

DECISION

QUÉBEC

RÉGIE DE L'ÉNERGIE

D-2018-009	R-3867-2013	31 January 2018
Phase 3		

PRESENT:

Laurent Pilotto
Marc Turgeon
Louise Pelletier
Regulators

Énergir L.P.

Applicant

and

Intervenors listed below

Decision regarding Subject B, Phase 3 dealing with challenges to certain responses from the Distributor to information requests from the intervenors, scheduling and the handling of confidential documents

Application regarding the generic file on Énergir's cost allocation and rate structure

Phase 3 intervenors:

Association des consommateurs industriels de gaz (ACIG)

Canadian Federation of Independent Business (Québec section) (CFIB)

Option Consommateurs (OC)

Regroupement des organismes environnementaux en énergie (ROEÉ)

Stratégies énergétiques (SÉ)

Union des consommateurs (UC)

1. APPLICATION

[1] On 15 November 2013, Gaz Métro Limited Partnership (Gaz Métro) filed an application with the Régie de l'énergie (the Régie) regarding the generic file on its cost allocation and rate structure.

[2] On 30 January 2014, the Régie handed down its decision D-2014-011¹ in which it ruled on the recognition of intervenors and on the procedural rules for the file. It divided the review of the file into two phases: Phase 1 dealing with all cost allocation methods and Phase 2 dealing with the rate structure, cross-subsidization and the rate strategy for the distribution service.

[3] On 28 April 2016, Gaz Métro filed an application regarding Phase 2 of the file² in which it proposed to divide it into four phases and to address the review of supply, transportation and load balancing services as well as the interruptible service offer within Phase 2. It also proposed to address the determination of marginal costs for long-term service delivery in Phase 3.

[4] On 4 August 2016, the Régie handed down its decision D-2016-126,³ in which it partially agreed to Gaz Métro's proposal regarding the procedural rules for the file. Regarding the proposal for a third phase, the Régie noted the absence of evidence and reserved its decision on that issue, as well as on the question of whether it should be dealt with separately in a phase dedicated to it.

[5] On 5 October 2016, Gaz Métro filed its application regarding the determination of marginal costs for long-term service delivery and proposed to address that issue in a separate phase, i.e. Phase 3.

[6] On 24 October 2016, the Régie held a preparatory meeting to determine, among other things, the manner and timetable for dealing with this new Phase 3.

¹ Decision [D-2014-011](#).

² Exhibit [B-0130](#).

³ Decision [D-2016-126](#).

[7] Following that preparatory meeting, the Régie handed down its Decision D-2016-169⁴ in which it created Phase 3 of the file to address the following two subjects:

- A. The method for determining the marginal costs for long-term service delivery
- B. The methodology for evaluating the profitability of network extension projects.

[8] In that same decision, the Régie decided that these two subjects should be dealt with sequentially. It asked Gaz Métro to file its evidence on Subject B no later than 19 January 2017.

[9] On 20 January 2017, Gaz Métro filed its evidence on Subject B.

[10] On 1 February 2017, the Régie handed down its Decision D-2017-009⁵ in which it asked Gaz Métro to file additional evidence on Subject B. It also recognized the expert status of Messrs. Richard A. Baudino, Paul L. Chernick, William P. Marcus and H. Edwin Overcast.

[11] On 16 February 2017, Gaz Métro filed the additional evidence that had been requested.⁶

[12] On 7 March 2017, the Régie handed down its Decision D-2017-026⁷ in which it ruled on the intervenors' participation budgets, among other things, and set a timetable for the review of Subject B. Said timetable was modified by the Régie twice, in its letters of 7 and 26 April 2017.⁸

[13] On 24 and 27 March 2017, Gaz Métro received requests for information (“DDRs”) from the Régie and from the intervenors on Subject B of Phase 3.

⁴ Decision [D-2016-169](#).

⁵ Decision [D-2017-009](#).

⁶ Exhibit [B-0220](#).

⁷ Decision [D-2017-026](#).

⁸ Exhibits [A-0107](#) and [A-0119](#).

[14] On 4 April 2017, Gaz Métro proposed⁹ a new procedural approach to allow it to engage the services of an expert to address Subject B, to reply to the DDRs received and to file new evidence. Gaz Métro also stated that the expert, Overcast, would not be accompanying it to the review of Subject B because he would soon be taking retirement.

[15] On 7 April 2017, the Régie accepted Gaz Métro's proposal and adjusted the procedural timetable for Subject B of Phase 3 accordingly.

[16] On 27 June 2017, Gaz Métro filed its responses to the intervenors' and the Régie's DDRs on Subject B that had been sent on 24 and 27 March 2017. It also filed, in confidence, certain information in response to question 11.1 of Régie DDR9.

