

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 file concerning Énergir's cost allocation and rate structure

February 5, 2018 hearing

ÉNERGIR ARGUMENTS

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THE APPLICANT RESPECTFULLY DECLARES THE FOLLOWING:

I. BACKGROUND

1. On January 16, 2018, the Régie invited the parties to this hearing (A-0136).
2. The Régie asked the parties to answer questions related to the following three issues:
 1. *The scope of the powers granted to the Régie for authorizing investment projects under section 73 of the Act respecting the Régie de l'énergie (the Act) and the Regulation respecting the conditions and cases where authorization is required from the Régie de l'énergie, in general and more specifically in the case of Énergir, especially with respect to system extension projects under \$1.5 million;*
 2. *The Régie's jurisdiction relative to examining the methodology which is used to evaluate the profitability of system extension projects under \$1.5 million and which Énergir has asked it to "take note" of.*
 3. *The impacts of a decision by the Régie to take note of the methodology used to evaluate the profitability of system extension projects under \$1.5 million rather than a decision to approve that methodology, with or without modifications.*
3. Énergir understands from the invitation letter (A-0136) that the Régie raised questions because of the formulation of the application, which asked the Régie to "take note" of the modified profitability evaluation methodology and the acceptance criteria for the development projects described in item B-0277.
4. Before answering the Régie's questions, Énergir believes it is important to outline the context in which this review panel ("**Review Panel**") became involved with this application.
5. The application that the Review Panel has become involved with existed prior to this file but had different forms.
6. On April 29, 2016, Énergir filed with the Régie an application for approval of the supply plan and changes to the Conditions of Service and Tariff as of October 1, 2016 (R-3970-2016). Among the items filed was one describing a methodology for accepting extension projects with profitability forecasts ("**AMT Method**" in the evidence submitted for examination by the Review Panel).
7. Despite the terms used in that item filed during the 2016-2017 rate case, and as it appears from the evidence provided in review file R-3998-2017, which will be discussed in more detail below, Énergir's objective in the April 2016 filing was to inform the Régie that its

internal management methods had been refined, which could impact the development plan for the 2016-2017 rate case (R-3970-2016, item B-0015).

8. On June 7, 2016, the Régie rendered procedural decision D-2016-090 in which it postponed the analysis of the AMT Method until the next rate case (namely the 2017-2018 rate case) because of the extent of the expected work and the tight deadlines.
9. Since the 2016-2017 development plan had been prepared using the AMT Method, the Régie asked Énergir to:
 - *Decision D-2016-090 (File R-3970-2016), p. 11, para. 51 [TAB 1]*
[...] revise its 2016-2017 development plan to take into account the approved methodology currently in effect for accepting extension projects [...]
10. On June 15, 2016, Énergir removed the AMT Method (B-0144) from the 2016-2017 rate case and filed an amended application (B-0140) in compliance with decision D-2016-090.
11. On October 17, 2016, the Review Panel invited (A-0056) the participants in this file to a preparatory conference to discuss the convergence of the issues between determining marginal costs and the methodology for accepting system extension projects as well as the possibility of addressing these two issues in the same forum (A-0057).
12. On October 24, 2016, the parties expressed their respective preferences for whether or not the two issues should be covered as part of file R-3867-2013 and, at that time, Énergir indicated that it preferred the AMT Method to be covered as part of a rate case.
13. On November 8, 2016, the Review Panel rendered procedural decision D-2016-169, creating Phase 3 of this file and dividing it into two review topics, including the current one covering the AMT Method.
14. On December 21, 2016, the Régie rendered decision D-2016-191 in the 2016-2017 rate case (R-3970-2016) in which it refused the creation of a deferred expense account (“DEA”) and ordered Énergir to use the methodology currently in effect when evaluating extension projects under \$1.5 million, including achievement of the prospective capital cost (PCC), which is currently 5.28%.

➤ *Decision D-2016-191 (R-3970-2016) [TAB 2]*

[90] For these reasons, the Régie refuses to allow the creation of a non-rate-base DEA in which Gaz Métro proposes to accumulate shortfalls associated with extension projects covered by the sales development methodology. This methodology will be examined by the Régie at a later date.

