C A N A D A

PROVINCE OF QUÉBEC
District of Montréal

No. R-3867-2013 (PHASE 3B)

RÉGIE DE L'ÉNERGIE

ÉNERGIR, L.P., a duly constituted corporation, headquartered at 1717 rue du Havre, District of Montréal, Province of Québec,

(Hereinafter "**Énergir**")

Phase 3 of the generic case concerning Énergir's cost allocation and rate structure

Hearing on February 6, 2018

ÉNERGIR'S RESPONSE

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THE APPLICANT RESPECTFULLY DECLARES THE FOLLOWING:

I. ÉNERGIR'S COMMENTS ON THE INTERVENORS' POSITIONS

A. IGUA

1. The IGUA submits that a simple reading of Section 73 of the Act respecting the Régie de l'énergie (the Act) should convince anyone that the New Methodology needs to be "approved."

2. In essence, the IGUA indicates that the term "authorization" appears several times in Section 73 of the Act while the expression "take note" does not appear anywhere in it, thereby concluding that the Régie has no other option than to "approve" the New Methodology.

   - *NS, February 5, 2018, Vol. 1, p. 109-116, 120.*

3. With respect, Énergir submits that the IGUA is wrong in law given that, in this case, the Régie has not been presented with any application regarding one or more investment projects.

4. In this respect, Énergir agrees with the arguments presented by the counsel for S.É.

   - *C-S.É.-0054, para. 12, p. 8.*

5. The third re-amended application (B-0355) is instead formulated in particular in accordance with Section 31 (5) of the Act, which provides that the Régie has the exclusive jurisdiction to decide "*any other application*."

6. It is common practice that the Régie be presented with various applications from the distributor and that it process them by "taking note" of the evidence submitted.

   - *D-2017-073, Annual Report 2016*

7. Furthermore, according to the IGUA, by "taking note" of the New Methodology instead of approving it, the Régie would be granting Énergir's management leeway in selecting the development projects that they intend to carry out and, in so doing, the Régie would be illegally delegating powers that it was entrusted by the legislator under Section 73 of the Act.

   - *NS, February 5, 2018, Vol. 1, p. 113, 120.*

8. Here as well, Énergir submits that the IGUA's position is wrong in law.

9. Indeed, as is evident in the text of Section 73 of the Act, the legislator left it to the Régie to determine the cases and conditions requiring its authorization:

> ***73.*** *The electric power carrier, the electric power distributor and natural gas distributors must obtain the authorization of the Régie,* subject to the conditions and in the cases determined by regulation by the Régie, to: […]
>
> *[Our underlining]*

10. What should be understood from this wording is that the legislator specifically provided that the Régie's authorization is thus not required in "all cases" and in "all circumstances," otherwise it would not have granted the Régie this regulatory power.

11. Consequently, the Régie has used this regulatory power granted by the legislator to identify situations where its authorization would not be required.

12. As part of its primary arguments, Énergir has submitted that this type of exemption applies when the projects are considered "*prudently acquired and useful*" in keeping with Section 49 of the Act.

13. Nothing in this approach or interpretation of the Act or the Regulation corresponds to what the IGUA qualifies as "illegal delegation" by the Régie.

B. CFIB

14. In a similar vein, the CFIB has claimed that nothing in the Act entitles Énergir to the "flexibility" or the "leeway" it desires: these terms cannot be found anywhere in the Act, according to the CFIB.

- *NS, February 5, 2018, Vol. 1, p. 127.*

15. Énergir asks the Régie to disregard this narrow reading of the regulatory framework and the Act suggested by the CFIB.

16. The CFIB's position is to limit regulated companies' leeway as much as possible.

17. Énergir reiterates that such an approach is unreasonable and would hinder the effectiveness of the regulatory regime.

18. Moreover, the CFIB's counsel has acknowledged, in an exchange with Commissioner Pelletier, that his client's position is diametrically opposed to that of Énergir relative to the latitude that regulated companies should have.

- *NS, February 5, 2018, Vol. 1, p. 146.*

C. ROEÉ

19. In paragraphs 54 to 56 of its arguments, the ROEÉ writes:

> ***54.*** *Furthermore, Énergir asks the Régie to "take note of," in other words to recognize in some respect the value of this methodology.*
>
> ***55.*** *The ROEÉ proposes that this request by Énergir would have the effect of preventing the Régie from exercising its authority over the authorization of network extensions and to exclude the public and the intervenors from the decision-making process for network extensions.*
>
> ***56.*** *In particular, if the Régie agrees to "take note" of the methodology without examining it, this would create a situation where it would be more difficult to later decide that the assets should not be accepted in the rate base as prudently acquired.*
>
> *[Our underlining] [our translation]*

20. With respect, this passage contains several manifest errors.

21. In fact, as indicated in the current regulatory framework, described in detail by Énergir as part of its Arguments (B-0364, para. 44 to 74), the Régie, as well as the participants in the rate cases and annual reports, have numerous occasions to question the distributor on the wisdom of the additions to the rate base and on the internal management methodology applied by Énergir.

