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**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER A-5-11**

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

and

**An Application by MXenergy (Canada) Ltd.
for an Extension for Filing Certain Financial Requirements per Order A-3-11**

BEFORE: L.F. Kelsey, Commissioner
D. Morton, Commissioner

February 10, 2011

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 the Application on an expedited basis. The Application for renewal of its Licence to Market Natural Gas 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 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 Licence A-27-10. These statements demonstrated that MXenergy exceeded the Current Ratio (1.10) and Working Capital (\$50,000) requirements of the Commission;
- E. 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 and by not filing copies of its unaudited quarterly statements, MXenergy is not fully compliant with item 5 of the Licence Requirements;
- F. The Commission issued Licence A-3-11 on the condition that MXenergy file its unaudited financial statements for the quarters ending September 30, 2010 and December 31, 2010 within 30 calendar days from the date of the Order (January 20, 2011) and prohibited MXenergy from soliciting or enrolling new customers under the Customer Choice Program;

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- G. On February 7, 2011, MXenergy requested a 90 day extension to file the aforementioned unaudited financial statements due the resignation of its Director of External Reporting; after email discussion on the potential consequences, MXenergy suggested by email dated February 8, 2011 that a 60 day extension would be satisfactory. MXenergy also noted that its request is "...not based on an unwillingness to comply or a failure to acknowledge the importance of the requirement to provide the statements, and that we are making our best efforts in light of these challenging circumstances";
- H. The Commission notes that in spite of the several delays and lack of appropriate planning to ensure licence requirements are met, MXenergy is currently only permitted to serve its existing customers and is not permitted to solicit or enroll any new customers, and therefore the extension request does not unduly exploit the spirit of the licence requirements, nor does it provide MXenergy with a market advantage.

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

1. The Commission grants MXenergy a further 60-day extension for the filing of its unaudited financial statements for the quarters ending September 30, 2010 and December 31, 2010 as outlined in Order A-3-11.
2. MXenergy is to file its March 31, 2011 quarterly unaudited financial statement in addition to the September and December 2010 statements outlined in Order A-3-11.
3. Failure to comply with this Order and demonstrate compliance with all licence requirements may require the Commission to initiate a hearing process to determine the status of MXenergy's Gas Marketer Licence.

DATED at the City of Vancouver, in the Province of British Columbia, this 10th day of February 2011.

BY ORDER

Original signed by:

L.F. Kelsey
Commissioner