

SIXTH FLOOR, 900 HOWE STREET, BOX 250
VANCOUVER, BC V6Z 2N3 CANADA
web site: <http://www.bcuc.com>



**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER A-3-11**

TELEPHONE: (604) 660-4700
BC TOLL FREE: 1-800-663-1385
FACSIMILE: (604) 660-1102

**IN THE MATTER OF
the Utilities Commission Act, R.S.B.C. 1996, Chapter 473**

and

**An Application by MXenergy (Canada) Ltd.
for renewal of its Gas Marketer Licence
under the Customer Choice Program**

BEFORE: D.A. Cote, Commissioner
 L.F. Kelsey, Commissioner
 N. E. MacMurchy, Commissioner January 20, 2011
 D. Morton, Commissioner

O R D E R

WHEREAS:

- A. By Order A-27-10 dated October 28, 2010, the British Columbia Utilities Commission (Commission) issued MXenergy (Canada) Ltd. (MXenergy) a Gas Marketer Licence with an expiry date of February 1, 2011. In the Order, the Commission noted a non-compliance with respect to Working Capital and the Current Ratio for the year-ended June 30, 2010, based on the audited financial statements of its parent company MXenergy Holdings Inc., which includes a separate balance sheet for the licence holder;
- B. Further, a condition (h) was placed on Licence A-27-10 requiring the filing of audited financial statements for the recently concluded year, on a stand-alone basis, due to MXenergy not filing these statements, as required, with its original licence renewal application;
- C. On January 13, 2011, MXenergy applied to the Commission for renewal of its Gas Marketer Licence and requested the Commission review it on an expedited basis. The Application for renewal of its Licence to Market Natural Gas (Application) included the payment of the \$1,000 Application Fee, pursuant to item 2 of the Licence Requirements. A \$250,000 Letter of Credit was previously filed with the Commission pursuant to item 3 of the Requirements;
- D. The Application also included MXenergy's audited financial statements for fiscal year-ended June 30, 2010, filed on a stand-alone basis, pursuant to item 5 of the Licence Requirements and condition (h) of its current Licence A-27-10. These statements demonstrate that MXenergy exceeded the Current Ratio (1.10) and Working Capital (\$50,000) requirements of the Commission;

- E. The Commission notes that MXenergy did not file copies of its unaudited quarterly statements for each concluded financial quarter following the most recently ended fiscal year, pursuant to item 5 of the Licence Requirements;
- F. By not filing copies of its unaudited quarterly statements, the Commission finds that MXenergy is not fully compliant with item 5 of the Licence Requirements;
- G. In reviewing MXenergy's Application, the Commission considered that MXenergy has filed its audited financial statements for the year-ended June 30, 2010, in partial compliance with item 5 of Licence Requirements and based on these statements, it exceeded the Current Ratio and Working Capital requirements of the Commission. The Commission also reviewed its overall compliance with the Code of Conduct and the Rules for Gas Marketers, and its small customer base; and
- H. The Commission finds that renewal of MXenergy's Gas Marketer Licence, subject to conditions, is warranted, to continue serving its existing customers.

NOW THEREFORE pursuant to section 71.1(6) of the *Utilities Commission Act* the Commission orders as follows:

- 1. The Commission issues to MXenergy a Gas Marketer Licence for the period January 20, 2011 to October 31, 2011. The Licence includes condition (h) prohibiting MXenergy from soliciting or enrolling new customers due to its non-filing of unaudited quarterly financial statements, in compliance with item 5 of the Licence Requirements.
- 2. MXenergy must submit copies of its unaudited statements for the quarters ending September 30, 2010 and December 31, 2010, 30 calendar days from the date of this Order. Failure to submit these statements by the due date may result in MXenergy's Licence to be revoked or further conditions may be imposed by the Commission.
- 3. The Gas Marketer Licence is subject to the following conditions:
 - a. MXenergy will carry out the undertakings as set out in the Application for a Gas Licence to Market Natural Gas dated January 13, 2011 and the Rules for Gas Marketers.
 - b. MXenergy will comply with the Code of Conduct for Gas Marketers and Rate Schedule 36 of Terasen Gas Inc. MXenergy shall ensure that its employees, salespersons or other representatives of its products and services comply with the standards required of a Gas Marketer as set out in the Code of Conduct for Gas Marketers and MXenergy shall be responsible for any non-compliance of its employees, salespersons or other representatives of its products and services.
 - c. MXenergy will maintain a \$250,000 Letter of Credit or acceptable substitute in full force and effect for the duration of the Licence.

