

C A N A D A

**PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL**

ÉNERGIR

Applicant

No. R-4008-2017

and

**REGROUPEMENT DES
ORGANISMES
ENVIRONNEMENTAUX EN ÉNERGIE
(ROÉÉ) *et al.***

Intervenors

APPLICATION REGARDING THE IMPLEMENTATION
OF MEASURES CONCERNING THE PURCHASE AND SALE
OF RENEWABLE NATURAL GAS

**Summary of ROÉÉ's arguments
on the issues of the hearing of September 4 and 6, 2018**

August 24, 2018

Introduction

1. The Régie has asked Énergir and intervenors to submit arguments pertaining to two preliminary issues and to present their arguments in person on September 4 and 6, 2018.
 - D-2018-109, August 16, 2018, paras 23–27
 - Letter from the Régie, A-0012
2. ROÉÉ understands that Énergir's application concerns in particular the approval of the characteristics of RNG supply contracts and the establishment of a new RNG tariff.
 - Third re-amended application, B-0026, conclusions
3. ROÉÉ also holds that the Régie already has decided that it is fully competent to handle both components of Énergir's application, in accordance with the existing regulatory framework.
 - D-2018-052, May 8, 2018, particularly para 31
4. ROÉÉ believes that at this preliminary stage of the file, the Régie should proceed with caution and avoid formulating and ruling on preliminary issues that are equivalent to motions for dismissal, without first hearing Énergir's and the intervenors' evidence and arguments.
 - The following regular law court rulings (French only) offer instructive analogies:
 - [Hydro-Québec c. Entreprises R. & G. St-Laurent inc., 2016 QCCA 2102 \(CanLII\)](#), para 1
 - [Fanous c. Gauthier, 2018 QCCA 293 \(CanLII\)](#), para 21
5. This risks encroaching on Énergir's right to apply to and have its application heard by the Régie.
6. This also risks putting the Régie in a situation whereby it is failing to exercise its broad jurisdiction and responsibilities under the current law.
7. In this context, ROÉÉ's arguments herein are submitted at the Régie's request and subject to the intervenor's evidence and arguments on the basis of merit.

Issue 1: [translation] “...the appropriateness, in the absence of a new regulatory framework, of establishing a feed-in tariff (FIT) for the purchase of RNG, as proposed by Énergir.”

8. Despite the Régie’s choice to frame this question in terms of opportunity, ROÉÉ respectfully submits that a negative response, which precludes the examination of an FIT for the purchase of RNG would be tantamount to an unlawful refusal to exercise the Régie’s responsibilities under the current law.
9. The Régie has already asked this question and has invited interested parties to comment:
 - D-2018-006, January 24, 2018, paras 15–20.
10. ROÉÉ believes that its comments in its first application for intervention still afford the correct response under the applicable law. The Régie has jurisdiction here and it cannot refuse to address this part of Énergir’s application while awaiting a possible amendment to the law in this matter.
 - C-ROÉÉ-0002, February 15, 2018, pp. 7–10.
11. As aforesaid, the Régie also previously rendered a decision on this matter.
 - D-2018-052, May 8, 2018, particularly para 31
12. This decision, rendered by three Commissioners in light of comprehensive representations, was not subject to a revision under section 37 of the Act.
13. To maintain the stability of decisions and ensure that the new panel respects the decision of the original panel, it is not advisable to move backwards.
14. Despite this situation, the new panel has come back with the same question.
 - D-2018-109, August 16, 2018, paras 23–27
 - Letter from the Régie, A-0012
15. Although some may claim to find an answer to the Régie’s question in the draft *Regulation respecting the quantity of renewable natural gas to be delivered by a distributor*, published in the Gazette officielle on August 22 (G.O., Part 2, No. 34, p. 4437), we respectfully submit that this draft consists of pure speculation and does not change the applicable law.
16. With the provincial election having been called on August 23, 2018, the future of this government measure is unpredictable.
 - [Les élections générales provinciales 2018 sont déclenchées](#)
17. Now, as before this publication, the Régie can and must address Énergir’s application under the current law.

Issue 2: [translation] “...whether voluntary buyers of RNG can be considered a class of consumers in accordance with section 52 of the Act respecting the Régie de l’énergie.”

18. ROEÉ is not against the idea of socializing costs associated with the purchase and sale of RNG, and in this sense it understands the apparent intended purpose of SÉ-AQPLA-GIRAM.
19. However, we do not agree with the interpretation of section 52 of the Act that the intervenor is proposing.
20. This section states “A tariff may also reflect any other acquisition-related cost of the natural gas to the distributor.” In this sense, ROEÉ considers that a purchasing tariff can indeed reflect the purchase prices of RNG to customers who choose it.
- The Act, section 52
21. The modern interpretation of this provision, pursuant to its terms, in its full context, based on the purpose of the *Act respecting the Régie de l’énergie* and in accordance with the Régie’s vast powers with respect to the supply and tariffs of natural gas, including renewable natural gas, confirms for us that the definition of “class of consumers” in section 52 of the Act does not preclude the establishment of a RNG tariff.

Respectfully submitted,

Montréal, August 23, 2018

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