

Régie de l'énergie – File R-4008-2017
Purchase and sale of renewable natural gas (“RNG”) by Énergir

C A N A D A

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

FILE R-4008-2017

RÉGIE DE L'ÉNERGIE

PURCHASE AND SALE OF RENEWABLE
NATURAL GAS (“RNG”) BY ÉNERGIR

ÉNERGIR

Applicant

-and-

REGROUPEMENT SÉ-AQLPA-GIRAM,
COMPRISING:

STRATÉGIES ÉNERGÉTIQUES (S.É.)

ASSOCIATION QUÉBÉCOISE DE LUTTE
CONTRE LA POLLUTION ATMOSPHÉRIQUE
(AQLPA)

GROUPE D'INITIATIVES ET DE RECHERCHES
APPLIQUÉES AU MILIEU (GIRAM)

Intervenor

**ARGUMENTS BY REGROUPEMENT SÉ-AQLPA-GIRAM CONCERNING
TWO PRELIMINARY ISSUES**

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Prepared for:
Regroupement SÉ-AQLPA-GIRAM, comprising:
Stratégies Énergétiques (S.É.)
Association québécoise de lutte contre la pollution atmosphérique (AQLPA)
and Groupe d'initiatives et de recherches appliquées au milieu (GIRAM)

*Arguments concerning two preliminary issues
M^e Dominique Neuman, LL.B., Attorney*

*In respect of Regroupement SÉ-AQLPA-GIRAM,
comprising: Stratégies Énergétiques (S.É.)
Association québécoise de lutte contre la pollution atmosphérique (AQLPA)
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August 23, 2018

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SUMMARY OF RECOMMENDATIONS

RECOMMENDATION NO. SÉ-AQLPA-GIRAM-1
(USE OF THE WORD “TARIFF”)

We recommend that the Régie de l'énergie ask Énergir and the other participants to refrain from using the incorrect expression “*feed-in tariff (FIT)*” in favour of “*price schedule for Énergir’s purchase of RNG from producers*” in this file and in the future.

RECOMMENDATION NO. SÉ-AQLPA-GIRAM-2
(INTERPRETATION OF THE SECOND SENTENCE OF PARAGRAPH 24 OF DECISION D-2018-109) (available in French only):

We understand that by using the word “*tariff*” in the second sentence of paragraph 24 of decision D-2018-109, the Régie is not referring to the FIT (which is not a tariff within the meaning of the Act, and which, furthermore, is “*the purchase cost*” itself). Rather, it is referring to the tariff payable by the RNG consumer, based on one of the tariff options (if they are under its regulatory jurisdiction), outlined by the Régie in paragraph 39 of its decision D-2018-052 (available in French only).

RECOMMENDATION NO. SÉ-AQLPA-GIRAM-3
(FIRST ISSUE, FIRST SENTENCE OF PARAGRAH 24 OF DECISION D-2018-109)

We recommend that the Régie de l'énergie determine that it is not only appropriate but mandatory to proceed immediately (without waiting for a new regulatory framework) with examining Énergir’s application in order to approve one of the components of this distributor’s supply plan, that is “*the characteristics of the contracts the [distributor] intends to enter into,*” in particular with regard to the possible establishment of a “*price schedule for Énergir’s purchase of RNG from producers.*” (FIT)

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RECOMMENDATION NO. SÉ-AQLPA-GIRAM-4
(FIRST ISSUE, SECOND SENTENCE OF PARAGRAPH 24 OF DECISION D-2018-109)

We recommend that the Régie de l'énergie determine that it is premature for the Régie to decide at this preliminary stage the manner in which the purchase cost of RNG will be incorporated into the “*tariff*,” a concern that is raised in the second sentence of the first preliminary issue identified by the Régie in the second sentence of paragraph 24 of its decision D-2018-109. Determining the manner in which the purchase cost of RNG will be incorporated into the “*tariff*” requires evidence from Énergir and intervenors. It will vary according to the type of rate option that will be selected from those listed by the Régie in paragraph 39 of its [decision D-2018-052](#).

RECOMMENDATION NO. SÉ-AQLPA-GIRAM-5
(SECOND ISSUE, PARAGRAPH 25 OF DECISION D-2018-109)

We recommend that the Régie de l'énergie determine that *[translation]* “customers who are interested in a potential RNG tariff offered by Énergir” cannot be considered as a “class of consumers” within the meaning of section 52 of the Act.

