>1,068,034</b>	<b>1,343,708</b>	<b>1,355,002</b>	<b>1,252,128</b>	<b>992,769</b>	<b>14,169,429</b>
<b>Gas Gross Margin</b>	<b>395,586</b>	<b>468,790</b>	<b>544,509</b>	<b>619,946</b>	<b>533,286</b>	<b>496,629</b>	<b>438,013</b>	<b>421,163</b>	<b>494,487</b>	<b>530,598</b>	<b>486,233</b>	<b>386,261</b>	<b>5,815,501</b>
<b>Total Gross Margin %</b>	<b>29.8%</b>	<b>30.1%</b>	<b>29.3%</b>	<b>30.5%</b>	<b>30.1%</b>	<b>30.8%</b>	<b>29.4%</b>	<b>28.3%</b>	<b>26.9%</b>	<b>28.1%</b>	<b>28.0%</b>	<b>28.0%</b>	<b>29.1%</b>
<b>SELLING, GENERAL &amp; ADMIN EXPENSES</b>													
Residual commissions	-	-	-	-	-	-	-	-	-	-	-	-	-
Upfront Commission - Electricity	-	-	-	-	-	-	-	-	-	-	-	-	-
Call centre costs	67,910	67,843	68,051	68,256	68,454	68,645	68,554	68,184	68,090	68,272	68,451	68,349	819,058
Back office compensation	172,954	172,870	173,129	173,383	173,629	173,867	173,754	173,294	173,177	173,404	173,626	173,499	2,080,585
Variable operating expenses	141,792	141,630	142,134	142,628	143,106	143,567	143,347	142,453	142,227	142,667	143,099	142,852	1,711,503
Rent	18,098	18,098	18,098	18,098	18,098	18,098	18,098	18,098	18,098	18,098	18,098	18,098	217,173
Insurance	3,391	3,391	3,391	3,391	3,391	3,391	3,391	3,391	3,391	3,391	3,391	3,391	40,695
<b>TOTAL S, G &amp; A</b>	<b>404,145</b>	<b>403,832</b>	<b>404,803</b>	<b>405,756</b>	<b>406,678</b>	<b>407,568</b>	<b>407,144</b>	<b>405,420</b>	<b>404,984</b>	<b>405,832</b>	<b>406,665</b>	<b>406,188</b>	<b>4,869,014</b>
<b>EBITDA</b>	<b>(8,559)</b>	<b>64,959</b>	<b>139,706</b>	<b>214,190</b>	<b>126,608</b>	<b>89,061</b>	<b>30,870</b>	<b>15,743</b>	<b>89,503</b>	<b>124,766</b>	<b>79,569</b>	<b>(19,928)</b>	<b>946,487</b>
Finance Costs	6,640	6,640	6,640	6,640	6,640	6,640	6,640	6,640	6,640	6,640	6,640	6,640	79,680
Change in Fair Value of Derivative Contracts	-	-	-	-	-	-	-	-	-	-	-	-	-
Other Expense	-	-	-	-	-	-	-	-	-	-	-	-	-
Depreciation - Fixed assets	-	-	-	-	-	-	-	-	-	-	-	-	-
Amortization - Intangible assets	-	-	-	-	-	-	-	-	-	-	-	-	-
Income tax expense - cash paid taxes	(2,568)	19,488	41,912	64,257	37,982	26,718	9,261	4,723	26,851	37,430	23,871	(5,978)	283,946
Deferred tax expense	-	-	-	-	-	-	-	-	-	-	-	-	-
<b>Net Income/(Loss)</b>	<b>(12,631)</b>	<b>38,831</b>	<b>91,154</b>	<b>143,293</b>	<b>81,985</b>	<b>55,703</b>	<b>14,969</b>	<b>4,380</b>	<b>56,012</b>	<b>80,696</b>	<b>49,058</b>	<b>(20,589)</b>	<b>582,861</b>
<b>Covenants</b>													
Modified Working Capital	3,793,305	3,832,136	3,923,290	4,066,583	4,148,568	4,204,271	4,219,240	4,223,620	4,279,632	4,360,328	4,409,386	4,388,796	
Minimum Modified Working Capital	2,200,000	2,200,000	2,200,000	2,200,000	2,200,000	2,200,000	2,200,000	2,200,000	2,200,000	2,200,000	2,200,000	2,200,000	
Run and Maintain	-	-	117,354	-	-	280,981	-	-	75,361	-	-	109,165	
<b>SALES BY PRODUCT</b>													
Electricity Sales per RCE	41	45	52	52	47	42	42	44	57	60	55	43	581
Gas Sales per RCE	22	48	70	111	87	81	56	38	23	17	17	18	592
<b>TOTAL SALES PER RCE</b>	<b>63</b>	<b>93</b>	<b>123</b>	<b>164</b>	<b>134</b>	<b>123</b>	<b>97</b>	<b>83</b>	<b>81</b>	<b>76</b>	<b>71</b>	<b>61</b>	<b>582</b>
<b>ELECTRICITY SALES BY GEOGRAPHY</b>													
Canada	597,921	653,745	677,436	756,665	661,349	654,923	572,178	544,018	623,374	765,033	688,834	537,134	7,732,610
US	640,232	717,831	905,587	841,158	770,171	642,613	702,474	799,104	1,126,383	1,057,652	986,085	775,470	9,964,762
<b>TOTAL</b>	<b>1,238,153</b>	<b>1,371,576</b>	<b>1,583,024</b>	<b>1,597,823</b>	<b>1,431,520</b>	<b>1,297,536</b>	<b>1,274,652</b>	<b>1,343,122</b>	<b>1,749,757</b>	<b>1,822,686</b>	<b>1,674,920</b>	<b>1,312,604</b>	<b>17,697,372</b>
<b>GAS SALES BY GEOGRAPHY</b>													
Canada	57,219	114,482	176,954	307,588	254,162	247,033	187,803	123,860	68,131	45,260	43,044	43,912	1,669,448
US	29,935	73,926	100,325	129,778	87,458	67,415	26,184	22,215	20,307	17,655	20,398	22,514	618,110
<b>TOTAL</b>	<b>87,153</b>	<b>188,409</b>	<b>277,279</b>	<b>437,366</b>	<b>341,620</b>	<b>314,449</b>	<b>213,988</b>	<b>146,075</b>	<b>88,438</b>	<b>62,914</b>	<b>63,441</b>	<b>66,426</b>	<b>2,287,558</b>
<b>TOTAL SALES</b>	<b>1,325,306</b>	<b>1,559,984</b>	<b>1,860,303</b>	<b>2,035,188</b>	<b>1,773,140</b>	<b>1,611,985</b>	<b>1,488,640</b>	<b>1,489,197</b>	<b>1,838,195</b>	<b>1,885,600</b>	<b>1,738,361</b>	<b>1,379,030</b>	<b>19,984,930</b>

## EXHIBIT IX

### PLANET'S F23 FINANCIAL PROJECTIONS – CASH FLOW

1. COMPANY BACKGROUND AND ENGAGEMENT OVERVIEW
2. EXECUTIVE SUMMARY
3. CURRENT FINANCIAL POSITION
4. OVERVIEW OF PLANET'S APR-21 FORECAST
5. SENSITIZED FORECAST ASSUMPTIONS
6. EXHIBITS

	Oct-22	Nov-22	Dec-22	Jan-23	Feb-23	Mar-23	Apr-23	May-23	Jun-23	Jul-23	Aug-23	Sep-23	TOTAL
Planet Apr-21 Forecast - FY23													
<b>CASH FLOW STATEMENT</b>													
<b>OPERATING ACTIVITIES</b>													
Net income/(loss) from Income Statement	(12,631)	38,831	91,154	143,293	81,985	55,703	14,969	4,380	56,012	80,696	49,058	(20,589)	582,861
Add back: Income Taxes	-	-	-	-	-	-	-	-	-	-	-	-	-
Add back: Depreciation - fixed assets	-	-	-	-	-	-	-	-	-	-	-	-	-
Add back: Amortization - intangible assets	-	-	-	-	-	-	-	-	-	-	-	-	-
Add back: Change in Fair Value of Derivative C	-	-	-	-	-	-	-	-	-	-	-	-	-
<b>Changes in non-cash working capital items</b>													
Change in A/R - Electricity	(12,469)	(133,423)	(211,448)	(14,799)	166,302	133,984	22,884	(68,470)	(406,635)	(72,929)	147,766	362,316	(86,920)
Change in A/R - Gas	(18,058)	(101,255)	(88,871)	(160,087)	95,746	27,171	100,461	67,912	57,637	25,524	(527)	(2,984)	2,669
Change in A/R - Other	-	-	-	-	-	-	-	-	-	-	-	-	-
Change in Inventory - Gas in Storage (incl Gas	(73,809)	(3,152)	51,450	156,272	107,195	77,913	17,516	(31,138)	(64,077)	(83,868)	(83,479)	(77,427)	(6,606)
Change in Other current assets	-	-	-	-	-	-	-	-	-	-	-	-	-
Change in Trade and other payables	27,570	161,474	224,600	99,449	(175,388)	(124,499)	(64,729)	17,408	275,674	11,294	(102,874)	(259,359)	90,618
Change in Corporate taxes payable	-	-	-	-	-	-	-	-	-	-	-	-	-
Change in Accrued Gas	94,646	30,279	(29,611)	(162,455)	(125,040)	(106,222)	(53,578)	12,758	62,097	87,291	87,519	80,544	(21,771)
Change in operating assets and liabilities	17,879	(46,077)	(53,879)	(81,620)	68,814	8,348	22,553	(1,529)	(75,304)	(32,688)	48,405	103,089	(22,010)
<b>Cash provided by/(used in) operating activit</b>	<b>5,248</b>	<b>(7,246)</b>	<b>37,275</b>	<b>61,673</b>	<b>150,799</b>	<b>64,051</b>	<b>37,522</b>	<b>2,851</b>	<b>(19,292)</b>	<b>48,008</b>	<b>97,463</b>	<b>82,499</b>	<b>560,851</b>
<b>INVESTING ACTIVITIES</b>													
Change in Restricted cash	-	-	-	-	-	-	-	-	-	-	-	-	-
<b>Cash used in investing activities</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>FINANCING ACTIVITIES</b>													
Interco transfers	-	-	-	-	-	-	-	-	-	-	-	-	-
<b>Cash provided by financing activities</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>NET INCR/(DECR) IN CASH</b>	<b>5,248</b>	<b>(7,246)</b>	<b>37,275</b>	<b>61,673</b>	<b>150,799</b>	<b>64,051</b>	<b>37,522</b>	<b>2,851</b>	<b>(19,292)</b>	<b>48,008</b>	<b>97,463</b>	<b>82,499</b>	<b>560,851</b>
<b>CASH , BEGINNING OF PERIOD</b>	<b>12,878,196</b>	<b>12,883,444</b>	<b>12,876,198</b>	<b>12,913,472</b>	<b>12,975,145</b>	<b>13,125,944</b>	<b>13,189,995</b>	<b>13,227,517</b>	<b>13,230,368</b>	<b>13,211,076</b>	<b>13,259,084</b>	<b>13,356,547</b>	<b>12,878,196</b>
<b>CASH , END OF PERIOD</b>	<b>12,883,444</b>	<b>12,876,198</b>	<b>12,913,472</b>	<b>12,975,145</b>	<b>13,125,944</b>	<b>13,189,995</b>	<b>13,227,517</b>	<b>13,230,368</b>	<b>13,211,076</b>	<b>13,259,084</b>	<b>13,356,547</b>	<b>13,439,047</b>	<b>13,439,047</b>

# EXHIBIT IX

## PLANET'S F23 FINANCIAL PROJECTIONS – BALANCE SHEET

1. COMPANY BACKGROUND AND ENGAGEMENT OVERVIEW
2. EXECUTIVE SUMMARY
3. CURRENT FINANCIAL POSITION
4. OVERVIEW OF PLANET'S APR-21 FORECAST
5. SENSITIZED FORECAST ASSUMPTIONS
6. EXHIBITS

	Oct-22	Nov-22	Dec-22	Jan-23	Feb-23	Planet Apr-21 Forecast - FY23		May-23	Jun-23	Jul-23	Aug-23	Sep-23
						Mar-23	Apr-23					
<b>Balance Sheet</b>												
<b>ASSETS</b>												
Cash	12,883,444	12,876,198	12,913,472	12,975,145	13,125,944	13,189,995	13,227,517	13,230,368	13,211,076	13,259,084	13,356,547	13,439,047
Restricted cash	111,725	111,725	111,725	111,725	111,725	111,725	111,725	111,725	111,725	111,725	111,725	111,725
Accounts Receivable	1,494,808	1,729,486	2,029,805	2,204,690	1,942,642	1,781,486	1,658,142	1,658,699	2,007,697	2,055,102	1,907,863	1,548,531
Gas Delivered in Excess of Consumptions	393,548	396,701	345,250	188,978	81,784	3,871	(13,645)	17,493	81,571	165,439	248,918	326,345
Other current assets	945,614	945,614	945,614	945,614	945,614	945,614	945,614	945,614	945,614	945,614	945,614	945,614
<b>Current Assets</b>	<b>15,829,139</b>	<b>16,059,724</b>	<b>16,345,866</b>	<b>16,426,153</b>	<b>16,207,710</b>	<b>16,032,692</b>	<b>15,929,353</b>	<b>15,963,899</b>	<b>16,357,683</b>	<b>16,536,964</b>	<b>16,570,667</b>	<b>16,371,262</b>
Property and equipment	449,448	449,448	449,448	449,448	449,448	449,448	449,448	449,448	449,448	449,448	449,448	449,448
Intangible assets	235,988	235,988	235,988	235,988	235,988	235,988	235,988	235,988	235,988	235,988	235,988	235,988
Deferred tax assets	614,703	614,703	614,703	614,703	614,703	614,703	614,703	614,703	614,703	614,703	614,703	614,703
<b>Total Assets</b>	<b>17,129,278</b>	<b>17,359,862</b>	<b>17,646,005</b>	<b>17,726,291</b>	<b>17,507,848</b>	<b>17,332,830</b>	<b>17,229,492</b>	<b>17,264,038</b>	<b>17,657,822</b>	<b>17,837,103</b>	<b>17,870,805</b>	<b>17,671,401</b>
<b>LIABILITIES</b>												
Trade and other payables	11,328,144	11,489,618	11,714,218	11,813,667	11,638,278	11,513,780	11,449,051	11,466,458	11,742,132	11,753,426	11,650,552	11,391,193
Corporate taxes payable	-	-	-	-	-	-	-	-	-	-	-	-
Deferred Revenue	496,189	526,468	496,857	334,402	209,362	103,140	49,562	62,320	124,418	211,709	299,228	379,772
Other payables	211,501	211,501	211,501	211,501	211,501	211,501	211,501	211,501	211,501	211,501	211,501	211,501
Current portion of lease liability	39,660	39,660	39,660	39,660	39,660	39,660	39,660	39,660	39,660	39,660	39,660	39,660
Current portion of derivative liabilities	1,416,830	1,416,830	1,416,830	1,416,830	1,416,830	1,416,830	1,416,830	1,416,830	1,416,830	1,416,830	1,416,830	1,416,830
<b>Current Liabilities</b>	<b>13,492,325</b>	<b>13,684,078</b>	<b>13,879,067</b>	<b>13,816,060</b>	<b>13,515,632</b>	<b>13,284,911</b>	<b>13,166,604</b>	<b>13,196,770</b>	<b>13,534,542</b>	<b>13,633,126</b>	<b>13,617,771</b>	<b>13,438,956</b>
Long term portion of lease liability	269,700	269,700	269,700	269,700	269,700	269,700	269,700	269,700	269,700	269,700	269,700	269,700
Derivative liabilities	789,264	789,264	789,264	789,264	789,264	789,264	789,264	789,264	789,264	789,264	789,264	789,264
Deferred tax liability	182,322	182,322	182,322	182,322	182,322	182,322	182,322	182,322	182,322	182,322	182,322	182,322
<b>Total Liabilities</b>	<b>14,733,611</b>	<b>14,925,364</b>	<b>15,120,353</b>	<b>15,057,347</b>	<b>14,756,918</b>	<b>14,526,198</b>	<b>14,407,890</b>	<b>14,438,056</b>	<b>14,775,828</b>	<b>14,874,413</b>	<b>14,859,057</b>	<b>14,680,242</b>
<b>EQUITY</b>												
Share Capital	7,364,210	7,364,210	7,364,210	7,364,210	7,364,210	7,364,210	7,364,210	7,364,210	7,364,210	7,364,210	7,364,210	7,364,210
Contributed Surplus	3,540,888	3,540,888	3,540,888	3,540,888	3,540,888	3,540,888	3,540,888	3,540,888	3,540,888	3,540,888	3,540,888	3,540,888
Unrealized Gain/Loss on power swaps	61,267	61,267	61,267	61,267	61,267	61,267	61,267	61,267	61,267	61,267	61,267	61,267
Retained Earnings, OCI	(1,070,699)	(1,031,868)	(940,714)	(797,421)	(715,435)	(659,733)	(644,764)	(640,384)	(584,372)	(503,675)	(454,618)	(475,207)
Dividends	(7,500,000)	(7,500,000)	(7,500,000)	(7,500,000)	(7,500,000)	(7,500,000)	(7,500,000)	(7,500,000)	(7,500,000)	(7,500,000)	(7,500,000)	(7,500,000)
<b>Total Equity</b>	<b>2,395,667</b>	<b>2,434,498</b>	<b>2,525,652</b>	<b>2,668,945</b>	<b>2,750,930</b>	<b>2,806,633</b>	<b>2,821,602</b>	<b>2,825,982</b>	<b>2,881,994</b>	<b>2,962,690</b>	<b>3,011,748</b>	<b>2,991,158</b>
<b>TOTAL LIABILITIES &amp; EQUITY</b>	<b>17,129,278</b>	<b>17,359,862</b>	<b>17,646,005</b>	<b>17,726,291</b>	<b>17,507,848</b>	<b>17,332,830</b>	<b>17,229,492</b>	<b>17,264,038</b>	<b>17,657,821</b>	<b>17,837,102</b>	<b>17,870,805</b>	<b>17,671,401</b>

# EXHIBIT X

## PLANET'S F24 FINANCIAL PROJECTIONS – INCOME STATEMENT

- COMPANY BACKGROUND AND ENGAGEMENT OVERVIEW
- EXECUTIVE SUMMARY
- CURRENT FINANCIAL POSITION
- OVERVIEW OF PLANET'S APR-21 FORECAST
- SENSITIZED FORECAST ASSUMPTIONS
- EXHIBITS

Planet Apr-21 Forecast - FY24													TOTAL
	Oct-23	Nov-23	Dec-23	Jan-24	Feb-24	Mar-24	Apr-24	May-24	Jun-24	Jul-24	Aug-24	Sep-24	
<b>Residential Consumer Equivalents</b>													
RCE's - ELECTRICITY	30,439	30,753	31,063	31,366	31,661	31,949	31,830	31,709	31,988	32,263	32,532	32,394	
RCE's - GAS	3,709	3,714	3,720	3,726	3,732	3,737	3,713	3,689	3,694	3,700	3,707	3,683	
<b>TOTAL RCE's</b>	<b>34,148</b>	<b>34,467</b>	<b>34,783</b>	<b>35,092</b>	<b>35,393</b>	<b>35,687</b>	<b>35,543</b>	<b>35,398</b>	<b>35,682</b>	<b>35,963</b>	<b>36,238</b>	<b>36,077</b>	
<b>Income Statement</b>													
Electricity Revenue	1,340,952	1,490,468	1,755,488	1,741,813	1,569,156	1,398,999	1,406,475	1,508,710	2,004,554	2,038,113	1,880,433	1,475,508	19,610,669
Electricity - Cost of goods sold	978,242	1,089,643	1,301,592	1,275,412	1,153,167	1,015,659	1,037,953	1,127,057	1,517,010	1,517,148	1,403,302	1,101,892	14,518,076
<b>Electricity Gross Margin</b>	<b>362,710</b>	<b>400,826</b>	<b>453,896</b>	<b>466,401</b>	<b>415,989</b>	<b>383,340</b>	<b>368,522</b>	<b>381,653</b>	<b>487,543</b>	<b>520,965</b>	<b>477,131</b>	<b>373,617</b>	<b>5,092,593</b>
<b>Electricity - GM %</b>	<b>27.0%</b>	<b>26.9%</b>	<b>25.9%</b>	<b>26.8%</b>	<b>26.5%</b>	<b>27.4%</b>	<b>26.2%</b>	<b>25.3%</b>	<b>24.3%</b>	<b>25.6%</b>	<b>25.4%</b>	<b>25.3%</b>	<b>26.0%</b>
Gas Revenue	88,649	196,497	285,057	435,299	333,018	299,737	193,179	134,416	85,307	62,550	64,642	68,438	2,246,789
Gas Cost of goods sold	56,787	125,390	182,283	279,704	214,661	193,884	126,064	87,439	55,075	40,193	41,381	43,737	1,446,597
<b>Gas Gross Margin</b>	<b>31,862</b>	<b>71,107</b>	<b>102,775</b>	<b>155,595</b>	<b>118,357</b>	<b>105,852</b>	<b>67,115</b>	<b>46,977</b>	<b>30,233</b>	<b>22,357</b>	<b>23,261</b>	<b>24,700</b>	<b>800,192</b>
<b>Gas GM%</b>	<b>35.9%</b>	<b>36.2%</b>	<b>36.1%</b>	<b>35.7%</b>	<b>35.5%</b>	<b>35.3%</b>	<b>34.7%</b>	<b>34.9%</b>	<b>35.4%</b>	<b>35.7%</b>	<b>36.0%</b>	<b>36.1%</b>	<b>35.6%</b>
<b>TOTAL REVENUE</b>	<b>1,429,600</b>	<b>1,686,965</b>	<b>2,040,545</b>	<b>2,177,113</b>	<b>1,902,174</b>	<b>1,698,736</b>	<b>1,599,655</b>	<b>1,643,125</b>	<b>2,089,861</b>	<b>2,100,663</b>	<b>1,945,075</b>	<b>1,543,946</b>	<b>21,857,458</b>
<b>TOTAL COST OF GOODS SOLD</b>	<b>1,035,029</b>	<b>1,215,032</b>	<b>1,483,874</b>	<b>1,555,116</b>	<b>1,367,828</b>	<b>1,209,544</b>	<b>1,164,017</b>	<b>1,214,496</b>	<b>1,572,085</b>	<b>1,557,340</b>	<b>1,444,683</b>	<b>1,145,629</b>	<b>15,964,673</b>
<b>TOTAL GROSS MARGIN</b>	<b>394,571</b>	<b>471,933</b>	<b>556,671</b>	<b>621,997</b>	<b>534,346</b>	<b>489,192</b>	<b>435,637</b>	<b>428,630</b>	<b>517,776</b>	<b>543,323</b>	<b>500,392</b>	<b>398,317</b>	<b>5,892,785</b>
<b>Total Gross Margin %</b>	<b>27.6%</b>	<b>28.0%</b>	<b>27.3%</b>	<b>28.6%</b>	<b>28.1%</b>	<b>28.8%</b>	<b>27.2%</b>	<b>26.1%</b>	<b>24.8%</b>	<b>25.9%</b>	<b>25.7%</b>	<b>25.8%</b>	<b>27.0%</b>
<b>SELLING, GENERAL &amp; ADMIN EXPENSES</b>													
Residual commissions	-	-	-	-	-	-	-	-	-	-	-	-	-
Upfront Commission - Electricity	-	-	-	-	-	-	-	-	-	-	-	-	-
Call centre costs	68,063	68,242	68,787	69,324	69,849	70,361	70,490	70,242	70,361	70,847	71,325	71,423	839,314
Back office compensation	173,143	173,366	174,044	174,712	175,364	176,001	176,162	175,852	176,001	176,605	177,200	177,322	2,105,771
Variable operating expenses	142,161	142,593	143,912	145,210	146,478	147,715	148,027	147,426	147,715	148,890	150,046	150,282	1,760,454
Rent	18,098	18,098	18,098	18,098	18,098	18,098	18,098	18,098	18,098	18,098	18,098	18,098	217,173
Insurance	3,391	3,391	3,391	3,391	3,391	3,391	3,391	3,391	3,391	3,391	3,391	3,391	40,695
<b>TOTAL S, G &amp; A</b>	<b>404,856</b>	<b>405,689</b>	<b>408,233</b>	<b>410,735</b>	<b>413,181</b>	<b>415,566</b>	<b>416,168</b>	<b>415,009</b>	<b>415,565</b>	<b>417,831</b>	<b>420,060</b>	<b>420,516</b>	<b>4,963,408</b>
<b>EBITDA</b>	<b>(10,284)</b>	<b>66,244</b>	<b>148,438</b>	<b>211,262</b>	<b>121,166</b>	<b>73,627</b>	<b>19,469</b>	<b>13,620</b>	<b>102,211</b>	<b>125,492</b>	<b>80,332</b>	<b>(22,198)</b>	<b>929,378</b>
Finance Costs	6,640	6,640	6,640	6,640	6,640	6,640	6,640	6,640	6,640	6,640	6,640	6,640	79,680
Change in Fair Value of Derivative Contracts	-	-	-	-	-	-	-	-	-	-	-	-	-
Other Expense	-	-	-	-	-	-	-	-	-	-	-	-	-
Depreciation - Fixed assets	-	-	-	-	-	-	-	-	-	-	-	-	-
Amortization - Intangible assets	-	-	-	-	-	-	-	-	-	-	-	-	-
Income tax expense - cash paid taxes	(3,085)	19,873	44,531	63,379	36,350	22,088	5,841	4,086	30,663	37,648	24,100	(6,659)	278,813
Deferred tax expense	-	-	-	-	-	-	-	-	-	-	-	-	-
<b>Net Income/(Loss)</b>	<b>(13,839)</b>	<b>39,731</b>	<b>97,266</b>	<b>141,243</b>	<b>78,176</b>	<b>44,899</b>	<b>6,988</b>	<b>2,894</b>	<b>64,908</b>	<b>81,204</b>	<b>49,592</b>	<b>(22,179)</b>	<b>570,884</b>
<b>Covenants</b>													
Modified Working Capital	4,374,958	4,414,688	4,511,955	4,653,198	4,731,374	4,776,273	4,783,261	4,786,155	4,851,063	4,932,267	4,981,860	4,959,681	
Minimum Modified Working Capital	2,200,000	2,200,000	2,200,000	2,200,000	2,200,000	2,200,000	2,200,000	2,200,000	2,200,000	2,200,000	2,200,000	2,200,000	
Run and Maintain	-	-	123,158	-	-	264,318	-	-	74,790	-	-	108,618	
<b>SALES BY PRODUCT</b>													
Electricity Sales per RCE	44	48	57	56	50	44	44	48	63	63	58	46	619
Gas Sales per RCE	24	53	77	117	89	80	52	36	23	17	17	19	606
<b>TOTAL SALES PER RCE</b>	<b>68</b>	<b>101</b>	<b>133</b>	<b>172</b>	<b>139</b>	<b>124</b>	<b>96</b>	<b>84</b>	<b>86</b>	<b>80</b>	<b>75</b>	<b>64</b>	<b>618</b>
<b>ELECTRICITY SALES BY GEOGRAPHY</b>													
Canada	514,149	562,151	582,524	650,652	568,691	563,164	492,013	467,798	536,036	657,848	592,325	461,879	6,649,230
US	826,803	928,317	1,172,964	1,091,161	1,000,466	835,835	914,463	1,040,911	1,468,518	1,380,265	1,288,108	1,013,630	12,961,439
<b>TOTAL</b>	<b>1,340,952</b>	<b>1,490,468</b>	<b>1,755,488</b>	<b>1,741,813</b>	<b>1,569,156</b>	<b>1,398,999</b>	<b>1,406,475</b>	<b>1,508,710</b>	<b>2,004,554</b>	<b>2,038,113</b>	<b>1,880,433</b>	<b>1,475,508</b>	<b>19,610,669</b>
<b>GAS SALES BY GEOGRAPHY</b>													
Canada	47,728	95,493	147,603	256,569	212,004	206,058	156,653	103,316	56,830	37,753	35,904	36,629	1,392,540
US	40,921	101,004	137,454	178,730	121,013	93,678	36,527	31,100	28,477	24,798	28,738	31,809	854,249
<b>TOTAL</b>	<b>88,649</b>	<b>196,497</b>	<b>285,057</b>	<b>435,299</b>	<b>333,018</b>	<b>299,737</b>	<b>193,179</b>	<b>134,416</b>	<b>85,307</b>	<b>62,550</b>	<b>64,642</b>	<b>68,438</b>	<b>2,246,789</b>
<b>TOTAL SALES</b>	<b>1,429,600</b>	<b>1,686,965</b>	<b>2,040,545</b>	<b>2,177,113</b>	<b>1,902,174</b>	<b>1,698,736</b>	<b>1,599,655</b>	<b>1,643,125</b>	<b>2,089,861</b>	<b>2,100,663</b>	<b>1,945,075</b>	<b>1,543,946</b>	<b>21,857,458</b>

# EXHIBIT X

## PLANET'S F24 FINANCIAL PROJECTIONS – CASH FLOW

1. COMPANY BACKGROUND AND ENGAGEMENT OVERVIEW
2. EXECUTIVE SUMMARY
3. CURRENT FINANCIAL POSITION
4. OVERVIEW OF PLANET'S APR-21 FORECAST
5. SENSITIZED FORECAST ASSUMPTIONS

### 6. EXHIBITS

	Oct-23	Nov-23	Dec-23	Jan-24	Feb-24	Mar-24	Apr-24	May-24	Jun-24	Jul-24	Aug-24	Sep-24	TOTAL
Planet Apr-21 Forecast - FY24													
<b>CASH FLOW STATEMENT</b>													
<b>OPERATING ACTIVITIES</b>													
Net income/(loss) from Income Statement	(13,839)	39,731	97,266	141,243	78,176	44,899	6,988	2,894	64,908	81,204	49,592	(22,179)	570,884
Add back: Income Taxes	-	-	-	-	-	-	-	-	-	-	-	-	-
Add back: Depreciation - fixed assets	-	-	-	-	-	-	-	-	-	-	-	-	-
Add back: Amortization - intangible assets	-	-	-	-	-	-	-	-	-	-	-	-	-
Add back: Change in Fair Value of Derivative C	-	-	-	-	-	-	-	-	-	-	-	-	-
<b>Changes in non-cash working capital items</b>													
Change in A/R - Electricity	(28,348)	(149,517)	(265,019)	13,674	172,657	170,157	(7,476)	(102,234)	(495,844)	(33,559)	157,680	404,925	(162,904)
Change in A/R - Gas	(22,223)	(107,848)	(88,560)	(150,242)	102,282	33,281	106,557	58,764	49,108	22,757	(2,092)	(3,795)	(2,012)
Change in A/R - Other	-	-	-	-	-	-	-	-	-	-	-	-	-
Change in Inventory - Gas in Storage (incl Gas	(67,415)	6,175	59,667	156,377	98,635	69,168	4,713	(38,626)	(66,328)	(84,650)	(84,139)	(78,380)	(24,803)
Change in Other current assets	-	-	-	-	-	-	-	-	-	-	-	-	-
Change in Trade and other payables	42,260	180,003	268,842	71,241	(187,288)	(158,284)	(45,526)	50,478	357,589	(14,744)	(112,657)	(299,055)	152,860
Change in Corporate taxes payable	-	-	-	-	-	-	-	-	-	-	-	-	-
Change in Accrued Gas	78,947	25,257	(24,700)	(135,509)	(100,453)	(88,603)	(44,691)	10,642	51,797	72,812	73,003	67,184	(14,314)
Change in operating assets and liabilities	3,222	(45,930)	(49,770)	(44,458)	85,833	25,718	13,577	(20,976)	(103,677)	(37,384)	31,794	90,879	(51,173)
<b>Cash provided by/(used in) operating activiti</b>	<b>(10,617)</b>	<b>(6,199)</b>	<b>47,496</b>	<b>96,785</b>	<b>164,009</b>	<b>70,617</b>	<b>20,565</b>	<b>(18,082)</b>	<b>(38,769)</b>	<b>43,820</b>	<b>81,387</b>	<b>68,700</b>	<b>519,711</b>
<b>INVESTING ACTIVITIES</b>													
Change in Restricted cash	-	-	-	-	-	-	-	-	-	-	-	-	-
<b>Cash used in investing activities</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>FINANCING ACTIVITIES</b>													
Interco transfers	-	-	-	-	-	-	-	-	-	-	-	-	-
<b>Cash provided by financing activities</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>NET INCR/(DECR) IN CASH</b>	<b>(10,617)</b>	<b>(6,199)</b>	<b>47,496</b>	<b>96,785</b>	<b>164,009</b>	<b>70,617</b>	<b>20,565</b>	<b>(18,082)</b>	<b>(38,769)</b>	<b>43,820</b>	<b>81,387</b>	<b>68,700</b>	<b>519,711</b>
<b>CASH , BEGINNING OF PERIOD</b>	<b>13,439,047</b>	<b>13,428,429</b>	<b>13,422,230</b>	<b>13,469,726</b>	<b>13,566,511</b>	<b>13,730,520</b>	<b>13,801,137</b>	<b>13,821,702</b>	<b>13,803,620</b>	<b>13,764,851</b>	<b>13,808,671</b>	<b>13,890,058</b>	<b>13,439,047</b>
<b>CASH , END OF PERIOD</b>	<b>13,428,429</b>	<b>13,422,230</b>	<b>13,469,726</b>	<b>13,566,511</b>	<b>13,730,520</b>	<b>13,801,137</b>	<b>13,821,702</b>	<b>13,803,620</b>	<b>13,764,851</b>	<b>13,808,671</b>	<b>13,890,058</b>	<b>13,958,758</b>	<b>13,958,758</b>

# EXHIBIT X

## PLANET'S F24 FINANCIAL PROJECTIONS – BALANCE SHEET

1. COMPANY BACKGROUND AND ENGAGEMENT OVERVIEW
2. EXECUTIVE SUMMARY
3. CURRENT FINANCIAL POSITION
4. OVERVIEW OF PLANET'S APR-21 FORECAST
5. SENSITIZED FORECAST ASSUMPTIONS
6. EXHIBITS

	Oct-23	Nov-23	Dec-23	Jan-24	Feb-24	Planet Apr-21 Forecast - FY24		May-24	Jun-24	Jul-24	Aug-24	Sep-24
						Mar-24	Apr-24					
<b>Balance Sheet</b>												
<b>ASSETS</b>												
Cash	13,428,429	13,422,230	13,469,726	13,566,511	13,730,520	13,801,137	13,821,702	13,803,620	13,764,851	13,808,671	13,890,058	13,958,758
Restricted cash	111,725	111,725	111,725	111,725	111,725	111,725	111,725	111,725	111,725	111,725	111,725	111,725
Accounts Receivable	1,599,102	1,856,467	2,210,047	2,346,614	2,071,676	1,868,238	1,769,156	1,812,627	2,259,363	2,270,165	2,114,577	1,713,448
Gas Delivered in Excess of Consumptions	393,760	387,585	327,919	171,541	72,906	3,738	(975)	37,651	103,979	188,629	272,768	351,148
Other current assets	945,614	945,614	945,614	945,614	945,614	945,614	945,614	945,614	945,614	945,614	945,614	945,614
<b>Current Assets</b>	<b>16,478,631</b>	<b>16,723,622</b>	<b>17,065,030</b>	<b>17,142,006</b>	<b>16,932,441</b>	<b>16,730,452</b>	<b>16,647,223</b>	<b>16,711,238</b>	<b>17,185,532</b>	<b>17,324,804</b>	<b>17,334,742</b>	<b>17,080,693</b>
Property and equipment	449,448	449,448	449,448	449,448	449,448	449,448	449,448	449,448	449,448	449,448	449,448	449,448
Intangible assets	235,988	235,988	235,988	235,988	235,988	235,988	235,988	235,988	235,988	235,988	235,988	235,988
Deferred tax assets	614,703	614,703	614,703	614,703	614,703	614,703	614,703	614,703	614,703	614,703	614,703	614,703
<b>Total Assets</b>	<b>17,778,769</b>	<b>18,023,760</b>	<b>18,365,169</b>	<b>18,442,145</b>	<b>18,232,579</b>	<b>18,030,591</b>	<b>17,947,361</b>	<b>18,011,376</b>	<b>18,485,670</b>	<b>18,624,943</b>	<b>18,634,881</b>	<b>18,380,831</b>
<b>LIABILITIES</b>												
Trade and other payables	11,433,453	11,613,456	11,882,298	11,953,540	11,766,252	11,607,968	11,562,441	11,612,920	11,970,509	11,955,764	11,843,107	11,544,053
Corporate taxes payable	-	-	-	-	-	-	-	-	-	-	-	-
Deferred Revenue	458,719	483,976	459,276	323,767	223,314	134,711	90,019	100,662	152,459	225,271	298,274	365,458
Other payables	211,501	211,501	211,501	211,501	211,501	211,501	211,501	211,501	211,501	211,501	211,501	211,501
Current portion of lease liability	39,660	39,660	39,660	39,660	39,660	39,660	39,660	39,660	39,660	39,660	39,660	39,660
Current portion of derivative liabilities	1,416,830	1,416,830	1,416,830	1,416,830	1,416,830	1,416,830	1,416,830	1,416,830	1,416,830	1,416,830	1,416,830	1,416,830
<b>Current Liabilities</b>	<b>13,560,163</b>	<b>13,765,423</b>	<b>14,009,566</b>	<b>13,945,298</b>	<b>13,657,557</b>	<b>13,410,670</b>	<b>13,320,452</b>	<b>13,381,573</b>	<b>13,790,959</b>	<b>13,849,027</b>	<b>13,809,373</b>	<b>13,577,502</b>
Long term portion of lease liability	269,700	269,700	269,700	269,700	269,700	269,700	269,700	269,700	269,700	269,700	269,700	269,700
Derivative liabilities	789,264	789,264	789,264	789,264	789,264	789,264	789,264	789,264	789,264	789,264	789,264	789,264
Deferred tax liability	182,322	182,322	182,322	182,322	182,322	182,322	182,322	182,322	182,322	182,322	182,322	182,322
<b>Total Liabilities</b>	<b>14,801,450</b>	<b>15,006,710</b>	<b>15,250,852</b>	<b>15,186,585</b>	<b>14,898,843</b>	<b>14,651,956</b>	<b>14,561,739</b>	<b>14,622,859</b>	<b>15,032,246</b>	<b>15,090,314</b>	<b>15,050,659</b>	<b>14,818,788</b>
<b>EQUITY</b>												
Share Capital	7,364,210	7,364,210	7,364,210	7,364,210	7,364,210	7,364,210	7,364,210	7,364,210	7,364,210	7,364,210	7,364,210	7,364,210
Contributed Surplus	3,540,888	3,540,888	3,540,888	3,540,888	3,540,888	3,540,888	3,540,888	3,540,888	3,540,888	3,540,888	3,540,888	3,540,888
Unrealized Gain/Loss on power swaps	61,267	61,267	61,267	61,267	61,267	61,267	61,267	61,267	61,267	61,267	61,267	61,267
Retained Earnings, OCI	(489,046)	(449,315)	(352,049)	(210,806)	(132,630)	(87,731)	(80,742)	(77,848)	(12,941)	68,264	117,856	95,677
Dividends	(7,500,000)	(7,500,000)	(7,500,000)	(7,500,000)	(7,500,000)	(7,500,000)	(7,500,000)	(7,500,000)	(7,500,000)	(7,500,000)	(7,500,000)	(7,500,000)
<b>Total Equity</b>	<b>2,977,319</b>	<b>3,017,050</b>	<b>3,114,316</b>	<b>3,255,560</b>	<b>3,333,736</b>	<b>3,378,634</b>	<b>3,385,623</b>	<b>3,388,517</b>	<b>3,453,425</b>	<b>3,534,629</b>	<b>3,584,221</b>	<b>3,562,043</b>
<b>TOTAL LIABILITIES &amp; EQUITY</b>	<b>17,778,769</b>	<b>18,023,760</b>	<b>18,365,169</b>	<b>18,442,144</b>	<b>18,232,579</b>	<b>18,030,591</b>	<b>17,947,361</b>	<b>18,011,376</b>	<b>18,485,670</b>	<b>18,624,943</b>	<b>18,634,880</b>	<b>18,380,831</b>



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RICHTER

# EXHIBIT XI

## PLANET'S F25 FINANCIAL PROJECTIONS – INCOME STATEMENT

Planet Apr-21 Forecast - FY25

1. COMPANY BACKGROUND AND ENGAGEMENT OVERVIEW
2. EXECUTIVE SUMMARY
3. CURRENT FINANCIAL POSITION
4. OVERVIEW OF PLANET'S APR-21 FORECAST
5. SENSITIZED FORECAST ASSUMPTIONS
6. EXHIBITS

	Oct-24	Nov-24	Dec-24	Jan-25	Feb-25	Mar-25	Apr-25	May-25	Jun-25	Jul-25	Aug-25	Sep-25	TOTAL
<b>Residential Consumer Equivalents</b>													
RCE's - ELECTRICITY	32,354	32,814	33,268	33,712	34,146	34,571	34,485	34,396	34,807	35,212	35,609	35,496	
RCE's - GAS	3,669	3,695	3,721	3,748	3,774	3,800	3,785	3,770	3,795	3,820	3,845	3,830	
<b>TOTAL RCE's</b>	<b>36,023</b>	<b>36,509</b>	<b>36,989</b>	<b>37,460</b>	<b>37,920</b>	<b>38,370</b>	<b>38,270</b>	<b>38,166</b>	<b>38,602</b>	<b>39,032</b>	<b>39,454</b>	<b>39,326</b>	
<b>Income Statement</b>													
Electricity Revenue	1,522,255	1,693,979	2,027,233	1,976,409	1,785,670	1,565,635	1,604,806	1,746,212	2,354,679	2,343,202	2,165,970	1,699,646	22,485,697
Electricity - Cost of goods sold	1,144,696	1,275,953	1,544,804	1,490,159	1,350,277	1,171,428	1,217,501	1,338,081	1,823,045	1,789,997	1,657,862	1,301,591	17,105,392
<b>Electricity Gross Margin</b>	<b>377,559</b>	<b>418,027</b>	<b>482,429</b>	<b>486,250</b>	<b>435,393</b>	<b>394,207</b>	<b>387,305</b>	<b>408,131</b>	<b>531,634</b>	<b>553,205</b>	<b>508,108</b>	<b>398,055</b>	<b>5,380,304</b>
<b>Electricity - GM %</b>	<b>24.8%</b>	<b>24.7%</b>	<b>23.8%</b>	<b>24.6%</b>	<b>24.4%</b>	<b>25.2%</b>	<b>24.1%</b>	<b>23.4%</b>	<b>22.6%</b>	<b>23.6%</b>	<b>23.5%</b>	<b>23.4%</b>	<b>23.9%</b>
Gas Revenue	97,779	222,914	317,715	466,164	347,029	303,252	181,760	129,576	87,097	66,017	69,881	74,669	2,363,853
Gas Cost of goods sold	61,873	140,502	200,696	296,033	221,198	194,120	117,705	83,559	55,639	41,950	44,230	47,183	1,504,688
<b>Gas Gross Margin</b>	<b>35,907</b>	<b>82,411</b>	<b>117,019</b>	<b>170,131</b>	<b>125,832</b>	<b>109,132</b>	<b>64,056</b>	<b>46,018</b>	<b>31,457</b>	<b>24,067</b>	<b>25,650</b>	<b>27,486</b>	<b>859,165</b>
<b>Gas GM%</b>	<b>36.7%</b>	<b>37.0%</b>	<b>36.8%</b>	<b>36.5%</b>	<b>36.3%</b>	<b>36.0%</b>	<b>35.2%</b>	<b>35.5%</b>	<b>36.1%</b>	<b>36.5%</b>	<b>36.7%</b>	<b>36.8%</b>	<b>36.3%</b>
<b>TOTAL REVENUE</b>	<b>1,620,034</b>	<b>1,916,893</b>	<b>2,344,948</b>	<b>2,442,573</b>	<b>2,132,700</b>	<b>1,868,887</b>	<b>1,786,566</b>	<b>1,875,788</b>	<b>2,441,776</b>	<b>2,409,220</b>	<b>2,235,850</b>	<b>1,774,315</b>	<b>24,849,550</b>
<b>TOTAL COST OF GOODS SOLD</b>	<b>1,206,568</b>	<b>1,416,455</b>	<b>1,745,500</b>	<b>1,786,192</b>	<b>1,571,474</b>	<b>1,365,548</b>	<b>1,335,205</b>	<b>1,421,639</b>	<b>1,878,684</b>	<b>1,831,947</b>	<b>1,702,092</b>	<b>1,348,774</b>	<b>18,610,080</b>
<b>Gas Gross Margin</b>	<b>413,466</b>	<b>500,438</b>	<b>599,448</b>	<b>656,381</b>	<b>561,225</b>	<b>503,339</b>	<b>451,361</b>	<b>454,149</b>	<b>563,091</b>	<b>577,273</b>	<b>533,758</b>	<b>425,541</b>	<b>6,239,470</b>
<b>Total Gross Margin %</b>	<b>25.5%</b>	<b>26.1%</b>	<b>25.6%</b>	<b>26.9%</b>	<b>26.3%</b>	<b>26.9%</b>	<b>25.3%</b>	<b>24.2%</b>	<b>23.1%</b>	<b>24.0%</b>	<b>23.9%</b>	<b>24.0%</b>	<b>25.1%</b>
<b>SELLING, GENERAL &amp; ADMIN EXPENSES</b>													
Residual commissions	-	-	-	-	-	-	-	-	-	-	-	-	-
Upfront Commission - Electricity	-	-	-	-	-	-	-	-	-	-	-	-	-
Call centre costs	71,238	71,610	72,441	73,259	74,059	74,842	75,143	74,968	75,252	75,996	76,729	76,982	892,520
Back office compensation	177,092	177,554	178,587	179,604	180,600	181,573	181,947	181,729	182,083	183,008	183,919	184,234	2,171,928
Variable operating expenses	149,835	150,734	152,742	154,718	156,653	158,545	159,272	158,848	159,536	161,334	163,105	163,717	1,889,037
Rent	18,098	18,098	18,098	18,098	18,098	18,098	18,098	18,098	18,098	18,098	18,098	18,098	217,173
Insurance	3,391	3,391	3,391	3,391	3,391	3,391	3,391	3,391	3,391	3,391	3,391	3,391	40,695
<b>TOTAL S, G &amp; A</b>	<b>419,654</b>	<b>421,388</b>	<b>425,259</b>	<b>429,069</b>	<b>432,801</b>	<b>436,449</b>	<b>437,851</b>	<b>437,033</b>	<b>438,360</b>	<b>441,827</b>	<b>445,242</b>	<b>446,422</b>	<b>5,211,355</b>
<b>EBITDA</b>	<b>(6,189)</b>	<b>79,050</b>	<b>174,189</b>	<b>227,312</b>	<b>128,424</b>	<b>66,890</b>	<b>13,510</b>	<b>17,116</b>	<b>124,731</b>	<b>135,445</b>	<b>88,516</b>	<b>(20,881)</b>	<b>1,028,115</b>
Finance Costs	6,640	6,640	6,640	6,640	6,640	6,640	6,640	6,640	6,640	6,640	6,640	6,640	79,680
Change in Fair Value of Derivative Contracts	-	-	-	-	-	-	-	-	-	-	-	-	-
Other Expense	-	-	-	-	-	-	-	-	-	-	-	-	-
Depreciation - Fixed assets	-	-	-	-	-	-	-	-	-	-	-	-	-
Amortization - Intangible assets	-	-	-	-	-	-	-	-	-	-	-	-	-
Income tax expense - cash paid taxes	(1,857)	23,715	52,257	68,194	38,527	20,067	4,053	5,135	37,419	40,634	26,555	(6,264)	308,435
Deferred tax expense	-	-	-	-	-	-	-	-	-	-	-	-	-
<b>Net Income/(Loss)</b>	<b>(10,972)</b>	<b>48,695</b>	<b>115,292</b>	<b>152,479</b>	<b>83,257</b>	<b>40,183</b>	<b>2,817</b>	<b>5,341</b>	<b>80,672</b>	<b>88,172</b>	<b>55,322</b>	<b>(21,257)</b>	<b>640,001</b>
<b>Covenants</b>													
Modified Working Capital	4,948,709	4,997,404	5,112,697	5,265,175	5,348,432	5,388,615	5,391,432	5,396,773	5,477,445	5,565,617	5,620,938	5,599,681	
Minimum Modified Working Capital	2,200,000	2,200,000	2,200,000	2,200,000	2,200,000	2,200,000	2,200,000	2,200,000	2,200,000	2,200,000	2,200,000	2,200,000	
Run and Maintain	-	-	153,016	-	-	275,919	-	-	88,830	-	-	122,236	
<b>SALES BY PRODUCT</b>													
Electricity Sales per RCE	47	52	61	59	52	45	47	51	68	67	61	48	657
Gas Sales per RCE	27	60	85	124	92	80	48	34	23	17	18	19	627
<b>TOTAL SALES PER RCE</b>	<b>74</b>	<b>112</b>	<b>146</b>	<b>183</b>	<b>144</b>	<b>125</b>	<b>95</b>	<b>85</b>	<b>91</b>	<b>84</b>	<b>79</b>	<b>67</b>	<b>654</b>
<b>ELECTRICITY SALES BY GEOGRAPHY</b>													
Canada	442,114	483,391	500,909	559,492	489,014	484,262	423,079	402,257	460,934	565,680	509,337	397,167	5,717,637
US	1,080,141	1,210,588	1,526,324	1,416,917	1,296,656	1,081,373	1,181,727	1,343,955	1,893,745	1,777,522	1,656,633	1,302,479	16,768,059
<b>TOTAL</b>	<b>1,522,255</b>	<b>1,693,979</b>	<b>2,027,233</b>	<b>1,976,409</b>	<b>1,785,670</b>	<b>1,565,635</b>	<b>1,604,806</b>	<b>1,746,212</b>	<b>2,354,679</b>	<b>2,343,202</b>	<b>2,165,970</b>	<b>1,699,646</b>	<b>22,485,697</b>
<b>GAS SALES BY GEOGRAPHY</b>													
Canada	39,811	79,654	123,120	214,012	176,840	171,880	130,669	86,179	47,404	31,491	29,949	30,553	1,161,562
US	57,968	143,260	194,595	252,152	170,190	131,372	51,091	43,397	39,693	34,527	39,932	44,116	1,202,291
<b>TOTAL</b>	<b>97,779</b>	<b>222,914</b>	<b>317,715</b>	<b>466,164</b>	<b>347,029</b>	<b>303,252</b>	<b>181,760</b>	<b>129,576</b>	<b>87,097</b>	<b>66,017</b>	<b>69,881</b>	<b>74,669</b>	<b>2,363,853</b>
<b>TOTAL SALES</b>	<b>1,620,034</b>	<b>1,916,893</b>	<b>2,344,948</b>	<b>2,442,573</b>	<b>2,132,700</b>	<b>1,868,887</b>	<b>1,786,566</b>	<b>1,875,788</b>	<b>2,441,776</b>	<b>2,409,220</b>	<b>2,235,850</b>	<b>1,774,315</b>	<b>24,849,550</b>

RICHTER

## EXHIBIT XI

### PLANET'S F25 FINANCIAL PROJECTIONS – CASH FLOW

1. COMPANY BACKGROUND AND ENGAGEMENT OVERVIEW
2. EXECUTIVE SUMMARY
3. CURRENT FINANCIAL POSITION
4. OVERVIEW OF PLANET'S APR-21 FORECAST
5. SENSITIZED FORECAST ASSUMPTIONS

6. EXHIBITS

	Oct-24	Nov-24	Dec-24	Jan-25	Feb-25	Mar-25	Apr-25	May-25	Jun-25	Jul-25	Aug-25	Sep-25	TOTAL
Planet Apr-21 Forecast - FY25													
<b>CASH FLOW STATEMENT</b>													
<b>OPERATING ACTIVITIES</b>													
Net income/(loss) from Income Statement	(10,972)	48,695	115,292	152,479	83,257	40,183	2,817	5,341	80,672	88,172	55,322	(21,257)	640,001
Add back: Income Taxes	-	-	-	-	-	-	-	-	-	-	-	-	-
Add back: Depreciation - fixed assets	-	-	-	-	-	-	-	-	-	-	-	-	-
Add back: Amortization - intangible assets	-	-	-	-	-	-	-	-	-	-	-	-	-
Add back: Change in Fair Value of Derivative C	-	-	-	-	-	-	-	-	-	-	-	-	-
<b>Changes in non-cash working capital items</b>													
Change in A/R - Electricity	(46,746)	(171,725)	(333,254)	50,824	190,739	220,035	(39,171)	(141,406)	(608,467)	11,477	177,232	466,324	(224,137)
Change in A/R - Gas	(29,342)	(125,134)	(94,801)	(148,449)	119,135	43,778	121,492	52,184	42,480	21,079	(3,863)	(4,788)	(6,231)
Change in A/R - Other	-	-	-	-	-	-	-	-	-	-	-	-	-
Change in Inventory - Gas in Storage (incl Gas	(64,972)	18,357	74,673	168,499	104,663	63,635	(9,968)	(49,791)	(73,118)	(90,804)	(89,932)	(83,995)	(32,753)
Change in Other current assets	-	-	-	-	-	-	-	-	-	-	-	-	-
Change in Trade and other payables	60,940	209,887	329,045	40,692	(214,718)	(205,926)	(30,343)	86,434	457,045	(46,737)	(129,855)	(353,318)	203,145
Change in Corporate taxes payable	-	-	-	-	-	-	-	-	-	-	-	-	-
Change in Accrued Gas	65,852	21,068	(20,603)	(113,032)	(87,000)	(73,907)	(37,278)	8,877	43,206	60,735	60,894	56,040	(15,148)
Change in operating assets and liabilities	(14,268)	(47,548)	(44,940)	(1,467)	112,819	47,614	4,732	(43,702)	(138,855)	(44,250)	14,476	80,263	(75,125)
<b>Cash provided by/(used in) operating activit</b>	<b>(25,240)</b>	<b>1,148</b>	<b>70,352</b>	<b>151,012</b>	<b>196,076</b>	<b>87,797</b>	<b>7,549</b>	<b>(38,361)</b>	<b>(58,183)</b>	<b>43,922</b>	<b>69,798</b>	<b>59,006</b>	<b>564,876</b>
<b>INVESTING ACTIVITIES</b>													
Change in Restricted cash	-	-	-	-	-	-	-	-	-	-	-	-	-
<b>Cash used in investing activities</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>FINANCING ACTIVITIES</b>													
Interco transfers	-	-	-	-	-	-	-	-	-	-	-	-	-
<b>Cash provided by financing activities</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>NET INCR/(DECR) IN CASH</b>	<b>(25,240)</b>	<b>1,148</b>	<b>70,352</b>	<b>151,012</b>	<b>196,076</b>	<b>87,797</b>	<b>7,549</b>	<b>(38,361)</b>	<b>(58,183)</b>	<b>43,922</b>	<b>69,798</b>	<b>59,006</b>	<b>564,876</b>
<b>CASH , BEGINNING OF PERIOD</b>	<b>13,958,758</b>	<b>13,933,518</b>	<b>13,934,665</b>	<b>14,005,018</b>	<b>14,156,029</b>	<b>14,352,106</b>	<b>14,439,903</b>	<b>14,447,451</b>	<b>14,409,091</b>	<b>14,350,908</b>	<b>14,394,830</b>	<b>14,464,627</b>	<b>13,958,758</b>
<b>CASH , END OF PERIOD</b>	<b>13,933,518</b>	<b>13,934,665</b>	<b>14,005,018</b>	<b>14,156,029</b>	<b>14,352,106</b>	<b>14,439,903</b>	<b>14,447,451</b>	<b>14,409,091</b>	<b>14,350,908</b>	<b>14,394,830</b>	<b>14,464,627</b>	<b>14,523,633</b>	<b>14,523,633</b>

# EXHIBIT XI

## PLANET'S F25 FINANCIAL PROJECTIONS – BALANCE SHEET

1. COMPANY BACKGROUND AND ENGAGEMENT OVERVIEW
2. EXECUTIVE SUMMARY
3. CURRENT FINANCIAL POSITION
4. OVERVIEW OF PLANET'S APR-21 FORECAST
5. SENSITIZED FORECAST ASSUMPTIONS
6. EXHIBITS

	Oct-24	Nov-24	Dec-24	Jan-25	Feb-25	Planet Apr-21 Forecast - FY25		May-25	Jun-25	Jul-25	Aug-25	Sep-25
						Mar-25	Apr-25					
<b>Balance Sheet</b>												
<b>ASSETS</b>												
Cash	13,933,518	13,934,665	14,005,018	14,156,029	14,352,106	14,439,903	14,447,451	14,409,091	14,350,908	14,394,830	14,464,627	14,523,633
Restricted cash	111,725	111,725	111,725	111,725	111,725	111,725	111,725	111,725	111,725	111,725	111,725	111,725
Accounts Receivable	1,789,536	2,086,395	2,514,450	2,612,075	2,302,201	2,038,389	1,956,068	2,045,290	2,611,278	2,578,721	2,405,352	1,943,816
Gas Delivered in Excess of Consumptions	416,120	397,763	323,091	154,591	49,928	(13,706)	(3,738)	46,053	119,171	209,975	299,907	383,901
Other current assets	945,614	945,614	945,614	945,614	945,614	945,614	945,614	945,614	945,614	945,614	945,614	945,614
<b>Current Assets</b>	<b>17,196,513</b>	<b>17,476,162</b>	<b>17,899,897</b>	<b>17,980,035</b>	<b>17,761,574</b>	<b>17,521,925</b>	<b>17,457,120</b>	<b>17,557,773</b>	<b>18,138,695</b>	<b>18,240,865</b>	<b>18,227,225</b>	<b>17,908,690</b>
Property and equipment	449,448	449,448	449,448	449,448	449,448	449,448	449,448	449,448	449,448	449,448	449,448	449,448
Intangible assets	235,988	235,988	235,988	235,988	235,988	235,988	235,988	235,988	235,988	235,988	235,988	235,988
Deferred tax assets	614,703	614,703	614,703	614,703	614,703	614,703	614,703	614,703	614,703	614,703	614,703	614,703
<b>Total Assets</b>	<b>18,496,651</b>	<b>18,776,301</b>	<b>19,200,036</b>	<b>19,280,174</b>	<b>19,061,713</b>	<b>18,822,063</b>	<b>18,757,259</b>	<b>18,857,911</b>	<b>19,438,834</b>	<b>19,541,003</b>	<b>19,527,364</b>	<b>19,208,829</b>
<b>LIABILITIES</b>												
Trade and other payables	11,604,992	11,814,879	12,143,924	12,184,616	11,969,898	11,763,972	11,733,629	11,820,063	12,277,108	12,230,371	12,100,516	11,747,198
Corporate taxes payable	-	-	-	-	-	-	-	-	-	-	-	-
Deferred Revenue	431,310	452,378	431,775	318,743	231,743	157,836	120,558	129,435	172,641	233,376	294,270	350,310
Other payables	211,501	211,501	211,501	211,501	211,501	211,501	211,501	211,501	211,501	211,501	211,501	211,501
Current portion of lease liability	39,660	39,660	39,660	39,660	39,660	39,660	39,660	39,660	39,660	39,660	39,660	39,660
Current portion of derivative liabilities	1,416,830	1,416,830	1,416,830	1,416,830	1,416,830	1,416,830	1,416,830	1,416,830	1,416,830	1,416,830	1,416,830	1,416,830
<b>Current Liabilities</b>	<b>13,704,294</b>	<b>13,935,248</b>	<b>14,243,691</b>	<b>14,171,350</b>	<b>13,869,633</b>	<b>13,589,800</b>	<b>13,522,179</b>	<b>13,617,490</b>	<b>14,117,740</b>	<b>14,131,738</b>	<b>14,062,777</b>	<b>13,765,499</b>
Long term portion of lease liability	269,700	269,700	269,700	269,700	269,700	269,700	269,700	269,700	269,700	269,700	269,700	269,700
Derivative liabilities	789,264	789,264	789,264	789,264	789,264	789,264	789,264	789,264	789,264	789,264	789,264	789,264
Deferred tax liability	182,322	182,322	182,322	182,322	182,322	182,322	182,322	182,322	182,322	182,322	182,322	182,322
<b>Total Liabilities</b>	<b>14,945,580</b>	<b>15,176,535</b>	<b>15,484,977</b>	<b>15,412,637</b>	<b>15,110,919</b>	<b>14,831,086</b>	<b>14,763,465</b>	<b>14,858,776</b>	<b>15,359,027</b>	<b>15,373,025</b>	<b>15,304,063</b>	<b>15,006,785</b>
<b>EQUITY</b>												
Share Capital	7,364,210	7,364,210	7,364,210	7,364,210	7,364,210	7,364,210	7,364,210	7,364,210	7,364,210	7,364,210	7,364,210	7,364,210
Contributed Surplus	3,540,888	3,540,888	3,540,888	3,540,888	3,540,888	3,540,888	3,540,888	3,540,888	3,540,888	3,540,888	3,540,888	3,540,888
Unrealized Gain/Loss on power swaps	61,267	61,267	61,267	61,267	61,267	61,267	61,267	61,267	61,267	61,267	61,267	61,267
Retained Earnings, OCI	84,705	133,401	248,693	401,172	484,429	524,612	527,429	532,770	613,442	701,613	756,935	735,678
Dividends	(7,500,000)	(7,500,000)	(7,500,000)	(7,500,000)	(7,500,000)	(7,500,000)	(7,500,000)	(7,500,000)	(7,500,000)	(7,500,000)	(7,500,000)	(7,500,000)
<b>Total Equity</b>	<b>3,551,071</b>	<b>3,599,766</b>	<b>3,715,058</b>	<b>3,867,537</b>	<b>3,950,794</b>	<b>3,990,977</b>	<b>3,993,794</b>	<b>3,999,135</b>	<b>4,079,807</b>	<b>4,167,978</b>	<b>4,223,300</b>	<b>4,202,043</b>
<b>TOTAL LIABILITIES &amp; EQUITY</b>	<b>18,496,651</b>	<b>18,776,301</b>	<b>19,200,036</b>	<b>19,280,173</b>	<b>19,061,713</b>	<b>18,822,063</b>	<b>18,757,259</b>	<b>18,857,911</b>	<b>19,438,834</b>	<b>19,541,003</b>	<b>19,527,363</b>	<b>19,208,829</b>

## EXHIBIT XII

## PLANET'S APR-21 INCOME STATEMENT FORECAST YEAR OVER YEAR

1. COMPANY BACKGROUND AND ENGAGEMENT OVERVIEW
2. EXECUTIVE SUMMARY
3. CURRENT FINANCIAL POSITION
4. OVERVIEW OF PLANET'S APR-21 FORECAST
5. SENSITIZED FORECAST ASSUMPTIONS
6. EXHIBITS

	Sep-17 FY17	Sep-18 FY18	Sep-19 FY19	Sep-20 FY20	Sep-21 FY21	Sep-22 FY22	Sep-23 FY23	Sep-24 FY24	Sep-25 FY25
<b>Residential Consumer Equivalents</b>									
RCE's - ELECTRICITY	71,982	59,144	48,720	36,250	31,200	30,193	30,525	32,394	35,496
RCE's - GAS	22,615	17,792	12,127	6,596	4,482	4,022	3,734	3,683	3,830
<b>TOTAL RCE's</b>	<b>94,597</b>	<b>76,936</b>	<b>60,847</b>	<b>42,846</b>	<b>35,683</b>	<b>34,215</b>	<b>34,259</b>	<b>36,077</b>	<b>39,326</b>
<b>Income Statement</b>									
Electricity Revenue	44,055,539	36,294,243	29,950,702	20,905,196	17,161,894	16,776,730	17,697,372	19,610,669	22,485,697
Electricity - Cost of goods sold	26,837,379	23,628,871	21,689,124	13,556,708	11,967,253	11,753,157	12,682,256	14,518,076	17,105,392
<b>Electricity Gross Margin</b>	<b>17,218,159</b>	<b>12,665,372</b>	<b>8,261,578</b>	<b>7,348,487</b>	<b>5,194,641</b>	<b>5,023,573</b>	<b>5,015,115</b>	<b>5,092,593</b>	<b>5,380,304</b>
<b>Electricity - GM %</b>	<b>39.1%</b>	<b>34.9%</b>	<b>27.6%</b>	<b>35.2%</b>	<b>30.3%</b>	<b>29.9%</b>	<b>28.3%</b>	<b>26.0%</b>	<b>23.9%</b>
Gas Revenue	15,846,731	12,495,635	10,158,105	5,160,338	2,641,856	2,449,324	2,287,558	2,246,789	2,363,853
Gas Cost of goods sold	9,942,109	8,089,842	6,619,979	3,263,069	1,652,703	1,604,518	1,487,173	1,446,597	1,504,688
<b>Gas Gross Margin</b>	<b>5,904,622</b>	<b>4,405,792</b>	<b>3,538,126</b>	<b>1,897,269</b>	<b>989,154</b>	<b>844,807</b>	<b>800,386</b>	<b>800,192</b>	<b>859,165</b>
<b>Gas GM%</b>	<b>37.3%</b>	<b>35.3%</b>	<b>34.8%</b>	<b>36.8%</b>	<b>37.4%</b>	<b>34.5%</b>	<b>35.0%</b>	<b>35.6%</b>	<b>36.3%</b>
<b>TOTAL REVENUE</b>	<b>59,902,270</b>	<b>48,789,878</b>	<b>40,108,807</b>	<b>26,065,534</b>	<b>19,803,751</b>	<b>19,226,054</b>	<b>19,984,930</b>	<b>21,857,458</b>	<b>24,849,550</b>
<b>TOTAL COST OF GOODS SOLD</b>	<b>36,779,488</b>	<b>31,718,714</b>	<b>28,309,103</b>	<b>16,819,778</b>	<b>13,619,956</b>	<b>13,357,674</b>	<b>14,169,429</b>	<b>15,964,673</b>	<b>18,610,080</b>
<b>TOTAL GROSS MARGIN</b>	<b>23,122,781</b>	<b>17,071,164</b>	<b>11,799,704</b>	<b>9,245,756</b>	<b>6,183,795</b>	<b>5,868,380</b>	<b>5,815,501</b>	<b>5,892,785</b>	<b>6,239,470</b>
<b>Total Gross Margin %</b>	<b>38.6%</b>	<b>35.0%</b>	<b>29.4%</b>	<b>35.5%</b>	<b>31.2%</b>	<b>30.5%</b>	<b>29.1%</b>	<b>27.0%</b>	<b>25.1%</b>
<b>SELLING, GENERAL &amp; ADMIN EXPENSES</b>									
Residual commissions	7,023,640	5,168,662	4,028,255	1,175,576	433,429	35,862	-	-	-
Upfront Commission - Electricity	2,124,377	410,639	138,291	15,343	6,670	-	-	-	-
Call centre costs	594,942	918,750	858,000	827,400	865,021	832,911	819,058	839,314	892,520
Back office compensation	3,168,554	2,557,679	2,495,069	2,159,483	2,196,479	2,097,810	2,080,585	2,105,771	2,171,928
Variable operating expenses	1,459,415	2,366,264	1,822,699	3,735,462	2,013,324	1,744,981	1,711,503	1,760,454	1,889,037
Rent	691,605	667,941	625,280	442,275	179,002	217,173	217,173	217,173	217,173
Insurance	49,788	38,954	32,045	30,267	43,561	40,695	40,695	40,695	40,695
<b>TOTAL S, G &amp; A</b>	<b>15,112,321</b>	<b>12,128,889</b>	<b>9,999,639</b>	<b>8,385,806</b>	<b>5,737,487</b>	<b>4,969,432</b>	<b>4,869,014</b>	<b>4,963,408</b>	<b>5,211,355</b>
<b>EBITDA</b>	<b>8,010,461</b>	<b>4,942,276</b>	<b>1,800,065</b>	<b>859,951</b>	<b>446,308</b>	<b>898,948</b>	<b>946,487</b>	<b>929,378</b>	<b>1,028,115</b>
Finance Costs	862,091	480,422	57,887	134,337	91,606	79,680	79,680	79,680	79,680
Change in Fair Value of Derivative Contract	(377,235)	(6,291,475)	(3,179,702)	(2,201,879)	101,882	-	-	-	-
Other Expense	2,864	4,980	(17,874)	22,935	294,415	-	-	-	-
Depreciation - Fixed assets	229,287	166,129	113,791	169,759	105,640	-	-	-	-
Amortization - Intangible assets	5,612,501	5,634,578	5,456,002	1,024,666	13,322	-	-	-	-
Income tax expense - cash paid taxes	1,455,677	1,428,197	731,475	104,409	152,768	269,684	283,946	278,813	308,435
Deferred tax expense	(1,346,698)	139,871	(386,646)	378,672	127,838	-	-	-	-
<b>Net Income/(Loss)</b>	<b>2,059,693</b>	<b>(2,426,500)</b>	<b>(974,868)</b>	<b>1,227,052</b>	<b>(441,162)</b>	<b>549,583</b>	<b>582,861</b>	<b>570,884</b>	<b>640,001</b>

**SALES BY PRODUCT**

Electricity Sales/Ave RCE/Mnth	612	614	535	500	520	547	581	619	657
Gas Sales/Ave RCE/Mnth	701	702	660	557	521	579	592	606	627
<b>SALES PER RCE</b>	<b>633</b>	<b>634</b>	<b>562</b>	<b>510</b>	<b>520</b>	<b>550</b>	<b>582</b>	<b>618</b>	<b>654</b>

**ELECTRICITY SALES BY GEOGRAPHY**

Canada	34,168,509	28,075,597	21,704,944	14,121,011	9,963,304	8,992,508	7,732,610	6,649,230	5,717,637
US	9,887,029	8,218,647	8,229,704	6,507,965	7,198,590	7,784,222	9,964,762	12,961,439	16,768,059
<b>TOTAL</b>	<b>44,055,539</b>	<b>36,294,243</b>	<b>29,934,648</b>	<b>20,628,976</b>	<b>17,161,894</b>	<b>16,776,730</b>	<b>17,697,372</b>	<b>19,610,669</b>	<b>22,485,697</b>

**GAS SALES BY GEOGRAPHY**

Canada	15,521,063	12,211,607	9,610,529	4,887,654	2,303,714	2,001,419	1,669,448	1,392,540	1,161,562
US	325,668	284,028	563,634	426,313	338,142	447,905	618,110	854,249	1,202,291
<b>TOTAL</b>	<b>15,846,731</b>	<b>12,495,635</b>	<b>10,174,163</b>	<b>5,313,968</b>	<b>2,641,856</b>	<b>2,449,324</b>	<b>2,287,558</b>	<b>2,246,789</b>	<b>2,363,853</b>

<b>TOTAL SALES</b>	<b>59,902,270</b>	<b>48,789,878</b>	<b>40,108,811</b>	<b>25,942,943</b>	<b>19,803,751</b>	<b>19,226,054</b>	<b>19,984,930</b>	<b>21,857,458</b>	<b>24,849,550</b>
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## EXHIBIT XII

### PLANET'S APR-21 CASH FLOW FORECAST YEAR OVER YEAR

1. COMPANY BACKGROUND AND ENGAGEMENT OVERVIEW
2. EXECUTIVE SUMMARY
3. CURRENT FINANCIAL POSITION
4. OVERVIEW OF PLANET'S APR-21 FORECAST
5. SENSITIZED FORECAST ASSUMPTIONS
6. EXHIBITS

	Sep-17 FY17	Sep-18 FY18	Sep-19 FY19	Sep-20 FY20	Sep-21 FY21	Sep-22 FY22	Sep-23 FY23	Sep-24 FY24	Sep-25 FY25
<b>CASH FLOW STATEMENT</b>									
<b>OPERATING ACTIVITIES</b>									
Net income/(loss) from Income Statement	1,571,973	3,379,574	(974,868)	1,227,052	(441,162)	549,583	582,861	570,884	640,001
Add back: Income Taxes	(1,346,698)	139,871	(386,646)	378,672	127,838	-	-	-	-
Add back: Depreciation - fixed assets	229,287	166,129	113,791	169,759	105,640	-	-	-	-
Add back: Amortization - intangible assets	5,612,501	5,634,578	5,456,002	1,024,666	13,322	-	-	-	-
Add back: Finance Costs	143,061	99,921	-	-	-	-	-	-	-
Add back: Change in Fair Value of Derivative Contracts	(377,235)	(6,291,475)	(3,179,702)	(2,201,879)	101,882	-	-	-	-
<b>Changes in non-cash working capital items</b>									
Change in A/R - Electricity	714,570	1,868,225	557,239	715,107	(591,816)	(23,066)	(86,920)	(162,904)	(224,137)
Change in A/R - Gas	-	-	320,762	287,332	233,495	6,684	2,669	(2,012)	(6,231)
Change in A/R - Other	(133,323)	(252,054)	219,580	(41,610)	66,540	-	-	-	-
Change in Inventory - RECs	15,382	(421)	(650)	(10)	-	-	-	-	-
Change in Inventory - Gas in Storage (incl	419,574	98,979	356,429	189,939	(93,872)	1,150	(6,606)	(24,803)	(32,753)
Change in Other current assets	(4,602)	(761)	3,255	48,508	(157,251)	-	-	-	-
Change in Trade and other payables	(764,903)	3,036,667	3,903,263	315,626	395,001	56,623	90,618	152,860	203,145
Change in Corporate taxes payable	(319,337)	(1,219,610)	(546,581)	152,257	(11,919)	-	-	-	-
Change in Accrued Gas	(506,643)	(164,712)	(382,556)	(218,331)	5,180	(26,101)	(21,771)	(14,314)	(15,148)
Change in Revolving credit facility	(629,229)	(544,375)	(276)	-	-	-	-	-	-
Change in operating assets and liabilities	(1,208,511)	2,821,938	4,430,465	1,448,818	(154,643)	15,291	(22,010)	(51,173)	(75,125)
Cash provided by/(used in) operating activities	4,624,378	5,950,536	5,459,042	2,047,088	(247,124)	564,875	560,851	519,711	564,876
<b>INVESTING ACTIVITIES</b>									
Customer Acquisition Costs	(753,281)	(204,533)	(847,493)	-	-	-	-	-	-
Property and equipment additions	(139,216)	-	(0)	(180,565)	3	-	-	-	-
Intangible assets additions	-	-	(0)	(70,187)	1	-	-	-	-
Change in Restricted cash	194,739	315,988	(85,347)	791,348	124,778	-	-	-	-
Cash used in investing activities	(697,758)	111,455	(932,840)	540,596	124,781	-	-	-	-
<b>FINANCING ACTIVITIES</b>									
Fulcrum loan repayments	(2,400,000)	(4,000,000)	-	-	-	-	-	-	-
Interco transfers	(18)	-	0	0	(0)	-	-	-	-
Dividends Paid	(4,500,000)	(3,000,000)	-	-	-	-	-	-	-
Translation Adjustment	(57,012)	72,001	4,308	(21,083)	138,133	-	-	-	-
Cash provided by financing activities	(6,957,030)	(6,927,999)	4,308	(21,083)	138,133	-	-	-	-
<b>NET INCR/(DECR) IN CASH</b>	<b>(3,030,410)</b>	<b>(866,008)</b>	<b>4,530,510</b>	<b>2,566,601</b>	<b>15,790</b>	<b>564,875</b>	<b>560,851</b>	<b>519,711</b>	<b>564,876</b>
<b>CASH , BEGINNING OF PERIOD</b>	<b>9,096,837</b>	<b>6,066,427</b>	<b>5,200,419</b>	<b>9,730,929</b>	<b>12,297,531</b>	<b>12,313,321</b>	<b>12,878,196</b>	<b>13,439,047</b>	<b>13,958,758</b>
<b>CASH , END OF PERIOD</b>	<b>6,066,427</b>	<b>5,200,420</b>	<b>9,730,929</b>	<b>12,297,531</b>	<b>12,313,321</b>	<b>12,878,196</b>	<b>13,439,047</b>	<b>13,958,758</b>	<b>14,523,633</b>

## EXHIBIT XII

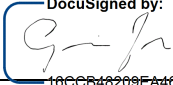
## PLANET'S APR-21 BALANCE SHEET FORECAST YEAR OVER YEAR

1. COMPANY BACKGROUND AND ENGAGEMENT OVERVIEW
2. EXECUTIVE SUMMARY
3. CURRENT FINANCIAL POSITION
4. OVERVIEW OF PLANET'S APR-21 FORECAST
5. SENSITIZED FORECAST ASSUMPTIONS
6. EXHIBITS

	Sep-17 FY17	Sep-18 FY18	Sep-19 FY19	Sep-20 FY20	Sep-21 FY21	Sep-22 FY22	Sep-23 FY23	Sep-24 FY24	Sep-25 FY25
<b>Balance Sheet</b>									
<b>ASSETS</b>									
Cash	6,066,427	5,200,419	9,730,929	12,297,531	12,313,321	12,878,196	13,439,047	13,958,758	14,523,633
Restricted cash	1,258,591	942,508	1,027,856	236,506	111,725	111,725	111,725	111,725	111,725
Accounts Receivable - Electricity	3,428,703	1,874,327	1,325,909	610,802	1,202,618	1,225,684	1,312,604	1,475,508	1,699,646
Accounts Receivable - Gas	1,240,038	926,189	596,606	309,274	75,779	69,095	66,426	68,438	74,669
Accounts Receivable - Other	161,959	414,012	194,432	236,042	169,502	169,502	169,502	169,502	169,502
Accounts Receivable	4,830,700	3,214,528	2,116,947	1,156,118	1,447,899	1,464,281	1,548,531	1,713,448	1,943,816
Gas Delivered in Excess of Consumptions	872,365	773,387	416,957	227,018	320,890	319,739	326,345	351,148	383,901
Other current assets	265,485	266,667	966,515	765,844	945,614	945,614	945,614	945,614	945,614
<b>Current Assets</b>	<b>13,293,568</b>	<b>10,397,508</b>	<b>14,259,204</b>	<b>14,683,017</b>	<b>15,139,449</b>	<b>15,719,555</b>	<b>16,371,262</b>	<b>17,080,693</b>	<b>17,908,690</b>
Property and equipment	445,170	279,137	165,369	555,924	449,448	449,448	449,448	449,448	449,448
Intangible assets	11,241,532	5,811,487	1,202,954	248,476	235,988	235,988	235,988	235,988	235,988
Deferred tax assets	3,727,378	2,024,644	1,190,635	602,176	614,703	614,703	614,703	614,703	614,703
<b>Total Assets</b>	<b>28,707,668</b>	<b>18,512,775</b>	<b>16,818,161</b>	<b>16,089,593</b>	<b>16,439,587</b>	<b>17,019,693</b>	<b>17,671,401</b>	<b>18,380,831</b>	<b>19,208,829</b>
<b>LIABILITIES</b>									
Trade and other payables	4,349,547	6,841,838	10,744,825	11,060,452	11,279,813	11,300,575	11,391,193	11,544,053	11,747,198
Corporate taxes payable	1,075,572	(144,038)	11,835	11,919	-	-	-	-	-
Deferred Revenue	1,165,510	1,000,798	618,241	399,910	427,644	401,543	379,772	365,458	350,310
Other payables	-	-	-	-	175,640	211,501	211,501	211,501	211,501
Current portion of long-term debt	2,319,310	-	-	-	-	-	-	-	-
Current portion of lease liability	-	-	-	163,851	39,660	39,660	39,660	39,660	39,660
Current portion of derivative liabilities	7,331,652	5,052,766	3,182,588	1,450,539	1,416,830	1,416,830	1,416,830	1,416,830	1,416,830
<b>Current Liabilities</b>	<b>16,241,590</b>	<b>12,751,364</b>	<b>14,557,489</b>	<b>13,086,671</b>	<b>13,339,587</b>	<b>13,370,109</b>	<b>13,438,956</b>	<b>13,577,502</b>	<b>13,765,499</b>
Long-term debt	1,580,768	-	-	214,982	-	-	-	-	-
Long term portion of lease liability	-	-	-	78,028	269,700	269,700	269,700	269,700	269,700
Derivative liabilities	6,607,540	2,593,575	960,786	757,601	789,264	789,264	789,264	789,264	789,264
Deferred tax liability	3,174,957	1,612,641	391,985	137,456	182,322	182,322	182,322	182,322	182,322
<b>Total Liabilities</b>	<b>27,604,855</b>	<b>16,957,580</b>	<b>15,910,261</b>	<b>14,274,737</b>	<b>14,580,873</b>	<b>14,611,396</b>	<b>14,680,242</b>	<b>14,818,788</b>	<b>15,006,785</b>
<b>EQUITY</b>									
Share Capital	7,364,210	7,364,210	7,364,210	7,364,210	7,364,210	7,364,210	7,364,210	7,364,210	7,364,210
Contributed Surplus	3,540,888	3,540,888	3,540,888	3,540,888	3,540,888	3,540,888	3,540,888	3,540,888	3,540,888
Unrealized Gain/Loss on power swaps	-	-	323,264	10,845	61,267	61,267	61,267	61,267	61,267
Retained Earnings, OCI	(5,145,050)	(1,765,480)	(2,740,347)	(1,601,085)	(1,607,651)	(1,058,067)	(475,207)	95,677	735,678
Accumulated other comprehensive income	(157,237)	(84,423)	(80,115)	-	-	-	-	-	-
Dividends	(4,500,000)	(7,500,000)	(7,500,000)	(7,500,000)	(7,500,000)	(7,500,000)	(7,500,000)	(7,500,000)	(7,500,000)
<b>Total Equity</b>	<b>1,102,812</b>	<b>1,555,195</b>	<b>907,901</b>	<b>1,814,857</b>	<b>1,858,714</b>	<b>2,408,298</b>	<b>2,991,158</b>	<b>3,562,043</b>	<b>4,202,043</b>
<b>TOTAL LIABILITIES &amp; EQUITY</b>	<b>28,707,667</b>	<b>18,512,775</b>	<b>16,818,161</b>	<b>16,089,594</b>	<b>16,439,587</b>	<b>17,019,693</b>	<b>17,671,401</b>	<b>18,380,831</b>	<b>19,208,829</b>

**RICHTER**

This is Exhibit "N" referred to in the Affidavit of Nino Silvestri sworn by Nino Silvestri of the Town of Oakville, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on May 26, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:  


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10CCB48209FA481  
*Commissioner for Taking Affidavits (or as may be)*

**GAVIN INKSTER LSO# 82737I**





**PLANET ENERGY (ONTARIO) CORP.**

**CONSOLIDATED FINANCIAL STATEMENTS**

**AS AT AND FOR THE YEARS ENDED SEPTEMBER 30, 2021 and 2020**

**PLANET ENERGY (ONTARIO) CORP.**  
**CONSOLIDATED FINANCIAL STATEMENTS**  
**AS AT AND FOR THE YEARS ENDED SEPTEMBER 30, 2021 AND 2020**  
**INDEX TO CONSOLIDATED FINANCIAL STATEMENTS**

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Canada  
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## INDEPENDENT AUDITORS' REPORT

To the Shareholders of Planet Energy (Ontario) Corp.

