

**D-99-124**

**R-3412-98**

**July 22, 1999**

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**PRESENT:**

M. Jean A. Guérin, M.A. (Econ.), Chairman

M. Pierre Dupont, M.A. (Econ.)

M<sup>e</sup> Catherine Rudel-Tessier, LL.M.

Commissioners

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**See next page for list of intervenors**

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***Decision with respect to the Intervenor Costs Payment  
Guide***

**List of Intervenors:**

Action Réseau Consommateur (ARC) (formerly the Fédération nationale des associations de consommateurs du Québec or FNACQ);

Canadian Wind Energy Association (CWEA) and Energy Strategy (ES);

Association coopérative d'économie familiale de Québec (ACEF);

Industrial Gas Users Association (IGUA), Quebec Forest Industries Association Limited (CFIA), Association québécoise de la production d'énergie renouvelable (AQPER) and Association québécoise des consommateurs industriels d'électricité (AQCIE) under the name COALITION INDUSTRIELLE;

Association Québécoise des Énergies Renouvelables (AQER) and Centre pour la Finance et la Technologie Durable (CFTD);

Centre d'étude sur les industries réglementées (CEIR);

Centre d'études réglementaires du Québec (CERQ), Office and Professional Employees International Union (OPEIU local 463) and Syndicat professionnel des scientifiques de l'IREQ (SPSI);

Corporation Approvisionnement-Montréal Santé et Services Sociaux;

Gazifère Inc.;

Grand Council of the Crees (Eeyou Istchee)/Cree Regional Administration (GCC(EI)/CRA);

Groupe de recherche appliquée en macroécologie (GRAMÉ) and Union pour le développement durable (UDD);

Hydro-Québec;

Petro-Canada;

Imperial Oil Limited;

Shell Canada Products Limited;

Regroupement des organismes environnementaux en énergie (ROEE);

Regroupement national des conseils régionaux de l'environnement du Québec (RNCREQ) et Option Consommateurs (OC);

Société en commandite Gaz Métropolitain (SCGM);

Ultramar Ltée.

## BACKGROUND

On November 25, 1998, the Régie de l'énergie decided to undertake a consultation process as part of a generic hearing to allow interested persons and groups to present their comments on the establishment of new standards and methods to be applied to claims costs.<sup>1</sup>

Under section 36 of the *Act respecting the Régie de l'énergie*<sup>2</sup>, the Régie may order any distributor of electricity or natural gas to pay all or part of the costs incurred by intervenors to a hearing where their participation has been useful to the hearing. The Régie may also decide to award such costs to groups participating in a public hearing, where justified by the public interest.

The Régie determined that it was necessary to review the standards used to award costs, given that the existing criteria did not sufficiently respond to its concerns over the high costs incurred by intervenors, costs which are borne by all consumers. The previous standards dated from 1994, and were established by the Régie du gaz naturel subsequent to a generic hearing.<sup>3</sup> The extent of participation at Régie de l'énergie hearings, and the high number of hearings have resulted in an increasing number of claims for costs and a significant increase in the amounts in question.

To promote and provide a framework for discussion of this matter by participants at Régie hearings, the Régie provided them with a document prepared at the Régie's request by Groupe-Conseil Aon. The purpose of the document is to address the concerns expressed by the Régie in its decision. It does not commit the Régie with respect to the issues addressed in the document nor the recommendations, but should provide a framework for the consultation process initiated.

Upon receiving twenty-two applications to intervene, the Régie reviewed its hearing schedule and its initially-preferred approach. The Régie decided that the comments submitted by those participating in the consultation should be submitted in writing rather than orally. The Régie specified that it did not want to trigger a debate among experts, but rather obtain useful comments on the needs of intervenors. Finally, nineteen groups submitted their comments to the Régie on April 27, 1999 which, for the most part, requested clarifications from the Aon Group on the contents of its document.<sup>4</sup>

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<sup>1</sup> D-98-127, 25 November 1998

<sup>2</sup> L.R.Q., c.R-6.01.

