

DECISION

QUÉBEC

RÉGIE DE L'ÉNERGIE

D-2013-117

R-3842-2013

July 29, 2013

PRESENT:

Gilles Boulianne

Marc Turgeon

Pierre Méthé

Commissioners

Hydro-Québec

Applicant

and

Interested persons listed hereinbelow

Procedural Decision

*Application for approval of the rate of return on equity
and the mechanism for treating earnings deviations
(earnings sharing mechanism)*

Interested persons:

Association coopérative d'économie familiale de l'Outaouais (ACEFO);
Association coopérative d'économie familiale de Québec (ACEFQ);
Association québécoise des consommateurs industriels d'électricité and
Conseil de l'industrie forestière du Québec (AQCIE/CIFQ);
Canadian Federation of Independent Business (CFIB);
Groupe de recherche appliquée en macroécologie (GRAMÉ);
Option consommateurs (OC);
Regroupement des organismes environnementaux en énergie (ROEÉ);
Regroupement national des conseils régionaux de l'environnement du Québec
(RNCREQ);
Stratégies énergétiques et Association québécoise de lutte contre la pollution
atmosphérique (SÉ/AQLPA);
Union des consommateurs (UC).

1. BACKGROUND

[1] On April 19, 2013, Hydro-Québec when carrying on electric power transmission activities (the “Transmission Provider”) and Hydro-Québec when carrying on electric power distribution activities (the “Distributor”) filed an application with the Régie de l’énergie (the “Régie”) pursuant to sections 31 (5), 32, 34, 48 and 49 of *An Act respecting the Régie de l’énergie*¹ (the “Act”) seeking approval of the rate of return on equity (the “ROE”) and the mechanism for treating earnings deviations (earnings sharing mechanism) (the “ESM”) (the “Application”).

[2] On May 16, 2013, the Régie rendered its decision D-2013-075. It asked the Transmission Provider and the Distributor to publish in certain daily newspapers and post on its website a public notice giving interested persons preliminary instructions pertaining to the hearing to be held by it to review this Application.

[3] That same day, the Régie also asked the Transmission Provider and the Distributor to produce additional evidence and file same no later than **August 27, 2013, at noon**.

[4] This decision deals with the holding of a preliminary hearing, the eligibility of intervenors, the framework for interventions, the participation budgets and the timetable for the case.

2. PRELIMINARY HEARING

2.1 ESM

[5] In support of their application for approval of the ROE and the ESM,² the Transmission Provider and the Distributor argued that one of the components of their proposal, namely the ESM, is in keeping with Bill 25³:

[TRANSLATION]

¹ R.S.Q., c. R-6.01.

² Exhibit B-0004, pp. 11 and 25.

³ Bill 25, *An Act respecting mainly the implementation of certain provisions of the Budget Speech of 20 November 2012*, 1st session, 40th Legislature, Québec, 2013 (assented to on June 14, 2013), S.Q., 2013, c. 16.

“The Québec Government’s Bill 25 is another contextual factor for one of the issues covered by the proposal of the Transmission Provider and the Distributor, namely the ESM. They are of the view that their proposed mechanism is in keeping with the Bill, which is aimed at achieving efficiency enhancements that benefit consumers and the enterprise alike.”

[6] On June 14, 2013, the National Assembly of Québec adopted *An Act respecting mainly the implementation of certain provisions of the Budget Speech of 20 November 2012*⁴ (“Chapter 16”).

2.2 THE RÉGIE’S OPINION

[7] Chapter 16 amends the Act, in particular by inserting section 48.1, which came into force on June 14, 2013:

“48.1. The Régie shall establish a performance-based regulation to ensure efficiency gains by the electric power distributor and the electric power carrier.

The regulation must pursue the following objectives:

- (1) ongoing improvement in performance and service quality;*
- (2) cost reduction that is beneficial to both consumers and the distributor or carrier; and*
- (3) streamlining of the process by which the Régie fixes or modifies the rates the electric power carrier and the electric power distributor charge consumers or a class of consumers.”*

[8] The Régie now wishes to determine whether the ESM proposal of the Transmission Provider and the Distributor constitutes a “performance-based regulation” within the meaning of section 48.1 of the Act.