[91] Consequently, for extension projects carried out in 2016-2017, Gaz Métro will have to respect the methodology currently in effect. The conditions approved by the Régie include, in particular, achievement of the PCC, which is currently 5.28%.

15. On January 20, 2017, Énergir filed with the Régie an application for review (file R-3998-2017) in order to have the conclusions in paragraphs 91, 92 and 248 of decision D-2016-191 reviewed.
16. That same day, Énergir file an amended version of the AMT Method (B-0178) in this file in compliance with the order set out by the Régie in decision D-2016-169 and asked the Régie to “take note” of it.
17. Moreover, that terminology was in line with Énergir’s objective set out in paragraph 7 of these arguments relating to its initial filing for file R-3970-2016, namely to inform the Régie.
18. That terminology was also consistent with the reality described on February 28, 2017 in the context of review file R-3998-2017 when Énergir’s witness explained that the AMT Method involved a refined, more systematic analysis and internal management methodology for development projects under \$1.5 million, which had been applied for many years.
 - *R-3998-2017, testimony by Renault-François Lortie, NS, Vol. 1, February 28, 2017, pp. 15 and 16, 26 and 27 [TAB 3]*
19. On February 28 and 29, 2017, during statements made for review file R-3998-2017, the parties explained their interpretations of section 73 of the *Act respecting the Régie de l'énergie* (“**Act**”) and the provisions of the *Regulation respecting the conditions and cases where authorization is required from the Régie de l'énergie* (“**Regulation**”).
20. On March 22, 2017, the Régie rendered decision D-2017-032 concerning Énergir’s application for review (R-3998-2017) and rejected it with grounds, particularly that decision D-2016-191 did not modify the approach used by Énergir for extension projects under \$1.5 million (para. 98) and should not be interpreted as a requirement for the PCC profitability criteria to be met for each of the investment projects under \$1.5 million (para. 102).

21. On June 28, 2017, Énergir amended its application in this file and, for reporting purposes, filed (B-0277) a new methodology for evaluating profitability and the acceptance criteria for development projects under \$1.5 million ("**New Methodology**"), and asked the Régie to "take note" of it.

22. Keeping that sequence in mind, in order to ensure a better understanding of the various terms used by Énergir in the evidence (B-0178 and B-0277) and its amended application (B-0355), Énergir considers that it would be useful to first recap certain basic regulatory principles that we respectfully believe should guide the Régie in examining its powers under the Act and the Regulation.

II. REGULATORY PRINCIPLES

23. The New Methodology is a management tool that is part of a broader internal governance process allowing Énergir and its managers to make choices about the projects to be selected in relation to the company's development.
24. It is important for the distributor to have access to this leeway and to be able to exercise that discretion, particularly in the context of ensuring that the regulatory regime is administered effectively.
25. In this regard, Énergir believes that in order for the regulatory regime to be effective and efficient in adequately serving the public interest, it must ensure that a balance is maintained between the management powers exercised by the regulated utility and the monitoring powers of the regulator.
26. To some extent, that balance is “embedded” in section 5 of the Act, which reads as follows:

- *Act respecting the Régie de l'énergie, section 5*

5. In the exercise of its functions, the Régie shall reconcile the public interest, consumer protection and the fair treatment of the electric power carrier and of distributors. It shall promote the satisfaction of energy needs in a manner consistent with the Government's energy policy objectives and in keeping with the principles of sustainable development and individual and collective equity.

[our emphasis]

27. This need to reconcile different interests is echoed by the notion of a "regulatory compact," which has been discussed on multiple occasions in Canadian courts, including the Supreme Court of Canada:

- *ATCO Gas & Pipelines Ltd. v. Alberta (Energy & Utilities Board), [2006] 1 S.C.R. 140 [TAB 4]*

[62] Rate regulation serves several aims — sustainability, equity and efficiency — which underlie the reasoning as to how rates are fixed:

. . . the regulated company must be able to finance its operations, and any required investment, so that it can continue to operate in the future. [. . .] Equity is related to the distribution of welfare among members of society. The objective of sustainability already implies that shareholders should not receive “too low” a return (and defines this in terms of the reward necessary to ensure continued investment in the utility), while equity implies that their returns should not be “too high”.