### *Opinion*

We have audited the consolidated financial statements of Planet Energy (Ontario) Corp. (the Entity), which comprise:

- the consolidated statement of financial position as at September 30, 2021
- the consolidated statement of operations and comprehensive income for the year then ended
- the consolidated statement of changes in equity for the years then ended
- the consolidated statement of cash flows for the year then ended
- and notes to the consolidated financial statements, including a summary of significant accounting policies

(hereinafter referred to as the “financial statements”).

In our opinion, the accompanying financial statements present fairly, in all material respects, the consolidated financial position of the Entity as at September 30, 2021, and its consolidated financial performance and its consolidated cash flows for the period then ended in accordance with International Financial Reporting Standards (IFRS).

### *Basis for Opinion*

We conducted our audit in accordance with Canadian generally accepted auditing standards. Our responsibilities under those standards are further described in the “**Auditors’ Responsibilities for the Audit of the Financial Statements**” section of our auditors’ report.

We are independent of the Entity in accordance with the ethical requirements that are relevant to our audit of the financial statements in Canada and we have fulfilled our other ethical responsibilities in accordance with these requirements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our opinion.

### *Responsibilities of Management and Those Charged With Governance for the Financial Statements*

Management is responsible for the preparation and fair presentation of the financial statements in accordance with IFRS, and for such internal control as management determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error. In preparing the financial statements, management is responsible for assessing the ability to continue as a going concern, disclosing as applicable, matters related to going concern and using the going concern basis



of accounting unless management either intends to liquidate the Entity or to cease operations, or has no realistic alternative but to do so.

Those charged with governance are responsible for overseeing the Entity's financial reporting process.

### *Auditors' Responsibilities for the Audit of the Financial Statements*

Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditors' report that includes our opinion.

Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with Canadian generally accepted auditing standards will always detect a material misstatement when it exists.

Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of the financial statements.

As part of an audit in accordance with Canadian generally accepted auditing standards, we exercise professional judgment and maintain professional skepticism throughout the audit.

We also:

- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for our opinion.
- The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Entity's internal control.
- Evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates and related disclosures made by management.
- Conclude on the appropriateness of management's use of the going concern basis of accounting and, based on the audit evidence obtained, whether a material uncertainty exists related to events or conditions that may cast significant doubt on the Entity's ability to continue as a going concern. If we conclude that a material uncertainty exists, we are required to draw attention in our auditors' report to the related disclosures in the financial statements or, if such disclosures are inadequate, to modify our opinion. Our conclusions are based on the audit evidence obtained up to the date of our auditors' report. However, future events or conditions may cause the Entity to cease to continue as a going concern.
- Evaluate the overall presentation, structure and content of the financial statements, including the disclosures, and whether the financial statements represent the underlying transactions and events in a manner that achieves fair presentation.



*Planet Energy (Ontario) Corp.*

- Communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit and significant audit findings, including any significant deficiencies in internal control that we identify during our audit.

*KPMG LLP*

Chartered Public Accountants, Licensed Public Accountants  
Toronto, Canada  
December 17, 2021

**PLANET ENERGY (ONTARIO) CORP.**  
**CONSOLIDATED STATEMENTS OF FINANCIAL POSITION**  
(in thousands of dollars)

	Notes	As at September 30, 2021	As at September 30, 2020
<b>ASSETS</b>			
<b>Current</b>			
Cash		\$ 12,467	\$ 12,298
Restricted cash	6	76	236
Accounts receivable	7	1,437	1,300
Gas delivered in excess of consumption		179	227
Corporate tax recoverable		71	538
Current portion of derivative assets	11	1,385	-
Other current assets		380	216
		15,995	14,815
<b>Non-current</b>			
Property and equipment	8	279	556
Intangible assets	9	44	248
Derivative assets	11	67	-
Deferred tax assets	14	-	420
		\$ 16,385	\$ 16,039
<b>LIABILITIES and EQUITY</b>			
<b>Current</b>			
Trade and other payables		11,394	11,204
Deferred revenue		293	400
Current portion of lease liability	12	167	164
Current portion of derivative liabilities	11	-	1,486
		11,854	13,254
<b>Non-current</b>			
Lease liability	12	88	215
Deferred tax liability	14	10	-
Derivative liabilities	11	-	766
		11,952	14,235
<b>Equity</b>			
Share capital	15	7,364	7,364
Contributed surplus		3,541	3,541
Retained deficit		(6,479)	(9,013)
Accumulated other comprehensive income (loss)		7	(88)
Total equity attributable to owners of the Company		4,433	1,804
		\$ 16,385	\$ 16,039
Commitments and contingencies	20		

*See accompanying notes to the consolidated financial statements*

**PLANET ENERGY (ONTARIO) CORP.**  
**CONSOLIDATED STATEMENTS OF OPERATIONS**  
**AND COMPREHENSIVE INCOME**

(in thousands of dollars)

	<u>Notes</u>	<b>Year ended</b> <b><u>September 30, 2021</u></b>	<b>Year ended</b> <b><u>September 30, 2020</u></b>
<b>Revenue</b>	16	\$ 19,140	\$ 26,066
<b>Cost of sales</b>		14,019	16,820
<b>Gross margin</b>		<u>5,121</u>	<u>9,246</u>
<b>Expenses:</b>			
Selling		955	1,191
General and administrative		4,241	7,195
Amortization and depreciation		451	1,194
		<u>5,647</u>	<u>9,580</u>
<b>Loss before the undernoted</b>		(526)	(334)
<b>Other income (expenses)</b>			
Finance costs	10	(99)	(134)
Change in fair value of derivative contracts	11	3,704	2,202
Other		(168)	(23)
Income before income taxes		<u>2,911</u>	<u>1,711</u>
Provision for income taxes	14	377	483
<b>Net income attributable to owners of the Company</b>		<u>\$ 2,534</u>	<u>\$ 1,228</u>
Other comprehensive income (loss) :			
Items that may subsequently be reclassified to income:			
Foreign currency translation adjustment for foreign operations, net of tax \$nil (2020 - \$nil)		95	(8)
<b>Total comprehensive income</b>		<u>\$ 2,629</u>	<u>\$ 1,220</u>

*See accompanying notes to the consolidated financial statements*

**PLANET ENERGY (ONTARIO) CORP.**  
**CONSOLIDATED STATEMENTS OF CHANGES IN EQUITY**  
**For the years ended September 30, 2021 and 2020**  
(in thousands of dollars)

	Number of Common Shares	Share capital	Contributed surplus	Deficit	Accumulated other comprehensive income (loss)	Total
<b>Balance, September 30, 2019</b>	<b>12,000,000</b>	<b>\$ 7,364</b>	<b>\$ 3,541</b>	<b>\$ (10,241)</b>	<b>\$ (80)</b>	<b>\$ 584</b>
Net income		-	-	1,228	-	1,228
Other comprehensive loss		-	-	-	(8)	(8)
<b>Balance, September 30, 2020</b>	<b>12,000,000</b>	<b>7,364</b>	<b>3,541</b>	<b>(9,013)</b>	<b>(88)</b>	<b>1,804</b>
Net income		-	-	2,534	-	2,534
Other comprehensive income		-	-	-	95	95
<b>Balance, September 30, 2021</b>	<b>12,000,000</b>	<b>7,364</b>	<b>3,541</b>	<b>(6,479)</b>	<b>7</b>	<b>4,433</b>

*See accompanying notes to the consolidated financial statements*



**PLANET ENERGY (ONTARIO) CORP.**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS**  
(in thousands of dollars)

	<b>Year ended</b> <b><u>September 30, 2021</u></b>	<b>Year ended</b> <b><u>September 30, 2020</u></b>
<b>Cash flows from operating activities</b>		
Net income for the year	\$ 2,534	\$ 1,228
Add (deduct) items not affecting cash		
Income taxes	377	483
Depreciation of property and equipment	247	169
Amortization of intangible assets	204	1,025
Finance costs	99	134
Change in fair value of derivative contracts	(3,704)	(2,202)
Restricted cash	160	792
Net change in operating assets and liabilities	(169)	1,296
Interest paid	(53)	(86)
Income taxes received	513	49
	<b><u>208</u></b>	<b><u>2,888</u></b>
<b>Cash flows used in investing activities</b>		
Customer acquisition costs	-	(70)
Purchase of property and equipment	(22)	(80)
	<b><u>(22)</u></b>	<b><u>(150)</u></b>
<b>Cash flows used in financing activities</b>		
Payment for lease liability	(118)	(149)
	<b><u>(118)</u></b>	<b><u>(149)</u></b>
<b>Net increase in cash</b>	<b>68</b>	<b>2,590</b>
<b>Cash, beginning of year</b>	<b>12,298</b>	<b>9,731</b>
Translation adjustment on cash	102	(23)
<b>Cash, end of year</b>	<b><u>12,467</u></b>	<b><u>12,298</u></b>

*See accompanying notes to the consolidated financial statements*

**PLANET ENERGY (ONTARIO) CORP.**  
**NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS**  
AS AT AND FOR THE YEARS ENDED SEPTEMBER 30, 2021 and 2020  
(in thousands of dollars, unless otherwise stated)

**1. NATURE AND ORGANIZATION**

Planet Energy (Ontario) Corp. (“PEOC”) is incorporated under the Canada Business Corporations Act (Amended June 1, 2013). PEOC operates in Ontario and operates in other Canadian and United States jurisdictions through its wholly owned operating subsidiaries: Planet Energy (B.C.) Corp., Planet Energy (Manitoba) Corp., Planet Energy Corp. (formerly Planet Energy USA Corp.), Planet Energy (New York) Corp., Planet Energy (Maryland) Corp., Planet Energy (Pennsylvania) Corp., Planet Energy (Illinois) Corp., Planet Energy (New Jersey) Corp. and Planet Energy (Ohio) Corp. (collectively, the “Company”).

The Company is domiciled in Canada. The registered office of the Company is 1202-5775 Yonge Street, Toronto, Ontario, M2M 4J1. The consolidated financial statements of the Company include the accounts of PEOC and its consolidated subsidiaries.

**2. OPERATIONS**

The Company’s business primarily involves the sale of electricity and natural gas to residential and commercial customers under fixed-priced, hybrid-priced and variable-priced contracts. The Company markets electricity and natural gas and derives its gross margin from the difference between the price at which it sells the commodities to its customers and the price at which it purchases the associated volumes from its supplier.

The Company provides retail electricity to its customers in the Ontario, Pennsylvania, Ohio and Maryland markets and natural gas to its customers in the Ontario and Pennsylvania markets. The Company is licensed in Canada by the respective provincial energy regulators and in the United States by the respective public utilities commissions as a retail energy marketer.

**3. BASIS OF PREPARATION AND STATEMENT OF COMPLIANCE**

The Company prepares its consolidated financial statements in accordance with International Financial Reporting Standards (“IFRS”) as issued by the International Accounting Standards Board (“IASB”).

The consolidated financial statements are presented in Canadian dollars, the functional currency of the Company, and all values are rounded to the nearest thousand, unless otherwise stated. The consolidated financial statements are prepared on a going concern basis under the historical cost convention, except for certain financial assets and liabilities which are stated at fair value.

**4. SIGNIFICANT ACCOUNTING POLICIES**

**(a) Principles of consolidation**

The consolidated financial statements include the financial statements of the Company as at September 30, 2021 and 2020 and include all the subsidiaries and entities over which PEOC has power to govern the financial and operating policies for and are consolidated from the date of acquisition and control, and continue to be consolidated until the date that such control ceases. All intercompany balances, income, expenses and unrealized gains and losses resulting from intercompany transactions are eliminated on consolidation.

**(b) Cash**

Cash consists of cash held at financial institutions. At any time, cash in banks may exceed federally insured limits.

**PLANET ENERGY (ONTARIO) CORP.**  
**NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS (continued)**  
AS AT AND FOR THE YEARS ENDED SEPTEMBER 30, 2021 and 2020  
(in thousands of dollars, unless otherwise stated)

**(c) Restricted cash**

Restricted cash is funds on deposit in bank accounts that are controlled by the Company's energy supplier and represents funds to be used towards the payment of purchases of commodity and excess cash not yet transferred to the Company's operating bank accounts.

**(d) Accounts receivable**

The Company delivers natural gas and electricity to its customers through local distribution companies ("LDCs"), many of which offer a purchase of receivable ("POR") program under which the LDCs for a fee, will assume the collection risk from the customer and will remit amounts due for natural gas and electricity consumed by customers net of an allowance for estimated amounts that will not be collected from customers.

**(e) Credit risk and allowance for doubtful accounts**

The Company operates in POR markets where its exposure to credit risk concentration is limited primarily to those LDCs that collect and remit receivables to the Company. The Company's customers are individually insignificant and geographically dispersed. The Company regularly monitors the financial condition of such LDCs and currently believes that its susceptibility to an individually significant write-off, as a result of concentrations of customer accounts receivable with those LDCs, is remote.

**(f) Accrued gas receivable/accrued gas payable or gas delivered in excess of consumption/deferred revenue**

Accrued gas receivable is stated at estimated realizable value and results when customers consume more gas than has been delivered by the Company to LDCs. Accrued gas payable represents the obligation to the LDCs with respect to gas consumed by customers in excess of that delivered to the LDCs.

Gas delivered to the LDCs in excess of consumption by customers is stated at the lower of cost and net realizable value. Collections from customers in advance of their consumption of gas results in deferred revenue.

Assuming normal weather and consumption patterns, during the winter months, customers will have consumed more gas than what was delivered resulting in the recognition of accrued gas receivable/accrued gas payable. However, in the summer months, customers will have consumed less than what was delivered, resulting in the recognition of gas delivered in excess of consumption/deferred revenue.

These adjustments are applicable to the Ontario, Manitoba, and Pennsylvania markets.

**(g) Property and equipment**

Property and equipment are recognized at cost less accumulated depreciation and any accumulated impairment losses. Cost includes expenditures that are directly attributable to the acquisition of the asset to bring the asset to a working condition for its intended use. The commencement date for capitalization of costs occurs when the Company first incurs expenditures for the qualifying assets and undertakes the required activities to prepare the assets for their intended use.

Depreciation commences when the assets are available for use and is recognized on a straight-line basis to depreciate the cost of these assets to their estimated residual value over their estimated useful lives.

**PLANET ENERGY (ONTARIO) CORP.**  
**NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS (continued)**  
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Maintenance and repairs are charged to expense as incurred. When significant parts of an item included in property and equipment have different useful lives, they are accounted for as separate components of the asset and depreciated over their estimated useful lives on a straight-line basis.

Estimated useful lives, determined on a straight-line basis, are as follows:

<u>Asset category</u>	<u>Useful life</u>
Computer hardware	3 years
Office furniture and equipment	3-5 years
Leasehold improvements	5 years

Depreciation methods, useful lives and residual values are reviewed at each financial year end and are adjusted if appropriate.

An item of property and equipment is derecognized upon disposal or when no future economic benefits are expected to arise from the continued use of the asset. Any gain or loss arising on derecognition of the asset (calculated as the difference between the net disposal proceeds and the carrying amount of the item) is included in operating results in the period the item is derecognized.

**(h) Intangible assets**

Intangible assets are initially recognized at fair value and subsequently measured at cost and are reflected net of any accumulated amortization and any accumulated impairment losses.

Intangible assets with finite useful lives are amortized over the useful economic life and assessed for impairment whenever there is an indication that the intangible assets may be impaired. The amortization method and useful life of an intangible asset with a finite useful life is reviewed at least once annually. Changes in the expected life or pattern of consumption of future economic benefits are accounted for by changing the amortization period or method, as appropriate, and treated as a change in accounting estimate and recorded on a prospective basis. The amortization expense related to intangible assets with finite lives is recognized in the consolidated statement of operations and comprehensive income (loss).

Intangible assets consist of computer software, purchased customer contracts and customer acquisition costs.

Gains and losses arising from the derecognition of intangible assets are measured as the difference between the net disposal proceeds and the carrying amount of the asset, and are recognized in the consolidated statement of operations and comprehensive income (loss) when the asset is derecognized.

<u>Asset category</u>	<u>Amortization method</u>	<u>Useful life</u>
Customer contracts	Straight line	7 years
Customer acquisition costs	Straight line	1-5 years
Computer software	Straight line	3 years

**PLANET ENERGY (ONTARIO) CORP.**  
**NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS (continued)**  
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**(i) Impairment of non-financial assets**

At each reporting date, the Company reviews the carrying amounts of its finite life non-financial assets, including property and equipment and intangible assets, to determine whether there is any indication of impairment.

For the purposes of reviewing finite life non-financial assets for impairment, asset groups are reviewed at their lowest level for which identifiable cash inflows are largely independent of cash inflows of other assets or groups of assets. This grouping is referred to as a cash generating unit (“CGU”).

If it is not possible to estimate the recoverable amount of an individual asset, the recoverable amount of the CGU to which the asset belongs is tested for impairment. Corporate assets are tested for impairment at the minimum collection of CGUs to which the corporate asset can be allocated reasonably and consistently.

The recoverable amount of a CGU is the greater of its value in use and its fair value less costs to sell. An impairment loss is recognized if the carrying amount of a CGU exceeds its recoverable amount. Impairment losses are recognized in profit and loss in the period in which they occur. For assets excluding goodwill, an assessment is made at each reporting date as to whether there is any indication that previously recognized impairment losses may no longer exist or may have decreased. If such indication exists, the Company estimates the asset’s or CGU’s recoverable amount. A previously recognized impairment loss will only be reversed if there will be a change in the assumptions used to determine the asset’s recoverable amount since the time the impairment loss was recognized. Where impairment subsequently reverses, the carrying amount of the asset is increased to the extent that the carrying value of the underlying asset does not exceed the carrying amount that would have been determined, net of depreciation, if no impairment had been recognized. Impairment reversals are recognized in profit and loss in the period in which they occur.

**(j) Provisions**

Provisions are recognized to the extent that the Company determines it is probable that the Company will be required to settle a present obligation (legal or constructive) and a reliable estimate can be made of the amount of the obligation.

The amount recognized as a provision is the best estimate of the consideration required to settle the present obligation at the end of the reporting period, taking into account the risks and uncertainties surrounding the obligation. Where a provision is measured using the cash flows estimated to settle the present obligation, its carrying amount is the present value of those cash flows.

When some or all of the economic benefits required to settle a provision are expected to be recovered from a third party, a receivable is recognized as an asset if it is virtually certain that reimbursement will be received and the amount of the receivable can be measured reliably.

**(k) Contingencies**

A contingent liability is disclosed where the existence of an obligation will only be confirmed by future events, or where the amount of a present obligation cannot be measured reliably, unless the possibility of an outflow of resources embodying economic benefits is remote. Contingent assets are only disclosed when the inflow of economic benefits is probable. When the economic benefit becomes virtually certain, the asset is no longer contingent and is recognized accordingly.

**PLANET ENERGY (ONTARIO) CORP.**  
**NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS (continued)**  
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**(l) Finance costs**

Finance costs are primarily incurred on letters of credit and credit facilities under the supplier agreements, and they are expensed in the period in which they are incurred.

**(m) Foreign currency translations**

**(i) Functional currency**

Items included in the financial statements of each of the Company's entities are measured using the currency of the primary economic environment in which the entity operates (the "functional currency").

**(ii) Transactions**

Foreign currency transactions are translated into the functional currency using the exchange rates prevailing at the dates of the transactions or valuation where items are remeasured. Foreign exchange gains and losses resulting from the settlement of such transactions and resulting from the translation at period-end exchange rates of monetary assets and liabilities denominated in foreign currencies are recognized in profit or loss.

**(iii) Translation of foreign entities**

Assets and liabilities of all the group entities that have a functional currency that is different from the presentation currency are translated to the presentation currency at the closing rate at the end of the reporting period. The consolidated statement of operations and comprehensive income (loss) is translated at exchange rates at the date of the transactions or at the average rate if it approximates the actual rates. All resulting exchange differences are recognized in other comprehensive income (loss).

On disposal or partial disposal of a foreign entity, or repatriation of the net investment in a foreign entity, resulting in a loss of control, significant influence or joint control, the cumulative translation account balance recognized in equity relating to that particular foreign entity is recognized in profit or loss as part of the gain or loss on sale. On a partial disposition of a subsidiary that does not result in a loss of control, the amounts are reallocated to the non-controlling interest in the foreign operation based on their proportionate share of the cumulative amounts recognized in accumulated other comprehensive income (loss).

**(n) Income taxes**

Current income tax is calculated on the basis of tax laws enacted or substantively enacted at the consolidated statement of financial position date in the countries where the Company operates and generates taxable income. Current tax includes adjustments to tax payable or recoverable in respect of previous periods.

Deferred income tax is provided using the asset and liability method on all temporary differences at the consolidated statement of financial position date between the tax basis of assets and liabilities and their carrying amounts for financial reporting purposes. However, deferred income taxes are not recognized if they arise from the initial recognition of goodwill. Deferred income tax is also not accounted for if it arises from the initial recognition of an asset or liability in a transaction that is not a business combination and, at the time of the transaction, affects neither the accounting profit nor taxable profit or loss.

**PLANET ENERGY (ONTARIO) CORP.**  
**NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS (continued)**  
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Deferred income tax is provided on temporary differences associated with investments in subsidiaries, associates or joint ventures, except where the timing of the reversal of temporary differences can be controlled and it is probable the temporary differences will not reverse in the foreseeable future.

Deferred income tax assets are recognized only to the extent that it is probable that taxable profit will be available against which deductible temporary differences, carried forward tax credits or tax losses can be utilized.

Deferred income tax is measured on an undiscounted basis at the tax rates that are expected to apply in the periods in which the asset is realized or the liability is settled, based on tax rates and tax laws enacted or substantively enacted at the consolidated statement of financial position date.

The carrying amount of deferred income tax assets is reviewed at each consolidated statement of financial position date and reduced to the extent that it is no longer probable that sufficient taxable profit will be available to allow all or part of the deferred income tax asset to be utilized. To the extent that an asset not previously recognized fulfills the criteria for recognition, a deferred income tax asset is recorded.

Current and deferred tax relating to items recognized directly in equity and other comprehensive income are recognized in equity and other comprehensive income and not in profit or loss.

Current income tax assets and liabilities or deferred income tax assets and liabilities are offset if a legally enforceable right exists to offset current tax assets against current tax liabilities and the income taxes relate to the same taxable entity and the same tax authority.

**(o) Revenue recognition**

The Company delivers electricity and/or natural gas to end-use customers who have entered into energy contracts. The Company recognizes revenue when the electricity and/or natural gas are consumed by the end-user or sold to third parties. Sales of electricity and/or natural gas are billed based on billing cycles for customers that do not coincide with the accounting periods used for financial reporting purposes. Electricity and/or natural gas that has been consumed by a customer, but not yet billed to that customer, is estimated on an accrual basis and included in revenue during the period in which it was consumed. Such estimates are refined in subsequent periods upon obtaining customer billing information from the utilities. Changes in these estimates are reflected in revenue in the period they are refined.

The Company's operations are seasonal. Electricity consumption is typically highest during the summer months (July and August) due to cooling demand and winter months (January and February) due to heating demand. Natural gas consumption is typically highest during the months of October through March due to heating demand.

**(p) Cost of sales**

Direct energy costs are recognized concurrently with the related energy sales. Direct energy costs include the commodity cost of purchased electricity or natural gas, costs associated with energy delivery, and the cost of renewable energy certificates. The Company estimates and accrues for these fees based on invoices, activity levels, preliminary settlements and other available information. Final determination and settlements of these charges may take several months following the month of delivery and are adjusted as information becomes available.

**PLANET ENERGY (ONTARIO) CORP.**  
**NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS (continued)**  
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**(q) Selling expenses**

Commissions related to obtaining customer contracts are paid in one of two ways: all or partially upfront or as a residual payment over the term of the contracts. If the commission is paid all or partially upfront, it is recorded as customer acquisition costs and amortized over the term of the contract. If the commission is paid as a residual payment, the amount is expensed in selling costs.

**(r) Financial Assets**

**i. Recognition and derecognition**

Regular purchases and sales of financial assets are recognized on the trade-date, being the date on which the Company commits to purchase or sell the asset. Financial assets are derecognized when the rights to receive cash flows from the financial assets have expired or have been transferred and the Company has substantially transferred all the risks and rewards of ownership

**ii. Classification**

Financial assets have been classified in the following categories:

- Measured at fair value (Either through other comprehensive income or through profit or loss) and
- Measured at amortized cost.

The measurement category classification of financial assets depend on Company's business objective for managing the financial assets and whether contractual terms of the cashflow are considered solely payments of principal and interest. For assets measured at fair value, gains and losses will either be recorded in profit or loss or other comprehensive income depending upon the business objective.

Financial assets and liabilities are classified in the consolidated statement of financial position as below:

**Current financial assets**

Cash	Amortized cost
Restricted cash	Amortized cost
Accounts receivables	Amortized cost

**Current financial liabilities**

Trade and other payables	Amortized cost
Current portion of derivative liabilities	FVTPL

**Non-current financial liabilities**

Derivative liabilities	FVTPL
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**iii. Measurement**

At initial recognition, the Company measures a financial asset at its fair value. In the case of a financial asset not categorized as FVTPL, transaction costs that are directly attributable to the acquisition of the financial asset are included in measurement at initial recognition. Transaction costs of financial assets carried at FVTPL are expensed in profit or loss.

Subsequent measurement of debt instruments depends on the Company's business objective for managing the asset and the cash flow characteristics of the asset. There are three measurement categories into which the Company classifies its debt instruments:



**PLANET ENERGY (ONTARIO) CORP.**  
**NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS (continued)**  
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- Amortized cost: Assets held for collection of contractual cash flows that represent solely payments of principal and interest are measured at amortized cost. A gain or loss on a debt instrument is recognized in profit or loss when the asset is derecognized or impaired. Interest income from these financial assets is included in “finance income” using the effective interest rate method. Cash and cash equivalents, restricted cash, trade and other receivables are included in this category.
- Fair value through other comprehensive income (“FVOCI”): Assets held to achieve a particular business objective, by collecting contractual cash flows and selling financial assets, where the contractual terms of the financial asset give rise on specified dates to cash flows that are solely payments of principal and interest on the principal outstanding are measured at FVOCI. Movements in the carrying amount are taken through other comprehensive income (OCI), except for the recognition of impairment gains or losses, interest revenue and foreign exchange gains and losses, which are recognized in profit and loss. When the financial asset is derecognized, the cumulative gain or loss previously recognized in OCI is reclassified from equity to profit or loss. Interest income from these financial assets is included in “finance income” using the effective interest rate method. The Company has not classified any investments in this category.
- Fair value through profit or loss (“FVTPL”): Assets that do not meet the criteria for amortized cost or FVOCI are measured at FVTPL. A gain or loss on a debt investment that is subsequently measured at FVTPL and is not part of a hedging relationship is recognized in profit or loss. The Company classifies its derivatives and its investments in equity securities at FVTPL due to the fact that they do not meet the criteria for classification at amortized cost as the contractual cash flows are not solely payments of principal and interest.

iv. **Impairment**

The Company assesses on a forward looking basis the expected credit losses (“ECL”) associated with its assets carried at amortized cost, including other receivables. For accounts receivables only, the Company applies the simplified approach permitted by IFRS 9, which requires expected lifetime losses to be recognized from initial recognition of the receivables.

Accounts receivables are reviewed qualitatively on a case-by-case basis to determine if they need to be written off.

(s) **Leases**

At inception of a contract, the Company assesses whether a contract is, or contains, a lease, by determining whether the contract conveys the right to control the use of an identified asset for a period of time in exchange for consideration.

At inception or on reassessment of a contract that contains a lease component, the Company allocates the consideration in the contract to each lease component on the basis of their relative standalone price.

The Company recognizes a right-of-use asset and a lease liability at the lease commencement date. The right-of-use asset is initially measured at cost, which comprises the initial amount of the lease liability adjusted for any lease payments made at or before the commencement date, plus any initial direct costs incurred and an estimate of costs to dismantle and remove the underlying asset or to restore the underlying asset or the site on which it is located, less any lease incentives received.

**PLANET ENERGY (ONTARIO) CORP.**  
**NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS (continued)**  
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The right-of-use asset is subsequently depreciated using the straight-line method from the commencement date to the earlier of the end of the useful life of the right-of-use asset or the end of the lease term. The estimated useful lives of right-of-use assets are determined on the same basis as those of property and equipment. In addition, the right-of-use asset is periodically reduced by impairment losses, if any, and adjusted for certain re-measurements of the lease liability.

The lease liability is initially measured at the present value of the lease payments that are not paid at the commencement date, discounted using the interest rate implicit in the lease or, if that rate cannot be readily determined, PEOC's incremental borrowing rate.

Lease payments included in the measurement of the lease liability comprise the following fixed payments, including in substance fixed payments, variable lease payments and amounts expected to be payable under a residual value guarantee.

The lease liability is measured at amortized cost using the effective interest method. After the commencement date, the amount of lease liability is increased to reflect the accretion of interest and reduced for the lease payments made. When the lease liability is re-measured in this way, a corresponding adjustment is made to the carrying amount of the right-of-use asset, or is recorded in profit or loss if the carrying amount of the right-of-use asset has been reduced to zero.

The Company presents right-of-use assets in "property and equipment" and lease liabilities separately in the consolidated statement of financial position.

**(t) Government Grants**

Grants are recognized when there is reasonable assurance that the Company will comply with the condition attached to the grant and the grant will be received. Grants related to the income is presented as reduction from related expenses.

**PLANET ENERGY (ONTARIO) CORP.**  
**NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS (continued)**  
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**5. SIGNIFICANT ACCOUNTING JUDGMENTS AND ESTIMATES**

The preparation of these consolidated financial statements involves management's judgment and the use of estimates and assumptions to be made in applying accounting policies that affect the reported amounts of assets and liabilities and disclosure of contingent liabilities, at the dates of the consolidated financial statements, and the reported revenue and expenses during the reporting period.

Judgment is commonly used in determining whether a balance or transaction should be recognized in the consolidated financial statements and estimates and assumptions are more commonly used in determining the measurement of recognized transactions and balances. However, judgment and estimates are often interrelated. As the basis for its judgments, management uses estimates and related assumptions which are based on previous experience and various commercial, economic and other factors that are considered reasonable under the circumstances. These estimates and underlying assumptions are reviewed on an ongoing basis. Revisions to accounting estimates are recognized in the period in which the estimate is revised. Actual outcomes may differ from these estimates under different assumptions and conditions.

Key sources of estimation uncertainty made by management in the application of IFRS that have a significant impact on the consolidated financial statements, relate to the following:

**(a) Revenue recognition**

Accounts receivable includes an unbilled receivables component, representing the amount of energy consumed by customers as at the end of the period but not yet billed. Unbilled receivables are estimated by the Company based on the number of units of energy consumed but not yet billed, based on estimates using usage data available, multiplied by the current customer average sales price per unit.

**(b) Fair value of financial instruments**

Determining the value of derivative instruments requires estimation and is based on market prices or management's best estimates if there is no market and/or if the market is illiquid. Where the fair value of financial instruments recorded cannot be derived from active markets, they are determined using valuation techniques including making internally generated adjustments to quoted prices in observable markets and discounted cash flow models. The inputs to these models are taken from observable markets where possible, but where this is not feasible, a degree of judgment is required in establishing fair values. The judgment includes consideration of inputs such as liquidity risk, credit risk and volatility, in line with comparable companies. Changes in assumptions about these factors could affect the reported fair value of financial instruments.

**(c) Impairment**

In assessing the value of intangible assets or non-financial assets for potential impairment, assumptions are made regarding future cash flows; these calculations require the use of estimates. If these estimates change in the future, the Company may be required to record impairment charges related to intangible assets.

**(d) Deferred taxes**

Significant management judgment is required to determine the amount of deferred tax assets that can be recognized, based upon the likely timing and the level of future taxable income realized, including the usage of tax-planning strategies.

**PLANET ENERGY (ONTARIO) CORP.**  
**NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS (continued)**  
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**(e) Useful life of property and equipment and intangible assets**

The depreciation and amortization method and useful lives reflect the pattern in which management expects the asset's future economic benefits to be consumed by the Company.

**(f) Provisions for litigation**

A potential obligation that is not probable to result in an economic outflow is classified as a contingent liability, with no impact on the Company's consolidated financial statements. Should, however, an obligation in a later period be deemed to be probable, then a provision shall be recognized, impacting the consolidated financial statements.

**6. RESTRICTED CASH**

All payments received by the Company from its customers and the LDCs are paid to a specified lockbox or by wire transfer to specified blocked bank accounts under the control of Shell Energy North America (Canada) Inc. in Canada and of Shell Energy North America (US), LP in the United States of America ("Shell Energy"), from which amounts are first paid to Shell Energy in satisfaction of payments due to Shell Energy under Gas and Power Purchase Agreements, and all excess amounts are then paid to the Company. As at September 30, 2021, this amounted to \$76 (2020 – \$236) and is classified as restricted cash, of which \$64 (2020 – \$66) was used in support of letters of credit and \$12 (2020 – \$170) was in the blocked accounts.

**7. ACCOUNTS RECEIVABLE**

The Company primarily operates in LDC markets which have POR programs in place under which the LDCs assume the credit risk associated with the customer billings. As such, all the accounts receivable are expected to be collectible.

**PLANET ENERGY (ONTARIO) CORP.**  
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**8. PROPERTY AND EQUIPMENT**

<b>2021</b>	<b>Computer hardware</b>	<b>Office furniture and equipment</b>	<b>Leasehold improvements</b>	<b>Buildings</b>	<b>Total</b>
<b>Cost</b>					
Balance as at September 30, 2020	\$ 800	\$ 343	\$ 278	\$ 480	\$ 1,901
Reimbursement of leasehold improvement	-	-	-	(52)	(52)
Additions	22	-	-	-	22
Balance as at September 30, 2021	<u>822</u>	<u>343</u>	<u>278</u>	<u>428</u>	<u>1,871</u>
<b>Accumulated depreciation</b>					
Balance as at September 30, 2020	(766)	(270)	(196)	(113)	(1,345)
Depreciation	(42)	(73)	(15)	(117)	(247)
Balance as at September 30, 2021	<u>(808)</u>	<u>(343)</u>	<u>(211)</u>	<u>(230)</u>	<u>(1,592)</u>
Net book value - September 30, 2021	<u>\$ 14</u>	<u>\$ -</u>	<u>\$ 67</u>	<u>\$ 198</u>	<u>\$ 279</u>

<b>2020</b>	<b>Computer hardware</b>	<b>Office furniture and equipment</b>	<b>Leasehold improvements</b>	<b>Buildings</b>	<b>Total</b>
<b>Cost</b>					
Balance as at September 30, 2019	\$ 800	\$ 343	\$ 198	\$ -	\$ 1,341
IFRS 16 transitional adjustment	\$ -	\$ -	\$ -	\$ 323	323
Additions/(Disposals)	-	-	80	157	237
Balance as at September 30, 2020	<u>800</u>	<u>343</u>	<u>278</u>	<u>480</u>	<u>1,901</u>
<b>Accumulated depreciation</b>					
Balance as at September 30, 2019	(734)	(252)	(190)	-	(1,176)
Depreciation	(32)	(18)	(6)	(113)	(169)
Balance as at September 30, 2020	<u>(766)</u>	<u>(270)</u>	<u>(196)</u>	<u>(113)</u>	<u>(1,345)</u>
Net book value - September 30, 2020	<u>\$ 34</u>	<u>\$ 73</u>	<u>\$ 82</u>	<u>\$ 367</u>	<u>\$ 556</u>

Buildings include right-of-use assets with a cost of \$428 (2020 – \$480) and net book value of \$198 (2020 - \$367) related to leased office space.

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**9. INTANGIBLE ASSETS**

<b>2021</b>	<b>Computer software</b>	<b>Customer contracts</b>	<b>Customer acquisitions</b>	<b>Total</b>
<b>Cost</b>				
Balance as at September 30, 2020	\$ 904	\$ 33,665	\$ 3,022	\$ 37,591
Additions	-	-	-	-
Balance as at September 30, 2021	904	33,665	3,022	37,591
<b>Accumulated amortization</b>				
Balance as at September 30, 2020	(797)	(33,665)	(2,881)	\$ (37,343)
Amortization	(107)	-	(97)	(204)
Balance as at September 30, 2021	(904)	(33,665)	(2,978)	(37,547)
Net book value - September 30, 2021	\$ -	\$ -	\$ 44	\$ 44
<b>2020</b>				
<b>Cost</b>				
Balance as at September 30, 2019	\$ 904	\$ 33,665	\$ 2,952	\$ 37,521
Additions	-	-	70	70
Balance as at September 30, 2020	904	33,665	3,022	37,591
<b>Accumulated amortization</b>				
Balance as at September 30, 2019	(770)	(33,128)	(2,420)	\$ (36,318)
Amortization	(27)	(537)	(461)	(1,025)
Balance as at September 30, 2020	(797)	(33,665)	(2,881)	(37,343)
Net book value - September 30, 2020	\$ 107	\$ -	\$ 141	\$ 248

At September 30, 2021, the remaining amortization period is 0 to 4 years.

**10. FINANCING**

**(a) Supplier Agreements**

Effective October 1, 2017 the Company renewed its energy commodity supply and credit agreements with Shell Energy (“Supplier Agreements”) for a further term of six years expiring on October 1, 2023. Shell Energy will remain the exclusive supplier of the Company’s wholesale gas and electricity needs and hedging requirements. Under the Supplier Agreements, Shell Energy assumes the responsibility for meeting the credit and collateral requirements with each Independent Systems Operator, gas transportation pipelines and storage operations.

The Company’s obligations to Shell Energy under the Supplier Agreements are secured by the grant of a first priority security interest on substantially all of the Company’s current and future assets, including all cash, all accounts receivable and all deposit accounts. In addition, all payments received by the Company from its customers and the LDCs are paid into specified lockbox accounts under the control of Shell Energy, from which amounts are first paid to Shell Energy in satisfaction of payments due to Shell Energy under the Supplier Agreements, and all excess amounts are then paid to the Company. As at September 30, 2021 the blocked account, which is included in the restricted cash balance, amounted to \$12 (2020 – \$170) (Note 7).

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If Shell Energy defaults in its obligation to deliver gas and/or electricity to the Company, or if the Company defaults in its obligation to accept delivery of gas and electricity, subject to force majeure, the Supplier Agreements contains provisions requiring the payment of various amounts by the non-performing party to the performing party.

During the year ended September 30, 2021, the Company made gas and electricity purchases under the Supplier Agreements totaling \$1,547 (2020 – \$3,263) and \$8,298 (2020 – \$9,270), respectively. Included in trade and other payables at September 30, 2021 is an amount owing to Shell Energy of \$489 (2020 – \$854).

The Supplier Agreements include financial support for the operations in the United States of America through a revolving credit facility in the amount of up to US \$10,000. At September 30, 2021, the draw on the revolving credit facility amounted to US \$nil (2020 – US \$nil). In addition, Shell Energy has made cash and collateral postings to third parties on behalf of the Company and the amount outstanding at September 30, 2021 is US \$612 (2020 – US \$649).

The Supplier Agreements include financial support for the operations in Canada through a revolving credit facility in the amount of up to \$1,000. At September 30, 2021, the cash advances drawn on the revolving credit facility amounted to \$nil (2020 – \$nil).

The Supplier Agreements include certain financial covenants, the more significant of which relate to profitability measures and maintenance of working capital. At September 30, 2021, the Company was in compliance with these covenants.

**(b) Warrants related to the Supplier Agreements**

In conjunction with the amendment of the Supplier Agreements in November 2012, the Company issued 555,555 warrants to Shell Energy (the “Shell Warrants”), which was subsequently increased to 1,111,110 to adjust for a 2:1 stock split, and a further 222,223 to equal to 10% of the common shares on a fully diluted basis. There are no further anti-dilutive provisions associated with these warrants. The total warrants granted to Shell Energy amounted to 1,333,333. These warrants give Shell Energy the right to purchase common shares from the Company at any time through the earlier of November 9, 2027 and five years from the date upon which the Company completes a liquidity transaction. Each of the Shell Warrants has an exercise price of \$1 for each of the Company’s common shares, subject to standard adjustments.

The warrants were valued at \$2,590 and were previously recognized as part of finance costs, in the consolidated statement of operations and comprehensive income and reflected in contributed surplus in the consolidated statements of financial position.

**(c) Credit facility**

The Company has US \$3,000 revolving credit facility with Export Development Canada (“EDC”) for the issuance of letters of credit. The fee for issued instruments is 3.5% per annum and the credit facility is renewed annually. At September 30, 2021, the available credit was US \$751 (2020 – US \$751).

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**11. FINANCIAL INSTRUMENTS**

**(a) Fair value**

Fair value is the estimated amount that the Company would pay or receive to dispose of financial instruments in an arm's-length transaction between knowledgeable, willing parties who are under no compulsion to act. Management has estimated the fair value of financial instruments using a discounted cash flow method that employs market forward curves that are either directly sourced from third parties or are developed internally based on third party market data. These curves can be volatile, thus leading to volatility in the mark to market with no impact to cash flows.

The Company's activities expose it to a variety of market risks, principally from fluctuating commodity prices. The Company has established risk management policies and procedures designed to reduce the potentially adverse effects of price volatility on operating results and distributions. The Company's risk management activities include the use of derivative instruments, such as swaps. The Company maintains commodity price risk management strategies that use derivative instruments, within approved risk tolerances to minimize significant, unanticipated fluctuations in earnings or distributions caused by market price volatility.

The following table illustrates the change in fair value related to the Company's derivative financial instruments classified as fair value through profit or loss and recorded in the consolidated statement of operations and comprehensive income:

	<u>September 30, 2021</u>	<u>September 30, 2020</u>
Fixed-for-floating electricity swaps gain (loss)	\$ 3,704	\$ 2,202
Change in fair value of derivative instruments	<u>\$ 3,704</u>	<u>\$ 2,202</u>

The following table summarizes the fair value of the financial assets (liabilities) recorded in the consolidated statements of financial position as at September 30, 2021 and 2020:

	<u>September 30, 2021</u>	<u>September 30, 2020</u>
Fixed-for-floating electricity swaps, current	\$ 1,385	\$ (1,486)
Fixed-for-floating electricity swaps, non-current	67	(766)
	<u>\$ 1,452</u>	<u>\$ (2,252)</u>



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The following tables summarize financial instruments which are classified as fair value through profit or loss as at September 30, 2021 and 2020:

<u>2021</u>	<b>Notional Volume (Peak and Flat)</b>	<b>Total Remaining Volume</b>	<b>Maturity Date</b>	<b>Fixed Price</b>	<b>Fair Value (unfavourable)</b>	<b>Notional Value</b>
Fixed-for-floating electricity swaps	0.05 MWh to 2 MWh	261,214 MWh	October 2021 to March 2024	\$21.49 to \$77.66	\$ 1,452	\$8,191

<u>2020</u>	<b>Notional Volume (Peak and Flat)</b>	<b>Total Remaining Volume</b>	<b>Maturity Date</b>	<b>Fixed Price</b>	<b>Fair Value (unfavourable)</b>	<b>Notional Value</b>
Fixed-for-floating electricity swaps	0.1 MWh to 2.5 MWh	270,854 MWh	October 2020 to December 2023	\$19.25 to \$59.50	\$ (2,252)	\$8,241

During the year ended September 30, 2021, included in cost of sales are the settlements under fixed-for-floating electricity swaps of \$5,131 (2020 – \$7,279).

The Company's physical gas supply contracts are not considered financial instruments; therefore, they have not been assessed.

**(b) Fair value ("FV") hierarchy**

**(i) Level 1**

The fair value measurements are classified as Level 1 in the FV hierarchy if the fair value is determined using quoted, unadjusted market prices. The Company values its cash, restricted cash, accounts receivable and trade and other payables under Level 1.

**(ii) Level 2**

Fair value measurements that require inputs other than quoted prices in Level 1, either directly or indirectly, are classified as Level 2 in the FV hierarchy. This could include the use of statistical techniques to derive the FV curve from observable market prices. However, in order to be classified under Level 2, inputs must be substantially observable in the market. Derivative assets and liabilities included in Level 2 are valued using multiple prices quoted by market participants other than exchanges, industry pooling, and other inputs that are derived principally from, or collaboratively by, observable market data.

**(iii) Level 3**

Fair value measurements that require unobservable market data or use statistical techniques to derive forward curves from observable market data and unobservable inputs are classified as Level 3 in the FV hierarchy. The Company's policy is to recognize transfers in and out as at the end of the reporting period.

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During the years ended September 30, 2021 and 2020, there were no significant transfers between levels.

The following table illustrates the classification of financial assets in the FV hierarchy as at September 30, 2021:

	<u>Level 1</u>	<u>Level 2</u>	<u>Level 3</u>	<u>Total</u>
Current portion of derivative assets	-	\$ 1,385	-	\$ 1,385
Long-term portion of derivative assets	-	\$ 67	-	\$ 67

The following table illustrates the classification of financial liabilities in the FV hierarchy as at September 30, 2020:

	<u>Level 1</u>	<u>Level 2</u>	<u>Level 3</u>	<u>Total</u>
Current portion of derivative liabilities	-	\$ 1,486	-	\$ 1,486
Long-term portion of derivative liabilities	-	\$ 766	-	\$ 766

**(c) Classification of financial assets and liabilities**

As at September 30, 2021 and 2020, the carrying amounts of the financial assets and liabilities, except for derivative assets and liabilities, approximated their fair value due to their short-term nature. The derivative assets and liabilities are recorded at fair value.

**(d) Management of risks arising from financial instruments**

The risks associated with the Company's financial instruments are as follows:

**(i) Market risk**

Market risk is the potential loss that may be incurred as a result of changes in the market or fair value of a particular instrument or commodity. Components of market risk to which the Company is exposed are discussed below.

*Commodity price risk*

The Company is exposed to market risks associated with commodity prices and market volatility where estimated customer requirements do not match actual customer requirements. Management actively monitors these positions on a daily basis in accordance with its Risk Management Policy. This policy sets out a variety of limits, most importantly thresholds for open positions in the electricity and natural gas portfolios. The Company's exposure to market risk is affected by a number of factors, including accuracy of estimation of customer commodity requirements, commodity prices, volatility and liquidity of markets. The Company enters into derivative instruments in order to manage exposures to changes in commodity prices. The inability or failure of the Company to manage and monitor the above market risks could have a material adverse effect on the operations and cash flow of the Company.

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The fair values of the Company's financial instruments are significantly influenced by the variability of forward spot prices for electricity. Period to period changes in forward spot prices could cause significant changes in the mark to market valuation ("MTM Valuation") of these contracts, as shown below:

Percentage change in the forward spot price at September 30, 2021		Electricity			
		Percent change in MTM Valuation		Dollar change in MTM Valuation	
+1%	-1%	+7%	-7%	\$ 96	\$ (96)
+5%	-5%	+33%	-33%	\$ 480	\$ (480)
+10%	-10%	+66%	-66%	\$ 960	\$ (960)

Percentage change in the forward spot price at September 30, 2020		Electricity			
		Percent change in MTM Valuation		Dollar change in MTM Valuation	
+1%	-1%	+2%	-2%	\$ 49	\$ (49)
+5%	-5%	+11%	-11%	\$ 246	\$ (246)
+10%	-10%	+22%	-22%	\$ 492	\$ (492)

*Interest rate risk*

The Company is exposed to interest rate risk on certain advances within the Supplier Agreements with Shell Energy. As at September 30, 2021, the Company had letters of credit outstanding of US \$2,250 (2020 – US \$2,250) under the EDC facility and, therefore, is exposed to interest rate risk. The Company's current exposure to interest rate risk does not economically warrant the use of derivative instruments, and the Company does not currently believe that it is exposed to material interest rate risk. During the years ended September 30, 2021 and 2020, the impact of a 1% increase (decrease) in the interest rate on these balances would have not had a material impact on finance costs in the consolidated statement of operations and comprehensive income.

*Foreign currency risk*

A portion of the Company's income is generated in US dollars and is subject to currency fluctuations. The performance of the Canadian dollar relative to the US dollar could positively or negatively affect the Company's income. Due to the expectations of growing the US operations, the Company expects to have greater exposure to US currency fluctuations in the future. Thus, the Company may from time to time, experience losses resulting from fluctuations in the value of its foreign currency translations, which could adversely affect its operating results. Translation risk is not hedged.

Regarding translation exposure, if the Canadian dollar had been 5% stronger/weaker versus the US dollar for the year ended September 30, 2021, all other variables constant, income for the period would have been \$33 higher/lower (2020 – \$17) and comprehensive income would have been \$124 higher/lower (2020 - \$145).

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**(ii) Credit risk**

Credit risk is the risk that one party to a financial instrument fails to discharge an obligation and causes financial loss to another party. The Company is exposed to credit risk in two specific areas: customer credit risk and counterparty credit risk.

*Customer credit risk*

The Company operates in POR markets, where for a fee the LDCs provide collection services and assume the risk of any bad debts owing from the Company's customers. Management believes that the risk of the LDCs failing to deliver payment to the Company is minimal. There is no assurance that the LDCs that provide these services will continue to do so in the future. As at September 30, 2021 and 2020, the Company's risk related to accounts receivable exposure is minimal.

*Counterparty credit risk*

Counterparty credit risk represents the loss that the Company would incur if a counterparty fails to perform under its contractual obligations. This risk would manifest itself in the Company replacing contracted supply at prevailing market rates, thus impacting the related customer margin. Counterparty credit risk is limited to Shell Energy for all wholesale supply positions. However, the failure of the counterparty to meet its contracted obligations could have a material adverse effect on the operations and cash flows of the Company. As at September 30, 2021, the exposure related to counterparty credit risk arising from derivative financial assets amounted to \$1,452 (2020-\$nil).

**(iii) Liquidity risk**

Liquidity risk is the potential inability to meet financial obligations as they fall due. The Company manages this risk by monitoring cash flow forecasts for the next 12 months to ensure adequate and efficient use of cash resources and credit facilities.

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The following are the contractual maturities of the Company's financial obligations as at September 30, 2021:

	Carrying amount	Contractual cash flow	Less than 1 year	1 to 5 years	More than 5 years
Trade and other payables	\$ 11,394	11,394	\$ 11,394	\$ -	\$ -
Lease liability	255	300	175	125	-
	<b>\$ 11,649</b>	<b>\$ 11,694</b>	<b>\$ 11,569</b>	<b>\$ 125</b>	<b>\$ -</b>

The following are the contractual maturities of the Company's financial liabilities as at September 30, 2020:

	Carrying amount	Contractual cash flow	Less than 1 year	1 to 5 years	More than 5 years
Trade and other payables	\$ 11,204	\$ 11,204	\$ 11,204	\$ -	\$ -
Lease liability	379	490	177	313	-
Derivative liabilities	2,252	2,611	1,600	1,011	-
	<b>\$ 13,835</b>	<b>\$ 14,305</b>	<b>\$ 12,981</b>	<b>\$ 1,324</b>	<b>\$ -</b>

*(iv) Supplier risk*

The Company purchases the gas and power delivered to its customers through a long-term contract entered into with Shell Energy. The Company has an exposure to supplier risk as the ability to continue to deliver gas and power to its customers is reliant upon the ongoing operations of Shell Energy and their ability to fulfill their contractual obligations. Of these gas and power purchases, 100% are with Shell Energy.

## 12. RIGHT-OF-USE ASSET AND LEASE LIABILITY

### (a) Lease liabilities

The following table summarizes the lease liability as at September 30, 2021 and the undiscounted contractual obligation maturities relating to the lease liabilities.

#### 2021

<b>Lease liabilities included in the consolidated statement of financial position as at September 30, 2021</b>	<b>\$255</b>
Current	\$167
Non-Current	\$88

#### Maturity analysis –contractual undiscounted cash flow

Less than one year	\$175
One to five year	125
More than five year	-
<b>Total undiscounted liabilities as at September 30, 2021</b>	<b>\$300</b>

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**2020**

<b>Lease liabilities included in the consolidated statement of financial position as at September 30, 2020</b>	<b>\$379</b>
Current	\$164
Non-Current	\$215

**Maturity analysis –contractual undiscounted cash flow**

Less than one year	\$177
One to five year	313
More than five year	-
<b>Total undiscounted liabilities as at September 30, 2020</b>	<b>\$490</b>

**(b) Right-of-use assets**

The right-of-use asset comprises of buildings included in the “property and equipment” in consolidated statement of financial position:

**2021**

<b>Balance as at September 30, 2020</b>	<b>\$367</b>
Less: Reimbursement of leasehold improvement	<u>(52)</u>
	<b>\$315</b>
Depreciation charge for the year	<u>(117)</u>
<b>Balance as at September 30, 2021</b>	<b><u>\$198</u></b>

**2020**

<b>Initial recognition as at October 1, 2019</b>	<b>\$323</b>
Addition	<u>157</u>
	<b>\$480</b>
Depreciation charge for the year	<u>(113)</u>
<b>Balance as at September 30, 2020</b>	<b><u>\$367</u></b>

**(c) Amount recognized in consolidated statement of operations and comprehensive income relating to leases:****2021**

Interest on lease liability	\$46
Variable lease payment not included in lease liability	\$69

**2020**

Interest on lease liability	\$48
Variable lease payment not included in lease liability	\$39
Expense related to short term leases	\$268

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**13. GOVERNMENT GRANTS**

The Company received grants of \$638 (2020 – \$343) in the form of wage subsidy and \$35 (2020 – \$nil) in the form of rent subsidy from the Government of Canada as a relief measure in response to COVID-19 pandemic. The grant is recognized as reduction in general and administrative expenses in the consolidated statement of operations and comprehensive income. There is no contingency or unfulfilled conditions attached to the recognized grant.

**14. INCOME TAXES**

**(a) Deferred income tax**

The tax effects of temporary differences and loss carryforward that give rise to the deferred tax assets are summarized below:

	<u>September 30, 2021</u>	<u>September 30, 2020</u>
Derivative liabilities	\$ -	\$ 602
Reserve	43	259
Property and equipment	26	-
Lease asset and liability	11	-
<b>Deferred tax assets</b>	<b><u>\$ 80</u></b>	<b><u>\$ 861</u></b>

The tax effects of temporary differences that give rise to the deferred tax liabilities are summarized below:

	<u>September 30, 2021</u>	<u>September 30, 2020</u>
Reserve	-	435
Property and equipment	-	4
Lease asset and liability	-	2
Derivative assets	90	-
<b>Deferred tax liabilities</b>	<b><u>\$ 90</u></b>	<b><u>\$ 441</u></b>

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**(b) Income tax expense**

The combined tax rate is determined using the substantially enacted tax rates as at September 30, 2021 and 2020. A reconciliation to the provision for income tax reported in the consolidated statement of operations and comprehensive income is summarized as follows:

	<u>September 30, 2021</u>	<u>September 30, 2020</u>
Income before income taxes	\$ 2,911	\$ 1,711
Statutory rate	26.5%	26.5%
Expected income tax recovery at statutory tax rates	771	453
Other permanent differences	4	(63)
Benefit of current year losses not recognized	55	79
Reversal of deferred tax liability on previous year expense	(434)	-
Other	(19)	14
<b>Income tax expense</b>	<b><u>\$ 377</u></b>	<b><u>\$ 483</u></b>

The components of the provision for income taxes were as follows:

Current income tax	\$ (46)	\$ 105
Deferred income tax	423	378
<b>Provision for income taxes</b>	<b><u>\$ 377</u></b>	<b><u>\$ 483</u></b>

The Company has losses for income tax purposes of approximately \$2,572 (2020 - \$2,652), of which US \$2,019 (2020 - US \$1,988) relate to the US operations, available to reduce future years income for tax purposes which will expire in 2035. The potential tax benefit of these losses has not been recognized.

**15. SHARE CAPITAL****Authorized**

Authorized share capital of the Company is an unlimited number of Class A and Class B shares.

**Issued and outstanding**

	<u>Common shares</u>	<u>\$</u>
Share capital at September 30, 2020	12,000,000	\$ 7,364
Shares issued	-	\$ -
Share capital at September 30, 2021	<u>12,000,000</u>	<u>\$ 7,364</u>

**16. REVENUE**

The revenue from contracts with customers is disaggregated by type of product as below:

	<u>September 30, 2021</u>	<u>September 30, 2020</u>
Electricity contracts	\$16,662	\$20,905
Gas contracts	\$2,478	\$5,161
<b>Revenue from contracts with customers</b>	<b><u>\$19,140</u></b>	<b><u>\$26,066</u></b>



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The Company's contract assets relating to unbilled revenue, included in accounts receivable, as at September 30, 2021 was \$175 (2020-\$163).

**17. NET CHANGE IN OPERATING ASSETS AND LIABILITIES**

The inflows (outflows) of net change in operating assets and liabilities are as follows:

	<u>September 30, 2021</u>	<u>September 30, 2020</u>
Accounts receivable	\$ (137)	\$ 817
Gas delivered in excess of consumption	48	190
Other current assets	(164)	48
Trade and other payables	190	459
Deferred revenue	(107)	(218)
	<u>\$ (170)</u>	<u>\$ 1,296</u>

**18. RELATED PARTY TRANSACTIONS**

**(a) Employee benefit expense**

	<u>September 30, 2021</u>	<u>September 30, 2020</u>
Salaries, fees and other short-term benefits	\$ 2,204	\$ 2,159
	<u>\$ 2,204</u>	<u>\$ 2,159</u>

**(b) Compensation of key management personnel**

The Company's key management personnel are comprised of the members of the executive team of the Company. Compensation of key management personnel that is directly attributable to the Company is as follows:

	<u>September 30, 2021</u>	<u>September 30, 2020</u>
Salaries, fees and short-term employee benefits	\$ 1,540	\$ 1,628
	<u>\$ 1,540</u>	<u>\$ 1,628</u>

**(c) Related party transaction**

The Company licenses computer software from a company controlled by a shareholder of the Company. During the year ended September 30, 2021, the Company incurred charges in the amount of \$819 (2020 – \$844), related to software license fees, which are recovered through related pass-through charges on energy sales. Related party transactions were made at agreed upon terms.

**19. CAPITAL DISCLOSURES**

For capital management purposes, the Company considers its capital structure to include share capital, debt, working capital and availability under the Supplier Agreements. The Company's principal objectives in managing capital are:

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**NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS (continued)**  
AS AT AND FOR THE YEARS ENDED SEPTEMBER 30, 2021 and 2020  
(in thousands of dollars, unless otherwise stated)

- ensure sufficient liquidity to adequately fund the ongoing operations of the business;
- provide flexibility to take advantage of contract and growth opportunities that are expected to provide satisfactory returns to shareholders;
- maintain a strong capital base so as to maintain investor and creditor confidence; and
- comply with financial covenants required under its financing and supply arrangements.

The Company manages its capital structure and adjusts it in light of changes in economic conditions and the risk characteristics of the underlying assets. The Company is not subject to externally imposed capital requirements other than standard covenants in the Supplier Agreements (Note 10). At September 30, 2021, all these covenants have been met.

**20. COMMITMENTS AND CONTINGENCIES**

The following are the gas purchase commitments for each of the next five years and thereafter as at September 30, 2021:

	<b>Less than 1 year</b>	<b>1 – 3 years</b>	<b>4 – 5 years</b>	<b>Exceeding 5 years</b>	<b>Total</b>
Long-term gas contracts	\$970	\$1,492	\$ -	\$ -	\$2,462

The following are the gas purchase commitments for each of the next five years and thereafter as at September 30, 2020:

	<b>Less than 1 year</b>	<b>1 – 3 years</b>	<b>4 – 5 years</b>	<b>Exceeding 5 years</b>	<b>Total</b>
Long-term gas contracts	\$1,058	\$455	\$ -	\$ -	\$1,513

**Regulatory proceedings**

The Company is an independent energy marketer of retail electricity and natural gas to residential and commercial customers across many jurisdictions. Market rules and regulations locally and regionally change periodically. These changes will likely have an impact on the Company's business; some may be material and others may not. Some changes may lead to new or enhanced business opportunities, some changes may result in a negative impact on the Company's business. As such, there is no way to impute an exact effect through a cost benefit analysis, because there are many variables. The regulatory process does allow for some participation, and the Company engages in that participation; however, such participation provides no assurance as to the outcome of such proceedings. The Company does not expect proceedings to have a material adverse effect on the Company's consolidated financial position or consolidated results of operations.

**Litigation and other claims**

The Company is involved in claims and legal actions in the normal course of business. In the opinion of management, the ultimate disposition of these matters will not have a material impact on the Company's consolidated financial position or liquidity. Provisions for any contingencies related to these items are

**PLANET ENERGY (ONTARIO) CORP.**  
**NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS (continued)**  
AS AT AND FOR THE YEARS ENDED SEPTEMBER 30, 2021 and 2020  
(in thousands of dollars, unless otherwise stated)

recorded in the consolidated financial statements when it is concluded that its occurrence is probable and the related liquidity is estimable.

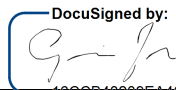
In March 2018, a plaintiff filed a \$1,600 claim against one of its former employees and the Company claiming unauthorized enrollment of its electricity and natural gas supply accounts with the Company. Since delivering its statement of defense and counterclaims for early termination charges, the Company has not heard from the plaintiff's counsel and this matter is on-going. At this time, an estimate of a possible loss, if any, related to this claim cannot be made.

On April 26, 2018, a former sales distributor issued a Notice of Arbitration to the Company for a dispute arising out of the Sales Agency Agreement ("SAA") between the parties that expired on November 9, 2016 and sought to recover commissions that the Company had withheld payment of along with claims for other amounts owing. The Company counter claimed and sought to recover specific damages and general damages incurred as a result of the sales distributor's purported breach of the SAA. On February 3, 2021, the arbitrator issued an arbitral award (the "Arbitration Award") directing that the Company to pay the sales distributor a net amount of \$28,096. On March 5, 2021, the Company issued a notice of application seeking to set aside the Arbitration Award (the "Set Aside Application") in the Ontario Superior Court (the "Court"). A virtual hearing was held by the Court on August 20, 2021, and is awaiting the decision of the Court. At this stage, it is not possible to accurately predict what the outcome of the set aside application will be. As at September 30, 2021, the total accrued withheld payments amounted to \$10,572 which is included in trade and other payables.

**21. APPROVAL OF THE CONSOLIDATED FINANCIAL STATEMENTS**

These consolidated financial statements were authorized for issue on December 17, 2021 by the Board of Directors of the Company.

This is Exhibit "O" referred to in the Affidavit of Nino Silvestri sworn by Nino Silvestri of the Town of Oakville, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on May 26, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:  


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10CCB48209FA101  
Commissioner for Taking Affidavits (or as may be)

**GAVIN INKSTER LSO# 82737I**

Court File Number: CV-21-00659022

**Superior Court of Justice**  
Commercial List

**FILE/DIRECTION/ORDER**

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**ALL COMMUNICATIONS NETWORK OF CANADA, CO.**

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Applicant

AND

**PLANET ENERGY CORP., PLANET ENERGY (ONTARIO) CORP., and PLANET  
ENERGY (B.C.) CORP.**

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Respondents

Case Management  Yes  No by Judge: \_\_\_\_\_

Counsel	Telephone No:	Email/Facsimile No:
Kris Borg-Olivier for Applicant		
Daniel Murdoch, Zev Smith and Jordana Kroft for Respondents		

Order     Direction for Registrar **(No formal order need be taken out)**  
 Above action transferred to the Commercial List at Toronto **(No formal order need be taken out)**

Adjourned to: \_\_\_\_\_  
 Time Table approved (as follows): \_\_\_\_\_

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**Date of Hearing: August 10, 2021**

ENDORSEMENT

- [1] Two applications have been brought following release of an arbitral award dated February 3, 2021 (the “Award”). The Award was issued in connection with an arbitration between All Communications Network of Canada, Co. (“ACN”) and Planet Energy Corp., Planet Energy (Ontario) Corp., and Planet Energy (B.C.) Corp. (together, “Planet Energy”). The arbitration was administered under the rules of the International Center for Dispute Resolution (the “ICDR Rules”). The arbitrator was Arbitrator Stephanie Cohen (the “Arbitrator”).
- [2] ACN was the successful party in the arbitration. Planet Energy was ordered to pay ACN in excess of CAD \$28 million, comprising damages, interest, and costs.
- [3] Planet Energy brings an application to set aside the Award in accordance with Article 34 of Schedule 2 to the *International Commercial Arbitration Act, 2017* (the “ICAA”). As part of the relief it seeks, Planet Energy seeks an order removing the Arbitrator, and directing the parties to agree on the appointment of a new arbitrator.
- [4] ACN brings a separate application under Articles 35 and 36 of the *ICAA* for a judgment recognizing and enforcing the Award. As part of its application, ACN seeks an order requiring Planet Energy to post security in the amount of \$10 million prior to an application for setting aside the Award being heard.
- [5] Hearings of the two applications are scheduled for August 20, 2021 before me.
- [6] On August 10, 2021, I heard ACN’s application for an interim order requiring Planet Energy to post security.
- [7] Article 36 of the *ICAA* addresses the grounds for refusing recognition or enforcement of an arbitral award. Article 36(2) provides:
- (2) If an application for setting aside or suspension of an award has been made to a court referred to in paragraph (1)(a)(v) of this article, the court where recognition or enforcement is sought may, if it considers it proper, adjourn its decision and may also, on the application of the party claiming recognition or enforcement of the award, order the other party to provide appropriate security.
- [8] The court referred to in paragraph (1)(a)(v) of Article 36 is the court where an application for setting aside or suspension of an award has been made.
- [9] I first address whether Article 36(2) confers statutory authority for the party seeking recognition or enforcement of the award to apply for an order requiring the other party to provide security where the court is not asked to and does not adjourn its decision.
- [10] ACN submits that Article 36(2) confers statutory authority on the court, on the application of the party claiming recognition or enforcement of the award, to order the other party to provide appropriate security. ACN submits that this is a matter for the exercise of the court’s discretion and does not depend on an adjournment of the decision on an application for recognition or enforcement of an award being requested or granted.

- [11] Planet Energy submits that the question of whether the court has authority under Article 36(2) of the ICAA to make an order for provision of security in the absence of an adjournment of the decision on an application for recognition and enforcement of an award has been decided by courts in Ontario and British Columbia which have held that security is only considered in the context of a request for an adjournment.
- [12] In support of this submission, Planet Energy relies on two authorities.
- [13] In *Empresa Minera Los Quenuales S.A. v. Vena Resources Inc.*, 2015 ONSC 4408, the respondent brought a motion to the Ontario Superior Court of Justice to adjourn the enforcement of an arbitral award by the applicant. The respondent had brought an application in Peru to set aside the award. The issues identified by the motion judge were (1) whether he should exercise its discretion to adjourn the enforcement application and, if so, (2) whether he should further exercise his discretion to order the respondent to post security. The motion judge exercised his discretion to adjourn the enforcement application until decision on the application to set aside the award in Peru had been delivered. The motion judge then addressed the question of security and, at paragraph 36, wrote that “[s]ecurity is only considered upon the ordering of an adjournment. It too is discretionary.” As a condition of the adjournment, the motion judge ordered the respondent to post a specified amount as security.
- [14] In *Empresa*, the motion judge was not called upon to decide whether the court does or does not have statutory authority under Article 36(2) of the ICAA to order that the party responding to an application for recognition or enforcement of an award provide security where there is no adjournment of the decision on the recognition or enforcement application. The applicant only sought security as a condition of the adjournment, if granted. I do not regard the decision in *Empresa* as authoritative on the question before me.
- [15] In *Wires Jolley LLP v. Jean Estate*, 2010 BCSC 391, an Ontario law firm applied to the British Columbia Supreme Court for an order recognizing and enforcing an arbitral award. The party against whom the award had been made opposed the application on the ground that he had applied to the Ontario Superior Court of Justice for an order setting aside the award. This party sought an order adjourning the application. The law firm asked that if the application is adjourned, the other party be ordered to pay the balance due on the award, plus costs and interest, as security. The application judge addressed other authorities where security had been ordered as a condition of an adjournment<sup>1</sup> and held:
- Similarly in *Powerex*, the security order appears to have been the *quid pro quo* for an adjournment of the enforcement application, just as comity may require an adjournment so as to avoid prejudice while an appeal or application to set aside is pending, so may comity require the securing of the judgment so as to facilitate execution.
- [16] In *Wires Jolley*, the court granted an adjournment and required the party opposing the application for recognition and enforcement of the award to provide security.

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<sup>1</sup> The cases cited are *Europcar Italia S.p.A. v. Alba Tours International Inc.*, [1997] O.J. No. 133; *Powerex Corp. v. Alcan Inc.*, 2004 BCSC 876; and *Soleh Boneh International Ltd. v. Government of the Republic of Uganda*, [1993] 2 Lloyd’s Rep. 208 (Eng. C.A.).

- [17] In *Wires Jolley*, like in *Empresa*, the court was not asked to decide whether Article 36(2) confers statutory authority on the court to make an order requiring the party opposing recognition or enforcement of the award to provide security where there is no adjournment of the decision by the court where recognition or enforcement is sought.
- [18] This question was not decided in any of the cases cited by counsel.
- [19] Article 36(2) is only engaged if an application for setting aside or suspension of an award has been made to a court of the country in which, or under the law of which, that award was made. If an application is made for recognition and enforcement of an arbitral award under Articles 35 and 36 of the *ICAA* which is opposed, and the opposing party does not bring an application to set aside the award, article 36(2) does not, under any interpretation, confer statutory authority for the court to order provision of security. This is so regardless of the strength or weakness of the opposition to the application for recognition and enforcement of the award, the conduct of the opposing party, or the financial or other circumstances of the opposing party.
- [20] I regard this requirement in Article 36(2) to be significant because the statutory grounds for an arbitral award to be set aside by the court under Article 34(2) are virtually the same as the statutory grounds for the court to refuse recognition or enforcement of an arbitral award under Article 36(1). On the applications before me, which are to be heard together, if Planet Energy had only opposed recognition or enforcement of the award, and not brought a separate application to set aside the award, it would be able to rely on the statutory grounds to oppose recognition or enforcement without being subject to an application to provide security.
- [21] ACN submits that the legal effect a successful outcome on an application to set aside an award is more serious than the legal effect of a decision not to recognize or enforce the award in on a given application, where the award itself would remain in place. ACN submits that this may explain why the *ICAA* only provides for security where an application has been made for setting aside or suspension of an award and not where there is only opposition to recognition or enforcement of an award.
- [22] The language of Article 36(2) may be read as ACN contends it should be, that the two decisions that the court is given discretion to make, to adjourn its decision, and also to order the provision of appropriate security, are to be treated discretely. However, Article 36(2) may also be read such that the discretion to make these two decisions is to exercised conjunctively, such that the discretion to order provision of security follows only from a decision to adjourn.
- [23] In the absence of authority on this question, I am not persuaded that the proper interpretation of Article 36(2) of the *ICAA* is that this provision confers statutory authority on the court to order that security be provided whether or not an adjournment of the decision recognizing or enforcing the award is made. Nevertheless, I do not need to make a decision on this question, one way or the other, because, for the reasons that follow, if there is statutory authority to order that Planet Energy provide security in these circumstances, I decline to exercise my discretion to do so.
- [24] ACN submits that there are five reasons that security should be ordered:
- a. First, the remedy sought by Planet Energy of having the award set aside, the arbitrator removed, and the process required to be re-started is an extreme one that is unlikely to succeed, and Planet Energy should not be given a “free shot” at this remedy without being



required to provide security. The provision of security would provide an incentive for Planet Energy to move with diligence in this court and on any appeal of a decision recognizing and enforcing the award.

- b. Second, ACN contends that the history of the arbitration proceedings shows that Planet Energy comes to the court with unclean hands based in findings of bad conduct made by the Arbitrator. ACN submits that all of Planet Energy's conduct, including the proceedings in this Court, must be viewed through this lens, and the Court should not allow itself to be used to assist Planet Energy to engage in meritless litigation.
- c. Third, an order of security would assist ACN in execution of a judgment recognizing and enforcing the award.
- d. Fourth, the equities of the applications favour ACN because it comes to court as the successful party. There is no prejudice to Planet Energy because, if successful, it will have the security returned to it.
- e. Fifth, the amount requested as security, \$10 million, or 36% of the award, is reasonable because the evidence is that Planet Energy has this amount available to it to provide as security.

[25] I am not satisfied that the reasons advanced by ACN justify the exercise of discretion, if available, to order the provision of security. Planet Energy is acting in accordance with its statutory rights under the *ICAA* in bringing an application to set aside the award and in opposing the recognition and enforcement application, and it should not be punished by being required to provide security simply for doing so. There is no evidence that Planet Energy has not acted with diligence on the applications that will be heard on August 2021 or that it will not act with diligence if it is unsuccessful on these applications and decides to appeal.

[26] I do not find on this application that the merits of the applications to be heard on August 20, 2021 are such that an order for security against Planet Energy should be made. The merits of the applications will be addressed when they are heard and decided.

[27] The findings made by the Arbitrator concerning the conduct of Planet Energy will be before me on the applications. I am not able to make factual findings on these matters on this application, nor, in my view, would it be appropriate for me to do so.

[28] I do not accept that the fact that an order for security will assist ACN to enforce a judgment recognizing the award, if one is made, should lead me to make an order for provision of security. Every party seeking a judgment would like to have security provided, but this is not done before the question of whether judgment should be granted is decided, absent exceptional circumstances. ACN has not shown that exceptional circumstances exist that would justify such an order. If there are proper grounds for ACN to move for extraordinary pre-judgment remedies, such as a *Mareva* injunction, ACN is at liberty to do so.

[29] The fact that Planet Energy may have sufficient resources to fund the requested security does not justify an order for provision of security before the applications are heard. Planet Energy points to evidence that enforcement of the award will cause it to become insolvent. I am not satisfied that, given Planet Energy's financial circumstances and the possibility of insolvency if the award

is recognized and enforced, it would be proper to require it to provide security for the benefit of one creditor, ACN, without consideration of the interests of secured and other unsecured creditors of Planet Energy.

[30] For these reasons, I decline to order Planet Energy to provide security. The application by ACN for interim relief is dismissed.

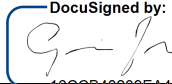
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Cavanagh J.

August 11, 2021

This is Exhibit "P" referred to in the Affidavit of Nino Silvestri sworn by Nino Silvestri of the Town of Oakville, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on May 26, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:



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Commissioner for Taking Affidavits (or as may be)

**GAVIN INKSTER LSO# 82737I**

CITATION: All Communications Network of Canada, Co. v. Planet Energy Corp., 2022 ONSC 2178

COURT FILE NO.: CV-21-00659022-00CL

COURT FILE NO.: CV-21-00658223-00CL

DATE: 20220407

ONTARIO

SUPERIOR COURT OF JUSTICE

(COMMERCIAL LIST)

BETWEEN:

ALL COMMUNICATIONS NETWORK OF CANADA, CO.

Kris Borg-Olivier for All Communications Network of Canada, Co.

Applicant

- and -

PLANET ENERGY CORP., PLANET ENERGY (ONTARIO) CORP., and PLANET ENERGY (B.C.) CORP.

Daniel Murdoch, Zev Smith and Jordana Kroft for the Planet Energy Corp., Planet Energy (Ontario) Corp., and Planet Energy (B.C.) Corp.

Respondents

AND BETWEEN:

PLANET ENERGY CORP., PLANET ENERGY (ONTARIO) CORP., and PLANET ENERGY (B.C.) CORP

Applicants

- and -

ALL COMMUNICATIONS NETWORK OF CANADA, CO.

Respondents

Heard: August 20, 2021

**CAVANAGH J.****REASONS FOR JUDGMENT****Introduction**

[1] The applicants in the application commenced in Court File No. CV-21-00658223 are Planet Energy (Ontario) Corp. and Planet Energy (B.C.) Corp. (together, “Planet”).

[2] Planet brings this application to set aside a final arbitral award dated February 3, 2021 (the “Award”). The Award was issued in an arbitration (the “Arbitration”) between Planet and the respondent All Communications Network of Canada, Co. (“ACN”). The Arbitration was administered under the rules of the International Center for Dispute Resolution (the “ICDR Rules”) before the arbitrator, Stephanie Cohen (the “Arbitrator”).

[3] ACN was the successful party in the Arbitration. Planet Energy was ordered to pay ACN in excess of \$29 million comprising damages, interest, and costs.

[4] ACN brings a separate application for an order recognizing and enforcing the Award.

[5] For the following reasons, Planet’s application for an order setting aside the Award is dismissed. ACN’s application for a judgment recognizing and enforcing the Award is granted.

**Factual Background**

[6] Planet is an energy retailer that provides primarily five-year fixed-price electricity and natural gas supply to residential customers throughout Canada and the United States.

[7] ACN is a direct selling company organized under the laws of Nova Scotia. ACN has contractual relationships with thousands of independent business owners, known as IBOs, in Canada. IBOs are independent contractors of ACN, typically individual entrepreneurs or small business owners, who contract with ACN for the opportunity to earn additional income through commissions by referring customers for the telecommunications, energy, and other residential and commercial services provided by ACN or by third party providers with which ACN contracts (such as Planet).

[8] The Arbitration between ACN and Planet arose out of the Amended, Restated and Assigned Sales Agency Agreement Canada, dated November 9, 2012, between the parties (the “SAA”). Under the SAA, ACN agreed to use its network of IBOs to sell Planet’s products. The SAA expired by its terms in November 2016. Certain provisions, including Planet’s obligations to make commission payments to ACN, survived termination of the SAA.

[9] Planet agreed to pay ACN a commission for every referred customer who successfully registered for Planet’s products and services. Planet and ACN tracked these customer referrals through an online portal where ACN (and its OBOs) would refer potential customers to register for products and services.

[10] In the SAA, ACN covenanted to use commercially reasonable efforts to sell Planet's products in "the Territory" and not to take actions that it knew would be harmful to Planet's retail energy business. ACN agreed to indemnify Planet for losses resulting from complaints, whether asserted or threatened, by any third party, customer or regulatory authority in connection with ACN or the IBOs selling Planet's products.

[11] In March 2018, Planet provided notice to ACN of an indemnification claim under the SAA relating, among other things, to a compliance investigation by the Ontario Energy Board ("OEB") in respect of the conduct of ACN's IBOs when selling Planet's products. Planet informed ACN that it would not pay further commissions as a set-off to the amounts claimed to be owed by ACN to Planet on its claims for indemnification.

[12] The SAA provided that any claim, controversy, or dispute between the parties was to be resolved by binding arbitration. In April 2018, CAN commenced the Arbitration seeking payment of the commissions it claimed were owing under the SAA.

[13] Planet defended ACN's claims in the Arbitration and counterclaimed, alleging that ACN had breached its obligations under the SAA by (a) failing to use commercially reasonable efforts to sell Planet's products; (b) failing to ensure that its IBOs adhered to applicable regulations and contractual standards for the sale of energy products; (c) barring Planet from events where it could present to IBOs; (d) deliberately declining to cooperate with Planet in an orderly wind-down of the business prior to expiry of the SAA; and (e) breaching its confidentiality obligations and commitment not to do harm to Planet by working with an affiliated energy company, Xoom Energy, LLC ("Xoom"), to replace and compete with Planet in Canada.

[14] The Arbitration was an international arbitration governed by Ontario's *International Commercial Arbitration Act, 2017* (the "Act"). A hearing on the merits was conducted the Zoom video-conference over eleven days in June 2020.

[15] On February 3, 2021, the Arbitrator issued the Award. The Arbitrator found that "ACN's claims have been upheld in all material respects and ACN is the prevailing party in the arbitration."

[16] The Award resulted in Planet owing ACN the total amount of \$29,259,787 as of August 20, 2021, comprising damages and the costs of the arbitration, as well as prejudgment interest.