[17] On 28 June 2017, Gaz Métro filed an expert's report produced by the firm Black and Veatch, along with new evidence.

[18] On 29 June 2017, in its Decision D-2017-067,¹⁰ the Régie recognized the expert status of Mr. Russell Feingold of the firm Black and Veatch. It also issued directives regarding the production of the joint experts' report, and made the expert William P. Marcus responsible for coordinating the interaction between the experts and for producing the joint report.

[19] In its letter dated 4 July 2017, the Régie accepted ROEÉ's proposal and confirmed to the participants that any challenge to a reponse to a DDR produced in French must be filed no later than two business days after the filing of the English translation thereof.

[20] On 14 July 2017, SÉ informed the Régie that henceforth it would intervene on its own in the review of Subject B, Phase 3 of this file.

[21] On 10 August 2017, Gaz Métro responded to the intervenors' and the Régie's DDRs which dealt mainly with the new evidence that it had filed on 28 June 2017.

⁹ Exhibit [B-0237](#)

¹⁰ Decision [D-2017-067](#).

[22] On 14, 18 and 30 August 2017, ROEÉ and OC challenged certain responses that had been filed by Gaz Métro. The distributor commented on those challenges in its letters dated 17 and 23 August and 5 September 2017.

[23] In its Decision D-2017-092,¹¹ the Régie temporarily suspended its proceedings in this file. However, it asked the Phase 3 participants to comply with the deadlines set in the procedural timetable that it had established in its letter dated 26 April 2017. It also postponed the hearing to a later date.

[24] On 11 December 2017, Gaz Métro informed the Régie that, effective 29 November 2017, Gaz Métro Limited Partnership had changed its company name, in both French and English, to Énergir L.P. (Énergir or the Distributor) and, consequently, filed a third, re-amended application to reflect that change.

[25] Also in that same letter, the Distributor informed the Régie that the methodology described in Exhibit B-0277,¹² which is the subject of this proceeding, would be applied to its development projects effective 1 January 2018.

[26] In a letter dated 16 January 2018, the Régie lifted the suspension of the proceedings for this file and convened the participants to a hearing on 5 and 6 February 2018. The subject of said hearing would be the Régie's jurisdiction over the authorization of investment projects and the review of the methodology for evaluating the profitability of network extension projects.

[27] This Decision deals with challenges by the intervenors to certain responses that Énergir had given to their DDRs, sets the procedural rules for the remainder of the file, and rules on the request for a confidentiality order.

¹¹ Decision [D-2017-092](#).

¹² Exhibit [B-0277](#).

2. CHALLENGES TO ÉNERGIR'S RESPONSES

OC

[28] OC is contesting the Distributor's responses to questions 1.5, 1.5.1, 1.5.2, 6.1 and 6.2 of its DDR2.

[29] Questions 1.5, 1.5.1 and 1.5.2 deal with the way that operating and maintenance costs associated with network reinforcement investments are handled in the methodology used to evaluate the profitability of network extension projects.

[30] Énergir is of the opinion that operating and maintenance costs were dealt with as part of the review of Subject A. However, in its response to OC's challenges, it elaborates as follows:

“[TRANSLATION]

On that note, Gaz Métro would like to specify that the OPEX associated with the preventive (\$0.22/m) and corrective (\$0.37/m) maintenance costs per additional meter of service line were documented and discussed in Phase 3A. These OPEX costs will also apply when Gaz Métro needs to add new distribution service lines (looping) to reinforce the system. Moreover, when the system reinforcement consists of replacing existing service lines by greater capacity service lines, Gaz Métro believes that this does not incur any OPEX.

[...]

As for projects consisting of reinforcing the system by adding a compressor, these are less frequent and are usually investment projects valued at over \$1.5 million. Such investments, as well as the marginal operating costs that may result therefrom (such as electricity costs), are dealt with on a case-by-case basis and submitted to the Régie for approval. For example, in the investment project contemplating the reinforcement of the Saguenay transmission system (R-3919-2015) presented to the Régie, Gaz Métro included original marginal operating cost investments of \$775,000 in its profitability analysis

[...]

In that regard[,] Gaz Métro specifies that the OPEX for system reinforcements resulting from Phase 3A will be dealt with in the profitability analysis in the same way as the CAPEX. Consequently, both the OPEX (where applicable) and the CAPEX associated with reinforcement will be considered globally in the

profitability of the development plan, and not on a project-by-project basis [footnotes have been omitted].”¹³

[31] The Régie finds that this clarification from the Distributor provides a satisfactory response in the context of this review. Consequently, it rejects the challenge to the responses to OC DDR2 questions 1.5, 1.5.1 and 1.5.2.

[32] OC DDR2 questions 6.1 and 6.2 deal with marketing costs and other administrative fees associated with new customers. The Distributor considers that these costs were dealt with as part of the review of Subject A, Phase 3 and that there is no need to discuss them again.