(R. Green and M. Rodriguez Pardina, *Resetting Price Controls for Privatized Utilities: A Manual for Regulators* (1999), p. 5)

[63] These goals have resulted in an economic and social arrangement dubbed the “regulatory compact”, which ensures that all customers have access to the utility at a fair price — nothing more. As I will further explain, it does not transfer onto the customers any property right. Under the regulatory compact, the regulated utilities are given exclusive rights to sell their services within a specific area at rates that will provide companies the opportunity to earn a fair return for their investors. In return for this right of exclusivity, utilities assume a duty to adequately and reliably serve all customers in their determined territories, and are required to have their rates and certain operations regulated (see Black, pp. 356-357; Milner, p. 101; Atco Ltd., p. 576; Northwestern Utilities Ltd. v. City of Edmonton, 1929 CanLII 39 (SCC), [1929] S.C.R. 186 (“Northwestern 1929”), pp. 192-193).

[64] Therefore, when interpreting the broad powers of the Board, one cannot ignore this well-balanced regulatory arrangement which serves as a backdrop for contextual interpretation. The object of the statutes is to protect both the customer and the investor (Milner, p. 101). The arrangement does not, however, cancel the private nature of the utility. In essence, the Board is responsible for maintaining a tariff that enhances the economic benefits to consumers and investors of the utility. [...]

[our emphasis]

28. Economic regulatory tribunals and Canadian courts have widely recognized that, in the normal course of business, a regulated distributor is called upon to make investment decisions and that such decisions are presumed prudent.

➤ *Ontario (Energy Board) v. Ontario Power Generation Inc.*, [2015] 3 S.C.R. 147, par. 87 to 105 (OPG) **[TAB 5]**

29. The Régie has recognized this principle many times, notably in decision D-2015-088 rendered in review:

➤ *Decision D-2015-088 (R-3911-2014, R-3912-2014)* **[TAB 6]**

[110] [Translation] Gaz Métro therefore benefits from a presumption of prudence in the expenses it has actually incurred. That presumption can be overruled by evidence to the contrary. The mere fact that Gaz Métro incurred operating expenses in excess of the amount initially authorized is therefore not sufficient reason to overrule the presumption of prudence.

[our emphasis]

30. This presumption of prudence accorded to the regulated utility is consistent with the discretion that the regulated utility must be allowed in its day-to-day management, which is based on its officers' extensive skills.

31. Énergir therefore respectfully encourages the Régie to interpret its powers under section 73 of the Act or the Regulation in such a way as to avoid assigning itself a role that would, for all intents and purposes, negate the presumption of prudence by controlling, in advance, the initiatives of competent and well-informed managers.

➤ *Section 101 of the Public Utilities Act (Newfoundland) (Re), 1998 CanLII 18064 (NL CA), par. 117-118 [ONGLET 7]*

[117] The level of operating costs is obviously an important factor in fixing rates. It is generally accepted that Board supervision as to reasonableness of such costs is therefore essential to effective regulation [...]

[118] In defining the parameters of such supervisory power, however, the Board must account for a competing principle, namely, that the Board is not the manager of the utility and should not as a general rule substitute its judgment on managerial and business issues for that of the officers of the enterprise.

[our emphasis]

32. According to Énergir, not only must the Régie preserve this presumption of prudence, but it must also interpret its governing legislation in such a way that the regulatory process itself meets efficiency and cost saving imperatives.

33. The regulatory process currently in effect for projects under \$1.5 million, which is fully compliant with the Regulation and the Filing Guide and which is based on well-established and consistent regulatory practice, respects these basic regulatory principles by giving Énergir discretion in selecting projects to be carried out, within an approved envelope on an aggregate and projected basis in a rate case.