### **Analysis**

[17] The UNCITRAL Model Law on International Commercial Arbitration (1985) (the "Model Law") is a multilateral instrument designed to provide consistent, stable, and predictable rules respecting the conduct of international commercial arbitrations that how they are dealt with by domestic courts. The Model Law is incorporated into Ontario law as Schedule 2 to the Act.

[18] Article 5 of the Model Law provides:

In matters governed by this Law, no court shall intervene except where so provided in this Law.

[19] Article 34(1) of the Model Law provides that “[r]ecourse to a court against an arbitral award may be made only by an application for setting aside in accordance with paragraphs (2) and (3) of this article”.

[20] Article 34(2) of the Model Law provides:

An arbitral award may be set aside by the court specified in article 6 only if:

(a) the party making the application furnishes proof that:

- (i) a party to the arbitration agreement referred to in article 7 was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of this State; or
- (ii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or
- (iii) the award deals with a dispute not contemplated by were not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside; or
- (iv) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Law from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Law; or

(b) the court finds that:

- (i) the subject-matter of the dispute is not capable of settlement by arbitration under the law of this State; or
- (ii) the award is in conflict with the public policy of this State.

[21] In *Bayview Irrigation District No. 11 v. United Mexican States*, 2008 CarswellOnt 2682, Allen J., at para. 11, describes the court's role in reviewing an arbitral award:

Article 34 sets out the grounds upon which a court can set aside an arbitration award. The court's role in reviewing an award is restricted to those grounds. Article 34(2)(a) establishes a claimant has the onus to prove one or more of the grounds under Article 34 is present. The Court is not permitted to engage in a hearing *de novo* on the merits of the Tribunal's decision or to undertake a review such as that conducted by a court in relation to a decision of a domestic tribunal. A high degree of deference is accorded on review by a court. [*United Mexican States v. Karpa* (2005), 74 O.R. (3d) 180 (Ont. C.A.) at para. 41 ("*Karpa*")]. Authorities have construed the court's authority to refuse enforcement narrowly.

[22] In *Bayview Irrigation*, at para. 14, Allen J. confirmed that while great deference is shown to arbitral tribunals, a tribunal has the obligation to ensure equal treatment of the parties, that minimum procedural standards are observed and that the decision does not offend public policy. If a tribunal falls short of those standards, a court can set aside the arbitral decision.

[23] Planet submits that the Award should be set aside on three grounds:

- a. Planet was unable to present its case because it was deprived of an opportunity to respond to the evidence and arguments advanced by ACN or to discover its case because the Arbitrator denied Planet reasonable discovery and the right to cross examine ACN's witnesses on the complete evidentiary record, and failed to sanction ACN when it failed to produce relevant documents;
- b. The Award is contrary to public policy because Planet cannot comply with the Award without violating the *Energy Consumer Protection Act* ("*ECPA*"); and
- c. The Arbitrator exceeded her jurisdiction in her interpretation of the SAA because she ignored the plain meaning of the SAA and, by improperly relying on extrinsic evidence, re-wrote the SAA's terms.

[24] I address each of Planet's three submissions, in turn.

***Was Planet denied the opportunity to present its case?***

[25] Planet contends that it was unable to present its case at the Arbitration and that the Award should be set aside under Article 34(2)(a)(ii) of the Model Law.

[26] Planet makes three main submissions in support of this contention.

[27] First, Planet submits that ACN failed to produce key documents relevant to Planet's case, and the Arbitrator failed to exercise the remedies available to her to compel production of these documents, or to sanction ACN for its insufficient production.



[28] I refer to the relevant events in the arbitration proceeding with respect to this issue.

[29] Planet had pleaded that Xoom was the alter ego of ACN. It unsuccessfully sought to add Xoom as a party. On September 17, 2019, in Procedural Order No. 12, the Arbitrator established dates for the parties to exchange requests for documents under the ICDR Rules. Production was to be completed by December 31, 2019. ACN had not provided documents by November 15, 2019 (the date for production of documents in response to requests to which there was no objection) and ACN opposed many requests for production of documents made by Planet.

[30] On November 19, 2019, a hearing was held before the Arbitrator to address the disputed document requests. ACN had agreed to 16 of Planet's document requests and there was a hearing with respect to the balance. The Arbitrator ordered ACN to produce documents in response to 43 of Planet's requests. The Arbitrator issued Procedural Order No. 13 on November 27, 2019. The Arbitrator did not order ACN to obtain documents from Xoom. Document production was to be complete by December 31, 2019.

[31] On December 31, 2019, ACN produced several hundred documents.

[32] Planet conducted its initial review of the ACN document production and concluded that it was inadequate and in violation of the ICDN rules. On January 16, 2020, counsel to Planet wrote to the Arbitrator setting out the grounds for ACN's failure to produce documents responsive to 39 out of 43 document requests. ACN responded with a letter from its counsel disagreeing that its document production is deficient.

[33] On January 20, 2020, the Arbitrator issued Procedural Order No. 16 denying Planet's request for leave to submit an application regarding deficiencies in ACN's document production and instructed Planet to draw "deficiencies directly to ACN's attention, in order that ACN may correct any omissions and supplement its production". The Arbitrator ruled that "[t]o the extent that ACN disputes alleged deficiencies raised by Planet, such deficiencies will be appropriate subjects for the Parties' pre-hearing submissions and/or cross-examination at the evidentiary hearing. If Planet succeeds in establishing that ACN failed to produce responsive documents, Planet may invite the Arbitrator to draw adverse inferences and/or grant such other relief as may be appropriate."

[34] Planet complied with the Arbitrator's directive, but no further documents were received from ACN. Planet argues that it did not – and does not – know what documents ACN may have withheld or failed to produce.

[35] Planet brought an application to the District Court under a United States statute, 28 U.S.C. §1782, (the "1782 Application") seeking a subpoena for production of documents relevant to the arbitration in the possession of Xoom. ACN asked the Arbitrator to prohibit the 1782 Application on the ground that Planet had failed to obtain leave from the Arbitrator to seek judicial intervention which, it argued, was in breach of the applicable rules. The Arbitrator declined to do so and noted that if relevant documents were withheld by ACN, the 1782 Application "could potentially yield relevant and material documents essential to Planet's case". The Arbitrator noted that ACN had raised concerns about procedural delay, and she ruled that the Arbitration proceed in accordance with the schedule previously set. The Arbitrator ruled that, presumptively, "any delay or impasse

that might arise in connection with the Application shall not be deemed good cause for the extension of any deadlines in the arbitration, including the evidentiary hearing”.

[36] By Order dated June 5, 2020, the District Court granted the 1782 Application. Production of documents by Xoom was ordered to be due on June 22, 2020.

[37] On June 19, 2020, the Arbitrator sent an email to counsel. She determined that if Planet seeks to have new documents admitted into the evidentiary record, from Xoom’s forthcoming production, it was required to submit copies of such documents no later than June 24, and ACN was given until June 25 to state any objection. The Arbitrator wrote that Planet’s request for 10 days from the June 22 deadline for Xoom’s production of documents “is patently disproportionate to the task at hand”. The Arbitrator wrote that if there is no objection to Planet’s application, closing submissions shall proceed on June 26, 2020 and “the parties shall address the relevance and materiality of the new documents, any impact on Planet’s requests for adverse inferences, and such other arguments as may be appropriate during their closings”.

[38] Xoom produced over 400 documents four days before the closing arguments. The Arbitrator accepted that 8 of these documents are relevant documents and 3 are highly relevant.

[39] One of Planet’s counterclaims was that ACN shared Planet’s confidential customer information to facilitate Xoom’s entry into the Territory. Xoom produced two emails involving ACN employees that, Planet submits, appear to illustrate sharing of Planet’s confidential sales and customer information. There were two attachments to the emails that were not produced that Planet submits, based on their descriptions, may have included confidential Planet information. Planet submits that it was unable to address this issue when presenting its case because of the late delivery of documents by Xoom and the failure to produce the missing attachments.

[40] Planet submits that the Arbitrator’s refusal to grant an adjournment as a result of the production of documents by Xoom constitutes a palpable and free-standing refusal to accord reasonable procedural fairness to Planet. Planet submits that it was disproportionately affected by the Arbitrator’s failure to compel ACN to abide by its discovery obligations and refusal to grant an adjournment while Planet brought the 1782 Application because ACN was able to present its case with the benefit of full document production from Planet while Planet was forced to present its case before it had full document production from ACN or Xoom.

[41] Planet submits that the ICDR Rules provide an arbitrator with four remedies to address non-compliance with document production orders: (1) issue a follow-up order; (2) award costs; (3) seek or support judicial assistance; and (4) apply adverse inferences. Planet submits that because the Arbitrator did not exercise any of these remedies in circumstances where ACN had failed to comply with procedural orders, Planet was unable to present its case and the Award should be set aside.

[42] Planet’s arguments that ACN’s failure to comply with its document production obligations resulted in its inability to present its case were made to the Arbitrator during the Arbitration proceedings. Xoom’s entry to the Ontario market was an issue at the Arbitration and the Arbitrator made findings with respect to these issues.

[43] In the Award, the Arbitrator addressed Planet's submission that ACN had failed to comply with its document production obligations:

443. According to Planet, ACN failed to produce material evidence in violation of the Arbitrator's document production orders and ACN's own agreements to produce documents. It also says that Xoom's production in response to the 1782 Application resulted in "scores" of documents that ACN should have produced, but withheld, and it seeks various adverse inferences against ACN. Planet further alleges that the whole Xoom Documents show:

- ACN's intertwined relationship with Xoom created a conflict of interest with ACN's obligations under the SAA;
- ACN freely shared Planet's confidential information with Xoom for their mutual benefit;
- ACN abdicated its responsibilities to Planet in favour of the Xoom Canada launch; and
- ACN deliberately omitted a transition plan required for an orderly wind down.

444. According to Planet, this post-hearing non-party production prevented it from "presenting its case on these documents in its principal pleadings and at the hearing".

445. ACN denies all of these allegations. It says that throughout this proceeding, Planet made repeated, unfounded allegations about ACN's document production, insisting that the lack of documentary evidence supporting its "speculative theory of the case" could only have resulted from ACN withholding documents, and taking the "extraordinary" step of making a Section 1782 Application.

446. Despite this "overreaching," ACN says that the balance of the Xoom Documents put forth as new exhibits by Planet (ultimately, 100 that Planet contends ACN should have produced) were non-responsive and irrelevant to the matters at issue in the arbitration. Further, while it admits to a "small number" that were responsive to one of the Stern Schedule requests and should have been produced, far from substantiating Planet's theory of the case, ACN argues the Xoom Documents:

- confirmed evidence in the arbitration to the effect that Xoom began considering expansion into Canada in 2015 but did not ramp up its work in that regard until early 2016, starting with Alberta;
- confirmed that ACN's document production was largely complete (acknowledging that the production, like any large document production, was imperfect); and

- did not support any of Planet's theories about scheming and coordination between Xoom and ACN aimed at promoting Xoom in Ontario at Planet's expense.

447. Having reviewed the complete collection of Xoom Documents prior to oral closing arguments and then again post-hearing against Planet's Xoom Spreadsheet and ACN's Xoom Spreadsheet, Planet's Adverse Inferences Chart, the 1782 Subpoena/Stern Schedule Comparison, as well as the Parties' submissions concerning the evidence adduced at the hearing, the Arbitrator finds that Planet's claims that ACN failed to produce material evidence or that any adverse inferences are warranted must be rejected.

448. The Arbitrator has summarized the factual evidence in this case in great detail above, which plainly shows that Planet's theory of the case as it pertains to Xoom and ACN is without merit and that Planet's protestations about being unable to present its case due to alleged misconduct by ACN with respect to its document production are inflammatory and untrue. Out of the 100 Xoom Documents that Planet says ACN should have produced, the Arbitrator identified 3 that are highly relevant, though they are all part of the same e-mail chain and concern the same subject (R350-R352). ACN concedes that these particular documents were responsive and should have been produced. But they do not change the Arbitrator's view of the case or reasonably give rise to an inference that they were purposefully withheld from production. Quite simply, the Xoom Documents contain no "game changers" or "smoking guns." Nor do they put any different light on the evidence that was presented at the hearing or suggest that ACN has been concealing documents or that it conspired with Xoom to Planet's detriment or shared Planet's confidential information.

[44] The Arbitrator made findings of fact in relation to the issue of Xoom's entry into Ontario and concluded that ACN continued to meet its obligations to Planet. The Arbitrator concluded at para. 452 of the Award that "the evidence does not support a finding that: (i) ACN materially failed to perform under the SAA; (ii) Planet suffered damages as a result of any alleged breach of contract or fiduciary duty by ACN; or (iii) ACN committed unfair trade practices by misappropriating Planet's trade secrets and confidential information". The Arbitrator supported the conclusions in this paragraph of the Award by summarizing a series of findings she made based on the evidence.

[45] Planet's submissions on these applications in relation to ACN's compliance with its document production obligations repeat the same submissions that were made to the Arbitrator. The Arbitrator had the benefit of hearing all of the evidence and of considering Planet's submissions about relevance of documents, prejudice from late production, and the appropriateness of drawing adverse inferences against ACN, in the context of a full understanding of the evidentiary record. The Arbitrator's decisions with respect to Planet's submissions regarding ACN's document disclosure obligations are entitled to deference.

[46] Planet clearly disagrees with the Arbitrator's findings and conclusions, but it has failed to furnish proof that it was unable to present its case because of the Arbitrator's decisions with respect to ACN's document production obligations.

[47] The second argument advanced by Planet in support of its submission that it was denied the opportunity to present its case is that the Arbitrator's refusal to grant an adjournment for the 1782 Application also obstructed Planet's cross-examination of ACN's witnesses. Planet submits that this had a critical impact on Planet's ability to impugn – and the arbitrator's ability to assess – the credibility of ACN's witnesses. Planet submits that the cross-examinations would have been significantly aided by the documents produced by Xoom and the missing attachments which, it contends, show that ACN was facilitating Xoom's entrance into the Territory with Planet's confidential information.

[48] Planet relies on the legal principle that cross-examination is essential to trial fairness and that it would be a denial of natural justice for an arbitral tribunal to prohibit cross-examination. See *Mayer v. Osborne Contracting Ltd.*, 2012 BCCA 77, at paras. 80-81.

[49] Planet contends that in the absence of cross-examination of ACN's witnesses on the Xoom documents and the missing attachments, the Arbitrator's findings about the Xoom documents are inconsistent with the evidence and gave no consideration to other ACN documents that should reasonably be assumed to be missing given the deficiencies in ACN's production and Xoom's assertion that the missing attachments were not part of the business records transferred when ACN sold Xoom to NRG Energy Inc. in June 2018. Planet submits that because the Arbitrator did not require ACN to uphold its document disclosure obligations or impose any penalty for its failures to meet them, there is every reason to suspect that ACN failed to produce additional relevant and key documents.

[50] In the Award, the Arbitrator addressed Xoom's production of documents pursuant to the order in the 1782 Application. The Arbitrator set out the procedural history in respect of these documents including her rulings in the June 19, 2020 email. The Arbitrator referred to Planet's proposal that 122 Xoom documents be admitted into the record from among 400+ documents produced by Xoom. The Arbitrator referenced her confirmation that the proposed exhibits were admitted into the record and that oral closings would take place on June 26, 2020. The Arbitrator recorded in the Award, at para. 101, that “[a]t no time before or after the Arbitrator admitted the Xoom Documents into the record did either Party ever argue that they should be permitted to recall one or more witnesses to testify or to seek the appearance of any new witness”.

[51] I do not accept Planet's submission that the record shows that it was denied an opportunity to cross-examine witnesses in respect of the Xoom documents. Planet was represented by experienced counsel at the Arbitration. It was open to counsel to request the right to cross-examine one or more witnesses on the Xoom documents. A decision was taken not to do so. It is not open to Planet, having taken this decision, to now argue that its ability to conduct further cross-examination was unfairly denied.

[52] Planet has failed to furnish proof that it was denied the right to cross-examine on the Xoom documents and that it was thereby unable to present its case.

[53] The third submission that Planet makes in support of its argument that it was unable to present its case is that the Arbitrator ignored or failed to consider Planet's evidence and legal submissions.

[54] Planet submits that the Arbitrator ignored Planet's evidence in respect of the audit conducted by ACN under the SAA and, instead, relied exclusively on the evidence of ACN's expert, Stout, which, it submits, was inconsistent with the evidence as a whole and undermined on cross-examination.

[55] Planet points to passages from the Award in various paragraphs and argues (i) the Arbitrator criticized Planet for failing to produce underlying files supporting the monthly commission advice provided to ACN when Planet's evidence was that the files were always made available to Stout as was the underlying data, and the Arbitrator failed to provide proper reasons for preferring Stout's evidence to evidence tendered by Planet (that it submits was undisputed); (ii) the Arbitrator penalized Planet for proving only "limited access" to certain files when, according to Planet, it acted in accordance with the Arbitrator's procedural orders; (iii) the Arbitrator, in concluding that Stout had no way to independently confirm the cost of sales used for margin calculations, ignored Planet's evidence that Stout had been given access to all of Planet's relevant records which provided the necessary source information to confirm the margin calculations; and (iv) the Arbitrator accepted an assertion made by Stout that it could not independently verify certain detailed commission files against a third party source when Planet's evidence confirmed that Stout did independently verify the third party source data. Planet submits that the Arbitrator's failures led her to accept Stout's calculations for commissions for over \$4 million on sales volumes that did not flow to Planet.

[56] Planet points to a passage from the transcript of the cross-examination of Stout's witness at the hearing in which the witness agreed that any constraints in the way Stout could work with files during its audit of Planet under the SAA were pursuant to procedural orders in the Arbitration. The witness agreed that Planet provided access to files pursuant to procedural orders and that process constrained Stout's ability to use them.

[57] Planet relies on *Consolidated Contractors Group S.A.L. v. Ambatovy Minerals S.A.*, 2016 ONSC 7171 in which Penny J. held, at para. 57, that a party might be said to have been unable to present his or her case when the tribunal ignored or failed to take the evidence or the submissions of the parties into account.

[58] Planet submits that Stout advanced the theory that there was \$4 million in commissions that Planet had failed to pay based on data from Planet's internal management system and that it accepted this data in favour of actual utility data. Planet argues that there was substantial evidence tendered showing why the actual utility data was the proper data to use, but the Arbitrator ignored this evidence and concluded that the approach taken by Stout was proper and made an award of unpaid commissions on this basis.

[59] Planet, in response to my questions at the hearing of these applications about the challenges presented to a judge asked to review the sufficiency of an arbitrator's reasons, particularly those involving detailed and contentious financial and accounting evidence and expert testimony, accepted that it would be improper for me to make findings in substitution for those made by the Arbitrator. Planet submits that the key underlying fact is that \$4 million of commission payments cannot be owed unless Planet earned revenues to support such commissions. Planet submits that its auditors conducted an annual audit of Planet and they never identified such additional revenue in the financial statements. Planet submits that the Arbitrator's acceptance of Stout's damages

calculations implicitly determined that Planet's audited financial statements were inadequate because it ignored evidence in relation to this key issue, with the result that Planet was unable to present its case.

[60] In the Award, at section O, the Arbitrator, gave extensive reasons in relation to the audit. The Arbitrator described Planet's contemporaneous gross margin calculations and commission payments as being based upon "Remittance Commission Files" that estimated commissions due to ACN. The Arbitrator referred to the fact that during the audit, Planet created "Detailed Commission Files" which were not created contemporaneously in the ordinary course of business but for the purpose of the arbitration. The Arbitrator at paras. 417- 421 of the Award addressed Planet's criticism that Stout relied on the Remittance Commission Files rather than the Detailed Commission Files and concluded that the criticism is misplaced. The Arbitrator wrote that she had studied the testimony of the parties' experts and their written reports in detail and weighed the relevant fact witness testimony. The Arbitrator found that "Stout's methodology was reasonable (if not conservative), its conclusions accurate, and the criticisms leveled by RSM and Plummer are unfounded". The Arbitrator found that Planet's expert, RSM, had failed to approach Planet's work with skepticism and largely submitted reports that adopted Planet's work and representations without any, or only limited, attempts at verification. She found that RSM's critiques of the Stout reports should be entitled to little weight.

[61] The audited financial statements to which Planet refers in argument were not tendered into evidence at the Arbitration and the Arbitrator could not have referred to them in relation to this issue.

[62] I refer to these passages from the Award to show that the Arbitrator addressed the issues raised by Planet in relation to the claim for unpaid commissions, and she directed her mind to the arguments advanced by Planet based on the proper approach to be taken to data upon which the experts relied and the weight to be given to expert evidence. I am unable to find, based on selected passages from the Award to which I was directed by Planet, that the Arbitrator ignored evidence given and submissions made on behalf of Planet leading to a fundamentally unsupported and unfair award for payment of commissions that should be set aside.

[63] Planet submits that the Arbitrator did not reasonably consider Planet's claim for loss of profits of \$7,795,990 relating to declining enrolments due to ACN's breaches of the SAA and that the Arbitrator ignored the evidence of Planet's expert. The Arbitrator concluded that the decline in enrollments was the result of ordinary market forces.

[64] Planet points to its evidence that (a) the decline in Planet's enrolments from IPOs was substantially greater than the decline in enrolments industrywide; (b) Planet's small tele-sales team was able to outperform ACN's IPOs based on cold calls, in stark change from prior periods; (c) ACN's marketing team stopped running Planet's promotions, canceled weekly meetings and instead promoted the Canadian launch of Xoom; (d) beginning in 2015, ACN no longer allowed Planet to attend IBO events, which it was entitled to do under the SAA and which had historically engaged IPOs and generated a significant volume of sales for Planet; and (e) ACN ceased sending communications to its IBOs promoting Planet.

[65] In the Award, the Arbitrator, at paras. 449-452, addressed Planet's submissions that ACN had violated its obligations under the SAA causing substantial and material injury to Planet. The Arbitrator concluded that the evidence does not support a finding that ACN materially failed to perform under the SAA or that Planet suffered damages as a result of any alleged breach of contract or fiduciary duty by ACN. The Arbitrator addressed the evidence with respect to Planet's access to ACN's training events. The Arbitrator found that ACN did not make changes to its marketing or sales strategies for IBOs during the agency period or in anticipation of Xoom's entry into Canada. The Arbitrator found that during the wind-down phase and when working internally on Xoom expansion, ACN leadership emphasized that ACN would continue to provide the same level of services to Planet until the end of the agency period. The Arbitrator found that any decline in sales during the agency period can be attributed to a variety of market forces, including those that she identified. She found that at the time, all ACN products and services were experiencing a decline.

[66] Planet submits that the Arbitrator ignored Planet's evidence in support of its claim for indemnification in the amount of \$2,056,627 due to IBO misconduct. Planet refers to a spreadsheet tendered into evidence summarizing thousands of customer complaints relating to IBO misconduct. Planet had advised the Arbitrator that it produced many contemporaneous documents and would make additional documents underlying the spreadsheet available upon request. Planet submits that in the Award, the Arbitrator rejected Planet's claim on the basis that the spreadsheet was not prepared contemporaneously, and that Planet was seeking the benefit of the doubt. Planet submits that the documents were available for review, but the Arbitrator elected not to review them.

[67] The Arbitrator addressed Planet's claim for disputed enrollments in the Award at paras. 459-464. The Arbitrator noted that according to ACN, Planet had failed to produce documents that establish the basis of the complaint, its resolution, the basis for the calculation of the fee, whether it was waived, and any actual losses suffered by Planet as a result of the contract cancellation. The Arbitrator noted that the spreadsheet was not prepared in the ordinary course of business, but solely for the arbitration. The Arbitrator considered that Planet essentially asks for the benefit of the doubt that its claim was properly prepared.

[68] The record shows that the Arbitrator considered the arguments made by Planet and, for reasons given in the Award, she did not accept them. Planet is asking this Court to consider the evidentiary record anew and substitute new findings for those made by the Arbitrator. This is not the proper role of the Court on this application. The Arbitrator had the benefit of hearing the witnesses and reviewing the documentary record, and her findings are entitled to deference. This is not a case where the Arbitrator ignored or failed to take the evidence or the submissions of Planet into account.

[69] Planet has failed to furnish proof that it was unable to present its case because the Arbitrator ignored or failed to consider Planet's evidence and submissions.

***Is the Award contrary to public policy?***

[70] Planet submits that the Award should be set aside because it is contrary to public policy.



[71] In *Depo Traffic Facilities (Kunshan) Co. v. Vikeda International Logistics and Automotive Supply Ltd.*, 2015 ONSC 999, Chiappetta J. confirmed, at para. 47, that the public policy defence “ought to be invoked only if the judgment involves an act that is illegal in the forum or if the action involves acts repugnant to the orderly functioning of the social or commercial life of the forum”.

[72] Planet submits that the Arbitrator disregarded its submissions and the governing legal principles by ordering Planet to make commission payments to ACN that are illegal under Ontario law and would expose Planet to penalties if it were to satisfy the Award. For this reason, Planet submits that the Award violates the public policy of Ontario and should be set aside.

[73] At the Arbitration hearing, Planet relied on the amendment to the *ECPA* on January 1, 2017 to include s. 9.3 which provides:

9.3 No supplier shall provide remuneration to a salesperson who sells or offers to sell electricity or gas to consumers or who advertises or markets the sale of electricity or gas to consumers on behalf of the supplier if the manner of remuneration contravenes the rules provided for in the regulations.

[74] Planet relied on a regulation under the *ECPA*, Regulation O. Reg. 389/10 which provides that the remuneration provided to a salesperson must not include any remuneration that is based on a commission or on the value or volume of sales.

[75] The Arbitrator referred to s. 9.3 of the *ECPA* in the Award, at paras. 402-403, and she noted that the *ECPA* defines a “salesperson” as a person “who, for the purpose of effecting sales” of gas or electricity conducts gas or electricity marketing “on behalf of a retailer or makes one or more representations to one or more consumers on behalf of a retailer, whether as an employee of the gas marketer or not”.

[76] At the Arbitration hearing, Planet relied on a memo from staff of the OEB in an email dated March 2, 2020 in which OEB staff expressed their view that “a salesperson may not be remunerated for any new, renewed or extended contract based on a commission or on the value or volume of sales, including the renewal/extension of contracts entered on or before January 1, 2017”. Planet submitted at the hearing that this memo supported its position that s. 9.3 of the *ECPA* and the *ECPA* regulation prohibited the payment of commissions to ACN or its IBOs for any new or renewed contracts entered into after January 1, 2017.

[77] The Arbitrator referred in the Award to the submissions by ACN that its entitlement to commissions does not contravene the *ECPA* because “the entitlement arises on ACN’s initial acquisition of the customer, and not based on any role it has in the marketing and signing of new, subsequent contracts to customers, of which it has none.” ACN cited section 3(e) of the SAA that provides that the entitlement to commissions arises regardless of who sold the energy product and permits Planet to sell directly to existing customers without any ACN/IBO involvement.

[78] In the Award, the Arbitrator addressed Planet’s argument that the *ECPA* precludes Planet from paying commissions to ACN for any ACN customers whose renewals became effective on or after January 1, 2017. The Arbitrator concluded that the *ECPN* does not do so. The Arbitrator

explained why she reached this conclusion. The Arbitrator found that for renewals entered post January 1, 2017, customer contact rests exclusively with Planet. The Arbitrator addressed the guidance given by staff at the OEB and noted that OEB staff had stated that the basis for their view was their understanding that ACN would be conducting retailing on behalf of the retailer for the purpose of effecting sales of energy contracts. The Arbitrator concluded that this guidance “does not appear to have taken into account the terms of Section 3(e) or that for all renewals entered post January 1, 2017, customer contact rests exclusively with Planet”. The Arbitrator concluded that given that the *ECPA* is a consumer protection statute, for the regulation to apply, there must be some active marketing activity by ACN.

[79] The Arbitrator was required to interpret the *ECPA* to address the submissions made by Planet. The Arbitrator was not presented with any controlling authority with respect to the question of statutory interpretation she was asked to decide. The Arbitrator did not disregard the *ECPA*, as Planet submits she did. In reaching her conclusion, the Arbitrator considered the language of the statutory provision and the regulation and that the *ECPA* is a consumer protection statute. The Arbitrator took into account the view offered by OEB staff and their stated basis for this view, as she was invited to do by Planet. The Arbitrator came to a different conclusion with respect to the question of statutory interpretation that was before her than the interpretation advanced by Planet.

[80] In *Corporacion Transnacional de Inversiones, S.A. de C.V. v. STET International, S.p.A.*, 1999 CarswellOnt 2988, at para. 30, Lax J. cited jurisprudence confirming “the care which courts must exercise in relying upon public policy as a reason for refusing enforcement of a foreign arbitral award”. Justice Lax held that to succeed on this ground, the award “must fundamentally offend the most basic and explicit principles of justice and fairness in Ontario, or evidence intolerable ignorance or corruption on the part of the Arbitral Tribunal”.

[81] The Arbitrator’s interpretation of the *ECPA* and the regulation in this context is a reasonable one. Planet has not shown that the Arbitrator made an error in her factual findings with respect to the basis for the views of OEB staff. Planet has not shown that as a result of the Arbitrator’s decision, the Award fundamentally offends the principles of justice and fairness in Ontario. The Arbitrator’s decision on the question of statutory interpretation is entitled to deference.

### ***Did the Arbitrator exceed her jurisdiction?***

[82] Planet submits that in the Award, the Arbitrator ignored the key terms of the SAA, relied on extrinsic evidence, and imported her own meanings to the SAA and, in so doing, exceeded her jurisdiction.

[83] Planet submits that according to the plain language of the SAA, ACN was only entitled to commissions on sales to ACN customers with the amount of such commissions to be calculated based on these customers’ usage across all products.

[84] Planet submits that the Arbitrator rewrote the SAA’s terms by ordering Planet to pay \$19,114,272 of commissions to ACN. Planet argues that the Arbitrator improperly relied on extrinsic evidence of ACN’s witness who was involved in the negotiation of the SAA.

[85] In the Award, the Arbitrator set out the general principles of contract interpretation under New York law that she applied, including that extrinsic evidence may be considered to determine the parties' intent as to the meaning of an ambiguous term.

[86] With respect to the question of the calculation of gross margin payments to which ACN was entitled under the SAA, the Arbitrator found that the SAA was clear and unambiguous and, accordingly, she did not consider extrinsic evidence. When the Arbitrator addressed the question of ACN's entitlement to commissions on renewals, the Arbitrator determined that the SAA "is reasonably susceptible to more than one meaning and, therefore, that it is ambiguous. In these circumstances, the Arbitrator turns to consider the extrinsic evidence presented of the Parties' intent with respect to commissions for renewals."

[87] The Arbitrator wrote that she considered the evidence of the SAA's negotiation history and the parties' words and conduct during the course of their relationship. The Arbitrator found that this evidence shows "a consistent and uniform course of conduct with respect to ACN's entitlement to commissions from renewals". The Arbitrator concluded that for any customer referred by ACN to Planet through the online portal, ACN is entitled to continue receiving commissions for as long as that customer remains with Planet, regardless of the means by which the relationship with Planet was renewed.

[88] The Arbitrator recorded in the Award the evidence upon which she relied for this conclusion, which included evidence given by a witness called by ACN who, she wrote, was the only witness directly involved in negotiation of the 2009 SAA, which mirrors the SAA. The Arbitrator noted in the Award that Planet offered no evidence to rebut ACN's version of the parties' contract negotiations although the person who was directly involved in negotiations for Planet was available and willing to testify and he was not called as a witness.

[89] The Arbitrator was required to determine whether the SAA was ambiguous, and she explained why she concluded that it is reasonably susceptible to more than one interpretation. Having done so, under principles of New York law, the Arbitrator was entitled to consider extrinsic evidence.

[90] I have reviewed the Arbitrator's findings with respect to interpretation of the SAA and I am unable to conclude that the Arbitrator acted outside of her jurisdiction by interpreting the SAA as she did. Planet may disagree with the Arbitrator's findings, but Planet has failed to show that the Arbitrator exceeded her jurisdiction by interpreting the SAA as she did.

[91] Planet has failed to show that the Award should be set aside under Article 34 of the Model Law.

[92] ACN has provided the court with a certified copy of the Award. The Award is presumptively enforceable and recognizable pursuant to Article 35 of the Model Law, subject only to the arguments advanced by Planet under Articles 34 and 36 of the Model Law.

### **Disposition**

[93] For these reasons:

- a. Planet's application for an order setting aside the Award is dismissed.
- b. ACN's application for Judgment is granted. Judgment is to issue:
  - i. Recognizing and enforcing the Award; and
  - ii. Ordering that, in accordance with the Award, Planet shall pay to ACN \$29,259,787.00 as at August 20, 2021 together with prejudgment interest accruing since that date in accordance with the Award, and postjudgment interest at the statutory rate.

[94] If the parties are unable to resolve costs, ACN may make written submissions within 20 days. Planet may make responding submissions within 20 days thereafter. If so advised, ACN may make brief reply submissions within 10 days thereafter.

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Cavanagh J.

**Released: April 7, 2022**

CITATION: All Communications Network of Canada, Co. v. Planet Energy Corp., 2022 ONSC  
2178

COURT FILE NO.: CV-21-00659022-00CL

COURT FILE NO.: CV-21-00658223-00CL

DATE: 20220407

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

**ALL COMMUNICATIONS NETWORK  
OF CANADA, CO.**

**Applicant**

**- and -**

**PLANET ENERGY CORP., PLANET  
ENERGY (ONTARIO) CORP., and  
PLANET ENERGY (B.C.) CORP.**

**Respondents**

**AND BETWEEN:**

**PLANET ENERGY CORP., PLANET  
ENERGY (ONTARIO) CORP., and  
PLANET ENERGY (B.C.) CORP**

**Applicants**

**- and -**

**ALL COMMUNICATIONS NETWORK  
OF CANADA, CO.**

**Respondents**

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**REASONS FOR JUDGMENT**

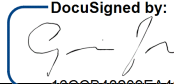
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Cavanagh J.

Released:

This is Exhibit "Q" referred to in the Affidavit of Nino Silvestri sworn by Nino Silvestri of the Town of Oakville, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on May 26, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:



10CCB48208FA481

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Commissioner for Taking Affidavits (or as may be)

**GAVIN INKSTER LSO# 82737I**

Court of Appeal File No.  
Court File No. CV-21-00658223-00CL

**COURT OF APPEAL FOR ONTARIO**

B E T W E E N :

**PLANET ENERGY CORP., PLANET ENERGY (ONTARIO) CORP., and  
PLANET ENERGY (B.C.) CORP**

Applicants  
(Appellants)

- and -

**ALL COMMUNICATIONS NETWORK OF CANADA, CO.**

Respondent  
(Respondent on Appeal)

**NOTICE OF APPEAL**

THE APPELLANTS, Planet Energy Corp., Planet Energy (Ontario) Corp. and Planet Energy (B.C.) Corp. (collectively, "**Planet Energy**"), APPEAL to the Court of Appeal from the Order of the Honourable Mr. Justice Cavanagh dated April 7, 2022, made at Toronto, Ontario.

THE APPELLANTS ASK that the Order be set aside and an Order be granted as follows:

1. Granting Planet Energy's application for an Order pursuant to Article 34 of Schedule 2 (the "**Model Law**") to the *International Commercial Arbitration Act, 2017*, S.O. 2017, c. 2., Sched. 5 setting aside a final arbitral award dated February 3, 2021 (the "**Award**") in connection with the arbitration administered by the International Center for Dispute Resolution (the "**ICDR**") in ICDR Case No. 01-18-0001-6527;

2. Dismissing the application of All Communications Network of Canada, Co. ("**ACN**") for an Order recognizing and enforcing the Award;
3. Costs of the appeal and the applications; and
4. Such further and other relief as this Honourable Court may deem just.

**THE GROUNDS OF APPEAL** are as follows:

5. Planet Energy commenced its application to set aside the Award ordering it to pay approximately \$30 million in damages to ACN in respect of, among other things, unpaid commissions on the sale of certain Planet Energy products and services;
6. The arbitration suffered from immense procedural deficiencies resulting in an indefensible Award that is financially devastating to Planet Energy and which will, if not set aside, lead to immediate insolvency proceedings;
7. Under Articles 34(2)(a) and 34(2)(b) of the Model Law, the Court may set aside the Award, in whole or in part, upon finding that (i) Planet Energy was not able to present its case at the arbitration, (ii) fundamental aspects of the arbitral procedure were not in accord with the parties' agreement, or (iii) recognition or enforcement of the Award would be contrary to the public policy of Ontario;
8. The Arbitrator did not provide Planet Energy with an adequate opportunity to present its case, failed to conduct the arbitration in accordance with the agreement of the parties, and rendered an Award that is contrary to public policy in Ontario. Among other things, the Arbitrator:
  - a. refused to grant Planet Energy customary discovery rights and emboldened ACN's refusal to abide by its document discovery obligations even after the



United States District Court of the Western District of North Carolina (the “**District Court**”) ordered the production of “highly relevant” documents (the “**Xoom Documents**”) because the Arbitrator had refused to do so;

- b. refused to adjourn the arbitration while Planet Energy’s application to the District Court was ongoing and directed the parties to closing arguments without providing Planet Energy the opportunity to cross-examine ACN’s witnesses on the “highly relevant” Xoom Documents;
- c. ignored substantial portions of Planet Energy’s evidence, including the financial evidence which demonstrated that there was no possible way Planet Energy owed ACN the amounts claimed and that the Award would bankrupt Planet Energy; and
- d. ordered Planet Energy to pay more than \$5 million to ACN in commission payments that are illegal under the Ontario *Energy Consumer Protection Act* (the “**ECPA Payments**”);

#### **The Award will Bankrupt Planet Energy**

9. The result of the incomplete documentary record is an Award that is 1.7 times greater than Planet Energy’s total assets as of February 2021, notwithstanding that ACN’s commissions were principally calculated based on a percentage of Planet Energy sales and that ***the actual amount of the alleged unpaid commissions (approximately \$10 million) had been accrued as a liability and held by (and continues to be held by) Planet Energy as cash;***

#### **The Application Judge Extended Unlimited Deference to the Arbitrator**

10. With respect, the application judge – like the Arbitrator – failed to reckon with Planet

Energy's evidence and the catastrophic impact of the Award, and erred in law by granting unlimited deference to the Arbitrator rather than performing any scrutiny of the Award in accordance with the Model Law and the controlling jurisprudence;

#### **The Arbitrator Failed to Grant Planet Energy Customary Discovery Rights**

11. The application judge erred in law by applying the incorrect standard of review in assessing whether Planet Energy was denied the opportunity to present its case as a result of the Arbitrator's failure to abide by her procedural orders and provide Planet Energy reasonable or timely discovery rights;

12. The application judge did not owe, and erred in extending, deference to the Arbitrator on this issue --- the application judge was required to, but did not, consider *de novo* whether Planet Energy was able to present its case as a result of the Arbitrator's decisions;

13. In the alternative, the application judge made a palpable and overriding error in his determination that Planet Energy failed to furnish proof that the Arbitrator's decisions with respect to ACN's document production obligations prevented Planet Energy from presenting its case;

#### **The Arbitrator Deprived Planet Energy of its Right to Cross-Examination**

14. The application judge made palpable and overriding errors in finding that Planet Energy failed to furnish proof that it was denied the right to cross-examine ACN's witnesses on the Xoom Documents and thereby unable to present its case;

15. The application judge erroneously concluded that it was "open to counsel to request the right to cross-examine one or more witnesses on the Xoom Documents" as the matter was already the subject of a procedural order where the Arbitrator directed that she would not extend "any deadlines in the arbitration, including the evidentiary hearing" as a result of

the late production of the Xoom Documents;

### **The Arbitrator Ignored Planet Energy's Evidence**

16. The application judge erred in law by applying the incorrect standard of review in considering whether the Arbitrator ignored Planet Energy's evidence and/or arguments in support of its counterclaim and ACN's claim for unpaid commissions;

17. The Arbitrator is not entitled to deference in circumstances where the factual findings of the Arbitrator are inconsistent with uncontroverted evidence that was before her and clearly ignored;

18. In the alternative, the application judge made a palpable and overriding error by concluding that the Arbitrator did not ignore Planet Energy's evidence and/or arguments in support of its counterclaim or ACN's claim for unpaid commissions and thereby prevent Planet Energy from ably presenting its case;

19. The application judge erred in relying on Section O of the Award as a complete response to the evidence and submissions of Planet Energy relating to ACN's claim for unpaid commissions which the Arbitrator ignored;

20. The application judge erred by failing to consider and apply relevant case law, including *Iran Aircraft Industries v. Avco Corporation*, 980 F. 2d 241 (1992), a decision of the United States Court of Appeals, Second Circuit, which set aside an arbitral award under the Model Law under very similar circumstances to the case at bar;

21. In *Iran Aircraft Industries*, the award was set aside because Avco was advised at a pre-hearing conference "not to burden the Tribunal by submitting 'kilos and kilos of invoices'", but in the final award the tribunal required actual invoices to substantiate the claim. Indeed, in the case at bar, the Arbitrator directed Planet Energy and ACN to produce targeted

documents only yet rejected Planet Energy's counterclaim on the basis that Planet Energy prepared a spreadsheet detailing its damages and advised the Arbitrator that the supporting documentation was available, if needed;

22. The application judge erred by concluding that Planet Energy did not tender its audited financial statements, which were before the application judge, into evidence at the arbitration and therefore the Arbitrator could not have referred to them in assessing the unpaid commissions issue. Planet Energy offered to tender its audited financial statements on a confidential basis to the Arbitrator but the Arbitrator elected not to review them;

**The Arbitrator Applied the Wrong Standard of Review to Issues of Ontario Law**

23. The application judge erred in law by applying the incorrect standard of review in determining that the Arbitrator's decision on the question of statutory interpretation as it related to the ECPA Payments was reasonable and therefore entitled to deference. The standard of review as to the legality of the ECPA Payments is correctness;

24. The application judge erred in law by failing to consider the interpretation of the *Energy Consumer Protection Act* and its associated regulations in assessing whether the ECPA Payments are illegal;

25. The application judge erred in law by concluding that the ECPA Payments are not contrary to public policy in Ontario, as such payments are illegal in Ontario and could expose Planet Energy to sanctions and penalties of up to \$1,000,000 per day; and

26. Such further grounds as counsel may advise and this Honourable Court may permit.

**THE BASIS OF THE APPELLATE COURT'S JURISDICTION IS:**

1. The Order appealed from is a final order of a judge of the Ontario Superior Court of

Justice;

2. Section 6(1)(b) of the *Courts of Justice Act*;
3. Leave to appeal is not required; and
4. Such other basis of jurisdiction as counsel for the Appellants may advise and this Honourable Court may allow.

May 6, 2022

**STIKEMAN ELLIOTT LLP**  
Barristers & Solicitors  
5300 Commerce Court West  
199 Bay Street  
Toronto, Canada M5L 1B9

**Daniel S. Murdoch LSUC#: 53123L**  
[dmurdoch@stikeman.com](mailto:dmurdoch@stikeman.com)  
Tel: (416) 869-5529

**Zev Smith LSUC#: 70756R**  
[zsmith@stikeman.com](mailto:zsmith@stikeman.com)  
Tel: (416) 869-5260  
Fax: (416) 947-0866

Lawyers for the Appellants, Planet Energy Corp., Planet Energy (Ontario) Corp. and Planet Energy (B.C.) Corp.

**PLANET ENERGY CORP., et al.**

and

**ALL COMMUNICATIONS  
NETWORK OF CANADA, CO.**

Court of Appeal File No.

Court File No.: CV-21-00658223-00CL

Applicants / Appellants

Respondent / Respondent on Appeal

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**COURT OF APPEAL FOR ONTARIO**

Proceeding commenced at Toronto

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**NOTICE OF APPEAL**

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**STIKEMAN ELLIOTT LLP**

Barristers & Solicitors  
5300 Commerce Court West  
199 Bay Street  
Toronto, Canada M5L 1B9

**Daniel S. Murdoch LSO#: 53123L**

*dmurdoch@stikeman.com*  
Tel: (416) 869-5529

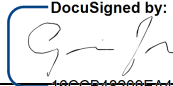
**Zev Smith LSO#: 70756R**

*zsmith@stikeman.com*  
Tel: (416) 869-5260

Lawyers for the Appellants, Planet Energy  
Corp., Planet Energy (Ontario) Corp. and Planet  
Energy (B.C.) Corp.

This is Exhibit "R" referred to in the Affidavit of Nino Silvestri sworn by Nino Silvestri of the Town of Oakville, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on May 26, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:



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10CCB18209FA101  
Commissioner for Taking Affidavits (or as may be)

**GAVIN INKSTER LSO# 82737I**

**COURT OF APPEAL FOR ONTARIO**

BETWEEN:

**PLANET ENERGY CORP., PLANET ENERGY (ONTARIO) CORP., and  
PLANET ENERGY (B.C.) CORP**

Applicants  
(Appellants)

- and -

**ALL COMMUNICATIONS NETWORK OF CANADA, CO.**

Respondent  
(Respondent on Appeal)

**CONSENT**

The parties, by their solicitors, consent to extend the time to perfect this appeal until August 30, 2022, subject to further agreement by the parties.

Dated: June 13, 2022



---

Stikeman Elliott LLP  
Lawyers for the Appellants, Planet Energy Corp., Planet Energy (Ontario) Corp. and Planet Energy (B.C.) Corp.

Dated: June 13, 2022



---

Paliare Roland Rosenberg Rothstein LLP  
Lawyers for the Respondent,  
All Communications Network, Co.



**PLANET ENERGY CORP., et al.**

and

**ALL COMMUNICATIONS  
NETWORK OF CANADA, CO.**

Court of Appeal File No. C70653

Court File No.: CV-21-00658223-00CL

Applicants / Appellants

Respondent / Respondent on Appeal

---

**COURT OF APPEAL FOR ONTARIO**

Proceeding commenced at Toronto

---

**CONSENT**

---

**STIKEMAN ELLIOTT LLP**

Barristers & Solicitors  
5300 Commerce Court West  
199 Bay Street  
Toronto, Canada M5L 1B9

**Daniel S. Murdoch LSO#: 53123L**

*dmurdoch@stikeman.com*  
Tel: (416) 869-5529

**Zev Smith LSO#: 70756R**

*zsmith@stikeman.com*  
Tel: (416) 869-5260

Lawyers for the Appellants, Planet Energy Corp., Planet Energy (Ontario) Corp. and Planet Energy (B.C.) Corp.

**COURT OF APPEAL FOR ONTARIO**

BETWEEN:

**ALL COMMUNICATIONS NETWORK OF CANADA, CO.**

Applicant  
(Respondent on Appeal)

- and -

**PLANET ENERGY CORP., PLANET ENERGY (ONTARIO) CORP., and  
PLANET ENERGY (B.C.) CORP.**

Respondents  
(Appellants)

**CONSENT**

The parties, by their solicitors, consent to extend the time to perfect this appeal until August 30, 2022, subject to further agreement by the parties.

Dated: June 13, 2022



---

Stikeman Elliott LLP  
Lawyers for the Appellants, Planet Energy Corp., Planet Energy (Ontario) Corp. and Planet Energy (B.C.) Corp.

Dated: June 13, 2022



---

Paliare Roland Rosenberg Rothstein LLP  
Lawyers for the Respondent,  
All Communications Network, Co.

**ALL COMMUNICATIONS  
NETWORK OF CANADA, CO.**

and

**PLANET ENERGY CORP., et al.**

Court of Appeal File No. C70642

Court File No.: CV-21-00659022-00CL

Applicant (Respondent on Appeal)

Respondents (Appellants)

**COURT OF APPEAL FOR ONTARIO**

Proceeding commenced at Toronto

**CONSENT**

**STIKEMAN ELLIOTT LLP**

Barristers & Solicitors  
5300 Commerce Court West  
199 Bay Street  
Toronto, Canada M5L 1B9

**Daniel S. Murdoch LSO#: 53123L**

*dmurdoch@stikeman.com*  
Tel: (416) 869-5529

**Zev Smith LSO#: 70756R**

*zsmith@stikeman.com*  
Tel: (416) 869-5260

Lawyers for the Appellants, Planet Energy  
Corp., Planet Energy (Ontario) Corp. and Planet  
Energy (B.C.) Corp.

-----Original Message-----

From: Kris.Borg-Olivier@paliareroland.com <Kris.Borg-Olivier@paliareroland.com>  
Sent: Thursday, June 2, 2022 1:31 PM  
To: Zev Smith <ZSmith@stikeman.com>  
Cc: Dan Murdoch <DMurdoch@stikeman.com>  
Subject: Re: ACN/Planet [IWOV-PRiManage.FID134066]

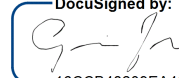
Thanks Zev. That's fine.

Feel free to execute the consent on my behalf.

Kris

Sent from my iPhone

This is Exhibit "S" referred to in the Affidavit of Nino Silvestri sworn by Nino Silvestri of the Town of Oakville, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on May 26, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:  


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10CCB#8209FA401  
Commissioner for Taking Affidavits (or as may be)

**GAVIN INKSTER LSO# 82737I**



Shell Energy North America (US), L.P.  
1000 Main Street, Level 12  
Houston, TX 77002  
Tel +1 713-767-5400  
www.shell.com

Planet Energy (Ontario) Corp.  
5775 Yonge St., Suite 1202  
North York, ON M2N 4J1  
Attention: Nino Silvestri and Stephen  
Plummer

via email:  
[NSilvestri@planetenergy.ca](mailto:NSilvestri@planetenergy.ca)  
[splummer@energlobeenergy.com](mailto:splummer@energlobeenergy.com)

March 22, 2023

RE: Amended and Restated Global Agreement (the "Global Agreement") and Second Amended and Restated Loan Agreement (the "Loan Agreement"), each dated October 1, 2017 by and among Planet Energy (Ontario) Corp., Energie Planete Inc./Planet Energy Inc., Planet Energy (Alberta) Corp., Planet Energy (B.C.) Corp., Planet Energy (Manitoba) Corp., Planet Energy Corp., Planet Energy (Maryland) Corp., Planet Energy (New York) Corp., Planet Energy (Pennsylvania) Corp., Planet Energy (Ohio) Corp., Planet Energy (Illinois) Corp., Planet Energy (New Jersey) Corp., (collectively, "Planet"), Shell Energy North America (US), L.P., ("Shell Energy"), Shell Energy North America (Canada) Inc., ("SENAC"), Shell Trading Risk Management, LLC ("STRM" and collectively with Shell Energy and SENAC, "Shell").

Dear Nino and Stephen:

As you know, Planet Energy Corp., Planet Energy (Ontario) Corp. and Planet Energy (B.C.) Corp. (collectively, the "Planet Defendants") are parties to an arbitration commenced by All Communications Network of Canada, Co. ("ACN") and administered by the International Center for Dispute Resolution (ICDR Case No. 01-18-0001-6527), in which an award was issued in favor of ACN, with ACN thereafter commencing an application in the Ontario Superior Court of Justice (Court File No. CV-21-00659022-00CL) seeking an order recognizing and enforcing the award, and on April 7, 2022, the Ontario Superior Court of Justice granted such order and ordered the Planet Defendants to pay ACN \$29,259,787, plus interest (the "Court Ordered Payment").

We understand that the Planet Defendants and ACN had been working on an agreed settlement, and it had been our expectation that such settlement would reduce the Planet Defendant's obligations to ACN to an amount substantially below the amount of the Court Ordered Payment, but Planet has recently informed us that the parties have been unable to reach a settlement.

Planet Energy's financial statements as recently provided to Shell show that it has current assets of approximately \$14.7 million, which is far short of the assets needed to satisfy the Court Ordered Payment, not to mention Planet's obligations to Shell and its other creditors. As a result of the foregoing events, one or more Events of Default exist under the Global Agreement,

including without limitation, an Event of Default under Section 7.1(o) of the Global Agreement, since Planet has become “Bankrupt” as defined the Global Agreement, for the reason that Planet is unable to pay the above-described debts as they become due.

As a result of this Event of Default (and without prejudice to those other Events of Default that now or may hereafter exist), Shell hereby gives notice to Planet that it is exercising the following remedies:

- (i) All transactions under the Second Amended and Restated Master Swap Agreement dated October 1, 2017 between SENAC and Planet Energy (Ontario) Corp. (the “Master Swap Agreement”) are terminated, and SENAC designates the date of this letter as the Early Termination Date thereunder, and the Settlement Amount owing to SENAC as a result thereof is US\$1,872,748.
- (ii) The US\$285,000.00 outstanding principal balance of the US Collateral Credit Facility is hereby accelerated and immediately due and payable.

At this time, Shell is not terminating the transactions outstanding under any Master Agreement other than the Master Swap Agreement as described above (such other agreements being collectively, the “Other Master Agreements”), and Shell will agree to forego exercising its right to terminate the transactions outstanding under the Other Master Agreements until October 1, 2023 so long as Planet satisfies the following conditions (collectively, the “Forbearance Conditions”): (a) Planet pays the amounts set forth in items (i) and (ii) above to Shell no later than March 24<sup>th</sup> 2023, and (b) Planet does not default in the timely payment of any Shell invoices for deliveries under the Other Master Agreements.

Except for the Shell forbearance specifically described above upon satisfaction of the Forbearance Conditions, nothing herein nor any of the above remedies exercised by Shell are intended to waive, or shall waive, any other remedies available to Shell under the Transaction Agreements, at law or otherwise as a result of the above-described Event of Default, and Shell reserves the right to exercise such other remedies as it may hereafter in its discretion elect.

Planet is further advised that no oral communication from or on behalf of Shell by any party shall constitute any agreement, commitment, or evidence of any assurance or intention of Shell with respect to the subject matter hereof. Any agreement, commitment, or assurance or intention of Shell shall be effective only if in writing. This notice will be interpreted solely by reference to the contents set forth herein, without regard to conversations or other correspondence between representatives of Shell and Planet.

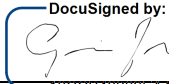
Sincerely,

Shell Energy North America (US), L.P.

DocuSigned by:  
*Christopher Riley*  
By: \_\_\_\_\_  
Printed name: Christopher Riley

This is Exhibit "T" referred to in the Affidavit of Nino Silvestri sworn by Nino Silvestri of the Town of Oakville, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on May 26, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:



---

Commissioner for Taking Affidavits (or as may be)

**GAVIN INKSTER LSO# 827371**



**From:** [Lekovic, Aleksa](#)  
**To:** [Nino Silvestri](#)  
**Cc:** [Ravi Shrestha](#); [D'Souza, Avinash](#); [Dan Murdoch](#); [Zev Smith](#); [Lee Nicholson](#)  
**Subject:** RE: [External] Letter of Credit to Shell  
**Date:** Monday, March 20, 2023 10:29:47 PM  
**Attachments:** [image001.png](#)

---

Hi Nino,

As previously communicated, the Bank is not prepared to issue new credit to Planet Energy at this time.

Regards,

Aleksa

**Aleksa Lekovic, CPA, CA** | Senior Client Relationship Manager | GTA

**Scotiabank** | Commercial Banking

2 Robert Speck Pkwy, 4<sup>th</sup> Floor, Mississauga, ON, Canada L4Z 1H8

T 437.688.7437

[aleksa.lekovic@scotiabank.com](mailto:aleksa.lekovic@scotiabank.com)

[www.scotiabank.com](http://www.scotiabank.com)

Scotiabank is a business name used by The Bank of Nova Scotia

[image001](#)

---

**From:** Nino Silvestri <[NSilvestri@planetenergy.ca](mailto:NSilvestri@planetenergy.ca)>  
**Sent:** March 15, 2023 4:53 PM  
**To:** Lekovic, Aleksa <[aleksa.lekovic@scotiabank.com](mailto:aleksa.lekovic@scotiabank.com)>  
**Cc:** Ravi Shrestha <[rshrestha@planetenergy.ca](mailto:rshrestha@planetenergy.ca)>; D'Souza, Avinash <[Avinash.DSouza@scotiabank.com](mailto:Avinash.DSouza@scotiabank.com)>; Dan Murdoch <[DMurdoch@stikeman.com](mailto:DMurdoch@stikeman.com)>; Zev Smith <[ZSmith@stikeman.com](mailto:ZSmith@stikeman.com)>; Lee Nicholson <[leenicholson@stikeman.com](mailto:leenicholson@stikeman.com)>  
**Subject:** RE: [External] Letter of Credit to Shell

Hi Aleksa,

Further to our meeting today, can you please confirm via email that Scotiabank declines to offer Planet Energy a letter of credit in favor of Shell for \$US 2.5 million that would be fully cash collateralized by Planet Energy.

We would appreciate such email as soon as possible.

Regards,

Nino

Nino Silvestri

570

CEO



5775 Yonge Street, Suite 1202  
Toronto, ON M2M 4J1  
Office: 416-250-7117  
Direct: 647-253-9602  
EA: 647-253-9622

---

**From:** Nino Silvestri

**Sent:** Tuesday, March 14, 2023 2:36 PM

**To:** Lekovic, Aleksa <[aleksa.lekovic@scotiabank.com](mailto:aleksa.lekovic@scotiabank.com)>

**Cc:** Ravi Shrestha <[rshrestha@planetenergy.ca](mailto:rshrestha@planetenergy.ca)>; D'Souza, Avinash <[Avinash.DSouza@scotiabank.com](mailto:Avinash.DSouza@scotiabank.com)>; Dan Murdoch <[dmurdoch@stikeman.com](mailto:dmurdoch@stikeman.com)>; Zev Smith <[zsmith@stikeman.com](mailto:zsmith@stikeman.com)>; Lee Nicholson <[leenicholson@stikeman.com](mailto:leenicholson@stikeman.com)>

**Subject:** RE: [External] Letter of Credit to Shell

Hi Aleksa,

We can have a call to discuss the recent developments.

However, I would like to have our lawyers at Stikeman on the call as well, whom I have copied on this email.

We are available this afternoon and tomorrow afternoon.

Please let me know when you and your colleagues will be available for a conference call.

Regards,

Nino

Nino Silvestri  
CEO



5775 Yonge Street, Suite 1202

571

Toronto, ON M2M 4J1  
Office: 416-250-7117  
Direct: 647-253-9602  
EA: 647-253-9622

---

**From:** Lekovic, Aleksa <[aleksa.lekovic@scotiabank.com](mailto:aleksa.lekovic@scotiabank.com)>  
**Sent:** Tuesday, March 14, 2023 2:15 PM  
**To:** Nino Silvestri <[NSilvestri@planetenergy.ca](mailto:NSilvestri@planetenergy.ca)>  
**Cc:** Ravi Shrestha <[rshrestha@planetenergy.ca](mailto:rshrestha@planetenergy.ca)>; D'Souza, Avinash <[Avinash.DSouza@scotiabank.com](mailto:Avinash.DSouza@scotiabank.com)>  
**Subject:** RE: [External] Letter of Credit to Shell

Hi Nino

I'm unclear on what's transpired here. Let's have a call to clarify the recent developments as I was under the assumption that the settlement payment to ACN was hinging on the HST rather than any LoC being extended. I also thought that Shell provided their consent already so why are they seeking a LoC?

When are you available this week?

Regards

Aleksa

---

**From:** Nino Silvestri <[NSilvestri@planetenergy.ca](mailto:NSilvestri@planetenergy.ca)>  
**Sent:** March 14, 2023 1:57 PM  
**To:** Lekovic, Aleksa <[aleksa.lekovic@scotiabank.com](mailto:aleksa.lekovic@scotiabank.com)>  
**Cc:** Ravi Shrestha <[rshrestha@planetenergy.ca](mailto:rshrestha@planetenergy.ca)>; D'Souza, Avinash <[Avinash.DSouza@scotiabank.com](mailto:Avinash.DSouza@scotiabank.com)>  
**Subject:** RE: [External] Letter of Credit to Shell

Thanks Aleksa for the guidance.

If we do not make the settlement payment to ACN, does that change Scotiabank's view?

Would you be willing to extend a LOC if it was fully cash collateralized?

Nino Silvestri

572

CEO



5775 Yonge Street, Suite 1202  
Toronto, ON M2M 4J1  
Office: 416-250-7117  
Direct: 647-253-9602  
EA: 647-253-9622

---

**From:** Lekovic, Aleksa <[aleksa.lekovic@scotiabank.com](mailto:aleksa.lekovic@scotiabank.com)>  
**Sent:** Thursday, March 09, 2023 4:40 PM  
**To:** Nino Silvestri <[NSilvestri@planetenergy.ca](mailto:NSilvestri@planetenergy.ca)>  
**Cc:** Ravi Shrestha <[rshrestha@planetenergy.ca](mailto:rshrestha@planetenergy.ca)>; D'Souza, Avinash <[Avinash.DSouza@scotiabank.com](mailto:Avinash.DSouza@scotiabank.com)>  
**Subject:** RE: [External] Letter of Credit to Shell

Hi Nino

I would have some questions on this request primarily why Shell is asking to post a letter of credit. Is this something that was done in the past or is this the first time they are doing this?

My initial response is that BNS is not in a position to be extending a LOC regardless if it is secured through cash. As mentioned in previous discussions, we are in the process of winding down the LCs and extension of further credit based on the strength of the Company after the payment to ACN is not one where we would be comfortable extending terms. Lets discuss further if we need to tomorrow. I can be available after 1pm.

Regards

Aleksa

**Aleksa Lekovic, CPA, CA** | Senior Client Relationship Manager | GTA

---

**Scotiabank** | Commercial Banking

2 Robert Speck Pkwy, 4<sup>th</sup> Floor, Mississauga, ON, Canada L4Z 1H8

T 437.688.7437

[aleksa.lekovic@scotiabank.com](mailto:aleksa.lekovic@scotiabank.com)

[www.scotiabank.com](http://www.scotiabank.com)

Scotiabank is a business name used by The Bank of Nova Scotia

image001

---

**From:** Nino Silvestri <[NSilvestri@planetenergy.ca](mailto:NSilvestri@planetenergy.ca)>  
**Sent:** March 9, 2023 3:40 PM  
**To:** Lekovic, Aleksa <[aleksa.lekovic@scotiabank.com](mailto:aleksa.lekovic@scotiabank.com)>  
**Cc:** Ravi Shrestha <[rshrestha@planetenergy.ca](mailto:rshrestha@planetenergy.ca)>  
**Subject:** [External] Letter of Credit to Shell

Hi Aleksa,

Shell may be asking us to post a letter of credit pursuant to our supply agreement with Shell.

How long will it take Scotiabank to issue Planet Energy a letter of credit of approximately \$US 2.5 million if we were to post the equal amount cash to Scotiabank to collateralize the LOC – so there would not be any risk to Scotiabank.

Can you please get back to me as soon as possible.

Regards,

Nino

Nino Silvestri  
CEO



5775 Yonge Street, Suite 1202  
Toronto, ON M2M 4J1  
Office: 416-250-7117  
Direct: 647-253-9602  
EA: 647-253-9622

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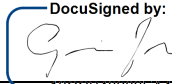
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This is Exhibit "U" referred to in the Affidavit of Nino Silvestri sworn by Nino Silvestri of the Town of Oakville, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on May 26, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:



---

Commissioner for Taking Affidavits (or as may be)

**GAVIN INKSTER LSO# 827371**

March 23, 2023

**By Email and Facsimile ((713) 767-5414  
and (713) 230-2900)**

Shell Energy North America (US), L.P.  
1000 Main Street, Level 12  
Houston, TX 77001

Attn: Contracts North America and General Counsel

Re: Amended and Restated Global Agreement (the “**Global Agreement**”) and Second Amended and Restated Loan Agreement (the “**Loan Agreement**”), each dated October 1, 2017 by and among Planet Energy (Ontario) Corp., Energie Planete Inc./Planet Energy Inc., Planet Energy (Alberta) Corp., Planet Energy (B.C.) Corp., Planet Energy (Manitoba) Corp., Planet Energy Corp., Planet Energy (Maryland) Corp., Planet Energy (New York) Corp., Planet Energy (Pennsylvania) Corp., Planet Energy (Ohio) Corp., Planet Energy (Illinois) Corp., Planet Energy (New Jersey) Corp., (collectively, “**Planet**”), Shell Energy North America (US), L.P., (“**Shell Energy**”), Shell Energy North America (Canada) Inc., (“**SENAC**”), Shell Trading Risk Management, LLC (“**STRM**” and collectively with Shell Energy and SENAC, “**Shell**”)

We write in response to your letter of March 22, 2023. Your letter incorrectly asserts that Planet is a “Bankrupt” within the meaning of the Global Agreement. Planet is currently able to pay its debts as they become due. As you know, the Court Ordered Payment (as defined by your letter) in the amount of \$29,259,787 plus interest is currently under appeal and Planet does not in any way fall under the definition of “Bankrupt”. Accordingly, no Event of Default has occurred pursuant Section 7.1(o) of the Global Agreement.

Furthermore, the Court Ordered Payment is currently stayed pending the appeal and, as such, does not constitute an Event of Default pursuant to Section 7.1(k) of the Global Agreement.

Yours truly,

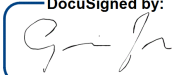


Nino Silvestri  
CEO

cc. Stephen Plummer



This is Exhibit "V" referred to in the Affidavit of Nino Silvestri sworn by Nino Silvestri of the Town of Oakville, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on May 26, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:  


---

10CCB48208EA401  
*Commissioner for Taking Affidavits (or as may be)*

**GAVIN INKSTER LSO# 82737I**



Shell Energy North America (US), L.P.  
1000 Main Street, Level 12  
Houston, TX 77002  
Tel +1 713-767-5400  
www.shell.com

Planet Energy (Ontario) Corp.  
5775 Yonge St., Suite 1202  
North York, ON M2N 4J1  
Attention: Nino Silvestri and Stephen  
Plummer

via email:  
[NSilvestri@planetenergy.ca](mailto:NSilvestri@planetenergy.ca)  
[splummer@energlobeenergy.com](mailto:splummer@energlobeenergy.com)

March 24, 2023

RE: Amended and Restated Global Agreement (the "Global Agreement") and Second Amended and Restated Loan Agreement (the "Loan Agreement"), each dated October 1, 2017 by and among Planet Energy (Ontario) Corp., Energie Planete Inc./Planet Energy Inc., Planet Energy (Alberta) Corp., Planet Energy (B.C.) Corp., Planet Energy (Manitoba) Corp., Planet Energy Corp., Planet Energy (Maryland) Corp., Planet Energy (New York) Corp., Planet Energy (Pennsylvania) Corp., Planet Energy (Ohio) Corp., Planet Energy (Illinois) Corp., Planet Energy (New Jersey) Corp., (collectively, "Planet"), Shell Energy North America (US), L.P., ("Shell Energy"), Shell Energy North America (Canada) Inc., ("SENAC"), Shell Trading Risk Management, LLC ("STRM") and collectively with Shell Energy and SENAC, "Shell").

Dear Nino and Stephen:

With reference to Planet's March 23, 2023 letter to Shell, Shell stands by its assertion that Planet is "Bankrupt" as defined in the Global Agreement and unable to pay its debts as they become due. The Ontario Superior Court of Justice has ordered the Planet Defendants to pay \$29,259,787, plus interest to ACN (the "Court Ordered Payment"), and it is expected that ACN will commence enforcement action shortly. We also call your attention to those other outstanding Events of Default under the Global Agreement as referenced in our letter, which Planet is well aware of:

(i) An Event of Default exists under Sections 3.4 and 7.1(c) of the Global Agreement, as Planet has failed to provide audited financial statements for the Fiscal Year ended September 30, 2022, which audited financial statements were due on January 31, 2023.

(ii) An Event of Default exists under Section 7.1(b) of the Global Agreement, as Planet is in default of the Run and Maintain Financial covenant, as reported in the Certificate of Compliance submitted by Planet for the Fiscal Quarter ended December 31, 2022.

(iii) An Event of Default exists under Section 7.1(b) of the Global Agreement, as Planet is in default of the minimum Modified Working Capital covenant, as reported in the Certificate of Compliance submitted by Planet for the Fiscal Quarter ended December 31, 2022.

(iv) An Event of Default exists under Section 7.1(c) of the Global Agreement, as Planet has failed to report its Modified Working Capital for the month ending January 31, 2023.

As you know, the Transaction Agreements that make up Planet's supply and lending facility with Shell allow Planet to borrow from Shell and trade with Shell under the Master Agreements without posting any margin, and as such Shell has taken a great deal of risk in its dealings with Planet. The Financial Metrics and reporting covenants in the Transaction Agreements are intended to protect Shell from adverse changes in Planet's condition, and Shell is allowed to take swift action to protect itself from loss if Planet doesn't abide by these covenants.

The existence of the various Events of Default has become unacceptable to Shell given Planet's dire circumstances, and we must stand by what we told you in our March 22 letter – *i.e.*, all transactions under the Master Swap Agreement are terminated and the balance of the US Collateral Credit Facility is accelerated. Shell's offer of forbearance subject to satisfaction of the Forbearance Conditions set forth therein still stands.

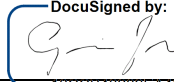
Sincerely,

Shell Energy North America (US), L.P.

DocuSigned by:  
*Christopher Riley*  
By: \_\_\_\_\_  
Printed name: Christopher Riley

This is Exhibit "W" referred to in the Affidavit of Nino Silvestri sworn by Nino Silvestri of the Town of Oakville, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on May 26, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:



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Commissioner for Taking Affidavits (or as may be)

**GAVIN INKSTER LSO# 827371**

March 29, 2023

**By Email and Facsimile ((713) 767-5414  
and (713) 230-2900)**

Shell Energy North America (US), L.P.  
1000 Main Street, Level 12  
Houston, TX 77001

Attn: Contracts North America and General Counsel

Re: Amended and Restated Global Agreement (the “**Global Agreement**”) and Second Amended and Restated Loan Agreement (the “**Loan Agreement**”), each dated October 1, 2017 by and among Planet Energy (Ontario) Corp., Energie Planete Inc./Planet Energy Inc., Planet Energy (Alberta) Corp., Planet Energy (B.C.) Corp., Planet Energy (Manitoba) Corp., Planet Energy Corp., Planet Energy (Maryland) Corp., Planet Energy (New York) Corp., Planet Energy (Pennsylvania) Corp., Planet Energy (Ohio) Corp., Planet Energy (Illinois) Corp., Planet Energy (New Jersey) Corp., (collectively, “**Planet**”), Shell Energy North America (US), L.P., (“**Shell Energy**”), Shell Energy North America (Canada) Inc., (“**SENAC**”), Shell Trading Risk Management, LLC (“**STRM**” and collectively with Shell Energy and SENAC, “**Shell**”)

We write in response to your letter of March 24, 2023.

We continue to assert that Planet is not “Bankrupt” as defined by the Global Agreement. We also disagree that an Event of Default has occurred pursuant to Section 3.4 or 7.1(c) of the Global Agreement for failure to provide audited financial statements or report its Modified Working Capital for the month ending January 31, 2023. Planet and Shell have agreed to an extension related to preparing and reporting audited financial statements and the Modified Working Capital is reported on a quarterly basis under the Global Agreement.

Regardless, we acknowledge an Event of Default has occurred pursuant to Section 7.1(b) of the Global Agreement related to the Run and Maintain Financial covenant and minimum Modified Working Capital covenant. Accordingly, as you know, we paid Shell the amounts demanded pursuant to your letter dated March 22, 2023. We trust this satisfies the Forbearance Conditions outlined in your letter dated March 22, 2023 related to the transactions outstanding under the Other Master Agreement. We look forward to continuing to work together in respect of the supply of natural gas.

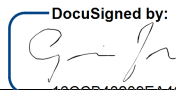
Yours truly,



Nino Silvestri  
CEO

cc. Stephen Plummer

This is Exhibit "X" referred to in the Affidavit of Nino Silvestri sworn by Nino Silvestri of the Town of Oakville, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on May 26, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:  


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10CCB48209FA101  
Commissioner for Taking Affidavits (or as may be)

**GAVIN INKSTER LSO# 82737I**

**From:** [Sharon.Ward@shell.com](mailto:Sharon.Ward@shell.com)  
**To:** [NSilvestri@planetenergy.ca](mailto:NSilvestri@planetenergy.ca); [M.Romero@shell.com](mailto:M.Romero@shell.com)  
**Cc:** [guy.feemster@shell.com](mailto:guy.feemster@shell.com); [christopher.riley@shell.com](mailto:christopher.riley@shell.com); [USJYOU@shell.com](mailto:USJYOU@shell.com); [splummer@energlobeenergy.com](mailto:splummer@energlobeenergy.com); [Dan Murdoch](mailto:Dan.Murdoch@stikeman.com); [Lee Nicholson](mailto:Lee.Nicholson@stikeman.com); [Zev Smith](mailto:Zev.Smith@stikeman.com)  
**Subject:** RE: Default Letter for Planet Energy from Shell Energy NA (US)  
**Date:** Wednesday, March 29, 2023 2:49:28 PM  
**Attachments:** [image001.png](#)

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Thank you Nino. We confirm that Planet has satisfied the Forbearance Conditions set forth in our 3/24/23 letter, and will continue to satisfy the Forbearance Conditions so long as Planet does not default in the timely payment of any Shell invoices for deliveries under the "Other Master Agreements" as referenced in our letter.

Kind regards,

**Sharon Ward**

Senior Legal Counsel - Trading / Gas & Power

Shell USA, Inc.  
1000 Main Street, Level 12  
Houston, Texas 77002

**Direct:** (713) 230-7473

**Fax:** (713) 230-2900

**E-mail:** [sharon.ward@shell.com](mailto:sharon.ward@shell.com)

---

**From:** Nino Silvestri <[NSilvestri@planetenergy.ca](mailto:NSilvestri@planetenergy.ca)>  
**Sent:** Wednesday, March 29, 2023 12:36 PM  
**To:** Romero, Melisa SENA-STO/EC54 <[M.Romero@shell.com](mailto:M.Romero@shell.com)>  
**Cc:** Feemster, Guy V SENA-STX/A/32 <[guy.feemster@shell.com](mailto:guy.feemster@shell.com)>; Ward, Sharon SHLUSA-LSTS/R <[Sharon.Ward@shell.com](mailto:Sharon.Ward@shell.com)>; Riley, Christopher SENA-STX/A/3 <[christopher.riley@shell.com](mailto:christopher.riley@shell.com)>; Young, Tres R SENA-STX/A/371 <[USJYOU@shell.com](mailto:USJYOU@shell.com)>; [splummer@energlobeenergy.com](mailto:splummer@energlobeenergy.com); [Dan Murdoch](mailto:Dan.Murdoch@stikeman.com) <[DMurdoch@stikeman.com](mailto:DMurdoch@stikeman.com)>; [Lee Nicholson](mailto:Lee.Nicholson@stikeman.com) <[leenicholson@stikeman.com](mailto:leenicholson@stikeman.com)>; [Zev Smith](mailto:ZSmith@stikeman.com) <[ZSmith@stikeman.com](mailto:ZSmith@stikeman.com)>  
**Subject:** RE: Default Letter for Planet Energy from Shell Energy NA (US)

**Think Secure. This email is from an external source.**

Please see attached letter from Planet Energy.

Regards,

Nino Silvestri

Nino Silvestri  
CEO



5775 Yonge Street, Suite 1202  
Toronto, ON M2M 4J1  
Office: 416-250-7117  
Direct: 647-253-9602  
EA: 647-253-9622

---

**From:** [M.Romero@shell.com](mailto:M.Romero@shell.com) <[M.Romero@shell.com](mailto:M.Romero@shell.com)>

**Sent:** Friday, March 24, 2023 1:10 PM

**To:** Nino Silvestri <[NSilvestri@planetenergy.ca](mailto:NSilvestri@planetenergy.ca)>; [splummer@energlobeenergy.com](mailto:splummer@energlobeenergy.com)

**Cc:** [guy.feemster@shell.com](mailto:guy.feemster@shell.com); [Sharon.Ward@shell.com](mailto:Sharon.Ward@shell.com); [christopher.riley@shell.com](mailto:christopher.riley@shell.com);  
[USJYOU@shell.com](mailto:USJYOU@shell.com)

**Subject:** Default Letter for Planet Energy from Shell Energy NA (US)

Good afternoon Planet Energy Team,

Please see the attached letter from Shell Energy NA (US).

Regards,

Melisa Romero  
Contract Coordinator

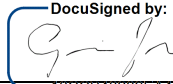
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Companies within the Shell Trading business may monitor and record communications for legal, regulatory and/or business purposes. Such communications will be controlled by Shell Energy North America (US) LP on behalf of all Shell Trading entities within the United States and by Shell International Trading and Shipping Company Ltd for all other Shell Trading entities. Personal data is handled and protected in accordance with applicable data protection laws and relevant Shell policies and rules. Personal data may be disclosed to other Shell companies and to third party organizations providing services to the relevant Shell Company or as required by law.



This is Exhibit "Y" referred to in the Affidavit of Nino Silvestri sworn by Nino Silvestri of the Town of Oakville, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on May 26, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:



---

Commissioner for Taking Affidavits (or as may be)

**GAVIN INKSTER LSO# 82737I**

Daniel S. Murdoch  
Direct: (416) 869 5529  
dmurdoch@stikeman.com

May 3, 2023

**By e-mail**  
**(Kris.Borg-Olivier@paliareroland.com)**

Paliare Roland Rosenberg Rothstein LLP  
155 Wellington Street West  
35<sup>th</sup> Floor  
Toronto, ON M5V 3H1  
Attention: Kris Borg-Olivier

Dear Mr. Borg-Olivier,

**Re: Planet Energy (Ontario) Corp. et al. (“Planet Energy”) v. All Communications Network of Canada, Co. (“ACN”)**

As discussed at our meeting last week, we are writing to provide an update on Planet Energy’s current operations and financial position while the appeal decision remains under reserve. We understand that your client has retained KSV Advisory Inc. (“KSV”) to assist it with this matter.

In March 2023, following the parties’ failure to conclude a consensual resolution to the arbitral award, Shell Energy North America (US) L.P. (“Shell”) advised that it was not prepared to extend further credit to Planet Energy pursuant to their electricity swap transactions under the Amended and Restated Global Agreement, dated October 1, 2017 (the “Global Agreement”). Planet Energy attempted to explore whether it could provide cash collateral or a letter of credit to maintain the transactions pursuant to the Global Agreement, however, Shell advised it would not accept cash collateral and The Bank of Nova Scotia (“Scotiabank”) was not willing to provide further letters of credit to Planet Energy, even if fully cash collateralized.

On March 22, 2023, Shell delivered a Default Notice to Planet Energy pursuant to the terms of the Global Agreement which declared certain covenant defaults and other alleged defaults arising from the arbitral award. Pursuant to the Default Notice, Shell terminated the Ontario electricity swap agreements and demanded Planet Energy pay US\$2,157,748 to Shell, representing the Settlement Amount and the outstanding principal balance of its US Collateral Credit Facility (each as defined in the Global Agreement) with respect to the electricity related swaps. Shell did not terminate Planet Energy’s gas supply in connection with this default and agreed to forbearance terms with respect to the remaining gas supply. However Shell advised Planet Energy that it would not renew the parties’ supply agreement when it expires on October 1, 2023.

Planet Energy is now operating without a hedge in respect of its electricity retail business. This is a significant change to Planet Energy’s business and exposes Planet Energy to market and commodity price risk. While Planet Energy has experienced short-term increases to its cash flow

**Stikeman Elliott**

due to favourable short-term electricity prices, any negative changes to the price of electricity could severely impact Planet Energy's business, cash position and value.

Planet Energy is assessing its strategic options in light of these circumstances and we would be prepared to discuss this further with you, your colleagues and KSV.

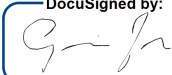
Yours truly,

A handwritten signature in black ink, appearing to read "Daniel S. Murdoch". The signature is fluid and cursive, with a prominent initial "D" and a long, sweeping tail.

Daniel S. Murdoch

cc. L. Nicholson and Z. Smith, Stikeman Elliott LLP

This is Exhibit "Z" referred to in the Affidavit of Nino Silvestri sworn by Nino Silvestri of the Town of Oakville, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on May 26, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:  


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10CCB48209FA481  
Commissioner for Taking Affidavits (or as may be)

**GAVIN INKSTER LSO# 82737I**

COURT OF APPEAL FOR ONTARIO

CITATION: All Communications Network of Canada v. Planet Energy Corp.,  
2023 ONCA 319  
DATE: 20230508  
DOCKET: C70642 & C70653

Lauwers, Paciocco and Thorburn JJ.A.

BETWEEN

All Communications Network of Canada, Co.

Applicant (Respondent)

and

Planet Energy Corp., Planet Energy (Ontario) Corp., and  
Planet Energy (B.C.) Corp.

Respondents (Appellants)

AND BETWEEN

Planet Energy Corp., Planet Energy (Ontario) Corp., and  
Planet Energy (B.C.) Corp.

Applicants (Appellants)

and

All Communications Network of Canada, Co.

Respondent (Respondent)

Daniel S. Murdoch and Zev Smith, for the appellants

Kris Borg-Olivier, for the respondent

Heard: March 27, 2023

On appeal from the judgment of Justice Peter J. Cavanagh of the Superior Court  
of Justice, dated April 7, 2022

**Thorburn J.A.:**

**OVERVIEW**

[1] This is an appeal of an order upholding an arbitral award in favour of the respondent, All Communications Network of Canada, Co. (“ACN”), in the amount of \$29,259,787 plus interest.

[2] The appellants, Planet Energy Corp., Planet Energy (Ontario) Corp. and Planet Energy (B.C.) Corp. (together “Planet”), provide fixed-price electricity and natural gas to residential customers in Canada and the U.S.

[3] The respondent, ACN is a marketing business that has contracts with thousands of Canadian independent business owners who earn commissions by referring customers to ACN or its third-party providers, including Planet.

