

CANADA

RÉGIE DE L'ÉNERGIE

PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

NO.: R-4008-2017

HYDRO-QUÉBEC DISTRIBUTION

Applicant

AND

GROUPE DE RECHERCHE  
APPLIQUÉE EN  
MACROÉCOLOGIE (GRAME)

Intervenor

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ÉNERGIR – APPLICATION REGARDING THE IMPLEMENTATION OF  
MEASURES CONCERNING THE PURCHASE AND SALE OF RENEWABLE  
NATURAL GAS (RNG)

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## ARGUMENTS

### 1. Opportunity to establish a feed-in tariff (FIT)

#### 1.1 The FIT as an appropriate and necessary tool

- [1] GRAME is of the opinion that an FIT is an appropriate, even necessary, mechanism for supporting the RNG sector in Québec and to be able to achieve the objectives of the 2030 Energy Policy Action Plan.

**Objective:** Increase the production and consumption of renewable natural gas in Québec;

**Action:** 37. In 2017, adopt a regulation establishing 5% as the minimum proportion of renewable natural gas that Québec natural gas distributors must inject in their distribution network for clients in Québec;

**Target date** (deadline): Achieve 5% renewable natural gas content by 2020<sup>1</sup>.

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<sup>1</sup> MERN, [2030 Energy Policy Action Plan](#), 2017, p. 3.

- [2] The Québec residual materials management policy provides for banning the disposal of putrescible organic material by 2020<sup>2</sup>.
- [3] The municipalities are already working toward achieving the residual materials management policy's objectives. In the absence of an FIT, it is very likely that the municipalities will turn to industries other than RNG to divert their putrescible materials from disposal, particularly composting.
- [4] Delaying the establishment of an FIT could result in wasting the contribution of many municipalities to achieving the Energy Policy's objective if they choose to invest in other putrescible material recovery industries. Meeting regulatory requirements could then depend on the purchase of RNG outside Québec.

## 1.2 The issue of the absence of regulation requiring a quantity of RNG in the supply plan

- [5] The absence of regulation requiring a quantity of RNG in the supply plan is not an obstacle to establishing RNG for two reasons. First, a minimum target of 5% to be reached by 2020 was set by the Ministère de l'Énergie et des Ressources naturelles in the 2030 Energy Policy Action Plan. Given that section 5 of the *Act respecting the Régie de l'énergie* (the Act) applies regardless of the adoption of such regulation, GRAME submits that the knowledge of this target is sufficient for establishing the framework for reviewing the Application.
- [6] This target must be considered on the basis of the government's objective in the 2030 Energy Policy of increasing the production of renewable natural gas in Québec:

### **Natural gas supply**

The government intends to:

- pursue the extension of the gas network;
- develop a liquefied natural gas supply network;
- expand renewable natural gas production<sup>3</sup>.

- [7] The Régie itself indicated that it would take into account the objectives of energy policies in this file:

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<sup>2</sup> MDDELCC, [Québec Residual Materials Management Policy – 2011–2015 Action Plan](#), 2011, p. 18.

<sup>3</sup> Québec, [2030 Energy Policy – Energy in Québec: A Source of Growth](#), 2016, p. 54.

[30] As with the other concerns mentioned in section 5 of the Act, meeting energy policy objectives will certainly be a factor that the Régie will take into account when reviewing the Application. However, in the absence of a specific regulation regarding RNG, its regulatory framework is based on sections 48 and 52 of the Act<sup>4</sup>.

- [8] Second, it appears highly likely that a regulation will be adopted shortly. This is because the Energy Policy Action Plan provided for its adoption in 2017, but particularly due to the draft regulation published in the *Gazette officielle du Québec* on August 22, 2018: *Regulation respecting the quantity of renewable natural gas to be delivered by a distributor*. Interested persons have 45 days to make comments about the draft regulation. The regulation will take effect 15 days following the date it is published in the *Gazette officielle du Québec*<sup>5</sup>.
- [9] Although it is not yet in force, the draft regulation substantially reduces the legal uncertainty surrounding the issue and confirms the impending establishment of regulatory requirements regarding the quantities of RNG to be delivered. Of course, the targets set are different from those established in the Energy Policy. As summarized by Énergir: *[Translation]* “Based on this draft regulation, it is expected that natural gas distributors must deliver annually a quantity of renewable natural gas equal to or greater than the result of a formula reproduced in the draft regulation, which, by 2020, could correspond to a volume equivalent to 1% of the total volume of natural gas distributed, and increase to 2% by 2023 and 5% by 2025.”<sup>6</sup> However, this variation in targets, likely due to the government’s delay in publishing the draft regulation, does not affect GRAME’s position that in the presence of a regulatory requirement regarding the quantities of RNG to be delivered, the FIT is an appropriate mechanism that must be examined.
- [10] Like Énergir, GRAME is of the opinion that, for the purposes of determining the issues to be examined, the Régie must consider that this new regulatory framework will be in effect in the short term.
- [11] Therefore, **GRAME is of the opinion that the Régie should examine the establishment of an FIT in this file.**

## 2. Interpretation of a “class of consumers”

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<sup>4</sup> R-4008-2017, [D-2018-052](#), para 30.