III. LEGISLATIVE / REGULATORY FRAMEWORK

A. ACT RESPECTING THE RÉGIE DE L'ÉNERGIE

49. *When fixing or modifying rates for the transmission of electric power or for the transmission, delivery or storage of natural gas, the Régie shall, in particular,*

(1) determine the rate base of the electric power carrier or of the natural gas distributor after giving due consideration, in particular, to the fair value of the assets the Régie considers prudently acquired and useful for the operation of the electric power transmission system or of a natural gas distribution system, as well as to the unamortized research and development and marketing expenditures, commercial programs, pre-operating costs and working capital required for the operation of such systems;

[...]

(7) ensure that the rates and other conditions for the provision of the service are fair and reasonable;

[...]

The Régie may use any other method it considers appropriate.

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:*

(1) acquire, construct or dispose of immovables or assets for transmission or distribution purposes;

(2) extend, modify or change the use of their transmission or distribution system;

[...]

[our emphasis]

B. REGULATION RESPECTING THE CONDITIONS AND CASES WHERE AUTHORIZATION IS REQUIRED FROM THE RÉGIE DE L'ÉNERGIE

1. Authorization from the Régie de l'énergie is required:

(1) to acquire, construct or dispose of immovables or assets for energy transmission or distribution purposes as well as to extend, modify or change the use of the transmission or distribution system as part of a project involving:

[...]

(c) the distribution of natural gas worth \$1.5 million or more, where the distributor's total annual delivery is 1 billion cubic metres or more; or

[...]

Authorization is also required for projects the cost of which is under the limits set in subparagraph 1 of the first paragraph and which have not yet been recognized as prudently acquired and useful for the operation of the electric power transmission system or electric power or natural gas distribution system under subparagraph 1 of the first paragraph of section 49 of the Act respecting the Régie de l'énergie (chapter R-6.01).

The second paragraph does not apply to projects for restoring service, or to connections required of the carrier or distributor after the date an application for authorization was filed.

2. An application for authorization under the first paragraph of section 1 shall contain the following:

(1) the project objectives;

(2) the project description;

(3) the justification of the project with regard to the objectives;

(4) the project costs;

(5) the project feasibility study;

(6) the list of authorizations required under other laws;

(7) the impact on the rates including a sensitivity analysis;

(8) the impact on the reliability of the electric power transmission system and on the quality of the electric power transmission service or electric power or natural gas distribution service; and

(9) any other solutions contemplated, which must include the information referred to in the preceding paragraphs.

5. An application for authorization referred to in the second paragraph of section 1 shall be made according to investment category and shall contain the following:

(1) the descriptive summary of the investments and their objectives;

(2) the costs based on the investment category;

(3) the justification of the investments with regard to the objectives;

(4) the impact on rates; and

(5) the impact on the reliability of the electric power transmission system and the quality of the electric power transmission service or electric power or natural gas distribution service.

[our emphasis]

C. 2010 FILING GUIDE

34. On October 25, 2010, the Régie adopted a filing guide for Énergir. Its purpose is mainly to standardize the documents filed by Énergir in support of its applications and to ensure that the Régie has all the documents it needs to carry out its role ("**Filing Guide**").
35. Section 1.2 of the Filing Guide states that the Guide's requirements are suggested standards that will enhance processing efficiency for Énergir's applications (our emphasis).
36. The Filing Guide contains various chapters, which specifically describe the requirements for each type of application, namely:

Chapter 1:	General rate application (sections 48, 49 and 52 of the Act)
Chapter 2:	Application to approve annual budgets for the Global Energy Efficiency Plan (section 49 of the Act)
Chapter 3:	Application to approve the supply plan (section 72 of the Act)
Chapter 4:	Application to authorize the investment project (section 73 of the Act)
Chapter 5:	Filing the annual report (section 75 of the Act)

37. Chapter 1 of the Filing Guide contains various guidelines about the information to be provided by Énergir for a rate application (sections 48, 49 and 52 of the Act).