[9] Consequently, the Régie calls the participants to a preliminary hearing where they will be heard on this issue. The hearing will be held on **September 5 and 6 (if necessary), at 9:30 a.m.** The Régie requests that participants file their arguments no later than **August 28, 2013**,

⁴ *Ibid.*

at noon.

3. APPLICATIONS TO INTERVENE

[10] The Régie received applications to intervene from the following interested persons: the ACEFO, ACEFQ, AQCIE/CIFQ, CFIB, GRAME, OC, RNCREQ, SÉ/AQLPA and UC. The ROEÉ informed the Régie that it did not wish to intervene in the case at this stage, but sought to reserve the possibility of doing so if the case were to give rise to environmental issues or issues pertaining to section 5 of the Act.

[11] The Régie received the comments of the Transmission Provider and the Distributor on these applications, and the interested persons replied thereto.

[12] The Régie considered the applications to intervene in light of the Act, the *Rules respecting the procedure of the Régie de l'énergie*⁵ (the "Rules") and relevant decisions.

3.1 INTEREST OF ENVIRONMENTAL GROUPS

[13] The Transmission Provider and the Distributor contested the applications to intervene of the GRAME, RNCREQ and SÉ/AQLPA, based on their absence of interest in the matter, the merits of previous decisions and a desire for consistency. They referred to certain decisions⁶ in which the Régie did not authorize the intervention of environmental groups in the review of purely financial and economic matters. They argued that the determination of the ROE of regulated entities and the adoption of an ESM are purely financial and economic matters. In their opinion, these three interested persons did not provide sufficient reasons for the Régie to derogate from its prior decisions.

[14] The GRAME argued that pursuant to section 5 of the Act, sustainable development serves as a background for the decisions of the Régie, which must exercise its jurisdiction in accordance with the wording of this section. It added that the implementation of an ESM requires much more than a mere economic analysis and should seek to achieve specific objectives so that earnings deviations, which will form part of a sharing mechanism, result

⁵ (2006) 138 G.O. II, 1651.

⁶ Case R-3703-2009, decision D-2009-103; case R-3732-2010, decision D-2010-098; case R-3549-2004, decisions D-2004-238 and D-2005-150; case R-3840-2013, D-2013-070.

from tangible efficiency enhancements in the context of sustainable development, without forsaking service quality.

[15] The RNCREQ submitted that the Régie had previously recognized it as having an interest related to sustainability and having legal interests and an expertise separate from the GRAME and the SÉ/AQLPA.⁷ It argued that it had presented evidence dealing with economic, financial and rate-making aspects for which the Régie had recognized it as being relevant to the discussion.

[16] In reply, the RNCREQ asserted that its representativeness was clearly demonstrated in its application to intervene. The RNCREQ indicated that its interests include not only environmental elements, but also economic and social elements, as part of a sustainable development approach. It argued that its interest related to sustainable development authorizes it to consider the economic components of a case.

[17] The RNCREQ intends to verify whether the ROE determination methodology tends to favour responsible production, whether, through its effect on rates, it encourages, directly or indirectly, responsible consumption and/or whether it favours the internalization of social and environmental costs.

[18] The SÉ/AQLPA argued that it has the necessary interest, as an environmental organization, to propose corrections to the mechanism proposed by the Transmission Provider and the Distributor so as to eliminate perverse effects of the ESM. According to the SÉ/AQLPA, the mechanism for rewarding or penalizing variances in budgetary items at the end of the year must exclude variances related to budgetary items aimed at satisfying regulatory objectives: energy efficiency, efficient energy use in off-grid systems, or others.

[19] The SÉ/AQLPA also argued that environmental associations sometimes have more precise knowledge than the selected experts regarding the environmental component of the risks associated with regulated firms. The SÉ/AQLPA intends to make representations on the environmental component of these risks, as it did in recent Gaz Métro and Intragaz cases.⁸

[20] The Régie considers the intervention of the environmental groups to be relevant to the case. However, the Régie reminds them that their intervention must deal with the issues directly related to their interest. Their intervention must seek to provide useful information on

⁷ Decisions D-2009-103 and D-2010-98; case R-3726-2010, decision D-2010-055.

