



**ST. MAARTEN
MINISTER OF ENERGY AND WATER**

NV GEBE,
Ir. W. Brooks, Managing Director
W.J. Nisbeth Road 35, Pondfill,
Philipsburg,
Sint Maarten.

Uw nummer: Uw brief van: Ons nummer: ^E126/10 Afd: MINVROMI
Onderwerp: Execution Electricity Concession GEBE

Philipsburg, JUL 19 2011

Dear Ir. Brooks,

Acknowledging the importance of having adequate legislation in place, Government has assumed its responsibility and made the necessary effort to initiate and complete the process of establishing a legal frame work for the supply of electricity in country Sint Maarten.

The Electricity Ordinance of July 2010 and the Electricity Concession issued to GEBE in August 2010 are key legal elements of the regulatory framework required for a sustainable development of the electricity company of Sint Maarten.

The driving force may have been the condition in the loan agreement with lender Pacific Life to have a valid concession in place, though the objectives of the new law and concession are intended to improve the continuity and quality of supply of electricity and the service provided to consumers on Sint Maarten.

Very unacceptable is the status of compliance and even the progress towards compliance of GEBE with the requirements set forth in the ordinance and concession. Within this context we have expressed our concerns at more than one occasion, as stated in previous correspondence:

1. Our letter, reference no. 1339/10, dated August 2nd, 2010 provides additional information, conditions to be met and instructions;
2. Our letter of November 30, 2010 no 126, stating conditions to be met and instructions;
3. Our letter of December 20, 2010, no response from GEBE;
4. GEBE's letter of December 20, 2010 WB/rh/10-41, response on letters sub 2 and 3
5. Our letter of December 22, 2010 requiring no financial support from Sint Maarten to Saba and St. Eustatius; Payment of the concession fees;
6. Our letter of January 7, 2011 reference compliance, payment concession, information;
7. GEBE's letter of January 27, 2011 to Saba and St. Eustatius; regarding the compliance with the Sint Maarten concession;
8. Your letter of February 1, 2011; WB/rh/11-06 in which GEBE requests two months as of February 1, 2011 to submit a multi-annual plan and the general conditions;

Reference is made to our letter of August 2, 2010 and November 30, 2010 for a detailed overview of subjects to address. In July 2011, nearly one year after the introduction of the Electricity Ordinance and GEBE's acceptance of the Electricity Concession the status is as follows:

1. **Acceptance of the Electricity Concession:** -completed late-
The NV GEBE, in its letter of December 20, 2010 WB/rh/10-41, confirmed acceptance of the concession.

2. **Concession Fee 2010:** - late payment -
The concession was granted in August 2010. In accordance with articles 7 and 8 of the Electricity Ordinance, a fee of ANG 5 million is payable to the Government for the year 2010. GEBE paid on January 14th 2011 to the Receiver of Sint Maarten the full amount of the concession fee due for 2010.

Concession Fee 2011 first, second and third quarter: -not paid-

The concession fee 1st quarter of ANG 1.25 million was due December 31st, 2010

The concession fee 2nd quarter of ANG 1.25 million was due March 31st, 2011

The concession fee 3rd quarter of ANG 1.25 million was due June 30th, 2011

Up to July 18, 2011 no concession fee has been received for the first three quarters.

3. **Income use of GEBE:** -six months of no compliance -
As of January 1st 2011, GEBE has to comply with article 12 sub 5 of the Electricity Ordinance, explicitly the requirement that:
Income from supply of electricity to the Sint Maarten customers shall be used exclusively and fully, to cover the operational costs and capital needs of investments of GEBE, which are directly related to activities of the concession holder for consumers established in Sint Maarten.

Up to July 18, 2011 GEBE has not submitted any information indicating the measures taken in the 2011. GEBE's letter of December 20, 2011 states that the company will comply by January 31st 2011. GEBE, in July 2011, should have an approved budget for the year 2011, showing the measures taken.

GEBE's letter of January 27, 2011 sent to the Executive Councils of the Dutch Entities St. Eustatius and Saba was a step towards compliance. It remained to a single step with no real results.

4. **Multi-annual plan 2011-2015:** -no compliance-
The requirement is that GEBE shall, in accordance with article 5 of the concession, prepare, within a period of three months after the concession has been granted, a multi annual plan indicating all activities in a period of 5 years. The multi annual plan shall be submitted for approval to the Government and shall comply with the requirements stipulated in article 6 of the concession.

The submission of the multi annual plan was due November 30, 2010.

In the letter of December 20, 2011 GEBE commits itself to compliance by January 31st 2011. We are in July 2011 and we have still to receive the multi annual plan. The plan is essential as it will confirm multi annual compliance of GEBE regarding the use of the income generated on Sint Maarten.