38. With respect to sales development and commercial programs, the Filing Guide indicates in particular that Énergir must demonstrate the profitability of the sales development plan ("**Development Plan**")¹.

39. With respect to the rate base, the Guide states in particular that Énergir must:

***18.** [Translation] Indicate the aggregate amount of investments whose individual cost is under the \$1.5 million limit. Provide a breakdown by investment category, including the following information:*

- description and objectives;

- costs based on the investment category;

- justification of the investments with regard to the objectives;

- impact on rates;

- impact on the reliability and quality of the natural gas distribution service.

¹ Section 4 of the Filing Guide

IV. CURRENT AND PAST REGULATORY PRACTICE

A. PROJECTS OVER \$1.5 MILLION

40. An individual application for authorization must be submitted to the Régie for every investment project over \$1.5 million, in compliance with section 73 of the Act and section 1 para.1 of the Regulation.
41. Sections 2 to 4 of the Regulation stipulate the information that Énergir must provide in support of an application for authorization, including:
 - a. the project objectives;
 - b. the project description;
 - c. the justification of the project with regard to the objectives;
 - d. the project costs;
 - e. the project feasibility study;
 - f. the list of authorizations required under other laws;
 - g. the impact on the rates including a sensitivity analysis.
42. After the project has been authorized by the Régie under section 73 of the Act, Énergir can allocate the resulting costs to a non-rate-base deferred expense account (DEA).
43. Only during the next rate case can the costs allocated to the DEA be added to the rate base and therefore be recognized as "*prudently acquired and useful*" by the Régie under section 49 of the Act.

B. PROJECTS UNDER \$1.5 MILLION

44. For many years, the regulatory process covering projects under \$1.5 million has consistently been the following:
 - i. Step 1: Estimating the rate base additions for Year T*
45. In preparation for each rate case, Énergir estimates the aggregate value of the investments it intends to make during the following fiscal year ("**Year T**") for investment projects under \$1.5 million.
46. To do so, Énergir evaluates the projects and sales forecasts for Year T based on the following factors in particular:

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- a. Information about market development;
 - b. Forecasting models for sales and projects;
 - c. GDP;
 - d. Competitive position;
 - e. Housing starts forecast for Year T.
47. This exercise enables Énergir to estimate the rate base additions that will be needed during Year T.

*ii. **Step 2: Filing the rate case for Year T***

48. As part of the rate case for Year T, Énergir asks the Régie to determine the overall rate base for Year T and to separately approve the rate base additions relating to investment projects under \$1.5 million, in compliance with section 49 of the Act.

49. For example, Énergir's conclusions for the 2018 rate case were as follows:

***SET** the rate base at \$2,118,075,000 for the purpose of determining rates;*

***AUTHORIZE** the rate base additions relating to investment projects under \$1.5 million.*

50. In support of its application for authorization, Énergir files the following documents, among others, for each rate case²:
- a. Development plan profitability
 - b. Rate base additions
 - c. Reconciliation of rate base additions with development plans
51. It should be noted that these documents do not contain itemized lists of the investments planned during Year T because those investments are usually not known at this stage.

² For more information about these documents, please refer to step 2 of the document "Exemple de traitement des projets de moins de 1,5 million de dollars" [TAB 8].

52. In compliance with section 18 of the Filing Guide, these documents instead show the aggregate amount of the investments that Énergir intends to make during Year T. Those investments are also broken down by investment category.

iii. Step 3: Rate approval by the Régie for Year T

53. After completing its rate case analysis, the Régie renders a decision in which it determines, in particular, the overall rate base for Year T and it approves the rate base additions, in compliance with section 49 of the Act.

54. For example, the Régie's decision for the 2018 rate case included the following conclusions:

APPROVE an amount of \$175.4 million in 2018 for additions to the rate base associated with investment projects whose individual cost is less than \$1.5 million.

SET the rate base at \$2,115,823,000 for the purpose of determining rates, taking into account the adjustments indicated in paragraphs 106 and 133 of this decision.

