



ST. MAARTEN MINISTER VAN VROMI

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

Uw nummer: Uw brief van: Ons nummer: ^A127/10 Afd: MINVROMI
Onderwerp: Execution Water Supply Agreement Sint Maarten - GEBE 1996

Philipsburg, JUL 19 2011

Dear Ir. Brooks,

The Government of Sint Maarten has embarked on a mission to improve the quality of electricity and water supplied by GEBE to consumers on Sint Maarten and to improve the related customers' services. In a recent, separate letter addressed to the managing director of GEBE, Government has indicated the actual status of compliance by GEBE with requirements imposed by the bylaws for electricity supply in Sint Maarten, as anchored in the Electricity Ordinance and the Electricity Concession

The responsibility for the supply of drinking water is of the Government of Sint Maarten. The execution tasks have been assigned to GEBE with rules of engagement established by the Water Supply Agreement, signed by the parties in 1996. The agreement has been renewed every two years, last in 2010.

Within this framework Government has brought forward the discontent with actual compliance of GEBE with the terms of the water supply agreement and reference is made to the letter of November 30th, 2010. Up to July 18, 2011 no reaction has been received or even an answer to our letter except for a brief statement in your letter of December 20, 2010 that the water issue will be addressed later.

While Government has taken effective actions to turn the water company's losses into profits, by negotiating agreements for the purchase of water from private producers, GEBE, has allowed water losses to develop to high levels of over 35% without taking effective actions.

An assessment of the situation per July 15, 2011 is as follows

1. Water Losses: - no compliance-

The development of the water losses are reflected in the GEBE 2010 and the Year to Date September 2010 report of GEBE, received from the Board of Directors after GEBE failed to provide information. From 2007 to 2010 the losses increased from 22% to 34.4%, an unprecedented development that can only be qualified as the result of neglect and mismanagement.

No information is available about the development of the water losses in 2011, nor is information available on the intended plans to effectively reduce the losses. The corresponding loss is 1.7 million m³ per year. The minimum value is estimated at ANG 5.000.000 per year.

1.1 Claim of water losses: -to be executed-

Government considers the inability of the NV GEBE to reduce the losses to be for account of the NV GEBE, not the water company. The minimum amount to be claimed will be established by considering the losses over 20% at the purchase price. The amount shall be added to the existing positive reserve as result of profits made over the last few years. Water losses attributed to theft will be valued at the average consumer tariff and added to the reserve.

GEBE had to submit a plan of action before December 31st 2010 on how GEBE will reduce the water losses. Up to July 18, 2011 no plan was submitted while news papers recently reported some action by GEBE and other professionals. Therefore GEBE must have plans available that we expect to receive without further delay.

Other actions shall be executed to reduce the cost of water operations, if the water losses have not been reduced to an acceptable level in the first six months of 2011. GEBE's proposed measures shall be submitted and discussed as soon as possible.

1.2 Budget Freeze due to water losses: -no compliance-

In addition to the reduction of the water losses, GEBE is expected to freeze all budgets for water of 2011 and to stop all expenses that are not related with the direct process of supplying water to consumers. (advertisement, traveling, off island conferences, water platform activities and other)

2. Organizational Changes: -no compliance- No information is available.

2.1 Restructuring Water Supply: -no compliance-

A new company shall be legally established for water supply and sewage services. All assets of the water distribution entity shall be incorporated in the new company. The new company shall be either a subsidiary of GEBE or a separate new company to be founded by Country Sint Maarten. Completion of the above activity was projected on June 30th 2011; GEBE was expected to present a plan of actions to Government on January 30th 2011.

Up to July 15, 2011 no progress has been reported.

2.2 New Water and Sewage Company: -no compliance-

Per January 31st 2011, a first advice had to be presented to the Minister of Energy and Water concerning the New Company, indicating the most preferred corporate structure of the new water company. The statutes of incorporation and a transition plan, with a detailed overview of all actions had to be prepared showing the transition from the present situation to the new one. The advice had to provide an indication on the kind, extent and cost of the (sharing) services that the present GEBE organization is giving to the Water Distribution Entity; Up to July 15, 2011 no progress has been reported.

Water Supply and Services Agreement: The present water supply agreement between Sint Maarten and GEBE shall be reviewed and updated to include the sewage services; GEBE is expected to present a plan of actions to Government on not later than October 30th 2011.

3. Operational responsibilities: -no compliance-

3.1 Water Supply: -no compliance-

GEBE has been requested to provide a report not later than December 31st 2010, of the areas that have low water supply pressure, indicating the reasons for low pressure, the actions required and date of action. Quarterly reports have been requested (art 1.a)

Up to July 15, 2011 no information was received.

3.2 Water Quality: -no compliance-

GEBE had to prepare a year report on the quality of drinking water supplied in 2010 to consumers in the various areas and the extent of compliance per area with the Drinking Water Ordinance of 2006. The year report 2010 had to be submitted to the Minister of Energy and Water before January 31st 2010. (art 3b)

Up to July 15, 2011 no information was received.