[4] Planet and ACN entered into the Amended, Restated and Assigned Sales Agency Agreement (the “Agreement”) on November 9, 2012.

[5] Planet agreed to pay gross margin commission payments to ACN for every customer who successfully registered for Planet’s products and services.

[6] ACN agreed to use its network of independent business owners to make commercially reasonable efforts to sell Planet products and to take no actions that would be harmful to Planet’s business in the contractually defined territory of Ontario, British Columbia, and Manitoba (collectively, the “Territory”). Section 12(a)(ii) of the Agreement provides that,

ACN hereby agrees to indemnify and hold Planet ... harmless from and against all damages which any Planet Indemnified Person may sustain, incur or assume as a result of any allegation, claim, civil or criminal action, proceeding, charge or prosecution which may be alleged, made, instituted or maintained against any Planet Indemnified Person arising out of, resulting from or based upon...

(ii) any claim asserted or threatened to be asserted by any third party in connection with ACN, its affiliates or the IBOs, selling the Energy Products or serving or having served pursuant to this Agreement; provided, however, ACN shall not be liable to indemnify and hold any Planet Indemnified Person harmless from any such damages to the extent it is the result of the gross negligence, bad faith, willful misconduct or criminal conduct of, or the breach of this Agreement by, the party seeking indemnification hereunder.

[7] Although the Agreement expired in November 2016, Planet's obligation to pay commissions to ACN survived the termination of the Agreement.

[8] Planet claims that in early 2015, contrary to the terms of the Agreement, ACN began working with Xoom Energy, LLC ("Xoom") to develop an energy retail business to compete with Planet, resulting in a significant decline in customer enrolments after January 2015. Moreover, in March 2018, Planet advised ACN that it would not pay any further commissions as there was a compliance investigation by the Ontario Energy Board ("OEB") into the conduct of the independent business owners who sold Planet's products. Planet told ACN that it

would set-off the amounts it claimed were owed by ACN pursuant to the investigation against any commissions payable to ACN.

[9] The Agreement provides that all claims be resolved by binding arbitration and that any award is “final, conclusive, non-appealable and binding upon the parties” and “enforced in any court of competent jurisdiction”. In April 2018, the parties proceeded to arbitration.

[10] ACN claimed it was owed commissions under the Agreement. Planet disputed ACN’s claim for commissions and claimed that ACN and its independent business owners failed to make reasonable efforts to sell Planet’s products and breached their confidentiality obligations and commitment not to harm Planet by working with Xoom to compete with Planet in Ontario. Planet claimed that Xoom was the alter ego of ACN.

[11] The arbitrator granted ACN’s claims for commissions payable under the agreement and dismissed Planet’s claims against ACN for breach of its confidentiality obligations and commitment not to harm Planet by working with a competitor.

[12] Planet brought an application to the Superior Court to set aside the arbitral award on the basis that, among other things, the arbitrator deprived Planet of the opportunity to present its case, and the award to ACN was contrary to public policy because it violated the *Energy Consumer Protection Act, 2010*, S.O. 2010,



c. 8 (“*ECPA*”). ACN brought a separate application for an order recognizing and enforcing the award.

[13] The application judge rejected Planet’s claims and upheld the arbitral award. Planet seeks to set aside the award or refer it back for proper consideration and claims the application judge erred by:

- i. not conducting a *de novo* hearing;
- ii. holding that the arbitrator did not deny Planet the opportunity to present its case pursuant to article 34(2)(a)(ii) of the Model Law; and
- iii. concluding that the arbitral award was not contrary to public policy pursuant to article 34(2)(b)(ii) of the Model Law.

[14] For the reasons that follow, I would dismiss the appeal.

[15] Before considering these issues, I will set out the applicable rules of arbitration and the underlying rulings and decisions of the arbitrator and the application judge.

## **THE RULES OF ARBITRATION**

[16] This was an international arbitration governed by Ontario’s *International Commercial Arbitration Act, 2017*, S.O. 2017, c. 2, Sched. 5 (the “*Act*”) and administered under the rules of the International Center for Dispute Resolution (the “*ICDR rules*”).

[17] The United Nations Commission on International Trade Law (“UNCITRAL”) Model Law on International Commercial Arbitration (1985) (the “Model Law”) is a multilateral instrument designed to provide consistent, stable, and predictable rules respecting the conduct of international commercial arbitrations and how they are dealt with by domestic courts.

[18] The Model Law is incorporated into Ontario law as Schedule 2 to the *Act*.

[19] Article 5 of the Model Law provides that, “no court shall intervene except where so provided in this Law.” This is consistent with the trend in favour of limiting court involvement in international commercial arbitration as the parties made a conscious decision to exclude court jurisdiction in favour of international arbitration. The Model Law provides for court involvement only where a party challenges and seeks the termination of the mandate of an arbitrator (articles 11, 13 and 14), challenges the jurisdiction of the arbitral tribunal (article 16), or seeks to set aside the arbitral award (article 34).

[20] Article 18 provides that each party be given a full opportunity to present its case and article 19 lays out the rights and powers of the parties to determine the rules of procedure and guarantees the parties' freedom to agree on the procedure to be followed in conducting the arbitration, subject to a few mandatory provisions. This includes the power to determine the admissibility, relevance and weight of the evidence.

[21] Article 34(1) of the Model Law provides that “[r]ecourse to a court against an arbitral award may be made only by an application for setting aside in accordance with paragraphs (2) and (3) of this article” (emphasis added). Article 34(2) of the Model Law provides that:

An arbitral award may be set aside by the court specified in article 6 only if:

(a) the party making the application furnishes proof that:

...

(ii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iii) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration... or

(b) the court finds that:

(i) the award is in conflict with the public policy of this State. [Emphasis added.]

## THE UNDERLYING LEGAL PROCEEDINGS

### The Arbitration Proceeding

[22] As noted above, ACN commenced an arbitral proceeding claiming it was owed commissions under the Agreement. Planet denied ACN’s claim and

brought its own claim against ACN and its independent business owners for failure to make reasonable efforts to sell its products, and breach of their confidentiality obligations and commitment not to harm Planet by working with Xoom to compete with Planet in Ontario. Planet claimed that Xoom was the alter ego of ACN.

[23] At the outset, Planet named Xoom as a respondent party in the arbitration. Planet's attempt to add Xoom to the arbitration was dismissed by the arbitrator. The arbitrator also denied requests by Planet to join additional parties to the arbitration, including Xoom-affiliated entities.

[24] A number of procedural orders were made before the hearing:

[25] On September 17, 2019, the arbitrator held that production of documents was to be completed by December 31, 2019. ACN had not provided certain documents by November 15, 2019 (the date for production of documents in response to requests to which there was no objection) and ACN opposed many requests for production of documents made by Planet.

[26] On November 19, 2019, a hearing was held to address the disputed document requests. The arbitrator subsequently ordered ACN to produce documents but did not order it to obtain documents from Xoom. ACN produced several hundred documents. Planet took the position that the disclosure was inadequate.

[27] On January 20, 2020, the arbitrator denied Planet's request for leave to submit an application about deficiencies in ACN's document production. However, the arbitrator ruled that "[t]o the extent that ACN disputes alleged deficiencies raised by Planet, such deficiencies will be appropriate subjects for the Parties' pre-hearing submissions and/or cross-examination at the evidentiary hearing. If Planet succeeds in establishing that ACN failed to produce responsive documents, Planet may invite the Arbitrator to draw adverse inferences and/or grant other relief as may be appropriate."

[28] Planet was not satisfied with this response and, without seeking the permission of the arbitrator, brought an application to the United States District Court of North Carolina seeking production of documents in the possession of Xoom (the "U.S. Application").

[29] In response, ACN asked the arbitrator to issue an order compelling Planet to cease and desist with the U.S. Application.

[30] In a procedural order dated March 11, 2020, the arbitrator declined to do so. She did, however, acknowledge that Planet had breached applicable procedures agreed on by the parties by failing to seek leave to make the U.S. Application. She also held that ACN raised legitimate concerns about procedural delay and the impact of the U.S. Application on the proceedings and held that "[p]resumptively, any delay or impasse that might arise in connection with the

[U.S. Application] shall not be deemed good cause for the extension of any deadlines in this arbitration...” The U.S. District Court granted the application and ordered Xoom to produce the documents by June 22, 2020.

[31] On June 19, 2020, the arbitrator held that Planet must submit any new Xoom documents to be admitted, no later than June 24, 2020 and ACN was given until June 25, 2020 to state any objection. (Planet had requested 10 days but the arbitrator rejected this as “patently disproportionate to the task at hand”.)

[32] On June 22, 2020, four days before closing arguments were to be made, Xoom produced over 400 documents (the “Xoom Documents”).

[33] The arbitrator held that only eight were relevant, three of which were highly relevant.

[34] One week before closing arguments were delivered, ACN produced a spreadsheet outlining Planet’s sales by jurisdiction. Planet claims this is the type of information that one competitor could use to develop a sales strategy. Planet says it became aware of this information when, further to the U.S. District Court order, Xoom produced two emails without attachments. Planet claims the attachments may have included confidential Planet information such as Planet’s sales in Ontario and B.C. by month and the percentage of Planet’s customers who subscribe to power versus gas services.

[35] On February 3, 2021, the arbitrator rendered her decision. She held that ACN's "claims have been upheld in all material respects and ACN is the prevailing party in the arbitration." Damages to ACN were assessed at \$29,259,787 as of August 20, 2019, including the costs of the arbitration and prejudgment interest.

### **The Application to the Superior Court**

[36] Planet brought an application to the Superior Court to set aside the award and ACN brought a cross-application to enforce the award of damages. Planet argued, in part, that:

- i. It was unable to present its case in accordance with article 34(2)(a)(ii) of the Model Law, because it was deprived of an opportunity to respond to the evidence and arguments advanced by ACN and denied the right to discovery and cross-examination on a complete evidentiary record; and
- ii. The award was contrary to public policy because Planet could not comply with the award without violating the *ECPA*, contrary to article 34(2)(b)(ii) of the Model Law.

[37] The application judge dismissed Planet's application to set aside the award and granted ACN's application recognizing and enforcing the award. In deferring to the arbitrator's decision, the application judge observed that the arbitrator had the benefit of hearing all of the evidence, reviewing the full evidentiary record,

and considering Planet's submissions. The application judge also held that Planet failed to provide proof that it was unable to present its case.

[38] The application judge also considered Planet's argument that the *ECPA* precluded payment of commissions for renewals effective January 1, 2017 and that the arbitrator's decision was therefore contrary to public policy. The application judge rejected this submission after considering the terms of the *ECPA* and a memorandum made out to Planet by the OEB, as well as the principles of contract interpretation. On the contrary, he upheld the arbitrator's assessment that the Agreement was clear and unambiguous on gross margin payments as negotiations revealed "a consistent and uniform course of conduct with respect to ACN's entitlement to commissions from renewals".

## **ANALYSIS OF THE ISSUES UNDER APPEAL**

### **1. Standard of Review where a Party Claims it was Unable to Present its Case**

[39] The first issue raised on this appeal is the standard of review to be applied to the application judge's analysis of whether Planet was unable to present its case.

[40] Planet does not challenge the arbitrator's jurisdiction to hear the case; rather, Planet challenges the arbitrator's decisions regarding document production, time for cross-examination, and opportunity to prepare closing



submissions to the arbitration that Planet claims resulted in its inability to properly present its case at the arbitration.

[41] Planet claims that the application judge was required to conduct a *de novo* hearing to determine whether Planet was able to present its case, and that he erred by failing “to independently assess the importance of document discovery and the prejudicial effect” of ACN’s failure to comply with its obligations to Planet, and instead, deferred to the arbitrator. Planet claims that, had the application judge conducted a *de novo* hearing, he would have concluded that Planet was unable to present its case.

[42] The onus on a party seeking to set aside an arbitral award on the basis of a failure of due process, is high. “Judicial intervention for alleged violations of the due process requirements of the Model Law will be warranted only when the Tribunal’s conduct is so serious that it cannot be condoned under the law of the enforcing State”: *Consolidated Contractors Groups S.A.L. (Offshore) v. Ambatovy Minerals S.A.*, 2017 ONCA 939, 70 C.L.R. (4th) 51, at para. 65, leave to appeal refused, 2018 CanLII 99661 (SCC), citing Lax J. in *Corporacion Transnacional de Inversiones, S.A. de C.V. v. STET International, S.p.A.*, [1999] O.J. No. 3573, at para. 34 (Sp. Ct.), *aff’d* (2000) 49 O.R. (3d) 414 (C.A.), leave to appeal refused, [2000] S.C.C.A. No. 581.

[43] The only authority cited by Planet in support of its claim that a *de novo* hearing should have been conducted by the application judge to determine whether this high threshold has been met, was *lululemon athletica Canada inc. v. Industrial Color Productions Inc.*, 2021 BCCA 428.

[44] In my view, *lululemon* is distinguishable.

[45] In *lululemon*, the appellant challenged the *jurisdiction* of the arbitral decision. *Lululemon* invoked s. 34(2)(a)(iv) of British Columbia's legislation which, like the wording in s. 34(2)(a)(iii) of the Ontario Act, concerns "disputes not contemplated by or not falling within the terms of the submission to arbitration: see s. 34(2)(a)(iv) of British Columbia's *International Commercial Arbitration Act*, R.S.B.C. 1996, c. 233.

[46] In this case by contrast, the appellant challenges the procedural fairness of the proceeding.

[47] Moreover, as was made clear by this court in *United Mexican States v. Cargill, Inc.*, 2011 ONCA 622, 107 O.R. (3d) 528, at para. 47, leave to appeal refused, [2011] S.C.C.A. No. 528, even in appeals of pure jurisdictional questions,

[C]ourts are to be circumspect in their approach to determining whether an error alleged under art. 34(2)(a)(iii) properly falls within that provision and is a true question of jurisdiction. They are obliged to take a narrow view of the extent of any such question. And when they do identify such an issue, they are to

carefully limit the issue they address to ensure that they do not, advertently or inadvertently, stray into the merits of the question that was decided by the tribunal.

[48] The correct test is whether the arbitrator's decisions respecting document production, cross-examination of witnesses, and closing submissions, "offend our most basic notions of morality and justice" such that the arbitrator committed a breach of procedural fairness: *Consolidated Contractors*, at para. 65.

[49] It was incumbent on Planet to demonstrate that it was unable to present its case. In the absence of evidence to demonstrate how the arbitrator erred in making her findings in respect of the documents, and why more time was needed to prepare cross-examinations and make closing submissions, the application judge was entitled to rely on the findings of the arbitrator. Even if a *de novo* hearing were conducted, as the application judge said, "Planet's submissions ... repeat the same submissions that were made to the Arbitrator", Planet has not challenged the finding that only eight of the 400 Xoom Documents were relevant, and no new evidence has been adduced to demonstrate how it has been deprived of its ability to present its case. As such, this would not have changed the result.

[50] For these reasons, I find that the application judge applied the correct test and invoked the correct standard of review. I would therefore dismiss this first ground of appeal.

## 2. Was Planet denied the Opportunity to Present its Case?

[51] Planet's second ground of appeal is that it was "arbitrarily denied reasonable discovery rights" because ACN failed to produce all relevant documents as "Xoom's rushed but significant production of over 400 documents was not delivered until after the evidentiary hearing and 4 days before closing submissions". They included documents that the arbitrator acknowledged were "highly relevant" to Planet's case. Planet claims it was thereby denied the right to cross-examine witnesses or make closing submissions on a complete evidentiary record.

[52] Natural justice requires that an arbitrator act with procedural fairness, the requirements of which depend on the subject-matter of the dispute, the circumstances of each case, the nature of the inquiry, and the rules under which the parties have agreed to arbitrate their dispute: *0927613 B.C. Ltd. v. 0941187 B.C. Ltd.*, 2015 BCCA 457, 392 D.L.R. (4th) 541, at para. 60 (citations omitted).

[53] The failure to give a party the opportunity to present its case by ordering production of necessary documents, refusing to admit relevant evidence, or failing to deal with all issues for determination, may constitute a breach of the rules of procedural fairness and natural justice: *Arbutus Software Inc. v. ACL Services Ltd.*, 2012 BCSC 1834, at para. 81. See also: *Williston Navigation Inc. v. BCR Finav No. 3*, 2007 BCSC 190, 69 B.C.L.R. (4th) 187, at paras. 45-53;

*Amos Investments Ltd. v. Minou Enterprises Ltd.*, 2008 BCSC 332, 45 B.L.R. (4th) 258, at paras. 26-39.

[54] The question for the application judge was whether the arbitrator breached Planet's right to procedural fairness, and if so, whether the breach was "sufficiently serious to offend our most basic notions of morality and justice" such that it "cannot be condoned": *Consolidated Contractors*, at para. 65.

[55] In his thorough and careful reasons, the application judge recognized that "a tribunal has the obligation to ensure equal treatment of the parties, and that minimum procedural standards are observed".

[56] He noted that Xoom's entry into the Ontario market was an important issue and that Planet sought production of documents it believed would demonstrate improper conduct concerning Xoom's entry into Ontario and efforts by ACN to assist Xoom contrary to the terms of its agreement with Planet. He noted that the arbitrator specifically adverted to Planet's argument that ACN's intertwined relationship with Xoom created a conflict of interest with ACN's obligations under the agreement, ACN shared Planet's confidential information with Xoom, it abdicated its responsibilities to Planet in favour of Xoom, and it deliberately omitted a transition plan required for an orderly wind down.

[57] The application judge noted the arbitrator's findings that,

- i. although Planet sought and obtained 400 documents from Xoom, only three were “highly relevant”, “they are all part of the same e-mail chain and concern the same subject [and do not] put any different light on the evidence that was presented at the hearing”;
- ii. “[t]o the extent that ACN disputes alleged deficiencies raised by Planet, such deficiencies will be appropriate subjects for the Parties’ pre-hearing submissions and/or cross-examination at the evidentiary hearing”; and
- iii. Planet had experienced legal counsel.

[58] The application judge also found that,

The Arbitrator set out the procedural history in respect of these documents including her rulings in the June 19, 2020 email. The Arbitrator referred to Planet’s proposal that 122 Xoom documents be admitted into the record from among 400+ documents produced by Xoom. The Arbitrator referenced her confirmation that the proposed exhibits were admitted into the record and that oral closings would take place on June 26, 2020. The Arbitrator recorded in the Award, at para. 101, that “[a]t no time before or after the Arbitrator admitted the Xoom Documents into the record did either Party ever argue that they should be permitted to recall one or more witnesses to testify or to seek the appearance of any new witness”.

...

The Arbitrator had the benefit of hearing all of the evidence and of considering Planet’s submissions about relevance of documents, prejudice from late production, and the appropriateness of drawing adverse inferences against ACN, in the context of a full understanding of the evidentiary record.

[59] The application judge therefore correctly concluded that,

It was open to counsel to request the right to cross-examine one or more witnesses on the Xoom documents. A decision was taken not to do so. It is not open to Planet, having taken this decision, to now argue that its ability to conduct further cross-examination was unfairly denied.

...

The record shows that the Arbitrator considered the arguments made by Planet and, for reasons given in the Award, she did not accept them. Planet is asking this Court to consider the evidentiary record anew and substitute new findings for those made by the Arbitrator. This is not the proper role of the Court on this application.

[60] I therefore see no error in the application judge's finding that Planet was given the opportunity to adduce the documents necessary and present its case.

[61] Moreover, although the application judge did not specifically advert to the two missing attachments to emails identified on this appeal, ACN furnished one attachment (an Excel spreadsheet) one week before the final submissions in the application, and has confirmed that the other is no longer available. The content of the attachments is clear from the description provided in the emails to which they are attached.

[62] I therefore see no error in the application judge's conclusion that, although "Planet clearly disagrees with the Arbitrator's findings and conclusions, ... it has failed to furnish proof that it was unable to present its case because of the

Arbitrator's decisions with respect to ACN's document production obligations." Moreover, at no time during the arbitration or since, has Planet articulated what additional documents it would have adduced and what prejudice was suffered by the failure to do so.

[63] The application judge also rejected Planet's argument that the arbitrator erred by ignoring Planet's evidence about ACN's audit conducted pursuant to the Agreement and, instead, relied exclusively on the evidence of the ACN's expert, which Planet says was inconsistent with the evidence as a whole and undermined on cross-examination. He noted that the auditor gave extensive reasons for his opinion. After studying the expert reports of each party, the arbitrator noted that Planet's auditing expert largely adopted Planet's representations with only limited attempts at verification. For this reason, she concluded that Planet's auditing expert's evidence should be accorded little weight.

[64] I see no error in the application judge's conclusion that the arbitrator did not ignore the evidence of Planet's expert.

[65] For these reasons, I would dismiss Planet's claim that it was unable to present its case.



### 3. The Arbitrator's Approach to the *ECPA* Issue

[66] Planet argued before the arbitrator that ordering it to make commission payments to ACN is illegal under the *ECPA* and would expose Planet to penalties.

[67] Planet claimed that the amendment to the *ECPA* on January 1, 2017 (at s. 9.3, along with Regulation O. Reg. 389/10) provides that the remuneration to salespersons selling electricity or gas to consumers must not include any remuneration based on a commission or the value or volume of sales. Planet also relied on a memorandum from staff of the OEB (the "OEB Memorandum") which expressed the view that "a salesperson may not be remunerated for any new, renewed or extended contract based on a commission...including the renewal/extension of contracts entered on or before January 1, 2017."

[68] Planet argued that according to the plain language of the Agreement, ACN was only entitled to commissions on sales to ACN's customers with the amount of such commissions to be calculated based on these customers' usage across all products. In short, payment of the arbitral award would put Planet in breach of the *ECPA*. Planet submitted that the arbitrator "rewrote" the terms by ordering Planet to pay over \$19 million of commissions to ACN after improperly relying on extrinsic evidence of ACN's witness who was involved in the negotiation of the Agreement.

[69] ACN claimed that its entitlement to commissions arose from the acquisition of the customer, not the marketing and signing of new customer contracts and that, as such, there was no breach of the *ECPA*.

[70] The arbitrator considered the relevant provisions of the *ECPA*, along with submissions of both parties and concluded that the *ECPA* does not preclude payment of commissions for renewals that became effective on/after January 1, 2017. She also considered that the Agreement provides that customer contact rests exclusively with Planet, and that the OEB Memorandum was written on the understanding that ACN would be doing the retail sales for Planet and did not consider that Planet could directly contact its customers.

[71] In so doing, the arbitrator addressed the language of the statute and regulation, the submissions of the parties, the OEB Memorandum, and the fact that the statute is consumer protection legislation. She disagreed with the Planet's interpretation of the Agreement in light of her factual findings to which deference is owed. She found that the Agreement was clear and unambiguous on gross margin payments and the negotiation history of the Agreement showed "a consistent and uniform course of conduct with respect to ACN's entitlement to commissions from renewals." The arbitrator concluded that for any customer referred by ACN to Planet through their online portal, ACN was entitled to continue receiving commissions for as long as that customer remained with

Planet, regardless of the means by which the relationship with Planet was renewed.

[72] The application judge noted that the public policy defence should be invoked “only if the judgment involves an act that is illegal in the forum or if the action involves acts repugnant to the orderly functioning of the social or commercial life of the forum”: *Depo Traffic v. Vikeda International*, 2015 ONSC 999, at para. 47. The public policy defence is a high standard, and the onus is on the claimant to demonstrate that such enforcement “offends our local principles of justice and fairness in a fundamental way”: *Consolidated Contractors*, at para. 99, citing *Schreter v. Gasmac Inc.* (1992), 7 O.R. (3d) 608 (Sup. Ct., at p. 623).

[73] The application judge correctly observed that the arbitrator addressed the issues raised by Planet in relation to the claim for unpaid commissions and directed her mind to the arguments raised by experts and the weight to be given to their evidence. He also correctly held that the arbitrator did not disregard the *ECPA*; rather, she considered the statutory provision and its purpose and applied it to the evidence available. He held that,

The Arbitrator’s interpretation of the *ECPA* and the regulation in this context is a reasonable one. Planet has not shown that the Arbitrator made an error in her factual findings with respect to the basis for the views of OEB staff. Planet has not shown that as a result of the Arbitrator’s decision, the Award fundamentally offends the principles of justice and fairness in Ontario. The

Arbitrator's decision on the question of statutory interpretation is entitled to deference.

[74] For the reasons set out above, I see no error in the application judge's conclusion. As such, I would dismiss this ground of appeal.

### CONCLUSION

[75] For these reasons, I would dismiss Planet's appeal. On the agreement of both parties, I would award costs of this appeal to the respondent in the amount of \$25,000 all inclusive.

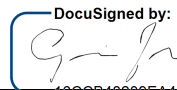
Released: May 8, 2023 PDL

Thaburn J.A.

I agree. Phauwers J.A.

I agree - [Signature] J.A.

This is Exhibit "AA" referred to in the Affidavit of Nino Silvestri sworn by Nino Silvestri of the Town of Oakville, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on May 26, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:  


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6000482009E1101...  
Commissioner for Taking Affidavits (or as may be)

**GAVIN INKSTER LSO# 82737I**

District of: -  
Division No. -  
Court No.  
Estate No.

- FORM 33 -  
Notice of Intention To Make a Proposal  
(Subsection 50.4(1) of the Act)

Take notice that:

1. I, Planet Energy (Ontario) Corp., an insolvent person, state, pursuant to subsection 50.4(1) of the Act, that I intend to make a proposal to my creditors.
2. Richter Inc. of 181 Bay Street, Suite 3510, Toronto, ON, M5J 2T3, a licensed trustee, has consented to act as trustee under the proposal. A copy of the consent is attached.
3. A list of the names of the known creditors with claims of \$250 or more and the amounts of their claims is also attached.
4. Pursuant to section 69 of the Act, all proceedings against me are stayed as of the date of filing of this notice with the official receiver in my locality.

Dated at the City of Toronto in the Province of Ontario, this 11th day of May 2023.



Planet Energy (Ontario) Corp.  
Insolvent Person

To be completed by Official Receiver:

\_\_\_\_\_  
Filing Date

\_\_\_\_\_  
Official Receiver

District of:  
 Division No. -  
 Court No.  
 Estate No.

- FORM 33 -  
 Notice of Intention To Make a Proposal  
 (Subsection 50.4(1) of the Act)

List of Creditors with claims of \$250 or more.			
Creditor	Address	Account#	Claim Amount
Accrued Salary Payable			69,137.00
Aizan Technologies Inc.	200-214 Adelaide Street West Toronto ON M5H 1W7		754.84
All Communication Network (ACN) of Canada Co.	450-100 Av. des Canadiens-de-Montréal Montreal QC H3B 2S2		35,184,894.00
Amex Bank of Canada	PO Box 7000 Station B Willowdale ON M2K 2R6		12,222.21
Cogent Canada, Inc.	220 Yonge St, Suite 211 Toronto ON M5B 2H1		666.47
Collection Group of Canada Inc.	400-255 Consumers Road Toronto ON M2J 1R4		419.35
Easybooks Inc.	31 Bales Ave, PH109 Toronto ON M2N 7L6		28,978.16
EasyTPV Inc.	104 Sandfield Dr. Aurora ON L4G 6T3		14,690.00
EC Infosystems, LLC *	1321 Upland Drive, Suite 8389 Houston TX 77043 USA		3,440.75
Enbridge	50 Keil Drive North PO Box 2001 Chatham ON N7M 5M1		230,987.00
Equifax Canada Co.	CP/PO Box 4265, Station A Toronto ON M5W 5T7		5,938.15
ERTH Business Technologies Inc.	154 University Ave Toronto ON M5H 3Y9		26,838.71
eStructure Data Centers Inc.	7001 rue St-Jacques Montreal QC H4B 3A2		2,404.90
Export Developement Canada Kevin Sullivan	3400-155 Wellington St. W. Toronto ON M5V 3L3		2,426,225.00
Greg Berry	418 Glasgow St, Unit Rear Kitchener ON N2M 2N2		1,895.48
IXICA Communications Inc.	174 Shropshire Dr, Unit 3 Toronto ON M1P 1Z7		1,174.19

District of:  
 Division No. -  
 Court No.  
 Estate No.

- FORM 33 -  
 Notice of Intention To Make a Proposal  
 (Subsection 50.4(1) of the Act)

List of Creditors with claims of \$250 or more.			
Creditor	Address	Account#	Claim Amount
Jordan Small	USA		1,651.56
KPMG LLP	4600-333 Bay Street Toronto ON M5H 2S5		70,000.00
Lester Plummer	13 Fiddlehead Terrace Toronto ON M1B 6B5		2,683.87
Prime Real Estate Holdings Inc. Richard P. Quance	Himelfarb, Proszanski 1401-480 University Avenue Toronto ON M5G 1V2		1,600,000.00
PTMJ Limited	21 Aristotle Drive Richmond Hill ON L4S 1J2		4,361.29
Scotiabank Aleksa Lekovic	2 Robert Speck Pkwy, 4th Floor Mississauga ON L4Z 1H8		2,426,225.00
Shell Energy North America (Canada)	400 4th Avenue SW. Calgary AB T2P 2H5		67,096.77
Shell Energy North America (US) *	1000 Main St., Level 12 Houston TX 77022 USA		4,266.53
Shell North America (Canada)	400 4th Avenue SW Calgary AB T2P 2H5		536,124.00
Silvestri Energy Services Ltd.	56 Cameo Street Oakville ON L6J 5Y1		8,387.10
Sunlife Assurance Company of Canada	1 York St Toronto ON M5J 0B6		5,870.97
Telus	PO Box 7575 Vancouver BC V6B 8N9		587.10
TNC 5775 Yonge Street Ltd. c/o Colliers International	102-5775 Yonge St. North York ON M2M 4J1		7,437.68
<b>Total</b>			<b>42,745,358.08</b>



Planet Energy (Ontario) Corp.  
 Insolvent Person



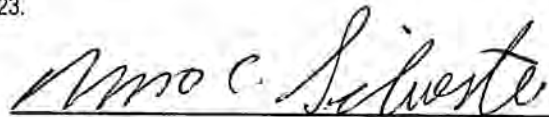
District of: -  
Division No. -  
Court No.  
Estate No.

- FORM 33 -  
Notice of Intention To Make a Proposal  
(Subsection 50.4(1) of the Act)

Take notice that:

1. I, Planet Energy (B.C.) Corp., an insolvent person, state, pursuant to subsection 50.4(1) of the Act, that I intend to make a proposal to my creditors.
2. Richter Inc. of 181 Bay Street, Suite 3510, Toronto, ON, M5J 2T3, a licensed trustee, has consented to act as trustee under the proposal. A copy of the consent is attached.
3. A list of the names of the known creditors with claims of \$250 or more and the amounts of their claims is also attached.
4. Pursuant to section 69 of the Act, all proceedings against me are stayed as of the date of filing of this notice with the official receiver in my locality.

Dated at the City of Toronto in the Province of Ontario, this 11th day of May 2023.



Planet Energy (B.C.) Corp.  
Insolvent Person

To be completed by Official Receiver:

\_\_\_\_\_  
Filing Date

\_\_\_\_\_  
Official Receiver

District of:  
 Division No. -  
 Court No.  
 Estate No.

- FORM 33 -  
 Notice of Intention To Make a Proposal  
 (Subsection 50.4(1) of the Act)

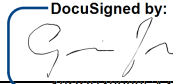
List of Creditors with claims of \$250 or more.			
Creditor	Address	Account#	Claim Amount
All Communications Network (ACN) of Canada Co.	450-100 Av. des Canadiens-de-Montreal MONTREAL QC H3B 2S2		35,184,894.00
Shell Energy North America (Canada)	400 4th Avenue SW. Calgary AB T2P 2H5		67,096.77
Shell Energy North America (Canada)	400-4th Avenue SW. Calgary AB T2P 2H5		536,124.00
Shell Energy North America (US)	1000 Main St., Level 12 Houston TX 77022 USA		4,266.53
<b>Total</b>			<b>35,792,381.30</b>



Planet Energy (B.C.) Corp.  
 Insolvent Person

This is Exhibit "BB" referred to in the Affidavit of Nino Silvestri sworn by Nino Silvestri of the Town of Oakville, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on May 26, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:



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Commissioner for Taking Affidavits (or as may be)

**GAVIN INKSTER LSO# 82737I**



Industry Canada  
Office of the Superintendent  
of Bankruptcy Canada

Industrie Canada  
Bureau du surintendant  
des faillites Canada

District of Ontario  
Division No. 09 - Toronto  
Court No. 31-2943175  
Estate No. 31-2943175

In the Matter of the Notice of Intention to make a proposal of:

**Planet Energy (Ontario) Corp.**

Insolvent Person

**RICHTER INC.**

Licensed Insolvency Trustee

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Date of the Notice of Intention:

May 11, 2023

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CERTIFICATE OF FILING OF A NOTICE OF INTENTION TO MAKE A PROPOSAL  
Subsection 50.4 (1)

I, the undersigned, Official Receiver in and for this bankruptcy district, do hereby certify that the aforementioned insolvent person filed a Notice of Intention to Make a Proposal under subsection 50.4 (1) of the Bankruptcy and Insolvency Act;

Pursuant to subsection 69. (1) of the Act, all proceedings against the aforementioned insolvent person are stayed as of the date of filing of the Notice of Intention.

Date: May 11, 2023, 14:22

E-File/Dépôt Electronique

Official Receiver

151 Yonge Street, 4th Floor, Toronto, Ontario, Canada, M5C2W7, (877)376-9902

**Canada**



Industry Canada  
Office of the Superintendent  
of Bankruptcy Canada

Industrie Canada  
Bureau du surintendant  
des faillites Canada

District of Ontario  
Division No. 09 - Toronto  
Court No. 31-2943168  
Estate No. 31-2943168

In the Matter of the Notice of Intention to make a proposal of:

**Planet Energy (B.C.) Corp.**

Insolvent Person

**RICHTER INC.**

Licensed Insolvency Trustee

---

Date of the Notice of Intention:

May 11, 2023

---

CERTIFICATE OF FILING OF A NOTICE OF INTENTION TO MAKE A PROPOSAL  
Subsection 50.4 (1)

I, the undersigned, Official Receiver in and for this bankruptcy district, do hereby certify that the aforementioned insolvent person filed a Notice of Intention to Make a Proposal under subsection 50.4 (1) of the Bankruptcy and Insolvency Act;

Pursuant to subsection 69. (1) of the Act, all proceedings against the aforementioned insolvent person are stayed as of the date of filing of the Notice of Intention.

Date: May 11, 2023, 13:56

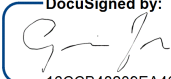
E-File/Dépôt Electronique

Official Receiver

151 Yonge Street, 4th Floor, Toronto, Ontario, Canada, M5C2W7, (877)376-9902

**Canada**

This is Exhibit "CC" referred to in the Affidavit of Nino Silvestri sworn by Nino Silvestri of the Town of Oakville, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on May 26, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:  


---

10CCB46209EA401  
Commissioner for Taking Affidavits (or as may be)

**GAVIN INKSTER LSO# 82737I**

Daniel S. Murdoch  
Direct: (416) 869 5529  
dmurdoch@stikeman.com

May 11, 2023

**By e-mail**  
**(Kris.Borg-Olivier@paliarerland.com and**  
**Max.Starnino@paliarerland.com)**

Paliare Roland Rosenberg Rothstein LLP  
155 Wellington Street West  
35<sup>th</sup> Floor  
Toronto, ON M5V 3H1

Attention: Kris Borg-Olivier and Massimo  
Starnino

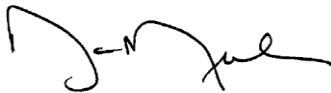
Dear Messrs. Borg-Olivier and Starnino,

**Re: Planet Energy (Ontario) Corp. and Planet Energy (B.C.) Corp.**

We are writing to advise that, earlier today, each of Planet Energy (Ontario) Corp. and Planet Energy (B.C.) Corp. filed a Notice of Intention to Make a Proposal pursuant to subsection 50.4 of the *Bankruptcy and Insolvency Act* (Canada). Enclosed are the corresponding certificates of filing from the Office of the Superintendent of Bankruptcy Canada.

As a result, all proceedings against Planet Energy (Ontario) Corp. and Planet Energy (B.C.) Corp., including your recently filed receivership application, are stayed as of today's date, and no creditor, including All Communications Network of Canada, Co., has any remedy against Planet Energy (Ontario) Corp. and Planet Energy (B.C.) Corp. or their property until the trustee has been discharged or Planet Energy (Ontario) Corp. and Planet Energy (B.C.) Corp. become bankrupt.

Yours truly,



Daniel S. Murdoch

cc. *Lee Nicholson and Zev Smith, Stikeman Elliott LLP*  
*Karen Kimel, Adam Sherman and Jonathan Joffe, Richter Inc.*



Industry Canada  
Office of the Superintendent  
of Bankruptcy Canada

Industrie Canada  
Bureau du surintendant  
des faillites Canada

District of Ontario  
Division No. 09 - Toronto  
Court No. 31-2943175  
Estate No. 31-2943175

In the Matter of the Notice of Intention to make a proposal of:

**Planet Energy (Ontario) Corp.**

Insolvent Person

**RICHTER INC.**

Licensed Insolvency Trustee

---

Date of the Notice of Intention:

May 11, 2023

---

CERTIFICATE OF FILING OF A NOTICE OF INTENTION TO MAKE A PROPOSAL  
Subsection 50.4 (1)

I, the undersigned, Official Receiver in and for this bankruptcy district, do hereby certify that the aforementioned insolvent person filed a Notice of Intention to Make a Proposal under subsection 50.4 (1) of the Bankruptcy and Insolvency Act;

Pursuant to subsection 69. (1) of the Act, all proceedings against the aforementioned insolvent person are stayed as of the date of filing of the Notice of Intention.

Date: May 11, 2023, 14:22

E-File/Dépôt Electronique

Official Receiver

151 Yonge Street, 4th Floor, Toronto, Ontario, Canada, M5C2W7, (877)376-9902

**Canada**





Industry Canada  
Office of the Superintendent  
of Bankruptcy Canada

Industrie Canada  
Bureau du surintendant  
des faillites Canada

District of Ontario  
Division No. 09 - Toronto  
Court No. 31-2943168  
Estate No. 31-2943168

In the Matter of the Notice of Intention to make a proposal of:

**Planet Energy (B.C.) Corp.**

Insolvent Person

**RICHTER INC.**

Licensed Insolvency Trustee

---

Date of the Notice of Intention:

May 11, 2023

---

CERTIFICATE OF FILING OF A NOTICE OF INTENTION TO MAKE A PROPOSAL  
Subsection 50.4 (1)

I, the undersigned, Official Receiver in and for this bankruptcy district, do hereby certify that the aforementioned insolvent person filed a Notice of Intention to Make a Proposal under subsection 50.4 (1) of the Bankruptcy and Insolvency Act;

Pursuant to subsection 69. (1) of the Act, all proceedings against the aforementioned insolvent person are stayed as of the date of filing of the Notice of Intention.

Date: May 11, 2023, 13:56

E-File/Dépôt Electronique

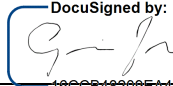
Official Receiver

151 Yonge Street, 4th Floor, Toronto, Ontario, Canada, M5C2W7, (877)376-9902

**Canada**

This is Exhibit "DD" referred to in the Affidavit of Nino Silvestri sworn by Nino Silvestri of the Town of Oakville, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on May 26, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:



18CCB18209FA101

---

Commissioner for Taking Affidavits (or as may be)

**GAVIN INKSTER LSO# 82737I**

Chris G. Palare  
Ian J. Roland  
Ken Rosenberg  
Linda R. Rothstein  
Richard P. Stephenson  
Nick Coleman  
Donald K. Eady  
Gordon D. Capern  
Lily L. Harmer  
Andrew Lokan  
John Monger  
Odette Soriano  
Andrew C. Lewis  
Megan E. Shortreed  
Massimo Starnino  
Karen Jones  
Robert A. Centa  
Nini Jones  
Jeffrey Larry  
Kristian Borg-Olivier  
Emily Lawrence  
Tina H. Lie  
Jean-Claude Killey  
Jodi Martin  
Michael Fenrick  
Ren Bucholz  
Jessica Latimer  
Lindsay Scott  
Alysha Shore  
Denise Cooney  
Paul J. Davis  
Danielle Glatt  
Lauren Pearce  
Elizabeth Rathbone  
S. Jessica Roher  
Daniel Rosenbluth  
Glynnis Hawe  
Hailey Bruckner  
Charlotté Calon  
Kartiga Thavaraj  
Catherine Fan  
Shawna LeClair  
Douglas Montgomery  
Chloe Hendrie  
Jesse Wright

## COUNSEL

Stephen Goudge, Q.C.

## HONORARY COUNSEL

Ian G. Scott, Q.C., O.C.  
(1934 -2006)**Kris Borg-Olivier**

T 416.646.7490 Asst 416.646.7404

F 416.646.4301

E kris.borg-olivier@paliareroland.com

[www.paliareroland.com](http://www.paliareroland.com)

May 13, 2021

**VIA EMAIL**

Christopher Riley  
SHELL ENERGY NORTH AMERICA  
1000 Main Street, Level 12  
Houston, TX 77002

**[christopher.riley@shell.com](mailto:christopher.riley@shell.com)**

FULCRUM CAPITAL PARTNERS  
79 Wellington Street West, Suite 3510  
Toronto, ON M5K 1K7

**[info@fulcrumcapital.ca](mailto:info@fulcrumcapital.ca)**

Dear Sirs:

**Re: Planet Energy**

I am counsel to All Communications Network of Canada Co. ("ACN").

ACN understands that ("Shell") is a current supplier and credit provider to Planet Energy (Ontario) Corp. and its related entities in Canada (collectively, "Planet"), and that Fulcrum Capital Partners is a lender to, and/or investor in, Planet.

As you are likely aware, ACN was the primary customer referral source for Planet until November 2016. ACN referred customers to Planet pursuant to an agreement between the parties, in exchange for commissions calculated on the basis of a 50% share of the monthly margin generated by those customers (for the life of the customers and surviving expiration of the parties' agreement).

In March 2018, Planet began withholding the monthly commissions due to ACN, asserting without any substantive support that ACN owed Planet for certain indemnity obligations. ACN consequently initiated an arbitration against Planet to vindicate its rights to the commissions.

That arbitration recently concluded with an award in ACN's favour on substantially all counts, for an all-inclusive total of approximately CAD \$28,000,000. The arbitration award is not confidential and I have included a copy herewith. It is important to note that the arbitrator also found Planet liable for substantial underpayments to ACN over the course of the parties' relationship, as determined by a forensic auditor.

File 95221

**CONFIDENTIAL**

A motion for enforcement of the arbitration award in Ontario is scheduled to be heard on August 20, 2021, following which ACN will begin to take all available steps to collect the amounts owed to it, including scrutinizing all distributions made by Planet throughout the relevant time period.

ACN understands that Shell likely monitors Planet's financial status and has effective control over Planet's cash management. It is not aware of the arrangements that may be in place between Planet and Fulcrum, but it assumes that Fulcrum also has some degree of oversight over Planet's financial status. ACN would expect that Planet reported the arbitration to Shell and Fulcrum, properly accounted for the potential liability in its financial statements, and that appropriate reservation was required over the course of the arbitration to satisfy any award made against Planet.

Nevertheless, ACN realizes that the arbitration award may be beyond Planet's ability to immediately satisfy in full. ACN desires to work with Shell and Fulcrum and any other creditors of Planet to find an appropriate resolution that protects both ACN's interests and those of Planet's creditors. In the meantime, ACN requests, to the extent Shell and Fulcrum are able to exercise control, that they prohibit Planet from (i) making any distributions or other payments to its owners or any of their affiliates, and (ii) transferring funds from Planet's bank accounts except to pay arms-length unaffiliated vendors in the ordinary course of business.

We welcome a discussion with Shell and Fulcrum, or their respective legal counsel, on this matter.

Yours very truly,  
PALIARE ROLAND ROSENBERG ROTHSTEIN LLP

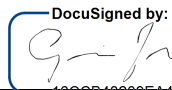


Kris Borg-Olivier

Encl.

Doc 3775904 v1

This is Exhibit "EE" referred to in the Affidavit of Nino Silvestri sworn by Nino Silvestri of the Town of Oakville, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on May 26, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:  


---

Commissioner for Taking Affidavits (or as may be)

**GAVIN INKSTER LSO# 82737I**

District of: Ontario  
Division No.: 09-Toronto  
Court No.: 31-2943175  
Estate No.: 31-2943175

FORM 29  
Trustee's Report on Cash-Flow Statement  
(Paragraphs 50(6)(b) and 50.4(2)(b) of the Act)

In the matter of the Notice of Intention to make a Proposal of  
Planet Energy (Ontario) Corp.  
of the city of Toronto  
in the province of Ontario

The attached statement of projected cash flow of Planet Energy (Ontario) Corp., as of the 19<sup>th</sup> day of May 2023, consisting of the period from May 13, 2023 to June 9, 2023, has been prepared by the management of the insolvent person for the purpose described in the notes attached, using the probable and hypothetical assumptions set out in the notes attached.

Our review consisted of inquiries, analytical procedures and discussion related to information supplied to us by the management and employees of the insolvent person. Since hypothetical assumptions need not be supported, our procedures with respect to them were limited to evaluating whether they were consistent with the purpose of the projection. We have also reviewed the support provided by management for the probable assumptions and preparation and presentation of the projection.

Based on our review, nothing has come to our attention that causes us to believe that, in all material respects,

- (a) the hypothetical assumptions are not consistent with the purpose of the projection;
- (b) as at the date of this report, the probable assumptions developed are not suitably supported and consistent with the plans of the insolvent person or do not provide a reasonable basis for the projection, given the hypothetical assumptions; or
- (c) the projection does not reflect the probable and hypothetical assumptions.

Since the projection is based on assumptions regarding future events, actual results will vary from the information presented even if the hypothetical assumptions occur, and the variations may be material. Accordingly, we express no assurance as to whether the projection will be achieved.

The projection has been prepared solely for the purpose described in the notes attached, and readers are cautioned that it may not be appropriate for other purposes.

Dated at the City of Toronto in the Province of Ontario, this 19<sup>th</sup> day May 2023.

Richter Inc. – Licensed Insolvency Trustee  
Per:



---

Karen Kimel, MAcc, CPA, CIRP, LIT  
181 Bay Street, Suite 3510  
Toronto, ON M5J 2T3  
Phone: 416.488.2345 Fax: 514.934.8603

District of: Ontario  
Division No.: 09-Toronto  
Court No.: 31-2943175  
Estate No.: 31-2943175

FORM 29 – ATTACHMENT  
Trustee's Report on Cash-Flow Statement  
(Paragraphs 50(6)(b) and 50.4(2)(b) of the Act)

In the matter of the Notice of Intention to make a Proposal of  
Planet Energy (Ontario) Corp.  
of the city of Toronto  
in the province of Ontario

**Purpose:**

Planet Energy (Ontario) Corp. (the "Company") filed a Notice of Intention to Make a Proposal on May 11, 2023. The purpose of this Statement of Projected Cash Flow is to present the estimated cash receipts and disbursements of the Company, for the period May 13, 2023 to June 9, 2023, relating to the filing of a Notice of Intention to Make a Proposal on May 11, 2023.

This Statement of Projected Cash Flow has been prepared by management on May 19, 2023, based on available financial information at that date in accordance with Section 50.4(2) of the Bankruptcy and Insolvency Act and should be read in conjunction with the Trustee's Report on the Cash Flow Statement. Readers are cautioned that this information may not be appropriate for other purposes.

**Projection Notes:**

The Statement of Projected Cash Flow has been prepared using probable assumptions supported and consistent with the plans of the Company for the period May 13, 2023 to June 9, 2023, considering the economic conditions that are considered the most probable by management.

As the cash flow is based upon various assumptions regarding future events and circumstances, variances will exist and said variances may be material. Accordingly, we express no assurance as to whether the projections will be achieved.

**Assumptions:**

(a) Projected Cash Receipts

The projected cash receipts are estimated by management, based upon:

- the pricing and payment terms established in the Company's contracts' with its customers;
- the terms of a settlement arrangement with Shell related to the prior sale of the Company's US derivatives;
- net sales tax credits expected to be received by the Company; and
- the collection experience of the Company.

(b) Projected Cash Disbursements

The projected cash disbursements are based upon:

- payroll and source deductions reflect continued planned reductions to staff. Payments for payroll and source deductions are assumed to be paid bi-weekly;
- historical data adjusted to reflect the current level of activity and best estimates of the Company;
- the cash disbursements do not provide for the payment of arrears to unsecured creditors;
- estimated professional fees relating to the filing have been included in the disbursements; and
- a contingency reserve has been assumed to account for potential requirements by the Company to pay deposits or other unforeseen payments.

District of: Ontario  
Division No.: 09-Toronto  
Court No.: 31-2943168  
Estate No.: 31-2943168

FORM 29  
Trustee's Report on Cash-Flow Statement  
(Paragraphs 50(6)(b) and 50.4(2)(b) of the Act)

In the matter of the Notice of Intention to make a Proposal of  
Planet Energy (B.C.) Corp.  
of the city of Toronto  
in the province of Ontario

The attached statement of projected cash flow of Planet Energy (B.C.) Corp., as of the 19<sup>th</sup> day of May 2023, consisting of the period from May 13, 2023 to June 9, 2023, has been prepared by the management of the insolvent person for the purpose described in the notes attached, using the probable and hypothetical assumptions set out in the notes attached.

Our review consisted of inquiries, analytical procedures and discussion related to information supplied to us by the management and employees of the insolvent person. Since hypothetical assumptions need not be supported, our procedures with respect to them were limited to evaluating whether they were consistent with the purpose of the projection. We have also reviewed the support provided by management for the probable assumptions and preparation and presentation of the projection.

Based on our review, nothing has come to our attention that causes us to believe that, in all material respects,

- (a) the hypothetical assumptions are not consistent with the purpose of the projection;
- (b) as at the date of this report, the probable assumptions developed are not suitably supported and consistent with the plans of the insolvent person or do not provide a reasonable basis for the projection, given the hypothetical assumptions; or
- (c) the projection does not reflect the probable and hypothetical assumptions.

Since the projection is based on assumptions regarding future events, actual results will vary from the information presented even if the hypothetical assumptions occur, and the variations may be material. Accordingly, we express no assurance as to whether the projection will be achieved.

The projection has been prepared solely for the purpose described in the notes attached, and readers are cautioned that it may not be appropriate for other purposes.

Dated at the City of Toronto in the Province of Ontario, this 19<sup>th</sup> day May 2023.

Richter Inc. – Licensed Insolvency Trustee  
Per:



---

Karen Kimel, MAcc, CPA, CIRP, LIT  
181 Bay Street, Suite 3510  
Toronto, ON M5J 2T3  
Phone: 416.488.2345 Fax: 514.934.8603



District of: Ontario  
Division No.: 09-Toronto  
Court No.: 31-2943168  
Estate No.: 31-2943168

FORM 29 – ATTACHMENT  
Trustee's Report on Cash-Flow Statement  
(Paragraphs 50(6)(b) and 50.4(2)(b) of the Act)

In the matter of the Notice of Intention to make a Proposal of  
Planet Energy (B.C.) Corp.  
of the city of Toronto  
in the province of Ontario

**Purpose:**

Planet Energy (B.C.) Corp. (the "Company") filed a Notice of Intention to Make a Proposal on May 11, 2023. The purpose of this Statement of Projected Cash Flow is to present the estimated cash receipts and disbursements of the Company, for the period May 13, 2023 to June 9, 2023, relating to the filing of a Notice of Intention to Make a Proposal on May 11, 2023.

This Statement of Projected Cash Flow has been prepared by management on May 19, 2023, based on available financial information at that date in accordance with Section 50.4(2) of the Bankruptcy and Insolvency Act and should be read in conjunction with the Trustee's Report on the Cash Flow Statement. Readers are cautioned that this information may not be appropriate for other purposes.

**Projection Notes:**

The Statement of Projected Cash Flow has been prepared using probable assumptions supported and consistent with the plans of the Company for the period May 13, 2023 to June 9, 2023, considering the economic conditions that are considered the most probable by management.

As the cash flow is based upon various assumptions regarding future events and circumstances, variances will exist and said variances may be material. Accordingly, we express no assurance as to whether the projections will be achieved.

**Assumptions:**

The Company has no operations or employees. As a result no operating activity or cash flows are anticipated during the forecasted period.

Dated at the City of Toronto in the Province of Ontario, this 19<sup>th</sup> day May 2023.

Richter Inc. – Licensed Insolvency Trustee  
Per:




---

Karen Kimel, MAcc, CPA, CA, CIRP, LIT  
181 Bay Street, Suite 3510  
Toronto, ON M5J 2T3  
Phone: 416.488.2345 Fax: 514.934.8603

This is Exhibit "FF" referred to in the Affidavit of Nino Silvestri sworn by Nino Silvestri of the Town of Oakville, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on May 26, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:



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Commissioner for Taking Affidavits (or as may be)

**GAVIN INKSTER LSO# 827371**

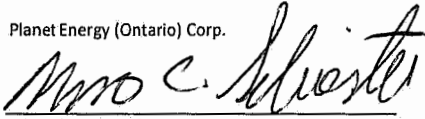
Planet Energy (Ontario) Corp.  
Cash Flow Forecast  
For the Period ending June 9, 2023

Week Ending	Week 1 19-May-23	Week 2 26-May-23	Week 3 2-Jun-23	Week 4 9-Jun-23	Total
<b>Receipts</b>					
Customer receipts	-	367,564	-	-	367,564
Settlement receipts	-	58,016	18,680	-	76,696
HST refunds	-	-	-	-	-
Interest	-	-	30,786	-	30,786
<b>Total Receipts</b>	-	<b>425,580</b>	<b>49,466</b>	-	<b>475,046</b>
<b>Disbursements</b>					
Payroll and benefits	1,000	78,583	8,900	78,567	167,050
Energy supplier payments	-	-	-	-	-
Operating expenses	47,713	3,846	21,793	59,186	132,538
Selling, general and administrative expenses	-	19,471	11,567	5,938	36,976
Restructuring professional fees	25,000	75,000	75,000	50,000	225,000
Retainer	-	-	-	-	-
Contingency	10,000	10,000	10,000	10,000	40,000
<b>Total Disbursements</b>	<b>83,713</b>	<b>186,900</b>	<b>127,260</b>	<b>203,691</b>	<b>601,564</b>
Net Cash Flow	- 83,713	238,680	- 77,794	- 203,691	- 126,519
Opening Cash	8,861,998	8,778,285	9,016,964	8,939,170	8,861,998
<b>Closing Cash</b>	<b>8,778,285</b>	<b>9,016,964</b>	<b>8,939,170</b>	<b>8,735,479</b>	<b>8,735,479</b>

The projected statement of cash flow has been prepared pursuant to section 50.4(2) of the *Bankruptcy and Insolvency Act* and solely for that purpose.

Dated this 19th day of May, 2023

Planet Energy (Ontario) Corp.



Nino Silvestri, CEO

The projected statement of cash flow has been prepared pursuant to section 50.4(2) of the *Bankruptcy and Insolvency Act* and should be read in conjunction with the attached Trustee's Report on the Cash Flow. Statement dated May 19, 2023 and the Report on Cash Flow Statement by the Person Making the Proposal dated May 19, 2023.

Richter Inc. in its capacity as Trustee  
Acting in the proposal of  
Planet Energy (Ontario) Corp.  
And not in its personal capacity

per:



Karen Kimel, Macc, CA, CPA, CPA (IL), CIRP, LIT

Planet Energy (B.C.) Corp.

**Cash Flow Forecast**

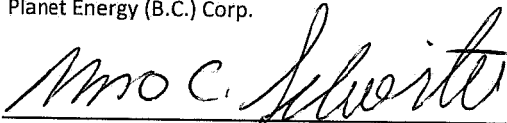
For the Period ending June 9, 2023

Week Ending	Week 1 19-May-23	Week 2 26-May-23	Week 3 2-Jun-23	Week 4 9-Jun-23	Total
Total Receipts	-	-	-	-	-
Total Disbursements	-	-	-	-	-
Net Cash Flow	-	-	-	-	-
Opening Cash	-	-	-	-	-
Closing Cash	-	-	-	-	-

The projected statement of cash flow has been prepared pursuant to section 50.4(2) of the *Bankruptcy and Insolvency Act* and solely for that purpose.

Dated this 19th day of May, 2023

Planet Energy (B.C.) Corp.



Nino Silvestri, CEO

The projected statement of cash flow has been prepared pursuant to section 50.4(2) of the *Bankruptcy and Insolvency Act* and should be read in conjunction with the attached Trustee's Report on the Cash Flow Statement dated May 19, 2023 and the Report on Cash Flow Statement by the Person Making the Proposal dated May 19, 2023.

Richter Inc. in its capacity as Trustee  
Acting in the proposal of  
Planet Energy (B.C.) Corp.  
And not in its personal capacity

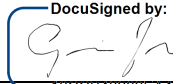
per:



Karen Kimel, Macc, CA, CPA, CPA (IL), CIRP, LIT

This is Exhibit "GG" referred to in the Affidavit of Nino Silvestri sworn by Nino Silvestri of the Town of Oakville, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on May 26, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:



---

Commissioner for Taking Affidavits (or as may be)

**GAVIN INKSTER LSO# 827371**

Planet Energy (Ontario) Corp. and Planet Energy (B.C.) Corp.

**Cash Flow Forecast**

For the Period ending July 28, 2023

Week Ending	Forecast Week 1 26-May-23	Forecast Week 2 2-Jun-23	Forecast Week 3 9-Jun-23	Forecast Week 4 16-Jun-23	Forecast Week 6 23-Jun-23	Forecast Week 7 30-Jun-23	Forecast Week 8 7-Jul-23	Forecast Week 9 14-Jul-23	Forecast Week 10 21-Jul-23	Forecast Week 11 28-Jul-23	Total
<b>Receipts</b>											
Customer receipts	367,564	-	-	223,423	-	351,514	-	210,067	-	334,731	1,487,299
Settlement receipts	58,016	18,680	-	-	59,704	-	-	-	57,851	-	194,251
Tax refunds	80,920	-	-	-	-	-	-	75,000	-	-	155,920
Interest	-	30,786	-	-	-	-	30,805	-	-	-	62,276
<b>Total Receipts</b>	<b>506,500</b>	<b>49,466</b>	<b>-</b>	<b>223,423</b>	<b>59,704</b>	<b>351,514</b>	<b>30,805</b>	<b>285,067</b>	<b>57,851</b>	<b>334,731</b>	<b>1,899,746</b>
<b>Disbursements</b>											
Payroll and benefits	78,583	8,900	82,098	3,381	53,398	1,850	88,998	3,381	53,398	1,850	375,836
Energy supplier payments	-	-	-	84,875	-	-	-	82,136	-	-	167,011
Operating expenses	41,883	21,793	59,186	33,672	3,846	5,353	53,361	42,552	3,846	3,846	279,015
Selling, general and administrative expenses	21,899	11,567	5,938	6,000	-	91	14,460	6,000	10,000	91	76,046
Restructuring professional fees	100,000	75,000	50,000	50,000	50,000	25,000	25,000	25,000	25,000	25,000	450,000
Retainer	-	-	-	-	-	-	-	-	-	-	-
Contingency	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	100,000
<b>Total Disbursements</b>	<b>252,364</b>	<b>127,260</b>	<b>207,222</b>	<b>187,928</b>	<b>117,244</b>	<b>42,294</b>	<b>191,819</b>	<b>169,069</b>	<b>102,244</b>	<b>40,787</b>	<b>1,447,907</b>
Net Cash Flow	254,135	- 77,794	- 207,222	35,495	- 57,540	309,219	- 161,014	115,998	- 44,392	293,944	451,838
Opening Cash	8,854,112	9,108,247	9,030,453	8,823,231	8,858,727	8,801,187	9,110,406	8,949,392	9,065,390	9,020,998	8,863,103
<b>Closing Cash</b>	<b>9,108,247</b>	<b>9,030,453</b>	<b>8,823,231</b>	<b>8,858,727</b>	<b>8,801,187</b>	<b>9,110,406</b>	<b>8,949,392</b>	<b>9,065,390</b>	<b>9,020,998</b>	<b>9,314,942</b>	<b>9,314,942</b>

The projected statement of cash flow has been prepared pursuant to section 50.4(2) of the *Bankruptcy and Insolvency Act* and solely for that purpose.

Dated this \_\_\_\_\_ day of May, 2023

Planet Energy (Ontario) Corp.

\_\_\_\_\_  
Nino Silvestri, CEO

The projected statement of cash flow has been prepared pursuant to section 50.4(2) of the *Bankruptcy and Insolvency Act* and should be read in conjunction with the attached Trustee's Report on the Cash Flow.

Statement dated May \_\_\_\_\_, 2023 and the Report on Cash Flow Statement by the Person Making the Proposal dated May \_\_\_\_\_, 2023.

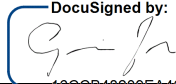
Richter Inc. in its capacity as Trustee  
Acting in the proposal of  
Planet Energy (Ontario) Corp. and Planet Energy (B.C.) Corp.  
And not in its personal capacity

per:

\_\_\_\_\_  
Karen Kimel, Macc, CA, CPA, CPA (IL), CIRP, LIT

This is Exhibit "HH" referred to in the Affidavit of Nino Silvestri sworn by Nino Silvestri of the Town of Oakville, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on May 26, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:



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1000018209E7101  
Commissioner for Taking Affidavits (or as may be)

**GAVIN INKSTER LSO# 82737I**

**Planet Energy (Ontario) Corp.**

## Consolidated Statements of Financial Position

As at March 31, 2023

(Unaudited)

**ASSETS**

	<b>As at March 31, 2023</b>	<b>As at September 30, 2022</b>
Current assets:		
Cash	8,691,611	11,572,907
Restricted cash	97,217	73,726
Accounts receivable	2,846,182	1,611,263
Gas delivered in excess of consumption	-	120,402
Other current assets	867,129	250,535
	<hr/> 12,502,138	<hr/> 13,628,832
Property and equipment	100,616	137,782
Other non-current receivable	130,086	-
Deferred tax assets	138,538	14,291
	<hr/> 369,239	<hr/> 152,073
	<hr/> <hr/> 12,871,377	<hr/> <hr/> 13,780,905

**LIABILITIES and SHAREHOLDER'S EQUITY**

Current liabilities:		
Trade and other payables	13,216,025	10,494,250
Corporate taxes payable	-	8,746
Deferred revenue	53,519	226,760
Gas under delivered	15,789	-
Current portion of lease liability	40,637	45,205
Current portion of unrealized derivative liabilities	0	(1,551,495)
	<hr/> 13,325,968	<hr/> 9,223,467
Lease liability	38,629	60,333
Derivative liabilities	0	1,302,089
	<hr/> 13,364,597	<hr/> 10,585,889
Shareholders' equity:		
Share capital	7,364,210	7,364,210
Contributed surplus	3,540,888	3,540,888
Retained earnings	(3,715,789)	34,151
Dividends paid	(7,500,000)	(7,500,000)
Accumulated OCI	(182,529)	(244,233)
	<hr/> (493,220)	<hr/> 3,195,016
	<hr/> <hr/> 12,871,377	<hr/> <hr/> 13,780,905



**Planet Energy (Ontario) Corp.**

Consolidated Statements of Operations and Deficit  
For the Period March 1, 2023 to March 31, 2023

	Month ended March 2023	YTD March 2023
<b>Revenue:</b>		
Natural gas	138,992	780,095
Electricity	583,108	3,825,321
	<u>722,100</u>	<u>4,605,416</u>
<b>Cost of sales:</b>		
Natural gas	116,224	598,234
Electricity	326,521	2,545,694
	<u>442,745</u>	<u>3,143,928</u>
<b>Gross margin</b>	279,355	1,461,488
<b>Expenses:</b>		
Selling	-	-
General and administrative	289,459	1,590,548
Amortization and depreciation	3,919	32,431
	<u>293,377</u>	<u>1,622,979</u>
<b>Income (loss) before the undernoted</b>	(14,022)	(161,491)
<b>Other income (expenses):</b>		
Finance costs	(4,324)	(26,165)
Change in fair value of derivative contracts	3,705,771	(351,871)
Other expenses	(2,334,101)	(2,371,570)
	<u>1,367,346</u>	<u>(2,749,606)</u>
<b>Income (loss) before income taxes</b>	1,353,323	(2,911,097)
<b>Income taxes:</b>		
Current	165	74,531
Deferred	982,029	(93,246)
	<u>982,194</u>	<u>(18,715)</u>
<b>Net income (loss) attributable to the owners of the Company</b>	371,129	(2,892,382)
Retained earnings, beginning of period	(4,086,918)	(823,407)
<b>Retained earnings, end of period</b>	<u>(3,715,789)</u>	<u>(3,715,789)</u>
Accumulated OCI, Opening	(205,739)	(227,081)
OCI	23,210	44,552
Accumulated OCI, Closing	(182,529)	(182,529)

**Planet Energy (Ontario) Corp.**

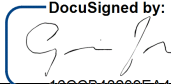
## Consolidated Statements of Cash Flows

For the Period March 1, 2023 to March 31, 2023

	Month ended March 2023	YTD March 2023
<b>Cash provided by (used in):</b>		
Operating activities:		
Net income (loss) for the period	371,129	(2,892,382)
Items not affecting cash		
Gain on disposal of assets	-	-
Interest - warrant accretion	-	-
Stock-based compensation	-	-
Depreciation and amortization	3,919	32,431
Amortization of customer contracts	-	-
Amortization of deferred financing fees	-	-
Change in fair value of derivative contracts	(3,705,771)	351,871
Deferred income taxes	982,029	(93,246)
	<u>(2,348,694)</u>	<u>(2,601,326)</u>
<b>Changes in non-cash working capital</b>		
Accounts receivable	(78,182)	(7,732)
Unbilled revenue	-	-
Gas under delivered	33,216	136,191
Gas held in storage	-	-
Inventories - carbon offset credits	-	-
Other current asset	(371,664)	(354,444)
Deferred commissions	-	-
Trade and other payables	(280,650)	(147,295)
Income taxes payable	(388)	(897)
Deferred revenue	(29,682)	(173,241)
Non current receivables	13,703	197,846
Accrued gas payable	-	-
	<u>(3,062,341)</u>	<u>(2,950,899)</u>
<b>Investing activities</b>		
Purchase of intangible assets	-	-
Purchase of capital assets	-	-
Restricted investments	-	-
Restricted cash	(23,963)	(23,491)
	<u>(23,963)</u>	<u>(23,491)</u>
<b>Financing activities</b>		
Dividends Paid	-	-
Revolving credit facility		
Loan payable with Shell Energy North America (Canada) Inc.	-	(0)
Loan payable with Fulcrum Capital Partners Inc., net of issuance costs	-	-
Lease liability	(2,634)	(15,322)
Proceeds from exercise of warrants	-	-
	<u>(2,634)</u>	<u>(15,322)</u>
<b>Increase (decrease) in cash and cash equivalents</b>	(3,088,938)	(2,989,712)
<b>Cash and cash equivalents, beginning of period</b>	11,757,338	11,634,344
Translation adjustment on cash	23,210	46,979
<b>Cash and cash equivalents, end of period</b>	<u>8,691,611</u>	<u>8,691,611</u>

This is Exhibit "II" referred to in the Affidavit of Nino Silvestri sworn by Nino Silvestri of the Town of Oakville, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on May 26, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:



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Commissioner for Taking Affidavits (or as may be)

**GAVIN INKSTER LSO# 82737I**

**ACQUISITION OPPORTUNITY:  
 NATURAL GAS AND ELECTRICITY SERVICE PROVIDER**



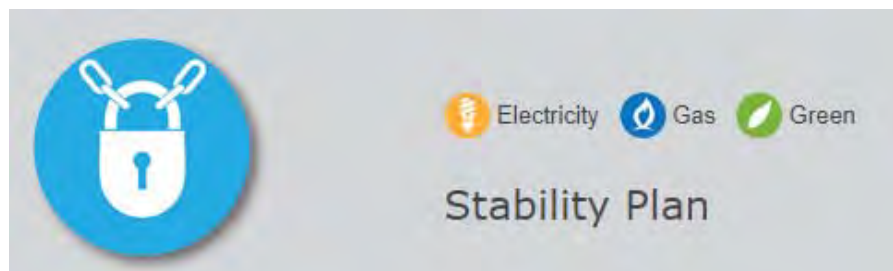
**BACKGROUND TO THE ACQUISITION OPPORTUNITY**

On May 11, 2023, Planet Energy (Ontario) Corp. and Planet Energy (B.C.) Corp. (together, “**Planet Energy**” or the “**Company**”) each filed a notice of intention to make a Proposal (an “**NOI**”) pursuant to the *Bankruptcy and Insolvency Act* (Canada). Richter Inc. (“**Richter**”) was named trustee (the “**Trustee**”) under each of the Company’s NOI’s.

On June [ ], 2023, the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) issued an order (the “**Sale Process Order**”), which, among other things, authorized the Trustee, on behalf of Planet Energy, to undertake a sale solicitation process (the “**Sale Process**”) for the sale of Planet Energy’s business and/or assets.

**OVERVIEW OF THE COMPANY**

Founded in 2006, Planet Energy is a natural gas and electricity service retailer active in multiple markets across Canada, serving both residential and commercial customers. The Company’s leased headquarters is located at 5775 Yonge Street, Suite 1202, Toronto, Ontario (the “**Premises**”). Planet Energy’s operations are focused on offering affordable, stable-price energy options. The Company’s customers are serviced by, and invoiced by, the same electric local utility provider that services the customers’ respective geographic regions. Planet Energy works with a multitude of vendors and electricity end-user service providers to deliver electricity to its customers. Planet Energy currently has approximately 17 employees.



**MONTRÉAL**

1981 McGill College  
 Montréal QC H3A 0G6  
 514.934.3400

**TORONTO**

181 Bay St., #3510  
 Bay Wellington Tower  
 Toronto ON M5J 2T3  
 416.488.2345

**CHICAGO**

200 South Wacker, #3100  
 Chicago IL 60606  
 312.828.0800

**ACQUISITION HIGHLIGHTS**

**Differentiated Market Position**

While rates offered by typical electricity service providers fluctuate based on usage and underlying energy costs, Planet Energy offers fixed energy price plans.

**Customer Contracts**

Planet Energy’s 6,000+ account customers, representing over 19,000 residential customer equivalents, typically enter 5-year agreements, establishing a steady stream of revenue. The Company has resources devoted to retaining customers at end of term, focused on the arrangement of contract renewals.



Electricity



Natural Gas

**Industry Relationships**

With over 15 years in the industry, Planet Energy has established a strong network of service providers and operating partners. Planet Energy works in concert with numerous energy suppliers, vendors, IT partners and utility service providers to deliver quality service to its customers and arrange for timely billing/collections. Planet Energy has the staff, accounting system and management systems in place to handle the detailed logistics involved.