55. Under section 49 of the Act, the Régie can then approve those rate base additions as long as:

- a. The additions are considered "*prudently acquired and useful*";
- b. The additions lead to "*fair and reasonable*" rates.

56. By approving those rate base additions, the Régie recognizes that the investment projects under \$1.5 million that Énergir intends to carry out during Year T will be "*prudently acquired and useful*" (section 49 (1) of the Act).

57. Pursuant to section 1 para. 2 of the Regulation, Énergir does not have to obtain authorization under section 73 of the Act for those projects:

- *Regulation respecting the conditions and cases where authorization is required from the Régie de l'énergie:*

1. Authorization from the Régie de l'énergie is required:

(1) to acquire, construct or dispose of immovables or assets for energy transmission or distribution purposes as well as to extend, modify or change the use of the transmission or distribution system as part of a project involving:

[...]

(c) the distribution of natural gas worth \$1.5 million or more, where the distributor's total annual delivery is 1 billion cubic metres or more; or

[...]

Authorization is also required for projects the cost of which is under the limits set in subparagraph 1 of the first paragraph and which have not yet been recognized as prudently acquired and useful for the operation of the electric power transmission system or electric power or natural gas distribution system under subparagraph 1 of the first paragraph of section 49 of the Act respecting the Régie de l'énergie (chapter R-6.01).

The second paragraph does not apply to projects for restoring service, or to connections required of the carrier or distributor after the date an application for authorization was filed.

[our emphasis]

iv. Step 4: Carrying out projects under \$1.5 million

58. During Year T, Énergir carries out projects under \$1.5 million but the total amount of those projects may be different from the amount approved by the Régie in step 3.
59. Even though the amounts actually incurred in Year T may total more than the amount approved by the Régie, an overrun of that nature does not impact the rates for Year T.
60. As shown in the steps below, the Régie will have the opportunity to exercise its power to monitor the amounts actually incurred for Year T:
 - a. During the rate case for Year T+1;
 - b. When reviewing the annual report;
 - c. During the rate case for Year T+2.

v. Step 5: Filing the rate case for Year T+1

61. While Year T is still underway, Énergir submits its rate case application for the Year T+1 to the Régie.
62. Since Year T has not yet been completed when that application is filed, the Year T+1 rate case therefore cannot take into account all the amounts actually incurred during Year T.

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63. The rate base for Year T+1 nevertheless takes into account part of the amounts actually incurred during Year T.
64. As part of the Year T+1 rate case, Énergir files a new investment forecast called “4/8” for Year T, which takes into account the investments actually made during the first four months of Year T as well as an updated forecast for the investments that will be made during the last eight months of Year T.
65. By approving the rate base for Year T+1 (section 49 of the Act), the Régie has the opportunity to re-examine the “*prudently acquired and useful*” nature of the investments made during Year T.

vi. Step 6: Filing the annual report for Year T

66. After Year T has ended, Énergir files an annual report specifying the amounts actually incurred during the year.
67. In support of its annual report, Énergir files a document on rate base additions (“*Additions à la base de tarification*”), which separately lists the investments made during Year T for projects under and over \$1.5 million and gives explanations about differences versus the amounts initially approved for Year T.

vii. Step 7: Régie’s powers concerning the Year T annual report

68. After analyzing the annual report, the Régie renders a decision in which, among other things, it takes note of Énergir’s explanations about the differences in the actual rate base additions and the rate base amount initially approved for Year T.
69. Once again, the Régie has the opportunity to exercise its power to monitor the investments made during Year T.

viii. Step 8: Filing the rate case for Year T+2

70. Following its decision about the annual report for Year T, the Régie moves on to the process of approving the rates for Year T+2.
71. Énergir files the same items as it did for Year T.
72. This time, the rate base for Year T+2 therefore takes into account all the investments actually made during Year T. This is an additional opportunity for the Régie to assess the “*prudently acquired and useful*” nature of the investments.