⁸ Cases R-3809-2012 Phase 2A, R-3837-2013 Phase 1 and R-3807-2012.

the link between the issues pertaining to the determination of the ROE of regulated entities and the adoption of an ESM.

[21] **Consequently, the Régie allows the applications to intervene of the GRAME, the RNCREQ and the SÉ/AQLPA and grants them intervenor status.**

[22] **Moreover, the Régie is of the opinion that the ACEFO, ACEFQ, AQCIE/CIFQ, CFIB, OC and UC have demonstrated their interest in intervening in the present case and it awards them intervenor status.**

4. FRAMEWORK FOR THE INTERVENTIONS

[23] The Régie wishes to provide clarifications on certain subjects proposed by the intervenors, on the scope of their interventions and on the participation budgets.

4.1 GROUPING OF INTERVENORS IN ORDER TO RETAIN THE SERVICES OF A SINGLE EXPERT AND ANALYSTS' REPORTS

[24] The Transmission Provider and the Distributor welcomed the grouping of intervenors in order to foster the efficient presentation of joint positions and expected that only experts recognized as such would be called upon to provide expert testimony, including on issues related to the risk profile of regulated firms.

[25] The Transmission Provider and the Distributor also questioned the relevance of opinions provided by analysts. They referred to previous warnings expressed by the Régie with respect to the use of intervenor status to develop the Régie's expertise rather than offer useful evidence for its deliberations. They specifically mentioned the proposed opinion of the UC's analyst on the robustness of the results of the Discounted Cash Flow model, the proposed opinion of the ACEFO's analyst on the risk profiles of the Transmission Provider and the Distributor, and the risk analysis and simulations of the analyst for the ACEFQ, whose interest seems questionable.

[26] The ACEFO argued that it is an autonomous and independent entity and that its right to participate, intervene or file an analysis in order to provide its recommendations and its conclusions to the Régie is of manifest, indisputable and unquestionable importance.

[27] The ACEFQ argued that the risk analysis is fully justified because the evidence provided by the Transmission Provider and the Distributor refers to a risk assessment that favours the proposed solutions. The ACEFQ intends to check the veracity of the statements relating to the risks and does not intend to propose new formulas or mechanisms. The ACEFQ stated that it has the expertise to perform such an analysis.

[28] While the CFIB will rely on the expert evidence of Dr. Booth regarding the ROE, it intends to present its position on this matter within the scope of its arguments.

[29] The UC stated that it does not form part of a group as expressed by the Transmission Provider and the Distributor. Dr. Booth's services were retained by the AQCIE/CIFQ, and the UC will accept his expert report, but subject to presenting its own position in a memorandum and in its arguments.

[30] While it is possible that the UC will agree in whole or in part with the arguments submitted by the AQCIE/CIFQ's lawyer on the matter, it would be detrimental to the UC's right to a full and complete representation to draw such a conclusion when the expert's findings and the arguments of the AQCIE/CIFQ are not yet known.

[31] Similarly and for the same reasons, as regards the evidence pertaining to the ESM, the UC reserves the right to comment, in whole or in part, on the findings of the CFIB's expert.

[32] The UC pointed out that if it were to file a memorandum on the subject of the ROE, the memorandum would deal in particular with its impact and reasonableness. It intends to offer evidence that is useful to the Régie's deliberations.

[33] The Régie appreciates the intervenors' efforts to form a group for the purpose of retaining the services of the same expert for each of the two principal issues in the case. In this regard, the Régie specifies that the intervenors' decision to mandate a joint expert will not preclude them from presenting their own position on the subjects broached by the expert, if they wish.

[34] As regards the concerns raised by the Transmission Provider and the Distributor with respect to the analysts' reports of certain interested persons, the Régie considers that, at first glance, the proposed analyses are relevant to the case and that an analyst can express his opinion, provided it is substantiated in his report. As with all evidence, the Régie will determine the usefulness of these reports during its deliberations.