<sup>3</sup> D-94-12, 31 March 1994

<sup>4</sup> In its decision D-99-10, the Régie defined the scope of interrogatories that could be submitted, and in D-99-36, ruled on those interrogatories to which Aon was required to respond.

## PRINCIPLES IDENTIFIED BY THE RÉGIE

The intervenors proposed to the Régie a number of elements for discussion aimed at improving the hearing process and more specifically, on the awarding of costs. Several of those suggestions were used by the Régie and incorporated within the *Intervenor Costs Payment Guide* attached hereto, i.e., the method that the Régie will adopt.

### **Efficiency measures**

The Régie believes that the more indication intervenors have as to the issues to be debated, and the nature and duration of the hearing, prior to preparing their interventions, the easier it will be to predict and control the costs of regulation. In order to achieve such an optimization of resources, the Régie intends to look at various measures:

- planning the regulatory schedule after consultation with both distributors and the customary intervenors at the Régie's hearings;
- recording an application on the hearing schedule once the applicant's file is complete, or at the very least once all the essential elements of the application can be made public;
- encouraging the holding of information sessions so that applicants can present their applications to interested parties, and interested parties can determine their actual interest in the matters raised and the outcomes they are seeking;
- encouraging interested parties to target their interventions on specific rather than all matters to be debated during a hearing;
- estimating the duration of hearings and the preparation time required up to the time the Régie begins deliberations, and so informs interested parties.

The Régie will also attempt, wherever possible, to hold hearings based on written evidence in cases where hearing witnesses is not essential to the Régie's deliberations and the Régie has not identified any conflicts of opinion. The Régie will encourage the creation of working groups, in parallel with a hearing or prior to the hearing, to streamline the regulatory process wherever possible. Also, the Régie will encourage the holding of pre-hearing conferences within the meaning of section 28 of the *Act respecting the Régie de l'énergie*, so as to define the scope of debate and identify areas where the participants' interests overlap. Holding such conferences will allow hearings to be organized more effectively.

Furthermore, the Régie intends in the coming months to intensify its efforts to reduce the number of print documents that must be submitted to the Régie, and will try to implement effective means for ensuring that the majority of communications relating to a file can be transmitted electronically.

## **Control measures**

When examining applications to intervene, the Régie will pay particular attention to the demonstration by the interested parties of their actual interest in the file, the way in which they are directly affected by a decision and their ability to provide new information to the Régie on the matters to be debated. All interventions must present assurances as to their usefulness and relevance before they being authorized.

The Régie will require that groups, annually or each time a new group is formed, file with the Secretary of the Régie letters from each member of the group. Such letters must describe their general interest in intervening before the Régie, and specifically authorize the group to represent them.

Furthermore, each intervenor, whether or not a member of a group, must provide the Secretary of the Régie, annually or subsequent to an amendment, with the following:

- a letter demonstrating its representivity (number of members, etc.), and
- a confirmation of its tax status issued by the responsible authorities.

To ensure compliance with the hearing schedule, the Régie intends to exercise tight control over the deadlines it establishes. Delays in the filing of evidence, interrogatories or responses to interrogatories create additional delays in the entire hearing schedule, and thus result in additional costs. As a result, if a participant fails to comply with the established deadlines, the Régie may refuse to accept a document filed after the deadline has expired or reduce the intervention costs that could otherwise be awarded to the intervenor.

## **Streamlined operations**

In addition to these measures relating to interventions and the handling of applications, the Régie intends to implement new methods for managing claims for costs.

First, the Régie will require that those persons and groups who wish to intervene at a hearing and obtain reimbursement for their costs to file an estimated budget at the same time they file their applications to intervene and, where applicable, applications for prior costs. They will be able to use the *Guide* adopted by the Régie as well as the estimates that the Régie may calculate and make public. Those estimates will involve the number of hearing and preparation days that the matter should require, taking into account the nature of the matter, its complexity and the number of interested parties.

