

D-2013-003, R-3809-2012 Phase 2, 14 January 2013

## 6. REQUEST FOR THE DETERMINATION OF THE RATE OF RETURN

[13] The Distributor asks the Board to authorize a return on common equity Gaz Métro 9.3% for the purposes of setting rates.

[14] In support of its application for determining a rate of return, the distributor invokes the following grounds [Footnote 4 in original: Exhibit B-0123] :

"81. In decision D-2011-182, the Board adopted an automatic adjustment formula for the rate of return and fixed application period to 3 years unless if the situation requires the Board to reexamine all the elements to determine a reasonable rate of return;

82. In this case, the rate of return resulting from the automatic adjustment formula is clearly inadequate and does not meet the reasonableness test required by the Act, as more fully set forth in the room Gaz Métro-11, Document 13;

83. Consequently, considering all relevant facts, including the evidence by Mr. Jim Coyne in support of this (filed as Gaz Métro as Exhibit-11, Document 14,) Gaz Métro asks the Board to recognize that the ROE established by application of the formula is not reasonable for the year 2013 and set for this year 2013 a reasonable rate of return of 9.3% on its common equity applicable to the deemed capital structure consisting of common equity 38.5% , 7.5% preferred equity and 54% debt; "[underlined from Gaz Métro]

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[15] The distributor refers correctly to the recent decision D-2011-182 which covers, *inter alia*, the study of its rate of return. The Board, while recognizing that Gaz Métro was entitled to a reasonable rate of return, expressed "*its concern repeated applications and regulatory costs associated with them.*" [Footnote 5, Décision D-2011-182, p. 73]

[16] Following an exhaustive study of the evidence, particularly the evidence presented by the experts, the board determined a rate of return on equity of 8.90% for the 2013 rate year. [Footnote 6 in original: Decision D-2011-182, page 104.].

[17] In addition, the Board then approved a new automatic adjustment formula

(FAA) applicable for a period of three years from the 2013 rate case, except if the situation requires the Board to study the subject again. In this regard, the Board expressed its decision in the following terms [Footnote 7 in original: Decision D-2011-182, page 73]:

*"[305] Without wanting to prevent Gaz Métro to make an application with respect to its rate of return if the situation requires it, the Board considers that the effectiveness, efficiency and stability of the regulatory process favour of a sufficiently long period of application of an FAA, prior to revising its parameters or even before reviewing the methodology for determining the rate of return. **Therefore the Board approves the application of the new FAA for a period of three years from the 2013 rate case.***

[emphasis added]

[18] However, in the context of this rate case, that is, as of the first year of the application of the new FAA, the distributor alleges that the situation requires that the Board should reexamine the determination of the rate of return, but without questioning (or challenging) the relevance of the FAA [Footnote 8: Exhibit B-0156, page 5].

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*"Gaz Métro remains favorable to maintaining the automatic adjustment formula (FAA). Although the existence of such formulas over recent years has not produced results considered reasonable by Gaz Métro, Gaz Metro considers it in the interest of all parties involved to maintain it in the future. Indeed, Gaz Métro believes that in a situation of relative stability in the markets, the formula provides useful information on the level of the adjustments in the authorized ROE."*

[19] The application of the FAA yields 7.92% ROE for 2013. According to the distributor, this rate can not be described as reasonable as a function of three criteria recognized by the courts to set the standard of a reasonable rate of return. More specifically, Gaz Métro believes that the criterion of comparable investment is not met due to the instability in the financial markets, specifically due to the decrease of risk-free rates. The distributor then asked the Board to set for the year 2013, a rate of return estimated by experts to 9.3%. [Footnote 9 in original: Exhibits B-0156 and B-0157.]

[20] Following a *prima facie* examination of the application, the Board is questioning if the context mentioned above and the reasons justified by the distributor a new "in-depth study" of its rate of return.

[21] Moreover, in its decision D-2011-182, the Board concluded that the reasonable rate of return to allow for the distributor is in the range 7.71% to 9.60% [Footnote 10 in

original: Decision D-2011-182, page 74]. The Board notes that the rate of return of 7.92% generated by the FAA is within this range.

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[22] However, the Board notes that there is indeed a significant difference between the forecast risk-free rate that it had adopted in its decision D-2011-182 to determine the authorized rate of return the average of risk-free rate forecasts prepared in August 2012, which are used for the application of the FAA. The range retained last year ranged from 3.91% to 4.50% [Footnote 11: D-2011-182, page 54], while the average August 2012 is 2.7% [Footnote 12 in original: Exhibit B-0156, pages 30-35.]

[23] With a constant concern about the costs associated with regulatory applications in determining the rate of return of the distributor and for reasons of efficiency and efficacy, the Board considers it appropriate to adopt an approach tailored to the circumstances and that respects both the interests of Gaz Métro and its customers.

[24] In this sense, for the year 2013, the Board considers that it may be appropriate to suspend the application of the FAA and maintain the rate of return set in 2012, that is, 8.90%. [Footnote 13, D-2011-182, p. 74]

[25] The Board wishes to hear the distributor and intervenors on this proposal. Consequently, it convenes the parties to a hearing to be held at its offices in Montreal, on **February 14, 2013 at 9 am** and will continue as needed, on **February 15, 2013**.

[26] To this end, the Board shall prepare a budget for the participation of \$5,000 per intervenor for intervenors to participate in this hearing.