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TABLE OF CONTENTS

1 - PREAMBLE	1
2 - ISSUE NO. 1: IN THE ABSENCE OF A NEW REGULATORY FRAMEWORK, THE APPROPRIATENESS OF ESTABLISHING A FEED-IN TARIFF (FIT) FOR THE PURCHASE OF RNG AND THE MANNER IN WHICH THE PURCHASE COST WILL BE INCORPORATED INTO THE TARIFF	3
2.1 REPLACEMENT OF THE EXPRESSION “FEED-IN TARIFF (FIT)” IN FAVOUR OF “PRICE SCHEDULE FOR ÉNERGIR’S PURCHASE OF RNG FROM PRODUCERS”	3
2.2 INTERPRETATION OF THE WORD “TARIFF” IN THE SECOND SENTENCE OF PARAGRAPH 24 OF DECISION D-2019-109	8
2.3 IN THE ABSENCE OF A NEW REGULATORY FRAMEWORK, THE OPPORTUNITY TO ESTABLISH A FEED-IN TARIFF (FIT) FOR THE PURCHASE OF RNG (THAT IS, A “PRICE SCHEDULE FOR ÉNERGIR’S PURCHASE OF RNG FROM PRODUCERS”	10
2.4 MANNER IN WHICH THE PURCHASE COST WILL BE INCORPORATED INTO THE TARIFF (FIRST ISSUE, SECOND SENTENCE OF PARAGRAPH 24 OF DECISION D-2018-109)	18
3 - ISSUE NO. 2: CAN “CUSTOMERS WHO ARE INTERESTED IN A POTENTIAL RNG TARIFF OFFERED BY ÉNERGIR” BE CONSIDERED AS A “CLASS OF CONSUMERS” WITHIN THE MEANING OF THE ACT?	20
4 - CONCLUSION	25

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1

PREAMBLE

1 - The Régie de l'énergie has before it, in this file R-4008-2017, an application from Énergir (hereinafter referred to as “the distributor”) for the purchase and sale of renewable natural gas (“RNG”) ¹

2 - Before addressing the substance of this application, the Régie de l'énergie has, in its procedural decision [D-2018-109](#), requested participants to submit their arguments, for the purpose of a hearing to be held on September 4 and 6, 2018, on the following two preliminary issues [translation] “since their determination will have a major impact on the remainder of the file” ²:

[Translation]

[24] Therefore, the Régie believes it appropriate to determine, in the absence of a new regulatory framework, the appropriateness of establishing a feed-in tariff (FIT) for the purchase of RNG, as proposed by Énergir. The Régie proposes to examine the manner in which the purchase cost will be incorporated into the tariff.

[25] The Régie will also examine the issue raised by SÉ-AQLPA-GIRAM. According to the latter, customers who are interested in a potential RNG tariff offered by Énergir cannot be considered as a “class of consumers” within the meaning of the Act³. ⁴

¹ ÉNERGIR, File R-4008-2017, [Exhibit B-0033, Fourth re-amended application](#).

² RÉGIE DE L'ÉNERGIE, File R-4008-2017, [Decision D-2018-109](#), para 23.

³ Footnote in the citation: [Exhibit C-SÉ-AQLPA-GIRAM-0011](#), p. 17 and following

⁴ RÉGIE DE L'ÉNERGIE, File R-4008-2017, [Decision D-2018-109](#), paras 24–25.

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3 - The Régie de l'énergie pointed out these issues in its [letter A-0012](#) dated August 21, 2018.

4 - Énergir submitted its arguments concerning these two preliminary issues on August 22, 2018 (Exhibits [B-0040](#) and [B-0042](#) respectively).

5 - This file constitutes arguments concerning these two preliminary issues from Regroupement SÉ-AQLPA-GIRAM, comprising *Stratégies Énergétiques (S.É.)*, *Association québécoise de lutte contre la pollution atmosphérique (AQLPA)* and *Groupe d'initiatives et de recherches appliquées au milieu (GIRAM)*.

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2

**ISSUE NO. 1: IN THE ABSENCE OF A NEW REGULATORY FRAMEWORK,
THE OPPORTUNITY TO ESTABLISH A FEED-IN-TARIFF (FIT) FOR THE PURCHASE
OF RNG AND THE MANNER IN WHICH THE PURCHASE COST WILL BE
INCORPORATED INTO THE TARIFF**

**2.1 THE REPLACEMENT OF THE EXPRESSION “FEED-IN-TARIFF (FIT)” IN FAVOUR OF “PRICE
SCHEDULE FOR ÉNERGIR’S PURCHASE OF RNG FROM PRODUCERS”**

6 - First, Regroupement SÉ-AQLPA-GIRAM asks that the Régie and Énergir as well as the other participants refrain from using the expression “*feed-in-tariff (FIT)*” in this file, since it is incorrect and may lead to confusion.

The word “*tariff*” in this expression is indeed used in a different, even opposite manner to the meaning of the same word, as it appears in the Act. Such a “*tariff*” does not correspond to the exercise of rate authority by the Régie de l'énergie, as defined in the Act. Thus, even a legally knowledgeable reader, who is not actively involved in this file before the Régie, may incorrectly interpret such an expression.

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Énergir itself notes:

15. [Translation] Énergir states that the expression “feed-in-tariff” (“FIT”) is an expression used in many jurisdictions to refer to the price paid by gas distributors to RNG producers (see the study led by Aviseo, *Gaz Métro-1*, Document 1, Appendix 1, p. 21), explaining why Énergir uses this expression in Exhibit *Gaz Métro-1*, Document 1.⁵

7 - The legal community in Québec and elsewhere in the world is increasingly promoting the use of plain language in legal documents and in those documents presented before the courts.