ix. **Conclusion**

73. Based on the foregoing, the Régie therefore has at least four opportunities to exercise its power to monitor the investments under \$1.5 million made during Year T.
74. As it stands:
- a. As part of the **Year T rate case**, the Régie approves the rate base (section 49 of the Act), which is determined primarily on the basis of the investments forecast for Year T.
 - b. As part of the **Year T+1 rate case**, the Régie approves the rate base (section 49 of the Act), which is determined primarily on the basis of the “4/8” forecast for Year T.
 - c. As part of its review of the **annual report**, the Régie takes note of the difference between the rate base additions initially approved for Year T and the investments actually made during Year T.
 - d. As part of the **Year T+2 rate case**, the Régie approves the rate base (section 49 of the Act), which is determined primarily on the basis of the investments actually made during Year T.

V. ANSWERS TO THE RÉGIE'S QUESTIONS

A. RÉGIE'S POWERS UNDER SECTION 73 OF THE ACT AND THE REGULATION

Régie's question: What is the scope of the powers granted to the Régie for authorizing investment projects under section 73 of the Act respecting the Régie de l'énergie (the Act) and the Regulation respecting the conditions and cases where authorization is required from the Régie de l'énergie, in general and more specifically in the case of Énergir, especially with respect to system extension projects under \$1.5 million.

i. Projects over \$1.5 million

75. The Régie has the power to individually authorize each project over \$1.5 million under section 73 of the Act and section 1 para. 1 of the Regulation.
76. As mentioned earlier, section 73 of the Act and the Regulation do not specify the parameters under which the Régie can authorize investment projects over \$1.5 million.
77. Over the years, however, the Régie has put forward certain principles that generally must be followed in order for a project over \$1.5 million to be authorized.
78. After the project has been authorized by the Régie under section 73 of the Act, Énergir can allocate the resulting costs to a non-rate-base deferred expense account (DEA).
79. Only during the next rate case can the costs allocated to the DEA be added to the rate base and therefore be recognized as "prudently acquired and useful" by the Régie under section 49 of the Act.

ii. Projects under \$1.5 million

80. As mentioned earlier, based on consistent regulatory practice, authorization is not required under section 73 of the Act for projects under \$1.5 million.
81. As part of the exercise whereby the Régie approves rate base additions relating to the investment projects under \$1.5 million that Énergir intends to carry out during Year T, the Régie recognizes the "*prudently acquired and useful*" nature of those investments (section 49 (1) of the Act).

82. Pursuant to section 1 para. 2 of the Regulation, Énergir does not have to obtain authorization under section 73 of the Act for those projects:

➤ *Regulation respecting the conditions and cases where authorization is required from the Régie de l'énergie:*

1. Authorization from the Régie de l'énergie is required:

(1) to acquire, construct or dispose of immovables or assets for energy transmission or distribution purposes as well as to extend, modify or change the use of the transmission or distribution system as part of a project involving:

[...]

(c) the distribution of natural gas worth \$1.5 million or more, where the distributor's total annual delivery is 1 billion cubic metres or more; or

[...]

Authorization is also required for projects the cost of which is under the limits set in subparagraph 1 of the first paragraph and which have not yet been recognized as prudently acquired and useful for the operation of the electric power transmission system or electric power or natural gas distribution system under subparagraph 1 of the first paragraph of section 49 of the Act respecting the Régie de l'énergie (chapter R-6.01).

The second paragraph does not apply to projects for restoring service, or to connections required of the carrier or distributor after the date an application for authorization was filed.

[our emphasis]

B. RÉGIE'S JURISDICTION RELATIVE TO EXAMINING THE NEW METHODOLOGY

Régie's question: What is the Régie's jurisdiction relative to examining the methodology which is used to evaluate the profitability of system extension projects under \$1.5 million and which Énergir has asked it to "take note" of.

83. As mentioned earlier, Énergir's goal when filing the 2016-2017 rate case (R-3970-2017) in April 2016 was to inform the Régie that it had refined its internal management methodology for evaluating development projects, which could impact the development plan for the 2016-2017 rate case as well as the rate base addition forecasts in that case.