**SOLICITATION PROCESS**

Below is a summary of the key aspects of the Sale Process:

- Interested parties are required to execute a non-disclosure agreement (an “NDA”) and return it to the Trustee in order to gain access to confidential information maintained in a data room.
- Parties will be required to submit an offer (an “Offer”) to the Trustee by 5 p.m. (Toronto time) on July [ ], 2023 (the “Offer Deadline”).**
- To be considered by the Trustee, an Offer is, *inter alia*: (i) to be on an “as is, where is” basis, and (ii) to be accompanied by a cash deposit of not less than [10%] of the Offer. The Trustee may waive compliance with one or more of the Offer requirements and deem such non-compliant offer to be an Offer.
- If one or more Qualifying Offers are received by the Offer Deadline, the Trustee may conduct an auction, to be held on the 5<sup>th</sup> business day after the Offer Deadline or a later date selected by the Trustee, to determine and select the winning bid in the Sale Process. **The outside closing date of the Sale Process is contemplated to be August [ ], 2023.**
- Additional information with respect to the Company’s NOI proceedings can be found at the Trustee’s website:  
<https://www.richter.ca/insolvencycase/planet-energy-ontario-corp/>  
<https://www.richter.ca/insolvencycase/planet-energy-b-c-corp/>

If you would like to execute an NDA, or further discuss this opportunity or the Sales Process, please direct your enquiries to:

**Jonathan Joffe**  
Vice-President  
416-646-7390  
JJoffe@Richter.ca

**Shane Connolly**  
Manager  
647-921-3902  
SConnolly@Richter.ca

**MONTRÉAL**

1981 McGill College  
Montréal QC H3A 0G6  
514.934.3400

**TORONTO**

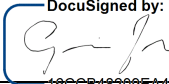
181 Bay St., #3510  
Bay Wellington Tower  
Toronto ON M5J 2T3  
416.488.2345

**CHICAGO**

200 South Wacker, #3100  
Chicago IL 60606  
312.828.0800

This is Exhibit "JJ" referred to in the Affidavit of Nino Silvestri sworn by Nino Silvestri of the Town of Oakville, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on May 26, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:



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Commissioner for Taking Affidavits (or as may be)

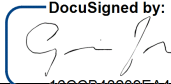
**GAVIN INKSTER LSO# 82737I**

Monthly attrition rate: 1.5%  
 Discount factor: 10%

Month	Avg Weighted Contract Price	HOEP	Monthly Usage (from SPI)	Monthly usage (after attrition)	Monthly Revenue	Monthly Cost	Net	Discount factor	Present Value	
Jun-23	\$0.0508	\$ 0.0195	10,407,328	10,251,219	520,762	199,731	321,031	0.991736	318,378	1
Jul-23	\$0.0508	\$ 0.0352	11,046,941	10,715,532	544,349	377,053	167,296	0.983539	164,542	2
Aug-23	\$0.0508	\$ 0.0329	11,644,382	11,120,385	564,916	365,981	198,935	0.975411	194,043	3
Sep-23	\$0.0508	\$ 0.0257	8,723,778	8,200,351	416,578	210,986	205,592	0.96735	198,879	4
Oct-23	\$0.0508	\$ 0.0209	8,332,485	7,707,548	391,543	160,928	230,615	0.959355	221,242	5
Nov-23	\$0.0508	\$ 0.0260	8,631,907	7,855,035	399,036	204,573	194,463	0.951427	185,017	6
Dec-23	\$0.0508	\$ 0.0329	9,187,899	8,223,170	417,737	270,631	147,106	0.943563	138,804	7
Jan-24	\$0.0508	\$ 0.0501	9,755,959	8,585,244	436,130	430,177	5,953	0.935765	5,571	8
Feb-24	\$0.0508	\$ 0.0452	8,779,416	7,594,195	385,785	343,128	42,657	0.928032	39,587	9
Mar-24	\$0.0508	\$ 0.0332	8,499,558	7,224,624	367,011	239,506	127,504	0.920362	117,350	10
Apr-24	\$0.0508	\$ 0.0230	7,323,350	6,114,998	310,642	140,354	170,288	0.912756	155,431	11
May-24	\$0.0508	\$ 0.0228	7,530,323	6,174,865	313,683	140,699	172,984	0.905212	156,587	12
Jun-24	\$0.0508	\$ 0.0245	7,771,049	6,255,694	317,789	153,310	164,479	0.897731	147,658	13
Jul-24	\$0.0508	\$ 0.0376	8,167,168	6,452,063	327,765	242,558	85,207	0.890312	75,861	14
Aug-24	\$0.0508	\$ 0.0351	8,281,863	6,418,444	326,057	225,493	100,564	0.882954	88,794	15
Sep-24	\$0.0508	\$ 0.0275	6,123,158	4,653,600	236,403	127,915	108,488	0.875657	94,998	16
Oct-24	\$0.0508	\$ 0.0263	5,952,521	4,434,628	225,279	116,643	108,636	0.86842	94,342	17
Nov-24	\$0.0508	\$ 0.0339	6,160,416	4,497,104	228,453	152,498	75,955	0.861243	65,415	18
Dec-24	\$0.0508	\$ 0.0456	6,618,588	4,732,291	240,400	215,658	24,742	0.854125	21,133	19
Jan-25	\$0.0508	\$ 0.0457	7,262,467	5,083,727	258,253	232,353	25,900	0.847067	21,939	20
Feb-25	\$0.0508	\$ 0.0413	6,073,781	4,160,540	211,355	171,796	39,560	0.840066	33,233	21
Mar-25	\$0.0508	\$ 0.0515	6,093,290	4,082,504	207,391	210,249	2,858	0.833123	2,381	22
Apr-25	\$0.0508	\$ 0.0355	5,204,236	3,408,775	173,166	121,001	52,164	0.826238	43,100	23
May-25	\$0.0508	\$ 0.0435	5,315,490	3,401,913	172,817	147,978	24,839	0.81941	20,353	24
Jun-25	\$0.0508	\$ 0.0435	5,580,803	3,488,002	177,190	151,723	25,468	0.812638	20,696	25
Jul-25	\$0.0508	\$ 0.0450	5,868,525	3,579,800	181,854	161,035	20,819	0.805922	16,779	26
Aug-25	\$0.0508	\$ 0.0420	5,792,038	3,446,263	175,070	144,787	30,283	0.799261	24,204	27
Sep-25	\$0.0508	\$ 0.0435	3,993,926	2,316,477	117,677	100,763	16,914	0.792656	13,407	28
Oct-25	\$0.0508	\$ 0.0324	3,782,116	2,136,895	108,554	69,317	39,237	0.786105	30,844	29
Nov-25	\$0.0508	\$ 0.0418	3,840,037	2,112,020	107,291	88,341	18,949	0.779608	14,773	30
Dec-25	\$0.0508	\$ 0.0562	4,004,037	2,142,160	108,822	120,452	11,630	0.773165	8,992	31
Jan-26	\$0.0508	\$ 0.0454	4,156,880	2,161,578	109,808	98,207	11,602	0.766775	8,896	32
Feb-26	\$0.0508	\$ 0.0410	3,375,114	1,704,433	86,585	69,960	16,625	0.760438	12,642	33
Mar-26	\$0.0508	\$ 0.0512	3,282,603	1,608,476	81,711	82,342	631	0.754154	476	34
Apr-26	\$0.0508	\$ 0.0353	2,670,749	1,268,606	64,445	44,764	19,681	0.747921	14,720	35
May-26	\$0.0508	\$ 0.0432	2,595,222	1,193,802	60,645	51,619	9,026	0.74174	6,695	36
Jun-26	\$0.0508	\$ 0.0432	2,748,288	1,222,988	62,128	52,881	9,247	0.73561	6,802	37
Jul-26	\$0.0508	\$ 0.0447	2,793,128	1,201,045	61,013	53,706	7,307	0.72953	5,331	38
Aug-26	\$0.0508	\$ 0.0418	2,835,630	1,176,787	59,781	49,146	10,635	0.723501	7,695	39
Sep-26	\$0.0508	\$ 0.0432	2,078,217	831,287	42,229	35,944	6,285	0.717522	4,510	40
Oct-26	\$0.0508	\$ 0.0322	1,980,098	762,338	38,727	24,583	14,144	0.711592	10,065	41
Nov-26	\$0.0508	\$ 0.0416	2,041,523	755,364	38,372	31,408	6,965	0.705711	4,915	42
Dec-26	\$0.0508	\$ 0.0559	2,092,446	742,818	37,735	41,518	3,782	0.699879	2,647	43
							<u>3,039,244</u>		<u>2,790,735</u>	

This is Exhibit "KK" referred to in the Affidavit of Nino Silvestri sworn by Nino Silvestri of the Town of Oakville, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on May 26, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:



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Commissioner for Taking Affidavits (or as may be)

**GAVIN INKSTER LSO# 82737I**



Gas Model WoW Summary

Beginning Date 1-Feb-23  
 Today's date 4-Jan-23

	<u>Last Week</u>	<u>This Week</u>	<u>Change</u>	<u>% Change</u>
<b>Marks</b>	\$ 3.130	\$ 3.146	\$ 0.02	0.53%
<b>Load (GJ's)</b>	546,330	546,330	-	0.00%
<b>Revenue</b>	\$ 2,259,231	\$ 2,259,231	\$ -	0.00%
<b>Costs</b>	1,640,784	1,638,146	\$ (2,637)	-0.16%
<b>Gross Margin</b>	684,383	687,020	\$ 2,637	0.39%
<b>Commission</b>	-	-	\$ -	
<b>Unit Margin (\$/GJ)</b>	\$ 1.253	\$ 1.258	\$ 0.005	0.39%

<b>Unit Revenue</b>	\$ 0.1559	\$ 0.1559	#DIV/0!	0.00%
<b>Unit Cost</b>	\$ 0.1132	\$ 0.1130	#DIV/0!	-0.16%
<b>Unit Gross Margin</b>	\$ 0.0427	\$ 0.0428	#DIV/0!	0.43%
<b>Comm % of GM</b>	0.0%	0.0%	0.0%	

-	<b>GJ/d</b>	-	<b>RCE</b>
#DIV/0!	<b>Unit Revenue</b>		
#DIV/0!	<b>Unit Cost</b>		
#DIV/0!	<b>Unit GM</b>		

Gas Model

	Jun-23	Jul-23	Aug-23	Sep-23	Oct-23	Nov-23	Dec-23	Jan-24	Feb-24	Mar-24	Apr-24	May-24
<b>Spot Price (Empress \$/GJ)</b>	2.0750	1.879	2.034	2.024	2.155	2.605	3.010	3.101	3.046	2.823	2.533	2.393
<b>Volumes (GJ)</b>												
MM Fixed	10,591	10,197	10,518	10,472	10,111	10,399	10,000	10,315	10,300	9,593	10,091	9,691
MM Variable	-	-	-	-	-	-	-	-	-	-	-	-
Commercial Fixed	9,090	8,797	9,078	7,881	7,576	7,214	6,981	7,214	7,207	6,742	7,207	6,953
Commercial Variable	1,037	1,004	1,037	1,037	1,004	1,037	1,004	1,037	1,037	970	1,037	1,004
<b>Total</b>	<b>20,718</b>	<b>19,998</b>	<b>20,633</b>	<b>19,391</b>	<b>18,691</b>	<b>18,650</b>	<b>17,985</b>	<b>18,566</b>	<b>18,544</b>	<b>17,305</b>	<b>18,335</b>	<b>17,648</b>
<b>Revenues</b>												
Fixed	\$83,953.51	\$80,938.67	\$83,618.73	\$78,198.31	\$75,596.64	\$75,435.31	\$72,959.80	\$75,215.08	\$75,026.30	\$69,437.61	\$73,257.18	\$70,646.24
Variable	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
<b>Total</b>	<b>\$83,953.51</b>	<b>\$80,938.67</b>	<b>\$83,618.73</b>	<b>\$78,198.31</b>	<b>\$75,596.64</b>	<b>\$75,435.31</b>	<b>\$72,959.80</b>	<b>\$75,215.08</b>	<b>\$75,026.30</b>	<b>\$69,437.61</b>	<b>\$73,257.18</b>	<b>\$70,646.24</b>
<b>COGS</b>												
Fixed	\$68,451.69	\$67,191.21	\$68,687.77	\$64,139.67	\$62,986.64	\$64,720.40	\$63,889.44	\$65,392.84	\$65,244.79	\$ 65,130.51	\$ 66,940.23	\$ 61,861.24
Variable	\$11,521.97	\$14,260.24	\$13,845.73	\$12,846.29	\$14,132.31	\$7,605.26	\$10,944.87	\$7,119.89	\$6,265.51	\$ 4,661.39	\$ 4,993.09	\$ 6,091.31
<b>Total</b>	<b>\$79,973.66</b>	<b>\$81,451.46</b>	<b>\$82,533.51</b>	<b>\$76,985.96</b>	<b>\$77,118.96</b>	<b>\$72,325.66</b>	<b>\$74,834.31</b>	<b>\$72,512.73</b>	<b>\$71,510.30</b>	<b>\$69,791.90</b>	<b>\$71,933.32</b>	<b>\$67,952.55</b>
<b>Gross Margin</b>												
MM Fixed	\$8,738.14	\$7,784.60	\$8,418.87	\$8,456.81	\$7,593.06	\$6,564.07	\$5,551.81	\$6,017.56	\$6,008.12	\$3,234.87	\$4,420.10	\$5,818.06
MM Variable	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Commercial Fixed	\$6,763.68	\$5,962.86	\$6,512.09	\$5,601.82	\$5,016.93	\$4,150.84	\$3,518.54	\$3,804.67	\$3,773.39	\$1,072.22	\$1,896.86	\$2,966.93
Commercial Variable	-\$11,521.97	-\$14,260.24	-\$13,845.73	-\$12,846.29	-\$14,132.31	-\$7,605.26	-\$10,944.87	-\$7,119.89	-\$6,265.51	-\$4,661.39	-\$4,993.09	-\$6,091.31
<b>Total</b>	<b>\$3,979.85</b>	<b>-\$512.79</b>	<b>\$1,085.23</b>	<b>\$1,212.34</b>	<b>-\$1,522.32</b>	<b>\$3,109.64</b>	<b>-\$1,874.52</b>	<b>\$2,702.34</b>	<b>\$3,516.00</b>	<b>-\$354.29</b>	<b>\$1,323.86</b>	<b>\$2,693.69</b>
<b>Total Net Margin</b>	3979.85251	-512.78573	1085.22565	1212.34443	-1522.3211	3109.64483	-1874.5156	2702.34145	3515.9991	-354.2907999	1323.863515	2693.689089

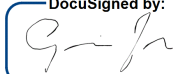
Jun-24	Jul-24	Aug-24	Sep-24	Oct-24	Nov-24	Dec-24	Jan-25	Feb-25	Mar-25	Apr-25	May-25
2.390	2.404	2.428	2.502	2.662	3.168	3.516	3.634	3.641	3.354	2.996	2.923
9,925	9,413	9,573	9,391	8,878	9,031	8,624	8,703	8,340	7,207	7,679	7,146
-	-	-	-	-	-	-	-	-	-	-	-
7,210	6,973	7,243	7,078	6,238	5,596	5,163	5,126	5,116	4,525	4,948	4,426
1,037	1,004	1,037	1,037	1,004	1,037	1,004	1,037	1,037	937	1,037	1,004
<b>18,173</b>	<b>17,390</b>	<b>17,853</b>	<b>17,507</b>	<b>16,120</b>	<b>15,665</b>	<b>14,791</b>	<b>14,866</b>	<b>14,494</b>	<b>12,669</b>	<b>13,664</b>	<b>12,576</b>
\$72,555.89	\$69,169.87	\$71,098.33	\$69,509.97	\$63,976.11	\$61,179.70	\$57,772.76	\$58,023.35	\$56,432.24	\$49,293.74	\$52,869.62	\$48,336.14
\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$1,037.35	\$1,037.35	\$936.96	\$1,037.35	\$1,003.89
<b>\$72,555.89</b>	<b>\$69,169.87</b>	<b>\$71,098.33</b>	<b>\$69,509.97</b>	<b>\$63,976.11</b>	<b>\$61,179.70</b>	<b>\$57,772.76</b>	<b>\$59,060.70</b>	<b>\$57,469.59</b>	<b>\$50,230.70</b>	<b>\$53,906.97</b>	<b>\$49,340.03</b>
\$ 66,014.27	\$ 64,579.32	\$ 65,690.06	\$ 63,969.69	\$60,436.12	\$ 53,916.65	\$51,227.07	\$418.97	\$1,401.45	\$382.18	\$16,691.15	\$12,320.22
\$ 4,534.22	\$ 4,444.87	\$ 4,701.76	\$ 5,031.20	\$5,455.89	\$4,517.57	\$4,627.06	\$3,041.66	\$2,016.32	\$938.98	\$3,157.78	\$2,893.28
<b>\$70,548.49</b>	<b>\$69,024.19</b>	<b>\$70,391.82</b>	<b>\$69,000.89</b>	<b>\$65,892.01</b>	<b>\$58,434.22</b>	<b>\$55,854.13</b>	<b>\$3,460.62</b>	<b>\$3,417.77</b>	<b>\$1,321.16</b>	<b>\$19,848.94</b>	<b>\$15,213.50</b>
\$4,455.20	\$3,315.28	\$3,794.26	\$3,850.54	\$2,592.39	\$5,293.58	\$4,859.84	\$37,030.75	\$111,807.06	\$30,747.85	\$22,708.67	\$22,849.79
\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
\$2,086.43	\$1,275.27	\$1,614.01	\$1,689.74	\$947.60	\$1,969.47	\$1,685.84	\$20,573.63	\$9,159.08	\$18,163.71	\$13,469.80	\$13,166.12
-\$4,534.22	-\$4,444.87	-\$4,701.76	-\$5,031.20	-\$5,455.89	-\$4,517.57	-\$4,627.06	-\$2,004.31	-\$978.97	-\$2.02	-\$2,120.43	-\$1,889.39
<b>\$2,007.40</b>	<b>\$145.68</b>	<b>\$706.51</b>	<b>\$509.08</b>	<b>-\$1,915.90</b>	<b>\$2,745.48</b>	<b>\$1,918.63</b>	<b>\$55,600.08</b>	<b>\$119,987.17</b>	<b>\$48,909.54</b>	<b>\$34,058.03</b>	<b>\$34,126.53</b>
2007.404772	145.675765	706.5057944	509.0814194	-1915.8951	2745.4809	1918.62946	55600.0808	119987.17	48909.5393	34058.031	34126.531

Jun-25	Jul-25	Aug-25	Sep-25	Oct-25	Nov-25	Dec-25	Jan-26	Feb-26	Mar-26	Apr-26	May-26
2.978	3.044	3.082	3.137	3.236	3.630	3.941	4.111	4.046	3.657	3.284	3.080
7,036	6,533	6,503	6,149	5,766	5,410	4,536	4,147	3,819	3,186	3,233	2,683
-	-	-	-	-	-	-	-	-	-	-	-
4,559	4,146	4,260	3,853	3,728	3,628	3,303	3,351	3,332	2,541	2,682	1,297
534	516	176	-	-	-	-	-	-	-	-	-
<b>12,129</b>	<b>11,195</b>	<b>10,939</b>	<b>10,001</b>	<b>9,494</b>	<b>9,038</b>	<b>7,839</b>	<b>7,498</b>	<b>7,152</b>	<b>5,727</b>	<b>5,915</b>	<b>3,980</b>
\$48,338.85	\$44,453.44	\$44,815.17	\$41,635.51	\$39,516.75	\$37,609.20	\$32,632.00	\$31,188.84	\$29,726.48	\$23,886.30	\$24,634.10	\$16,679.22
\$533.50	\$516.29	\$176.31	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
<b>\$48,872.35</b>	<b>\$44,969.73</b>	<b>\$44,991.48</b>	<b>\$41,635.51</b>	<b>\$39,516.75</b>	<b>\$37,609.20</b>	<b>\$32,632.00</b>	<b>\$31,188.84</b>	<b>\$29,726.48</b>	<b>\$23,886.30</b>	<b>\$24,634.10</b>	<b>\$16,679.22</b>
\$12,166.53	\$9,945.28	\$9,700.92	\$7,574.52	\$6,507.57	\$5,290.07	\$1,669.22	\$24,760.24	\$23,439.03	\$9,350.26	\$14,199.80	\$11,211.08
\$1,559.17	\$1,451.02	\$774.98	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
<b>\$13,725.70</b>	<b>\$11,396.29</b>	<b>\$10,475.90</b>	<b>\$7,574.52</b>	<b>\$6,507.57</b>	<b>\$5,290.07</b>	<b>\$1,669.22</b>	<b>\$24,760.24</b>	<b>\$23,439.03</b>	<b>\$9,350.26</b>	<b>\$14,199.80</b>	<b>\$11,211.08</b>
\$22,542.68	\$21,682.69	\$21,809.69	\$21,473.99	\$20,560.03	\$19,841.73	\$18,373.67	\$4,007.71	\$3,797.90	\$8,458.96	\$6,079.46	\$3,901.12
\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
\$13,629.63	\$12,825.47	\$13,304.56	\$12,587.00	\$12,449.16	\$12,477.41	\$12,589.11	\$2,420.90	\$2,489.55	\$6,077.09	\$4,354.84	\$1,567.02
-\$1,025.67	-\$934.73	-\$598.67	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
<b>\$35,146.64</b>	<b>\$33,573.44</b>	<b>\$34,515.58</b>	<b>\$34,060.99</b>	<b>\$33,009.19</b>	<b>\$32,319.13</b>	<b>\$30,962.78</b>	<b>\$6,428.60</b>	<b>\$6,287.45</b>	<b>\$14,536.05</b>	<b>\$10,434.30</b>	<b>\$5,468.14</b>
35146.643	33573.436	34515.583	34060.988	33009.189	32319.133	30962.784	6428.6007	6287.4461	14536.047	10434.303	5468.1436

Jun-26	Jul-26	Aug-26	Sep-26	Oct-26	Nov-26	Dec-26	Jan-27	Feb-27	Mar-27	Apr-27	May-27
3.184	3.241	3.244	3.255	3.326	3.631	3.953	4.113	3.915	3.518	3.123	3.078
2,680	2,442	2,412	2,243	2,043	1,930	1,674	1,448	1,275	1,063	1,128	980
-	-	-	-	-	-	-	-	-	-	-	-
1,124	1,088	1,108	1,108	247	255	209	216	195	176	195	189
-	-	-	-	-	-	-	-	-	-	-	-
<b>3,804</b>	<b>3,530</b>	<b>3,520</b>	<b>3,351</b>	<b>2,291</b>	<b>2,186</b>	<b>1,884</b>	<b>1,664</b>	<b>1,470</b>	<b>1,239</b>	<b>1,323</b>	<b>1,169</b>
\$15,871.20	\$18,024.33	\$18,180.17	\$17,572.01	\$13,242.74	\$12,858.79	\$11,439.96	\$10,479.57	\$9,533.50	\$8,149.92	\$8,789.09	\$7,976.18
\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
<b>\$15,871.20</b>	<b>\$18,024.33</b>	<b>\$18,180.17</b>	<b>\$17,572.01</b>	<b>\$13,242.74</b>	<b>\$12,858.79</b>	<b>\$11,439.96</b>	<b>\$10,479.57</b>	<b>\$9,533.50</b>	<b>\$8,149.92</b>	<b>\$8,789.09</b>	<b>\$7,976.18</b>
\$11,662.00	\$10,993.08	\$8,277.10	\$7,669.74	\$6,644.85	\$6,764.03	\$6,132.38	\$6,326.51	\$ 5,805.74	\$ 4,417.14	\$ 4,212.09	\$ 3,543.33
\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$ -	\$ -	\$ -	\$ -
<b>\$11,662.00</b>	<b>\$10,993.08</b>	<b>\$8,277.10</b>	<b>\$7,669.74</b>	<b>\$6,644.85</b>	<b>\$6,764.03</b>	<b>\$6,132.38</b>	<b>\$6,326.51</b>	<b>\$5,805.74</b>	<b>\$4,417.14</b>	<b>\$4,212.09</b>	<b>\$3,543.33</b>
\$3,130.91	\$5,595.92	\$7,581.02	\$7,510.77	\$5,827.92	\$5,348.60	\$4,635.54	\$3,577.77	\$3,202.66	\$3,191.10	\$3,902.87	\$3,751.56
\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
\$1,078.29	\$1,435.34	\$2,322.05	\$2,391.50	\$769.97	\$746.15	\$672.04	\$575.29	\$525.09	\$541.68	\$674.14	\$681.29
\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
<b>\$4,209.20</b>	<b>\$7,031.26</b>	<b>\$9,903.07</b>	<b>\$9,902.27</b>	<b>\$6,597.89</b>	<b>\$6,094.75</b>	<b>\$5,307.58</b>	<b>\$4,153.06</b>	<b>\$3,727.76</b>	<b>\$3,732.78</b>	<b>\$4,577.00</b>	<b>\$4,432.86</b>
4209.2037	7031.2558	9903.0743	9902.2652	6597.891	6094.755	5307.57884	4153.0611	3727.75829	3732.78199	4577.00465	4432.85541

Jun-27	Jul-27	Aug-27	Sep-27	Oct-27	Nov-27	Dec-27	Jan-28	Feb-28			
3.145	3.214	3.243	3.238	3.348	3.689	\$ 4.04	\$ 4.18	\$ 4.06	\$ 3.63	\$ 3.16	
975	893	802	684	477	411	282	201	94	56	26	
-	-	-	-	-	-	-	-	-	-	-	
156	151	156	125	121	117	106	108	-	-	-	
-	-	-	-	-	-	-	-	-	-	-	
<b>1,130</b>	<b>1,043</b>	<b>958</b>	<b>809</b>	<b>598</b>	<b>528</b>	<b>388</b>	<b>309</b>	<b>94.21705</b>	<b>55.73153</b>	<b>26.07911</b>	
\$7,848.12	\$7,340.17	\$6,849.14	\$5,845.48	\$4,356.51	\$3,880.65	\$ 2,843	\$ 2,255	\$ 685	\$ 403	\$ 188	
\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$ -	\$ -	\$ -	
<b>\$7,848.12</b>	<b>\$7,340.17</b>	<b>\$6,849.14</b>	<b>\$5,845.48</b>	<b>\$4,356.51</b>	<b>\$3,880.65</b>	<b>\$2,843.12</b>	<b>\$2,254.78</b>	<b>684.5</b>	<b>402.53</b>	<b>188.41</b>	
\$ 3,444.49	\$ 2,817.69	\$ 2,329.80	\$ 1,996.11	\$ 1,569.86	\$ 1,456.12	\$ 620	\$ 533	\$ 393	\$ 451	\$ 335	
\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
<b>\$3,444.49</b>	<b>\$2,817.69</b>	<b>\$2,329.80</b>	<b>\$1,996.11</b>	<b>\$1,569.86</b>	<b>\$1,456.12</b>	<b>\$620</b>	<b>\$533</b>	<b>392.7086</b>	<b>451.1052</b>	<b>334.6148</b>	
\$3,770.99	\$3,857.98	\$3,790.87	\$3,252.72	\$2,228.65	\$1,880.31	\$1,605.82	\$1,106.33	\$ 292	\$ (49)	\$ (146)	
\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$ -	\$ -	\$ -	
\$632.64	\$664.50	\$728.46	\$596.64	\$558.00	\$544.22	\$617.38	\$615.84	\$ -	\$ -	\$ -	
\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$ -	\$ -	\$ -	
<b>\$4,403.63</b>	<b>\$4,522.48</b>	<b>\$4,519.34</b>	<b>\$3,849.37</b>	<b>\$2,786.65</b>	<b>\$2,424.53</b>	<b>\$2,223.19</b>	<b>\$1,722.17</b>	<b>\$ 292</b>	<b>\$ (49)</b>	<b>\$ (146)</b>	
4403.6274	4522.4752	4519.3391	3849.3668	2786.6521	2424.53	2223.193	1722.171	291.7914	-48.5752	-146.205	

This is Exhibit "LL" referred to in the Affidavit of Nino Silvestri sworn by Nino Silvestri of the Town of Oakville, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on May 26, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:  


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10CCB10209E1401  
*Commissioner for Taking Affidavits (or as may be)*

**GAVIN INKSTER LSO# 82737I**

## SALE PROCESS

### PLANET ENERGY (ONTARIO) CORP. AND PLANET ENERGY (B.C.) CORP.

(collectively “Planet”)

#### Defined Terms

1. These terms and conditions, and the process described herein shall collectively be hereinafter referred to as the “**Sale Process**”.

#### Role of the Trustee and Consultation Parties

2. The Sale Process will be administered by Richter Inc., the trustee in the proposal proceedings of Planet (the “**Trustee**”). The roles and responsibilities of the Trustee are described below, however, the Trustee’s role in the Sale Process does not include managing, operating, or taking possession or control of Planet’s property, assets or undertakings.
3. Planet and its principals, employees and professional advisors shall cooperate with the Trustee throughout the Sale Process and promptly provide any documents and information requested by the Trustee as part of the Sale Process.
4. All Communications Network of Canada (“**ACN**”) shall be entitled certain consultation rights as set forth herein provided that ACN executes a non-disclosure agreement in a form acceptable to the Trustee and Planet and ACN confirms in writing to the Trustee that ACN and its affiliates and related parties will not submit an offer or participate in the Sales Process as a Prospective Participant (as defined below). Upon satisfying such conditions, ACN shall be a “**Consultation Party**” hereunder.

#### Commencement of the Sale Process

5. The Sale Process shall commence immediately upon Court approval thereof (the “**Commencement Date**”).
6. As soon as practicable after the Commencement Date, the Trustee shall contact parties identified by Planet, the Trustee or the Consultation Party who may be interested in purchasing the business and/or assets of Planet (collectively, the “**Prospective Participants**” and each a “**Prospective Participant**”) and provide those parties with a copy of a letter (the “**Teaser Letter**”) containing general details about the opportunity to purchase the business and/or assets of Planet (the “**Opportunity**”), as well as some general background information about Planet.
7. As soon as practicable after the Commencement Date, the Trustee shall also (a) publish a notice advertising the Opportunity in the National Post and/or such other newspaper and/or trade publications or other publications as the Trustee may deem appropriate or advisable, and (b) post the Teaser Letter and other relevant information concerning the Opportunity, as determined by the Trustee, on its website.



### Due Diligence

8. Any Prospective Participant who advises the Trustee of its interest in participating in the Sale Process shall execute a non-disclosure agreement (the “**NDA**”) in a form satisfactory to the Trustee and shall satisfy the Trustee, in the Trustee’s sole discretion, of its ability to consummate a transaction for the acquisition of the business and/or assets of Planet. Any Prospective Participant executing an NDA and so satisfying the Trustee shall be invited to participate in the Sale Process and commence due diligence.
9. Commencing on the Commencement Date (and after each respective Prospective Participant has executed the NDA), the Trustee shall make available to the qualifying Prospective Participants the following:
  - a) a copy of a template asset purchase agreement (the “**Template Purchase Agreement**”); and
  - b) access to an electronic data room, to be maintained by the Trustee, which shall contain information pertaining to the Opportunity along with other corporate financial and other documents as provided by Planet.

### Offer Deadline

10. All offers must be submitted in writing to and received by the Trustee electronically to [jjoffe@richter.ca](mailto:jjoffe@richter.ca) by no later than 5:00pm (Toronto time) on August 4, 2023 (the “**Offer Deadline**”). Each offer must remain open for acceptance until completion of the Auction (if any).
11. The Trustee shall provide Planet and the Consultation Party with the offers received by the Offer Deadline.

### Qualified Offers

12. An offer will only be considered in this Sale Process, in which case it shall be considered a “**Qualified Offer**”, if it is submitted before the Offer Deadline and if it meets the following minimum criteria:
  - a) it must be submitted in writing, substantially in the form of the Template Purchase Agreement, with any changes to the offer blacklined against the appropriate Template Purchase Agreement;
  - b) it must be irrevocable until five business days after the Auction (*as defined herein*);
  - c) it must be accompanied by a deposit in the form of a certified cheque or bank draft (or in the form of confirmed wire transfer in the case of offers submitted electronically) payable to the Trustee “in trust” which is equal to at least ten percent (10%) percent of the total purchase price payable under the offer;
  - d) it may only contemplate an acquisition on an “as is, where is” basis and must include an acknowledgement that the purchaser has relied solely on its own independent review and investigation and that it has not relied on any representation by Planet, the Trustee or their respective agents, employees or advisors;

- e) it must not contain any condition or contingency relating to due diligence or financing or any other material conditions precedent to the offeror's obligation to complete the transaction (save and except for approval by the Court); and
- f) it must include written evidence, satisfactory to the Trustee, that the offeror has the financial means to complete the proposed acquisition,

provided however that the Trustee may, in consultation with Planet and the Consultation Party, may (i) consider liquidation offers in respect of the assets of Planet and (ii) exercising its reasonable discretion, waive compliance with one or more of the foregoing Qualified Offer requirements and deem such non-compliant offer to be a Qualified Offer.

13. Offers for all or part of the business, assets and undertakings of Planet will be considered.

### **Auction**

14. If no Qualified Offer is received by the Offer Deadline, the Auction (*as defined herein*) will not be held.

15. If more than one Qualified Offer is received by the Offer Deadline, the Trustee shall extend invitations by phone, and/or email by no later than 10:00am (Toronto time) on the second (2<sup>nd</sup>) Business Day after the Offer Deadline to all bidders who submitted Qualified Offers to attend an auction (the "**Auction**"). The Auction shall be held at 10:00am (Toronto time) on the fifth (5<sup>th</sup>) Business Day after the Offer Deadline or such later date that the Trustee may determine, at the offices of the Trustee or by teleconference, video conference or other form of electronic telecommunications, as the Trustee may deem fit. Only the Trustee, Planet, the Consultation Party, and persons that have submitted a Qualified Officer and their respective advisors shall be entitled to attend the Auction.

16. The Trustee shall conduct the Auction. At the Auction, the bidding shall begin initially with the highest Qualified Offer and subsequently continue in multiples of \$50,000, or such other amount as the Trustees determines, to facilitate the Auction. The format and other procedures for the Auction shall be determined by the Trustee in its sole discretion.

### **Selection of the Winning Bid**

17. The winning bid (the "**Winning Bid**") shall be, either:
- a. in the event that only one Qualified Offer is received, the Qualified Offer;
  - or,
  - b. in the event that multiple Qualified Offers are received, following the conclusion of the Auction (if applicable), the party submitting the highest and best offer through the Auction, which the Trustee is satisfied, acting reasonably, is capable of being completed in accordance with the Sale Process Order.
18. Notwithstanding anything contained herein, the Trustee reserves the right to not accept any offer or offers submitted as part of the Sale Process.

**Court Approval**

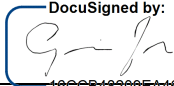
19. As soon as practicable after determination of the Winning Bid, Planet will make a motion to the Court (the “**Approval Motion**”) for an approval and vesting order in respect of the Winning Bid and the underlying purchase agreement (the “**Final Purchase Agreement**”).
20. The Trustee shall serve and file a report with respect to the Sale Process and Winning Bid in advance of the Approval Motion.

**Other Terms**

21. All deposits received shall be held by the Trustee “in trust”. All deposits submitted by parties that submitted a Qualified Offer who did not submit the Winning Bid shall be returned, without interest, as soon as practicable following the date on which any such offers are rejected hereunder. The deposit forming part of the Winning Bid shall be dealt with in accordance with the Final Purchase Agreement.
22. In the event that a deposit is forfeited for any reason it shall be forfeited as liquidated damages and not as a penalty.
23. All Qualified Offers (other than the Winning Bid) shall be deemed rejected on the earlier of (a) the date on which the transaction contemplated by the Final Purchase Agreement is completed and (b) August 31, 2023, or such later date as may be agreed to, in writing, by the Trustee and the party who submitted the Qualified Offer.
24. Subject to the Sale Process Order or other order of the Court, the Trustee, in consultation with Planet and the Consultation Party shall have the right to adopt such other rules for, or extend any deadlines in, the Sale Process that, at its sole discretion, will better promote the goals of the Sale Process.

This is Exhibit "MM" referred to in the Affidavit of Nino Silvestri sworn by Nino Silvestri of the Town of Oakville, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on May 26, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:



18CCE42209FA101

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Commissioner for Taking Affidavits (or as may be)

**GAVIN INKSTER LSO# 82737I**

Platts M2MS Modeled Power Curves  
 Curve Date 10-May-23  
 2023 S&P Global

REGION	SYMBOL	DESCRIPTION	HUB	DELIVERY DATE	M2MS INDEX	PEAK/OFFPEAK
East	EONMB00u	Ontario M2M BOM	Ontario	5/12/2023	19.83	Peak
East	EONMF23u	Ontario Jun23	Ontario	6/1/2023	23.02916	Peak
East	EONMG23u	Ontario Jul23	Ontario	7/1/2023	39.77764	Peak
East	EONMH23u	Ontario Aug23	Ontario	8/1/2023	38.095315	Peak
East	EONMI23u	Ontario Sep23	Ontario	9/1/2023	27.29105	Peak
East	EONMJ23u	Ontario Oct23	Ontario	10/1/2023	23.70209	Peak
East	EONMK23u	Ontario Nov23	Ontario	11/1/2023	29.45938	Peak
East	EONML23u	Ontario Dec23	Ontario	12/1/2023	36.18868	Peak
East	EONMA24u	Ontario Jan24	Ontario	1/1/2024	54.170865	Peak
East	EONMB24u	Ontario Feb24	Ontario	2/1/2024	49.19866	Peak
East	EONMC24u	Ontario Mar24	Ontario	3/1/2024	41.04873	Peak
East	EONMD24u	Ontario Apr24	Ontario	4/1/2024	28.973375	Peak
East	EONME24u	Ontario May24	Ontario	5/1/2024	29.347225	Peak
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East	EONMK24u	Ontario Nov24	Ontario	11/1/2024	41.235655	Peak
East	EONML24u	Ontario Dec24	Ontario	12/1/2024	53.0867	Peak
East	EONMA25u	Ontario Jan25	Ontario	1/1/2025	54.525309	Peak
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East	EONOD27u	Ontario Apr27	Ontario	4/1/2027	28.40207 OffPeak

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East	EONOA28u	Ontario Jan28	Ontario	1/1/2028	37.481483	OffPeak
East	EONOB28u	Ontario Feb28	Ontario	2/1/2028	33.699557	OffPeak
East	EONOC28u	Ontario Mar28	Ontario	3/1/2028	42.77897	OffPeak
East	EONOD28u	Ontario Apr28	Ontario	4/1/2028	28.40207	OffPeak
East	EONOE28u	Ontario May28	Ontario	5/1/2028	35.59052	OffPeak
East	EONOF28u	Ontario Jun28	Ontario	6/1/2028	35.59052	OffPeak
East	EONOG28u	Ontario Jul28	Ontario	7/1/2028	36.914644	OffPeak
East	EONOH28u	Ontario Aug28	Ontario	8/1/2028	34.266396	OffPeak
East	EONOI28u	Ontario Sep28	Ontario	9/1/2028	35.59052	OffPeak
East	EONOJ28u	Ontario Oct28	Ontario	10/1/2028	25.21821	OffPeak
East	EONOK28u	Ontario Nov28	Ontario	11/1/2028	33.561542	OffPeak
East	EONOL28u	Ontario Dec28	Ontario	12/1/2028	47.991808	OffPeak
East	EONOA29u	Ontario Jan29	Ontario	1/1/2029	37.481483	OffPeak
East	EONOB29u	Ontario Feb29	Ontario	2/1/2029	33.699557	OffPeak
East	EONOC29u	Ontario Mar29	Ontario	3/1/2029	42.77897	OffPeak
East	EONOD29u	Ontario Apr29	Ontario	4/1/2029	28.40207	OffPeak
East	EONOE29u	Ontario May29	Ontario	5/1/2029	35.59052	OffPeak
East	EONOF29u	Ontario Jun29	Ontario	6/1/2029	35.59052	OffPeak
East	EONOG29u	Ontario Jul29	Ontario	7/1/2029	36.914644	OffPeak
East	EONOH29u	Ontario Aug29	Ontario	8/1/2029	34.266396	OffPeak
East	EONOI29u	Ontario Sep29	Ontario	9/1/2029	35.59052	OffPeak
East	EONOJ29u	Ontario Oct29	Ontario	10/1/2029	25.21821	OffPeak
East	EONOK29u	Ontario Nov29	Ontario	11/1/2029	33.561542	OffPeak
East	EONOL29u	Ontario Dec29	Ontario	12/1/2029	47.991808	OffPeak
East	EONOA30u	Ontario Jan30	Ontario	1/1/2030	37.481483	OffPeak
East	EONOB30u	Ontario Feb30	Ontario	2/1/2030	33.699557	OffPeak
East	EONOC30u	Ontario Mar30	Ontario	3/1/2030	42.77897	OffPeak
East	EONOD30u	Ontario Apr30	Ontario	4/1/2030	28.40207	OffPeak
East	EONOE30u	Ontario May30	Ontario	5/1/2030	35.59052	OffPeak
East	EONOF30u	Ontario Jun30	Ontario	6/1/2030	35.59052	OffPeak
East	EONOG30u	Ontario Jul30	Ontario	7/1/2030	36.914644	OffPeak
East	EONOH30u	Ontario Aug30	Ontario	8/1/2030	34.266396	OffPeak
East	EONOI30u	Ontario Sep30	Ontario	9/1/2030	35.59052	OffPeak
East	EONOJ30u	Ontario Oct30	Ontario	10/1/2030	25.21821	OffPeak
East	EONOK30u	Ontario Nov30	Ontario	11/1/2030	33.561542	OffPeak
East	EONOL30u	Ontario Dec30	Ontario	12/1/2030	47.991808	OffPeak
East	EONOA31u	Ontario Jan31	Ontario	1/1/2031	37.481483	OffPeak
East	EONOB31u	Ontario Feb31	Ontario	2/1/2031	33.699557	OffPeak
East	EONOC31u	Ontario Mar31	Ontario	3/1/2031	42.77897	OffPeak
East	EONOD31u	Ontario Apr31	Ontario	4/1/2031	28.40207	OffPeak
East	EONOE31u	Ontario May31	Ontario	5/1/2031	35.59052	OffPeak
East	EONOF31u	Ontario Jun31	Ontario	6/1/2031	35.59052	OffPeak
East	EONOG31u	Ontario Jul31	Ontario	7/1/2031	36.914644	OffPeak
East	EONOH31u	Ontario Aug31	Ontario	8/1/2031	34.266396	OffPeak
East	EONOI31u	Ontario Sep31	Ontario	9/1/2031	35.59052	OffPeak
East	EONOJ31u	Ontario Oct31	Ontario	10/1/2031	25.21821	OffPeak
East	EONOK31u	Ontario Nov31	Ontario	11/1/2031	33.561543	OffPeak
East	EONOL31u	Ontario Dec31	Ontario	12/1/2031	47.991807	OffPeak
East	EONOA32u	Ontario Jan32	Ontario	1/1/2032	38.646438	OffPeak
East	EONOB32u	Ontario Feb32	Ontario	2/1/2032	34.746966	OffPeak



East	EONOC32u	Ontario Mar32	Ontario	3/1/2032	44.108575 OffPeak
East	EONOD32u	Ontario Apr32	Ontario	4/1/2032	29.284829 OffPeak
East	EONOE32u	Ontario May32	Ontario	5/1/2032	36.696702 OffPeak
East	EONOF32u	Ontario Jun32	Ontario	6/1/2032	36.696702 OffPeak
East	EONOG32u	Ontario Jul32	Ontario	7/1/2032	38.06198 OffPeak
East	EONOH32u	Ontario Aug32	Ontario	8/1/2032	35.331423 OffPeak
East	EONOI32u	Ontario Sep32	Ontario	9/1/2032	36.696702 OffPeak
East	EONOJ32u	Ontario Oct32	Ontario	10/1/2032	26.002013 OffPeak
East	EONOK32u	Ontario Nov32	Ontario	11/1/2032	34.604662 OffPeak
East	EONOL32u	Ontario Dec32	Ontario	12/1/2032	49.483431 OffPeak
East	EONOA33u	Ontario Jan33	Ontario	1/1/2033	40.398287 OffPeak
East	EONOB33u	Ontario Feb33	Ontario	2/1/2033	36.322052 OffPeak
East	EONOC33u	Ontario Mar33	Ontario	3/1/2033	46.108024 OffPeak
East	EONOD33u	Ontario Apr33	Ontario	4/1/2033	30.612315 OffPeak
East	EONOE33u	Ontario May33	Ontario	5/1/2033	38.360169 OffPeak
East	EPCMB00u	PJM PECO Zone M2M BOM	PJM PECO Zone	5/12/2023	22.07 Peak
East	EPCMF23u	PJM PECO Zone Jun23	PJM PECO Zone	6/1/2023	26.05 Peak
East	EPCMG23u	PJM PECO Zone Jul23	PJM PECO Zone	7/1/2023	48.7 Peak
East	EPCMH23u	PJM PECO Zone Aug23	PJM PECO Zone	8/1/2023	44.65 Peak
East	EPCMI23u	PJM PECO Zone Sep23	PJM PECO Zone	9/1/2023	24.35 Peak
East	EPCMJ23u	PJM PECO Zone Oct23	PJM PECO Zone	10/1/2023	24.65 Peak
East	EPCMK23u	PJM PECO Zone Nov23	PJM PECO Zone	11/1/2023	28.95 Peak
East	EPCML23u	PJM PECO Zone Dec23	PJM PECO Zone	12/1/2023	50.1 Peak
East	EPCMA24u	PJM PECO Zone Jan24	PJM PECO Zone	1/1/2024	83.45 Peak
East	EPCMB24u	PJM PECO Zone Feb24	PJM PECO Zone	2/1/2024	73.5 Peak
East	EPCMC24u	PJM PECO Zone Mar24	PJM PECO Zone	3/1/2024	38.85 Peak
East	EPCMD24u	PJM PECO Zone Apr24	PJM PECO Zone	4/1/2024	31.3 Peak
East	EPCME24u	PJM PECO Zone May24	PJM PECO Zone	5/1/2024	31.25 Peak
East	EPCMF24u	PJM PECO Zone Jun24	PJM PECO Zone	6/1/2024	34.8 Peak
East	EPCMG24u	PJM PECO Zone Jul24	PJM PECO Zone	7/1/2024	55.4 Peak
East	EPCMH24u	PJM PECO Zone Aug24	PJM PECO Zone	8/1/2024	50.15 Peak
East	EPCMI24u	PJM PECO Zone Sep24	PJM PECO Zone	9/1/2024	34.15 Peak
East	EPCMJ24u	PJM PECO Zone Oct24	PJM PECO Zone	10/1/2024	29.55 Peak
East	EPCMK24u	PJM PECO Zone Nov24	PJM PECO Zone	11/1/2024	34.65 Peak
East	EPCML24u	PJM PECO Zone Dec24	PJM PECO Zone	12/1/2024	53.05 Peak
East	EPCMA25u	PJM PECO Zone Jan25	PJM PECO Zone	1/1/2025	87.35 Peak
East	EPCMB25u	PJM PECO Zone Feb25	PJM PECO Zone	2/1/2025	82.35 Peak
East	EPCMC25u	PJM PECO Zone Mar25	PJM PECO Zone	3/1/2025	45.7 Peak
East	EPCMD25u	PJM PECO Zone Apr25	PJM PECO Zone	4/1/2025	37.7 Peak
East	EPCME25u	PJM PECO Zone May25	PJM PECO Zone	5/1/2025	39.6 Peak
East	EPCMF25u	PJM PECO Zone Jun25	PJM PECO Zone	6/1/2025	38.2 Peak
East	EPCMG25u	PJM PECO Zone Jul25	PJM PECO Zone	7/1/2025	55.95 Peak
East	EPCMH25u	PJM PECO Zone Aug25	PJM PECO Zone	8/1/2025	52.5 Peak
East	EPCMI25u	PJM PECO Zone Sep25	PJM PECO Zone	9/1/2025	36.95 Peak
East	EPCMJ25u	PJM PECO Zone Oct25	PJM PECO Zone	10/1/2025	32.9 Peak
East	EPCMK25u	PJM PECO Zone Nov25	PJM PECO Zone	11/1/2025	35.35 Peak
East	EPCML25u	PJM PECO Zone Dec25	PJM PECO Zone	12/1/2025	49.6 Peak
East	EPCMA26u	PJM PECO Zone Jan26	PJM PECO Zone	1/1/2026	85.65 Peak
East	EPCMB26u	PJM PECO Zone Feb26	PJM PECO Zone	2/1/2026	78.85 Peak
East	EPCMC26u	PJM PECO Zone Mar26	PJM PECO Zone	3/1/2026	47.55 Peak
East	EPCMD26u	PJM PECO Zone Apr26	PJM PECO Zone	4/1/2026	39.65 Peak
East	EPCME26u	PJM PECO Zone May26	PJM PECO Zone	5/1/2026	41.35 Peak
East	EPCMF26u	PJM PECO Zone Jun26	PJM PECO Zone	6/1/2026	48.35 Peak
East	EPCMG26u	PJM PECO Zone Jul26	PJM PECO Zone	7/1/2026	70.35 Peak
East	EPCMH26u	PJM PECO Zone Aug26	PJM PECO Zone	8/1/2026	64.75 Peak
East	EPCMI26u	PJM PECO Zone Sep26	PJM PECO Zone	9/1/2026	45.55 Peak
East	EPCMJ26u	PJM PECO Zone Oct26	PJM PECO Zone	10/1/2026	40.85 Peak
East	EPCMK26u	PJM PECO Zone Nov26	PJM PECO Zone	11/1/2026	44.35 Peak

East	EPCML26u	PJM PECO Zone Dec26	PJM PECO Zone	12/1/2026	62.1 Peak
East	EPCMA27u	PJM PECO Zone Jan27	PJM PECO Zone	1/1/2027	78.2 Peak
East	EPCMB27u	PJM PECO Zone Feb27	PJM PECO Zone	2/1/2027	72.85 Peak
East	EPCMC27u	PJM PECO Zone Mar27	PJM PECO Zone	3/1/2027	49.2 Peak
East	EPCMD27u	PJM PECO Zone Apr27	PJM PECO Zone	4/1/2027	41.05 Peak
East	EPCME27u	PJM PECO Zone May27	PJM PECO Zone	5/1/2027	40.6 Peak
East	EPCMF27u	PJM PECO Zone Jun27	PJM PECO Zone	6/1/2027	40.25 Peak
East	EPCMG27u	PJM PECO Zone Jul27	PJM PECO Zone	7/1/2027	61.2 Peak
East	EPCMH27u	PJM PECO Zone Aug27	PJM PECO Zone	8/1/2027	57.2 Peak
East	EPCMI27u	PJM PECO Zone Sep27	PJM PECO Zone	9/1/2027	41.1 Peak
East	EPCMJ27u	PJM PECO Zone Oct27	PJM PECO Zone	10/1/2027	40.3 Peak
East	EPCMK27u	PJM PECO Zone Nov27	PJM PECO Zone	11/1/2027	41.45 Peak
East	EPCML27u	PJM PECO Zone Dec27	PJM PECO Zone	12/1/2027	49.3 Peak
East	EPCMA28u	PJM PECO Zone Jan28	PJM PECO Zone	1/1/2028	90.681149 Peak
East	EPCMB28u	PJM PECO Zone Feb28	PJM PECO Zone	2/1/2028	84.518851 Peak
East	EPCMC28u	PJM PECO Zone Mar28	PJM PECO Zone	3/1/2028	59.35248 Peak
East	EPCMD28u	PJM PECO Zone Apr28	PJM PECO Zone	4/1/2028	49.64752 Peak
East	EPCME28u	PJM PECO Zone May28	PJM PECO Zone	5/1/2028	48.6 Peak
East	EPCMF28u	PJM PECO Zone Jun28	PJM PECO Zone	6/1/2028	48.5 Peak
East	EPCMG28u	PJM PECO Zone Jul28	PJM PECO Zone	7/1/2028	63.514174 Peak
East	EPCMH28u	PJM PECO Zone Aug28	PJM PECO Zone	8/1/2028	59.435826 Peak
East	EPCMI28u	PJM PECO Zone Sep28	PJM PECO Zone	9/1/2028	49.9 Peak
East	EPCMJ28u	PJM PECO Zone Oct28	PJM PECO Zone	10/1/2028	48.466406 Peak
East	EPCMK28u	PJM PECO Zone Nov28	PJM PECO Zone	11/1/2028	49.878836 Peak
East	EPCML28u	PJM PECO Zone Dec28	PJM PECO Zone	12/1/2028	59.154758 Peak
East	EPCMA29u	PJM PECO Zone Jan29	PJM PECO Zone	1/1/2029	91.302253 Peak
East	EPCMB29u	PJM PECO Zone Feb29	PJM PECO Zone	2/1/2029	85.097747 Peak
East	EPCMC29u	PJM PECO Zone Mar29	PJM PECO Zone	3/1/2029	59.651965 Peak
East	EPCMD29u	PJM PECO Zone Apr29	PJM PECO Zone	4/1/2029	49.898035 Peak
East	EPCME29u	PJM PECO Zone May29	PJM PECO Zone	5/1/2029	48.85 Peak
East	EPCMF29u	PJM PECO Zone Jun29	PJM PECO Zone	6/1/2029	48.8 Peak
East	EPCMG29u	PJM PECO Zone Jul29	PJM PECO Zone	7/1/2029	63.772467 Peak
East	EPCMH29u	PJM PECO Zone Aug29	PJM PECO Zone	8/1/2029	59.677533 Peak
East	EPCMI29u	PJM PECO Zone Sep29	PJM PECO Zone	9/1/2029	50.3 Peak
East	EPCMJ29u	PJM PECO Zone Oct29	PJM PECO Zone	10/1/2029	48.958763 Peak
East	EPCMK29u	PJM PECO Zone Nov29	PJM PECO Zone	11/1/2029	50.385542 Peak
East	EPCML29u	PJM PECO Zone Dec29	PJM PECO Zone	12/1/2029	59.755695 Peak
East	EPCMA30u	PJM PECO Zone Jan30	PJM PECO Zone	1/1/2030	92.104511 Peak
East	EPCMB30u	PJM PECO Zone Feb30	PJM PECO Zone	2/1/2030	85.845489 Peak
East	EPCMC30u	PJM PECO Zone Mar30	PJM PECO Zone	3/1/2030	60.033128 Peak
East	EPCMD30u	PJM PECO Zone Apr30	PJM PECO Zone	4/1/2030	50.216872 Peak
East	EPCME30u	PJM PECO Zone May30	PJM PECO Zone	5/1/2030	49.25 Peak
East	EPCMF30u	PJM PECO Zone Jun30	PJM PECO Zone	6/1/2030	49.15 Peak
East	EPCMG30u	PJM PECO Zone Jul30	PJM PECO Zone	7/1/2030	64.185736 Peak
East	EPCMH30u	PJM PECO Zone Aug30	PJM PECO Zone	8/1/2030	60.064264 Peak
East	EPCMI30u	PJM PECO Zone Sep30	PJM PECO Zone	9/1/2030	50.7 Peak
East	EPCMJ30u	PJM PECO Zone Oct30	PJM PECO Zone	10/1/2030	49.358804 Peak
East	EPCMK30u	PJM PECO Zone Nov30	PJM PECO Zone	11/1/2030	50.797241 Peak
East	EPCML30u	PJM PECO Zone Dec30	PJM PECO Zone	12/1/2030	60.243956 Peak
East	EPCMA31u	PJM PECO Zone Jan31	PJM PECO Zone	1/1/2031	94.293537 Peak
East	EPCMB31u	PJM PECO Zone Feb31	PJM PECO Zone	2/1/2031	87.885759 Peak
East	EPCMC31u	PJM PECO Zone Mar31	PJM PECO Zone	3/1/2031	61.459921 Peak
East	EPCMD31u	PJM PECO Zone Apr31	PJM PECO Zone	4/1/2031	51.410365 Peak
East	EPCME31u	PJM PECO Zone May31	PJM PECO Zone	5/1/2031	50.420513 Peak
East	EPCMF31u	PJM PECO Zone Jun31	PJM PECO Zone	6/1/2031	50.318137 Peak
East	EPCMG31u	PJM PECO Zone Jul31	PJM PECO Zone	7/1/2031	65.711225 Peak
East	EPCMH31u	PJM PECO Zone Aug31	PJM PECO Zone	8/1/2031	61.491796 Peak
East	EPCMI31u	PJM PECO Zone Sep31	PJM PECO Zone	9/1/2031	51.904975 Peak

East	EPCMJ31u	PJM PECO Zone Oct31	PJM PECO Zone	10/1/2031	50.531903 Peak
East	EPCMK31u	PJM PECO Zone Nov31	PJM PECO Zone	11/1/2031	52.004526 Peak
East	EPCML31u	PJM PECO Zone Dec31	PJM PECO Zone	12/1/2031	61.67576 Peak
East	EPCMA32u	PJM PECO Zone Jan32	PJM PECO Zone	1/1/2032	96.862074 Peak
East	EPCMB32u	PJM PECO Zone Feb32	PJM PECO Zone	2/1/2032	90.279747 Peak
East	EPCMC32u	PJM PECO Zone Mar32	PJM PECO Zone	3/1/2032	63.134076 Peak
East	EPCMD32u	PJM PECO Zone Apr32	PJM PECO Zone	4/1/2032	52.810772 Peak
East	EPCME32u	PJM PECO Zone May32	PJM PECO Zone	5/1/2032	51.793957 Peak
East	EPCMF32u	PJM PECO Zone Jun32	PJM PECO Zone	6/1/2032	51.688792 Peak
East	EPCMG32u	PJM PECO Zone Jul32	PJM PECO Zone	7/1/2032	67.501183 Peak
East	EPCMH32u	PJM PECO Zone Aug32	PJM PECO Zone	8/1/2032	63.16682 Peak
East	EPCMI32u	PJM PECO Zone Sep32	PJM PECO Zone	9/1/2032	53.318855 Peak
East	EPCMJ32u	PJM PECO Zone Oct32	PJM PECO Zone	10/1/2032	51.908382 Peak
East	EPCMK32u	PJM PECO Zone Nov32	PJM PECO Zone	11/1/2032	53.421118 Peak
East	EPCML32u	PJM PECO Zone Dec32	PJM PECO Zone	12/1/2032	63.355793 Peak
East	EPCMA33u	PJM PECO Zone Jan33	PJM PECO Zone	1/1/2033	100.243092 Peak
East	EPCMB33u	PJM PECO Zone Feb33	PJM PECO Zone	2/1/2033	93.431005 Peak
East	EPCMC33u	PJM PECO Zone Mar33	PJM PECO Zone	3/1/2033	65.337801 Peak
East	EPCMD33u	PJM PECO Zone Apr33	PJM PECO Zone	4/1/2033	54.654158 Peak
East	EPCME33u	PJM PECO Zone May33	PJM PECO Zone	5/1/2033	53.60185 Peak
East	EPCOB00u	PJM PECO Zone M2M BOM	PJM PECO Zone	5/12/2023	17.42 OffPeak
East	EPCOF23u	PJM PECO Zone Jun23	PJM PECO Zone	6/1/2023	21.8 OffPeak
East	EPCOG23u	PJM PECO Zone Jul23	PJM PECO Zone	7/1/2023	32.5 OffPeak
East	EPCOH23u	PJM PECO Zone Aug23	PJM PECO Zone	8/1/2023	28.25 OffPeak
East	EPCOI23u	PJM PECO Zone Sep23	PJM PECO Zone	9/1/2023	20.25 OffPeak
East	EPCOJ23u	PJM PECO Zone Oct23	PJM PECO Zone	10/1/2023	22.55 OffPeak
East	EPCOK23u	PJM PECO Zone Nov23	PJM PECO Zone	11/1/2023	27.25 OffPeak
East	EPCOL23u	PJM PECO Zone Dec23	PJM PECO Zone	12/1/2023	44.85 OffPeak
East	EPCOA24u	PJM PECO Zone Jan24	PJM PECO Zone	1/1/2024	73.5 OffPeak
East	EPCOB24u	PJM PECO Zone Feb24	PJM PECO Zone	2/1/2024	67.5 OffPeak
East	EPCOC24u	PJM PECO Zone Mar24	PJM PECO Zone	3/1/2024	35.9 OffPeak
East	EPCOD24u	PJM PECO Zone Apr24	PJM PECO Zone	4/1/2024	26.7 OffPeak
East	EPCOE24u	PJM PECO Zone May24	PJM PECO Zone	5/1/2024	24.3 OffPeak
East	EPCOF24u	PJM PECO Zone Jun24	PJM PECO Zone	6/1/2024	23.3 OffPeak
East	EPCOG24u	PJM PECO Zone Jul24	PJM PECO Zone	7/1/2024	33.2 OffPeak
East	EPCOH24u	PJM PECO Zone Aug24	PJM PECO Zone	8/1/2024	30.1 OffPeak
East	EPCOI24u	PJM PECO Zone Sep24	PJM PECO Zone	9/1/2024	22.7 OffPeak
East	EPCOJ24u	PJM PECO Zone Oct24	PJM PECO Zone	10/1/2024	21.9 OffPeak
East	EPCOK24u	PJM PECO Zone Nov24	PJM PECO Zone	11/1/2024	27.15 OffPeak
East	EPCOL24u	PJM PECO Zone Dec24	PJM PECO Zone	12/1/2024	44.9 OffPeak
East	EPCOA25u	PJM PECO Zone Jan25	PJM PECO Zone	1/1/2025	72.2 OffPeak
East	EPCOB25u	PJM PECO Zone Feb25	PJM PECO Zone	2/1/2025	67.95 OffPeak
East	EPCOC25u	PJM PECO Zone Mar25	PJM PECO Zone	3/1/2025	39 OffPeak
East	EPCOD25u	PJM PECO Zone Apr25	PJM PECO Zone	4/1/2025	28.1 OffPeak
East	EPCOE25u	PJM PECO Zone May25	PJM PECO Zone	5/1/2025	27.05 OffPeak
East	EPCOF25u	PJM PECO Zone Jun25	PJM PECO Zone	6/1/2025	28.55 OffPeak
East	EPCOG25u	PJM PECO Zone Jul25	PJM PECO Zone	7/1/2025	41 OffPeak
East	EPCOH25u	PJM PECO Zone Aug25	PJM PECO Zone	8/1/2025	37.25 OffPeak
East	EPCOI25u	PJM PECO Zone Sep25	PJM PECO Zone	9/1/2025	27.05 OffPeak
East	EPCOJ25u	PJM PECO Zone Oct25	PJM PECO Zone	10/1/2025	28.3 OffPeak
East	EPCOK25u	PJM PECO Zone Nov25	PJM PECO Zone	11/1/2025	31.25 OffPeak
East	EPCOL25u	PJM PECO Zone Dec25	PJM PECO Zone	12/1/2025	46.9 OffPeak
East	EPCOA26u	PJM PECO Zone Jan26	PJM PECO Zone	1/1/2026	76.75 OffPeak
East	EPCOB26u	PJM PECO Zone Feb26	PJM PECO Zone	2/1/2026	70.35 OffPeak
East	EPCOC26u	PJM PECO Zone Mar26	PJM PECO Zone	3/1/2026	40.85 OffPeak
East	EPCOD26u	PJM PECO Zone Apr26	PJM PECO Zone	4/1/2026	31.95 OffPeak
East	EPCOE26u	PJM PECO Zone May26	PJM PECO Zone	5/1/2026	31.8 OffPeak
East	EPCOF26u	PJM PECO Zone Jun26	PJM PECO Zone	6/1/2026	32.9 OffPeak

East	EPCOG26u	PJM PECO Zone Jul26	PJM PECO Zone	7/1/2026	44.5 OffPeak
East	EPCOH26u	PJM PECO Zone Aug26	PJM PECO Zone	8/1/2026	41.3 OffPeak
East	EPCOI26u	PJM PECO Zone Sep26	PJM PECO Zone	9/1/2026	31.75 OffPeak
East	EPCOJ26u	PJM PECO Zone Oct26	PJM PECO Zone	10/1/2026	32.5 OffPeak
East	EPCOK26u	PJM PECO Zone Nov26	PJM PECO Zone	11/1/2026	36.6 OffPeak
East	EPCOL26u	PJM PECO Zone Dec26	PJM PECO Zone	12/1/2026	55.85 OffPeak
East	EPCOA27u	PJM PECO Zone Jan27	PJM PECO Zone	1/1/2027	73.5 OffPeak
East	EPCOB27u	PJM PECO Zone Feb27	PJM PECO Zone	2/1/2027	67.9 OffPeak
East	EPCOC27u	PJM PECO Zone Mar27	PJM PECO Zone	3/1/2027	44.65 OffPeak
East	EPCOD27u	PJM PECO Zone Apr27	PJM PECO Zone	4/1/2027	36.85 OffPeak
East	EPCOE27u	PJM PECO Zone May27	PJM PECO Zone	5/1/2027	32.25 OffPeak
East	EPCOF27u	PJM PECO Zone Jun27	PJM PECO Zone	6/1/2027	31.9 OffPeak
East	EPCOG27u	PJM PECO Zone Jul27	PJM PECO Zone	7/1/2027	40.85 OffPeak
East	EPCOH27u	PJM PECO Zone Aug27	PJM PECO Zone	8/1/2027	36.85 OffPeak
East	EPCOI27u	PJM PECO Zone Sep27	PJM PECO Zone	9/1/2027	32.25 OffPeak
East	EPCOJ27u	PJM PECO Zone Oct27	PJM PECO Zone	10/1/2027	32.7 OffPeak
East	EPCOK27u	PJM PECO Zone Nov27	PJM PECO Zone	11/1/2027	35 OffPeak
East	EPCOL27u	PJM PECO Zone Dec27	PJM PECO Zone	12/1/2027	44.05 OffPeak
East	EPCOA28u	PJM PECO Zone Jan28	PJM PECO Zone	1/1/2028	77.423906 OffPeak
East	EPCOB28u	PJM PECO Zone Feb28	PJM PECO Zone	2/1/2028	71.476094 OffPeak
East	EPCOC28u	PJM PECO Zone Mar28	PJM PECO Zone	3/1/2028	52.326179 OffPeak
East	EPCOD28u	PJM PECO Zone Apr28	PJM PECO Zone	4/1/2028	43.173821 OffPeak
East	EPCOE28u	PJM PECO Zone May28	PJM PECO Zone	5/1/2028	37.65 OffPeak
East	EPCOF28u	PJM PECO Zone Jun28	PJM PECO Zone	6/1/2028	37.6 OffPeak
East	EPCOG28u	PJM PECO Zone Jul28	PJM PECO Zone	7/1/2028	45.347706 OffPeak
East	EPCOH28u	PJM PECO Zone Aug28	PJM PECO Zone	8/1/2028	40.852294 OffPeak
East	EPCOI28u	PJM PECO Zone Sep28	PJM PECO Zone	9/1/2028	37.8 OffPeak
East	EPCOJ28u	PJM PECO Zone Oct28	PJM PECO Zone	10/1/2028	38.354512 OffPeak
East	EPCOK28u	PJM PECO Zone Nov28	PJM PECO Zone	11/1/2028	41.082727 OffPeak
East	EPCOL28u	PJM PECO Zone Dec28	PJM PECO Zone	12/1/2028	51.612761 OffPeak
East	EPCOA29u	PJM PECO Zone Jan29	PJM PECO Zone	1/1/2029	78.255862 OffPeak
East	EPCOB29u	PJM PECO Zone Feb29	PJM PECO Zone	2/1/2029	72.244138 OffPeak
East	EPCOC29u	PJM PECO Zone Mar29	PJM PECO Zone	3/1/2029	53.093267 OffPeak
East	EPCOD29u	PJM PECO Zone Apr29	PJM PECO Zone	4/1/2029	43.806733 OffPeak
East	EPCOE29u	PJM PECO Zone May29	PJM PECO Zone	5/1/2029	38.2 OffPeak
East	EPCOF29u	PJM PECO Zone Jun29	PJM PECO Zone	6/1/2029	38.2 OffPeak
East	EPCOG29u	PJM PECO Zone Jul29	PJM PECO Zone	7/1/2029	46.136819 OffPeak
East	EPCOH29u	PJM PECO Zone Aug29	PJM PECO Zone	8/1/2029	41.563181 OffPeak
East	EPCOI29u	PJM PECO Zone Sep29	PJM PECO Zone	9/1/2029	38.4 OffPeak
East	EPCOJ29u	PJM PECO Zone Oct29	PJM PECO Zone	10/1/2029	38.837419 OffPeak
East	EPCOK29u	PJM PECO Zone Nov29	PJM PECO Zone	11/1/2029	41.599984 OffPeak
East	EPCOL29u	PJM PECO Zone Dec29	PJM PECO Zone	12/1/2029	52.262598 OffPeak
East	EPCOA30u	PJM PECO Zone Jan30	PJM PECO Zone	1/1/2030	79.009822 OffPeak
East	EPCOB30u	PJM PECO Zone Feb30	PJM PECO Zone	2/1/2030	72.940178 OffPeak
East	EPCOC30u	PJM PECO Zone Mar30	PJM PECO Zone	3/1/2030	53.66858 OffPeak
East	EPCOD30u	PJM PECO Zone Apr30	PJM PECO Zone	4/1/2030	44.28142 OffPeak
East	EPCOE30u	PJM PECO Zone May30	PJM PECO Zone	5/1/2030	38.5 OffPeak
East	EPCOF30u	PJM PECO Zone Jun30	PJM PECO Zone	6/1/2030	38.55 OffPeak
East	EPCOG30u	PJM PECO Zone Jul30	PJM PECO Zone	7/1/2030	46.636591 OffPeak
East	EPCOH30u	PJM PECO Zone Aug30	PJM PECO Zone	8/1/2030	42.013409 OffPeak
East	EPCOI30u	PJM PECO Zone Sep30	PJM PECO Zone	9/1/2030	38.7 OffPeak
East	EPCOJ30u	PJM PECO Zone Oct30	PJM PECO Zone	10/1/2030	39.232525 OffPeak
East	EPCOK30u	PJM PECO Zone Nov30	PJM PECO Zone	11/1/2030	42.023194 OffPeak
East	EPCOL30u	PJM PECO Zone Dec30	PJM PECO Zone	12/1/2030	52.794281 OffPeak
East	EPCOA31u	PJM PECO Zone Jan31	PJM PECO Zone	1/1/2031	80.88763 OffPeak
East	EPCOB31u	PJM PECO Zone Feb31	PJM PECO Zone	2/1/2031	74.67373 OffPeak
East	EPCOC31u	PJM PECO Zone Mar31	PJM PECO Zone	3/1/2031	54.944108 OffPeak
East	EPCOD31u	PJM PECO Zone Apr31	PJM PECO Zone	4/1/2031	45.333846 OffPeak

East	EPCOE31u	PJM PECO Zone May31	PJM PECO Zone	5/1/2031	39.41502 OffPeak
East	EPCOF31u	PJM PECO Zone Jun31	PJM PECO Zone	6/1/2031	39.466209 OffPeak
East	EPCOG31u	PJM PECO Zone Jul31	PJM PECO Zone	7/1/2031	47.744992 OffPeak
East	EPCOH31u	PJM PECO Zone Aug31	PJM PECO Zone	8/1/2031	43.011932 OffPeak
East	EPCOI31u	PJM PECO Zone Sep31	PJM PECO Zone	9/1/2031	39.619774 OffPeak
East	EPCOJ31u	PJM PECO Zone Oct31	PJM PECO Zone	10/1/2031	40.164956 OffPeak
East	EPCOK31u	PJM PECO Zone Nov31	PJM PECO Zone	11/1/2031	43.021948 OffPeak
East	EPCOL31u	PJM PECO Zone Dec31	PJM PECO Zone	12/1/2031	54.049031 OffPeak
East	EPCOA32u	PJM PECO Zone Jan32	PJM PECO Zone	1/1/2032	83.090991 OffPeak
East	EPCOB32u	PJM PECO Zone Feb32	PJM PECO Zone	2/1/2032	76.707827 OffPeak
East	EPCOC32u	PJM PECO Zone Mar32	PJM PECO Zone	3/1/2032	56.440775 OffPeak
East	EPCOD32u	PJM PECO Zone Apr32	PJM PECO Zone	4/1/2032	46.56873 OffPeak
East	EPCOE32u	PJM PECO Zone May32	PJM PECO Zone	5/1/2032	40.488677 OffPeak
East	EPCOF32u	PJM PECO Zone Jun32	PJM PECO Zone	6/1/2032	40.54126 OffPeak
East	EPCOG32u	PJM PECO Zone Jul32	PJM PECO Zone	7/1/2032	49.045555 OffPeak
East	EPCOH32u	PJM PECO Zone Aug32	PJM PECO Zone	8/1/2032	44.183568 OffPeak
East	EPCOI32u	PJM PECO Zone Sep32	PJM PECO Zone	9/1/2032	40.699008 OffPeak
East	EPCOJ32u	PJM PECO Zone Oct32	PJM PECO Zone	10/1/2032	41.259039 OffPeak
East	EPCOK32u	PJM PECO Zone Nov32	PJM PECO Zone	11/1/2032	44.193858 OffPeak
East	EPCOL32u	PJM PECO Zone Dec32	PJM PECO Zone	12/1/2032	55.521315 OffPeak
East	EPCOA33u	PJM PECO Zone Jan33	PJM PECO Zone	1/1/2033	85.991323 OffPeak
East	EPCOB33u	PJM PECO Zone Feb33	PJM PECO Zone	2/1/2033	79.38535 OffPeak
East	EPCOC33u	PJM PECO Zone Mar33	PJM PECO Zone	3/1/2033	58.410866 OffPeak
East	EPCOD33u	PJM PECO Zone Apr33	PJM PECO Zone	4/1/2033	48.194235 OffPeak
East	EPCOE33u	PJM PECO Zone May33	PJM PECO Zone	5/1/2033	41.901954 OffPeak
East	EJNAB00u	PJM PENELEC M2M BOM	PJM PENELEC	5/12/2023	32.27 Peak
East	EJNAF23u	PJM PENELEC Jun23	PJM PENELEC	6/1/2023	37.2 Peak
East	EJNAG23u	PJM PENELEC Jul23	PJM PENELEC	7/1/2023	53.25 Peak
East	EJNAH23u	PJM PENELEC Aug23	PJM PENELEC	8/1/2023	49.15 Peak
East	EJNAI23u	PJM PENELEC Sep23	PJM PENELEC	9/1/2023	38.55 Peak
East	EJNAJ23u	PJM PENELEC Oct23	PJM PENELEC	10/1/2023	31.7 Peak
East	EJNAK23u	PJM PENELEC Nov23	PJM PENELEC	11/1/2023	36.7 Peak
East	EJNAL23u	PJM PENELEC Dec23	PJM PENELEC	12/1/2023	50.9 Peak
East	EJNAA24u	PJM PENELEC Jan24	PJM PENELEC	1/1/2024	80.05 Peak
East	EJNAB24u	PJM PENELEC Feb24	PJM PENELEC	2/1/2024	70.2 Peak
East	EJNAC24u	PJM PENELEC Mar24	PJM PENELEC	3/1/2024	46.9 Peak
East	EJNAD24u	PJM PENELEC Apr24	PJM PENELEC	4/1/2024	40 Peak
East	EJNAE24u	PJM PENELEC May24	PJM PENELEC	5/1/2024	39.65 Peak
East	EJNAF24u	PJM PENELEC Jun24	PJM PENELEC	6/1/2024	40.25 Peak
East	EJNAG24u	PJM PENELEC Jul24	PJM PENELEC	7/1/2024	58.95 Peak
East	EJNAH24u	PJM PENELEC Aug24	PJM PENELEC	8/1/2024	53.65 Peak
East	EJNAI24u	PJM PENELEC Sep24	PJM PENELEC	9/1/2024	40.7 Peak
East	EJNAJ24u	PJM PENELEC Oct24	PJM PENELEC	10/1/2024	36.45 Peak
East	EJNAK24u	PJM PENELEC Nov24	PJM PENELEC	11/1/2024	41.1 Peak
East	EJNAL24u	PJM PENELEC Dec24	PJM PENELEC	12/1/2024	54.95 Peak
East	EJNAA25u	PJM PENELEC Jan25	PJM PENELEC	1/1/2025	80.05 Peak
East	EJNAB25u	PJM PENELEC Feb25	PJM PENELEC	2/1/2025	74.9 Peak
East	EJNAC25u	PJM PENELEC Mar25	PJM PENELEC	3/1/2025	49.35 Peak
East	EJNAD25u	PJM PENELEC Apr25	PJM PENELEC	4/1/2025	42.75 Peak
East	EJNAE25u	PJM PENELEC May25	PJM PENELEC	5/1/2025	44.15 Peak
East	EJNAF25u	PJM PENELEC Jun25	PJM PENELEC	6/1/2025	48.2 Peak
East	EJNAG25u	PJM PENELEC Jul25	PJM PENELEC	7/1/2025	66.9 Peak
East	EJNAH25u	PJM PENELEC Aug25	PJM PENELEC	8/1/2025	62.75 Peak
East	EJNAI25u	PJM PENELEC Sep25	PJM PENELEC	9/1/2025	47.95 Peak
East	EJNAJ25u	PJM PENELEC Oct25	PJM PENELEC	10/1/2025	43.4 Peak
East	EJNAK25u	PJM PENELEC Nov25	PJM PENELEC	11/1/2025	46.15 Peak
East	EJNAL25u	PJM PENELEC Dec25	PJM PENELEC	12/1/2025	58.3 Peak
East	EJNAA26u	PJM PENELEC Jan26	PJM PENELEC	1/1/2026	84.35 Peak

East	EJNAB26u	PJM PENELEC Feb26	PJM PENELEC	2/1/2026	77.3 Peak
East	EJNAC26u	PJM PENELEC Mar26	PJM PENELEC	3/1/2026	50.6 Peak
East	EJNAD26u	PJM PENELEC Apr26	PJM PENELEC	4/1/2026	44.7 Peak
East	EJNAE26u	PJM PENELEC May26	PJM PENELEC	5/1/2026	46.3 Peak
East	EJNAF26u	PJM PENELEC Jun26	PJM PENELEC	6/1/2026	50.85 Peak
East	EJNAG26u	PJM PENELEC Jul26	PJM PENELEC	7/1/2026	70.45 Peak
East	EJNAH26u	PJM PENELEC Aug26	PJM PENELEC	8/1/2026	64.85 Peak
East	EJNAI26u	PJM PENELEC Sep26	PJM PENELEC	9/1/2026	49.05 Peak
East	EJNAJ26u	PJM PENELEC Oct26	PJM PENELEC	10/1/2026	44.5 Peak
East	EJNAK26u	PJM PENELEC Nov26	PJM PENELEC	11/1/2026	47.8 Peak
East	EJNAL26u	PJM PENELEC Dec26	PJM PENELEC	12/1/2026	61.5 Peak
East	EJNAA27u	PJM PENELEC Jan27	PJM PENELEC	1/1/2027	86.4 Peak
East	EJNAB27u	PJM PENELEC Feb27	PJM PENELEC	2/1/2027	80 Peak
East	EJNAC27u	PJM PENELEC Mar27	PJM PENELEC	3/1/2027	58.5 Peak
East	EJNAD27u	PJM PENELEC Apr27	PJM PENELEC	4/1/2027	51.4 Peak
East	EJNAE27u	PJM PENELEC May27	PJM PENELEC	5/1/2027	50.8 Peak
East	EJNAF27u	PJM PENELEC Jun27	PJM PENELEC	6/1/2027	49.95 Peak
East	EJNAG27u	PJM PENELEC Jul27	PJM PENELEC	7/1/2027	71.75 Peak
East	EJNAH27u	PJM PENELEC Aug27	PJM PENELEC	8/1/2027	67.05 Peak
East	EJNAI27u	PJM PENELEC Sep27	PJM PENELEC	9/1/2027	51.85 Peak
East	EJNAJ27u	PJM PENELEC Oct27	PJM PENELEC	10/1/2027	51.25 Peak
East	EJNAK27u	PJM PENELEC Nov27	PJM PENELEC	11/1/2027	52.2 Peak
East	EJNAL27u	PJM PENELEC Dec27	PJM PENELEC	12/1/2027	57.25 Peak
East	EJNAA28u	PJM PENELEC Jan28	PJM PENELEC	1/1/2028	87.741908 Peak
East	EJNAB28u	PJM PENELEC Feb28	PJM PENELEC	2/1/2028	81.308092 Peak
East	EJNAC28u	PJM PENELEC Mar28	PJM PENELEC	3/1/2028	61.653267 Peak
East	EJNAD28u	PJM PENELEC Apr28	PJM PENELEC	4/1/2028	54.246733 Peak
East	EJNAE28u	PJM PENELEC May28	PJM PENELEC	5/1/2028	53.05 Peak
East	EJNAF28u	PJM PENELEC Jun28	PJM PENELEC	6/1/2028	52.5 Peak
East	EJNAG28u	PJM PENELEC Jul28	PJM PENELEC	7/1/2028	65.391625 Peak
East	EJNAH28u	PJM PENELEC Aug28	PJM PENELEC	8/1/2028	61.158375 Peak
East	EJNAI28u	PJM PENELEC Sep28	PJM PENELEC	9/1/2028	54.85 Peak
East	EJNAJ28u	PJM PENELEC Oct28	PJM PENELEC	10/1/2028	53.752191 Peak
East	EJNAK28u	PJM PENELEC Nov28	PJM PENELEC	11/1/2028	54.804523 Peak
East	EJNAL28u	PJM PENELEC Dec28	PJM PENELEC	12/1/2028	60.043286 Peak
East	EJNAA29u	PJM PENELEC Jan29	PJM PENELEC	1/1/2029	88.572355 Peak
East	EJNAB29u	PJM PENELEC Feb29	PJM PENELEC	2/1/2029	82.077645 Peak
East	EJNAC29u	PJM PENELEC Mar29	PJM PENELEC	3/1/2029	62.185221 Peak
East	EJNAD29u	PJM PENELEC Apr29	PJM PENELEC	4/1/2029	54.714779 Peak
East	EJNAE29u	PJM PENELEC May29	PJM PENELEC	5/1/2029	53.55 Peak
East	EJNAF29u	PJM PENELEC Jun29	PJM PENELEC	6/1/2029	53 Peak
East	EJNAG29u	PJM PENELEC Jul29	PJM PENELEC	7/1/2029	65.908351 Peak
East	EJNAH29u	PJM PENELEC Aug29	PJM PENELEC	8/1/2029	61.641649 Peak
East	EJNAI29u	PJM PENELEC Sep29	PJM PENELEC	9/1/2029	55.5 Peak
East	EJNAJ29u	PJM PENELEC Oct29	PJM PENELEC	10/1/2029	54.485465 Peak
East	EJNAK29u	PJM PENELEC Nov29	PJM PENELEC	11/1/2029	55.552153 Peak
East	EJNAL29u	PJM PENELEC Dec29	PJM PENELEC	12/1/2029	60.862382 Peak
East	EJNAA30u	PJM PENELEC Jan30	PJM PENELEC	1/1/2030	89.636365 Peak
East	EJNAB30u	PJM PENELEC Feb30	PJM PENELEC	2/1/2030	83.063635 Peak
East	EJNAC30u	PJM PENELEC Mar30	PJM PENELEC	3/1/2030	62.823563 Peak
East	EJNAD30u	PJM PENELEC Apr30	PJM PENELEC	4/1/2030	55.276437 Peak
East	EJNAE30u	PJM PENELEC May30	PJM PENELEC	5/1/2030	54.2 Peak
East	EJNAF30u	PJM PENELEC Jun30	PJM PENELEC	6/1/2030	53.55 Peak
East	EJNAG30u	PJM PENELEC Jul30	PJM PENELEC	7/1/2030	66.554257 Peak
East	EJNAH30u	PJM PENELEC Aug30	PJM PENELEC	8/1/2030	62.245743 Peak
East	EJNAI30u	PJM PENELEC Sep30	PJM PENELEC	9/1/2030	56.15 Peak
East	EJNAJ30u	PJM PENELEC Oct30	PJM PENELEC	10/1/2030	55.139035 Peak
East	EJNAK30u	PJM PENELEC Nov30	PJM PENELEC	11/1/2030	56.218519 Peak

East	EJNAL30u	PJM PENELEC Dec30	PJM PENELEC	12/1/2030	61.592445 Peak
East	EJNAA31u	PJM PENELEC Jan31	PJM PENELEC	1/1/2031	91.766732 Peak
East	EJNAB31u	PJM PENELEC Feb31	PJM PENELEC	2/1/2031	85.037788 Peak
East	EJNAC31u	PJM PENELEC Mar31	PJM PENELEC	3/1/2031	64.316675 Peak
East	EJNAD31u	PJM PENELEC Apr31	PJM PENELEC	4/1/2031	56.59018 Peak
East	EJNAE31u	PJM PENELEC May31	PJM PENELEC	5/1/2031	55.488159 Peak
East	EJNAF31u	PJM PENELEC Jun31	PJM PENELEC	6/1/2031	54.82271 Peak
East	EJNAG31u	PJM PENELEC Jul31	PJM PENELEC	7/1/2031	68.136037 Peak
East	EJNAH31u	PJM PENELEC Aug31	PJM PENELEC	8/1/2031	63.725123 Peak
East	EJNAI31u	PJM PENELEC Sep31	PJM PENELEC	9/1/2031	57.484504 Peak
East	EJNAJ31u	PJM PENELEC Oct31	PJM PENELEC	10/1/2031	56.449512 Peak
East	EJNAK31u	PJM PENELEC Nov31	PJM PENELEC	11/1/2031	57.554652 Peak
East	EJNAL31u	PJM PENELEC Dec31	PJM PENELEC	12/1/2031	63.056298 Peak
East	EJNAA32u	PJM PENELEC Jan32	PJM PENELEC	1/1/2032	94.266437 Peak
East	EJNAB32u	PJM PENELEC Feb32	PJM PENELEC	2/1/2032	87.354199 Peak
East	EJNAC32u	PJM PENELEC Mar32	PJM PENELEC	3/1/2032	66.068647 Peak
East	EJNAD32u	PJM PENELEC Apr32	PJM PENELEC	4/1/2032	58.131684 Peak
East	EJNAE32u	PJM PENELEC May32	PJM PENELEC	5/1/2032	56.999644 Peak
East	EJNAF32u	PJM PENELEC Jun32	PJM PENELEC	6/1/2032	56.316069 Peak
East	EJNAG32u	PJM PENELEC Jul32	PJM PENELEC	7/1/2032	69.992048 Peak
East	EJNAH32u	PJM PENELEC Aug32	PJM PENELEC	8/1/2032	65.460981 Peak
East	EJNAI32u	PJM PENELEC Sep32	PJM PENELEC	9/1/2032	59.050369 Peak
East	EJNAJ32u	PJM PENELEC Oct32	PJM PENELEC	10/1/2032	57.987184 Peak
East	EJNAK32u	PJM PENELEC Nov32	PJM PENELEC	11/1/2032	59.122428 Peak
East	EJNAL32u	PJM PENELEC Dec32	PJM PENELEC	12/1/2032	64.773939 Peak
East	EJNAA33u	PJM PENELEC Jan33	PJM PENELEC	1/1/2033	97.556853 Peak
East	EJNAB33u	PJM PENELEC Feb33	PJM PENELEC	2/1/2033	90.40334 Peak
East	EJNAC33u	PJM PENELEC Mar33	PJM PENELEC	3/1/2033	68.374806 Peak
East	EJNAD33u	PJM PENELEC Apr33	PJM PENELEC	4/1/2033	60.160799 Peak
East	EJNAE33u	PJM PENELEC May33	PJM PENELEC	5/1/2033	58.989244 Peak
East	EJNCB00u	PJM PENELEC M2M BOM	PJM PENELEC	5/12/2023	25.27 OffPeak
East	EJNCF23u	PJM PENELEC Jun23	PJM PENELEC	6/1/2023	25.5 OffPeak
East	EJNCG23u	PJM PENELEC Jul23	PJM PENELEC	7/1/2023	35.2 OffPeak
East	EJNCH23u	PJM PENELEC Aug23	PJM PENELEC	8/1/2023	31.1 OffPeak
East	EJNCI23u	PJM PENELEC Sep23	PJM PENELEC	9/1/2023	26.9 OffPeak
East	EJNCJ23u	PJM PENELEC Oct23	PJM PENELEC	10/1/2023	25.45 OffPeak
East	EJNCK23u	PJM PENELEC Nov23	PJM PENELEC	11/1/2023	31.85 OffPeak
East	EJNCL23u	PJM PENELEC Dec23	PJM PENELEC	12/1/2023	47.4 OffPeak
East	EJNCA24u	PJM PENELEC Jan24	PJM PENELEC	1/1/2024	74.25 OffPeak
East	EJNCB24u	PJM PENELEC Feb24	PJM PENELEC	2/1/2024	68.1 OffPeak
East	EJNCC24u	PJM PENELEC Mar24	PJM PENELEC	3/1/2024	42.35 OffPeak
East	EJNCD24u	PJM PENELEC Apr24	PJM PENELEC	4/1/2024	33.15 OffPeak
East	EJNCE24u	PJM PENELEC May24	PJM PENELEC	5/1/2024	30.55 OffPeak
East	EJNCF24u	PJM PENELEC Jun24	PJM PENELEC	6/1/2024	29.35 OffPeak
East	EJNCG24u	PJM PENELEC Jul24	PJM PENELEC	7/1/2024	38.45 OffPeak
East	EJNCH24u	PJM PENELEC Aug24	PJM PENELEC	8/1/2024	35.25 OffPeak
East	EJNCI24u	PJM PENELEC Sep24	PJM PENELEC	9/1/2024	29.55 OffPeak
East	EJNCJ24u	PJM PENELEC Oct24	PJM PENELEC	10/1/2024	28.6 OffPeak
East	EJNCK24u	PJM PENELEC Nov24	PJM PENELEC	11/1/2024	33.9 OffPeak
East	EJNCL24u	PJM PENELEC Dec24	PJM PENELEC	12/1/2024	49.15 OffPeak
East	EJNCA25u	PJM PENELEC Jan25	PJM PENELEC	1/1/2025	74.8 OffPeak
East	EJNCB25u	PJM PENELEC Feb25	PJM PENELEC	2/1/2025	70 OffPeak
East	EJNCC25u	PJM PENELEC Mar25	PJM PENELEC	3/1/2025	44.15 OffPeak
East	EJNCD25u	PJM PENELEC Apr25	PJM PENELEC	4/1/2025	33.95 OffPeak
East	EJNCE25u	PJM PENELEC May25	PJM PENELEC	5/1/2025	32.4 OffPeak
East	EJNCF25u	PJM PENELEC Jun25	PJM PENELEC	6/1/2025	34.55 OffPeak
East	EJNCG25u	PJM PENELEC Jul25	PJM PENELEC	7/1/2025	46.4 OffPeak
East	EJNCH25u	PJM PENELEC Aug25	PJM PENELEC	8/1/2025	42.2 OffPeak