The Régie may award as prior costs a maximum amount not to exceed 20% of the intervenor's estimated budget.

If in its decision as to eligibility to intervene in a hearing, the Régie establishes other parameters that may result in significant changes, the intervenors may if they so desire file an amended estimated budget.

Costs must be claimed using the statement of costs attached to the *Rules of Procedure*<sup>5</sup>. Also, the Régie has designed a new form so that all intervenors can prepare standardized detailed statements of account as provided for in the Rules. These new tools, which will make claims processing faster and more efficient, are attached to this decision. It will be available in electronic format (Microsoft Excel) and can be downloaded from the Régie's web site, or obtained in print format from the Régie's Secretariat.

On their final claims for costs, intervenors must explain any variances between the costs claimed and the estimated budget submitted that exceed 10%. The Régie will determine the relevance and usefulness of the intervention and the costs incurred, and whether the costs claimed were necessary and reasonable.

The Régie makes it clearly and unequivocally that the commissioners will have full discretion over the amount of costs to be awarded to an intervenor, taking into account the following elements:

- the usefulness of the intervenor's evidence and arguments to the Régie's deliberations;
- whether the intervenor stayed within the scope of the issues debated;
- the complementarity of the various interventions;
- the scope of the intervention, distinguishing between any private interests that the intervenor could defend compared to the public interest, which should be the focus.

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<sup>5</sup> Régie de l'énergie *Rules of Procedure*, (1998) 7 G.O. II, 1244 and s. (section 26)

The members may also assess:

- the extent and implications of the application;
- the nature of the intervenor's participation;
- the complexity of the subjects addressed by the intervenor;
- the number of intervenors;
- the duration of the hearing;
- the claimant's experience and duplication of tasks among claimants.

### **Easy-to-use scales**

In view of the intervenors' recommendations and the standards used by other economic regulatory agencies, the Régie has established certain scales for fees and expenses.

For fees, the Régie has established various categories of professionals and various hourly or daily rates based on whether or not the person is an internal or external resource of the intervenor. Furthermore, if an intervenor uses an expert from outside Canada, the intervenor must explain to the Régie why an expert could not be found in Canada. In that event, the intervenor could be reimbursed, in exceptional cases, for costs incurred for the expert in Canadian dollars at a rate different from that normally applied.

As a general rule, all professional fees claimed by an intervenor must be for work done during the eligibility period, i.e., between the Régie's first procedural decision and the first day of its deliberations.

For lawyers, the standard will be two preparation days for each hearing day (including, obviously, technical and preparatory meetings, participation in a working group or a negotiated agreement process). This standard corresponds best to standard practice and is the easiest to apply.

Fees for expert witnesses and analysts will be reviewed on the basis of hearing days and the Régie's estimated preparation time. If no such estimate is available, preparation time for expert witnesses and analysts cannot exceed 50% of the eligibility period described above.

Intervenors must keep an hourly log for at least twelve months, showing the work done and the date on which the services were provided, for all individuals for whom the intervenor is claiming payment for fees. The Régie will systematically audit the logs using sampling.

With respect to expenses, the Régie will apply an amount equal to 5% of the total of the approved fees, and an amount of 6% for group intervenors to take into account additional costs for a group. Intervenors will not be required to provide receipts for expenses covered under this amount (5% or 6%), unless otherwise requested by the Régie.

This amount will cover all the expenses of an intervenor, excluding any taxes which may apply. Also excluded are expenses for meals, accommodation and transportation which may be awarded to any individual who is required to travel over 100 kilometres from their customary place of business to attend a hearing. The applicable scales are those used by the government for the services of professionals, with the understanding, of course, that only the most economic means of transportation will be reimbursed.

Furthermore, the 5% or 6% amount will also exclude translation costs, which, if deemed useful, will be reimbursed at the rate of \$0.20 per word.