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84. By doing so, Énergir enabled the Régie to exercise its monitoring powers under section 31(2.1) of the Act in fixing 2016-2017 rates that were “*fair and reasonable*” under section 49 of the Act.
 85. In fact, during this rate review, rather than waiting for possible questions from the Régie (through requests for information or other inquiries), Énergir wanted to be proactive by immediately notifying the Régie that changes had been made to the 2016-2017 development plan and that additions had been made to the rate base after its internal management methods were refined, as described in item B-0277.
 86. As part of the 2016-2017 rate case (R-3970-2016), the Régie could therefore decide whether or not to authorize the inclusion of the rate base additions and exercise its powers under sections 31(1)(2.1) and 49 of the Act.
 87. As part of this file, even though the elements under review are closely related to rates, the Régie does not have to “fix” rates under section 48 of the Act and therefore does not have to decide about the “prudently acquired and useful” nature of the assets to be included in the rate base.
 88. Consequently, Énergir acknowledges that the exercise undertaken by the Régie in this file concerning the New Methodology may seem academic or out of context because, as shown in the answer to the next question, we respectfully believe that the Régie cannot prospectively and pre-emptively limit (before the rate-setting exercise) the distributor’s discretion in making day-to-day decisions about how to manage its business.

C. TAKING NOTE VERSUS APPROVING

Régie’s question: What are the impacts of a decision by the Régie to take note of the methodology used to evaluate the profitability of system extension projects under \$1.5 million rather than a decision to approve that methodology, with or without modifications.

89. Énergir considers that the Régie’s approval of the New Methodology should not, and even could not, limit its leeway and the discretion that it must be able to exercise as a distributor, especially from the standpoint of an effectively administered regulatory regime.
90. As previously mentioned, the New Methodology is an internal management tool, **among others**, which enables Énergir and its managers to make informed choices about the company’s development projects.

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91. It is possible that a project under \$1.5 million could be selected by Énergir, based on the specific circumstances of each individual case, even though it does not *a priori* respect the New Methodology's parameters.
 92. Consequently, whether the Régie "takes note" of, "approves" or "authorizes" the New Methodology, the outcome of the debate must not destabilize the regulatory compact's balance: whether the actions taken by Énergir rigorously comply with an approved/authorized method or they diverge from that method for fair and valid reasons based on the knowledge of well-informed managers, those actions will benefit from the presumption of prudence that is consistent with widely-recognized regulatory principles.
 93. Énergir remains a private company even though it is regulated, and it must be able to take risks while fulfilling its duty to act prudently for its own benefit and that of its clients.
 94. Under the regulatory compact, Énergir must be accorded that leeway and, from that perspective, we respectfully believe that the Régie should not intervene at that early stage in the distributor's decision-making, either by requiring a specific profitability threshold for each project or by enforcing a restrictive framework for applying a method, regardless of the method.
 95. From that perspective, the impacts of a "decision by the Régie to take note" and the impacts of a "decision that would approve" must be similar by allowing each party to play its proper role in the regulatory compact.
 96. As illustrated by the regulatory practice that involves submitting annual rate cases and annual reports, including the review of a service cost, the rate base and its additions, the Régie can currently play its full role, exercise its power to monitor the distributor's investments and, in various instances, determine whether they were "prudently acquired and useful", thereby giving effect to the exemption provided for in the second paragraph of section 1 of the Regulation.
 97. Moreover, if the Régie decided to change this regulatory practice, as it is allowed to do under the final subparagraph of section 49 of the Act, and "use any other method it considers appropriate" to fix the distributor's rates, it is possible that the authorization provided for in paragraph 2 of section 1 of the Regulation could then be deemed necessary by the Régie.

98. However, we respectfully believe that this is not currently the case.

RESPECTFULLY SUBMITTED.

Montréal, February 5, 2018

(s) Hugo Sigouin-Plasse

Hugo Sigouin-Plasse
Philip Thibodeau
Counsel for Énergir
1717 rue du Havre
Montréal, Québec H2K 2X3
Telephone: 514-598-3767
Fax: 514-598-3839
Email address for this case:
dossiers.reglementaires@energir.com