8 - Thus, the Québec organization *Éducaloi*, in the words of its Belgian Francophone counterpart *Droits Quotidiens*⁶, states that:

[Translation] *The use of plain language in any legal communication is a guarantee of success in terms of a winning business strategy and effective social policy.*

*It interconnects a number of professional, economic and social interests sought by companies and organizations as well as by the government.*⁷

The Régie de l'énergie itself supported Hydro-Québec Distribution in the use of plain language when drafting its own *Conditions of Service* in File R-3964-2016 Phase 1,

⁵ **ÉNERGIR**, File R-4008-2017, [Exhibit B-0033, Fourth re-amended application](#), para 15.

⁶ **DROITS QUOTIDIENS**, Website, “*langage juridique clair*” [plain legal language] page, <https://www.droitsquotidiens.be/fr/langage-juridique-clair>, consulted on August 23, 2018: “*L’emploi d’un langage clair dans toute communication juridique est un gage de succès. [The use of plain language in any legal communication is a guarantee of success].// Il rejoint de nombreux intérêts professionnels, économiques et sociaux recherchés aussi bien par les entreprises que par les organisations sociales et par les pouvoirs publics.*”.[It interconnects a number of professional, economic and social interests sought by companies and organizations as well as by the government]

⁷ **ÉDUCALOI**, Website, “*Le langage clair en droit*” [Plain language in law], <https://www.educaloi.qc.ca/services-et-ressources/organisations/le-langage-clair-en-droit>, consulted on August 23, 2018.

the distributor thus having recourse to *Éducaloi* services to improve the clarity of the writing of said conditions.⁸

9 - As M^e Stéphanie Roy rightly points out in her article “*Le langage clair en droit: pour une profession plus humaine, efficace, crédible et prospère!*” [Plain language in law: for a more humane, effective, credible and prosperous profession!]:

At one time, the jargonistic language of experts was thrust on the population. Where the incomprehensibility of legal language has long incited admiration and fear for the profession, this is no longer the case.

Today, Quebecers are more informed than ever, in particular on account of the arrival of information technologies. They want to be more involved in managing their legal issues.⁹ More and more, they are claiming their right to understand.¹⁰

Plain language in law is no longer a simple question of access to justice. It concerns the future of the profession. [...]

Legal texts (laws, judgments, doctrine, contracts, etc.) are first and foremost communicative acts.¹¹ They should therefore be written according to the

⁸ RÉGIE DE L'ÉNERGIE, File R-3864-2016, Phase 1, [Decision D-2017-118](#), paras 23, 776, 789.

⁹ Footnote in the citation: **THE CANADIAN BAR ASSOCIATION**, *CBA Legal Futures Initiative. The Clients' Perspective*, June 2013, p. 8, https://www.cba.org/CBAMediaLibrary/cba_na/PDFs/CBA%20Legal%20Futures%20PDFS/The-Clients-Perspective-Linked-eng.pdf [Editor's note: The reference in the citation has been updated].

¹⁰ Footnote in the citation: **Nicole FERNBACH**, *La lisibilité dans la rédaction juridique au Québec* [Legibility in legal writing in Québec], Ottawa, Canadian Legal Information Centre, 1990, p. 4; **Serge ALLARD**, “Réflexion sur la rédaction des actes” [Discussion paper on the drafting of acts]. (2008) 2 *C.P. du N.* 31, 45.

¹¹ Footnote in the citation: **Jean-Louis BAUDOIN**, “L’illisible: la lecture contemporaine de la loi et du jugement” [Illegible: contemporary reading of the law and judgment], in **Ysolde GENDREAU (dir.)**, *Le lisible et l’illisible. The Legible and the Illegible*, Montréal, Éditions Thémis, 2003, p. 1, page 5. Text that summarizes the notes used in preparing a conference delivered at the Centre de recherche en droit public (Université de Montréal) on January 25, 2001; **Louise MAILHOT**, *Decision writing. A practical guide to legal writing*, 2nd ed., Cowansville, Éditions Yvon Blais, 2004, p. 8.

*plain language in law principles, which are nothing but effective communication principles.*¹²

10 - In 2008, the Barreau du Québec formed a plain language committee, which published in October 2010 a report entitled *Le langage clair : Un outil indispensable à l'avocat* [Plain language – An indispensable guide for lawyers].¹³

The research carried out by the author emeritus Nicole M. Fernbach, founder of the *International Readability Centre* in Montréal, helped develop this plain language approach in French-speaking states.¹⁴

In the United States, a plain language requirement was codified at the federal level, when on June 1, 1998 President Clinton issued a *Memorandum on Plain Language in Government Writing. Memorandum for the Heads of Executive Departments and Agencies*.¹⁵ This requirement was subsequently legislatively codified at the federal level in the United

¹² **Stéphanie ROY**, “Le langage clair en droit: pour une profession plus humaine, efficace, crédible et prospère!” [Plain language in law: for a more humane, efficient, credible and prosperous profession!]. (2013) 54 *Les Cahiers de Droit* 975, https://www.educaloi.qc.ca/sites/all/files/langage_clair_sroy.pdf, pp. 979–980.

¹³ **BARREAU DU QUÉBEC**, *Le langage clair : Un outil indispensable à l'avocat*, October 2010, <http://collections.banq.qc.ca/ark:/52327/bs2006344>.