With the exception of meals, which is a fixed per diem, receipts must be attached to the final statement submitted by the intervenor for all expenses which are not included in the 5% or 6% amount.

The Régie may periodically review the rates and scales it has established to take into account changes to government policies with respect to expenses.

### **Intervenors' costs for this proceeding**

Pursuant to its Decision D-99-10 of February 3, 1999, the Régie has set a ceiling of \$5,000 for costs eligible for reimbursement incurred by intervenors to participate in this proceeding.

The Régie finds that the intervenors' participation in this proceeding were useful to the Régie, and therefore authorizes them to submit final statements of costs. The quantum will be subsequently established in compliance with the *Rules of Procedure* and decisions rendered by the Régie in this matter.



**WHEREAS** the Régie wishes to establish new standards and methods to be applied to claims for intervenors' costs;

**WHEREAS** the Régie finds that the intervenors' participation in this proceeding was useful to the Régie's deliberations;

**The Régie de l'énergie:**

**ADOPTS** the *Intervenors Costs Payment Guide* and the schedules attached hereto;

**ORDERS** that the standards and scales stipulated in the *Guide* be applied to costs incurred by the intervenors' subsequent to the date of this proceeding;

**ORDERS** that the forms appended to the *Guide* be used for all claims for the reimbursement of costs subsequent to the date of this proceeding;

**ORDERS** that the *Guide* may be updated periodically to adjust the rates and scales where necessary;

**APPROVES** the claims for reimbursement of intervenors' costs, with the quantum to be determined subsequently in compliance with this decision and Decisions D-99-10 and D-99-36.

Jean A. Guérin  
Commissioner

Pierre Dupont  
Commissioner

Catherine Rudel-Tessier  
Commissioner

**List of representatives:**

Action Réseau Consommateur (formerly the Fédération nationale des associations de consommateurs de Québec), represented by Me Martin Brunelle.

The Canadian Wind Energy Association (CWEA) and Energy Strategy (ES), represented by Me Dominique Neuman.

Association coopérative d'économie familiale de Québec, represented by Vital Barbeau.

Industrial Gas Users Association, Quebec Forest Industries Association Limited, Association québécoise de la production d'énergie renouvelable and Association québécoise des consommateurs industriels d'électricité, under the name COALITION INDUSTRIELLE, represented by Me Guy Sarault.

Association Québécoise des Énergies Renouvelables/Centre pour la Finance et la Technologie Durable, represented by Jean-Michel Parrouffe.

Centre d'étude sur les industries réglementées, represented by Me Daniel Martin Bellemare.

Centre d'études réglementaires du Québec, Office and Professional Employees International Union and Syndicat professionnel des scientifiques de l'IREQ, represented by Me Claude Tardif.

Corporation Approvisionnements-Montréal Santé et Services Sociaux, represented by Me Pierre Tourigny.

Gazifère inc., represented by Me Pierre Paquet.

Grand Council of the Crees (Eeyou Istchee)/Cree Regional Administration (GCC(EI)/CRA), represented by Me Johanne Mainville.

Groupe de recherche appliquée en macroécologie and Union pour le développement durable, represented by J.F. Lefebvre and J.P. Drapeau.

Hydro-Québec, represented by Me Nicole Lemieux.

Petro-Canada, represented by Me Éric Dunberry.

Imperial Oil Limited, represented by Me Paule Hamelin.

Shell Canada Products Limited, represented by Me Ann M. Bigué.

Regroupement des organismes environnementaux en énergie, represented by Me Franklin S. Gertler.

Regroupement national des conseils régionaux de l'environnement du Québec/Option Consommateurs, represented by Me Charles O'Brien.

Société en commandite Gaz Métropolitain, represented by Me Jocelyn B. Allard.

Ultramar Ltée, represented by Me Louis P. Bélanger.

La Régie de l'énergie, represented by Me Pierre Rondeau and Me Jean-François Ouimette.