East	EJNCI25u	PJM PENELEC Sep25	PJM PENELEC	9/1/2025	33.6 OffPeak
East	EJNCJ25u	PJM PENELEC Oct25	PJM PENELEC	10/1/2025	34.75 OffPeak
East	EJNCK25u	PJM PENELEC Nov25	PJM PENELEC	11/1/2025	37.35 OffPeak
East	EJNCL25u	PJM PENELEC Dec25	PJM PENELEC	12/1/2025	51.8 OffPeak
East	EJNCA26u	PJM PENELEC Jan26	PJM PENELEC	1/1/2026	75.2 OffPeak
East	EJNCB26u	PJM PENELEC Feb26	PJM PENELEC	2/1/2026	68.6 OffPeak
East	EJNCC26u	PJM PENELEC Mar26	PJM PENELEC	3/1/2026	42.75 OffPeak
East	EJNCD26u	PJM PENELEC Apr26	PJM PENELEC	4/1/2026	35.45 OffPeak
East	EJNCE26u	PJM PENELEC May26	PJM PENELEC	5/1/2026	35.05 OffPeak
East	EJNCF26u	PJM PENELEC Jun26	PJM PENELEC	6/1/2026	34.2 OffPeak
East	EJNCG26u	PJM PENELEC Jul26	PJM PENELEC	7/1/2026	43.75 OffPeak
East	EJNCH26u	PJM PENELEC Aug26	PJM PENELEC	8/1/2026	40.7 OffPeak
East	EJNCI26u	PJM PENELEC Sep26	PJM PENELEC	9/1/2026	33.65 OffPeak
East	EJNCJ26u	PJM PENELEC Oct26	PJM PENELEC	10/1/2026	34.05 OffPeak
East	EJNCK26u	PJM PENELEC Nov26	PJM PENELEC	11/1/2026	37.55 OffPeak
East	EJNCL26u	PJM PENELEC Dec26	PJM PENELEC	12/1/2026	53.35 OffPeak
East	EJNCA27u	PJM PENELEC Jan27	PJM PENELEC	1/1/2027	76.65 OffPeak
East	EJNCB27u	PJM PENELEC Feb27	PJM PENELEC	2/1/2027	70.35 OffPeak
East	EJNCC27u	PJM PENELEC Mar27	PJM PENELEC	3/1/2027	49.6 OffPeak
East	EJNCD27u	PJM PENELEC Apr27	PJM PENELEC	4/1/2027	42.9 OffPeak
East	EJNCE27u	PJM PENELEC May27	PJM PENELEC	5/1/2027	37.65 OffPeak
East	EJNCF27u	PJM PENELEC Jun27	PJM PENELEC	6/1/2027	37.1 OffPeak
East	EJNCG27u	PJM PENELEC Jul27	PJM PENELEC	7/1/2027	45 OffPeak
East	EJNCH27u	PJM PENELEC Aug27	PJM PENELEC	8/1/2027	40.7 OffPeak
East	EJNCI27u	PJM PENELEC Sep27	PJM PENELEC	9/1/2027	38.1 OffPeak
East	EJNCJ27u	PJM PENELEC Oct27	PJM PENELEC	10/1/2027	38.35 OffPeak
East	EJNCK27u	PJM PENELEC Nov27	PJM PENELEC	11/1/2027	40.25 OffPeak
East	EJNCL27u	PJM PENELEC Dec27	PJM PENELEC	12/1/2027	46.85 OffPeak
East	EJNCA28u	PJM PENELEC Jan28	PJM PENELEC	1/1/2028	71.616875 OffPeak
East	EJNCB28u	PJM PENELEC Feb28	PJM PENELEC	2/1/2028	65.683125 OffPeak
East	EJNCC28u	PJM PENELEC Mar28	PJM PENELEC	3/1/2028	51.745835 OffPeak
East	EJNCD28u	PJM PENELEC Apr28	PJM PENELEC	4/1/2028	44.754165 OffPeak
East	EJNCE28u	PJM PENELEC May28	PJM PENELEC	5/1/2028	39.2 OffPeak
East	EJNCF28u	PJM PENELEC Jun28	PJM PENELEC	6/1/2028	38.85 OffPeak
East	EJNCG28u	PJM PENELEC Jul28	PJM PENELEC	7/1/2028	44.521547 OffPeak
East	EJNCH28u	PJM PENELEC Aug28	PJM PENELEC	8/1/2028	40.228453 OffPeak
East	EJNCI28u	PJM PENELEC Sep28	PJM PENELEC	9/1/2028	39.75 OffPeak
East	EJNCJ28u	PJM PENELEC Oct28	PJM PENELEC	10/1/2028	40.0479 OffPeak
East	EJNCK28u	PJM PENELEC Nov28	PJM PENELEC	11/1/2028	42.073425 OffPeak
East	EJNCL28u	PJM PENELEC Dec28	PJM PENELEC	12/1/2028	48.928675 OffPeak
East	EJNCA29u	PJM PENELEC Jan29	PJM PENELEC	1/1/2029	71.356072 OffPeak
East	EJNCB29u	PJM PENELEC Feb29	PJM PENELEC	2/1/2029	65.443928 OffPeak
East	EJNCC29u	PJM PENELEC Mar29	PJM PENELEC	3/1/2029	51.745835 OffPeak
East	EJNCD29u	PJM PENELEC Apr29	PJM PENELEC	4/1/2029	44.754165 OffPeak
East	EJNCE29u	PJM PENELEC May29	PJM PENELEC	5/1/2029	39.15 OffPeak
East	EJNCF29u	PJM PENELEC Jun29	PJM PENELEC	6/1/2029	38.9 OffPeak
East	EJNCG29u	PJM PENELEC Jul29	PJM PENELEC	7/1/2029	44.652879 OffPeak
East	EJNCH29u	PJM PENELEC Aug29	PJM PENELEC	8/1/2029	40.347121 OffPeak
East	EJNCI29u	PJM PENELEC Sep29	PJM PENELEC	9/1/2029	39.75 OffPeak
East	EJNCJ29u	PJM PENELEC Oct29	PJM PENELEC	10/1/2029	39.986781 OffPeak
East	EJNCK29u	PJM PENELEC Nov29	PJM PENELEC	11/1/2029	42.009215 OffPeak
East	EJNCL29u	PJM PENELEC Dec29	PJM PENELEC	12/1/2029	48.854004 OffPeak
East	EJNCA30u	PJM PENELEC Jan30	PJM PENELEC	1/1/2030	71.069186 OffPeak
East	EJNCB30u	PJM PENELEC Feb30	PJM PENELEC	2/1/2030	65.180814 OffPeak
East	EJNCC30u	PJM PENELEC Mar30	PJM PENELEC	3/1/2030	51.61178 OffPeak
East	EJNCD30u	PJM PENELEC Apr30	PJM PENELEC	4/1/2030	44.63822 OffPeak
East	EJNCE30u	PJM PENELEC May30	PJM PENELEC	5/1/2030	38.95 OffPeak
East	EJNCF30u	PJM PENELEC Jun30	PJM PENELEC	6/1/2030	38.75 OffPeak



East	EJNCG30u	PJM PENELEC Jul30	PJM PENELEC	7/1/2030	44.521547 OffPeak
East	EJNCH30u	PJM PENELEC Aug30	PJM PENELEC	8/1/2030	40.228453 OffPeak
East	EJNCI30u	PJM PENELEC Sep30	PJM PENELEC	9/1/2030	39.5 OffPeak
East	EJNCJ30u	PJM PENELEC Oct30	PJM PENELEC	10/1/2030	39.818706 OffPeak
East	EJNCK30u	PJM PENELEC Nov30	PJM PENELEC	11/1/2030	41.832637 OffPeak
East	EJNCL30u	PJM PENELEC Dec30	PJM PENELEC	12/1/2030	48.648657 OffPeak
East	EJNCA31u	PJM PENELEC Jan31	PJM PENELEC	1/1/2031	72.758271 OffPeak
East	EJNCB31u	PJM PENELEC Feb31	PJM PENELEC	2/1/2031	66.729951 OffPeak
East	EJNCC31u	PJM PENELEC Mar31	PJM PENELEC	3/1/2031	52.838424 OffPeak
East	EJNCD31u	PJM PENELEC Apr31	PJM PENELEC	4/1/2031	45.699127 OffPeak
East	EJNCE31u	PJM PENELEC May31	PJM PENELEC	5/1/2031	39.875715 OffPeak
East	EJNCF31u	PJM PENELEC Jun31	PJM PENELEC	6/1/2031	39.670962 OffPeak
East	EJNCG31u	PJM PENELEC Jul31	PJM PENELEC	7/1/2031	45.57968 OffPeak
East	EJNCH31u	PJM PENELEC Aug31	PJM PENELEC	8/1/2031	41.184553 OffPeak
East	EJNCI31u	PJM PENELEC Sep31	PJM PENELEC	9/1/2031	40.438787 OffPeak
East	EJNCJ31u	PJM PENELEC Oct31	PJM PENELEC	10/1/2031	40.765067 OffPeak
East	EJNCK31u	PJM PENELEC Nov31	PJM PENELEC	11/1/2031	42.826864 OffPeak
East	EJNCL31u	PJM PENELEC Dec31	PJM PENELEC	12/1/2031	49.804879 OffPeak
East	EJNCA32u	PJM PENELEC Jan32	PJM PENELEC	1/1/2032	74.74019 OffPeak
East	EJNCB32u	PJM PENELEC Feb32	PJM PENELEC	2/1/2032	68.54766 OffPeak
East	EJNCC32u	PJM PENELEC Mar32	PJM PENELEC	3/1/2032	54.277732 OffPeak
East	EJNCD32u	PJM PENELEC Apr32	PJM PENELEC	4/1/2032	46.943961 OffPeak
East	EJNCE32u	PJM PENELEC May32	PJM PENELEC	5/1/2032	40.961921 OffPeak
East	EJNCF32u	PJM PENELEC Jun32	PJM PENELEC	6/1/2032	40.75159 OffPeak
East	EJNCG32u	PJM PENELEC Jul32	PJM PENELEC	7/1/2032	46.821261 OffPeak
East	EJNCH32u	PJM PENELEC Aug32	PJM PENELEC	8/1/2032	42.306412 OffPeak
East	EJNCI32u	PJM PENELEC Sep32	PJM PENELEC	9/1/2032	41.540331 OffPeak
East	EJNCJ32u	PJM PENELEC Oct32	PJM PENELEC	10/1/2032	41.875498 OffPeak
East	EJNCK32u	PJM PENELEC Nov32	PJM PENELEC	11/1/2032	43.993459 OffPeak
East	EJNCL32u	PJM PENELEC Dec32	PJM PENELEC	12/1/2032	51.161552 OffPeak
East	EJNCA33u	PJM PENELEC Jan33	PJM PENELEC	1/1/2033	77.349033 OffPeak
East	EJNCB33u	PJM PENELEC Feb33	PJM PENELEC	2/1/2033	70.940349 OffPeak
East	EJNCC33u	PJM PENELEC Mar33	PJM PENELEC	3/1/2033	56.172321 OffPeak
East	EJNCD33u	PJM PENELEC Apr33	PJM PENELEC	4/1/2033	48.582564 OffPeak
East	EJNCE33u	PJM PENELEC May33	PJM PENELEC	5/1/2033	42.391717 OffPeak
East	EPLMB00u	PJM PPL Zone M2M BOM	PJM PPL Zone	5/12/2023	28.42 Peak
East	EPLMF23u	PJM PPL Zone Jun23	PJM PPL Zone	6/1/2023	33.1 Peak
East	EPLMG23u	PJM PPL Zone Jul23	PJM PPL Zone	7/1/2023	50.6 Peak
East	EPLMH23u	PJM PPL Zone Aug23	PJM PPL Zone	8/1/2023	46.75 Peak
East	EPLMI23u	PJM PPL Zone Sep23	PJM PPL Zone	9/1/2023	33.75 Peak
East	EPLMJ23u	PJM PPL Zone Oct23	PJM PPL Zone	10/1/2023	30 Peak
East	EPLMK23u	PJM PPL Zone Nov23	PJM PPL Zone	11/1/2023	37 Peak
East	EPLML23u	PJM PPL Zone Dec23	PJM PPL Zone	12/1/2023	52.6 Peak
East	EPLMA24u	PJM PPL Zone Jan24	PJM PPL Zone	1/1/2024	84.1 Peak
East	EPLMB24u	PJM PPL Zone Feb24	PJM PPL Zone	2/1/2024	74.05 Peak
East	EPLMC24u	PJM PPL Zone Mar24	PJM PPL Zone	3/1/2024	44.7 Peak
East	EPLMD24u	PJM PPL Zone Apr24	PJM PPL Zone	4/1/2024	37.8 Peak
East	EPLME24u	PJM PPL Zone May24	PJM PPL Zone	5/1/2024	37.45 Peak
East	EPLMF24u	PJM PPL Zone Jun24	PJM PPL Zone	6/1/2024	38.1 Peak
East	EPLMG24u	PJM PPL Zone Jul24	PJM PPL Zone	7/1/2024	57.85 Peak
East	EPLMH24u	PJM PPL Zone Aug24	PJM PPL Zone	8/1/2024	52.55 Peak
East	EPLMI24u	PJM PPL Zone Sep24	PJM PPL Zone	9/1/2024	36.8 Peak
East	EPLMJ24u	PJM PPL Zone Oct24	PJM PPL Zone	10/1/2024	32.05 Peak
East	EPLMK24u	PJM PPL Zone Nov24	PJM PPL Zone	11/1/2024	37 Peak
East	EPLML24u	PJM PPL Zone Dec24	PJM PPL Zone	12/1/2024	54.95 Peak
East	EPLMA25u	PJM PPL Zone Jan25	PJM PPL Zone	1/1/2025	85.35 Peak
East	EPLMB25u	PJM PPL Zone Feb25	PJM PPL Zone	2/1/2025	80.2 Peak
East	EPLMC25u	PJM PPL Zone Mar25	PJM PPL Zone	3/1/2025	46.85 Peak

East	EPLMD25u	PJM PPL Zone Apr25	PJM PPL Zone	4/1/2025	39 Peak
East	EPLME25u	PJM PPL Zone May25	PJM PPL Zone	5/1/2025	40.6 Peak
East	EPLMF25u	PJM PPL Zone Jun25	PJM PPL Zone	6/1/2025	44.45 Peak
East	EPLMG25u	PJM PPL Zone Jul25	PJM PPL Zone	7/1/2025	63.9 Peak
East	EPLMH25u	PJM PPL Zone Aug25	PJM PPL Zone	8/1/2025	59.85 Peak
East	EPLMI25u	PJM PPL Zone Sep25	PJM PPL Zone	9/1/2025	42.8 Peak
East	EPLMJ25u	PJM PPL Zone Oct25	PJM PPL Zone	10/1/2025	38.1 Peak
East	EPLMK25u	PJM PPL Zone Nov25	PJM PPL Zone	11/1/2025	41.05 Peak
East	EPLML25u	PJM PPL Zone Dec25	PJM PPL Zone	12/1/2025	56.45 Peak
East	EPLMA26u	PJM PPL Zone Jan26	PJM PPL Zone	1/1/2026	84.75 Peak
East	EPLMB26u	PJM PPL Zone Feb26	PJM PPL Zone	2/1/2026	78.35 Peak
East	EPLMC26u	PJM PPL Zone Mar26	PJM PPL Zone	3/1/2026	47.3 Peak
East	EPLMD26u	PJM PPL Zone Apr26	PJM PPL Zone	4/1/2026	40.1 Peak
East	EPLME26u	PJM PPL Zone May26	PJM PPL Zone	5/1/2026	41.7 Peak
East	EPLMF26u	PJM PPL Zone Jun26	PJM PPL Zone	6/1/2026	47.45 Peak
East	EPLMG26u	PJM PPL Zone Jul26	PJM PPL Zone	7/1/2026	68.65 Peak
East	EPLMH26u	PJM PPL Zone Aug26	PJM PPL Zone	8/1/2026	62.85 Peak
East	EPLMI26u	PJM PPL Zone Sep26	PJM PPL Zone	9/1/2026	44.4 Peak
East	EPLMJ26u	PJM PPL Zone Oct26	PJM PPL Zone	10/1/2026	39.8 Peak
East	EPLMK26u	PJM PPL Zone Nov26	PJM PPL Zone	11/1/2026	43.3 Peak
East	EPLML26u	PJM PPL Zone Dec26	PJM PPL Zone	12/1/2026	60.35 Peak
East	EPLMA27u	PJM PPL Zone Jan27	PJM PPL Zone	1/1/2027	85 Peak
East	EPLMB27u	PJM PPL Zone Feb27	PJM PPL Zone	2/1/2027	79.05 Peak
East	EPLMC27u	PJM PPL Zone Mar27	PJM PPL Zone	3/1/2027	53.35 Peak
East	EPLMD27u	PJM PPL Zone Apr27	PJM PPL Zone	4/1/2027	45.05 Peak
East	EPLME27u	PJM PPL Zone May27	PJM PPL Zone	5/1/2027	44.6 Peak
East	EPLMF27u	PJM PPL Zone Jun27	PJM PPL Zone	6/1/2027	44.1 Peak
East	EPLMG27u	PJM PPL Zone Jul27	PJM PPL Zone	7/1/2027	66.7 Peak
East	EPLMH27u	PJM PPL Zone Aug27	PJM PPL Zone	8/1/2027	62.35 Peak
East	EPLMI27u	PJM PPL Zone Sep27	PJM PPL Zone	9/1/2027	44.95 Peak
East	EPLMJ27u	PJM PPL Zone Oct27	PJM PPL Zone	10/1/2027	44.1 Peak
East	EPLMK27u	PJM PPL Zone Nov27	PJM PPL Zone	11/1/2027	45.15 Peak
East	EPLML27u	PJM PPL Zone Dec27	PJM PPL Zone	12/1/2027	53.35 Peak
East	EPLMA28u	PJM PPL Zone Jan28	PJM PPL Zone	1/1/2028	83.130775 Peak
East	EPLMB28u	PJM PPL Zone Feb28	PJM PPL Zone	2/1/2028	77.369225 Peak
East	EPLMC28u	PJM PPL Zone Mar28	PJM PPL Zone	3/1/2028	54.263397 Peak
East	EPLMD28u	PJM PPL Zone Apr28	PJM PPL Zone	4/1/2028	45.936603 Peak
East	EPLME28u	PJM PPL Zone May28	PJM PPL Zone	5/1/2028	44.9 Peak
East	EPLMF28u	PJM PPL Zone Jun28	PJM PPL Zone	6/1/2028	44.7 Peak
East	EPLMG28u	PJM PPL Zone Jul28	PJM PPL Zone	7/1/2028	58.095562 Peak
East	EPLMH28u	PJM PPL Zone Aug28	PJM PPL Zone	8/1/2028	54.354438 Peak
East	EPLMI28u	PJM PPL Zone Sep28	PJM PPL Zone	9/1/2028	46.05 Peak
East	EPLMJ28u	PJM PPL Zone Oct28	PJM PPL Zone	10/1/2028	44.73497 Peak
East	EPLMK28u	PJM PPL Zone Nov28	PJM PPL Zone	11/1/2028	45.848257 Peak
East	EPLML28u	PJM PPL Zone Dec28	PJM PPL Zone	12/1/2028	54.016773 Peak
East	EPLMA29u	PJM PPL Zone Jan29	PJM PPL Zone	1/1/2029	83.053083 Peak
East	EPLMB29u	PJM PPL Zone Feb29	PJM PPL Zone	2/1/2029	77.296917 Peak
East	EPLMC29u	PJM PPL Zone Mar29	PJM PPL Zone	3/1/2029	54.155087 Peak
East	EPLMD29u	PJM PPL Zone Apr29	PJM PPL Zone	4/1/2029	45.844913 Peak
East	EPLME29u	PJM PPL Zone May29	PJM PPL Zone	5/1/2029	44.85 Peak
East	EPLMF29u	PJM PPL Zone Jun29	PJM PPL Zone	6/1/2029	44.75 Peak
East	EPLMG29u	PJM PPL Zone Jul29	PJM PPL Zone	7/1/2029	57.863076 Peak
East	EPLMH29u	PJM PPL Zone Aug29	PJM PPL Zone	8/1/2029	54.136924 Peak
East	EPLMI29u	PJM PPL Zone Sep29	PJM PPL Zone	9/1/2029	46.1 Peak
East	EPLMJ29u	PJM PPL Zone Oct29	PJM PPL Zone	10/1/2029	44.874187 Peak
East	EPLMK29u	PJM PPL Zone Nov29	PJM PPL Zone	11/1/2029	45.990937 Peak
East	EPLML29u	PJM PPL Zone Dec29	PJM PPL Zone	12/1/2029	54.184875 Peak
East	EPLMA30u	PJM PPL Zone Jan30	PJM PPL Zone	1/1/2030	83.208467 Peak

East	EPLMB30u	PJM PPL Zone Feb30	PJM PPL Zone	2/1/2030	77.441533 Peak
East	EPLMC30u	PJM PPL Zone Mar30	PJM PPL Zone	3/1/2030	54.128008 Peak
East	EPLMD30u	PJM PPL Zone Apr30	PJM PPL Zone	4/1/2030	45.821992 Peak
East	EPLME30u	PJM PPL Zone May30	PJM PPL Zone	5/1/2030	44.9 Peak
East	EPLMF30u	PJM PPL Zone Jun30	PJM PPL Zone	6/1/2030	44.75 Peak
East	EPLMG30u	PJM PPL Zone Jul30	PJM PPL Zone	7/1/2030	57.811413 Peak
East	EPLMH30u	PJM PPL Zone Aug30	PJM PPL Zone	8/1/2030	54.088587 Peak
East	EPLMI30u	PJM PPL Zone Sep30	PJM PPL Zone	9/1/2030	46.15 Peak
East	EPLMJ30u	PJM PPL Zone Oct30	PJM PPL Zone	10/1/2030	44.936061 Peak
East	EPLMK30u	PJM PPL Zone Nov30	PJM PPL Zone	11/1/2030	46.05435 Peak
East	EPLML30u	PJM PPL Zone Dec30	PJM PPL Zone	12/1/2030	54.259588 Peak
East	EPLMA31u	PJM PPL Zone Jan31	PJM PPL Zone	1/1/2031	85.186064 Peak
East	EPLMB31u	PJM PPL Zone Feb31	PJM PPL Zone	2/1/2031	79.282067 Peak
East	EPLMC31u	PJM PPL Zone Mar31	PJM PPL Zone	3/1/2031	55.414456 Peak
East	EPLMD31u	PJM PPL Zone Apr31	PJM PPL Zone	4/1/2031	46.911032 Peak
East	EPLME31u	PJM PPL Zone May31	PJM PPL Zone	5/1/2031	45.967128 Peak
East	EPLMF31u	PJM PPL Zone Jun31	PJM PPL Zone	6/1/2031	45.813563 Peak
East	EPLMG31u	PJM PPL Zone Jul31	PJM PPL Zone	7/1/2031	59.185404 Peak
East	EPLMH31u	PJM PPL Zone Aug31	PJM PPL Zone	8/1/2031	55.374097 Peak
East	EPLMI31u	PJM PPL Zone Sep31	PJM PPL Zone	9/1/2031	47.246836 Peak
East	EPLMJ31u	PJM PPL Zone Oct31	PJM PPL Zone	10/1/2031	46.004046 Peak
East	EPLMK31u	PJM PPL Zone Nov31	PJM PPL Zone	11/1/2031	47.148914 Peak
East	EPLML31u	PJM PPL Zone Dec31	PJM PPL Zone	12/1/2031	55.549162 Peak
East	EPLMA32u	PJM PPL Zone Jan32	PJM PPL Zone	1/1/2032	87.506514 Peak
East	EPLMB32u	PJM PPL Zone Feb32	PJM PPL Zone	2/1/2032	81.441693 Peak
East	EPLMC32u	PJM PPL Zone Mar32	PJM PPL Zone	3/1/2032	56.923934 Peak
East	EPLMD32u	PJM PPL Zone Apr32	PJM PPL Zone	4/1/2032	48.188878 Peak
East	EPLME32u	PJM PPL Zone May32	PJM PPL Zone	5/1/2032	47.219262 Peak
East	EPLMF32u	PJM PPL Zone Jun32	PJM PPL Zone	6/1/2032	47.061514 Peak
East	EPLMG32u	PJM PPL Zone Jul32	PJM PPL Zone	7/1/2032	60.797601 Peak
East	EPLMH32u	PJM PPL Zone Aug32	PJM PPL Zone	8/1/2032	56.882476 Peak
East	EPLMI32u	PJM PPL Zone Sep32	PJM PPL Zone	9/1/2032	48.53383 Peak
East	EPLMJ32u	PJM PPL Zone Oct32	PJM PPL Zone	10/1/2032	47.257186 Peak
East	EPLMK32u	PJM PPL Zone Nov32	PJM PPL Zone	11/1/2032	48.433242 Peak
East	EPLML32u	PJM PPL Zone Dec32	PJM PPL Zone	12/1/2032	57.062309 Peak
East	EPLMA33u	PJM PPL Zone Jan33	PJM PPL Zone	1/1/2033	90.56097 Peak
East	EPLMB33u	PJM PPL Zone Feb33	PJM PPL Zone	2/1/2033	84.284456 Peak
East	EPLMC33u	PJM PPL Zone Mar33	PJM PPL Zone	3/1/2033	58.910892 Peak
East	EPLMD33u	PJM PPL Zone Apr33	PJM PPL Zone	4/1/2033	49.870934 Peak
East	EPLME33u	PJM PPL Zone May33	PJM PPL Zone	5/1/2033	48.867474 Peak
East	EPLOB00u	PJM PPL Zone M2M BOM	PJM PPL Zone	5/12/2023	21.62 OffPeak
East	EPLOF23u	PJM PPL Zone Jun23	PJM PPL Zone	6/1/2023	21.35 OffPeak
East	EPLOG23u	PJM PPL Zone Jul23	PJM PPL Zone	7/1/2023	32.25 OffPeak
East	EPLOH23u	PJM PPL Zone Aug23	PJM PPL Zone	8/1/2023	28.1 OffPeak
East	EPLOI23u	PJM PPL Zone Sep23	PJM PPL Zone	9/1/2023	23.3 OffPeak
East	EPLOJ23u	PJM PPL Zone Oct23	PJM PPL Zone	10/1/2023	23.5 OffPeak
East	EPLOK23u	PJM PPL Zone Nov23	PJM PPL Zone	11/1/2023	30.8 OffPeak
East	EPLOL23u	PJM PPL Zone Dec23	PJM PPL Zone	12/1/2023	47.2 OffPeak
East	EPLOA24u	PJM PPL Zone Jan24	PJM PPL Zone	1/1/2024	74.15 OffPeak
East	EPLOB24u	PJM PPL Zone Feb24	PJM PPL Zone	2/1/2024	68.2 OffPeak
East	EPLOC24u	PJM PPL Zone Mar24	PJM PPL Zone	3/1/2024	38.95 OffPeak
East	EPLOD24u	PJM PPL Zone Apr24	PJM PPL Zone	4/1/2024	30.05 OffPeak
East	EPLOE24u	PJM PPL Zone May24	PJM PPL Zone	5/1/2024	27.45 OffPeak
East	EPLOF24u	PJM PPL Zone Jun24	PJM PPL Zone	6/1/2024	26.25 OffPeak
East	EPLOG24u	PJM PPL Zone Jul24	PJM PPL Zone	7/1/2024	36.5 OffPeak
East	EPLOH24u	PJM PPL Zone Aug24	PJM PPL Zone	8/1/2024	33.65 OffPeak
East	EPLOI24u	PJM PPL Zone Sep24	PJM PPL Zone	9/1/2024	25.75 OffPeak
East	EPLOJ24u	PJM PPL Zone Oct24	PJM PPL Zone	10/1/2024	24.55 OffPeak

East	EPLOK24u	PJM PPL Zone Nov24	PJM PPL Zone	11/1/2024	30.05 OffPeak
East	EPLOL24u	PJM PPL Zone Dec24	PJM PPL Zone	12/1/2024	48.3 OffPeak
East	EPLOA25u	PJM PPL Zone Jan25	PJM PPL Zone	1/1/2025	73.35 OffPeak
East	EPLOB25u	PJM PPL Zone Feb25	PJM PPL Zone	2/1/2025	68.95 OffPeak
East	EPLOC25u	PJM PPL Zone Mar25	PJM PPL Zone	3/1/2025	41.25 OffPeak
East	EPLOD25u	PJM PPL Zone Apr25	PJM PPL Zone	4/1/2025	30.2 OffPeak
East	EPLOE25u	PJM PPL Zone May25	PJM PPL Zone	5/1/2025	28.4 OffPeak
East	EPLOF25u	PJM PPL Zone Jun25	PJM PPL Zone	6/1/2025	30.45 OffPeak
East	EPLOG25u	PJM PPL Zone Jul25	PJM PPL Zone	7/1/2025	40.55 OffPeak
East	EPLOH25u	PJM PPL Zone Aug25	PJM PPL Zone	8/1/2025	36.6 OffPeak
East	EPLOI25u	PJM PPL Zone Sep25	PJM PPL Zone	9/1/2025	28.8 OffPeak
East	EPLOJ25u	PJM PPL Zone Oct25	PJM PPL Zone	10/1/2025	30.15 OffPeak
East	EPLOK25u	PJM PPL Zone Nov25	PJM PPL Zone	11/1/2025	32.95 OffPeak
East	EPLOL25u	PJM PPL Zone Dec25	PJM PPL Zone	12/1/2025	49.65 OffPeak
East	EPLOA26u	PJM PPL Zone Jan26	PJM PPL Zone	1/1/2026	76.35 OffPeak
East	EPLOB26u	PJM PPL Zone Feb26	PJM PPL Zone	2/1/2026	70.3 OffPeak
East	EPLOC26u	PJM PPL Zone Mar26	PJM PPL Zone	3/1/2026	41 OffPeak
East	EPLOD26u	PJM PPL Zone Apr26	PJM PPL Zone	4/1/2026	32.5 OffPeak
East	EPLOE26u	PJM PPL Zone May26	PJM PPL Zone	5/1/2026	32.25 OffPeak
East	EPLOF26u	PJM PPL Zone Jun26	PJM PPL Zone	6/1/2026	31.95 OffPeak
East	EPLOG26u	PJM PPL Zone Jul26	PJM PPL Zone	7/1/2026	43.25 OffPeak
East	EPLOH26u	PJM PPL Zone Aug26	PJM PPL Zone	8/1/2026	40.05 OffPeak
East	EPLOI26u	PJM PPL Zone Sep26	PJM PPL Zone	9/1/2026	31 OffPeak
East	EPLOJ26u	PJM PPL Zone Oct26	PJM PPL Zone	10/1/2026	31.6 OffPeak
East	EPLOK26u	PJM PPL Zone Nov26	PJM PPL Zone	11/1/2026	35.2 OffPeak
East	EPLOL26u	PJM PPL Zone Dec26	PJM PPL Zone	12/1/2026	53.6 OffPeak
East	EPLOA27u	PJM PPL Zone Jan27	PJM PPL Zone	1/1/2027	77.35 OffPeak
East	EPLOB27u	PJM PPL Zone Feb27	PJM PPL Zone	2/1/2027	71.15 OffPeak
East	EPLOC27u	PJM PPL Zone Mar27	PJM PPL Zone	3/1/2027	47.1 OffPeak
East	EPLOD27u	PJM PPL Zone Apr27	PJM PPL Zone	4/1/2027	39.55 OffPeak
East	EPLOE27u	PJM PPL Zone May27	PJM PPL Zone	5/1/2027	34.3 OffPeak
East	EPLOF27u	PJM PPL Zone Jun27	PJM PPL Zone	6/1/2027	33.75 OffPeak
East	EPLOG27u	PJM PPL Zone Jul27	PJM PPL Zone	7/1/2027	43.25 OffPeak
East	EPLOH27u	PJM PPL Zone Aug27	PJM PPL Zone	8/1/2027	38.85 OffPeak
East	EPLOI27u	PJM PPL Zone Sep27	PJM PPL Zone	9/1/2027	34.2 OffPeak
East	EPLOJ27u	PJM PPL Zone Oct27	PJM PPL Zone	10/1/2027	34.55 OffPeak
East	EPLOK27u	PJM PPL Zone Nov27	PJM PPL Zone	11/1/2027	36.65 OffPeak
East	EPLOL27u	PJM PPL Zone Dec27	PJM PPL Zone	12/1/2027	45.65 OffPeak
East	EPLOA28u	PJM PPL Zone Jan28	PJM PPL Zone	1/1/2028	73.860144 OffPeak
East	EPLOB28u	PJM PPL Zone Feb28	PJM PPL Zone	2/1/2028	67.889856 OffPeak
East	EPLOC28u	PJM PPL Zone Mar28	PJM PPL Zone	3/1/2028	50.268836 OffPeak
East	EPLOD28u	PJM PPL Zone Apr28	PJM PPL Zone	4/1/2028	42.231164 OffPeak
East	EPLOE28u	PJM PPL Zone May28	PJM PPL Zone	5/1/2028	36.6 OffPeak
East	EPLOF28u	PJM PPL Zone Jun28	PJM PPL Zone	6/1/2028	36.25 OffPeak
East	EPLOG28u	PJM PPL Zone Jul28	PJM PPL Zone	7/1/2028	43.666243 OffPeak
East	EPLOH28u	PJM PPL Zone Aug28	PJM PPL Zone	8/1/2028	39.183757 OffPeak
East	EPLOI28u	PJM PPL Zone Sep28	PJM PPL Zone	9/1/2028	36.55 OffPeak
East	EPLOJ28u	PJM PPL Zone Oct28	PJM PPL Zone	10/1/2028	36.998674 OffPeak
East	EPLOK28u	PJM PPL Zone Nov28	PJM PPL Zone	11/1/2028	39.281884 OffPeak
East	EPLOL28u	PJM PPL Zone Dec28	PJM PPL Zone	12/1/2028	48.819442 OffPeak
East	EPLOA29u	PJM PPL Zone Jan29	PJM PPL Zone	1/1/2029	73.729879 OffPeak
East	EPLOB29u	PJM PPL Zone Feb29	PJM PPL Zone	2/1/2029	67.770121 OffPeak
East	EPLOC29u	PJM PPL Zone Mar29	PJM PPL Zone	3/1/2029	50.431871 OffPeak
East	EPLOD29u	PJM PPL Zone Apr29	PJM PPL Zone	4/1/2029	42.368129 OffPeak
East	EPLOE29u	PJM PPL Zone May29	PJM PPL Zone	5/1/2029	36.6 OffPeak
East	EPLOF29u	PJM PPL Zone Jun29	PJM PPL Zone	6/1/2029	36.35 OffPeak
East	EPLOG29u	PJM PPL Zone Jul29	PJM PPL Zone	7/1/2029	43.929769 OffPeak
East	EPLOH29u	PJM PPL Zone Aug29	PJM PPL Zone	8/1/2029	39.420231 OffPeak

East	EPLOI29u	PJM PPL Zone Sep29	PJM PPL Zone	9/1/2029	36.65 OffPeak
East	EPLOJ29u	PJM PPL Zone Oct29	PJM PPL Zone	10/1/2029	36.998674 OffPeak
East	EPLOK29u	PJM PPL Zone Nov29	PJM PPL Zone	11/1/2029	39.281884 OffPeak
East	EPLOL29u	PJM PPL Zone Dec29	PJM PPL Zone	12/1/2029	48.819442 OffPeak
East	EPLOA30u	PJM PPL Zone Jan30	PJM PPL Zone	1/1/2030	73.547508 OffPeak
East	EPLOB30u	PJM PPL Zone Feb30	PJM PPL Zone	2/1/2030	67.602492 OffPeak
East	EPLOC30u	PJM PPL Zone Mar30	PJM PPL Zone	3/1/2030	50.350355 OffPeak
East	EPLOD30u	PJM PPL Zone Apr30	PJM PPL Zone	4/1/2030	42.299645 OffPeak
East	EPLOE30u	PJM PPL Zone May30	PJM PPL Zone	5/1/2030	36.45 OffPeak
East	EPLOF30u	PJM PPL Zone Jun30	PJM PPL Zone	6/1/2030	36.25 OffPeak
East	EPLOG30u	PJM PPL Zone Jul30	PJM PPL Zone	7/1/2030	43.877064 OffPeak
East	EPLOH30u	PJM PPL Zone Aug30	PJM PPL Zone	8/1/2030	39.372936 OffPeak
East	EPLOI30u	PJM PPL Zone Sep30	PJM PPL Zone	9/1/2030	36.5 OffPeak
East	EPLOJ30u	PJM PPL Zone Oct30	PJM PPL Zone	10/1/2030	36.939522 OffPeak
East	EPLOK30u	PJM PPL Zone Nov30	PJM PPL Zone	11/1/2030	39.219084 OffPeak
East	EPLOL30u	PJM PPL Zone Dec30	PJM PPL Zone	12/1/2030	48.741394 OffPeak
East	EPLOA31u	PJM PPL Zone Jan31	PJM PPL Zone	1/1/2031	75.295495 OffPeak
East	EPLOB31u	PJM PPL Zone Feb31	PJM PPL Zone	2/1/2031	69.209184 OffPeak
East	EPLOC31u	PJM PPL Zone Mar31	PJM PPL Zone	3/1/2031	51.547019 OffPeak
East	EPLOD31u	PJM PPL Zone Apr31	PJM PPL Zone	4/1/2031	43.304972 OffPeak
East	EPLOE31u	PJM PPL Zone May31	PJM PPL Zone	5/1/2031	37.316299 OffPeak
East	EPLOF31u	PJM PPL Zone Jun31	PJM PPL Zone	6/1/2031	37.111545 OffPeak
East	EPLOG31u	PJM PPL Zone Jul31	PJM PPL Zone	7/1/2031	44.91988 OffPeak
East	EPLOH31u	PJM PPL Zone Aug31	PJM PPL Zone	8/1/2031	40.308703 OffPeak
East	EPLOI31u	PJM PPL Zone Sep31	PJM PPL Zone	9/1/2031	37.367487 OffPeak
East	EPLOJ31u	PJM PPL Zone Oct31	PJM PPL Zone	10/1/2031	37.817456 OffPeak
East	EPLOK31u	PJM PPL Zone Nov31	PJM PPL Zone	11/1/2031	40.151194 OffPeak
East	EPLOL31u	PJM PPL Zone Dec31	PJM PPL Zone	12/1/2031	49.899819 OffPeak
East	EPLOA32u	PJM PPL Zone Jan32	PJM PPL Zone	1/1/2032	77.346528 OffPeak
East	EPLOB32u	PJM PPL Zone Feb32	PJM PPL Zone	2/1/2032	71.094427 OffPeak
East	EPLOC32u	PJM PPL Zone Mar32	PJM PPL Zone	3/1/2032	52.951148 OffPeak
East	EPLOD32u	PJM PPL Zone Apr32	PJM PPL Zone	4/1/2032	44.48459 OffPeak
East	EPLOE32u	PJM PPL Zone May32	PJM PPL Zone	5/1/2032	38.332786 OffPeak
East	EPLOF32u	PJM PPL Zone Jun32	PJM PPL Zone	6/1/2032	38.122456 OffPeak
East	EPLOG32u	PJM PPL Zone Jul32	PJM PPL Zone	7/1/2032	46.143487 OffPeak
East	EPLOH32u	PJM PPL Zone Aug32	PJM PPL Zone	8/1/2032	41.406704 OffPeak
East	EPLOI32u	PJM PPL Zone Sep32	PJM PPL Zone	9/1/2032	38.385369 OffPeak
East	EPLOJ32u	PJM PPL Zone Oct32	PJM PPL Zone	10/1/2032	38.847595 OffPeak
East	EPLOK32u	PJM PPL Zone Nov32	PJM PPL Zone	11/1/2032	41.244904 OffPeak
East	EPLOL32u	PJM PPL Zone Dec32	PJM PPL Zone	12/1/2032	51.259079 OffPeak
East	EPLOA33u	PJM PPL Zone Jan33	PJM PPL Zone	1/1/2033	80.046346 OffPeak
East	EPLOB33u	PJM PPL Zone Feb33	PJM PPL Zone	2/1/2033	73.576012 OffPeak
East	EPLOC33u	PJM PPL Zone Mar33	PJM PPL Zone	3/1/2033	54.799434 OffPeak
East	EPLOD33u	PJM PPL Zone Apr33	PJM PPL Zone	4/1/2033	46.037347 OffPeak
East	EPLOE33u	PJM PPL Zone May33	PJM PPL Zone	5/1/2033	39.670811 OffPeak
East	EPJMB00u	PJM West M2M BOM	PJM West	5/12/2023	35.24 Peak
East	EPJMF23u	PJM West Jun23	PJM West	6/1/2023	39.55 Peak
East	EPJMG23u	PJM West Jul23	PJM West	7/1/2023	55.9 Peak
East	EPJMH23u	PJM West Aug23	PJM West	8/1/2023	51.6 Peak
East	EPJMI23u	PJM West Sep23	PJM West	9/1/2023	40.85 Peak
East	EPJMJ23u	PJM West Oct23	PJM West	10/1/2023	36.85 Peak
East	EPJMK23u	PJM West Nov23	PJM West	11/1/2023	41.7 Peak
East	EPJML23u	PJM West Dec23	PJM West	12/1/2023	57.9 Peak
East	EPJMA24u	PJM West Jan24	PJM West	1/1/2024	85.05 Peak
East	EPJMB24u	PJM West Feb24	PJM West	2/1/2024	75.35 Peak
East	EPJMC24u	PJM West Mar24	PJM West	3/1/2024	49.85 Peak
East	EPJMD24u	PJM West Apr24	PJM West	4/1/2024	42.95 Peak
East	EPJME24u	PJM West May24	PJM West	5/1/2024	43.45 Peak

East	EPJMF24u	PJM West Jun24	PJM West	6/1/2024	45.7 Peak
East	EPJMG24u	PJM West Jul24	PJM West	7/1/2024	64.5 Peak
East	EPJMH24u	PJM West Aug24	PJM West	8/1/2024	58.8 Peak
East	EPJMI24u	PJM West Sep24	PJM West	9/1/2024	44.6 Peak
East	EPJMJ24u	PJM West Oct24	PJM West	10/1/2024	40 Peak
East	EPJMK24u	PJM West Nov24	PJM West	11/1/2024	44.9 Peak
East	EPJML24u	PJM West Dec24	PJM West	12/1/2024	59.4 Peak
East	EPJMA25u	PJM West Jan25	PJM West	1/1/2025	85.5 Peak
East	EPJMB25u	PJM West Feb25	PJM West	2/1/2025	81.05 Peak
East	EPJMC25u	PJM West Mar25	PJM West	3/1/2025	53.45 Peak
East	EPJMD25u	PJM West Apr25	PJM West	4/1/2025	46.4 Peak
East	EPJME25u	PJM West May25	PJM West	5/1/2025	48.2 Peak
East	EPJMF25u	PJM West Jun25	PJM West	6/1/2025	50.55 Peak
East	EPJMG25u	PJM West Jul25	PJM West	7/1/2025	69.35 Peak
East	EPJMH25u	PJM West Aug25	PJM West	8/1/2025	65.25 Peak
East	EPJMI25u	PJM West Sep25	PJM West	9/1/2025	49.7 Peak
East	EPJMJ25u	PJM West Oct25	PJM West	10/1/2025	45.4 Peak
East	EPJMK25u	PJM West Nov25	PJM West	11/1/2025	47.6 Peak
East	EPJML25u	PJM West Dec25	PJM West	12/1/2025	60.1 Peak
East	EPJMA26u	PJM West Jan26	PJM West	1/1/2026	88.2 Peak
East	EPJMB26u	PJM West Feb26	PJM West	2/1/2026	81.8 Peak
East	EPJMC26u	PJM West Mar26	PJM West	3/1/2026	53.45 Peak
East	EPJMD26u	PJM West Apr26	PJM West	4/1/2026	47.2 Peak
East	EPJME26u	PJM West May26	PJM West	5/1/2026	48.95 Peak
East	EPJMF26u	PJM West Jun26	PJM West	6/1/2026	53.35 Peak
East	EPJMG26u	PJM West Jul26	PJM West	7/1/2026	73.2 Peak
East	EPJMH26u	PJM West Aug26	PJM West	8/1/2026	67.7 Peak
East	EPJMI26u	PJM West Sep26	PJM West	9/1/2026	51.15 Peak
East	EPJMJ26u	PJM West Oct26	PJM West	10/1/2026	46.65 Peak
East	EPJMK26u	PJM West Nov26	PJM West	11/1/2026	49.45 Peak
East	EPJML26u	PJM West Dec26	PJM West	12/1/2026	63.55 Peak
East	EPJMA27u	PJM West Jan27	PJM West	1/1/2027	88.75 Peak
East	EPJMB27u	PJM West Feb27	PJM West	2/1/2027	82.65 Peak
East	EPJMC27u	PJM West Mar27	PJM West	3/1/2027	59.1 Peak
East	EPJMD27u	PJM West Apr27	PJM West	4/1/2027	52.25 Peak
East	EPJME27u	PJM West May27	PJM West	5/1/2027	52.05 Peak
East	EPJMF27u	PJM West Jun27	PJM West	6/1/2027	50.95 Peak
East	EPJMG27u	PJM West Jul27	PJM West	7/1/2027	72.65 Peak
East	EPJMH27u	PJM West Aug27	PJM West	8/1/2027	68 Peak
East	EPJMI27u	PJM West Sep27	PJM West	9/1/2027	52.6 Peak
East	EPJMJ27u	PJM West Oct27	PJM West	10/1/2027	51.4 Peak
East	EPJMK27u	PJM West Nov27	PJM West	11/1/2027	52.5 Peak
East	EPJML27u	PJM West Dec27	PJM West	12/1/2027	58 Peak
East	EPJMA28u	PJM West Jan28	PJM West	1/1/2028	88.6 Peak
East	EPJMB28u	PJM West Feb28	PJM West	2/1/2028	82.65 Peak
East	EPJMC28u	PJM West Mar28	PJM West	3/1/2028	61.35 Peak
East	EPJMD28u	PJM West Apr28	PJM West	4/1/2028	54.55 Peak
East	EPJME28u	PJM West May28	PJM West	5/1/2028	53.35 Peak
East	EPJMF28u	PJM West Jun28	PJM West	6/1/2028	53.15 Peak
East	EPJMG28u	PJM West Jul28	PJM West	7/1/2028	64.95 Peak
East	EPJMH28u	PJM West Aug28	PJM West	8/1/2028	61.45 Peak
East	EPJMI28u	PJM West Sep28	PJM West	9/1/2028	55.2 Peak
East	EPJMJ28u	PJM West Oct28	PJM West	10/1/2028	53.45 Peak
East	EPJMK28u	PJM West Nov28	PJM West	11/1/2028	54.8 Peak
East	EPJML28u	PJM West Dec28	PJM West	12/1/2028	59.4 Peak
East	EPJMA29u	PJM West Jan29	PJM West	1/1/2029	89.2 Peak
East	EPJMB29u	PJM West Feb29	PJM West	2/1/2029	82.35 Peak
East	EPJMC29u	PJM West Mar29	PJM West	3/1/2029	60.9 Peak

East	EPJMD29u	PJM West Apr29	PJM West	4/1/2029	54.7 Peak
East	EPJME29u	PJM West May29	PJM West	5/1/2029	53.5 Peak
East	EPJMF29u	PJM West Jun29	PJM West	6/1/2029	53.2 Peak
East	EPJMG29u	PJM West Jul29	PJM West	7/1/2029	64.7 Peak
East	EPJMH29u	PJM West Aug29	PJM West	8/1/2029	60.9 Peak
East	EPJMI29u	PJM West Sep29	PJM West	9/1/2029	55.4 Peak
East	EPJMJ29u	PJM West Oct29	PJM West	10/1/2029	54.65 Peak
East	EPJMK29u	PJM West Nov29	PJM West	11/1/2029	54.85 Peak
East	EPJML29u	PJM West Dec29	PJM West	12/1/2029	59.3 Peak
East	EPJMA30u	PJM West Jan30	PJM West	1/1/2030	89.2 Peak
East	EPJMB30u	PJM West Feb30	PJM West	2/1/2030	82.9 Peak
East	EPJMC30u	PJM West Mar30	PJM West	3/1/2030	61 Peak
East	EPJMD30u	PJM West Apr30	PJM West	4/1/2030	54.75 Peak
East	EPJME30u	PJM West May30	PJM West	5/1/2030	53.5 Peak
East	EPJMF30u	PJM West Jun30	PJM West	6/1/2030	55.266621 Peak
East	EPJMG30u	PJM West Jul30	PJM West	7/1/2030	67.237484 Peak
East	EPJMH30u	PJM West Aug30	PJM West	8/1/2030	63.241607 Peak
East	EPJMI30u	PJM West Sep30	PJM West	9/1/2030	57.552083 Peak
East	EPJMJ30u	PJM West Oct30	PJM West	10/1/2030	56.76731 Peak
East	EPJMK30u	PJM West Nov30	PJM West	11/1/2030	56.986223 Peak
East	EPJML30u	PJM West Dec30	PJM West	12/1/2030	61.603717 Peak
East	EPJMA31u	PJM West Jan31	PJM West	1/1/2031	90.909957 Peak
East	EPJMB31u	PJM West Feb31	PJM West	2/1/2031	84.526577 Peak
East	EPJMC31u	PJM West Mar31	PJM West	3/1/2031	62.179229 Peak
East	EPJMD31u	PJM West Apr31	PJM West	4/1/2031	55.814838 Peak
East	EPJME31u	PJM West May31	PJM West	5/1/2031	54.537214 Peak
East	EPJMF31u	PJM West Jun31	PJM West	6/1/2031	56.338086 Peak
East	EPJMG31u	PJM West Jul31	PJM West	7/1/2031	68.541029 Peak
East	EPJMH31u	PJM West Aug31	PJM West	8/1/2031	64.467684 Peak
East	EPJMI31u	PJM West Sep31	PJM West	9/1/2031	58.667856 Peak
East	EPJMJ31u	PJM West Oct31	PJM West	10/1/2031	57.867869 Peak
East	EPJMK31u	PJM West Nov31	PJM West	11/1/2031	58.091025 Peak
East	EPJML31u	PJM West Dec31	PJM West	12/1/2031	62.79804 Peak
East	EPJMA32u	PJM West Jan32	PJM West	1/1/2032	93.009392 Peak
East	EPJMB32u	PJM West Feb32	PJM West	2/1/2032	86.478598 Peak
East	EPJMC32u	PJM West Mar32	PJM West	3/1/2032	63.615169 Peak
East	EPJMD32u	PJM West Apr32	PJM West	4/1/2032	57.103802 Peak
East	EPJME32u	PJM West May32	PJM West	5/1/2032	55.796673 Peak
East	EPJMF32u	PJM West Jun32	PJM West	6/1/2032	57.639133 Peak
East	EPJMG32u	PJM West Jul32	PJM West	7/1/2032	70.123886 Peak
East	EPJMH32u	PJM West Aug32	PJM West	8/1/2032	65.956473 Peak
East	EPJMI32u	PJM West Sep32	PJM West	9/1/2032	60.022706 Peak
East	EPJMJ32u	PJM West Oct32	PJM West	10/1/2032	59.204243 Peak
East	EPJMK32u	PJM West Nov32	PJM West	11/1/2032	59.432555 Peak
East	EPJML32u	PJM West Dec32	PJM West	12/1/2032	64.24827 Peak
East	EPJMA33u	PJM West Jan33	PJM West	1/1/2033	94.650697 Peak
East	EPJMB33u	PJM West Feb33	PJM West	2/1/2033	88.004655 Peak
East	EPJMC33u	PJM West Mar33	PJM West	3/1/2033	64.737764 Peak
East	EPJMD33u	PJM West Apr33	PJM West	4/1/2033	58.111492 Peak
East	EPJME33u	PJM West May33	PJM West	5/1/2033	56.781298 Peak
East	EPJOB00u	PJM West M2M BOM	PJM West	5/12/2023	25.81 OffPeak
East	EPJOF23u	PJM West Jun23	PJM West	6/1/2023	26.05 OffPeak
East	EPJOG23u	PJM West Jul23	PJM West	7/1/2023	35.45 OffPeak
East	EPJOH23u	PJM West Aug23	PJM West	8/1/2023	31.5 OffPeak
East	EPJOI23u	PJM West Sep23	PJM West	9/1/2023	27.3 OffPeak
East	EPJOJ23u	PJM West Oct23	PJM West	10/1/2023	27.3 OffPeak
East	EPJOK23u	PJM West Nov23	PJM West	11/1/2023	33.75 OffPeak
East	EPJOL23u	PJM West Dec23	PJM West	12/1/2023	50.1 OffPeak

East	EPJOA24u	PJM West Jan24	PJM West	1/1/2024	75.65 OffPeak
East	EPJOB24u	PJM West Feb24	PJM West	2/1/2024	69.35 OffPeak
East	EPJOC24u	PJM West Mar24	PJM West	3/1/2024	43.05 OffPeak
East	EPJOD24u	PJM West Apr24	PJM West	4/1/2024	34.05 OffPeak
East	EPJOE24u	PJM West May24	PJM West	5/1/2024	32 OffPeak
East	EPJOF24u	PJM West Jun24	PJM West	6/1/2024	31.85 OffPeak
East	EPJOG24u	PJM West Jul24	PJM West	7/1/2024	40.9 OffPeak
East	EPJOH24u	PJM West Aug24	PJM West	8/1/2024	37.7 OffPeak
East	EPJOI24u	PJM West Sep24	PJM West	9/1/2024	31.15 OffPeak
East	EPJOJ24u	PJM West Oct24	PJM West	10/1/2024	30.15 OffPeak
East	EPJOK24u	PJM West Nov24	PJM West	11/1/2024	35.7 OffPeak
East	EPJOL24u	PJM West Dec24	PJM West	12/1/2024	51.05 OffPeak
East	EPJOA25u	PJM West Jan25	PJM West	1/1/2025	77.55 OffPeak
East	EPJOB25u	PJM West Feb25	PJM West	2/1/2025	72.9 OffPeak
East	EPJOC25u	PJM West Mar25	PJM West	3/1/2025	46 OffPeak
East	EPJOD25u	PJM West Apr25	PJM West	4/1/2025	35.95 OffPeak
East	EPJOE25u	PJM West May25	PJM West	5/1/2025	34.15 OffPeak
East	EPJOF25u	PJM West Jun25	PJM West	6/1/2025	34.85 OffPeak
East	EPJOG25u	PJM West Jul25	PJM West	7/1/2025	46.3 OffPeak
East	EPJOH25u	PJM West Aug25	PJM West	8/1/2025	42.45 OffPeak
East	EPJOI25u	PJM West Sep25	PJM West	9/1/2025	33.9 OffPeak
East	EPJOJ25u	PJM West Oct25	PJM West	10/1/2025	34.95 OffPeak
East	EPJOK25u	PJM West Nov25	PJM West	11/1/2025	37.5 OffPeak
East	EPJOL25u	PJM West Dec25	PJM West	12/1/2025	51.9 OffPeak
East	EPJOA26u	PJM West Jan26	PJM West	1/1/2026	79.8 OffPeak
East	EPJOB26u	PJM West Feb26	PJM West	2/1/2026	73.35 OffPeak
East	EPJOC26u	PJM West Mar26	PJM West	3/1/2026	45.9 OffPeak
East	EPJOD26u	PJM West Apr26	PJM West	4/1/2026	38 OffPeak
East	EPJOE26u	PJM West May26	PJM West	5/1/2026	37.65 OffPeak
East	EPJOF26u	PJM West Jun26	PJM West	6/1/2026	36.4 OffPeak
East	EPJOG26u	PJM West Jul26	PJM West	7/1/2026	46.3 OffPeak
East	EPJOH26u	PJM West Aug26	PJM West	8/1/2026	43.35 OffPeak
East	EPJOI26u	PJM West Sep26	PJM West	9/1/2026	35.95 OffPeak
East	EPJOJ26u	PJM West Oct26	PJM West	10/1/2026	36.05 OffPeak
East	EPJOK26u	PJM West Nov26	PJM West	11/1/2026	39.95 OffPeak
East	EPJOL26u	PJM West Dec26	PJM West	12/1/2026	56.1 OffPeak
East	EPJOA27u	PJM West Jan27	PJM West	1/1/2027	80.15 OffPeak
East	EPJOB27u	PJM West Feb27	PJM West	2/1/2027	73.95 OffPeak
East	EPJOC27u	PJM West Mar27	PJM West	3/1/2027	51.85 OffPeak
East	EPJOD27u	PJM West Apr27	PJM West	4/1/2027	44.65 OffPeak
East	EPJOE27u	PJM West May27	PJM West	5/1/2027	39.7 OffPeak
East	EPJOF27u	PJM West Jun27	PJM West	6/1/2027	38.8 OffPeak
East	EPJOG27u	PJM West Jul27	PJM West	7/1/2027	46.8 OffPeak
East	EPJOH27u	PJM West Aug27	PJM West	8/1/2027	42.8 OffPeak
East	EPJOI27u	PJM West Sep27	PJM West	9/1/2027	39.6 OffPeak
East	EPJOJ27u	PJM West Oct27	PJM West	10/1/2027	39.75 OffPeak
East	EPJOK27u	PJM West Nov27	PJM West	11/1/2027	41.95 OffPeak
East	EPJOL27u	PJM West Dec27	PJM West	12/1/2027	48.7 OffPeak
East	EPJOA28u	PJM West Jan28	PJM West	1/1/2028	82.462026 OffPeak
East	EPJOB28u	PJM West Feb28	PJM West	2/1/2028	76.029536 OffPeak
East	EPJOC28u	PJM West Mar28	PJM West	3/1/2028	53.329031 OffPeak
East	EPJOD28u	PJM West Apr28	PJM West	4/1/2028	45.921039 OffPeak
East	EPJOE28u	PJM West May28	PJM West	5/1/2028	40.831376 OffPeak
East	EPJOF28u	PJM West Jun28	PJM West	6/1/2028	39.905727 OffPeak
East	EPJOG28u	PJM West Jul28	PJM West	7/1/2028	48.154896 OffPeak
East	EPJOH28u	PJM West Aug28	PJM West	8/1/2028	43.998536 OffPeak
East	EPJOI28u	PJM West Sep28	PJM West	9/1/2028	40.728526 OffPeak
East	EPJOJ28u	PJM West Oct28	PJM West	10/1/2028	40.873504 OffPeak



East	EPJOK28u	PJM West Nov28	PJM West	11/1/2028	43.1664 OffPeak
East	EPJOL28u	PJM West Dec28	PJM West	12/1/2028	50.076252 OffPeak
East	EPJOA29u	PJM West Jan29	PJM West	1/1/2029	82.757424 OffPeak
East	EPJOB29u	PJM West Feb29	PJM West	2/1/2029	76.301891 OffPeak
East	EPJOC29u	PJM West Mar29	PJM West	3/1/2029	53.520067 OffPeak
East	EPJOD29u	PJM West Apr29	PJM West	4/1/2029	46.085539 OffPeak
East	EPJOE29u	PJM West May29	PJM West	5/1/2029	40.977643 OffPeak
East	EPJOF29u	PJM West Jun29	PJM West	6/1/2029	40.048679 OffPeak
East	EPJOG29u	PJM West Jul29	PJM West	7/1/2029	48.327398 OffPeak
East	EPJOH29u	PJM West Aug29	PJM West	8/1/2029	44.156149 OffPeak
East	EPJOI29u	PJM West Sep29	PJM West	9/1/2029	40.874425 OffPeak
East	EPJOJ29u	PJM West Oct29	PJM West	10/1/2029	41.019922 OffPeak
East	EPJOK29u	PJM West Nov29	PJM West	11/1/2029	43.321032 OffPeak
East	EPJOL29u	PJM West Dec29	PJM West	12/1/2029	50.255637 OffPeak
East	EPJOA30u	PJM West Jan30	PJM West	1/1/2030	85.972241 OffPeak
East	EPJOB30u	PJM West Feb30	PJM West	2/1/2030	79.265934 OffPeak
East	EPJOC30u	PJM West Mar30	PJM West	3/1/2030	55.599121 OffPeak
East	EPJOD30u	PJM West Apr30	PJM West	4/1/2030	47.875791 OffPeak
East	EPJOE30u	PJM West May30	PJM West	5/1/2030	42.569471 OffPeak
East	EPJOF30u	PJM West Jun30	PJM West	6/1/2030	41.604421 OffPeak
East	EPJOG30u	PJM West Jul30	PJM West	7/1/2030	50.204737 OffPeak
East	EPJOH30u	PJM West Aug30	PJM West	8/1/2030	45.871451 OffPeak
East	EPJOI30u	PJM West Sep30	PJM West	9/1/2030	42.462244 OffPeak
East	EPJOJ30u	PJM West Oct30	PJM West	10/1/2030	42.613392 OffPeak
East	EPJOK30u	PJM West Nov30	PJM West	11/1/2030	45.003893 OffPeak
East	EPJOL30u	PJM West Dec30	PJM West	12/1/2030	52.20788 OffPeak
East	EPJOA31u	PJM West Jan31	PJM West	1/1/2031	87.639 OffPeak
East	EPJOB31u	PJM West Feb31	PJM West	2/1/2031	80.802678 OffPeak
East	EPJOC31u	PJM West Mar31	PJM West	3/1/2031	56.677032 OffPeak
East	EPJOD31u	PJM West Apr31	PJM West	4/1/2031	48.803967 OffPeak
East	EPJOE31u	PJM West May31	PJM West	5/1/2031	43.394774 OffPeak
East	EPJOF31u	PJM West Jun31	PJM West	6/1/2031	42.411013 OffPeak
East	EPJOG31u	PJM West Jul31	PJM West	7/1/2031	51.178065 OffPeak
East	EPJOH31u	PJM West Aug31	PJM West	8/1/2031	46.760769 OffPeak
East	EPJOI31u	PJM West Sep31	PJM West	9/1/2031	43.285467 OffPeak
East	EPJOJ31u	PJM West Oct31	PJM West	10/1/2031	43.439547 OffPeak
East	EPJOK31u	PJM West Nov31	PJM West	11/1/2031	45.876391 OffPeak
East	EPJOL31u	PJM West Dec31	PJM West	12/1/2031	53.220044 OffPeak
East	EPJOA32u	PJM West Jan32	PJM West	1/1/2032	89.662897 OffPeak
East	EPJOB32u	PJM West Feb32	PJM West	2/1/2032	82.6687 OffPeak
East	EPJOC32u	PJM West Mar32	PJM West	3/1/2032	57.985906 OffPeak
East	EPJOD32u	PJM West Apr32	PJM West	4/1/2032	49.931025 OffPeak
East	EPJOE32u	PJM West May32	PJM West	5/1/2032	44.396914 OffPeak
East	EPJOF32u	PJM West Jun32	PJM West	6/1/2032	43.390435 OffPeak
East	EPJOG32u	PJM West Jul32	PJM West	7/1/2032	52.35995 OffPeak
East	EPJOH32u	PJM West Aug32	PJM West	8/1/2032	47.840641 OffPeak
East	EPJOI32u	PJM West Sep32	PJM West	9/1/2032	44.285083 OffPeak
East	EPJOJ32u	PJM West Oct32	PJM West	10/1/2032	44.442721 OffPeak
East	EPJOK32u	PJM West Nov32	PJM West	11/1/2032	46.935841 OffPeak
East	EPJOL32u	PJM West Dec32	PJM West	12/1/2032	54.449084 OffPeak
East	EPJOA33u	PJM West Jan33	PJM West	1/1/2033	91.245147 OffPeak
East	EPJOB33u	PJM West Feb33	PJM West	2/1/2033	84.127527 OffPeak
East	EPJOC33u	PJM West Mar33	PJM West	3/1/2033	59.009164 OffPeak
East	EPJOD33u	PJM West Apr33	PJM West	4/1/2033	50.812141 OffPeak
East	EPJOE33u	PJM West May33	PJM West	5/1/2033	45.180371 OffPeak

## Platts M2MS Modeled NatGas Curves

Curve Date 10-May-23

2023 S&amp;P Global

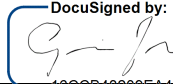
REGION	SYMBOL	DESCRIPTION	HUB	HUB CODE	DELIVERY DATE	M2MS II BASIS
West	NNAMB00u	TC Alb AECO-C M2M BOM	TC Alb AECO-C	NNA	5/12/2023	1.497 -0.499
West	NNAMF23u	TC Alb AECO-C Jun23	TC Alb AECO-C	NNA	6/1/2023	1.371 -0.82
West	NNAMG23u	TC Alb AECO-C Jul23	TC Alb AECO-C	NNA	7/1/2023	1.121 -1.215
West	NNAMH23u	TC Alb AECO-C Aug23	TC Alb AECO-C	NNA	8/1/2023	1.274 -1.145
West	NNAMI23u	TC Alb AECO-C Sep23	TC Alb AECO-C	NNA	9/1/2023	1.305 -1.11
West	NNAMJ23u	TC Alb AECO-C Oct23	TC Alb AECO-C	NNA	10/1/2023	1.43 -1.09
West	NNAMK23u	TC Alb AECO-C Nov23	TC Alb AECO-C	NNA	11/1/2023	1.954 -1.02
West	NNAML23u	TC Alb AECO-C Dec23	TC Alb AECO-C	NNA	12/1/2023	2.385 -1.085
West	NNAMA24u	TC Alb AECO-C Jan24	TC Alb AECO-C	NNA	1/1/2024	2.469 -1.25
West	NNAMB24u	TC Alb AECO-C Feb24	TC Alb AECO-C	NNA	2/1/2024	2.455 -1.18
West	NNAMC24u	TC Alb AECO-C Mar24	TC Alb AECO-C	NNA	3/1/2024	2.223 -1.1
West	NNAMD24u	TC Alb AECO-C Apr24	TC Alb AECO-C	NNA	4/1/2024	1.9815 -1.0225
West	NNAME24u	TC Alb AECO-C May24	TC Alb AECO-C	NNA	5/1/2024	1.8205 -1.1775
West	NNAMF24u	TC Alb AECO-C Jun24	TC Alb AECO-C	NNA	6/1/2024	1.8695 -1.2775
West	NNAMG24u	TC Alb AECO-C Jul24	TC Alb AECO-C	NNA	7/1/2024	1.9105 -1.3775
West	NNAMH24u	TC Alb AECO-C Aug24	TC Alb AECO-C	NNA	8/1/2024	1.9365 -1.3925
West	NNAMI24u	TC Alb AECO-C Sep24	TC Alb AECO-C	NNA	9/1/2024	2.008 -1.285
West	NNAMJ24u	TC Alb AECO-C Oct24	TC Alb AECO-C	NNA	10/1/2024	2.1605 -1.2175
West	NNAMK24u	TC Alb AECO-C Nov24	TC Alb AECO-C	NNA	11/1/2024	2.7425 -1.0525
West	NNAML24u	TC Alb AECO-C Dec24	TC Alb AECO-C	NNA	12/1/2024	3.0895 -1.1925
West	NNAMA25u	TC Alb AECO-C Jan25	TC Alb AECO-C	NNA	1/1/2025	3.2545 -1.3575
West	NNAMB25u	TC Alb AECO-C Feb25	TC Alb AECO-C	NNA	2/1/2025	3.258 -1.245
West	NNAMC25u	TC Alb AECO-C Mar25	TC Alb AECO-C	NNA	3/1/2025	2.986 -1.15
West	NNAMD25u	TC Alb AECO-C Apr25	TC Alb AECO-C	NNA	4/1/2025	2.643 -1.09
West	NNAME25u	TC Alb AECO-C May25	TC Alb AECO-C	NNA	5/1/2025	2.5645 -1.1425
West	NNAMF25u	TC Alb AECO-C Jun25	TC Alb AECO-C	NNA	6/1/2025	2.6195 -1.2225
West	NNAMG25u	TC Alb AECO-C Jul25	TC Alb AECO-C	NNA	7/1/2025	2.6845 -1.2875
West	NNAMH25u	TC Alb AECO-C Aug25	TC Alb AECO-C	NNA	8/1/2025	2.7195 -1.2875
West	NNAMI25u	TC Alb AECO-C Sep25	TC Alb AECO-C	NNA	9/1/2025	2.7795 -1.1825
West	NNAMJ25u	TC Alb AECO-C Oct25	TC Alb AECO-C	NNA	10/1/2025	2.8855 -1.1475
West	NNAMK25u	TC Alb AECO-C Nov25	TC Alb AECO-C	NNA	11/1/2025	3.303 -1.07
West	NNAML25u	TC Alb AECO-C Dec25	TC Alb AECO-C	NNA	12/1/2025	3.622 -1.115
West	NNAMA26u	TC Alb AECO-C Jan26	TC Alb AECO-C	NNA	1/1/2026	3.783 -1.19
West	NNAMB26u	TC Alb AECO-C Feb26	TC Alb AECO-C	NNA	2/1/2026	3.711 -1.055
West	NNAMC26u	TC Alb AECO-C Mar26	TC Alb AECO-C	NNA	3/1/2026	3.3055 -1.0125
West	NNAMD26u	TC Alb AECO-C Apr26	TC Alb AECO-C	NNA	4/1/2026	2.9335 -0.8725
West	NNAME26u	TC Alb AECO-C May26	TC Alb AECO-C	NNA	5/1/2026	2.735 -1.05
West	NNAMF26u	TC Alb AECO-C Jun26	TC Alb AECO-C	NNA	6/1/2026	2.8405 -1.0425
West	NNAMG26u	TC Alb AECO-C Jul26	TC Alb AECO-C	NNA	7/1/2026	2.897 -1.095
West	NNAMH26u	TC Alb AECO-C Aug26	TC Alb AECO-C	NNA	8/1/2026	2.9015 -1.1025
West	NNAMI26u	TC Alb AECO-C Sep26	TC Alb AECO-C	NNA	9/1/2026	2.912 -1.045
West	NNAMJ26u	TC Alb AECO-C Oct26	TC Alb AECO-C	NNA	10/1/2026	2.984 -1.04
West	NNAMK26u	TC Alb AECO-C Nov26	TC Alb AECO-C	NNA	11/1/2026	3.322 -1.02
West	NNAML26u	TC Alb AECO-C Dec26	TC Alb AECO-C	NNA	12/1/2026	3.6445 -1.0875
West	NNAMA27u	TC Alb AECO-C Jan27	TC Alb AECO-C	NNA	1/1/2027	3.804 -1.145
West	NNAMB27u	TC Alb AECO-C Feb27	TC Alb AECO-C	NNA	2/1/2027	3.6185 -1.1425

West	NNAMC27u	TC Alb AECO-C Mar27	TC Alb AECO-C	NNA	3/1/2027	3.216	-1.095
West	NNAMD27u	TC Alb AECO-C Apr27	TC Alb AECO-C	NNA	4/1/2027	2.826	-0.975
West	NNAME27u	TC Alb AECO-C May27	TC Alb AECO-C	NNA	5/1/2027	2.781	-0.995
West	NNAMF27u	TC Alb AECO-C Jun27	TC Alb AECO-C	NNA	6/1/2027	2.8485	-0.9975
West	NNAMG27u	TC Alb AECO-C Jul27	TC Alb AECO-C	NNA	7/1/2027	2.917	-1.01
West	NNAMH27u	TC Alb AECO-C Aug27	TC Alb AECO-C	NNA	8/1/2027	2.946	-1.015
West	NNAMI27u	TC Alb AECO-C Sep27	TC Alb AECO-C	NNA	9/1/2027	2.9415	-1.0025
West	NNAMJ27u	TC Alb AECO-C Oct27	TC Alb AECO-C	NNA	10/1/2027	3.051	-0.995
West	NNAMK27u	TC Alb AECO-C Nov27	TC Alb AECO-C	NNA	11/1/2027	3.3975	-0.9975
West	NNAML27u	TC Alb AECO-C Dec27	TC Alb AECO-C	NNA	12/1/2027	3.7915	-1.0325
West	NNAMA28u	TC Alb AECO-C Jan28	TC Alb AECO-C	NNA	1/1/2028	3.9315	-1.0725
West	NNAMB28u	TC Alb AECO-C Feb28	TC Alb AECO-C	NNA	2/1/2028	3.8085	-1.0075
West	NNAMC28u	TC Alb AECO-C Mar28	TC Alb AECO-C	NNA	3/1/2028	3.3765	-0.9925
West	NNAMD28u	TC Alb AECO-C Apr28	TC Alb AECO-C	NNA	4/1/2028	2.902	-0.94
West	NNAME28u	TC Alb AECO-C May28	TC Alb AECO-C	NNA	5/1/2028	2.7975	-1.0025
West	NNAMF28u	TC Alb AECO-C Jun28	TC Alb AECO-C	NNA	6/1/2028	2.88	-1.005
West	NNAMG28u	TC Alb AECO-C Jul28	TC Alb AECO-C	NNA	7/1/2028	2.935	-1.04
West	NNAMH28u	TC Alb AECO-C Aug28	TC Alb AECO-C	NNA	8/1/2028	2.967	-1.035
West	NNAMI28u	TC Alb AECO-C Sep28	TC Alb AECO-C	NNA	9/1/2028	2.972	-1.03
West	NNAMJ28u	TC Alb AECO-C Oct28	TC Alb AECO-C	NNA	10/1/2028	3.1675	-0.9375
West	NNAMK28u	TC Alb AECO-C Nov28	TC Alb AECO-C	NNA	11/1/2028	3.3785	-1.0425
West	NNAML28u	TC Alb AECO-C Dec28	TC Alb AECO-C	NNA	12/1/2028	3.825	-0.985
West	NNAMA29u	TC Alb AECO-C Jan29	TC Alb AECO-C	NNA	1/1/2029	4.0875	-0.9525
West	NNAMB29u	TC Alb AECO-C Feb29	TC Alb AECO-C	NNA	2/1/2029	3.905	-0.945
West	NNAMC29u	TC Alb AECO-C Mar29	TC Alb AECO-C	NNA	3/1/2029	3.4225	-0.9775
West	NNAMD29u	TC Alb AECO-C Apr29	TC Alb AECO-C	NNA	4/1/2029	2.9	-0.945
West	NNAME29u	TC Alb AECO-C May29	TC Alb AECO-C	NNA	5/1/2029	2.86	-0.955
West	NNAMF29u	TC Alb AECO-C Jun29	TC Alb AECO-C	NNA	6/1/2029	2.9465	-0.9575
West	NNAMG29u	TC Alb AECO-C Jul29	TC Alb AECO-C	NNA	7/1/2029	3.024	-0.98
West	NNAMH29u	TC Alb AECO-C Aug29	TC Alb AECO-C	NNA	8/1/2029	3.0625	-0.9675
West	NNAMI29u	TC Alb AECO-C Sep29	TC Alb AECO-C	NNA	9/1/2029	3.0665	-0.9675
West	NNAMJ29u	TC Alb AECO-C Oct29	TC Alb AECO-C	NNA	10/1/2029	3.154	-0.96
West	NNAMK29u	TC Alb AECO-C Nov29	TC Alb AECO-C	NNA	11/1/2029	3.5615	-0.9075
West	NNAML29u	TC Alb AECO-C Dec29	TC Alb AECO-C	NNA	12/1/2029	4.038	-0.85
West	NNAMA30u	TC Alb AECO-C Jan30	TC Alb AECO-C	NNA	1/1/2030	4.268	-0.85
West	NNAMB30u	TC Alb AECO-C Feb30	TC Alb AECO-C	NNA	2/1/2030	4.0755	-0.8425
West	NNAMC30u	TC Alb AECO-C Mar30	TC Alb AECO-C	NNA	3/1/2030	3.583	-0.875
West	NNAMD30u	TC Alb AECO-C Apr30	TC Alb AECO-C	NNA	4/1/2030	3.0605	-0.8475
West	NNAME30u	TC Alb AECO-C May30	TC Alb AECO-C	NNA	5/1/2030	3.0285	-0.8575
West	NNAMF30u	TC Alb AECO-C Jun30	TC Alb AECO-C	NNA	6/1/2030	3.086	-0.86
West	NNAMG30u	TC Alb AECO-C Jul30	TC Alb AECO-C	NNA	7/1/2030	3.1285	-0.8875
West	NNAMH30u	TC Alb AECO-C Aug30	TC Alb AECO-C	NNA	8/1/2030	3.1885	-0.8675
West	NNAMI30u	TC Alb AECO-C Sep30	TC Alb AECO-C	NNA	9/1/2030	3.1985	-0.8725
West	NNAMJ30u	TC Alb AECO-C Oct30	TC Alb AECO-C	NNA	10/1/2030	3.252	-0.865
West	NNAMK30u	TC Alb AECO-C Nov30	TC Alb AECO-C	NNA	11/1/2030	3.572	-0.865
West	NNAML30u	TC Alb AECO-C Dec30	TC Alb AECO-C	NNA	12/1/2030	4.0395	-0.8075
West	NNAMA31u	TC Alb AECO-C Jan31	TC Alb AECO-C	NNA	1/1/2031	4.247	-0.81
West	NNAMB31u	TC Alb AECO-C Feb31	TC Alb AECO-C	NNA	2/1/2031	4.0845	-0.8025
West	NNAMC31u	TC Alb AECO-C Mar31	TC Alb AECO-C	NNA	3/1/2031	3.652	-0.835
West	NNAMD31u	TC Alb AECO-C Apr31	TC Alb AECO-C	NNA	4/1/2031	3.1555	-0.8325
West	NNAME31u	TC Alb AECO-C May31	TC Alb AECO-C	NNA	5/1/2031	3.1235	-0.8425

West	NNAMF31u	TC Alb AECO-C Jun31	TC Alb AECO-C	NNA	6/1/2031	3.156	-0.845
West	NNAMG31u	TC Alb AECO-C Jul31	TC Alb AECO-C	NNA	7/1/2031	3.1685	-0.8725
West	NNAMH31u	TC Alb AECO-C Aug31	TC Alb AECO-C	NNA	8/1/2031	3.2285	-0.8525
West	NNAMI31u	TC Alb AECO-C Sep31	TC Alb AECO-C	NNA	9/1/2031	3.2385	-0.8575
West	NNAMJ31u	TC Alb AECO-C Oct31	TC Alb AECO-C	NNA	10/1/2031	3.316	-0.85
West	NNAMK31u	TC Alb AECO-C Nov31	TC Alb AECO-C	NNA	11/1/2031	3.5635	-0.9225
West	NNAML31u	TC Alb AECO-C Dec31	TC Alb AECO-C	NNA	12/1/2031	3.9985	-0.8675
West	NNAMA32u	TC Alb AECO-C Jan32	TC Alb AECO-C	NNA	1/1/2032	4.312	-0.77
West	NNAMB32u	TC Alb AECO-C Feb32	TC Alb AECO-C	NNA	2/1/2032	4.1495	-0.7625
West	NNAMC32u	TC Alb AECO-C Mar32	TC Alb AECO-C	NNA	3/1/2032	3.717	-0.795
West	NNAMD32u	TC Alb AECO-C Apr32	TC Alb AECO-C	NNA	4/1/2032	3.2495	-0.8175
West	NNAME32u	TC Alb AECO-C May32	TC Alb AECO-C	NNA	5/1/2032	3.2175	-0.8275
West	NNAMF32u	TC Alb AECO-C Jun32	TC Alb AECO-C	NNA	6/1/2032	3.25	-0.83
West	NNAMG32u	TC Alb AECO-C Jul32	TC Alb AECO-C	NNA	7/1/2032	3.2625	-0.8575
West	NNAMH32u	TC Alb AECO-C Aug32	TC Alb AECO-C	NNA	8/1/2032	3.3225	-0.8375
West	NNAMI32u	TC Alb AECO-C Sep32	TC Alb AECO-C	NNA	9/1/2032	3.3325	-0.8425
West	NNAMJ32u	TC Alb AECO-C Oct32	TC Alb AECO-C	NNA	10/1/2032	3.386	-0.835
West	NNAMK32u	TC Alb AECO-C Nov32	TC Alb AECO-C	NNA	11/1/2032	3.4835	-0.9425
West	NNAML32u	TC Alb AECO-C Dec32	TC Alb AECO-C	NNA	12/1/2032	3.941	-0.885
West	NNAMA33u	TC Alb AECO-C Jan33	TC Alb AECO-C	NNA	1/1/2033	4.326	-0.735
West	NNAMB33u	TC Alb AECO-C Feb33	TC Alb AECO-C	NNA	2/1/2033	4.1735	-0.7275
West	NNAMC33u	TC Alb AECO-C Mar33	TC Alb AECO-C	NNA	3/1/2033	3.791	-0.76
West	NNAMD33u	TC Alb AECO-C Apr33	TC Alb AECO-C	NNA	4/1/2033	3.4135	-0.8075
West	NNAME33u	TC Alb AECO-C May33	TC Alb AECO-C	NNA	5/1/2033	3.3815	-0.8175

This is Exhibit "NN" referred to in the Affidavit of Nino Silvestri sworn by Nino Silvestri of the Town of Oakville, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on May 26, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:



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Commissioner for Taking Affidavits (or as may be)

**GAVIN INKSTER LSO# 82737I**

**From:** [Yaroslav.Paliy@shell.com](mailto:Yaroslav.Paliy@shell.com) <[Yaroslav.Paliy@shell.com](mailto:Yaroslav.Paliy@shell.com)>

**Sent:** Wednesday, May 24, 2023 3:11 PM

**Subject:** Indicative Price Update - 5/24/2023

Good Afternoon,

Indicative gas offers at **Empress:**

Jun23	\$2.47	CAD/GJ
Jul23	\$2.63	CAD/GJ
Rest of Summer23 (Jun23-Oct23)	\$2.58	CAD/GJ
Winter23/24 (Nov23-Mar24)	\$3.66	CAD/GJ
Summer24 (Apr24-Oct24)	\$3.17	CAD/GJ
Jun23 1 Year:	\$3.13	CAD/GJ
Jun23 2 Year:	\$3.45	CAD/GJ
Jun23 3 Year:	\$3.73	CAD/GJ
Jun23 5 Year:	\$3.95	CAD/GJ

Indicative gas offers at **Dawn:**

Jun23	\$2.94	CAD/GJ
Jul23	\$3.07	CAD/GJ
Rest of Summer23 (Jun23-Oct23)	\$3.02	CAD/GJ
Winter23/24 (Nov23-Mar24)	\$4.52	CAD/GJ
Jun23 1 Year:	\$3.77	CAD/GJ
Jun23 2 Year:	\$4.20	CAD/GJ
Jun23 3 Year:	\$4.55	CAD/GJ
Jun23 5 Year:	\$4.71	CAD/GJ

Indicative gas offers at **CDA:**

Jun23 1 Year:	\$4.11	CAD/GJ
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Indicative Ontario electricity offers for a 7x24 block:

Jun23	\$29.64	CAD/MwH
Jun23 1 Year:	\$43.03	CAD/MwH
Jun23 2 Year:	\$47.41	CAD/MwH
Jun23 3 Year:	\$51.61	CAD/MwH
Jun23 5 Year:	\$55.33	CAD/MwH

Indicative Ontario electricity offers for a 5x16 block:

Jun23	\$34.65	CAD/MwH
Jun23 1 Year:	\$49.36	CAD/MwH
Jun23 2 Year:	\$54.50	CAD/MwH
Jun23 3 Year:	\$59.38	CAD/MwH
Jun23 5 Year:	\$63.69	CAD/MwH

Please e-mail or call the Inside Sales Team for price indications or to transact.