¹⁴ **Nicole M. FERNBACH**, “La simplification du texte juridique: étude comparative,” [Legal text simplified: a comparative study] in **Gérard SNOW, Jacques VANDERLINDEN**, *Français juridique et science du droit* [Legal French and the science of law]. Bruylant, Brussels, 1995, pp. 105–122, <http://www.lisibilitejuridique.net/articles/francaisjuridique.pdf>.

Nicole M. FERNBACH, “Langue juridique et lisibilité” [Legal language and legibility]. Interview in *Magazine Circuit, Magazine de l'Ordre des traducteurs, terminologues et interprètes agréés du Québec*, Issue 121, Winter 2013, <http://www.circuitmagazine.org/langue-juridique-et-lisibilite>.

¹⁵ **UNITED STATES OF AMERICA**, *Memorandum on Plain Language in Government Writing. Memorandum for the Heads of Executive Departments and Agencies*, Administration of William J. Clinton, 1998, pp. 1010–1011, <https://www.gpo.gov/fdsys/pkg/WCPD-1998-06-08/pdf/WCPD-1998-06-08-Pg1010.pdf>.

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States by the *Plain Writing Act of 2010*, adopted by the two chambers in Congress, prior to President Obama’s approval on October 13, 2018.¹⁶

Since 1983, the UK association Clarity—an international association promoting plain legal language—has been publishing a journal that focuses exclusively on this subject.¹⁷

11 - For all the above reasons, Regroupement SÉ-AQLPA-GIRAM requires that the Régie de l'énergie, Énergir and the other participants refrain from using the incorrect expression “feed-in tariff (FIT)” in favour of “price schedule for Énergir’s purchase of RNG from producers” in this file and in the future.

**RECOMMENDATION NO. SÉ-AQLPA-GIRAM-1
(USE OF THE WORD “TARIFF”)**

We recommend that the Régie de l'énergie ask Énergir and the other participants to refrain from using the incorrect expression “feed-in tariff (FIT)” in favour of “price schedule for Énergir’s purchase of RNG from producers” in this file and in the future.

¹⁶ **UNITED STATES OF AMERICA**, *An Act to enhance citizen access to Government information and services by establishing that Government documents issued to the public must be written clearly, and for other purposes. (Plain Writing Act of 2010)*, H.R. 946; Pub.L. 111–274, <https://www.gpo.gov/fdsys/pkg/PLAW-111publ274/pdf/PLAW-111publ274.pdf>.

¹⁷ **CLARITY—AN INTERNATIONAL ASSOCIATION PROMOTING PLAIN LEGAL LANGUAGE**, see <http://www.clarity-international.net/about/aboutus/> and [http://www.lisibilite.net/clarite/clarite/Clarity%20\(Oct%2007\).pdf](http://www.lisibilite.net/clarite/clarite/Clarity%20(Oct%2007).pdf), as well as the journal under <http://www.clarity-international.net/clarite-journal/archives/>.

2.2 INTERPRETATION OF THE WORD “TARIFF” IN THE SECOND SENTENCE OF PARAGRAPH 24 OF DECISION D-2019-109

12 - As indicated, the first preliminary issue that the Régie de l'énergie wishes to examine is outlined below:

[Translation]

*[24] Therefore, the Régie believes it appropriate to determine, in the absence of a new regulatory framework, the appropriateness of establishing a feed-in tariff (FIT) for the purchase of RNG, as proposed by Énergir. The Régie proposes to examine the manner in which the purchase cost will be incorporated **into the tariff**.¹⁸ [our emphasis]*

13 - In section 2.3 below, in the absence of a new regulatory framework, we address the opportunity to establish a feed-in-tariff (FIT) for the purchase of RNG (that is, as seen as above, a “price schedule for Énergir’s purchase of RNG from producers”).

In section 2.4, we address the manner in which the purchase cost will be incorporated into the “*tariff*,” as indicated by the Régie in the second sentence of paragraph 24 of its decision D-2018-109. **It is our understanding that, by the word “tariff” in this sentence, the Régie is not referring to the FIT here (which is not a tariff within the meaning of the Act, and which, furthermore, is “the purchase cost” itself). Rather, it is referring to the tariff payable by the RNG consumer, based on one of the tariff options (if they are under its regulatory jurisdiction) outlined by the Régie in paragraph 39 of its decision D-2018-052.**¹⁹

¹⁸ RÉGIE DE L'ÉNERGIE, File R-4008-2017, [Decision D-2018-109](#), paras 24–25.

¹⁹ RÉGIE DE L'ÉNERGIE, File R-4008-2017, [Decision D-2018-052](#), para 39.

RECOMMENDATION NO. SÉ-AQLPA-GIRAM-2
(INTERPRETATION OF THE SECOND SENTENCE OF PARAGRAPH 24 OF
DECISION D-2018-109) (available in French only):

It is our understanding that, by the word “*tariff*” in the second sentence of paragraph 24 of decision D-2018-109, the Régie is not referring to the FIT here (which is not a tariff within the meaning of the *Act*, and which, furthermore is the “*purchase cost*” itself). Rather, it is referring to the tariff payable by the RNG consumer, based on one of the tariff options (if they are under its regulatory jurisdiction) outlined by the Régie in paragraph 39 of its decision D-2018-052.