22. Therefore, it is wrong to maintain, as does the ROEÉ, that the Régie would be "prevented" from exercising its authority over the extension projects, just as it does not reflect reality to claim that the public and intervenors would be "excluded" from the decision-making process, given the public nature of the rate cases and annual reports (Section 25 (1) of the Act).

D. STRATÉGIE ÉNERGÉTIQUE (S.É.)

23. Contrary to the claims of certain counsel during the hearing, Énergir's understanding of the Act and the Regulation is not unique and is shared, in several respects, by S.É.

E. OC

24. OC's counsel filed a letter of support at the beginning of the day on February 5, 2018 for the positions maintained by the CFIB with the goal of having the Régie "set" the criteria for evaluating the profitability of the network extension projects.

25. OC attached to this letter of support (C-OC-0054) an appendix written by William P. Marcus and Brigid Rowan entitled "*Comments regarding approaches to the evaluation of the profitability of natural gas system expansion projects in other jurisdictions*."

26. Énergir submits that nothing in these comments makes it possible to conclude, as claims the CFIB, that regulators' authorizations or approvals relative to methods similar to the New Methodology led other regulators to "set" strict criteria for the evaluation of network extension projects.

27. On the contrary, a reading of the excerpts retranscribed in the comments instead suggests that the OEB ruled on "*guidelines*," which does not correspond *a priori* to the restrictive approach that the OC and CFIB would like the Régie to adopt in this case.

> *The Guidelines provide the utilities with direction with respect to the structure of their system expansion portfolios and the methods for conducting financial feasibility analyses at both the individual project level and the portfolio level. The Guidelines standardize the elements to be used in the discounted cash flow ("DCF") analysis as well as establish the parameters for the costs and revenues that are the inputs to that analysis.*
>
> *[Our underlining]*

28. It should also be noted that the "*guidelines*" in question are appended to OEB decision 188, which in particular states the following:

> *« The Board believes that utilities are in the best position to plan their distribution systems and, therefore, they should have flexibility in choosing the optimal system design for their distribution system expansions. The Board also believes that if the utilities are allowed to assess the financial viability of all potential customers as a group [using a portfolio approach] more marginal customers could be served as a result of assessing the cost of serving them together with more financially viable customers* » (p. 7)
>
> *[Our underlining]*

II. PANEL QUESTIONS

A. QUESTIONS FROM COMMISSIONER PELLETIER ON THE PRACTICES OF OTHER REGULATED COMPANIES WITH RESPECT TO THE HANDLING OF PROJECTS OF LESS THAN $1.5M

30. During the hearing on February 5, 2018, Commissioner Pelletier questioned Énergir about the compliance of its regulatory practice with respect to the handling of projects of less than $1.5M compared with that of other regulated companies under the Régie's jurisdiction.

31. As noted in paragraphs 53 to 57 and 80 to 82 of its Arguments, (B-0364), Énergir reiterates that its regulatory practice complies with the provisions of Section 73 of the Act and the Regulation and that authorization is not required for investment projects of less than $1.5M for the following reasons:

    a. Under Section 73 of the Act, Énergir requires the Régie's authorization to acquire assets or extend its distribution network "*subject to the conditions and in the cases determined by regulation by the Régie*";

    b. Section 1 para. 2 of the Regulation stipulates that authorization is required for projects of less than $1.5M whose cost is under the threshold of paragraph 1 ($1.5M) to the extent that these projects have not yet been recognized as prudently acquired and useful by virtue of Section 49 of the Act respecting the Régie de l'énergie;

    c. According to established regulatory practice, Énergir's projects of less than $1.5M are recognized as "*prudently acquired and useful*" within the meaning of Section 49 of the Act as part of each rate case on a forecast basis for the upcoming year.

32. Énergir submits that an examination of Section 164.1 of the Act should not affect this interpretation of Section 73 of the Act or the Regulation suggested by Énergir since this provision applies only to the assets of transmission and electricity networks:

> ***164.1*** *For the purposes of subparagraph 1 of the first paragraph of section 49 and section 52.3, assets in operation and entered [...] are deemed to be prudently acquired and useful for the operation of an electric power transmission or distribution system.*
>
> *[Our underlining] [our translation]*

33. However, nothing in paragraph 2 of Section 1 of the Regulation indicates that only carriers and distributors of electricity are entitled to the exemption it provides. On the contrary, this paragraph specifically refers to the operation of a natural gas distribution system.