[33] The Régie shares the Distributor’s opinion on this matter. Consequently, it rejects the challenge to the responses to OC DDR2 questions 6.1 and 6.2.

ROEE

[34] ROEE is contesting the Distributor’s responses to questions 1.2, 2.3, 3.1, 4.1 and 5.2 of its DDR2 and to questions 2.2, 11.2, 12.2 and 13.4 of its DDR3.

[35] In reply to the intervenor’s challenges, Énergir provided additional responses.¹⁴

[36] The Régie finds that the additional information provided by the Distributor in its response to DDR2 questions 1.2 and 2.3 and to DDR3 questions 2.2, 11.2, 12.2 and 13.4 satisfactorily completes its responses to ROEE’s questions. Consequently, it rejects ROEE’s challenge to the responses to these questions.

[37] As for DDR2 question 3.1, discussing the documents used to compile tables 6, 7 and 8 and Appendix A presented in the Black and Veatch report dated 22 September 2016 and prepared by expert Overcast,¹⁵ the Distributor indicates:

“[TRANSLATION]

[...] From this perspective, although question 3.1 of DDR2 falls within the scope

¹³ Exhibit [B-0306](#), p. 3 and 4.

¹⁴ Exhibits [B-0305](#) and [B-0318](#).

¹⁵ Exhibit [B-0145](#).

of this matter, the usefulness of the question is unfounded, seeing as a new expert was mandated for Phase 3B, expert evidence was filed by that expert and this question refers to evidence that is not part of Gaz Métro's request in this case."¹⁶
[emphasis added]

[38] Based on this assertion by the Distributor, the Régie understands that this section of the evidence is no longer part of this application. Consequently, the intervenor's question is no longer relevant. **The Régie therefore rejects the challenge to the response to ROÉÉ DDR2 question 3.1.**

[39] **Furthermore, the Régie orders Énergir to indicate exactly which sections of the filed evidence are no longer part of this application, and to confirm which ones it wishes to withdraw from the file. The Distributor shall provide this information no later than 12 February 2018 at noon.**

[40] Finally, the responses to ROÉÉ DDR2 questions 4.1 and 5.2 relate to the profitability analyses carried out between 2009 and 2016. However, the intervenor mentions, in its challenge, that it would be satisfied with just a portion of the analyses if Énergir is not able to provide all of them.

[41] Énergir declares that it is impossible for it to accede to ROÉÉ's request and to reconstitute the analysis of "[TRANSLATION] *each and every project, whether carried out or not, according to the context of the times that justified its acceptance or its rejection.*"¹⁷

[42] The Régie is of the opinion that the information requested by the intervenor is of considerable scope, and that responding to that request would entail a sizable amount of work. While it recognizes that this information could be useful to the review of the file, it considers that at this stage, collecting, processing and analyzing the information would unduly delay the review of the file.

[43] Instead, the Régie invites ROÉÉ to use the information filed by Énergir in response to Régie DDR9 question 9.3.¹⁸

¹⁶ Exhibit [B-0305](#), p. 4.

¹⁷ Exhibit [B-0264](#), p. 10.

¹⁸ Exhibit [B-0298](#), p. 32 and following.

[44] **For these reasons, the Régie rejects the challenge to the response to ROÉE DDR2 questions 4.1 and 5.2.**

3. PROCEDURAL RULES

[45] The Régie notes the withdrawal of the Association québécoise de lutte contre la pollution atmosphérique from the review of Subject B, Phase 3 of this file.

[46] In its Decision D-2017-092, the Régie temporarily suspended its proceedings in this file. However, it asked those participating in the review of Subject B, Phase 3 to comply with the deadlines set in the procedural timetable that it had established in its letter dated 26 April 2017. It also postponed the hearing to a later date.

[47] In that same Decision, the Régie indicated that, if necessary, it would add an extra step to allow the intervenors and the Distributor to adjust their evidence based on this decision on the challenges to the responses to the DDRs.

[48] Inasmuch as this Decision requests no further information of the Distributor, a hearing date is all that is needed to complete the timetable for the review of Subject B, Phase 3. **Consequently, the Régie hereby sets the dates for the hearing at 9 through 13 April 2018. As an exception, the hearing of 9 April 2018 will begin at 1:00 p.m.**

4. REQUEST FOR CONFIDENTIAL HANDLING

[49] On 27 June 2017, Énergir filed, in confidence, the redacted information contained in the response to Régie DDR9 question 11.1.¹⁹

¹⁹ Exhibit [B-0253](#) (this Exhibit is filed in confidence as Exhibit B-0254).