4.2 AUTOMATIC ADJUSTMENT FORMULA (“AAF”)

[35] The Transmission Provider and the Distributor argued that it would not be timely to discuss matters pertaining to the determination of an AAF. They referred to the difficulties the Régie recently encountered in applying such a formula to determine a reasonable ROE in the Gaz Métro and Gazifère cases.⁹ They pointed out that the Régie recently ordered the application of this formula to be suspended for a second consecutive rate year as regards Gaz Métro and that Gazifère is seeking to have the application of its own adjustment formula suspended, for reasons related to current capital market conditions.

[36] The Transmission Provider and the Distributor argued that a discussion, if any, regarding an AAF should be held only after the issues in the present case have been settled.

[37] In the AQCIE/CIFQ’s opinion, it would be preferable to avoid the proliferation of cases involving a detailed examination of the ROE, because of the regulatory red tape and the high costs related thereto. It argued that this was a justification for determining now how the ROE should evolve until the context requires that the matter be examined anew. The AQCIE/CIFQ stated that the AAF adopted could even ultimately consist in simply freezing the ROE over a given period of time.

[38] According to the AQCIE/CIFQ, the AAF-related problems in the Gaz Métro and Gazifère cases are not necessarily relevant to the present case, particularly since the Régie has not yet ruled on the Gazifère case.¹⁰ Moreover, according to the AQCIE/CIFQ, it is uncertainty related to the evolution of the risk-free rate during the AAF application period that led the Régie to suspend the AAF in the Gaz Métro case.

[39] The AQCIE/CIFQ argued that it would be premature to exclude the consideration of an AAF, given that the Régie has not received any evidence on the subject. Conversely, if the Régie were to allow evidence on this subject, the AQCIE/CIFQ’s experts could propose parameters that take the current economic and financial context into account, including, if necessary, an adjustment or suspension of the AAF upon the occurrence of a major event.

[40] The UC was of the opinion that the establishment of an AAF is highly relevant to a case dealing with the ROE and that it would be timely to establish such a formula in order to

⁹ Case R-3809-2012 Phase 2, decision D-2013-036; case R-3837-2013 Phase 1, decision D-2013-085; case R-3840-2013.

¹⁰ The Régie rendered decision D-2013-102 (case R-3840-2013) in which it suspended, in particular, the application of the AAF to the ROE for the 2014 test year (par. 39 and in the conclusions).

reduce, to the extent possible, hearings on the ROE of Hydro-Québec's regulated divisions in the foreseeable future.

[41] According to the UC, the establishment of such a formula would be perfectly in keeping with the streamlining of the regulatory process favoured by the Régie. Consequently, it supported the AQCIE/CIFQ's request to present expert evidence for the purpose of establishing an AAF in the present case.

[42] The Régie is of the opinion that updating or adjusting the ROE is a matter that must be examined in the present case. Given that the Transmission Provider and the Distributor reserved the right to present amended evidence if the Régie were to expand the scope of this Application, it will allow them to file additional evidence on the subject by no later than **August 27, 2013, at noon.**

4.3 AMENDMENT OF THE METHOD FOR ESTABLISHING THE PROSPECTIVE COST OF CAPITAL

[43] In its application to intervene, the UC proposed retaining the services of an analyst to verify, through benchmarking and a review of current economic conditions, whether the existing practice for establishing the prospective cost of capital is the most appropriate, and to offer an alternate suggestion, if applicable.

[44] The Transmission Provider and the Distributor contested the relevance of the UC's proposed verification. They were of the opinion that the method for determining the prospective cost of capital is not an issue in this case. They argued that a study performed outside the scope of a determination of the ROE and an updating of the cost of debt could yield results that are irreconcilable with the elements to be addressed in this case.

[45] In reply, the UC stated that it would limit its intervention on the method for establishing the prospective cost of capital to a few comments, if it deemed it necessary, after reading the evidence presented by the AQCIE/CIFQ's expert on the subject.

[46] Based on the UC's reply to the comments of the Transmission Provider and the Distributor, the Régie understands that the UC will not file evidence on a new method for establishing the prospective cost of capital, but will instead limit itself to providing comments or observations on the current method and could make recommendations for possible

improvements. The cost of capital is one of the subjects the Régie must consider. As such, the Régie considers that the UC's analysis could be useful to it and, as with any analysis filed into evidence, it will determine its usefulness during its deliberations.