34. Alternatively, should the Régie come to the conclusion that authorization under Section 73 of the Act is required for projects of less than $1.5M, Énergir submits that this authorization could be obtained as follows:

    a. Such authorization would be requested as part of each rate case, on a projected basis, for the coming year;

    b. The Régie would thus be asked to authorize a global amount (budget), which would also be broken down by investment category (Section 5 of the Regulation);

    c. The authorization request would be accompanied by the information stipulated in Section 5 of the Regulation.

35. For example, Énergir notes that Hydro-Québec Distribution recently filed an "*Application relative to the establishment of electricity rates for the rate year 2018–2019*" [our translation] (R-4011-2017, B-0002), which in particular includes the following request:

> ***28.*** *For the test year 2018, the Distributor submits to the Régie for authorization an investment budget of $607M for all projects under $10M, as presented in exhibit HQD-9, document 5.*
>
> *[…]*
>
> ***FOR THESE REASONS, MAY IT PLEASE THE RÉGIE TO:***
>
> ***AUTHORIZE*** *the projects for acquisition or construction of buildings or assets of less than $10M intended for the distribution of electricity for which authorization is required under Section 73 of the Act and its implementing regulation; [our translation]*

36. Therefore, despite its interpretation of Section 73 of the Act and the Regulation, and subject to the representations already made concerning the relevance of examining Section 73 of the Act in order to rule on the application which the Régie has before it, Énergir could in future add a similar conclusion to its rate applications.

37. However, although Énergir can adopt such an approach, this does not resolve the question before the Régie of how the New Methodology should be handled.

38. In that respect, Énergir submits that while HQD may present its projects of less than $10M for approval, there is no information to indicate that HQD first applies a detailed methodology for evaluation of the profitability of the development projects which would have been approved by the Régie beforehand.

39. On the contrary, in its decision D-2017-022, the Régie states:

> *"[505] The Régie recognizes the effort made by the Distributor to enable a better understanding of the investment budget proposed for 2017. It asks that this level of detail be maintained each year in the Distributor's future rate cases.*
>
> *[506] The Régie asks that the Distributor advise it, during the next rate case, of the results of its work on an indicator that could help it evaluate the appropriateness of the investment amounts requested. Furthermore, until the Régie rules on a new indicator and despite the reservations expressed by the Distributor, the Régie asks it to continue presenting in future rate cases the external indicator developed as part of the investment performance benchmarking.*
>
> *[507] Lastly, in the absence of a proposal for an internal indicator for investments, as mentioned by the Distributor, the current approach of providing additional explanations on the investment planning process remains a useful and relevant exercise for the Régie's purposes.*
>
> *[508]* ***The Régie considers that the budget for investments of less than $10M requested by the Distributor for the test year 2017 is reasonable. Consequently, it authorizes the projects of less than $10M up to the amount of $556.8M."***
>
> *[Our underlining] [our translation]*

40. In Énergir's opinion, this excerpt illustrates that the dynamic applicable to the examination of projects under the threshold set by the Regulation for HQD corresponds to an exercise of communicating sufficient information to enable the Régie to evaluate the "appropriateness of the investment amounts requested" rather than an approach aimed at setting strict criteria that must be followed to assess the profitability of development projects.

41. Unless Énergir is mistaken, the same observation could be made for Gazifère concerning the lack of prior application of a detailed methodology for evaluation of the profitability of the development projects which would have been approved by the Régie beforehand.

B. RÉGIE'S JURISDICTION RELATIVE TO THE NEW METHODOLOGY

42. Although Énergir is currently asking the Régie to "*take note*" of its New Methodology, it could amend the application before the Régie to request that it "*approve*" or "*authorize*" the New Methodology.

43. As was submitted by the Panel chair during the hearing on February 5, 2018, this type of approach would have the effect of signalling that the development projects whose characteristics were within the guidelines of the New Methodology ("**intra-method projects**") would be presumed prudent.

44. Such a signal is effectively reassuring from the distributor's perspective.

45. However, if such an amendment were made to the application, how would projects that don't fall within the guidelines of the New Methodology ("**extra-method projects**") be qualified?

46. In other words, if an "approval" of the New Methodology can provide a signal that intra-method projects are presumed prudent, does that imply a "corollary signal" to the effect that extra-method projects would be presumed imprudent?

47. Énergir submits that such an effect of a decision approving the New Methodology would be contrary to the regulatory principles noted in its Arguments (B-0364, para. 28 and 29).

48. Consequently, Énergir asks the Régie that if it does approve the New Methodology, it clarify that projects carried out extra-method are not, *de facto*, presumed imprudent.

RESPECTFULLY SUBMITTED.

Montréal, February 6, 2018

(s) Hugo Sigouin-Plasse

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