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2.3 IN THE ABSENCE OF A NEW REGULATORY FRAMEWORK, THE OPPORTUNITY TO ESTABLISH A FEED-IN-TARIFF (FIT) FOR THE PURCHASE OF RNG (THAT IS, A “PRICE SCHEDULE FOR ÉNERGIR’S PURCHASE OF RNG FROM PRODUCERS.”

14 - We respectfully submit that it is appropriate and mandatory for the Régie to proceed immediately (without waiting for a new regulatory framework) with examining Énergir’s proposal regarding a “price schedule for □Énergir’s purchase of RNG from producers” (FIT).

15 - As established by the Court of Appeal of Quebec, confirming the Superior Court’s decision in *Regroupement national des conseils régionaux de l’environnement du Québec (RNCREQ) c Régie de l’énergie*, the Régie de l’énergie, like any court, must take into account the existing law as opposed to possible future legal changes.²⁰

16 - However, the first sentence of the current section 72 of the *Act respecting the Régie de l’énergie* already grants the Régie the authority to approve, within the framework of a supply plan, “the characteristics of the contracts that the [distributor] intends to enter into.”

And this authority may be exercised between supply plans regardless of whether the new components of such a plan have yet to be approved. The jurisdiction of the Régie in this

²⁰ *Regroupement national des conseils régionaux de l’environnement du Québec (RNCREQ) c Régie de l’énergie*, CSM 500-05-048991-994, on November 22, 1999, J. Barbeau, paras 19–21. Confirmed by *Hydro-Québec c Regroupement national des conseils régionaux de l’environnement du Québec (RNCREQ)*, CAM 500-09-008991-994, May 10, 2001, JJ. Gendreau, Chamberland and Pelletier, [2001] Q.J. No. 2183, para 11:

regard is part of a continuum, as the Régie rightly pointed out in File R-3806-2012, in its [Decision D-2012-142](#) (in French only):

4.2.1 REGARDING THE SUPPLY PLAN

[80] [Translation] When approving a supply plan, the Régie approves a plan that incorporates the characteristics of the contracts the Distributor intends to enter into. Given that the characteristics of capacity contracts the Distributor intended to enter into at some point were not defined under the 2008-2017 supply plan, **the Régie requested that these characteristics be submitted to it for approval in a separate file:**

*Under section 72 of the Act, the Régie must approve a supply plan describing the characteristics of the contracts the Distributor intends to enter into. In this context, it approved the supply strategies of the previous two supply plans. **Prior to taking this file under advisement, the Distributor was not able to define its tender solicitation strategy for medium- and long-term capacity products. Consequently, the Régie requests that the Distributor present its strategy to it in a separate file (including quantities, the characteristics of short-, medium-, and long-term capacity products that it has developed, as well as deadlines and tender solicitation selection criteria), within a reasonable timeframe prior to the planned launch of the first tender solicitation for medium- and long-term capacity products.***²¹ [references omitted]

[81] In its decision D-2011-011 related to the Plan, the Régie clarifies its position on the fact that it **must examine the characteristics of the contracts the Distributor intends to enter into as part of the examination of the supply plan:**

²¹ Footnote in the citation: Decision D-2008-133, File R-3648-2007 Phase 2, page 33.

[54] [Translation] Section 72 of the Act states that:

“a holder of exclusive electric power [...] shall prepare and submit to the Régie for approval, according to the form, tenor and intervals fixed by regulation of the Régie, a supply plan describing the characteristics of the contracts the holder intends to enter into in order to meet the needs of Québec markets [...]” [underlined by the Régie]

[55] Furthermore, section 1 of the Regulation respecting the tenor of a supply plan states that the Distributor’s supply plan shall describe:

“(3) the objectives that the holder of rights [the Distributor] intends to achieve and the strategy he intends to apply, over the next 3 years [...], with respect to the additional supplies required [...], and the characteristics of the contracts he intends to enter into, indicating, among other things:

- a) the various products, tools or measures contemplated;
- b) the risks inherent in the sources of supply chosen;
- c) the measures he intends to take to mitigate the impact of those risks;
- d) if applicable, the measures he intends to take to have at his disposal an adequate transmission capacity;” [underlined by the Régie]

[56] It is clear from these provisions that the characteristics of the contracts or agreements that the Distributor intends to enter into shall be examined within the framework of the Plan. Also, any contract, such as the modulation agreement that may be entered into sometime in the future, will be subject to a specific examination by the Régie once the Distributor submits an application for approval in this regard under section 74.2 of the Act.”²² [underlined by the Régie]

²² Footnote in the citation: Decision D-2011-011, File R-3748-2010, paragraphs 54 to 56.

[82] In its decision D-2011-029, the Régie reiterated its statement:

[Translation]

“[21] As the Régie indicated in its decision D-2011-011, in accordance with section 72 of the Act and section 1 of the Regulation, the characteristics or the contracts or agreements the Distributor intends to enter into shall be examined within the framework of the Plan. Also, any future contract, such as the Agreement, will be subject to a specific examination by the Régie following the submission of the Distributor’s application for approval under section 74.2 of the Act.