4.4 CREATION OF VARIANCE ACCOUNTS OR EXCLUSIONS FROM THE ESM

[47] The Transmission Provider and the Distributor questioned the merits of suggesting a discussion on the use of variance accounts, given that variance accounts are used only for activities with volatile, unforeseeable and significant costs. In addition, the Transmission Provider and the Distributor were of the opinion that a proper discussion on variance management mechanisms would require the production of financial data that is not in the record, considering the current framework arising from the Régie's decisions.

[48] The CFIB was of the opinion that the use of exclusions from the ESM and the creation of variance accounts should not be dismissed from the outset. It felt that it would be premature for the Régie to rule on this issue before hearing the experts on this matter.

[49] The GRAME proposed an analysis of variance accounts or exclusions from the ESM specific to the Distributor and others specific to the Transmission Provider. Their interest is related to the objective of ongoing improvement in performance and service quality, which forms part of the objectives chosen by the legislature for the establishment of a performance-based regulation.

[50] The UC was of the opinion that the creation of specific variance accounts is inseparable from the review of an ESM. The amounts recorded in variance accounts directly affect the amounts to be allocated between the regulated firm and its customers. According to the UC, the presence or absence of certain specific variance accounts has a direct impact on the occurrence of earnings deviations. Consequently, the UC asked the Régie to include the creation of specific variance accounts as a priority issue to be dealt with in this case. The UC reserved the right to make comments on this subject, while avoiding a duplication of any comments made by the CFIB's expert.

[51] The Régie acknowledges the existence of links between the variance accounts of the Transmission Provider and the Distributor and their risk level. However, the decisions to create each of the Distributor's ten variance accounts and the Transmission Provider's two

variance accounts were made in the context of rate cases after an exhaustive review of the benefits and disadvantages of each of them. Consequently, in the present case, it asks that the participants address the issue of variance accounts solely with respect to the matter of risk assessment.

4.5 TRANSLATION

[52] The CFIB informed the Régie that the Application as well as the principal evidence of the Transmission Provider and the Distributor needed to be translated into English. The CFIB sought the Régie's authorization for their translation. It proposed that the translated documents be made available to all interested parties as soon as possible. It added that other documents would also be translated over the course of this case, including the answers of the Transmission Provider and the Distributor to the requests for information (RFIs) of the CFIB, the Régie and other intervenors.

[53] The Régie authorizes the CFIB to translate the documents mentioned in its application to intervene and asks that it make them available as soon as possible.

[54] The Régie asks the Transmission Provider and the Distributor to file the French version of their experts' documentary evidence.¹¹

5. PARTICIPATION BUDGETS

[55] In its decision D-2013-075, the Régie indicated that any interested person intending to file an application for reimbursement must include with its application to intervene a participation budget prepared in accordance with the *2012 Intervenor Costs Payment Guide* (the "Guide").

[56] Section 8 of the Guide indicates [TRANSLATION] "*that the participation budget must include a detailed estimate of the costs and means required by the intervenor for its specific needs in respect of lawyers, expert witnesses, consultants [...] in light of the issues it wishes to address.*"

¹¹ Exhibits B-0007, HQT D-2, doc. 1 and B-0008, HQT D-2, doc. 2.

[57] In the present case, nine interested persons filed a participation budget with their application to intervene.

Intervenor	Hours anticipated			Budget requested (\$)
	Lawyers	Analysts	Experts	
ACEFO	35	75		23,969.18
ACEFQ	190	230		76,014.00
AQCIE/CIFQ	173	424	225	191,183.45
CFIB	120	156	162	148,351.43
GRAME	48	102		29,660.73
OC	74	124	30	42,635.24
RNCREQ	103	103		64,248.83
SÉ/AQLPA	147	177		55,499.53
UC	140	193		55,280.66
TOTAL	1030	1584	417	686,843.05

[58] In general, the Régie finds the participation budgets submitted to be high. It also notes that the number of hours of work anticipated by some of the intervenors is definitely too high. Given that there are only two main subjects involved and the timetable is tight, the Régie expects the number of hours of work to be adjusted to the time allotted and the scope of the case.