**Thank you,**

**Yaroslav Paliy**

Originator, Energy & Environmental Products

Shell Energy North America (Canada) Inc.

T: 1. 437.848.0845 | C: 1. 416.876.3061 | 90 Sheppard Ave. East Suite 600, Toronto, Ontario Canada, M2N 6Y2

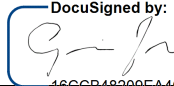


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Companies within the Shell Trading business may monitor and record communications for legal, regulatory and/or business purposes. Such communications will be controlled by Shell Energy North America (US) LP on behalf of all Shell Trading entities within the United States and by Shell International Trading and Shipping Company Ltd for all other Shell Trading entities. Personal data is handled and protected in accordance with applicable data protection laws and relevant Shell policies and rules. Personal data may be disclosed to other Shell companies and to third party organizations providing services to the relevant Shell Company or as required by law.

This is Exhibit "OO" referred to in the Affidavit of Nino Silvestri sworn by Nino Silvestri of the Town of Oakville, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on May 26, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:



16C6B48299EA461

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*Commissioner for Taking Affidavits (or as may be)*

**GAVIN INKSTER LSO# 82737I**



**Indicative Ontario electricity offers for a 7x24 bloc**

23-Jun	\$30.66	CAD/MwH
Jun23 1 Year:	\$42.47	CAD/MwH
Jun23 2 Year:	\$47.47	CAD/MwH
Jun23 3 Year:	\$51.73	CAD/MwH
Jun23 5 Year:	\$55.42	CAD/MwH

**Values May 24, 2023**

Indicative Ontario electricity offers for a 7x24 block:	CAD/MwH			Present Value of	
		Forecast Gross Margin	PV of Forecast Gross Margin	Variance from No Swap	Variance from No Swap
No Swap		3,039,244	2,790,735		
Jun23 6month:	\$29.64	2,846,133	2,603,302	(193,112)	(187,433)
Jun23 1 Year:	\$43.03	1,885,880	1,686,768	(1,153,364)	(1,103,968)
Jun23 2 Year:	\$47.41	771,112	672,671	(2,268,132)	(2,118,064)
Jun23 3 Year:	\$51.61	(120,791)	(117,695)	(3,160,036)	(2,908,430)
Jun23 5 Year:	\$55.33	(883,342)	(789,105)	(3,922,586)	(3,579,840)

**Key Assumptions:**

10% present value discount factor

1.5% monthly attrition

We get the power report from S&P Global Platts and it is updated every week on Tuesday.

<b>Impact on Present Value of Forecast Gross Margin due to Increase in HOEP</b>										
PV of Forecast Gross Margin - No Swap	2,790,735	2,790,735	2,790,735	2,790,735	2,790,735	2,790,735	2,790,735	2,790,735	2,790,735	2,790,735
% Increase in HOEP	<b>5%</b>	<b>10%</b>	<b>15%</b>	<b>20%</b>	<b>25%</b>	<b>30%</b>	<b>35%</b>	<b>40%</b>	<b>45%</b>	<b>50%</b>
\$ Impact of HOEP Increase	(294,300)	(588,600)	(882,900)	(1,177,200)	(1,471,500)	(1,765,800)	(2,060,100)	(2,354,400)	(2,648,700)	(2,943,000)
<b>PV of Forecast Gross Margin</b>	<b>2,496,435</b>	<b>2,202,136</b>	<b>1,907,836</b>	<b>1,613,536</b>	<b>1,319,236</b>	<b>1,024,936</b>	<b>730,636</b>	<b>436,336</b>	<b>142,036</b>	<b>(152,264)</b>

Monthly attrition rate: 1.5%  
Discount factor: 10%

Using April Us S&P Global 0%

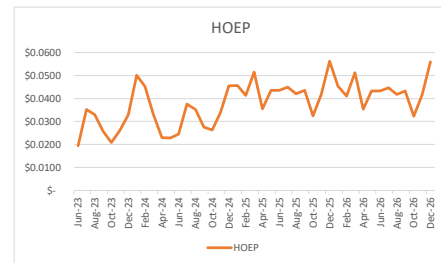
Month	Avg Weighted Contract Price	HOEP	HOEP after Adj	Margin	Monthly Usage (from SPI)	Monthly usage (after attrition)	Monthly Revenue	Monthly Cost	Net	Discount factor	Present Value
Jun-23	\$0.0508	\$ 0.0195	\$0.0195	\$0.0313	10,407,328	10,251,219	520,762	199,731	321,031	0.991736	318,378
Jul-23	\$0.0508	\$ 0.0352	\$0.0352	\$0.0156	11,046,941	10,715,532	544,349	377,053	167,296	0.983539	164,542
Aug-23	\$0.0508	\$ 0.0329	\$0.0329	\$0.0179	11,644,382	11,120,385	564,916	365,981	198,935	0.975411	194,043
Sep-23	\$0.0508	\$ 0.0257	\$0.0257	\$0.0251	8,723,778	8,200,351	416,578	210,986	205,592	0.96735	198,879
Oct-23	\$0.0508	\$ 0.0209	\$0.0209	\$0.0299	8,332,485	7,707,548	391,543	160,928	230,615	0.959355	221,242
Nov-23	\$0.0508	\$ 0.0260	\$0.0260	\$0.0248	8,631,907	7,855,035	399,036	204,573	194,463	0.951427	185,017
Dec-23	\$0.0508	\$ 0.0329	\$0.0329	\$0.0179	9,187,899	8,223,170	417,737	270,631	147,106	0.943563	138,804
Jan-24	\$0.0508	\$ 0.0501	\$0.0501	\$0.0007	9,755,959	8,585,244	436,130	430,177	5,953	0.935765	5,571
Feb-24	\$0.0508	\$ 0.0452	\$0.0452	\$0.0056	8,779,416	7,594,195	385,785	343,128	42,657	0.928032	39,587
Mar-24	\$0.0508	\$ 0.0332	\$0.0332	\$0.0176	8,499,558	7,224,624	367,011	239,506	127,504	0.920362	117,350
Apr-24	\$0.0508	\$ 0.0230	\$0.0230	\$0.0278	7,323,350	6,114,998	310,642	140,354	170,288	0.912756	155,431
May-24	\$0.0508	\$ 0.0228	\$0.0228	\$0.0280	7,530,323	6,174,865	313,683	140,699	172,984	0.905212	156,587
Jun-24	\$0.0508	\$ 0.0245	\$0.0245	\$0.0263	7,771,049	6,255,694	317,789	153,310	164,479	0.897731	147,658
Jul-24	\$0.0508	\$ 0.0376	\$0.0376	\$0.0132	8,167,168	6,452,063	327,765	242,558	85,207	0.890312	75,861
Aug-24	\$0.0508	\$ 0.0351	\$0.0351	\$0.0157	8,281,863	6,418,444	326,057	225,493	100,564	0.882954	88,794
Sep-24	\$0.0508	\$ 0.0275	\$0.0275	\$0.0233	6,123,158	4,653,600	236,403	127,915	108,488	0.875657	94,998
Oct-24	\$0.0508	\$ 0.0263	\$0.0263	\$0.0245	5,952,521	4,434,628	225,279	116,643	108,636	0.86842	94,342
Nov-24	\$0.0508	\$ 0.0339	\$0.0339	\$0.0169	6,160,416	4,497,104	228,453	152,498	75,955	0.861243	65,415
Dec-24	\$0.0508	\$ 0.0456	\$0.0456	\$0.0052	6,618,588	4,732,291	240,400	215,658	24,742	0.854125	21,133
Jan-25	\$0.0508	\$ 0.0457	\$0.0457	\$0.0051	7,262,467	5,083,727	258,253	232,353	25,900	0.847067	21,939
Feb-25	\$0.0508	\$ 0.0413	\$0.0413	\$0.0095	6,073,781	4,160,540	211,355	171,796	39,560	0.840066	33,233
Mar-25	\$0.0508	\$ 0.0515	\$0.0515	(\$0.0007)	6,093,290	4,082,504	207,391	210,249	-2,858	0.833123	2,381
Apr-25	\$0.0508	\$ 0.0355	\$0.0355	\$0.0153	5,204,236	3,408,775	173,166	121,001	52,164	0.826238	43,100
May-25	\$0.0508	\$ 0.0435	\$0.0435	\$0.0073	5,315,490	3,401,913	172,817	147,978	24,839	0.81941	20,353
Jun-25	\$0.0508	\$ 0.0435	\$0.0435	\$0.0073	5,580,803	3,488,002	177,190	151,723	25,468	0.812638	20,696
Jul-25	\$0.0508	\$ 0.0450	\$0.0450	\$0.0058	5,868,525	3,579,800	181,854	161,035	20,819	0.805922	16,779
Aug-25	\$0.0508	\$ 0.0420	\$0.0420	\$0.0088	5,792,038	3,446,263	175,070	144,787	30,283	0.799261	24,204
Sep-25	\$0.0508	\$ 0.0435	\$0.0435	\$0.0073	3,993,926	2,316,477	117,677	100,763	16,914	0.792656	13,407
Oct-25	\$0.0508	\$ 0.0324	\$0.0324	\$0.0184	3,782,116	2,136,895	108,554	69,317	39,237	0.786105	30,844
Nov-25	\$0.0508	\$ 0.0418	\$0.0418	\$0.0090	3,840,037	2,112,020	107,291	88,341	18,949	0.779608	14,773
Dec-25	\$0.0508	\$ 0.0562	\$0.0562	(\$0.0054)	4,004,037	2,142,160	108,822	120,452	-11,630	0.773165	8,992
Jan-26	\$0.0508	\$ 0.0454	\$0.0454	\$0.0054	4,156,880	2,161,578	109,808	98,207	11,602	0.766775	8,896
Feb-26	\$0.0508	\$ 0.0410	\$0.0410	\$0.0098	3,375,114	1,704,433	86,585	69,960	16,625	0.760438	12,642
Mar-26	\$0.0508	\$ 0.0512	\$0.0512	(\$0.0004)	3,282,603	1,608,476	81,711	82,342	-631	0.754154	476
Apr-26	\$0.0508	\$ 0.0353	\$0.0353	\$0.0155	2,670,749	1,268,606	64,445	44,764	19,681	0.747921	14,720
May-26	\$0.0508	\$ 0.0432	\$0.0432	\$0.0076	2,595,222	1,193,802	60,645	51,619	9,026	0.741174	6,695
Jun-26	\$0.0508	\$ 0.0432	\$0.0432	\$0.0076	2,748,288	1,222,988	62,128	52,881	9,247	0.73561	6,802
Jul-26	\$0.0508	\$ 0.0447	\$0.0447	\$0.0061	2,793,128	1,201,045	61,013	53,706	7,307	0.72953	5,331
Aug-26	\$0.0508	\$ 0.0418	\$0.0418	\$0.0090	2,835,630	1,176,787	59,781	49,146	10,635	0.723501	7,695
Sep-26	\$0.0508	\$ 0.0432	\$0.0432	\$0.0076	2,078,217	831,287	42,229	35,944	6,285	0.717522	4,510
Oct-26	\$0.0508	\$ 0.0322	\$0.0322	\$0.0186	1,980,998	762,338	38,727	24,583	14,144	0.711592	10,065
Nov-26	\$0.0508	\$ 0.0416	\$0.0416	\$0.0092	2,041,523	755,364	38,372	31,408	6,965	0.705711	4,915
Dec-26	\$0.0508	\$ 0.0559	\$0.0559	(\$0.0051)	2,092,446	742,818	37,735	41,518	-3,782	0.699879	2,647
Average		0.0381					9,712,939	6,673,695	3,039,244		2,790,735
Standard Deviation		0.0094					2,046,604	1,153,750	892,854		875,843

Net Present Value of Contracts Jun 1-23 to Dec 31-26

Change in HOEP	Present Value Factor			
	5%	10%	15%	20%
-10.00%	3,536,385	3,379,335	3,234,145	3,099,651
-9.00%	3,473,778	3,320,475	3,178,693	3,047,303
-8.00%	3,411,171	3,261,615	3,123,241	2,994,956
-7.00%	3,348,563	3,202,755	3,067,788	2,942,609
-6.00%	3,285,956	3,143,895	3,012,336	2,890,262
-5.00%	3,223,349	3,085,035	2,956,883	2,837,915
-4.00%	3,160,742	3,026,175	2,901,431	2,785,568
-3.00%	3,098,134	2,967,315	2,845,978	2,733,221
-2.00%	3,035,527	2,908,455	2,790,526	2,680,874
-1.00%	2,972,920	2,849,595	2,735,074	2,628,527
0%	2,910,313	2,790,735	2,679,621	2,576,180
5.00%	2,597,277	2,496,435	2,402,359	2,314,444
10.00%	2,284,241	2,202,136	2,125,097	2,052,709
15.00%	1,971,204	1,907,836	1,847,835	1,790,973
20.00%	1,658,168	1,613,536	1,570,572	1,529,237
25.00%	1,345,132	1,319,236	1,293,310	1,267,502
30.00%	1,032,096	1,024,936	1,016,048	1,005,766
35.00%	719,060	730,636	738,786	744,031
40.00%	406,024	436,336	461,524	482,295
45.00%	92,988	142,036	184,261	220,560
50.00%	220,048	152,264	93,001	41,176

Net Present Value of Contracts Jun 1-23 to Sep 30-23

Change in HOEP	Present Value Factor			
	5%	10%	15%	20%
-10.00%	998,457	988,843	979,383	970,074
-9.00%	987,040	977,543	968,199	959,004
-8.00%	975,622	966,243	957,015	947,934
-7.00%	964,204	954,943	945,831	936,864
-6.00%	952,786	943,643	934,647	925,794
-5.00%	941,368	932,343	923,463	914,724
-4.00%	929,950	921,043	912,278	903,654
-3.00%	918,533	909,743	901,094	892,584
-2.00%	907,115	898,443	889,910	881,514
-1.00%	895,697	887,143	878,726	870,443
0%	884,279	875,843	867,542	859,373
1.00%	872,861	864,543	856,358	848,303
2.00%	861,444	853,243	845,173	837,233
3.00%	850,026	841,943	833,989	826,163
4.00%	838,608	830,643	822,805	815,093
5.00%	827,190	819,343	811,621	804,023
6.00%	815,772	808,042	800,437	792,953
7.00%	804,354	796,742	789,253	781,883
8.00%	792,937	785,442	778,068	770,812
9.00%	781,519	774,142	766,884	759,742
10.00%	770,101	762,842	755,700	748,672



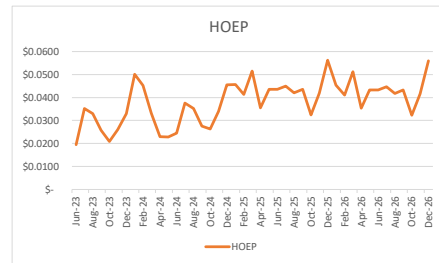


Monthly attrition rate: 1.5%  
Discount factor: 10%

Using April Us S&P Global 0%

Month	Avg Weighted Contract Price	HOEP	HOEP after Adj	Margin	Monthly Usage (from SPI)	Monthly usage (after attrition)	Monthly Revenue	Monthly Cost	Net	Discount factor	Present Value
Jun-23	\$0.0508	\$ 0.0425	\$ 0.0425	\$0.0083	10,407,328	10,251,219	520,762	435,369	85,393	0.991736	84,687
Jul-23	\$0.0508	\$ 0.0425	\$ 0.0425	\$0.0083	11,046,941	10,715,532	544,349	455,089	89,260	0.983539	87,791
Aug-23	\$0.0508	\$ 0.0425	\$ 0.0425	\$0.0083	11,644,382	11,120,385	564,916	472,283	92,633	0.975411	90,355
Sep-23	\$0.0508	\$ 0.0425	\$ 0.0425	\$0.0083	8,723,778	8,200,351	416,578	348,269	68,309	0.96735	66,079
Oct-23	\$0.0508	\$ 0.0425	\$ 0.0425	\$0.0083	8,332,485	7,707,548	391,543	327,340	64,204	0.959355	61,594
Nov-23	\$0.0508	\$ 0.0425	\$ 0.0425	\$0.0083	8,631,907	7,855,035	399,036	333,603	65,432	0.951427	62,254
Dec-23	\$0.0508	\$ 0.0425	\$ 0.0425	\$0.0083	9,187,899	8,223,170	417,737	349,238	68,499	0.943563	64,633
Jan-24	\$0.0508	\$ 0.0425	\$ 0.0425	\$0.0083	9,755,959	8,585,244	436,130	364,615	71,515	0.935765	66,921
Feb-24	\$0.0508	\$ 0.0425	\$ 0.0425	\$0.0083	8,779,416	7,594,195	385,785	322,525	63,260	0.928032	58,707
Mar-24	\$0.0508	\$ 0.0425	\$ 0.0425	\$0.0083	8,499,558	7,224,624	367,011	306,830	60,181	0.920362	55,388
Apr-24	\$0.0508	\$ 0.0425	\$ 0.0425	\$0.0083	7,323,350	6,114,998	310,642	259,704	50,938	0.912756	46,494
May-24	\$0.0508	\$ 0.0425	\$ 0.0425	\$0.0083	7,530,323	6,174,865	313,683	262,247	51,437	0.905212	46,561
Jun-24	\$0.0508	\$ 0.0425	\$ 0.0425	\$0.0263	7,771,049	6,255,694	317,789	153,310	164,479	0.897731	147,658
Jul-24	\$0.0508	\$ 0.0376	\$ 0.0376	\$0.0132	8,167,168	6,452,063	327,765	242,558	85,207	0.890312	75,861
Aug-24	\$0.0508	\$ 0.0351	\$ 0.0351	\$0.0157	8,281,863	6,418,444	326,057	225,493	100,564	0.882954	88,794
Sep-24	\$0.0508	\$ 0.0275	\$ 0.0275	\$0.0233	6,123,158	4,653,600	236,403	127,915	108,488	0.875657	94,998
Oct-24	\$0.0508	\$ 0.0263	\$ 0.0263	\$0.0245	5,952,521	4,434,628	225,279	116,643	108,636	0.86842	94,342
Nov-24	\$0.0508	\$ 0.0339	\$ 0.0339	\$0.0169	6,160,416	4,497,104	228,453	152,498	75,955	0.861243	65,415
Dec-24	\$0.0508	\$ 0.0456	\$ 0.0456	\$0.0052	6,618,588	4,732,291	240,400	215,658	24,742	0.854125	21,133
Jan-25	\$0.0508	\$ 0.0457	\$ 0.0457	\$0.0051	7,262,467	5,083,727	258,253	232,353	25,900	0.847067	21,939
Feb-25	\$0.0508	\$ 0.0413	\$ 0.0413	\$0.0095	6,073,781	4,160,540	211,355	171,796	39,560	0.840066	33,233
Mar-25	\$0.0508	\$ 0.0515	\$ 0.0515	(\$0.0007)	6,093,290	4,082,504	207,391	210,249	-2,858	0.833123	-2,381
Apr-25	\$0.0508	\$ 0.0355	\$ 0.0355	\$0.0153	5,204,236	3,408,775	173,166	121,001	52,164	0.826238	43,100
May-25	\$0.0508	\$ 0.0435	\$ 0.0435	\$0.0073	5,315,490	3,401,913	172,817	147,978	24,839	0.81941	20,353
Jun-25	\$0.0508	\$ 0.0435	\$ 0.0435	\$0.0073	5,580,803	3,488,002	177,190	151,723	25,468	0.812638	20,696
Jul-25	\$0.0508	\$ 0.0450	\$ 0.0450	\$0.0058	5,868,525	3,579,800	181,854	161,035	20,819	0.805922	16,779
Aug-25	\$0.0508	\$ 0.0420	\$ 0.0420	\$0.0088	5,792,038	3,446,263	175,070	144,787	30,283	0.799261	24,204
Sep-25	\$0.0508	\$ 0.0435	\$ 0.0435	\$0.0073	3,993,926	2,316,477	117,677	100,763	16,914	0.792656	13,407
Oct-25	\$0.0508	\$ 0.0324	\$ 0.0324	\$0.0184	3,782,116	2,136,895	108,554	69,317	39,237	0.786105	30,844
Nov-25	\$0.0508	\$ 0.0418	\$ 0.0418	\$0.0090	3,840,037	2,112,020	107,291	88,341	18,949	0.779608	14,773
Dec-25	\$0.0508	\$ 0.0562	\$ 0.0562	(\$0.0054)	4,004,037	2,142,160	108,822	120,452	-11,630	0.773165	-8,992
Jan-26	\$0.0508	\$ 0.0454	\$ 0.0454	\$0.0054	4,156,880	2,161,578	109,808	98,207	11,602	0.766775	8,896
Feb-26	\$0.0508	\$ 0.0410	\$ 0.0410	\$0.0098	3,375,114	1,704,433	86,585	69,960	16,625	0.760438	12,642
Mar-26	\$0.0508	\$ 0.0512	\$ 0.0512	(\$0.0004)	3,282,603	1,608,476	81,711	82,342	-631	0.754154	-476
Apr-26	\$0.0508	\$ 0.0353	\$ 0.0353	\$0.0155	2,670,749	1,268,606	64,445	44,764	19,681	0.747921	14,720
May-26	\$0.0508	\$ 0.0432	\$ 0.0432	\$0.0076	2,595,222	1,193,802	60,645	51,619	9,026	0.741174	6,695
Jun-26	\$0.0508	\$ 0.0432	\$ 0.0432	\$0.0076	2,748,288	1,222,988	62,128	52,881	9,247	0.73561	6,802
Jul-26	\$0.0508	\$ 0.0447	\$ 0.0447	\$0.0061	2,793,128	1,201,045	61,013	53,706	7,307	0.72953	5,331
Aug-26	\$0.0508	\$ 0.0418	\$ 0.0418	\$0.0090	2,835,630	1,176,787	59,781	49,146	10,635	0.723501	7,695
Sep-26	\$0.0508	\$ 0.0432	\$ 0.0432	\$0.0076	2,078,217	831,287	42,229	35,944	6,285	0.717522	4,510
Oct-26	\$0.0508	\$ 0.0322	\$ 0.0322	\$0.0186	1,980,998	762,338	38,727	24,583	14,144	0.711592	10,065
Nov-26	\$0.0508	\$ 0.0416	\$ 0.0416	\$0.0092	2,041,523	755,364	38,372	31,408	6,965	0.705711	4,915
Dec-26	\$0.0508	\$ 0.0559	\$ 0.0559	(\$0.0051)	2,092,446	742,818	37,735	41,518	-3,782	0.699879	-2,647
Average		0.0414					9,712,939	7,827,059	1,885,880		1,686,768
Standard Deviation		0.0065					2,046,604	1,711,010	335,595		328,912

Net Present Value of Contracts Jun 1-23 to Dec 31-26				
Change in HOEP	Present Value Factor			
	5%	10%	15%	20%
-10.00%	2,107,566	1,982,241	1,867,634	1,762,633
-9.00%	2,075,020	1,952,694	1,840,773	1,738,181
-8.00%	2,042,474	1,923,146	1,813,911	1,713,729
-7.00%	2,009,928	1,893,599	1,787,050	1,689,277
-6.00%	1,977,382	1,864,052	1,760,189	1,664,825
-5.00%	1,944,835	1,834,504	1,733,327	1,640,373
-4.00%	1,912,289	1,804,957	1,706,466	1,615,920
-3.00%	1,879,743	1,775,410	1,679,605	1,591,468
-2.00%	1,847,197	1,745,863	1,652,743	1,567,016
-1.00%	1,814,651	1,716,315	1,625,882	1,542,564
0%	1,782,105	1,686,768	1,599,020	1,518,112
1.00%	1,749,559	1,657,221	1,572,159	1,493,660
2.00%	1,717,012	1,627,673	1,545,298	1,469,208
3.00%	1,684,466	1,598,126	1,518,436	1,444,756
4.00%	1,651,920	1,568,579	1,491,575	1,420,304
5.00%	1,619,374	1,539,031	1,464,714	1,395,852
6.00%	1,586,828	1,509,484	1,437,852	1,371,400
7.00%	1,554,282	1,479,937	1,410,991	1,346,948
8.00%	1,521,736	1,450,389	1,384,129	1,322,496
9.00%	1,489,189	1,420,842	1,357,268	1,298,044
10.00%	1,456,643	1,391,295	1,330,407	1,273,592
Net Present Value of Contracts Jun 1-23 to Sep 30-23				
Change in HOEP	Present Value Factor			
	5%	10%	15%	20%
-10.00%	332,226	328,912	325,650	322,441
-9.00%	332,226	328,912	325,650	322,441
-8.00%	332,226	328,912	325,650	322,441
-7.00%	332,226	328,912	325,650	322,441
-6.00%	332,226	328,912	325,650	322,441
-5.00%	332,226	328,912	325,650	322,441
-4.00%	332,226	328,912	325,650	322,441
-3.00%	332,226	328,912	325,650	322,441
-2.00%	332,226	328,912	325,650	322,441
-1.00%	332,226	328,912	325,650	322,441
0%	332,226	328,912	325,650	322,441
1.00%	332,226	328,912	325,650	322,441
2.00%	332,226	328,912	325,650	322,441
3.00%	332,226	328,912	325,650	322,441
4.00%	332,226	328,912	325,650	322,441
5.00%	332,226	328,912	325,650	322,441
6.00%	332,226	328,912	325,650	322,441
7.00%	332,226	328,912	325,650	322,441
8.00%	332,226	328,912	325,650	322,441
9.00%	332,226	328,912	325,650	322,441
10.00%	332,226	328,912	325,650	322,441



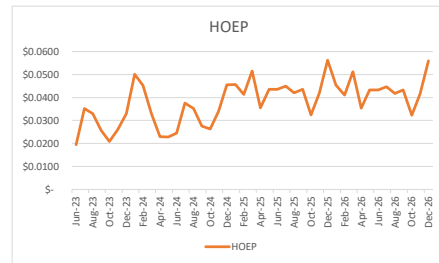
Monthly attrition rate: 1.5%  
Discount factor: 10%

Using April Us S&P Global 0%

Month	Avg Weighted Contract Price	HOEP	HOEP after Adj	Margin	Monthly Usage (from SPI)	Monthly usage (after attrition)	Monthly Revenue	Monthly Cost	Net	Discount factor	Present Value
Jun-23	\$0.0508	\$ 0.0475	\$ 0.0475	\$0.0033	10,407,328	10,251,219	520,762	486,625	34,137	0.991736	33,854
Jul-23	\$0.0508	\$ 0.0475	\$ 0.0475	\$0.0033	11,046,941	10,715,532	544,349	508,666	35,683	0.983539	35,095
Aug-23	\$0.0508	\$ 0.0475	\$ 0.0475	\$0.0033	11,644,382	11,120,385	564,916	527,885	37,031	0.975411	36,120
Sep-23	\$0.0508	\$ 0.0475	\$ 0.0475	\$0.0033	8,723,778	8,200,351	416,578	389,271	27,307	0.96735	26,416
Oct-23	\$0.0508	\$ 0.0475	\$ 0.0475	\$0.0033	8,332,485	7,707,548	391,543	365,877	25,666	0.959355	24,623
Nov-23	\$0.0508	\$ 0.0475	\$ 0.0475	\$0.0033	8,631,907	7,855,035	399,036	372,879	26,157	0.951427	24,887
Dec-23	\$0.0508	\$ 0.0475	\$ 0.0475	\$0.0033	9,187,899	8,223,170	417,737	390,354	27,383	0.943563	25,838
Jan-24	\$0.0508	\$ 0.0475	\$ 0.0475	\$0.0033	9,755,959	8,585,244	436,130	407,542	28,589	0.935765	26,752
Feb-24	\$0.0508	\$ 0.0475	\$ 0.0475	\$0.0033	8,779,416	7,594,195	385,785	360,496	25,289	0.928032	23,469
Mar-24	\$0.0508	\$ 0.0475	\$ 0.0475	\$0.0033	8,499,558	7,224,624	367,011	342,953	24,058	0.920362	22,142
Apr-24	\$0.0508	\$ 0.0475	\$ 0.0475	\$0.0033	7,323,350	6,114,998	310,642	290,279	20,363	0.912756	18,586
May-24	\$0.0508	\$ 0.0475	\$ 0.0475	\$0.0033	7,530,323	6,174,865	313,683	293,121	20,562	0.905212	18,613
Jun-24	\$0.0508	\$ 0.0475	\$ 0.0475	\$0.0033	7,771,049	6,255,694	317,789	296,958	20,831	0.897731	18,701
Jul-24	\$0.0508	\$ 0.0475	\$ 0.0475	\$0.0033	8,167,168	6,452,063	327,765	306,279	21,485	0.890312	19,129
Aug-24	\$0.0508	\$ 0.0475	\$ 0.0475	\$0.0033	8,281,863	6,418,444	326,057	304,684	21,373	0.882954	18,872
Sep-24	\$0.0508	\$ 0.0475	\$ 0.0475	\$0.0033	6,123,158	4,653,600	236,403	220,906	15,496	0.875657	13,570
Oct-24	\$0.0508	\$ 0.0475	\$ 0.0475	\$0.0033	5,952,521	4,434,628	225,279	210,512	14,767	0.86842	12,824
Nov-24	\$0.0508	\$ 0.0475	\$ 0.0475	\$0.0033	6,160,416	4,497,104	228,453	213,478	14,975	0.861243	12,897
Dec-24	\$0.0508	\$ 0.0475	\$ 0.0475	\$0.0033	6,618,588	4,732,291	240,400	224,642	15,759	0.854125	13,460
Jan-25	\$0.0508	\$ 0.0475	\$ 0.0475	\$0.0033	7,262,467	5,083,727	258,253	241,325	16,929	0.847067	14,340
Feb-25	\$0.0508	\$ 0.0475	\$ 0.0475	\$0.0033	6,073,781	4,160,540	211,355	197,501	13,855	0.840066	11,639
Mar-25	\$0.0508	\$ 0.0475	\$ 0.0475	\$0.0033	6,093,290	4,082,504	207,391	193,796	13,595	0.833123	11,326
Apr-25	\$0.0508	\$ 0.0475	\$ 0.0475	\$0.0033	5,204,236	3,408,775	173,166	161,815	11,351	0.826238	9,379
May-25	\$0.0508	\$ 0.0475	\$ 0.0475	\$0.0033	5,315,490	3,401,913	172,817	161,489	11,328	0.81941	9,283
Jun-25	\$0.0508	\$ 0.0435	\$ 0.0435	\$0.0073	5,580,803	3,488,002	177,190	151,723	25,468	0.812638	20,696
Jul-25	\$0.0508	\$ 0.0450	\$ 0.0450	\$0.0058	5,868,525	3,579,800	181,854	161,035	20,819	0.805922	16,779
Aug-25	\$0.0508	\$ 0.0420	\$ 0.0420	\$0.0088	5,792,038	3,446,263	175,070	144,787	30,283	0.799261	24,204
Sep-25	\$0.0508	\$ 0.0435	\$ 0.0435	\$0.0073	3,993,926	2,316,477	117,677	100,763	16,914	0.792656	13,407
Oct-25	\$0.0508	\$ 0.0324	\$ 0.0324	\$0.0184	3,782,116	2,136,895	108,554	69,317	39,237	0.786105	30,844
Nov-25	\$0.0508	\$ 0.0418	\$ 0.0418	\$0.0090	3,840,037	2,112,020	107,291	88,341	18,949	0.779608	14,773
Dec-25	\$0.0508	\$ 0.0562	\$ 0.0562	(\$0.0054)	4,004,037	2,142,160	108,822	120,452	-11,630	0.773165	-8,992
Jan-26	\$0.0508	\$ 0.0454	\$ 0.0454	\$0.0054	4,156,880	2,161,578	109,808	98,207	11,602	0.766775	8,896
Feb-26	\$0.0508	\$ 0.0410	\$ 0.0410	\$0.0098	3,375,114	1,704,433	86,585	69,960	16,625	0.760438	12,642
Mar-26	\$0.0508	\$ 0.0512	\$ 0.0512	(\$0.0004)	3,282,603	1,608,476	81,711	82,342	-631	0.754154	-476
Apr-26	\$0.0508	\$ 0.0353	\$ 0.0353	\$0.0155	2,670,749	1,268,606	64,445	44,764	19,681	0.747921	14,720
May-26	\$0.0508	\$ 0.0432	\$ 0.0432	\$0.0076	2,595,222	1,193,802	60,645	51,619	9,026	0.741174	6,695
Jun-26	\$0.0508	\$ 0.0432	\$ 0.0432	\$0.0076	2,748,288	1,222,988	62,128	52,881	9,247	0.73561	6,802
Jul-26	\$0.0508	\$ 0.0447	\$ 0.0447	\$0.0061	2,793,128	1,201,045	61,013	53,706	7,307	0.72953	5,331
Aug-26	\$0.0508	\$ 0.0418	\$ 0.0418	\$0.0090	2,835,630	1,176,787	59,781	49,146	10,635	0.723501	7,695
Sep-26	\$0.0508	\$ 0.0432	\$ 0.0432	\$0.0076	2,078,217	831,287	42,229	35,944	6,285	0.717522	4,510
Oct-26	\$0.0508	\$ 0.0322	\$ 0.0322	\$0.0186	1,980,998	762,338	38,727	24,583	14,144	0.711592	10,065
Nov-26	\$0.0508	\$ 0.0416	\$ 0.0416	\$0.0092	2,041,523	755,364	38,372	31,408	6,965	0.705711	4,915
Dec-26	\$0.0508	\$ 0.0559	\$ 0.0559	(\$0.0051)	2,092,446	742,818	37,735	41,518	-3,782	0.699879	-2,647
Average		0.0456					9,712,939	8,941,827	771,112		672,671
Standard Deviation		0.0046					2,046,604	1,912,447	134,157		131,486

Change in HOEP	Present Value Factor			
	5%	10%	15%	20%
-10.00%	848,546	786,239	730,513	680,565
-9.00%	835,621	774,882	720,525	671,772
-8.00%	822,695	763,525	710,536	662,979
-7.00%	809,770	752,169	700,548	654,186
-6.00%	796,845	740,812	690,560	645,393
-5.00%	783,919	729,455	680,572	636,600
-4.00%	770,994	718,098	670,583	627,807
-3.00%	758,069	706,742	660,595	619,014
-2.00%	745,144	695,385	650,607	610,220
-1.00%	732,218	684,028	640,619	601,427
0%	719,293	672,671	630,630	592,634
1.00%	706,368	661,315	620,642	583,841
2.00%	693,443	649,958	610,654	575,048
3.00%	680,517	638,601	600,666	566,255
4.00%	667,592	627,244	590,677	557,462
5.00%	654,667	615,888	580,689	548,669
6.00%	641,742	604,531	570,701	539,876
7.00%	628,816	593,174	560,713	531,083
8.00%	615,891	581,817	550,725	522,290
9.00%	602,966	570,461	540,736	513,497
10.00%	590,040	559,104	530,748	504,704

Change in HOEP	Present Value Factor			
	5%	10%	15%	20%
-10.00%	132,811	131,486	130,182	128,899
-9.00%	132,811	131,486	130,182	128,899
-8.00%	132,811	131,486	130,182	128,899
-7.00%	132,811	131,486	130,182	128,899
-6.00%	132,811	131,486	130,182	128,899
-5.00%	132,811	131,486	130,182	128,899
-4.00%	132,811	131,486	130,182	128,899
-3.00%	132,811	131,486	130,182	128,899
-2.00%	132,811	131,486	130,182	128,899
-1.00%	132,811	131,486	130,182	128,899
0%	132,811	131,486	130,182	128,899
1.00%	132,811	131,486	130,182	128,899
2.00%	132,811	131,486	130,182	128,899
3.00%	132,811	131,486	130,182	128,899
4.00%	132,811	131,486	130,182	128,899
5.00%	132,811	131,486	130,182	128,899
6.00%	132,811	131,486	130,182	128,899
7.00%	132,811	131,486	130,182	128,899
8.00%	132,811	131,486	130,182	128,899
9.00%	132,811	131,486	130,182	128,899
10.00%	132,811	131,486	130,182	128,899



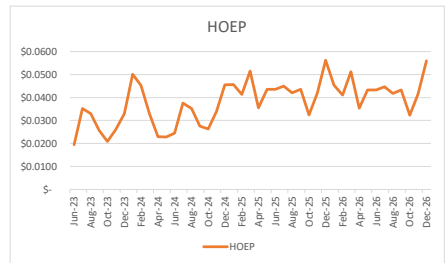
Monthly attrition rate: 1.5%  
Discount factor: 10%

Using April Us S&P Global 0%

Month	Avg Weighted Contract Price	HOEP	HOEP after Adj	Margin	Monthly Usage (from SPI)	Monthly usage (after attrition)	Monthly Revenue	Monthly Cost	Net	Discount factor	Present Value
Jun-23	\$0.0508	\$ 0.0517	\$ 0.0517	(\$0.0009)	10,407,328	10,251,219	520,762	530,296	- 9,534	0.991736	9,455
Jul-23	\$0.0508	\$ 0.0517	\$ 0.0517	(\$0.0009)	11,046,941	10,715,532	544,349	554,314	- 9,965	0.983539	9,801
Aug-23	\$0.0508	\$ 0.0517	\$ 0.0517	(\$0.0009)	11,644,382	11,120,385	564,916	575,258	- 10,342	0.975411	10,088
Sep-23	\$0.0508	\$ 0.0517	\$ 0.0517	(\$0.0009)	8,723,778	8,200,351	416,578	424,204	- 7,626	0.96735	7,377
Oct-23	\$0.0508	\$ 0.0517	\$ 0.0517	(\$0.0009)	8,332,485	7,707,548	391,543	398,711	- 7,168	0.959355	6,877
Nov-23	\$0.0508	\$ 0.0517	\$ 0.0517	(\$0.0009)	8,631,907	7,855,035	399,036	406,341	- 7,305	0.951427	6,950
Dec-23	\$0.0508	\$ 0.0517	\$ 0.0517	(\$0.0009)	9,187,899	8,223,170	417,737	425,385	- 7,648	0.943563	7,216
Jan-24	\$0.0508	\$ 0.0517	\$ 0.0517	(\$0.0009)	9,755,959	8,585,244	436,130	444,115	- 7,984	0.935765	7,471
Feb-24	\$0.0508	\$ 0.0517	\$ 0.0517	(\$0.0009)	8,779,416	7,594,195	385,785	392,848	- 7,063	0.928032	6,554
Mar-24	\$0.0508	\$ 0.0517	\$ 0.0517	(\$0.0009)	8,499,558	7,224,624	367,011	373,730	- 6,719	0.920362	6,184
Apr-24	\$0.0508	\$ 0.0517	\$ 0.0517	(\$0.0009)	7,323,350	6,114,998	310,642	316,329	- 5,687	0.912756	5,191
May-24	\$0.0508	\$ 0.0517	\$ 0.0517	(\$0.0009)	7,530,323	6,174,865	313,683	319,426	- 5,743	0.905212	5,198
Jun-24	\$0.0508	\$ 0.0517	\$ 0.0517	(\$0.0009)	7,771,049	6,255,694	317,789	323,607	- 5,818	0.897731	5,223
Jul-24	\$0.0508	\$ 0.0517	\$ 0.0517	(\$0.0009)	8,167,168	6,452,063	327,765	333,765	- 6,000	0.890312	5,342
Aug-24	\$0.0508	\$ 0.0517	\$ 0.0517	(\$0.0009)	8,281,863	6,418,444	326,057	332,026	- 5,969	0.882954	5,270
Sep-24	\$0.0508	\$ 0.0517	\$ 0.0517	(\$0.0009)	6,123,158	4,653,600	236,403	240,731	- 4,328	0.875657	3,790
Oct-24	\$0.0508	\$ 0.0517	\$ 0.0517	(\$0.0009)	5,952,521	4,434,628	225,279	229,403	- 4,124	0.86842	3,582
Nov-24	\$0.0508	\$ 0.0517	\$ 0.0517	(\$0.0009)	6,160,416	4,497,104	228,453	232,635	- 4,182	0.861243	3,602
Dec-24	\$0.0508	\$ 0.0517	\$ 0.0517	(\$0.0009)	6,618,588	4,732,291	240,400	244,801	- 4,401	0.854125	3,759
Jan-25	\$0.0508	\$ 0.0517	\$ 0.0517	(\$0.0009)	7,262,467	5,083,727	258,253	262,981	- 4,728	0.847067	4,005
Feb-25	\$0.0508	\$ 0.0517	\$ 0.0517	(\$0.0009)	6,073,781	4,160,540	211,355	215,225	- 3,869	0.840066	3,250
Mar-25	\$0.0508	\$ 0.0517	\$ 0.0517	(\$0.0009)	6,093,290	4,082,504	207,391	211,188	- 3,797	0.833123	3,163
Apr-25	\$0.0508	\$ 0.0517	\$ 0.0517	(\$0.0009)	5,204,236	3,408,775	173,166	176,336	- 3,170	0.826238	2,619
May-25	\$0.0508	\$ 0.0517	\$ 0.0517	(\$0.0009)	5,315,490	3,401,913	172,817	175,981	- 3,164	0.81941	2,592
Jun-25	\$0.0508	\$ 0.0517	\$ 0.0517	(\$0.0009)	5,580,803	3,488,002	177,190	180,434	- 3,244	0.812638	2,636
Jul-25	\$0.0508	\$ 0.0517	\$ 0.0517	(\$0.0009)	5,868,525	3,579,800	181,854	185,183	- 3,329	0.805922	2,683
Aug-25	\$0.0508	\$ 0.0517	\$ 0.0517	(\$0.0009)	5,792,038	3,446,263	175,070	178,275	- 3,205	0.799261	2,562
Sep-25	\$0.0508	\$ 0.0517	\$ 0.0517	(\$0.0009)	3,993,926	2,316,477	117,677	119,831	- 2,154	0.792656	1,708
Oct-25	\$0.0508	\$ 0.0517	\$ 0.0517	(\$0.0009)	3,782,116	2,136,895	108,554	110,542	- 1,987	0.786105	1,562
Nov-25	\$0.0508	\$ 0.0517	\$ 0.0517	(\$0.0009)	3,840,037	2,112,020	107,291	109,255	- 1,964	0.779608	1,531
Dec-25	\$0.0508	\$ 0.0517	\$ 0.0517	(\$0.0009)	4,004,037	2,142,160	108,822	110,814	- 1,992	0.773165	1,540
Jan-26	\$0.0508	\$ 0.0517	\$ 0.0517	(\$0.0009)	4,156,880	2,161,578	109,808	111,818	- 2,010	0.766775	1,541
Feb-26	\$0.0508	\$ 0.0517	\$ 0.0517	(\$0.0009)	3,375,114	1,704,433	86,585	88,170	- 1,585	0.760438	1,205
Mar-26	\$0.0508	\$ 0.0517	\$ 0.0517	(\$0.0009)	3,282,603	1,608,476	81,711	83,206	- 1,496	0.754154	1,128
Apr-26	\$0.0508	\$ 0.0517	\$ 0.0517	(\$0.0009)	2,670,749	1,268,606	64,445	65,625	- 1,180	0.747921	882
May-26	\$0.0508	\$ 0.0517	\$ 0.0517	(\$0.0009)	2,595,222	1,193,802	60,645	61,755	- 1,110	0.74174	824
Jun-26	\$0.0508	\$ 0.0432	\$ 0.0432	\$ 0.0076	2,748,288	1,222,988	62,128	62,881	853	0.73561	6,802
Jul-26	\$0.0508	\$ 0.0447	\$ 0.0447	\$ 0.0061	2,793,128	1,201,045	61,013	61,706	687	0.72953	5,331
Aug-26	\$0.0508	\$ 0.0418	\$ 0.0418	\$ 0.0090	2,835,630	1,176,787	59,781	49,146	10,635	0.723501	7,695
Sep-26	\$0.0508	\$ 0.0432	\$ 0.0432	\$ 0.0076	2,078,217	831,287	42,229	35,944	6,285	0.717522	4,510
Oct-26	\$0.0508	\$ 0.0322	\$ 0.0322	\$ 0.0186	1,980,998	762,338	38,727	24,583	14,144	0.711592	10,065
Nov-26	\$0.0508	\$ 0.0416	\$ 0.0416	\$ 0.0092	2,041,523	755,364	38,372	31,408	6,965	0.705711	4,915
Dec-26	\$0.0508	\$ 0.0559	\$ 0.0559	(\$0.0051)	2,092,446	742,818	37,735	41,518	- 3,782	0.699879	2,647
Average		0.0503					9,712,939	9,833,730	- 120,791		- 117,695
Standard Deviation		0.0041					2,046,604	2,084,072	- 37,467		- 36,721

Net Present Value of Contracts Jun 1-23 to Dec 31-26					
Change in HOEP	Present Value Factor				
	5%	10%	15%	20%	
-10.00%	94,946	96,880	97,900	98,188	
-9.00%	97,398	98,962	99,668	99,690	
-8.00%	99,851	101,043	101,435	101,193	
-7.00%	102,303	103,125	103,203	102,695	
-6.00%	104,756	105,206	104,971	104,198	
-5.00%	107,208	107,287	106,739	105,701	
-4.00%	109,661	109,369	108,507	107,203	
-3.00%	112,113	111,450	110,275	108,706	
-2.00%	114,565	113,532	112,043	110,208	
-1.00%	117,018	115,613	113,810	111,711	
0%	119,470	117,695	115,578	113,214	20,814
1.00%	121,923	119,776	117,346	114,711	
2.00%	124,375	121,857	119,114	116,219	
3.00%	126,828	123,939	120,882	117,722	
4.00%	129,280	126,020	122,650	119,224	
5.00%	131,733	128,102	124,417	120,727	
6.00%	134,185	130,183	126,185	122,229	
7.00%	136,638	132,265	127,953	123,732	
8.00%	139,090	134,346	129,721	125,235	
9.00%	141,543	136,427	131,489	126,737	
10.00%	143,995	138,509	133,257	128,240	

Net Present Value of Contracts Jun 1-23 to Sep 30-23					
Change in HOEP	Present Value Factor				
	5%	10%	15%	20%	
-10.00%	37,091	36,721	36,357	35,999	
-9.00%	37,091	36,721	36,357	35,999	
-8.00%	37,091	36,721	36,357	35,999	
-7.00%	37,091	36,721	36,357	35,999	
-6.00%	37,091	36,721	36,357	35,999	
-5.00%	37,091	36,721	36,357	35,999	
-4.00%	37,091	36,721	36,357	35,999	
-3.00%	37,091	36,721	36,357	35,999	
-2.00%	37,091	36,721	36,357	35,999	
-1.00%	37,091	36,721	36,357	35,999	
0%	37,091	36,721	36,357	35,999	
1.00%	37,091	36,721	36,357	35,999	
2.00%	37,091	36,721	36,357	35,999	
3.00%	37,091	36,721	36,357	35,999	
4.00%	37,091	36,721	36,357	35,999	
5.00%	37,091	36,721	36,357	35,999	
6.00%	37,091	36,721	36,357	35,999	
7.00%	37,091	36,721	36,357	35,999	
8.00%	37,091	36,721	36,357	35,999	
9.00%	37,091	36,721	36,357	35,999	
10.00%	37,091	36,721	36,357	35,999	





Monthly attrition rate: 1.5%  
Discount factor: 10%

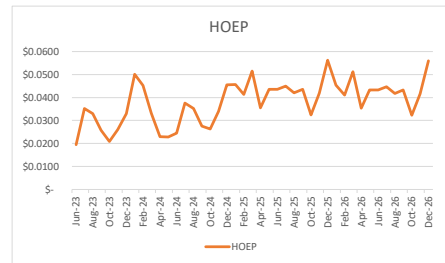
Using April Us S&P Global 0%

Month	Avg Weighted Contract Price	HOEP	HOEP after Adj	Margin	Monthly Usage (from SPI)	Monthly usage (after attrition)	Monthly Revenue	Monthly Cost	Net	Discount factor	Present Value
Jun-23	\$0.0508	\$ 0.0554	\$ 0.0554	(\$0.0046)	10,407,328	10,251,219	520,762	568,123	- 47,361	0.991736	46,969
Jul-23	\$0.0508	\$ 0.0554	\$ 0.0554	(\$0.0046)	11,046,941	10,715,532	544,349	593,855	- 49,506	0.983539	48,691
Aug-23	\$0.0508	\$ 0.0554	\$ 0.0554	(\$0.0046)	11,644,382	11,120,385	564,916	616,292	- 51,376	0.975411	50,113
Sep-23	\$0.0508	\$ 0.0554	\$ 0.0554	(\$0.0046)	8,723,778	8,200,351	416,578	454,463	- 37,886	0.96735	36,649
Oct-23	\$0.0508	\$ 0.0554	\$ 0.0554	(\$0.0046)	8,332,485	7,707,548	391,543	427,152	- 35,609	0.959355	34,162
Nov-23	\$0.0508	\$ 0.0554	\$ 0.0554	(\$0.0046)	8,631,907	7,855,035	399,036	435,326	- 36,290	0.951427	34,528
Dec-23	\$0.0508	\$ 0.0554	\$ 0.0554	(\$0.0046)	9,187,899	8,223,170	417,737	455,728	- 37,991	0.943563	35,847
Jan-24	\$0.0508	\$ 0.0554	\$ 0.0554	(\$0.0046)	9,755,959	8,585,244	436,130	475,794	- 39,664	0.935765	37,116
Feb-24	\$0.0508	\$ 0.0554	\$ 0.0554	(\$0.0046)	8,779,416	7,594,195	385,785	420,870	- 35,085	0.928032	32,560
Mar-24	\$0.0508	\$ 0.0554	\$ 0.0554	(\$0.0046)	8,499,558	7,224,624	367,011	400,389	- 33,378	0.920362	30,720
Apr-24	\$0.0508	\$ 0.0554	\$ 0.0554	(\$0.0046)	7,323,350	6,114,998	310,642	338,893	- 28,251	0.912756	25,787
May-24	\$0.0508	\$ 0.0554	\$ 0.0554	(\$0.0046)	7,530,323	6,174,865	313,683	342,211	- 28,528	0.905212	25,824
Jun-24	\$0.0508	\$ 0.0554	\$ 0.0554	(\$0.0046)	7,771,049	6,255,694	317,789	346,691	- 28,901	0.897731	25,946
Jul-24	\$0.0508	\$ 0.0554	\$ 0.0554	(\$0.0046)	8,167,168	6,452,063	327,765	357,573	- 29,809	0.890312	26,539
Aug-24	\$0.0508	\$ 0.0554	\$ 0.0554	(\$0.0046)	8,281,863	6,418,444	326,057	355,710	- 29,653	0.882954	26,182
Sep-24	\$0.0508	\$ 0.0554	\$ 0.0554	(\$0.0046)	6,123,158	4,653,600	236,403	257,903	- 21,500	0.875657	18,826
Oct-24	\$0.0508	\$ 0.0554	\$ 0.0554	(\$0.0046)	5,952,521	4,434,628	225,279	245,767	- 20,488	0.86842	17,792
Nov-24	\$0.0508	\$ 0.0554	\$ 0.0554	(\$0.0046)	6,160,416	4,497,104	228,453	249,230	- 20,777	0.861243	17,894
Dec-24	\$0.0508	\$ 0.0554	\$ 0.0554	(\$0.0046)	6,618,588	4,732,291	240,400	262,264	- 21,863	0.854125	18,674
Jan-25	\$0.0508	\$ 0.0554	\$ 0.0554	(\$0.0046)	7,262,467	5,083,727	258,253	281,740	- 23,487	0.847067	19,895
Feb-25	\$0.0508	\$ 0.0554	\$ 0.0554	(\$0.0046)	6,073,781	4,160,540	211,355	230,577	- 19,222	0.840066	16,147
Mar-25	\$0.0508	\$ 0.0554	\$ 0.0554	(\$0.0046)	6,093,290	4,082,504	207,391	226,252	- 18,861	0.833123	15,714
Apr-25	\$0.0508	\$ 0.0554	\$ 0.0554	(\$0.0046)	5,204,236	3,408,775	173,166	188,914	- 15,749	0.826238	13,012
May-25	\$0.0508	\$ 0.0554	\$ 0.0554	(\$0.0046)	5,315,490	3,401,913	172,817	188,534	- 15,717	0.81941	12,879
Jun-25	\$0.0508	\$ 0.0554	\$ 0.0554	(\$0.0046)	5,580,803	3,488,002	177,190	193,305	- 16,115	0.812638	13,095
Jul-25	\$0.0508	\$ 0.0554	\$ 0.0554	(\$0.0046)	5,868,525	3,579,800	181,854	198,393	- 16,539	0.805922	13,329
Aug-25	\$0.0508	\$ 0.0554	\$ 0.0554	(\$0.0046)	5,792,038	3,446,263	175,070	190,992	- 15,922	0.799261	12,726
Sep-25	\$0.0508	\$ 0.0554	\$ 0.0554	(\$0.0046)	3,993,926	2,316,477	117,677	128,379	- 10,702	0.792656	8,483
Oct-25	\$0.0508	\$ 0.0554	\$ 0.0554	(\$0.0046)	3,782,116	2,136,895	108,554	118,427	- 9,872	0.786105	7,761
Nov-25	\$0.0508	\$ 0.0554	\$ 0.0554	(\$0.0046)	3,840,037	2,112,020	107,291	117,048	- 9,758	0.779608	7,607
Dec-25	\$0.0508	\$ 0.0554	\$ 0.0554	(\$0.0046)	4,004,037	2,142,160	108,822	118,718	- 9,897	0.773165	7,652
Jan-26	\$0.0508	\$ 0.0554	\$ 0.0554	(\$0.0046)	4,156,880	2,161,578	109,808	119,795	- 9,986	0.766775	7,657
Feb-26	\$0.0508	\$ 0.0554	\$ 0.0554	(\$0.0046)	3,375,114	1,704,433	86,585	94,460	- 7,874	0.760438	5,988
Mar-26	\$0.0508	\$ 0.0554	\$ 0.0554	(\$0.0046)	3,282,603	1,608,476	81,711	89,142	- 7,431	0.754154	5,604
Apr-26	\$0.0508	\$ 0.0554	\$ 0.0554	(\$0.0046)	2,670,749	1,268,606	64,445	70,306	- 5,861	0.747921	4,384
May-26	\$0.0508	\$ 0.0554	\$ 0.0554	(\$0.0046)	2,595,222	1,193,802	60,645	66,161	- 5,515	0.74174	4,091
Jun-26	\$0.0508	\$ 0.0554	\$ 0.0554	(\$0.0046)	2,748,288	1,222,988	62,128	67,778	- 5,650	0.73561	4,156
Jul-26	\$0.0508	\$ 0.0554	\$ 0.0554	(\$0.0046)	2,793,128	1,201,045	61,013	66,562	- 5,549	0.72953	4,048
Aug-26	\$0.0508	\$ 0.0554	\$ 0.0554	(\$0.0046)	2,835,630	1,176,787	59,781	65,218	- 5,437	0.723501	3,933
Sep-26	\$0.0508	\$ 0.0554	\$ 0.0554	(\$0.0046)	2,078,217	831,287	42,229	46,070	- 3,841	0.717522	2,756
Oct-26	\$0.0508	\$ 0.0554	\$ 0.0554	(\$0.0046)	1,980,098	762,338	38,727	42,249	- 3,522	0.711592	2,506
Nov-26	\$0.0508	\$ 0.0554	\$ 0.0554	(\$0.0046)	2,041,523	755,364	38,372	41,862	- 3,490	0.705711	2,463
Dec-26	\$0.0508	\$ 0.0554	\$ 0.0554	(\$0.0046)	2,092,446	742,818	37,735	41,167	- 3,432	0.699879	2,402
Average		0.0554					9,712,939	10,596,281	- 883,342		789,105
Standard Deviation		0.0000					2,046,604	2,232,733	- 186,128		182,422

Net Present Value of Contracts Jun 1-23 to Dec 31-26					
Change in HOEP	Present Value Factor				
	5%	10%	15%	20%	
-10.00%	834,059	789,105	748,009	710,360	
-9.00%	834,059	789,105	748,009	710,360	
-8.00%	834,059	789,105	748,009	710,360	
-7.00%	834,059	789,105	748,009	710,360	
-6.00%	834,059	789,105	748,009	710,360	
-5.00%	834,059	789,105	748,009	710,360	
-4.00%	834,059	789,105	748,009	710,360	
-3.00%	834,059	789,105	748,009	710,360	
-2.00%	834,059	789,105	748,009	710,360	
-1.00%	834,059	789,105	748,009	710,360	
0%	834,059	789,105	748,009	710,360	
1.00%	834,059	789,105	748,009	710,360	
2.00%	834,059	789,105	748,009	710,360	
3.00%	834,059	789,105	748,009	710,360	
4.00%	834,059	789,105	748,009	710,360	
5.00%	834,059	789,105	748,009	710,360	
6.00%	834,059	789,105	748,009	710,360	
7.00%	834,059	789,105	748,009	710,360	
8.00%	834,059	789,105	748,009	710,360	
9.00%	834,059	789,105	748,009	710,360	
10.00%	834,059	789,105	748,009	710,360	

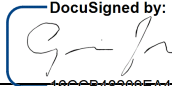
  

Net Present Value of Contracts Jun 1-23 to Sep 30-23					
Change in HOEP	Present Value Factor				
	5%	10%	15%	20%	
-10.00%	184,260	182,422	180,613	178,833	
-9.00%	184,260	182,422	180,613	178,833	
-8.00%	184,260	182,422	180,613	178,833	
-7.00%	184,260	182,422	180,613	178,833	
-6.00%	184,260	182,422	180,613	178,833	
-5.00%	184,260	182,422	180,613	178,833	
-4.00%	184,260	182,422	180,613	178,833	
-3.00%	184,260	182,422	180,613	178,833	
-2.00%	184,260	182,422	180,613	178,833	
-1.00%	184,260	182,422	180,613	178,833	
0%	184,260	182,422	180,613	178,833	
1.00%	184,260	182,422	180,613	178,833	
2.00%	184,260	182,422	180,613	178,833	
3.00%	184,260	182,422	180,613	178,833	
4.00%	184,260	182,422	180,613	178,833	
5.00%	184,260	182,422	180,613	178,833	
6.00%	184,260	182,422	180,613	178,833	
7.00%	184,260	182,422	180,613	178,833	
8.00%	184,260	182,422	180,613	178,833	
9.00%	184,260	182,422	180,613	178,833	
10.00%	184,260	182,422	180,613	178,833	



This is Exhibit "PP" referred to in the Affidavit of Nino Silvestri sworn by Nino Silvestri of the Town of Oakville, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on May 26, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:



10CCB48209FA481

---

Commissioner for Taking Affidavits (or as may be)

**GAVIN INKSTER LSO# 82737I**



Shell Energy North America (US), L.P.  
1000 Main Street, Level 12  
Houston, TX 77002  
Tel +1 713-767-5400  
[www.shell.com](http://www.shell.com)

May22, 2023

Robert Stevanovski  
ACN  
1000 Progress place  
Concord, NC 28025

Via email: [robert@acninc.com](mailto:robert@acninc.com)


Dear Robert,

Thank you for your letter of May 16th. You appear to be aware that Shell has been winding down our business relationship with Planet, and we intend to exit the relationship no later than our contractual end date of October 1, 2023. We're not fully acquainted with the workings of the separate Canadian insolvency paths being proposed by Planet and ACN so we're not in a position to confirm our support for either; however, we're willing to cooperate with both ACN and Planet to determine the most efficient path to making an orderly distribution to the creditors.

Planet's business is not a going concern and will likely be liquidated, so we do not want to enter into additional hedge transactions and enmesh ourselves further into the Planet relationship we're seeking to exit, with only increased risk and administrative burden to Shell. Our objective is to pursue an expedited path that allows us to fully exit the relationship and recover our claims, and we would like to work with both parties to find the path that can best achieve this result.

Shell, as a senior secured lienholder, reserves all rights with respect to these matters both in law and in equity.

Sincerely,

A handwritten signature in blue ink, appearing to read "Chris Riley", written over a large, sweeping blue line that extends across the signature block.

Christopher Riley  
Vice President  
Shell Energy North America (US), L.P.

Dated at the City of Toronto in the Province of Ontario, this 19<sup>th</sup> day May 2023.

Richter Inc. – Licensed Insolvency Trustee

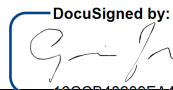
Per:

A handwritten signature in black ink, appearing to be 'KK', with a long horizontal stroke extending to the right.

---

Karen Kimel, MAcc, CPA, CA, CIRP, LIT  
181 Bay Street, Suite 3510  
Toronto, ON M5J 2T3  
Phone: 416.488.2345 Fax: 514.934.8603

This is Exhibit "QQ" referred to in the Affidavit of Nino Silvestri sworn by Nino Silvestri of the Town of Oakville, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on May 26, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:  


10CCB16209E1401  
\_\_\_\_\_  
*Commissioner for Taking Affidavits (or as may be)*

**GAVIN INKSTER LSO# 82737I**

Chris G. Paliare  
 Ian J. Roland  
 Ken Rosenberg  
 Linda R. Rothstein  
 Richard P. Stephenson  
 Nick Coleman  
 Donald K. Eady  
 Gordon D. Capern  
 Lily I. Harmer  
 Andrew Lokan  
 John Monger  
 Odette Soriano  
 Andrew C. Lewis  
 Megan E. Shortreed  
 Massimo Starnino  
 Karen Jones  
 Robert A. Centa  
 Nini Jones  
 Jeffrey Larry  
 Kristian Borg-Olivier  
 Emily Lawrence  
 Tina H. Lie  
 Jean-Claude Killey  
 Jodi Martin  
 Michael Fenrick  
 Ren Bucholz  
 Jessica Latimer  
 Lindsay Scott  
 Alysha Shore  
 Denise Cooney  
 Paul J. Davis  
 Danielle Glatt  
 Lauren Pearce  
 Elizabeth Rathbone  
 Daniel Rosenbluth  
 Glynnis Hawe  
 Hailey Bruckner  
 Charlotté Calon  
 Catherine Fan  
 Douglas Montgomery  
 Shawna Leclair  
 Jesse Wright  
 Chloe Hendrie

## COUNSEL

Stephen Goudge, Q.C.

## HONORARY COUNSEL

Ian G. Scott, Q.C., O.C.  
 (1934 -2006)

## Kris Borg-Olivier

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File 95221

February 15, 2021

## VIA EMAIL

[jdstrum@jdstrumlaw.com](mailto:jdstrum@jdstrumlaw.com)

## WITHOUT PREJUDICE

Jonathan D. Strum  
 Law Offices of Jonathan D. Strum  
 1620 L Street NW – Seventh Floor  
 Washington DC 20015

Dear Jonathan:

**Re: ACN v. Planet Energy**

I am responding to your letter of February 13, 2021.

ACN will not engage in a re-litigation of the arbitration award with you.

ACN never asked to become embroiled in a lengthy and costly arbitration with Planet Energy. Its hand was forced by Planet's unjustified refusal to pay commissions that were unquestionably due to ACN. The arbitration award now stands on its own, and it underscores the deliberate and fraudulent conduct engaged in by Planet and its principals.

ACN is prepared to negotiate in good faith to settle this matter, but Planet's offer, in light of its conduct, is simply insulting. It is unacceptable that Planet failed to set aside the commissions that it reported each month as owing to ACN and now cries poverty in the face of the award that has been made against it. Planet made assurances to the arbitrator that there was no need for such commissions to be paid into escrow because Planet was a "thriving organization"; those assurances appear to have been false and misleading.

Any negotiation should start, minimally, with an offer to pay those amounts reported and wrongfully withheld (as determined by the arbitrator), and with accommodation for payment of future commissions. If Planet makes an offer in accordance with this, then ACN will consider it and provide a reasonable counter-offer so that we can work towards settlement.

If Planet and ACN have not made meaningful and substantial progress towards settlement within 48 hours, ACN will no longer negotiate, but will pursue all available measures to collect on the award in full (even if that means initiating conversations with Planet's other creditors and petitioning Planet Energy into bankruptcy).

Be further advised that ACN intends to pursue Planet Energy's principals, representatives, and advisors personally and in their capacities as directors, officers, representatives, or advisors of Planet, as well as affiliated parties of the foregoing, who ACN suspects or discovers participated in, contributed to, enabled, or wrongly benefited from Planet's wrongful conduct. To the extent ACN believes fraudulent or other illegal conduct occurred, ACN will also consider filing criminal charges where applicable.

If you have not already done so, please direct your client, its principals, each of its representatives and advisors, and each of their affiliates to preserve all relevant documentation and information in anticipation of litigation – including, but not limited to, all financial documentation reflecting transfers from Planet to its principals (including any entities in which Planet's principals have an interest) and to any related or affiliated parties, from 2016 to the present. We also suggest that the foregoing parties notify any potential insurers of ACN's demand.

Planet and its principals would do well to recognize that if they had simply complied with their obligations in the first place instead of engaging in fanciful schemes to evade those obligations, they would not have ended up in the dire straits in which they now find themselves. Regrettably, they once again seem intent on looking for ways to shirk their debts rather than facing up to them; they should know that this approach, will, again, end very badly for them.

Yours very truly,  
PALIARE ROLAND ROSENBERG ROTHSTEIN LLP

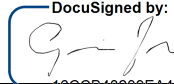


Kris Borg-Olivier

Doc 3659215 v1

This is Exhibit "RR" referred to in the Affidavit of Nino Silvestri sworn by Nino Silvestri of the Town of Oakville, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on May 26, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:



18CCB#8209FA#01

---

Commissioner for Taking Affidavits (or as may be)

**GAVIN INKSTER LSO# 82737I**



APPEARANCES:

Attending via Zoom Videoconferencing:

The Arbitrator: Ms. Stephanie Cohen

49 South Elliott Place

Brooklyn, NY 11217

Tel./fax: 718-422-1089

E-mail: cohen@cohenarbitration.com

Website: www.cohenarbitration.com

Counsel for Claimant/Counter-Respondent

Attending via Zoom Videoconferencing:

Mr. Kris Borg-Olivier

Paliare Roland Rosenberg Rothstein

155 Wellington St West, 35th Floor

Toronto ON M5V 3H1

Senior Law Clerk: Jacqueline Cummins

Also present via Zoom:

Jeremy Smuckler, ACN Corporate Representative

Kevin Rust, ACN Corporate Representative

David Stevanovski, ACN Corporate Representative

Robert Stevanovski, ACN Corporate Representative

Dave Merriman, ACN employee

APPEARANCES:

Counsel for Respondent/Counter-Claimant

Jonathan D. Strum,

Law Offices of Jonathan D. Strum,

1620 L St Nw, 7th Floor, Washington,

District of Columbia 20036, USA

Ryan Mellske, Flex Arbitri, PLLC

Sara Salama, Flex Arbitri, PLLC

Yurica Ramos Montes, Flex Arbitri, PLLC

525 Water Street SW, Suite 216

20024, USA

Also present via Zoom:

Nino Silvestri, Planet Energy Corporate Rep.

Stephen Plummer, Planet Energy Corporate Rep.

Verbatim Reporter via Zoom:

Lisa Barrett, CRR, RPR, CRC, CSR

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1 witness statement, please?

2 MS. MA: I'm looking for that. Give  
3 me one moment.

4 MR. BORG-OLIVIER: I think there are  
5 multiple witness statements.

6 MR. STRUM: The fourth witness  
7 statement of Steve Plummer. Sorry.

8 MS. MA: Sorry, I don't seem to have  
9 it in my files.

10 THE ARBITRATOR: We could email it  
11 very quickly, if necessary.

12 MS. MA: Sure.

13 MR. STRUM: Would you like me to do  
14 that or will somebody else do that?

15 MR. BORG-OLIVIER: I have it here.  
16 I'd be happy to send it along.

17 MR. STRUM: Go ahead.

18 MR. BORG-OLIVIER: You said the  
19 fourth, right?

20 MR. STRUM: The fourth, correct.

21 MS. MA: So, my apologies, I was  
22 just able to find it so I should have it on screen  
23 now.

24 MR. STRUM: Okay. Thank you.

25 All right. I still have this weird

1 thing going on with my video.

2 All right, if we can scroll down to  
3 page 6, please.

4 We'll put the email -- there we go.

5 This was the email from -- with  
6 process change number 3.1 which is, I guess,  
7 slightly different than process change number 3.

8 And do you recall having received  
9 this email, Ms. Ma? I will proffer that this is  
10 the same -- this was reprinted in total and I'm  
11 sure we have the other one somewhere in our  
12 exhibits. It might have been renamed.

13 Okay, well I'm told now that C23 is,  
14 in fact, the correct one.

15 All right. Let's just use this if  
16 that's okay. I apologize for the mix up.

17 BY MR. STRUM

18 Q. Do you recall receiving a copy  
19 of this email, Ms. David?

20 A. Yes.

21 Q. Okay. And this is with regard  
22 to the changes that you say Mr. Plummer was  
23 directing you to do?

24 A. Yes, part of that, this  
25 I believe is related mostly -- we had two things

1 that were renewing, electricity and gas.

2 So most of this one, this one is  
3 pertaining to electricity because we are not able  
4 to auto renew electricity. It's done by the call  
5 centre which the renewal department that later were  
6 hired, but when, I don't know.

7 Q. Okay, but -- okay. Then for  
8 electricity this -- but you did receive this email;  
9 is that right?

10 A. I did.

11 Q. And this was the instructions  
12 that Mr. Plummer was giving to you and to the rest  
13 of the team because, clearly, it's Mr. Gould,  
14 Mr. Sukul, Mr. McDonald, Ben Chen and yourself; is  
15 that right?

16 A. I'm sorry, what those names are?

17 Q. Those are the names that are on  
18 the screen. Those are the other people from Planet  
19 Energy who received this email?

20 A. Yeah, among together with them,  
21 yes, I received the email.

22 Q. Okay, so could scroll up for  
23 another page. Okay, so, and here you get an  
24 instruction, if you don't -- if you get a call --  
25 we do not get any ACN renewals, call in to CS

1 because it should go to the renewals department; is  
2 that correct?

3 A. Yes, electricity, yep.

4 Q. Okay, we're only talking about  
5 electricity now. Okay?

6 A. Okay.

7 Q. And it's pretty clear, it says,  
8 you read the notes and if there's a renewal -- if  
9 there's a prior contract by renewals, it goes to  
10 renewals. If there was no prior contract --  
11 contact by Planet Energy, the contract's in 500.

12 Now, 500 is flowing; right?

13 A. Yes.

14 Q. Then you direct the customer to  
15 the portal; is that right?

16 A. Yes, because there is still ACN  
17 and ACN have this record as active.

18 Q. Correct, and --

19 A. In their system.

20 Q. And if there is no prior contact  
21 by Planet and the contract is in 600 or 300, it  
22 goes to renewals.

23 Do you remember what 600 is?

24 A. It's the terminated accounts.

25 Q. I'm sorry?

1 A. Terminated accounts.

2 Q. Terminated accounts. So the  
3 customer terminated or the utility terminated or  
4 something like that?

5 A. Yes. So different types of --  
6 different ways it was terminated.

7 Q. Right. And if it's in 300 it  
8 went to renewals. Do you remember what 300 is?

9 A. 300 is in a process of dropping.  
10 That's my recollection, yeah, 300.

11 Q. And you see in red because this  
12 would have been the change from process change 3.  
13 It says:

14 "If it's in 500, if  
15 it's flowing, CS  
16 customer service will  
17 use the PS screen ..."

18 [As read]

19 I don't know what that is:

20 "... to select the" --

21 A. Plan switch.

22 Q. I am sorry?

23 A. Plan switch.

24 Q. So if it's in 500, customer  
25 service will use the plan switch to select the ACN



1 channel; is that right?

2 A. Yes.

3 Q. So if it was flowing, if it was  
4 an ACN customer that was flowing, the instructions  
5 were to plan switch it into an ACN channel;  
6 correct?

7 A. That is correct.

8 Q. And then in number 5, the red  
9 indicates that it's a change from 3 point -- or a  
10 clarification of process change 3, if the IBO  
11 customer wants to add an additional account so they  
12 can get the lower rate, they should go to the  
13 portal and they should call you back and do that;  
14 right?

15 A. That's correct.

16 Q. Okay. So to anybody that is a  
17 customer of ACN is going to remain a customer of  
18 ACN that's currently flowing; is that right?

19 A. Yeah, especially when the IBO --  
20 when the IBO is active, we would not want to  
21 trigger any questions from ACN. So any active  
22 accounts will remain as ACN.

23 Q. Right. So there was no  
24 hiding -- there was no hiding of any active  
25 accounts of ACN, was there?

1                   A. For this one? Not -- for this  
2 one, no, but for the gas, yes, but there are other  
3 electricity too where the account got reconnected  
4 from dropped.

5                   Q. Can we scroll up again.

6                   And how did ACN know that -- I mean,  
7 how did Planet Energy know which IBOs were active  
8 and inactive?

9                   A. We have it -- so earlier back  
10 then we receive a file from ACN to give us the  
11 statuses of their account -- of their agent, sorry.

12                   We requested that, to give us the  
13 active.

14                   And then we hard coded it in the  
15 system for us to base -- so this is how the process  
16 began, to base how we are going to put the account  
17 to Planet, especially that in a percentage level.

18                   Q. Can I ask a question in here.  
19 How did Planet hard code it into the system?

20                   A. Well, we requested that the IT  
21 did.

22                   Q. And how was that -- is that  
23 done? Is that in the -- is that -- in what  
24 database is that?

25                   A. It's the -- it's in the EMS.

## APPEARANCES:

Attending via Zoom Videoconferencing:

The Arbitrator: Ms. Stephanie Cohen

49 South Elliott Place

Brooklyn, NY 11217

Tel./fax: 718-422-1089

E-mail: cohen@cohenarbitration.com

Website: www.cohenarbitration.com

Counsel for Claimant/Counter-Respondent

Attending via Zoom Videoconferencing:

Mr. Kris Borg-Olivier

Paliare Roland Rosenberg Rothstein

155 Wellington St West, 35th Floor

Toronto ON M5V 3H1

Senior Law Clerk: Jacqueline Cummins

Also present via Zoom:

Jeremy Smuckler, ACN Corporate Representative

Kevin Rust, ACN Corporate Representative

David Stevanovski, ACN Corporate Representative

Robert Stevanovski, ACN Corporate Representative

Dave Merriman, ACN employee

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Counsel for Respondent/Counter-Claimant

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1620 L St Nw, 7th Floor, Washington,

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Sara Salama, Flex Arbitri, PLLC

Yurica Ramos Montes, Flex Arbitri, PLLC

525 Water Street SW, Suite 216

20024, USA

Also present via Zoom:

Nino Silvestri, Planet Energy Corporate Rep.

Stephen Plummer, Planet Energy Corporate Rep.

Verbatim Reporter via Zoom:

Lisa Barrett, CRR, RPR, CRC, CSR

Arbitration Place:

Virtual Hearing Technician: Ms. Christina Ma

1 THE WITNESS: True.

2 THE ARBITRATOR: So in the course of  
3 trying to undertake that exercise of determining  
4 the treatment and the status of the customers  
5 referred by ACN, there have been various  
6 allegations throughout this arbitration about  
7 re-coding, if you will, being done of certain  
8 designations within the Planet system, so changing  
9 of agent ID numbers.

10 Did you find evidence of changes of  
11 coding in reviewing the databases, the EMS  
12 database?

13 THE WITNESS: Let me answer it this  
14 way: I definitely saw connected customers or the  
15 same customer with different numbers attached to  
16 them in different time period.

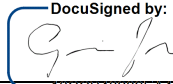
17 I can't -- I wasn't able to sort of  
18 go in and look at an audit trail and say someone  
19 changed it; here's when they changed it; why they  
20 changed it.

21 I saw instances of things being  
22 different, but for me to say oh, someone changed it  
23 at that time, I can't. I can't speak to that.

24 THE ARBITRATOR: Thank you. Those  
25 are my questions. Counsel, you might have

This is Exhibit "SS" referred to in the Affidavit of Nino Silvestri sworn by Nino Silvestri of the Town of Oakville, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on May 26, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:



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Commissioner for Taking Affidavits (or as may be)

**GAVIN INKSTER LSO# 82737I**

## LICENCE AGREEMENT (CANADA)

This **LICENCE AGREEMENT** is made effective as of June 12, 2018 (the "**Effective Date**") between EASYBOOKS INC., a Canada corporation ("**EASYBOOKS**") and PLANET ENERGY (ONTARIO) CORP., a Canada corporation ("**CUSTOMER**")

**WHEREAS** Easybooks has developed and is the owner of proprietary energy management software (the "Easybooks Software") which is used in the energy marketing industry to process gas and power transactions, to provide customer relationships and contract management, voice recording of customer interactions, payroll processing for agent networks, online information portal for agents, and comprehensive financial and general ledger reporting (the "Business");

**AND WHEREAS** CUSTOMER wishes to use the Easybooks Software in connection with the operation of its business in the fields of gas and power;

**AND WHEREAS** EASYBOOKS has agreed to grant to CUSTOMER and any and all Canadian subsidiaries of CUSTOMER a non-exclusive, non-transferable license to use the Easybooks Software in accordance with the terms and conditions set out herein;

**NOW THEREFORE**, in consideration of the mutual covenants and agreements hereinafter contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree and understand as follows:

### **ARTICLE 1** **DEFINITIONS**

1.1 **Definitions.** In this Agreement, the following terms shall have the meanings set out below:

**"Agreement"** means this License Agreement, including the recitals hereto and all schedules annexed to this Agreement as the same may be amended from time to time in accordance with the provisions hereof; "hereof", "hereto" and "hereunder" and similar expressions mean and refer to this Agreement and not to any particular Article or section;

**"Confidential Information"** means all oral, written or machine-readable data and information of value relating to the business and management of the disclosing party (the "**Disclosing Party**"), that is not generally known to its competitors and includes but is not limited to the Intellectual Property business plans, research and development, general business operations, and trade secrets, which is provided by the Disclosing Party to the receiving party (the "**Receiving Party**"); however, Confidential Information shall not include any data or information which:

- (a) is or becomes publicly available through no fault of the Receiving Party;
- (b) is already in the rightful possession of the Receiving Party prior to its receipt from the Disclosing Party;

- (c) is independently developed by the Receiving Party without breaching this Agreement;
- (d) is disclosed with the written consent of the Disclosing Party; or
- (e) is disclosed pursuant to court order or other requirement of law;

**"Force Majeure"** means any acts of God, war, natural calamities, strikes or other labour stoppages or disturbances, epidemics, acts of government or any competent authority having jurisdiction, or any other legitimate cause beyond the reasonable control of a party, and which, by exercise of due diligence, such party could not have prevented, but lack of funds on the part of such party shall not be deemed to be a force majeure;

**"Intellectual Property"** or **"Intellectual Property Rights"** means (i) any right that is or may be granted to, or recognized for the benefit of, any Person under any legislation in Canada and other foreign jurisdictions or at common or, as applicable, civil law in Canada or in other foreign jurisdictions regarding patents, copyright and any copyrightable subject matter (including moral rights), trade-marks, trade names, service marks, confidential information, trade secrets, industrial designs and integrated circuit topography rights, including any other statutory provision or common or civil law principle regarding intellectual property, whether registered or unregistered, and including rights in any and all applications, registrations, re-issues, divisionals, renewals, re-examinations relating to the foregoing, and (ii) any rights in and to licenses and sub-licenses from third parties relating to the foregoing;

**"Modifications"** means any enhancements, changes, corrections, improvements, translations, adaptations, revisions, upgrades or updates to the Easybooks Software; and **"Modify"** shall mean the creation of any of the foregoing;

**"parties"** means EASYBOOKS and CUSTOMER and **"party"** means any one of them;

**"Technical Information"** means all know-how and related technical knowledge of related to the Easybooks Software including, without limitation, all trade secrets and other proprietary know-how, source code, process documentation, methods of procedures, technical development requirements assessment and the end-to-end network architecture diagram;

**"Use"** means to install use, Modify, translate, and market the Easybooks Software.

## **ARTICLE 2**

### **GRANT OF LICENSE**

2.1 **License.** Subject to the terms of this Agreement, EASYBOOKS grants to CUSTOMER, and any and all subsidiaries of CUSTOMER, a non-exclusive, worldwide license and right to, directly use the Easybooks Software for its internal purposes only, and not for re-sale.

2.2 **Sublicensing.** CUSTOMER shall not be entitled to sublicense the right and license granted to it hereunder.