5. **Multi-annual plan 2012-2016:** -no compliance-
The five year multi-annual plan shall be reviewed and updated on a yearly basis.
The next update was due June 30th 2011.
No update has been submitted as yet.

6. **New Tariffs:** -no compliance-

For an evaluation of the proposal to introduce a new tariff structure and tariffs, dated April 30th 2010, the following documents are still missing:

- The proposed new tariffs, the tariff study report and details in attachments;
- The proposed fuel clause, the related efficiency factors, the projected fuel cost;
- The related multi-annual operational, investment and cash-flow budgets;
- The budget for 2010; The budget for 2011, whether approved or not;
- The Business Plan 2009-2023, with the attachments and investment schemes;

At completion of the evaluation and approval of the new tariffs and structure, these will be ratified by Ministerial Decree in accordance with article 12 of the Electricity Ordinance and taking into consideration article 18 of the concession;

Sint Maarten will introduce new tariffs other than proposed by GEBE if the requested documents are not submitted. Note that payment of the concession fee is not subject to approval of the new tariffs as suggested in GEBE's letter of December 20, 2010.

7. **General Conditions:** -one month to comply-

The applicable general conditions are valid for one year after granting the new concession. Validity ends August 30th 2011. Six months after granting the new concession GEBE should have submitted new general conditions to Government for approval (conditions for supply and connection).

GEBE shall submit the first draft before August 1, 2011;

8. **Quality and Safety:** -no compliance-

To initiate the process of establishing and improving the quality of supply and safety, GEBE had to submit a plan, including an execution schedule, not later than March 31st 2011, for:

- implementation of a reliable, accurate and independent measuring system,
- selection of the quality measuring instruments,
- a structure of reporting of the quality and safety situation and improvements,

The objective is to provide information on the extent to which GEBE is in compliance with the quality standards and safety regulations. A joint GEBE – Government approach is required from the inception. The first reports, covering one third of the grid, were due June 30th 2011.

No plan or report has been submitted as yet. GEBE is in default as of the second quarter of 2011.

9. **Network stability and protection study:** -no compliance-

Within a period of 3 months after granting the concession (November 30th 2010) the concession holder and country Sint Maarten had to meet to discuss the execution of a dynamic stability study to establish new parameters and limit values for quality of the electricity supplied.

The preparations, coordination and execution (outsourcing) of the study had to be done by a steering group consisting of 3 members, one appointed by Government, one by GEBE and one by Government and GEBE together. GEBE's views on the steering committee were requested in writing before December 31, 2010. The intention was to establish the steering group in January 2011.

GEBE is in default as there has been no action since.

10 **Streetlights:** -partial compliance-

GEBE will be responsible for street lighting as of January 1st 2011, in accordance with article 15 of the concession. GEBE has taken over the responsibility for street lighting with no further follow up or action up to this date.

11. **Consultations:** -no compliance-

The work to be executed, indicated above, requires a structural approach. Government proposed the establishment of a work group or steering group with the responsibility to execute specific tasks. GEBE's opinion and comments were requested.

GEBE up to July 18, 2011 has not taken any action.

12. **Water Supply Agreement:** -no compliance-

GEBE is responsible for the supply of water to consumers according to the Water Supply Agreement with Government. A separate letter sent to GEBE in November 2010 elaborates on the subjects to be addressed and instructions to be carried out within the framework of the existing water supply agreement between the country Sint Maarten and GEBE. Immediate action was and still is required to permanently reduce the high water losses of over 40%.

For at least years no water budget has been submitted to Government for approval. Information is required on the use of the funds and the reserve (account) of the profits made in past years. These funds, as stated in the water supply agreement, cannot be used for other activities than for improvement of the water distribution system on Sint Maarten.

This is the second requested to GEBE to submit the budget for water of 2011 and all financial reports on operations over the past five years.

In conclusion: GEBE does not comply with the stipulations of the Electricity Ordinance and Electricity Concession and is not taking the necessary actions to reach compliance.

All actions as indicated above are past due with a few exceptions.

You are called upon to take action on all outstanding subjects and provide the information that has been requested within sixty days from the date of this letter. The single instrument available to Government, to enforce compliance, is the cancellation of the concession. GEBE is herewith informed that Government will evaluate the use of the cancellation instrument in the event no immediate and effective actions are taken towards compliance by GEBE with the Electricity Ordinance and Concession.

Awaiting your response, I remain

The Minister of Energy and Water



Theodore E. Heyliger

cc. The Council of Ministers
N.V. GEBE Board of Supervisory Directors
N.V. GEBE Shareholders Foundation
The Executive Council of the Dutch Entity Sint Eustatius;
The Executive Council of the Dutch Entity Saba;