[22] Consequently, the characteristics of future contracts and agreements contemplated by the Distributor must be described by the latter within the framework of the Plan, and the examination of the Plan by the Régie is the appropriate forum for debating these characteristics. In this regard, the Régie points out that it is important that the Distributor be clear on its preferred objectives and strategies, on the costs and risks associated with these strategies, and on their impact on the energy and capacity balances over the period covered by the Plan.

[23] The Régie reiterates that when an agreement is entered into, and following an application for approval by the Distributor in this regard, this application will be examined under section 74.2 of the Act.”²³ [reference omitted – underlined by the Régie]

[83] Moreover, in decisions on order applications from intervenors regarding the sufficiency of information provided by the Distributor on the characteristics of the contracts, **the Régie adopted a broad approach of what it considered to be “characteristics” and ordered the Distributor or provide information on these characteristics.**²⁴

[...]

[90] According to the Distributor, the Régie acts in accordance with a jurisdiction conferred to it under a very precise regulatory framework, which is broken down into

²³ Footnote in the citation: Decision D-2011-029, file R-3748-2010, paragraphs 21 to 23.

²⁴ Footnote in the citation: Decision D-2011-064, file R-3748-2010; oral decision rendered in file R-3748-2010, exhibit A-0038, pages 11 to 13.

four steps: i) approving the supply plan, ii) approving the tendering procedure and the code of ethics, iii) overseeing the application of the tendering procedure and iv) approving contracts.

[91] The Distributor points out that the powers exercised by the Régie in carrying out the four steps will be watertight and mutually exclusive, since the Régie acts in accordance with the various powers. It argues that while the latter uses its decision-making powers to approve the supply plan, the tendering procedure, the code of ethics and contracts, it uses its administrative powers to oversee the application of the tendering procedure.

[92] The Régie cannot be limited to this restrictive approach and, instead, follows an approach whereby it exercises its powers as part of a “continuum” of powers that can be exercised at all times. [...]

[94] It is not because the Distributor failed to ask the Régie to approve these changes prior to launching the request for qualification that the Régie will no longer have the powers required to approve or refuse these changes. The Régie's jurisdiction and powers are governed by the Act. Thus, they are not governed by the choices or requests initiated by the Distributor.²⁵

17 - In addition, we submit that not only does the Régie have the power to rule on a distributor's supply plan (or, between two plans, on one of the components of such a plan, including “*the characteristics of the contracts the distributor intends to enter into,*”) but, above all, it has a duty to rule on the latter as soon as such a plan (or one of its components) is presented before the court by a distributor for approval.

²⁵ RÉGIE DE L'ÉNERGIE, File R-3806-2012, [Decision D-2012-142](#), October 26, 2012, R.R. Turgeon, Viau, Kirouac, http://publicsde.regie-energie.qc.ca/projets/71/DocPrj/R-3806-2012-A-0008-DEC-DEC-2012_10_26.pdf, paragraphs 60–94. Our emphasis.

The Régie does not need to first question whether it is appropriate to decide on the application for approval of the supply plan (or one of its components) filed by a distributor. On the contrary, the simple fact that a distributor submits a supply plan or one of its components for approval is enough to require the Régie to render a decision on these.

18 - Furthermore, in taking for granted the facts set out by Énergir in its evidence, it appears that the latter wishes to inform potential RNG producers in Québec that it is ready (after Sainte-Sophie and Saint-Hyacinthe) to continue purchasing long-term RNG contracts at a price that would be generally acceptable for them to invest in producing this RNG, based on a price schedule to be standardized by Énergir to ensure fairness.

Thus, the Régie does not need to wait for Énergir to be required by regulation to purchase RNG, since Énergir, even without requirement, has already expressed to the Régie that it wishes, after Sainte-Sophie and Saint-Hyacinthe, to continue making such purchases and has established a price schedule for this purpose.

19 - It is therefore for the Régie to decide on the merits of prohibiting or, as we would like it, allowing Énergir to purchase RNG, even if it is not required to do so by regulation, and whether its proposal for a “*price schedule for Énergir’s purchase of RNG from producers*” (FIT) is acceptable, so that it can be approved with or without changes.

20 - It is therefore appropriate and mandatory that the Régie examine and rule on Énergir’s application in order to approve one of the components of its supply plan—that is, “the characteristics of the contracts that the [distributor] intends to enter into.”

21 - This opportunity and this obligation for the Régie to examine and rule on Énergir’s application in no way depends on the adoption or not of the recent *Draft Regulation respecting the quantity of renewable natural gas to be delivered by a distributor*, (2018) 150 GO 2 4437, <http://www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=1&file=2018A%2F103642.PDF>.

The Régie does not need to wait before exercising its jurisdiction until this Draft Regulation is adopted.

At best, we note that if this Regulation is adopted, it will be compatible with the Régie’s possible approval of a “*price structure for Énergir’s purchase of RNG from producers*” (FIT), even prior to the adoption of this Regulation, in accordance with current section 72 (first sentence) of the Act.