3.3 Water General Conditions: -no compliance-

GEBE has not submitted new general conditions

3.4 Multi-Annual Planning and Investments -no compliance-

Master Plan Water Distribution 2011-2020: within the framework of cost effective policy GEBE has been instructed to develop, not later than June 30th 2011 (art 4), together with Government a new water supply master plan. Reference is made to the IWACO master plan issued in 1997 by the present Royal Haskoning.

GEBE has not taken any action.

4. Budget, Financial Statements and Tariffs: -no compliance-

4.1 Water Budget and Investment plan 2011: -no compliance-

For the year 2011 GEBE had to submit the water operational budget, the investment and liquidity plan in October 2010. Seven Months in 2011 and the budgets still have to be submitted to Government.

The Water Supply Agreement Article 4 sub a stipulates the obligation of GEBE to submit to Government for approval a multi annual balanced operational budget, a multi annual investment, financing and liquidity plan, before October 1st of the preceding year. For at least five years Government has not received any water budget or other information regarding the distribution of water. The water budgets for these years have not been approved and article 4 sub b cannot be applied.

The indirect consequence of operating with no Government approved water budget is that finalized Financial Statements of the NV GEBE may have to be updated as result of corrections required by for example overspending the water budget and or by Government justifying a different cost allocation.

4.2 Water Annual Report 2008, 2009 and 2010: -no compliance-

GEBE still have to submit the budgets and the annual reports of 2008, 2009 and 2010. These reports shall be submitted even if these are presently qualified as preliminary. The Water Supply Agreement in article 4 sub c stipulates that GEBE will inform Government at minimum once a year extensively on the water operations;

No information has been received from GEBE for the last few years

4.3 Water Tariffs: -no compliance-

GEBE has been requested to submit before December 31st 2010 the present tariffs applied for water for each consumer group and the applied fuel clause for each group and to indicate the large consumers with a separate supply agreement and, show the compliance of each client with the agreement. No information has reached Government as yet.

4.4 Large Water Consumers: -no compliance-

The agreements with all Large Water Consumers have to be reviewed and updated in view of the foreseen new prices for production of water. One fuel clause for water will introduced to replace the existing fuel clauses. GEBE has been requested to supply all information regarding consumption and billing of each large consumer per month over the last two years with the corresponding fuel oil prices.

No information has reached Government as yet.

5. Financials

5.1 Water Profit and Loss: -no compliance-

The water supply agreement article 6d reads as follows: In the event, in a given year, the proceeds resulting from the production and distribution of water, exceed the burdens of the cost of operations the favourable balance shall be reserved in order to cover shortages, when the operational cost exceed the benefits, arising in later years. GEBE has been requested to present an overview over the last 5 years showing the results of the operations and indicating the amounts credited to the reserves. The report had to be submitted not later than January 31st 2011.

Up to July 15 2011 no information has been received about the actual reserve and yearly additions to the reserve fund.

5.2 Water Reserve Account: -no compliance-

In order to provide transparency GEBE has been requested to open before December 31st 2010 a special reserve account at a bank and shall deposit the amount accumulated as positive result from water operations over the last five years. This account shall be opened and credited before December 31st 2010.

GEBE has taken no action;

6. Investments 2011

Investments in Water and Sewage systems: -no compliance-

The present reserves shall be used to finance projects to the benefit of the GEBE customers in Sint Maarten. GEBE has been requested to provide insight in the budgeted investments for 2011, the required financing of these projects and the effect on the reserve account.

In view of the recent operational constraints at the Cay Bay plant, attributed to the present intake of feed water, Government requires an upgrade of the intake system to water plant which shall include extended seawater intake lines, upgrading of the pump house and upgrading of the feed lines to the plant. GEBE has/has to invest in the pumping and transport capacity to the storage tanks outside the plant. These investments shall be financed from the reserve account. Your views were requested before December 31st 2010.

No views were received up to July 15, 2011.

7. Structured Consultation

Consultations: -no compliance-

The work to be executed and indicated in this and the previous letter requires a structural approach. Government has proposed to establish a work / steering group to which the responsibility of specific tasks can be assigned. GEBE had to comment.

No reaction from GEBE has been received.

Conclusion:

The conclusion of the assessment of the status of affairs with respect to the water supply is that GEBE has not taken any action towards addressing the concerns of Government expressed in the letter of November 30, 2010, not even to inform on when to expect a plan of action. All actions, as indicated above, are past due, with no intent or vision for future improvements.

GEBE is in default with respect to compliance with the Water Supply Agreement.

Management of GEBE is advised once more to take action on all outstanding subjects and to provide the information that has been requested within sixty days from the date of this letter.

Contrary to the situation with electricity supply, I will not consider cancellation of the Water Supply Agreement. I emphasize though that all expenses or cost attributable to mismanagement of the water company will be for account of NV GEBE in particular the cost of water losses. The total amount of these costs is to be credited by NV GEBE to the reserve account of the water company.

I remain, awaiting your response,

The Minister of Energy and Water



Theodore E. Heyliger

cc. The Prime Minister
 The Minister of Finance
 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;