<sup>5</sup> *Gazette officielle du Québec*, [Regulation respecting the quantity of renewable natural gas to be delivered by a distributor](#), August 22, 2018, Vol. 150, No. 34, p. 4437, section 2.

<sup>6</sup> R-4008-2017, [B-0040](#), para 8.

[12] The Act does not define the expression “class of consumers.” GRAME’s research to date has not revealed a decision by the Régie containing such a definition.

[13] In this regard, GRAME agrees with Énergir that the Régie must interpret its enabling statute broadly and liberally in order to achieve its objective<sup>7</sup>.

[14] GRAME would also like to point out the rule confirmed by the Supreme Court of Canada in *Canada Trustco Mortgage Co. v. Canada* to the effect that statutory interpretation consists in examining the ordinary sense of words in their legislative context:

It has been long established as a matter of statutory interpretation that “the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament”: see 65302 *British Columbia Ltd. v. Canada*, [1999] 3 S.C.R. 804, at para. 50. The interpretation of a statutory provision must be made according to a textual, contextual and purposive analysis to find a meaning that is harmonious with the Act as a whole. When the words of a provision are precise and unequivocal, the ordinary meaning of the words play a dominant role in the interpretive process. On the other hand, where the words can support more than one reasonable meaning, the ordinary meaning of the words plays a lesser role. The relative effects of ordinary meaning, context and purpose on the interpretive process may vary, but in all cases the court must seek to read the provisions of an Act as a harmonious whole<sup>8</sup>.

[15] This rule was applied by the Régie in decision D-2013-187<sup>9</sup>, cited by Énergir, in which it referred to *Le Petit Robert* to establish the common meaning of the term “consommateur” (consumer).

[16] GRAME submits that this approach is suitable to define the term “catégorie” (class). The Larousse and Le Petit Robert dictionaries, respectively, define a “catégorie” (class) as:

[/Translation] A group of the same type of people or things<sup>10</sup>.

[/Translation] A category containing the same type of things<sup>11</sup>.

[17] GRAME respectfully does not support the definition of a “class of consumers” proposed by Énergir, as it is incompatible with the common meaning of the word “class,” which unequivocally implies that the elements included in a class are of the same type. In fact, by defining a class of consumers as “a group of people who use

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<sup>7</sup> R-4008-2017, [B-0042](#), para 12.

<sup>8</sup> *Canada Trustco Mortgage Co. v. Canada*, [2005 SCC 54](#), [2005] 2 S.C.R. 601, para 10

<sup>9</sup> R-3837-2013, Phase 2, [D-2013-187](#), para 48.

<sup>10</sup> Larousse en ligne, “[catégorie](#)” (class), consulted on August 23, 2018.

<sup>11</sup> Le Petit Robert, “catégorie” (class), 1986, p. 266.

goods, resources or services to meet their needs,” the only characteristic shared by the people in the group is that they are consumers. The definition proposed by Énergir is less related to a class of consumers than it is to all consumers.

[18] GRAME supports the position of SÉ-AQLPA-GIRAM to the effect that voluntary buyers of RNG do not constitute a class of consumers within the meaning of the Act, since a shared desire, which is a subjective and variable criterion, is not a sufficient characteristic to establish that they are of the same type.

[19] The application of the polluter pays principle is also an argument in favour of not recognizing voluntary RNG buyers as a class of consumers, enabling the RNG supply cost to be fully socialized. GRAME also points out that “polluter pays” is a sustainable development principle recognized in the *Sustainable Development Act* and, therefore, the Régie can take it into account when applying section 5 of the Act.

“Polluter pays”: Those who generate pollution or whose actions otherwise degrade the environment must bear their share of the cost of measures to prevent, reduce, control and mitigate environmental damage;<sup>12</sup>

**[20] In conclusion, GRAME respectfully submits that voluntary buyers of RNG do not constitute a class of consumers within the meaning of section 52 of the Act.**

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<sup>12</sup> *Sustainable Development Act*, [CQLR, c. D-8.1.1](#), section 6(o).