**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER A-3-11**

3

- d. MXenergy will maintain a Working Capital position of at least \$50,000 and a Current Ratio of current assets to current liabilities of at least 1.10.
- e. The Commission may, at any time and without prior notice to MXenergy, amend or impose new terms and conditions on, suspend, or cancel the Gas Marketer Licence for reasons the Commission, in its sole discretion, deems and considers sufficient.
- f. The Gas Marketer Licence and all copies of it shall remain the property of the Commission and MXenergy will return these documents forthwith upon written request from the Commission.
- g. MXenergy must file with the Commission unaudited quarterly financial statements no later than 45 days after the end of each quarter. The Chief Financial Officer for MXenergy must confirm that the financial information contained in the unaudited financial statements were prepared by management in accordance with the accounting principles generally accepted in Canada and within the framework of the company's significant accounting policies.
- h. MXenergy is not permitted to solicit or enrol new customers under the Customer Choice Program.

DATED at the City of Vancouver, in the Province of British Columbia, this 20th day of January 2011.

BY ORDER

Original signed by:

D.A. Cote
Commissioner

Attachment



LICENCE No. A-3-11

GAS MARKETER LICENCE

MXenergy (Canada) Ltd.

is granted a licence for the purpose of providing advice to, or acting on behalf of, a low volume consumer ⁽¹⁾ purchasing gas directly in the Province of British Columbia subject to the terms and conditions contained in Commission Order A-3-11, which are set out in the reverse of the Licence.

BRITISH COLUMBIA UTILITIES COMMISSION

Original signed by

D.A. Cote, Commissioner

ISSUED: January 20, 2011

EXPIRES: October 31, 2011

(1) As described in the Rules for Gas Marketers

The Gas Marketer Licence is subject to the following conditions:

- a. MXenergy will carry out the undertakings as set out in the Application for a Gas Licence to Market Natural Gas dated January 13, 2011 and the Rules for Gas Marketers.
- b. MXenergy will comply with the Code of Conduct for Gas Marketers and Rate Schedule 36 of Terasen Gas Inc. MXenergy shall ensure that its employees, salespersons or other representatives of its products and services comply with the standards required of a Gas Marketer as set out in the Code of Conduct for Gas Marketers and MXenergy shall be responsible for any non-compliance of its employees, salespersons or other representatives of its products and services.
- c. MXenergy will maintain a \$250,000 Letter of Credit or acceptable substitute in full force and effect for the duration of the Licence.
- d. MXenergy will maintain a Working Capital position of at least \$50,000 and a Current Ratio of current assets to current liabilities of at least 1.10.
- e. The Commission may, at any time and without prior notice to MXenergy, amend or impose new terms and conditions on, suspend, or cancel the Gas Marketer Licence for reasons the Commission, in its sole discretion, deems and considers sufficient.
- f. The Gas Marketer Licence and all copies of it shall remain the property of the Commission and MXenergy will return these documents forthwith upon written request from the Commission.
- g. MXenergy must file with the Commission unaudited quarterly financial statements no later than 45 days after the end of each quarter. The Chief Financial Officer for MXenergy must confirm that the financial information contained in the unaudited financial statements were prepared by management in accordance with the accounting principles generally accepted in Canada and within the framework of the company's significant accounting policies.
- h. MXenergy is not permitted to solicit or enrol new customers under the Customer Choice Program.