22 - We respectfully invite the Régie de l'énergie to determine that it is not only appropriate but mandatory for it to proceed immediately (without waiting for a new regulatory framework) with examining Énergir’s application in order to approve one of the components of this distributor’s supply plan, that is “the characteristics of the contracts the distributor intends

to enter into,” in particular with regard to the possible establishment of a “price schedule for Énergir’s purchase of RNG from producers” (FIT).

RECOMMENDATION NO. SÉ-AQLPA-GIRAM-3
(FIRST ISSUE, FIRST SENTENCE OF PARAGRAH 24 OF DECISION D-2018-109)

We recommend that the Régie de l'énergie determine that it is not only appropriate but mandatory to proceed immediately (without waiting for a new regulatory framework) with examining

- • Énergir’s application in order to approve one of the components of this distributor’s supply plan, that is “the characteristics of the contracts the [distributor] intends to enter into,” in particular with regard to the possible establishment of a “price schedule for Énergir’s purchase of RNG from producers.” (FIT)

Arguments concerning two preliminary issues
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**2.4 THE MANNER IN WHICH THE PURCHASE COST WILL BE INCORPORATED INTO THE TARIFF
(FIRST ISSUE, SECOND SENTENCE OF PARAGRAPH 24 OF DECISION D-2018-109)**

23 - We respectfully submit that it is premature for the Régie to decide at this preliminary stage the manner in which the purchase cost of RNG will be incorporated into the “*tariff*,” a concern that is raised in the second sentence of the first preliminary issue identified by the Régie in the second sentence of paragraph 24 of its decision D-2018-109.

As indicated in section 2.2 of this file, we understand that, by using the word “*tariff*” in the second sentence, the Régie is not referring to the FIT (which is not a tariff within the meaning of the Act, and which, furthermore, is the “*purchase cost*” itself). Rather, it is referring to the tariff payable by the RNG consumer, based on one of the tariff options (if they fall within its regulatory jurisdiction), outlined by the Régie in paragraph 39 of its [Decision D-2018-052](#).²⁶

24 - Determining the manner in which the purchase cost of RNG will be incorporated into the “*tariff*” requires evidence from Énergir and intervenors.

The manner in which the purchase cost of RNG will be incorporated into the “*tariff*” will vary depending on what the Régie chooses in this file: an “*RNG tariff*” based on Énergir’s proposal (regulated and forecast, and may also be based on a purchase cost average by Énergir from various RNG producers), or a “*fixed price*” tariff (by definition, this is determined by the customer following its own negotiations with the producer, presumably a single

²⁶ RÉGIE DE L'ÉNERGIE, File R-4008-2017, [Decision D-2018-052](#), para 39.

producer, and which is indicated to Énergir). And, for direct purchases by customers (even if an Énergir subsidiary acts as a broker), the purchase cost will not be regulated.

RECOMMENDATION NO. SÉ-AQLPA-GIRAM-4
(FIRST ISSUE, SECOND SENTENCE OF PARAGRAPH 24 OF DECISION D-2018-109)

We recommend that the Régie de l'énergie determine that it is premature for the Régie to decide, at this preliminary stage, the manner in which the purchase cost of RNG will be incorporated into the “*tariff*,” a concern that is raised in the second sentence of the first preliminary issue identified by the Régie in the second sentence of paragraph 24 of its decision D-2018-109. Determining the manner in which the purchase cost of RNG will be incorporated into the “*tariff*” requires evidence from Énergir and intervenors. It will vary according to the type of rate option that will be selected from those listed by the Régie in paragraph 39 of its [decision D-2018-052](#).

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3

ISSUE NO. 2: CAN “CUSTOMERS WHO ARE INTERESTED IN A POTENTIAL RNG TARIFF OFFERED BY ÉNERGIR” BE CONSIDERED AS A “CLASS OF CONSUMERS” WITHIN THE MEANING OF THE ACT?

25 - Regroupement SÉ-AQLPA-GIRAM respectfully submits that “*the customers who are interested in a potential RNG tariff offered by Énergir*” cannot be considered as a “*class of consumers*” within the meaning of section 52 of the Act.

It is therefore not possible for Énergir itself to purchase RNG and then specifically resell it to a potential “*class*” of “*customers who are interested in a potential RNG tariff offered by Énergir*”.

26 - Section 52 of the Act respecting the Régie de l'énergie reads as follows:

52. *In any tariff for the supply of natural gas, the rates and other conditions applicable to a consumer or class of consumers must reflect the actual cost of acquisition to the distributor or any other terms granted to the distributor by producers of natural gas or their representatives in consideration of the consumption of that consumer or class of consumers.*

A tariff may also reflect any other acquisition-related cost of the natural gas to the distributor.

[Our emphasis]

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27 - Section 52 of the Act requires that a separate tariff be offered to a “*class of consumers*” (in “consideration” of which the actual cost of acquisition or any other terms have been granted to the distributor by producers of natural gas or their representatives), signifying a “*circular*” approach where said “*class*” is defined due to the simple fact that it would include customers with a separate tariff.