[50] The Distributor asked the Régie to issue a confidentiality order for the redacted information, for the same reasons as those given in the sworn statements made by Mrs. Isabelle Lemay²⁰ (Manager, Regulatory Affairs) and by Mr. Hugo Sigouin-Plasse²¹ (Manager, Regulatory Affairs and Claims) on 22 December 2016, filed in R-3992-2016. The Distributor asked that the confidentiality order be issued for an indefinite period of time.

[51] In his sworn statement, Mr. Hugo Sigouin-Plasse indicated that the work relating to the project²² that was the subject of follow-up in Exhibit B-0087 of File R-3992-2016²³ had resulted in a settlement following a dispute between the Distributor and the contractor in charge of the project. Énergir indicated that said dispute resolution agreement contained a confidentiality clause that prevented it from disclosing the amount of the settlement, without contravening its contractual obligations.

[52] As for Mrs. Lemay, she indicated that, as part of File R-3992-2016, she had filed certain information and tables relating to the investment project costs that were being monitored, in confidence.²⁴

[53] She added that, in the files requiring authorization from the Régie before said investments could proceed, Énergir asked that said information and tables be handled in confidence because it had to undertake a call-for-proposals process. In each of these files, the Régie declared itself satisfied with the explanations provided in support of the request for a confidentiality order, and it prohibited the disclosure, publication and dissemination of said information and tables until such time as the investment projects were completed. As of 22 December 2016, none of the investment projects being monitored had been completed.

[54] On 23 January 2018, Énergir clarified that the “*indefinite period of time*” of the request for confidential handling pertained only to the redacted information in line 14 of the table contained in the response to Régie DDR9 question 11.1 for the reasons given in

²⁰ File R-3992-2016, Exhibit [B-0004](#).

²¹ File R-3992-2016, Exhibit [B-0003](#).

²² Network extension between Vallée-Jonction and Thetford Mines.

²³ File R-3992-2016, [Exhibit B-0087](#).

²⁴ Files R-3941-2015, R-3857-2013, R-3922-2015, R-3919-2015, R-3937-2015 and R-3958-2015).

Mr. Sigouin-Plasse's sworn statement. As for the redacted information in lines 31 and 32 of that same table, Énergir asked instead that the confidentiality order be valid for as long as it took to complete the Bellechasse and Asbestos projects, for the reasons given in Mrs. Lemay's sworn statement. At that time, Énergir maintained that those projects were not yet completed.

[55] Having reviewed the sworn statements of Mrs. Lemay and Mr. Sigouin-Plasse, the Régie finds that the reasons given justify the issuance of the requested order covering the redacted information in Exhibit B-0253.²⁵

[56] **Consequently, the Régie hereby grants Énergir's request for a confidentiality order covering this information. It hereby prohibits the disclosure, publication and dissemination of the redacted information in line 14 of the table presented in Exhibit B-0253, filed in confidence as B-0254, for an indefinite period of time, as well as the disclosure, publication and dissemination of the redacted information in lines 31 and 32 of that same table, until the projects in question are completed.**

[57] **For these reasons,**

The Régie de l'énergie:

REJECTS OC's challenge to Énergir's responses to OC DDR2 questions 1.5, 1.5.1, 1.5.2, 6.1 and 6.2.

REJECTS ROEÉ's challenge to Énergir's responses to ROEÉ DDR2 questions 1.2, 2.3, 3.1, 4.1 and 5.2 and to ROEÉ DDR3 questions 2.2, 11.2, 12.2 and 13.4.

ORDERS Énergir to indicate exactly which sections of the filed evidence are no longer part of this application, and to confirm which ones it wishes to withdraw from the file, no later than 12 February 2018 at noon.

SCHEDULES the hearing to begin on **9 April 2018, at 1:00 p.m.**, and to end on **13 April 2018.**

²⁵ Filed in confidence under B-0254.

PROHIBITS the disclosure, publication and dissemination of the redacted information in line 14 of the table contained in the response to Question 11.1 of Exhibit B-0253, filed in confidence as B-0254, for an indefinite period of time.

PROHIBITS the disclosure, publication and dissemination of the redacted information in lines 31 and 32 of the table contained in the response to Question 11.1 of Exhibit B-0253, filed in confidence as B-0254, until the projects in question are completed.

Laurent Pilotto
Regulator

Marc Turgeon
Regulator

Louise Pelletier
Regulator

Representatives:

Association des consommateurs industriels de gaz (ACIG) represented by M^e Guy Sarault

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

Option Consommateurs (OC) represented by M^e Éric David

Regroupement des organismes environnementaux en énergie (ROÉÉ) represented by M^e Franklin S. Gertler and M^e Nicholas Ouellet

Énergir, s.e.c. (Énergir) represented by M^e Hugo Sigouin-Plasse

Stratégies énergétiques (SÉ) represented by M^e Dominique Neuman

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