### 2.3 CUSTOMER's Obligations.

- (a) CUSTOMER agrees that it and its subsidiaries will use the Easybooks Software only in accordance with this Agreement.
- (b) CUSTOMER agrees that it will not use any competing software similar to the Easybooks Software, nor will it itself develop or use any software similar to the Easybooks Software during the Term. CUSTOMER will use commercially reasonable efforts to transfer, promptly after the Effective Date, all of its existing consumer accounts to the Easybooks Software pursuant to this Agreement to the extent that CUSTOMER is permitted to do so by applicable law and the terms of its agreements with third party service providers. Notwithstanding the foregoing, CUSTOMER will have the right to temporarily find alternate means by which to carry on the Business if an event of Force Majeure continues for a period of more than two (2) days and Easybooks is prevented from performing its obligations under this Agreement as a result.
- (c) CUSTOMER may make a single copy of the Easybooks Software for testing, backups or archival purposes and not for production use. In making this single copy of the Easybooks Software, CUSTOMER may not remove any copyright or other proprietary rights, notices contained in or faced on the Easybooks Software by EASYBOOKS.
- (d) CUSTOMER will ensure that all servers and other hardware on which the Easybooks Software is installed meet the technical specifications provided by EASYBOOKS and such hardware has valid SQL database, Windows Server and Windows Drive Partition software licences, in addition to any other licences required, during the term of this Agreement.

### 2.4 EASYBOOKS' Obligations.

- (a) EASYBOOKS shall deliver to CUSTOMER one copy of each of the components of the Easybooks Software (Energy Financial System ("EFS"), Energy Management System ("EMS"), Agent Online System ("AOS") and Customer Enrollment System ("CES")) and the source code therefor being licensed under this Agreement upon execution of this Agreement or at another time agreed upon by both parties.
- (b) CUSTOMER may require EASYBOOKS to assist with the deployment or implementation of the Easybooks Software, or the Modifications thereof, in which case the terms of such service engagement shall be negotiated in good faith and EASYBOOKS shall invoice CUSTOMER for such incremental services based on rates mutually agreed upon by the parties.

## **ARTICLE 3** **REPRESENTATIONS AND WARRANTIES**

- 3.1 EASYBOOKS' Representations and Warranties. EASYBOOKS represents and warrants:

- (a) when delivered, the media upon which the Easybooks Software is provided to CUSTOMER shall be free from defects in material and workmanship. CUSTOMER's sole remedy for breach of this warranty shall be replacement of the defective media, and for greater certainty, this remedy is not available where any inoperability is the result of use or Modifications to the Easybooks Software by CUSTOMER;
- (b) it has the right and authority to enter into this Agreement and grant all of the license rights herein and perform its obligations hereunder;
- (c) its execution and delivery of this Agreement have been duly authorized by all requisite corporate requirements; and this Agreement, when executed and delivered by EASYBOOKS, will constitute a legal, valid and binding obligation of EASYBOOKS, that is enforceable against EASYBOOKS in accordance with its terms;
- (d) it has all necessary rights to perform its obligations under this Agreement, and such performance does not, and will not, violate any other agreement or document to which EASYBOOKS is a party or by which it is bound;
- (e) to the best of EASYBOOKS' knowledge, the Easybooks Software does not infringe any third party Intellectual Property rights nor will any claim of such infringement or violation have been threatened or asserted, or be pending against EASYBOOKS at the time of delivery of the Easybooks Software; and

THE FOREGOING ARE THE ONLY WARRANTIES CONCERNING THE EASYBOOKS SOFTWARE AND ARE BEING MADE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES AND REPRESENTATIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND MERCHANTABILITY.

3.2 CUSTOMER's Representations and Warranties. CUSTOMER represents and warrants:

- (a) it has the right and authority to enter into this Agreement and perform its obligations set out herein;
- (b) its execution and delivery of this Agreement have been duly authorized by all requisite corporate requirements; and this Agreement, when executed and delivered by CUSTOMER, will constitute a legal, valid and binding obligation of CUSTOMER, that is enforceable against CUSTOMER in accordance with its terms;
- (c) it has all necessary rights to perform its obligations under this Agreement, and such performance does not, and will not, violate any other agreement or document to which CUSTOMER is a party or by which it is bound;
- (d) it shall not dispute or contest, directly or indirectly, the validity, ownership or enforceability of any of the Easybooks Software, or EASYBOOKS' right, title and

interest, in and to the Easybooks Software, nor counsel, procure or assist any other party to do the same.

**ARTICLE 4**  
**FEES**

4.1 **Account Processing Fees.** During the Term, CUSTOMER shall pay to EASYBOOKS the monthly fees as detailed below, subject to a minimum fee of \$30,000.00 per month, plus HST.

<b>Monthly Rate for Each Account based on Total number of Accounts Enrolled on the Easybooks Software by CUSTOMER and Canadian subsidiaries of CUSTOMER (Sum of Easybooks Status Codes 490 (Enrolled for Flow) and 500 (Flowing))</b>		
<b>From</b>	<b>To</b>	<b>Rate for Each Canada Account</b>
10,001	20,000	\$3.00
20,001	30,000	\$2.30
30,001	40,000	\$1.80
40,001	50,000	\$1.55
50,001	60,000	\$1.40
60,001	70,000	\$1.30
70,001	90,000	\$1.15
90,001	90,000	\$1.10
90,001	100000	\$1.05
100,001	110000	\$0.95
110,001	120000	\$0.86
120,001	130000	\$0.79
130,001	140000	\$0.74
140,001	150000	\$0.69
150,001	and up	\$0.69

Invoices for Account Processing Fees will commence on June 12, 2018 and monthly thereafter. All invoices for Account Processing Fees are due Net 15 days. The applicable Tier to use for the unit rate per account will be determined by adding all of CUSTOMER's accounts with the accounts of Planet Energy Corp. and its subsidiaries in the USA.

In addition, CUSTOMER will pay a monthly network, internet and server cabinet fee of \$576.00 per month plus HST plus any bandwidth charges in excess of 10Mb. This amount will be adjusted from time to time based on the actual charges billed by the third party co-location service and will be invoiced separately.

4.2 **Annual Fee Increase.** The monthly fee referred to in Section 4.1 (excluding the network, internet fee and server cabinet fee) will increase by the amount of Consumer Price Index plus 2% each year on the yearly anniversary of the Effective Date.

4.3 **Upfront setup fees for new markets entered into.** A one-time upfront setup fee of \$30,000 plus HST is payable by CUSTOMER upon entering new markets for which a new instance of Easybooks is required to be installed, configured and setup on its own server or server partition.

4.4 **Modifications and Other Customization Services.** All Modifications to the Easybooks Software and conversion of customer account data to the Easybooks Software must be made by EASYBOOKS and will be billed for at our current rates in effect for the provision of such services. EASYBOOKS grants to CUSTOMER the right to make Modifications and customization to the Easybooks Software and to convert customer account data to the Easybooks Software using its own in-house technical personnel providing EASYBOOKS provides approval in advance of the technical specifications for the Modifications, customization and data conversion to the Easybooks Software, which approval will not be unreasonably withheld. CUSTOMER acknowledges that it is solely responsible for all loss of data and breakage of code and database logic that occurs as a result of CUSTOMER's Modifications, customization and data conversion to the Easybooks Software and any pre-approval provided to CUSTOMER by EASYBOOKS of the technical specifications is not to be construed as an opinion that the Modifications, customization and data conversion to the Easybooks Software to be done by CUSTOMER will achieve CUSTOMER's desired outcome. All Modifications made by CUSTOMER to the Easybooks Software become the property of Easybooks.

## **ARTICLE 5**

### **CONFIDENTIALITY**

5.1 **Confidentiality.** The parties acknowledge that the Confidential Information is derived from information disclosed to the Receiving Party by the Disclosing Party and that such information is confidential and a trade secret of the Disclosing Party. The Receiving Party agrees to use commercially reasonable efforts (and, in any event, efforts that are no less than the efforts used to protect its own confidential information) to protect Confidential Information from disclosure during the Term and after the termination or expiry thereof.

5.2 **Obligations.** The Receiving Party and its officers, employees, agents and contractors at all times shall:

- (a) treat the Confidential Information as strictly confidential, and shall not disclose or permit the disclosure of the Confidential Information to any person, corporation or organization whatsoever without first obtaining written permission from the Disclosing Party, save and except to those officers and employees of the Receiving Party with a need-to-know, and upon whom confidentiality obligations as required by this Article have been imposed;
- (b) not make use of the Confidential Information other than as required for the sole and exclusive purpose of performing its obligations under this Agreement; and
- (c) immediately notify the Disclosing Party of any breach, or threatened breach, of this Article of which it is aware.

5.3 **Personnel's Obligations.** The Receiving Party represents and warrants that appropriate confidentiality obligations have been, or shall be prior to receipt of any Confidential Information,

imposed upon its officers, employees, agents and contractors who may have access to, or be in possession of, Confidential Information during the Term, that are consistent with or more stringent than the confidentiality obligations contained herein. The Receiving Party shall inform all of its officers, employees, agents and contractors who may have access to, or be in possession of, Confidential Information about its confidential nature, and of the obligations contained herein.

5.4 **Equitable Remedies.** In the event of a breach, or a threatened breach, of any of the provisions of this Article, the Receiving Party acknowledges and agrees that the harm suffered by the Disclosing Party would not be compensable by monetary damages alone and, accordingly, the Disclosing Party, in addition to other available legal or equitable remedies, shall be entitled to seek an injunction against such breach or threatened breach, and the Receiving Party shall not challenge such application for injunction on the basis that there is another adequate remedy available at law. This provision does not affect any other remedies available to the parties to this Agreement.

## **ARTICLE 6**

### **LIMITATION OF LIABILITY, INDEMNITIES AND INSURANCE**

6.1 **General Indemnity.** Each party shall be liable for, and shall indemnify and save harmless the other party from and against, all costs, expenses, claims, losses and damages that the other party may sustain or incur as a result of:

- (a) that party's breach of any provision of this Agreement;
- (b) any defect in the title to the Easybooks Software supplied under this Agreement, or any liens, encumbrances, charges or security interests against, on or in the Easybooks Software.
- (c) any loss, injury, death, damage, expense, charge or cost that the other party may suffer or incur, whether in respect of injury to persons or damage to the other party's property, end-users, or others in any manner that arises out of, or is attributable to, the Easybooks Software.

6.2 **Consequential Damages.** Notwithstanding any other provision of this Agreement, neither party will be liable to the other for any indirect, special, consequential, incidental, economic or punitive damages in connection with, or arising out of, this Agreement, including, without limitation, loss of business, revenue, profits, goodwill, use, data, electronically transmitted orders, or other economic advantages, arising, directly or indirectly, from breach of contract (including fundamental breach or otherwise), negligence, any act or omission of the party or those for whom it is in law responsible, or under any other theory of law or equity, even if the party has been advised of, had knowledge of, or reasonably could have foreseen, the possibility of such damages. The foregoing limitation shall not apply with respect to the indemnities provided for in this Article, a breach of Article 5 (Confidential Information) or any injury, death, or damage to personal or real property.

6.3 **Infringement Obligation.** Each party (the "**Indemnifying Party**"), at its expense, shall be liable for, and shall defend, indemnify and hold harmless the other party and its officers, directors, employees, agents and contractors (the "**Indemnified Party**") from and against any

claim that the Easybooks Software, infringes any patent, copyright or other Intellectual Property right, including, without limitation, trade secrets of a third party. The Indemnifying Party's obligation under the preceding sentence is conditional upon the following:

- (a) the Indemnifying Party is promptly informed in writing and furnished with a copy of each communication, notice or other action relating to the alleged infringement;
- (b) the Indemnifying Party shall have control over the defence and negotiations for a settlement or compromise;
- (c) the Indemnifying Party is given all reasonable authority, information and assistance from the Indemnified Party, at the Indemnifying Party's expense, necessary to defend or settle such suit or proceeding; and
- (d) the Indemnified Party incurs no obligation or liability with respect to any alleged infringement claim without the prior written consent of the Indemnifying Party.

6.4 **Indemnification Exceptions.** The obligations of the Indemnifying Party as specified in section 6.3 above do not apply to the Easybooks Software, or portions or components thereof that:

- (a) are modified by persons or entities other than the Indemnifying Party without the written consent of the Indemnifying Party if the alleged infringement is a direct result of such modification;
- (b) are combined with other products, processes or materials not supplied or approved in writing by the Indemnifying Party where the alleged infringement is a direct result of such combination;
- (c) are the result of the Indemnifying Party compliance with the Indemnified Party's direction to modify the Easybooks Software, as applicable, where the modification could not have been completed in a way to avoid infringement and the Indemnifying Party had informed the Indemnified Party in writing prior to making the modification that the modification may result in infringement; or
- (d) continue to be used after the Indemnifying Party has made a non-infringing version of the Easybooks Software, available and has notified the Indemnified Party in writing that the non-infringing version of the Easybooks Software should be used to avoid infringement, where the non-infringing version has materially the same functionality as the original.

6.5 **Infringement Remedy.** If any claim that the Indemnifying Party is obligated to defend has occurred or, in the Indemnifying Party's opinion, is likely to occur, the Indemnifying Party may, at its option, discharge its indemnification obligation under Section 6.3 by either:

- (a) procuring for the Indemnified Party the right to continue to use the Easybooks Software, under commercially reasonable terms; or

- (b) replacing or modifying the Easybooks Software, so that it becomes non-infringing, without adversely affecting functionality.

## **ARTICLE 7**

### **TERM AND TERMINATION**

7.1 **Term.** The term of this Agreement shall be for Five (5) years from the Effective Date.

7.2 **Termination on Default.** Either party (the "**Defaulting Party**") shall be deemed to be in default under this Agreement, and the other party (the "**Non-Defaulting Party**") may at its option terminate this Agreement and all rights granted herein effective immediately without notice, in the following events:

- (a) the Defaulting Party files a voluntary petition in bankruptcy or insolvency or petitions for reorganization under any bankruptcy law (and such is not dismissed within ten (10) days); and
- (b) there is entered an order, judgment or decree by a court of competent jurisdiction, upon the application of a creditor, approving a petition seeking reorganization or appointing a receiver, trustee or liquidator of all or a substantial part of the Defaulting Party's assets, and such order, judgment or decree continues in effect for a period of thirty (30) consecutive days; or
- (c) in the case of CUSTOMER, CUSTOMER fails to make one or more monthly payments, and when requested to do so, fails to make such payments within 10 days of such notice.

7.3 **Termination without Cause.** CUSTOMER or EASYBOOKS may terminate this Agreement at any time on twelve (12) calendar months notice to provide for an orderly transition of services.

7.4 **Obligations on Termination.** Upon the termination of this Agreement as a result of the following:

- (a) If CUSTOMER is the Defaulting Party in Section 7.2 or terminates the Agreement pursuant to Section 7.3:
  - (i) CUSTOMER shall immediately cease to use, directly or indirectly, the Easybooks Software, delete all source code from its computing equipment and return all copies of source code provided pursuant to Section 2.3(c).

## **ARTICLE 8**

### **GENERAL PROVISIONS**

8.1 **Survival.** The provisions of Articles 2 through 7 herein shall survive the expiry or termination of this Agreement.

8.2 **Force Majeure.** In the event either party fails to meet any of its obligations under this Agreement, and such failure shall be caused, or materially contributed to, by Force Majeure, such failure shall be deemed not to be a breach of the obligations of such party under this Agreement, and the time for the performance of such obligations shall be extended accordingly as may be appropriate under the circumstances, provided that the party who is unable to meet its obligations due to Force Majeure (i) provides prompt notice to the other party of the Force Majeure and its anticipated impact on such party's obligations, which notice may be verbal where written notice is impractical under the circumstances; and (ii) takes all reasonable commercial steps to work around the Force Majeure if possible, or in any event to minimize the delay arising from the Force Majeure.

8.3 **Notices.** Any notice, request, consent or other communication provided, required or permitted under this Agreement (the "**Notice**") shall be sufficiently given if in writing and personally delivered or sent by registered mail, facsimile, or e-mail, and addressed or sent as specified, as set out below:

**EASYBOOKS INC.**  
Attention: Stephen Plummer  
1200 Eglinton Ave E, Suite 504  
Toronto, ON M3C 1H9  
E-mail: splummer@easybooks.net

with a copy to:

**PLANET ENERGY (ONTARIO) CORP.**  
Attention: Nino Silvestri  
5255 Yonge Street, Suite 1500  
Toronto, ON M2N 6P4  
E-mail: nsilvestri@planetenergy.ca

8.4 **Assignment.** Each Party shall be able to assign this Agreement, or any of its rights or obligations hereunder, in whole or in part, without the prior written consent of the other. This Agreement shall be binding upon, and shall enure to the benefit of, the parties and their respective successors and permitted assigns.

8.5 **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of Ontario and the laws of Canada applicable therein. The Parties attorn to the jurisdiction of the courts of Ontario.

8.6 **Amendment and Waiver.** This Agreement may not be amended unless agreed to in writing by both Parties. Any consent by a Party to a breach under this Agreement or waiver of a breach by the other, whether express or implied, shall not constitute a consent to or waiver of or excuse for any other different or subsequent breach unless such waiver or consent is in writing and signed by the Party claimed to have waived or consented. Except as otherwise provided herein, no term or provision hereof shall be deemed waived and no breach excused.

8.7 **Severability.** If any part of this Agreement is held to be unenforceable or invalid, it will be severed from the rest of this Agreement, which shall continue in full force and effect.



8.8 **Number and Gender.** Words importing the singular include the plural and vice versa; and words importing gender include all genders.

8.9 **Entire Agreement.** This Agreement, and any schedules or other documents referred to herein, constitutes the entire agreement between the parties relating to the licensing of the Easybooks Software and supersedes all prior written or oral agreements, representations and other communications between the parties.

8.10 **Independent Legal Advice.** The parties hereby confirm and acknowledge that they have been afforded an opportunity to obtain independent legal advice with respect to this Agreement, and have obtained all of such independent legal advice which it desired to obtain in that regard.

8.11 **Counterparts.** This Agreement may be executed in any number of counterparts and may be executed and delivered via facsimile or electronic transmission, each of which, when executed and delivered, shall be deemed to be an original and all of which taken together shall constitute one and the same instrument.

8.12 **Compliance with Laws** Each party, in the performance of this Agreement, shall comply with all laws, codes, orders, by-laws and regulations of municipal, provincial or federal authorities applicable to the fulfillment of such party's obligations under this Agreement.

**IN WITNESS WHEREOF**, the Parties, by their duly authorized officers, have executed this Agreement.

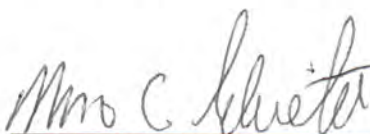
**EASYBOOKS INC.**

Per: 

Stephen Plummer  
President

*I have authority to bind the Corporation*

**PLANET ENERGY (ONTARIO) CORP.**

Per: 

Nino C. Silvestri  
Co-CEO

*I have authority to bind the Corporation*

## LICENCE AGREEMENT (USA)

This **LICENCE AGREEMENT** is made effective as of June 12, 2018 (the "**Effective Date**") between EASYBOOKS INC., a Canada corporation ("**EASYBOOKS**") and PLANET ENERGY CORP., a Delaware corporation ("**CUSTOMER**")

**WHEREAS** Easybooks has developed and is the owner of proprietary energy management software (the "Easybooks Software") which is used in the energy marketing industry to process gas and power transactions, to provide customer relationships and contract management, voice recording of customer interactions, payroll processing for agent networks, online information portal for agents, and comprehensive financial and general ledger reporting (the "Business");

**AND WHEREAS** CUSTOMER wishes to use the Easybooks Software in connection with the operation of its business in the fields of gas and power;

**AND WHEREAS** EASYBOOKS has agreed to grant to CUSTOMER and any and all USA subsidiaries of CUSTOMER a non-exclusive, non-transferable license to use the Easybooks Software in accordance with the terms and conditions set out herein;

**NOW THEREFORE**, in consideration of the mutual covenants and agreements hereinafter contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree and understand as follows:

### **ARTICLE 1** **DEFINITIONS**

1.1 **Definitions.** In this Agreement, the following terms shall have the meanings set out below:

**"Agreement"** means this License Agreement, including the recitals hereto and all schedules annexed to this Agreement as the same may be amended from time to time in accordance with the provisions hereof; "hereof", "hereto" and "hereunder" and similar expressions mean and refer to this Agreement and not to any particular Article or section;

**"Confidential Information"** means all oral, written or machine-readable data and information of value relating to the business and management of the disclosing party (the "**Disclosing Party**"), that is not generally known to its competitors and includes but is not limited to the Intellectual Property business plans, research and development, general business operations, and trade secrets, which is provided by the Disclosing Party to the receiving party (the "**Receiving Party**"); however, Confidential Information shall not include any data or information which:

- (a) is or becomes publicly available through no fault of the Receiving Party;
- (b) is already in the rightful possession of the Receiving Party prior to its receipt from the Disclosing Party;

- (c) is independently developed by the Receiving Party without breaching this Agreement;
- (d) is disclosed with the written consent of the Disclosing Party; or
- (e) is disclosed pursuant to court order or other requirement of law;

**"Force Majeure"** means any acts of God, war, natural calamities, strikes or other labour stoppages or disturbances, epidemics, acts of government or any competent authority having jurisdiction, or any other legitimate cause beyond the reasonable control of a party, and which, by exercise of due diligence, such party could not have prevented, but lack of funds on the part of such party shall not be deemed to be a force majeure;

**"Intellectual Property"** or **"Intellectual Property Rights"** means (i) any right that is or may be granted to, or recognized for the benefit of, any Person under any legislation in Canada and other foreign jurisdictions or at common or, as applicable, civil law in Canada or in other foreign jurisdictions regarding patents, copyright and any copyrightable subject matter (including moral rights), trade-marks, trade names, service marks, confidential information, trade secrets, industrial designs and integrated circuit topography rights, including any other statutory provision or common or civil law principle regarding intellectual property, whether registered or unregistered, and including rights in any and all applications, registrations, re-issues, divisionals, renewals, re-examinations relating to the foregoing, and (ii) any rights in and to licenses and sub-licenses from third parties relating to the foregoing;

**"Modifications"** means any enhancements, changes, corrections, improvements, translations, adaptations, revisions, upgrades or updates to the Easybooks Software; and **"Modify"** shall mean the creation of any of the foregoing;

**"parties"** means EASYBOOKS and CUSTOMER and **"party"** means any one of them;

**"Technical Information"** means all know-how and related technical knowledge of related to the Easybooks Software including, without limitation, all trade secrets and other proprietary know-how, source code, process documentation, methods of procedures, technical development requirements assessment and the end-to-end network architecture diagram;

**"Use"** means to install use, Modify, translate, and market the Easybooks Software.

## **ARTICLE 2**

### **GRANT OF LICENSE**

2.1 **License.** Subject to the terms of this Agreement, EASYBOOKS grants to CUSTOMER, and any and all subsidiaries of CUSTOMER, a non-exclusive, worldwide license and right to, directly use the Easybooks Software for its internal purposes only, and not for re-sale.

2.2 **Sublicensing.** CUSTOMER shall not be entitled to sublicense the right and license granted to it hereunder.

### 2.3 CUSTOMER's Obligations.

- (a) CUSTOMER agrees that it and its subsidiaries will use the Easybooks Software only in accordance with this Agreement.
- (b) CUSTOMER agrees that it will not use any competing software similar to the Easybooks Software, nor will it itself develop or use any software similar to the Easybooks Software during the Term. CUSTOMER will use commercially reasonable efforts to transfer, promptly after the Effective Date, all of its existing consumer accounts to the Easybooks Software pursuant to this Agreement to the extent that CUSTOMER is permitted to do so by applicable law and the terms of its agreements with third party service providers. Notwithstanding the foregoing, CUSTOMER will have the right to temporarily find alternate means by which to carry on the Business if an event of Force Majeure continues for a period of more than two (2) days and Easybooks is prevented from performing its obligations under this Agreement as a result.
- (c) CUSTOMER may make a single copy of the Easybooks Software for testing, backups or archival purposes and not for production use. In making this single copy of the Easybooks Software, CUSTOMER may not remove any copyright or other proprietary rights, notices contained in or faced on the Easybooks Software by EASYBOOKS.
- (d) CUSTOMER will ensure that all servers and other hardware on which the Easybooks Software is installed meet the technical specifications provided by EASYBOOKS and such hardware has valid SQL database, Windows Server and Windows Drive Partition software licences, in addition to any other licences required, during the term of this Agreement.

### 2.4 EASYBOOKS' Obligations.

- (a) EASYBOOKS shall deliver to CUSTOMER one copy of each of the components of the Easybooks Software (Energy Financial System ("EFS"), Energy Management System ("EMS"), Agent Online System ("AOS") and Customer Enrollment System ("CES")) and the source code therefor being licensed under this Agreement upon execution of this Agreement or at another time agreed upon by both parties.
- (b) CUSTOMER may require EASYBOOKS to assist with the deployment or implementation of the Easybooks Software, or the Modifications thereof, in which case the terms of such service engagement shall be negotiated in good faith and EASYBOOKS shall invoice CUSTOMER for such incremental services based on rates mutually agreed upon by the parties.

## **ARTICLE 3** **REPRESENTATIONS AND WARRANTIES**

- 3.1 EASYBOOKS' Representations and Warranties. EASYBOOKS represents and warrants:

- (a) when delivered, the media upon which the Easybooks Software is provided to CUSTOMER shall be free from defects in material and workmanship. CUSTOMER's sole remedy for breach of this warranty shall be replacement of the defective media, and for greater certainty, this remedy is not available where any inoperability is the result of use or Modifications to the Easybooks Software by CUSTOMER;
- (b) it has the right and authority to enter into this Agreement and grant all of the license rights herein and perform its obligations hereunder;
- (c) its execution and delivery of this Agreement have been duly authorized by all requisite corporate requirements; and this Agreement, when executed and delivered by EASYBOOKS, will constitute a legal, valid and binding obligation of EASYBOOKS, that is enforceable against EASYBOOKS in accordance with its terms;
- (d) it has all necessary rights to perform its obligations under this Agreement, and such performance does not, and will not, violate any other agreement or document to which EASYBOOKS is a party or by which it is bound;
- (e) to the best of EASYBOOKS' knowledge, the Easybooks Software does not infringe any third party Intellectual Property rights nor will any claim of such infringement or violation have been threatened or asserted, or be pending against EASYBOOKS at the time of delivery of the Easybooks Software; and

THE FOREGOING ARE THE ONLY WARRANTIES CONCERNING THE EASYBOOKS SOFTWARE AND ARE BEING MADE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES AND REPRESENTATIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND MERCHANTABILITY.

3.2 CUSTOMER's Representations and Warranties. CUSTOMER represents and warrants:

- (a) it has the right and authority to enter into this Agreement and perform its obligations set out herein;
- (b) its execution and delivery of this Agreement have been duly authorized by all requisite corporate requirements; and this Agreement, when executed and delivered by CUSTOMER, will constitute a legal, valid and binding obligation of CUSTOMER, that is enforceable against CUSTOMER in accordance with its terms;
- (c) it has all necessary rights to perform its obligations under this Agreement, and such performance does not, and will not, violate any other agreement or document to which CUSTOMER is a party or by which it is bound;
- (d) it shall not dispute or contest, directly or indirectly, the validity, ownership or enforceability of any of the Easybooks Software, or EASYBOOKS' right, title and

interest, in and to the Easybooks Software, nor counsel, procure or assist any other party to do the same.

**ARTICLE 4**  
**FEES**

4.1 **Account Processing Fees.** During the Term, CUSTOMER shall pay to EASYBOOKS the monthly fees as detailed below, subject to a minimum fee of \$30,000.00 per month, plus HST.

<b>Monthly Rate for Each Account based on Total number of Accounts Enrolled on the Easybooks Software by CUSTOMER and USA subsidiaries of CUSTOMER (Sum of Easybooks Status Codes 490 (Enrolled for Flow) and 500 (Flowing))</b>		
<b>From</b>	<b>To</b>	<b>Rate for Each USA Account</b>
10,001	20,000	\$3.00
20,001	30,000	\$2.30
30,001	40,000	\$1.80
40,001	50,000	\$1.55
50,001	60,000	\$1.40
60,001	70,000	\$1.30
70,001	90,000	\$1.15
90,001	90,000	\$1.10
90,001	100000	\$1.05
100,001	110000	\$0.95
110,001	120000	\$0.86
120,001	130000	\$0.79
130,001	140000	\$0.74
140,001	150000	\$0.69
150,001	and up	\$0.69

Invoices for Account Processing Fees will commence on June 12, 2018 and monthly thereafter. All invoices for Account Processing Fees are due Net 15 days. The applicable Tier to use for the unit rate per account will be determined by adding all CUSTOMER's accounts with the accounts of Planet Energy (Ontario) Corp. and its subsidiaries in Canada.

In addition, CUSTOMER will pay a monthly network, internet and server cabinet fee of \$576.00 per month plus HST plus any bandwidth charges in excess of 10Mb. This amount will be adjusted from time to time based on the actual charges billed by the third party co-location service and will be invoiced separately.

4.2 **Annual Fee Increase.** The monthly fee referred to in Section 4.1 (excluding the network, internet fee and server cabinet fee) will increase by the amount of Consumer Price Index plus 2% each year on the yearly anniversary of the Effective Date.

4.3 **Upfront setup fees for new markets entered into.** A one-time upfront setup fee of \$30,000 plus HST is payable by CUSTOMER upon entering new markets for which a new instance of Easybooks is required to be installed, configured and setup on its own server or server partition.

4.4 **Modifications and Other Customization Services.** All Modifications to the Easybooks Software and conversion of customer account data to the Easybooks Software must be made by EASYBOOKS and will be billed for at our current rates in effect for the provision of such services. EASYBOOKS grants to CUSTOMER the right to make Modifications and customization to the Easybooks Software and to convert customer account data to the Easybooks Software using its own in-house technical personnel providing EASYBOOKS provides approval in advance of the technical specifications for the Modifications, customization and data conversion to the Easybooks Software, which approval will not be unreasonably withheld. CUSTOMER acknowledges that it is solely responsible for all loss of data and breakage of code and database logic that occurs as a result of CUSTOMER's Modifications, customization and data conversion to the Easybooks Software and any pre-approval provided to CUSTOMER by EASYBOOKS of the technical specifications is not to be construed as an opinion that the Modifications, customization and data conversion to the Easybooks Software to be done by CUSTOMER will achieve CUSTOMER's desired outcome. All Modifications made by CUSTOMER to the Easybooks Software become the property of Easybooks.

## **ARTICLE 5**

### **CONFIDENTIALITY**

5.1 **Confidentiality.** The parties acknowledge that the Confidential Information is derived from information disclosed to the Receiving Party by the Disclosing Party and that such information is confidential and a trade secret of the Disclosing Party. The Receiving Party agrees to use commercially reasonable efforts (and, in any event, efforts that are no less than the efforts used to protect its own confidential information) to protect Confidential Information from disclosure during the Term and after the termination or expiry thereof.

5.2 **Obligations.** The Receiving Party and its officers, employees, agents and contractors at all times shall:

- (a) treat the Confidential Information as strictly confidential, and shall not disclose or permit the disclosure of the Confidential Information to any person, corporation or organization whatsoever without first obtaining written permission from the Disclosing Party, save and except to those officers and employees of the Receiving Party with a need-to-know, and upon whom confidentiality obligations as required by this Article have been imposed;
- (b) not make use of the Confidential Information other than as required for the sole and exclusive purpose of performing its obligations under this Agreement; and
- (c) immediately notify the Disclosing Party of any breach, or threatened breach, of this Article of which it is aware.

5.3 **Personnel's Obligations.** The Receiving Party represents and warrants that appropriate confidentiality obligations have been, or shall be prior to receipt of any Confidential Information,

imposed upon its officers, employees, agents and contractors who may have access to, or be in possession of, Confidential Information during the Term, that are consistent with or more stringent than the confidentiality obligations contained herein. The Receiving Party shall inform all of its officers, employees, agents and contractors who may have access to, or be in possession of, Confidential Information about its confidential nature, and of the obligations contained herein.

5.4 **Equitable Remedies.** In the event of a breach, or a threatened breach, of any of the provisions of this Article, the Receiving Party acknowledges and agrees that the harm suffered by the Disclosing Party would not be compensable by monetary damages alone and, accordingly, the Disclosing Party, in addition to other available legal or equitable remedies, shall be entitled to seek an injunction against such breach or threatened breach, and the Receiving Party shall not challenge such application for injunction on the basis that there is another adequate remedy available at law. This provision does not affect any other remedies available to the parties to this Agreement.

## **ARTICLE 6**

### **LIMITATION OF LIABILITY, INDEMNITIES AND INSURANCE**

6.1 **General Indemnity.** Each party shall be liable for, and shall indemnify and save harmless the other party from and against, all costs, expenses, claims, losses and damages that the other party may sustain or incur as a result of:

- (a) that party's breach of any provision of this Agreement;
- (b) any defect in the title to the Easybooks Software supplied under this Agreement, or any liens, encumbrances, charges or security interests against, on or in the Easybooks Software.
- (c) any loss, injury, death, damage, expense, charge or cost that the other party may suffer or incur, whether in respect of injury to persons or damage to the other party's property, end-users, or others in any manner that arises out of, or is attributable to, the Easybooks Software.

6.2 **Consequential Damages.** Notwithstanding any other provision of this Agreement, neither party will be liable to the other for any indirect, special, consequential, incidental, economic or punitive damages in connection with, or arising out of, this Agreement, including, without limitation, loss of business, revenue, profits, goodwill, use, data, electronically transmitted orders, or other economic advantages, arising, directly or indirectly, from breach of contract (including fundamental breach or otherwise), negligence, any act or omission of the party or those for whom it is in law responsible, or under any other theory of law or equity, even if the party has been advised of, had knowledge of, or reasonably could have foreseen, the possibility of such damages. The foregoing limitation shall not apply with respect to the indemnities provided for in this Article, a breach of Article 5 (Confidential Information) or any injury, death, or damage to personal or real property.

6.3 **Infringement Obligation.** Each party (the "**Indemnifying Party**"), at its expense, shall be liable for, and shall defend, indemnify and hold harmless the other party and its officers, directors, employees, agents and contractors (the "**Indemnified Party**") from and against any



claim that the Easybooks Software, infringes any patent, copyright or other Intellectual Property right, including, without limitation, trade secrets of a third party. The Indemnifying Party's obligation under the preceding sentence is conditional upon the following:

- (a) the Indemnifying Party is promptly informed in writing and furnished with a copy of each communication, notice or other action relating to the alleged infringement;
- (b) the Indemnifying Party shall have control over the defence and negotiations for a settlement or compromise;
- (c) the Indemnifying Party is given all reasonable authority, information and assistance from the Indemnified Party, at the Indemnifying Party's expense, necessary to defend or settle such suit or proceeding; and
- (d) the Indemnified Party incurs no obligation or liability with respect to any alleged infringement claim without the prior written consent of the Indemnifying Party.

**6.4 Indemnification Exceptions.** The obligations of the Indemnifying Party as specified in section 6.3 above do not apply to the Easybooks Software, or portions or components thereof that:

- (a) are modified by persons or entities other than the Indemnifying Party without the written consent of the Indemnifying Party if the alleged infringement is a direct result of such modification;
- (b) are combined with other products, processes or materials not supplied or approved in writing by the Indemnifying Party where the alleged infringement is a direct result of such combination;
- (c) are the result of the Indemnifying Party compliance with the Indemnified Party's direction to modify the Easybooks Software, as applicable, where the modification could not have been completed in a way to avoid infringement and the Indemnifying Party had informed the Indemnified Party in writing prior to making the modification that the modification may result in infringement; or
- (d) continue to be used after the Indemnifying Party has made a non-infringing version of the Easybooks Software, available and has notified the Indemnified Party in writing that the non-infringing version of the Easybooks Software should be used to avoid infringement, where the non-infringing version has materially the same functionality as the original.

**6.5 Infringement Remedy.** If any claim that the Indemnifying Party is obligated to defend has occurred or, in the Indemnifying Party's opinion, is likely to occur, the Indemnifying Party may, at its option, discharge its indemnification obligation under Section 6.3 by either:

- (a) procuring for the Indemnified Party the right to continue to use the Easybooks Software, under commercially reasonable terms; or

- (b) replacing or modifying the Easybooks Software, so that it becomes non-infringing, without adversely affecting functionality.

## **ARTICLE 7**

### **TERM AND TERMINATION**

7.1 **Term.** The term of this Agreement shall be for Five (5) years from the Effective Date.

7.2 **Termination on Default.** Either party (the "**Defaulting Party**") shall be deemed to be in default under this Agreement, and the other party (the "**Non-Defaulting Party**") may at its option terminate this Agreement and all rights granted herein effective immediately without notice, in the following events:

- (a) the Defaulting Party files a voluntary petition in bankruptcy or insolvency or petitions for reorganization under any bankruptcy law (and such is not dismissed within ten (10) days); and
- (b) there is entered an order, judgment or decree by a court of competent jurisdiction, upon the application of a creditor, approving a petition seeking reorganization or appointing a receiver, trustee or liquidator of all or a substantial part of the Defaulting Party's assets, and such order, judgment or decree continues in effect for a period of thirty (30) consecutive days; or
- (c) in the case of CUSTOMER, CUSTOMER fails to make one or more monthly payments, and when requested to do so, fails to make such payments within 10 days of such notice.

7.3 **Termination without Cause.** CUSTOMER or EASYBOOKS may terminate this Agreement at any time on twelve (12) calendar months notice to provide for an orderly transition of services.

7.4 **Obligations on Termination.** Upon the termination of this Agreement as a result of the following:

- (a) If CUSTOMER is the Defaulting Party in Section 7.2 or terminates the Agreement pursuant to Section 7.3:
  - (i) CUSTOMER shall immediately cease to use, directly or indirectly, the Easybooks Software, delete all source code from its computing equipment and return all copies of source code provided pursuant to Section 2.3(c).

## **ARTICLE 8**

### **GENERAL PROVISIONS**

8.1 **Survival.** The provisions of Articles 2 through 7 herein shall survive the expiry or termination of this Agreement.

8.2 **Force Majeure.** In the event either party fails to meet any of its obligations under this Agreement, and such failure shall be caused, or materially contributed to, by Force Majeure, such failure shall be deemed not to be a breach of the obligations of such party under this Agreement, and the time for the performance of such obligations shall be extended accordingly as may be appropriate under the circumstances, provided that the party who is unable to meet its obligations due to Force Majeure (i) provides prompt notice to the other party of the Force Majeure and its anticipated impact on such party's obligations, which notice may be verbal where written notice is impractical under the circumstances; and (ii) takes all reasonable commercial steps to work around the Force Majeure if possible, or in any event to minimize the delay arising from the Force Majeure.

8.3 **Notices.** Any notice, request, consent or other communication provided, required or permitted under this Agreement (the "**Notice**") shall be sufficiently given if in writing and personally delivered or sent by registered mail, facsimile, or e-mail, and addressed or sent as specified, as set out below:

**EASYBOOKS INC.**

Attention: Stephen Plummer  
1200 Eglinton Ave E, Suite 504  
Toronto, ON M3C 1H9  
E-mail: splummer@easybooks.net

with a copy to:

**PLANET ENERGY CORP.**

Attention: Nino Silvestri  
5255 Yonge Street, Suite 1500  
Toronto, ON M2N 6P4  
E-mail: nsilvestri@planetenergy.ca

8.4 **Assignment.** Each Party shall be able to assign this Agreement, or any of its rights or obligations hereunder, in whole or in part, without the prior written consent of the other. This Agreement shall be binding upon, and shall enure to the benefit of, the parties and their respective successors and permitted assigns.

8.5 **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of Ontario and the laws of Canada applicable therein. The Parties attorn to the jurisdiction of the courts of Ontario.

8.6 **Amendment and Waiver.** This Agreement may not be amended unless agreed to in writing by both Parties. Any consent by a Party to a breach under this Agreement or waiver of a breach by the other, whether express or implied, shall not constitute a consent to or waiver of or excuse for any other different or subsequent breach unless such waiver or consent is in writing and signed by the Party claimed to have waived or consented. Except as otherwise provided herein, no term or provision hereof shall be deemed waived and no breach excused.

8.7 **Severability.** If any part of this Agreement is held to be unenforceable or invalid, it will be severed from the rest of this Agreement, which shall continue in full force and effect.

8.8 **Number and Gender.** Words importing the singular include the plural and vice versa; and words importing gender include all genders.

8.9 **Entire Agreement.** This Agreement, and any schedules or other documents referred to herein, constitutes the entire agreement between the parties relating to the licensing of the Easybooks Software and supersedes all prior written or oral agreements, representations and other communications between the parties.


8.10 **Independent Legal Advice.** The parties hereby confirm and acknowledge that they have been afforded an opportunity to obtain independent legal advice with respect to this Agreement, and have obtained all of such independent legal advice which it desired to obtain in that regard.

8.11 **Counterparts.** This Agreement may be executed in any number of counterparts and may be executed and delivered via facsimile or electronic transmission, each of which, when executed and delivered, shall be deemed to be an original and all of which taken together shall constitute one and the same instrument.

8.12 **Compliance with Laws** Each party, in the performance of this Agreement, shall comply with all laws, codes, orders, by-laws and regulations of municipal, provincial or federal authorities applicable to the fulfillment of such party's obligations under this Agreement.

**IN WITNESS WHEREOF**, the Parties, by their duly authorized officers, have executed this Agreement.

**EASYBOOKS INC.**

Per:   
\_\_\_\_\_  
Stephen Plummer  
President

*I have authority to bind the Corporation*

**PLANET ENERGY CORP.**

Per:   
\_\_\_\_\_  
Nino C. Silvestri  
Co-CEO

*I have authority to bind the Corporation*

## LICENCE EXTENSION & AMENDING AGREEMENT

This **LICENCE EXTENSION AND AMENDING AGREEMENT** (the "Agreement") is made effective as of June 1, 2023 (the "Effective Date") between EASYBOOKS INC., a Canada corporation ("EASYBOOKS") and PLANET ENERGY (ONTARIO) CORP., a Canada corporation ("CUSTOMER")

**WHEREAS**, by way of a Licence Agreement ("Licence Agreement") dated June 12, 2018 EASYBOOKS and CUSTOMER (collectively "the Parties") entered into an Agreement for CUSTOMER to licence and use the Easybooks Software in connection with the operation of its business in the fields of gas and power retailing upon certain terms and conditions more particularly set forth therein;

**AND WHEREAS**, except as expressly set out herein, the Original Term and the Extension Term are hereinafter collectively referred to as the "**Term**";

**AND WHEREAS**, the Parties wish to extend the Term and amend the Licence Agreement upon terms, covenants, and conditions set out in this Agreement; and


**NOW THEREFORE**, in consideration of the mutual covenants and agreements hereinafter contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

1. **Amendments to the Licence Agreement.** The Parties acknowledge and agree that effective as of the date of this Agreement, the Licence Agreement is hereby amended on the following terms and conditions:
  - a) **Term.** The Term of the Licence Agreement is hereby extended for a period of one (1) year commencing on June 1, 2023 and expiring on May 31, 2024.
  - b) **Fee.** CUSTOMER will pay to EASYBOOKS a monthly Licence Fee of \$20,000 per month plus HST due and payable on or before the last business day of each month. In addition, CUSTOMER will pay a monthly network, internet and server cabinet fee of \$576.00 per month plus HST.
  - c) **Termination without Cause.** Either party may terminate this Agreement without Cause at any time on one (1) calendar months notice.
2. **Confirmation.** The Parties confirm that in all other respects, the terms, covenants and conditions contained in the Licence Agreement remain unchanged, and in full force and effect, except as modified by this Agreement.
3. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of Ontario and the laws of Canada applicable therein. The Parties attorn to the jurisdiction of the courts of Ontario.

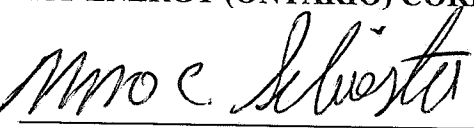
4. **Amendment and Waiver.** This Agreement may not be amended unless agreed to in writing by both Parties.
5. **Severability.** If any part of this Agreement is held to be unenforceable or invalid, it will be severed from the rest of this Agreement, which shall continue in full force and effect.
6. **Independent Legal Advice.** The Parties hereby confirm and acknowledge that they have been afforded an opportunity to obtain independent legal advice with respect to this Agreement, and have obtained all of such independent legal advice which it desired to obtain in that regard.
7. **Counterparts.** This Agreement may be executed by the Parties in separate counterparts all of which, when taken together, will constitute a single agreement among the Parties. Execution of this Agreement by a party may be evidenced by way of a faxed or emailed (by way of an Adobe Acrobat PDF file) transmission of such party's signature, or by a photocopy of a party's signature, each of which will constitute the original signature of such party to this Agreement.
8. **Compliance with Laws** Each party, in the performance of this Agreement, shall comply with all laws, codes, orders, by-laws and regulations of municipal, provincial or federal authorities applicable to the fulfillment of such party's obligations under this Agreement.

**EASYBOOKS INC.**

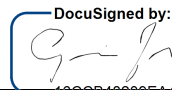
Per: \_\_\_\_\_

  
Stephen Plummer  
President*I have authority to bind the Corporation***PLANET ENERGY (ONTARIO) CORP.**

Per: \_\_\_\_\_

  
Nino C. Silvestri  
CEO*I have authority to bind the Corporation*

This is Exhibit "TT" referred to in the Affidavit of Nino Silvestri sworn by Nino Silvestri of the Town of Oakville, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on May 26, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:  


---

10000482009E1101  
Commissioner for Taking Affidavits (or as may be)

**GAVIN INKSTER LSO# 82737I**



Ontario  
Energy  
Board | Commission  
de l'énergie  
de l'Ontario

---

## **DECISION AND ORDER**

**EB-2021-0332**

## **PLANET ENERGY (ONTARIO) CORP.**

**Application for an Electricity Retailer Licence**

**BY DELEGATION,**

**BEFORE:**   **Brian Hewson**  
Vice President, Consumer Protection & Industry Performance

---

**March 10, 2022**



## **DECISION AND ORDER**

Planet Energy (Ontario) Corp. (Planet Energy) filed an application on December 21, 2021, with the Ontario Energy Board (OEB) pursuant to section 60 of the *Ontario Energy Board Act, 1998* (OEB Act) for a renewal of its electricity retailer licence. The licence will allow Planet Energy to continue retailing electricity to consumers in Ontario.

This Decision and Order is being issued by the Delegated Authority pursuant to Section 6 of the OEB Act. The Delegated Authority has considered the application without holding a hearing pursuant to section 6(4) of the OEB Act.

Planet Energy's application for renewal of its electricity retailer licence is granted. When evaluating applications for an electricity retailer licence, the OEB focuses its consideration on the requirements set out in Ontario Regulation 90/99: Licence Requirements - Electricity Retailers and Gas Marketers (Regulation). The record in this case indicates that Planet Energy has met the requirements set out in the Regulation.

### **IT IS ORDERED THAT:**

1. The application for an electricity retailer licence is granted, on such conditions as are contained in the attached licence.

**DATED** at Toronto, March 10, 2022

### **ONTARIO ENERGY BOARD**

*Original Signed By*

Brian Hewson  
Vice President, Consumer Protection & Industry Performance



# Electricity Retailer Licence

## ER-2021-0332

### Planet Energy (Ontario) Corp.

Valid Until

March 9, 2027

*Original Signed By*

---

**Brian Hewson**  
**Vice President, Consumer Protection & Industry Performance**  
**Ontario Energy Board**  
**Date of Issuance: March 10, 2022**

Ontario Energy Board  
P.O. Box 2319  
2300 Yonge Street  
27th. Floor  
Toronto, ON M4P 1E4

Commission de l'énergie de l'Ontario  
C.P. 2319  
2300, rue Yonge  
27e étage  
Toronto ON M4P 1E4

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## 1 Definitions

In this Licence:

“**Act**” means the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, Schedule B;

“**consumer**” means a person who uses, for the person’s own consumption, electricity that the person did not generate;

“**Electricity Act**” means the *Electricity Act, 1998*, S.O. 1998, c. 15, Schedule A;

“**ECPA**” means the *Energy Consumer Protection Act, 2010*, S.O. 2010, c. 8;

“**Licensee**” means Planet Energy (Ontario) Corp.;

“**Market Rules**” means the rules made under section 32 of the Electricity Act; and

“**regulation**” means a regulation made under the Act, the Electricity Act or the ECPA;

“**residential or small business consumer**” means a consumer who annually uses less than 150,000 kWh of electricity;

For the purpose of this Licence, the terms “retailer” and “retailing” do not apply to a Licensed Distribution Company fulfilling its obligations under section 29 of the Electricity Act.

## 2 Interpretation

- 2.1 In this Licence, words and phrases shall have the meaning ascribed to them in the Act, the Electricity Act, or the ECPA. Words or phrases importing the singular shall include the plural and vice versa. Headings are for convenience only and shall not affect the interpretation of this Licence. Any reference to a document or a provision of a document includes an amendment or supplement to, or a replacement of, that document or that provision of that document. In the computation of time under this Licence, where there is a reference to a number of days between two events, they shall be counted by excluding the day on which the first event happens and including the day on which the second event happens. Where the time for doing an act expires on a holiday, the act may be done on the next day that is not a holiday.

## 3 Authorization

- 3.1 The Licensee is authorized, under Part V of the Act and subject to the terms and conditions set out in this Licence:
- a) to sell or offer to sell electricity to a consumer;
  - b) to act as the agent or broker for a retailer with respect to the sale or offering for sale of electricity; and
  - c) to act or offer to act as the agent or broker for a consumer with respect to the sale or offering for sale of electricity.

- 3.2 The Licensee is authorized to conduct business in the name under which this Licence is issued, or any trade name(s) listed in Schedule 1.

#### **4 Obligation to Comply with Legislation, Regulations and Market Rules**

- 4.1 The Licensee shall comply with all applicable provisions of the Act, the Electricity Act, the ECPA and regulations under these Acts, except where the Licensee has been exempted from such compliance by regulation.
- 4.2 The Licensee shall comply with all applicable Market Rules.

#### **5 Obligation to Comply with Codes**

- 5.1 The Licensee shall at all times comply with the following Codes (collectively the "Codes") approved by the Board, except where the Licensee has been specifically exempted from such compliance by the Board:
- a) the Electricity Retailer Code of Conduct; and
  - b) the Retail Settlement Code.
- 5.2 The Licensee shall:
- a) make a copy of the Codes available for inspection by members of the public at its head office and regional offices during normal business hours; and
  - b) provide a copy of the Codes to any person who requests it. The Licensee may impose a fair and reasonable charge for the cost of providing copies.

#### **6 Agent for Service**

- 6.1 If the Licensee does not have an office or other place of business in Ontario, the Licensee shall ensure the continuing appointment at all times of an individual who is a resident of Ontario and is at least 18 years old, or a corporation that has its head office or registered office in Ontario, as the Licensee's agent for service in Ontario on whom service of process, notices or other documentation may be made.

#### **7 Market Power Mitigation Rebates**

- 7.1 The Licensee shall comply with the pass through of Ontario Power Generation rebate conditions set out in Appendix A of this Licence.

#### **8 Provision of Information to the Board**

- 8.1 The Licensee shall maintain records of and provide, in the manner and form determined by the Board, such information as the Board may require from time to time.
- 8.2 Without limiting the generality of paragraph 8.1, the Licensee shall notify the Board of any material change in circumstances that adversely affects or is likely to adversely affect the business, operations or assets of the Licensee as soon as practicable, but in any event no more than twenty (20) days past the date upon which such change occurs.

**9 Customer Complaint and Dispute Resolution**

9.1 The Licensee shall participate in a consumer complaints resolution process selected by the Board.

**10 Term of Licence**

10.1 This Licence shall take effect on March 10, 2022 and expire on March 9, 2027. The term of this Licence may be extended by the Board.

**11 Fees and Assessments**

11.1 The Licensee shall pay all fees charged and amounts assessed by the Board.

**12 Communication**

12.1 The Licensee shall designate a person that will act as a primary contact with the Board on matters related to this Licence. The Licensee shall notify the Board promptly should the contact details change.

12.2 All official communication relating to this Licence shall be in writing.

12.3 All written communication is to be regarded as having been given by the sender and received by the addressee:

- a) when delivered in person to the addressee by hand, by registered mail, or by courier;
- b) ten (10) business days after the date of posting if the communication is sent by regular mail; or
- c) when received by facsimile transmission by the addressee, according to the sender's transmission report.

**13 Copies of the Licence**

13.1 The Licensee shall:

- a) make a copy of this Licence available for inspection by members of the public at its head office and regional offices during normal business hours; and
- b) provide a copy of this Licence to any person who requests it. The Licensee may impose a fair and reasonable charge for the cost of providing copies.

**SCHEDULE 1 AUTHORIZED TRADE NAMES**

1. Reliabil
2. ReliaBILL Electricity
3. ReliaBILL Energy

**APPENDIX A****MARKET POWER MITIGATION REBATES**

“OPGI” means Ontario Power Generation Inc.

A retailer shall promptly pass through a portion of the rebate received from a distributor to those consumers who are not receiving the fixed price under sections 79.4, 79.5 and 79.16 of the *Ontario Energy Board Act, 1998* and who are served by the retailer but who have not assigned the benefit of the rebate payment to the retailer.

If requested in writing by OPGI, the retailer shall ensure that all rebates paid to consumers are identified as coming from OPGI in the following form on or with each bill or cheque.

“ONTARIO POWER GENERATION INC. rebate”

A retailer shall promptly return to a distributor any portion of the rebate received from the distributor which relates to low-volume or designated consumers receiving the fixed commodity price for electricity under sections 79.4, 79.5 and 79.16 of the *Ontario Energy Board Act, 1998*, who are served by the retailer but who have not assigned the benefit of the rebate payment to the retailer or another party.

The amounts paid out to consumers or returned to the distributor shall be based on energy consumed and calculated in accordance with the rules set out in the Retail Settlement Code.

Amounts payable by the retailer may be made by way of set off at the discretion of the retailer.

**ONTARIO POWER GENERATION INC. REBATES**

For the payments that relate to the period from May 1, 2006 to April 30, 2009, the rules set out below shall apply.

A retailer shall promptly pass through a portion of the rebate received from a distributor to those consumers who are not receiving the fixed price under sections 79.4, 79.5 and 79.16 of the *Ontario Energy Board Act, 1998* and who are served by the retailer but who have not assigned the benefit of the rebate payment to the retailer.

If requested in writing by OPGI, the retailer shall ensure that all rebates paid to consumers are identified as coming from OPGI in the following form on or with each bill or cheque.

“ONTARIO POWER GENERATION INC. rebate”

The amounts paid out to consumers or returned to the distributor shall be based on energy consumed and calculated in accordance with the rules set out in the Retail Settlement Code.

Amounts payable by the retailer may be made by way of set off at the discretion of the retailer.



**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

THE HONOURABLE	)	THURSDAY, THE 5 <sup>th</sup>
	)	
JUSTICE	)	DAY OF JUNE, 2023

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF PLANET ENERGY (ONTARIO) CORP.**

**AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF PLANET ENERGY (B.C.) CORP**

**SALE PROCESS AND ADMINISTRATION ORDER**

**THIS MOTION**, made by Planet Energy (Ontario) Corp. (“**PEOC**”) and Planet Energy (B.C.) Corp. (“**PEBC**”, and together with PEOC, “**Applicants**” or “**Planet Energy**”) for an order, (a) consolidating the Applicants’ proposal proceedings (the “**Proposal Proceedings**”); (b) approving the sale process (the “**Sale Process**”); and (c) extending the time for Planet Energy to file a proposal to July 25, 2023, was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the affidavit of Nino Silvestri sworn May 26, 2023 (the “**Silvestri Affidavit**”) and the exhibits thereto, the First Report (the “**First Report**”) of the Richter Inc., in its capacity as proposal trustee of each of PEOC and PEBC (the “**Proposal Trustee**”), the affidavit of Robert Stevanovski sworn May 15, 2023, the transcripts of the cross-examinations of Mr. Silvestri and Mr. Stevanovski on their respective affidavits, and on hearing the submissions of counsel for Planet Energy, counsel for the Proposal Trustee and all other counsel appearing on the counsel slip.

**SERVICE**

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

**ADMINISTRATIVE CONSOLIDATION**

2. **THIS COURT ORDERS** the administrative consolidation of the proceedings bearing Court/Estate File No. 31-2943175 and 31-2943168 (the “**Proposal Proceedings**”) and the Proposal Trustee shall administer the Proposal Proceedings as if the Proposal Proceedings were a single proceeding for the purposes of carrying out its duties and responsibilities as proposal trustee under the BIA.

**APPROVAL OF SALE PROCESS**

3. **THIS COURT ORDERS** that the Sale Process in respect of Planet Energy’s assets, business and property attached hereto as Schedule A is hereby approved and that the Proposal Trustee is hereby authorized and empowered to take such steps as are necessary or desirable to carry out the Sale Process, provided that any definitive agreement to be executed by Planet Energy in respect of any transaction resulting therefrom shall require further approval of this Court.

**EXTENSION OF THE PROPOSAL PERIOD**

4. **THIS COURT ORDERS** that the time for Planet Energy to file a proposal (the “**Proposal Period**”), and the stay of proceedings herein, is hereby extended in accordance with subsection 50.4(9) of the *Bankruptcy and Insolvency Act* R.S.C. 1985 c. B-3, as amended (the “**BIA**”), to and including July 25, 2023.

**SERVICE AND NOTICE**

5. **THIS COURT ORDERS** the E-Service Guide of the Commercial List (the “**Guide**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Guide (which can be found on the Commercial List website at: [www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/](http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/)) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 13 of the Guide, service of documents in accordance with the Guide will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URLs:

- (a) “<https://www.richter.ca/insolvencycase/planet-energy-ontario-corp/>”; and
- (b) “<https://www.richter.ca/insolvencycase/planet-energy-b-c-corp/>”.

6. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Proposal Trustee is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to Planet Energy’s creditors or other interested parties at their respective addresses as last shown on the records of Planet Energy and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

7. **THIS COURT ORDERS** that the Proposal Trustee, Planet Energy and their respective counsel, are at liberty to serve or distribute this Order, any materials and orders as may be reasonably required in these proceedings including any notices, or other

correspondence, by forwarding true copies thereof by electronic message to Planet Energy's creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the Electronic Commerce Protection Regulations, Reg. 81000-2-175 (SOR/DORS).

## **GENERAL**

8. **THIS COURT ORDERS** that the Proposal Trustee shall not take possession of the Property and shall take no part whatsoever in management or supervision of the management of the business of Planet Energy and shall not, in carrying out the Sale Process, or otherwise fulfilling its obligations hereunder or under the BIA, be deemed to have taken possession or control of the business of Planet Energy or its property, or any part thereof.

9. **THIS COURT ORDERS** that that the Proposal Trustee shall provide any creditor of Planet Energy with information provided by Planet Energy in response to reasonable requests for information made in writing by such creditor addressed to the Proposal Trustee. The Proposal Trustee shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Proposal Trustee has been advised by Planet Energy or its counsel is confidential, the Proposal Trustee shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Proposal Trustee and Planet Energy may agree.

10. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Proposal Trustee under the BIA or as an officer of this Court, the Proposal Trustee shall incur no liability or obligation as a result of its appointment, carrying out of the Sale Process or carrying out any provisions of this Order, save and except for any gross negligence or wilful

misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Proposal Trustee by the BIA or any applicable legislation.

11. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, to give effect to this Order and to assist Planet Energy and the Proposal Trustee and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to Planet Energy and the Proposal Trustee, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist Planet Energy, the Proposal Trustee and their respective agents in carrying out the terms of this Order.

12. **THIS COURT ORDERS** that any interested party (including Planet Energy and the Proposal Trustee) may apply to this court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

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## SCHEDULE A

### SALE PROCESS PLANET ENERGY (ONTARIO) CORP. AND PLANET ENERGY (B.C.) CORP. (collectively "Planet")

#### Defined Terms

1. These terms and conditions, and the process described herein shall collectively be hereinafter referred to as the "**Sale Process**".

#### Role of the Trustee and Consultation Parties

2. The Sale Process will be administered by Richter Inc., the trustee in the proposal proceedings of Planet (the "**Trustee**"). The roles and responsibilities of the Trustee are described below, however, the Trustee's role in the Sale Process does not include managing, operating, or taking possession or control of Planet's property, assets or undertakings.
3. Planet and its principals, employees and professional advisors shall cooperate with the Trustee throughout the Sale Process and promptly provide any documents and information requested by the Trustee as part of the Sale Process.
4. All Communications Network of Canada ("**ACN**") shall be entitled certain consultation rights as set forth herein provided that ACN executes a non-disclosure agreement in a form acceptable to the Trustee and Planet and ACN confirms in writing to the Trustee that ACN and its affiliates and related parties will not submit an offer or participate in the Sales Process as a Prospective Participant (as defined below). Upon satisfying such conditions, ACN shall be a "**Consultation Party**" hereunder.

#### Commencement of the Sale Process

5. The Sale Process shall commence immediately upon Court approval thereof (the "**Commencement Date**").
6. As soon as practicable after the Commencement Date, the Trustee shall contact parties identified by Planet, the Trustee or the Consultation Party who may be interested in purchasing the business and/or assets of Planet (collectively, the "**Prospective Participants**" and each a "**Prospective Participant**") and provide those parties with a copy of a letter (the "**Teaser Letter**") containing general details about the opportunity to purchase the business and/or assets of Planet (the "**Opportunity**"), as well as some general background information about Planet.
7. As soon as practicable after the Commencement Date, the Trustee shall also (a) publish a notice advertising the Opportunity in the National Post and/or such other newspaper and/or trade publications or other publications as the Trustee may deem appropriate or advisable, and (b) post the Teaser Letter and other relevant information concerning the Opportunity, as determined by the Trustee, on its website.

### Due Diligence

8. Any Prospective Participant who advises the Trustee of its interest in participating in the Sale Process shall execute a non-disclosure agreement (the “**NDA**”) in a form satisfactory to the Trustee and shall satisfy the Trustee, in the Trustee’s sole discretion, of its ability to consummate a transaction for the acquisition of the business and/or assets of Planet. Any Prospective Participant executing an NDA and so satisfying the Trustee shall be invited to participate in the Sale Process and commence due diligence.
9. Commencing on the Commencement Date (and after each respective Prospective Participant has executed the NDA), the Trustee shall make available to the qualifying Prospective Participants the following:
  - a) a copy of a template asset purchase agreement (the “**Template Purchase Agreement**”); and
  - b) access to an electronic data room, to be maintained by the Trustee, which shall contain information pertaining to the Opportunity along with other corporate financial and other documents as provided by Planet.

### Offer Deadline

10. All offers must be submitted in writing to and received by the Trustee electronically to [jjoffe@richter.ca](mailto:jjoffe@richter.ca) by no later than 5:00pm (Toronto time) on August 4, 2023 (the “**Offer Deadline**”). Each offer must remain open for acceptance until completion of the Auction (if any).
11. The Trustee shall provide Planet and the Consultation Party with the offers received by the Offer Deadline.

### Qualified Offers

12. An offer will only be considered in this Sale Process, in which case it shall be considered a “**Qualified Offer**”, if it is submitted before the Offer Deadline and if it meets the following minimum criteria:
  - a) it must be submitted in writing, substantially in the form of the Template Purchase Agreement, with any changes to the offer blacklined against the appropriate Template Purchase Agreement;
  - b) it must be irrevocable until five business days after the Auction (*as defined herein*);
  - c) it must be accompanied by a deposit in the form of a certified cheque or bank draft (or in the form of confirmed wire transfer in the case of offers submitted electronically) payable to the Trustee “in trust” which is equal to at least ten percent (10%) percent of the total purchase price payable under the offer;
  - d) it may only contemplate an acquisition on an “as is, where is” basis and must include an acknowledgement that the purchaser has relied solely on its own independent review and investigation and that it has not relied on any

representation by Planet, the Trustee or their respective agents, employees or advisors;

- e) it must not contain any condition or contingency relating to due diligence or financing or any other material conditions precedent to the offeror's obligation to complete the transaction (save and except for approval by the Court); and
- f) it must include written evidence, satisfactory to the Trustee, that the offeror has the financial means to complete the proposed acquisition,

provided however that the Trustee may, in consultation with Planet and the Consultation Party, may (i) consider liquidation offers in respect of the assets of Planet and (ii) exercising its reasonable discretion, waive compliance with one or more of the foregoing Qualified Offer requirements and deem such non-compliant offer to be a Qualified Offer.

- 13. Offers for all or part of the business, assets and undertakings of Planet will be considered.

### **Auction**

- 14. If no Qualified Offer is received by the Offer Deadline, the Auction (*as defined herein*) will not be held.
- 15. If more than one Qualified Offer is received by the Offer Deadline, the Trustee shall extend invitations by phone, and/or email by no later than 10:00am (Toronto time) on the second (2<sup>nd</sup>) Business Day after the Offer Deadline to all bidders who submitted Qualified Offers to attend an auction (the "**Auction**"). The Auction shall be held at 10:00am (Toronto time) on the fifth (5<sup>th</sup>) Business Day after the Offer Deadline or such later date that the Trustee may determine, at the offices of the Trustee or by teleconference, video conference or other form of electronic telecommunications, as the Trustee may deem fit. Only the Trustee, Planet, the Consultation Party, and persons that have submitted a Qualified Offer and their respective advisors shall be entitled to attend the Auction.
- 16. The Trustee shall conduct the Auction. At the Auction, the bidding shall begin initially with the highest Qualified Offer and subsequently continue in multiples of \$50,000, or such other amount as the Trustee determines, to facilitate the Auction. The format and other procedures for the Auction shall be determined by the Trustee in its sole discretion.

### **Selection of the Winning Bid**

- 17. The winning bid (the "**Winning Bid**") shall be, either:
  - a. in the event that only one Qualified Offer is received, the Qualified Offer;
  - or,
  - b. in the event that multiple Qualified Offers are received, following the conclusion of the Auction (if applicable), the party submitting the highest and best offer through the Auction, which the Trustee is satisfied, acting reasonably, is capable of being completed in accordance with the Sale Process Order.



18. Notwithstanding anything contained herein, the Trustee reserves the right to not accept any offer or offers submitted as part of the Sale Process.

#### **Court Approval**

19. As soon as practicable after determination of the Winning Bid, Planet will make a motion to the Court (the "**Approval Motion**") for an approval and vesting order in respect of the Winning Bid and the underlying purchase agreement (the "**Final Purchase Agreement**").
20. The Trustee shall serve and file a report with respect to the Sale Process and Winning Bid in advance of the Approval Motion.

#### **Other Terms**

21. All deposits received shall be held by the Trustee "in trust". All deposits submitted by parties that submitted a Qualified Offer who did not submit the Winning Bid shall be returned, without interest, as soon as practicable following the date on which any such offers are rejected hereunder. The deposit forming part of the Winning Bid shall be dealt with in accordance with the Final Purchase Agreement.
22. In the event that a deposit is forfeited for any reason it shall be forfeited as liquidated damages and not as a penalty.
23. All Qualified Offers (other than the Winning Bid) shall be deemed rejected on the earlier of (a) the date on which the transaction contemplated by the Final Purchase Agreement is completed and (b) August 31, 2023, or such later date as may be agreed to, in writing, by the Trustee and the party who submitted the Qualified Offer.
24. Subject to the Sale Process Order or other order of the Court, the Trustee, in consultation with Planet and the Consultation Party shall have the right to adopt such other rules for, or extend any deadlines in, the Sale Process that, at its sole discretion, will better promote the goals of the Sale Process.

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF  
PLANET ENERGY (ONTARIO) CORP., AN INSOLVENT PERSON

Court File No. 31-2943175  
Estate No. 31-2943175

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**ONTARIO**  
SUPERIOR COURT OF JUSTICE  
  
(IN BANKRUPTCY AND INSOLVENCY)

Proceeding Commenced at Toronto

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**ORDER**

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**STIKEMAN ELLIOTT LLP**

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Lawyers for the Debtors under Proposal,  
Planet Energy (Ontario) Corp. and Planet Energy (B.C.)  
Corp.

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

THE HONOURABLE	)	THURSDAY, THE 5 <sup>th</sup>
	)	
JUSTICE	)	DAY OF JUNE, 2023

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF PLANET ENERGY (ONTARIO) CORP.**

**AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF PLANET ENERGY (B.C.) CORP**

**SALE PROCESS AND ADMINISTRATION ORDER**

**THIS MOTION**, made by Planet Energy (Ontario) Corp. (“**PEOC**”) and Planet Energy (B.C.) Corp. (“**PEBC**”, and together with PEOC, “**Applicants**” or “**Planet Energy**”) for an order, (a) consolidating the Applicants’ proposal proceedings (the “**Proposal Proceedings**”); (b) approving the sale process (the “**Sale Process**”); and (c) extending the time for Planet Energy to file a proposal to July 25, 2023, was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the affidavit of Nino Silvestri sworn May 26, 2023 (the “**Silvestri Affidavit**”) and the exhibits thereto, the First Report (the “**First Report**”) of the Richter Inc., in its capacity as proposal trustee of each of PEOC and PEBC (the “**Proposal Trustee**”), the affidavit of Robert Stevanovski sworn May 15, 2023, the transcripts of the cross-examinations of Mr. Silvestri and Mr. Stevanovski on their respective affidavits, and on hearing the submissions of counsel for Planet Energy, counsel for the Proposal Trustee and all other counsel appearing on the counsel slip.

**SERVICE**

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

**ADMINISTRATIVE CONSOLIDATION**

2. **THIS COURT ORDERS** the administrative consolidation of the proceedings bearing Court/Estate File No. 31-2943175 and 31-2943168 (the "**Proposal Proceedings**") and the Proposal Trustee shall administer the Proposal Proceedings as if the Proposal Proceedings were a single proceeding for the purposes of carrying out its duties and responsibilities as proposal trustee under the BIA.

**APPROVAL OF SALE PROCESS**

3. **THIS COURT ORDERS** that the Sale Process in respect of Planet Energy's assets, business and property attached hereto as Schedule A is hereby approved and that the Proposal Trustee is hereby authorized and empowered to take such steps as are necessary or desirable to carry out the Sale Process, provided that any definitive agreement to be executed by Planet Energy in respect of any transaction resulting therefrom shall require further approval of this Court.

**EXTENSION OF THE PROPOSAL PERIOD**

4. **THIS COURT ORDERS** that the time for Planet Energy to file a proposal (the "**Proposal Period**"), and the stay of proceedings herein, is hereby extended in accordance with subsection 50.4(9) of the *Bankruptcy and Insolvency Act* R.S.C. 1985 c. B-3, as amended (the "**BIA**"), to and including July 25, 2023.

**SERVICE AND NOTICE**

5. **THIS COURT ORDERS** the E-Service Guide of the Commercial List (the “**Guide**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Guide (which can be found on the Commercial List website at: [www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/](http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/)) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 13 of the Guide, service of documents in accordance with the Guide will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URLs:

- (a) “<https://www.richter.ca/insolvencycase/planet-energy-ontario-corp/>”; and
- (b) “<https://www.richter.ca/insolvencycase/planet-energy-b-c-corp/>”.

6. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Proposal Trustee is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to Planet Energy’s creditors or other interested parties at their respective addresses as last shown on the records of Planet Energy and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

7. **THIS COURT ORDERS** that the Proposal Trustee, Planet Energy and their respective counsel, are at liberty to serve or distribute this Order, any materials and orders as may be reasonably required in these proceedings including any notices, or other

correspondence, by forwarding true copies thereof by electronic message to Planet Energy's creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the Electronic Commerce Protection Regulations, Reg. 81000-2-175 (SOR/DORS).

## **GENERAL**

8. **THIS COURT ORDERS** that the Proposal Trustee shall not take possession of the Property and shall take no part whatsoever in management or supervision of the management of the business of Planet Energy and shall not, in carrying out the Sale Process, or otherwise fulfilling its obligations hereunder or under the BIA, be deemed to have taken possession or control of the business of Planet Energy or its property, or any part thereof.

9. **THIS COURT ORDERS** that that the Proposal Trustee shall provide any creditor of Planet Energy with information provided by Planet Energy in response to reasonable requests for information made in writing by such creditor addressed to the Proposal Trustee. The Proposal Trustee shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Proposal Trustee has been advised by Planet Energy or its counsel is confidential, the Proposal Trustee shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Proposal Trustee and Planet Energy may agree.

10. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Proposal Trustee under the BIA or as an officer of this Court, the Proposal Trustee shall incur no liability or obligation as a result of its appointment, carrying out of the Sale Process or carrying out any provisions of this Order, save and except for any gross negligence or wilful

misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Proposal Trustee by the BIA or any applicable legislation.

11. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, to give effect to this Order and to assist Planet Energy and the Proposal Trustee and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to Planet Energy and the Proposal Trustee, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist Planet Energy, the Proposal Trustee and their respective agents in carrying out the terms of this Order.

12. **THIS COURT ORDERS** that any interested party (including Planet Energy and the Proposal Trustee) may apply to this court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

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## SCHEDULE A

### SALE PROCESS PLANET ENERGY (ONTARIO) CORP. AND PLANET ENERGY (B.C.) CORP. (collectively "Planet")

#### Defined Terms

1. These terms and conditions, and the process described herein shall collectively be hereinafter referred to as the "**Sale Process**".

#### Role of the Trustee and Consultation Parties

2. The Sale Process will be administered by Richter Inc., the trustee in the proposal proceedings of Planet (the "**Trustee**"). The roles and responsibilities of the Trustee are described below, however, the Trustee's role in the Sale Process does not include managing, operating, or taking possession or control of Planet's property, assets or undertakings.
3. Planet and its principals, employees and professional advisors shall cooperate with the Trustee throughout the Sale Process and promptly provide any documents and information requested by the Trustee as part of the Sale Process.
4. All Communications Network of Canada ("**ACN**") shall be entitled certain consultation rights as set forth herein provided that ACN executes a non-disclosure agreement in a form acceptable to the Trustee and Planet and ACN confirms in writing to the Trustee that ACN and its affiliates and related parties will not submit an offer or participate in the Sales Process as a Prospective Participant (as defined below). Upon satisfying such conditions, ACN shall be a "**Consultation Party**" hereunder.

#### Commencement of the Sale Process

5. The Sale Process shall commence immediately upon Court approval thereof (the "**Commencement Date**").
6. As soon as practicable after the Commencement Date, the Trustee shall contact parties identified by Planet, the Trustee or the Consultation Party who may be interested in purchasing the business and/or assets of Planet (collectively, the "**Prospective Participants**" and each a "**Prospective Participant**") and provide those parties with a copy of a letter (the "**Teaser Letter**") containing general details about the opportunity to purchase the business and/or assets of Planet (the "**Opportunity**"), as well as some general background information about Planet.
7. As soon as practicable after the Commencement Date, the Trustee shall also (a) publish a notice advertising the Opportunity in the National Post and/or such other newspaper and/or trade publications or other publications as the Trustee may deem appropriate or advisable, and (b) post the Teaser Letter and other relevant information concerning the Opportunity, as determined by the Trustee, on its website.



### Due Diligence

8. Any Prospective Participant who advises the Trustee of its interest in participating in the Sale Process shall execute a non-disclosure agreement (the “**NDA**”) in a form satisfactory to the Trustee and shall satisfy the Trustee, in the Trustee’s sole discretion, of its ability to consummate a transaction for the acquisition of the business and/or assets of Planet. Any Prospective Participant executing an NDA and so satisfying the Trustee shall be invited to participate in the Sale Process and commence due diligence.
9. Commencing on the Commencement Date (and after each respective Prospective Participant has executed the NDA), the Trustee shall make available to the qualifying Prospective Participants the following:
  - a) a copy of a template asset purchase agreement (the “**Template Purchase Agreement**”); and
  - b) access to an electronic data room, to be maintained by the Trustee, which shall contain information pertaining to the Opportunity along with other corporate financial and other documents as provided by Planet.

### Offer Deadline

10. All offers must be submitted in writing to and received by the Trustee electronically to [jjoffe@richter.ca](mailto:jjoffe@richter.ca) by no later than 5:00pm (Toronto time) on August 4, 2023 (the “**Offer Deadline**”). Each offer must remain open for acceptance until completion of the Auction (if any).
11. The Trustee shall provide Planet and the Consultation Party with the offers received by the Offer Deadline.

### Qualified Offers

12. An offer will only be considered in this Sale Process, in which case it shall be considered a “**Qualified Offer**”, if it is submitted before the Offer Deadline and if it meets the following minimum criteria:
  - a) it must be submitted in writing, substantially in the form of the Template Purchase Agreement, with any changes to the offer blacklined against the appropriate Template Purchase Agreement;
  - b) it must be irrevocable until five business days after the Auction (*as defined herein*);
  - c) it must be accompanied by a deposit in the form of a certified cheque or bank draft (or in the form of confirmed wire transfer in the case of offers submitted electronically) payable to the Trustee “in trust” which is equal to at least ten percent (10%) percent of the total purchase price payable under the offer;
  - d) it may only contemplate an acquisition on an “as is, where is” basis and must include an acknowledgement that the purchaser has relied solely on its own independent review and investigation and that it has not relied on any

representation by Planet, the Trustee or their respective agents, employees or advisors;

- e) it must not contain any condition or contingency relating to due diligence or financing or any other material conditions precedent to the offeror's obligation to complete the transaction (save and except for approval by the Court); and
- f) it must include written evidence, satisfactory to the Trustee, that the offeror has the financial means to complete the proposed acquisition,

provided however that the Trustee may, in consultation with Planet and the Consultation Party, may (i) consider liquidation offers in respect of the assets of Planet and (ii) exercising its reasonable discretion, waive compliance with one or more of the foregoing Qualified Offer requirements and deem such non-compliant offer to be a Qualified Offer.

- 13. Offers for all or part of the business, assets and undertakings of Planet will be considered.

### **Auction**

- 14. If no Qualified Offer is received by the Offer Deadline, the Auction (*as defined herein*) will not be held.
- 15. If more than one Qualified Offer is received by the Offer Deadline, the Trustee shall extend invitations by phone, and/or email by no later than 10:00am (Toronto time) on the second (2<sup>nd</sup>) Business Day after the Offer Deadline to all bidders who submitted Qualified Offers to attend an auction (the "**Auction**"). The Auction shall be held at 10:00am (Toronto time) on the fifth (5<sup>th</sup>) Business Day after the Offer Deadline or such later date that the Trustee may determine, at the offices of the Trustee or by teleconference, video conference or other form of electronic telecommunications, as the Trustee may deem fit. Only the Trustee, Planet, the Consultation Party, and persons that have submitted a Qualified Offer and their respective advisors shall be entitled to attend the Auction.
- 16. The Trustee shall conduct the Auction. At the Auction, the bidding shall begin initially with the highest Qualified Offer and subsequently continue in multiples of \$50,000, or such other amount as the Trustee determines, to facilitate the Auction. The format and other procedures for the Auction shall be determined by the Trustee in its sole discretion.

### **Selection of the Winning Bid**

- 17. The winning bid (the "**Winning Bid**") shall be, either:
  - a. in the event that only one Qualified Offer is received, the Qualified Offer;
  - or,
  - b. in the event that multiple Qualified Offers are received, following the conclusion of the Auction (if applicable), the party submitting the highest and best offer through the Auction, which the Trustee is satisfied, acting reasonably, is capable of being completed in accordance with the Sale Process Order.

18. Notwithstanding anything contained herein, the Trustee reserves the right to not accept any offer or offers submitted as part of the Sale Process.

### **Court Approval**

19. As soon as practicable after determination of the Winning Bid, Planet will make a motion to the Court (the "**Approval Motion**") for an approval and vesting order in respect of the Winning Bid and the underlying purchase agreement (the "**Final Purchase Agreement**").
20. The Trustee shall serve and file a report with respect to the Sale Process and Winning Bid in advance of the Approval Motion.

### **Other Terms**

21. All deposits received shall be held by the Trustee "in trust". All deposits submitted by parties that submitted a Qualified Offer who did not submit the Winning Bid shall be returned, without interest, as soon as practicable following the date on which any such offers are rejected hereunder. The deposit forming part of the Winning Bid shall be dealt with in accordance with the Final Purchase Agreement.
22. In the event that a deposit is forfeited for any reason it shall be forfeited as liquidated damages and not as a penalty.
23. All Qualified Offers (other than the Winning Bid) shall be deemed rejected on the earlier of (a) the date on which the transaction contemplated by the Final Purchase Agreement is completed and (b) August 31, 2023, or such later date as may be agreed to, in writing, by the Trustee and the party who submitted the Qualified Offer.
24. Subject to the Sale Process Order or other order of the Court, the Trustee, in consultation with Planet and the Consultation Party shall have the right to adopt such other rules for, or extend any deadlines in, the Sale Process that, at its sole discretion, will better promote the goals of the Sale Process.

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF  
PLANET ENERGY (ONTARIO) CORP., AN INSOLVENT PERSON

Court File No. 31-2943175  
Estate No. 31-2943175

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**ONTARIO**  
SUPERIOR COURT OF JUSTICE  
  
(IN BANKRUPTCY AND INSOLVENCY)

Proceeding Commenced at Toronto

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**ORDER**

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Corp.

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF  
PLANET ENERGY (ONTARIO) CORP., AN INSOLVENT PERSON

Court/Estate File Nos. 31-2943175  
and 31-2943168

AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A  
PROPOSAL OF PLANET ENERGY (B.C.) CORP.

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(IN BANKRUPTCY AND INSOLVENCY)**

Proceeding Commenced at Toronto

**MOTION RECORD**  
**(RETURNABLE JUNE 5, 2023)**

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