With this line of reasoning, an infinite number of separate tariffs could exist, along with an infinite number of “*classes of consumers*.” This would be contrary to the letter or at least to the intention of the legislator in enacting sections 53 and 54 of the *Act respecting the Régie de l'énergie*, prohibiting any variance with the established tariffs.

28 - For a certain number of customers to be distinguished from others and to be considered as a “*class of customers*” within the meaning of section 52 of the Act, they must have consumer characteristics that distinguish them from other consumers.

These characteristics cannot simply be due to the fact that they pay a separate tariff. Otherwise, it would be a case of circular reasoning.

29 - If we observe the existing “*classes of consumers*” among electricity or gas distributors, we see that the consumer characteristics of each “*class of consumers*” may reflect a specific use of energy (e.g. for domestic or industrial purposes), or consumption volume, or consumption profile.

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The legislator clearly indicates that “classes of consumers” is not equivalent to “rate classes,” as illustrated in **subparagraph (6) of section 49 of the Act** where both terms have their own distinct meaning. Among different gas and electricity distributors, a “class of consumers” can comprise several “rate classes.”

Furthermore, even **customers who purchase gas directly are not a distinct “class of consumers”** in their own original “class of consumers.”

As far as Hydro-Québec is concerned, we note that **the third paragraph of section 52.2 of the Act** suggests that “classes of consumers” are identified by such distinct “consumption characteristics” as the utilization factors and the power losses:

*The government determines a cost of heritage pool electricity for each class of consumers on the basis of the evolution of these classes as well as **their consumption characteristics**, that is the utilization factors and the power losses attributable to the transmission and distribution system.*

30 - Potential customers who would purchase RNG, by means of a separate tariff from Énergir, are already part of an existing “class of consumers” of Énergir and simply due to the fact that they pay a separate tariff does not make them a distinct “class of consumers” that would set them apart from other customers in their original “class of consumers.” Simply paying a separate tariff would not change the manner in which a new “class of consumers” is created or their specific use of energy (e.g. for domestic or industrial purposes) or their consumption volume or consumption

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profile or any other of their “consumption characteristics” within the meaning of the aforementioned Act.

(In addition, as pointed out in the second paragraph of paragraph 22 of our application for intervention [C-SÉ-AQLPA-GIRAM-0011](#), one of the issues in this file consists in determining precisely which customers would be eligible for RNG and, in this regard, Regroupement SÉ-AQLPA-GIRAM and the other participants recommend that **all categories of consumers** be eligible.)

31 - (Coupled with our other argument, addressed in paragraph 22 of our application for intervention [C-SÉ-AQLPA-GIRAM-0011](#), but not covered by the present preliminary issues, whereby it is not possible to affirm that “the actual cost of acquisition to the distributor or any other terms [would have been **granted**] to the distributor by producers of natural gas or their representatives **in consideration of the consumption** [of a] consumer or [of a] class of consumers” within the meaning of section 52 of the Act. In the event of a separate RNG tariff as proposed by Énergir, customers subscribed to such a tariff are not known at the time the long-term supply contract is signed by Énergir and an RNG producer, thus committing themselves to a shorter period than that of the long-term supply contracts. Furthermore, on the basis of Énergir’s proposal, RNG purchases not resold to specific customers would be added to the gas mix sold to the mass consumer market. This is also recognized by the **Draft Regulation respecting the quantity of renewable natural gas to be delivered by a distributor**, (2018) 150 GO 2 4437, <http://www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=1&file=2018A%2F103642.PDF>, since its preamble indicates a rate impact on RNG purchases on the mass consumer market).

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32 - Regroupement SÉ-AQLPA-GIRAM therefore respectfully submits that **section 52 of the Act may not be validly invoked** to establish a separate RNG tariff, because [translation] “customers who are interested in a potential RNG tariff offered by Énergir” cannot be considered as a “**class of consumers**” within the meaning of section 52 of the Act (and a further reason, not covered by the present preliminary issues, whereby it is not possible to affirm that the “actual cost of acquisition to the distributor or any other terms [would have been **granted**] to the distributor by producers of natural gas or their representatives **in consideration of the consumption**” of these consumers).

(To properly place the debate within the overall context, this means that, **apart from the RNG already contained in the gas mix delivered to Énergir’s mass market customers**, the only possible method for the specific purchase of RNG by a specific customer, that would ensure compliance with the Act, is **for the customer to purchase directly from an RNG producer** (or through a recognized broker, including a broker that is an Énergir subsidiary carrying out non-regulated activities), or its equivalent, as defined by the **fixed-price supply agreement** under section 1.3 of Énergir’s *Conditions of Service and Tariff*.)

33 - This leads us to the following recommendation:

RECOMMENDATION NO. SÉ-AQLPA-GIRAM-5
(SECOND ISSUE, PARAGRAPH 25 OF DECISION D-2018-109)

We recommend that the Régie de l'énergie determine that [translation] “customers who are interested in a potential RNG tariff offered by Énergir” cannot be considered as a “class of consumers” within the meaning of section 52 of the Act.

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4

CONCLUSION

34 - For all of the above reasons, we ask that the Régie allow the recommendations expressed in these arguments.

35 - Respectfully submitted,

Montréal, August 23, 2018

[signed]

Dominique Neuman

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