[59] As regards the intervenors' participation, the Régie expects them to take into account the issues selected and the comments made in this decision. It also expects the interventions to be appropriately focused.

[60] OC retained the services of Dr. Roger Higgin of the firm Sustainable Planning Associates Inc. as a consultant to assist it in preparing its evidence relating to the ESM. The relevant experience of Dr. Roger Higgin as it pertains to this case is set out in a schedule

annexed to OC's application to intervene. The Régie asks that OC file a formal application for recognition of the status of consultant in accordance with the procedure set out in section 29 and following of the Rules.

[61] As regards the expert witnesses, **the Régie fixes the date for filing the applications for recognition on October 1, 2013 at noon.** Any challenge must be made no later than October 17, 2013 at noon. The Régie will rule on the applications for recognition of expert witnesses at the hearing. It invites the intervenors in question to read the document on its website dealing with the Régie's expectations regarding the role of expert witnesses.¹²

6. TIMETABLE

[62] The Régie fixes the following timetable:

August 27, 2013 at noon	Deadline for filing additional evidence
September 5 and 6, 2013	Preliminary hearing
September 17, 2013 at noon	Deadline for filing the RFIs addressed to the Transmission Provider and the Distributor
September 27, 2013 at noon	Deadline for the answers of the Transmission Provider and the Distributor to the RFIs
October 1, 2013 at noon	Deadline for filing the applications for recognition of status as an expert
October 8, 2013 at noon	Deadline for filing the evidence of the intervenors and the observations of the interested persons
October 17, 2013 at noon	Deadline for the RFIs regarding the evidence of the intervenors and for the challenges to the applications for recognition of status as an expert
October 24, 2013 at noon	Deadline for the answers of the intervenors to the RFIs
October 24, 25, 30 and 31 and November 1, 4 and 5, 2013	Period reserved for the hearing

¹² http://www.regie-energie.qc.ca/regie/FraisInterv/Regie_RoleExpert_19juillet2011.pdf.

[63] Moreover, as provided for in the Guide, **any intervenor who deems it necessary to terminate its intervention in this case must indicate its intent and submit its conclusions to the Régie no later than October 8, 2013 at noon.**

[64] CONSIDERING the foregoing,

The Régie de l'énergie:

GRANTS intervenor status to the ACEFO, the ACEFQ, the AQCIE/CIFQ, the CFIB, the GRAME, OC, the RNCREQ, the SÉ/AQLPA and the UC;

CALLS the participants to a preliminary hearing to be held on **September 5 and 6, 2013 (if necessary) at 9:30 a.m.** in the Régie's premises;

FIXES the deadline for filing the applications for recognition of expert witnesses on **October 1, 2013 at noon** and the deadline for challenging same on **October 17, 2013 at noon;**

FIXES the timetable set forth in section 6 of this decision;

ASKS the Transmission Provider and the Distributor to file the French version of their experts' documentary evidence.

Gilles Boulianne
Commissioner

Marc Turgeon
Commissioner

Pierre Méthé
Commissioner

Representatives:

Association coopérative d'économie familiale de l'Outaouais (ACEFO) represented by M^e Stéphanie Lussier;

Association coopérative d'économie familiale de Québec (ACEFQ) represented by M^e Denis Falardeau;

Association québécoise des consommateurs industriels d'électricité et Conseil de l'industrie forestière du Québec (AQCIE/CIFQ) represented by M^e Guy Sarault;

Canadian Federation of Independent Business (CFIB) represented by M^e André Turmel;

Groupe de recherche appliquée en macroécologie (GRAME) represented by M^e Geneviève Paquet;

Hydro-Québec represented by M^e Éric Dunberry and M^e Marie-Christine Hivon;

Option consommateurs (OC) represented by M^e Éric David;

Regroupement national des conseils régionaux de l'environnement du Québec (RNCREQ) represented by M^e Annie Gariépy;

Stratégies énergétiques et Association québécoise de lutte contre la pollution atmosphérique (SÉ/AQLPA) represented by M^e Dominique Neuman;

Union des consommateurs (UC) represented by M^e Hélène Sicard.