



LETTER NO. L-32-07

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VIA E-MAIL

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May 7, 2007

Mr. Jeffrey Mayer
President & CEO
MX Energy (Canada) Limited
595 Summer Street
Suite 300
Stamford, CT 06901-1407

Dear Mr. Mayer:

Re: MX Energy's Letter dated April 9, 2007

In its letter dated April 9, 2007 MX Energy recommends that consumer protection would be enhanced by allowing voice contracting for customer enrollment subject to the mandatory recording of both the sales call and third party verification ("TPV") of the transaction. In fact, MX Energy advocates for the introduction of telemarketing as an independent contracting channel provided that there is mandatory recording of the entire sales call and recorded third party verification. In addition, MX Energy requests clarification on whether telemarketing solicitation can be followed by an electronic distribution of the contract and electronic signature approval.

In order to make its argument, MX Energy points out failures that have historically taken place in door-to-door sales and presents a case for telemarketing with safeguards as a superior marketing application. In conclusion, the Gas Marketer also advocates that TPV is a useful application that should be applied to all door-to-door sales to enhance consumer protection. MX Energy's argument is that bad publicity from door-to-door sales and low customer participation brought on by limited sales channels could damage the success of the Residential Commodity Unbundling Program ("RCUP" or the "Program").

In response, it should be considered that the Commission has developed the Code of Conduct and Rules for Gas Marketers with the full knowledge of the advantages and limitations of a number of marketing methods and the review of the implementation of similar unbundling programs across North America. Although door-to-door sales is the dominant marketing channel at this stage in the Program, there is a variant of telemarketing permitted that requires the customer to complete a contract with a wet or electronic signature. The customer must initiate some action rather than a simple verbal response over the telephone. The electronic signature requires the customer to search out the contract on a Gas Marketer website and actually demonstrate agreement. If the customer has to manually perform a task it was considered to be a better representation of intention and a demonstration that the customer actually understood the consequences of committing to the agreement. The supplier must then give a customer the distance sales contract within 15 days after it has been entered into (Business Practices and Consumer Protection Act, Articles 48 and 49) and if sent by electronic mail, the contract is deemed to have been received on the 3rd business day. The customer then has 7 days to cancel the contract.

One major consideration in developing the present structure of the Program was that a slow roll-out of the RCUP was preferable to a high velocity telemarketing campaign from a number of perspectives. A door-to-door approach in fact places all marketers on an equal footing and slows down the rollout of the Program overall. The Program is at the product introduction phase in its life cycle with the advertising campaign only now creating

market awareness. A door-to-door campaign forces the Gas Marketer to more fully explain its product offerings which should enhance awareness for the program generally as there is a better exchange of information in a door-to-door meeting than is usually the case through a telemarketing process.

It is expected that once actual sales agents make contact with customers there will be enhanced Program understanding and the advertising campaign will have more customer significance. In effect, it will stimulate customers exchanging information with neighbors, comparing price offerings and reviewing the market pricing depository website. The objective is for customers to be price conscious so that they will search out competing Gas Marketers' offerings and confirm the attributes of a healthy market.

One feature not mentioned by MX Energy is the Confirmation Letter which Terasen sends out to a customer once Terasen Gas receives an enrollment request from a marketer and validates the request. At this point, Terasen issues a Confirmation Letter and the 10-day Cooling off Period begins. The Confirmation Letter advises the customer that the gas commodity will now be delivered by the marketer selected at the price and terms agreed to. It also indicates the location of the pricing depository website where a price comparison can be initiated during the 10-day period. During this time, the customer can still cancel the contract and remain with Terasen Gas, cancel the contract and move to another marketer or accept the terms and conditions of the signed contract.

The Commission agrees that the TPV is a useful validation tool to both control the presentation of sales agents and confirm for the Commission that the terms of the contract presented to the customer were correct. Without this information it may be difficult for a Gas Marketer to present sufficient support to confirm that the contract with the customer was legitimate. It is for this reason that the Commission would encourage all Gas Marketers to provide third party verification; however, this has not been made mandatory at this time. The Commission has committed, however, to review the Program before May 1, 2008 and if there are consistent issues in this area that demand a remedy, then it will be addressed. In order to provide information to this process, MX Energy should provide a report to the Commission by December 31, 2007 that presents data on TPV in this market. It should include but not be limited to the number of contracts, contracts found invalid and information on agents and customers in breach of contract conditions.

I trust that the foregoing explanation provides some insight into the development of the Code of Conduct and Rules for Gas Marketers. The Commission looks forward to a review of MX Energy's report on TPV and a further review of the mechanics of the Program before May 1, 2008.

Yours truly,

Original signed by

Robert J. Pellatt

RB/yl

cc: Mr. Hans Mertins, Terasen Gas Inc.
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