

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

RÉGIE DE L'ÉNERGIE

R-4008-2017

GAZ MÉTRO
LIMITED PARTNERSHIP (Énergir)

Applicant

and

ACEF de Québec

Interested Person

Application regarding the implementation of measures
concerning the purchase and sale of renewable natural gas

ARGUMENTS

Preliminary issues – D-2018-109

- 1- In paragraphs 24 and 25 of its decision D-2018-109 and in its letter dated August 20, 2018 (A-0012), the Régie asked the parties to:
 - A) weigh in on the opportunity to examine the establishment of a feed-in tariff (FIT) in this case and
 - B) offer their legal interpretation to determine whether voluntary buyers of renewable natural gas (RNG) can be considered a class of consumers in accordance with section 52 of the *Act respecting the Régie de l'énergie*.
- 2- To follow up on this request by the Régie, ACEF de Québec reviewed the concerns expressed by the Régie, as related in its decision D-2018-109 and clarified in its letter dated August 20, as well as the positions presented by Énergir regarding each of the two issues in the Arguments filed on August 22 labelled B-0040 and B-0042, and the feedback concerning issue B submitted by the intervenor, SÉ-AQLPA-GIRAM, on pages 17 to 23 of its application for intervention of June 15, 2018 (C-SÉ-AQLPA-GIRAM-0011).
- A) With regard to **the opportunity to examine the establishment of a feed-in tariff (FIT) as part of this case**
- 3- ACEF de Québec deems it appropriate to examine the establishment of an FIT for this case;

- 4- ACEF de Québec is of the opinion that section 72, subparagraph 3(b) of the *Act respecting the Régie de l'énergie* (the Act) grants it the capacity to examine and rule on this issue;
- 5- The publication, on August 22, 2018, of the draft Regulation respecting the quantity of renewable natural gas to be delivered by a distributor (Gazette officielle, Part 2, August 22, 2018, page 4437) announced the upcoming adoption of a regulation to this effect and provided a sufficient indication to examine the establishment of an FIT so that the regulation can be applied;
- 5- In paragraph 14 and following of its application for intervention, ACEF de Québec mentioned various concerns regarding the establishment of an FIT applicable to Énergir's potential purchases from RNG producers;
- 6- The development of an RNG production industry in Québec requires the implementation of various mechanisms to promote efforts to make RNG available to natural gas consumers, including its delivery via the distribution infrastructure. The application submitted by Énergir regarding the approval of measures concerning the purchase and sale of RNG are therefore in line with pursuing this objective;
- 7- The development of a Québec industry with a presence across the territory must be supported by an FIT in order to be profitable and viable (paragraph 225 and following of the *Avis de la Régie sur les mesures susceptibles d'améliorer les pratiques tarifaires dans le domaine de l'électricité et du gaz naturel* (Régie's opinion regarding the measures likely to improve rate practices in the electricity and natural gas sectors), as well as the Régie's recommendation on page 97);
- 8- The Distributor appears to share this concern regarding the development of an RNG production industry supported by an FIT, as described on page 21 of *Gaz Métro-1*, document 1 and, more specifically, in table 3 of this page, as well as in paragraph 13 and following of its arguments on this topic;
- 9- ACEF de Québec believes that the declining price structure by volume level proposed by Énergir for establishing an FIT applicable to various subsidized production facilities will sufficiently support the initial development of an RNG production industry in Québec without creating the risk of financial disqualification for smaller-scale facilities;
- 10- However, ACEF de Québec remains concerned about the challenges presented by the development of an RNG production industry in more remote areas and/or those that are not connected to a natural gas distribution network. We would like for any related issues to be addressed as part of another case at a later stage of this industry's development;

B) With regard to the possibility of voluntary buyers of RNG being considered a class of consumers in accordance with section 52 of the Act respecting the Régie de l'énergie

11- Section 52 of the Act respecting the Régie de l'énergie:

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.

12- On page 17 and following of the application for intervention dated June 15, 2018, the interested person (now the intervenor), SÉ-AQLPA-GIRAM, submitted feedback on at least three "requirements" that would be included in section 52 of the Act according to the intervenor, namely:

- the need to be able to identify the individuals to whom a supply tariff applies
 - o according to section 52: a consumer or class of consumers;
 - o according to the intervenor: the need to be considered a class of consumers under section 52 and the need to be able to identify the recipient(s) of a delivered product;
(our emphasis)
- an obligation to the effect that the rates and other conditions applied reflect the actual acquisition cost or any other condition granted to a distributor by natural gas producers or representatives;
- an additional obligation to the effect that the rates and other applicable conditions (to voluntary buyers) translate into an RNG supply tariff established in consideration of the consumer or class of consumers' actual consumption;
(our emphasis)

13- According to the intervenor:

- o voluntary buyers of RNG cannot be considered a class of consumers within the meaning of section 52 of the Act and cannot be identified as more significant recipients or users of a product than any other customer or class of customers served by the distribution network;

- rates and other conditions applicable to supply cannot reflect the actual acquisition cost or any other condition granted to the distributor due to the nature of supply contracts, rate application conditions in terms of the length of commitments, and foreseeable inventory differences; it has concluded that the *Fixed-Price Supply Agreement* (section 1.3 of the Conditions of Service and Tariff) is the only purchasing formula enabling compliance with the Act;
- the supply price cannot, in any way, be established in consideration of the actual RNG consumption of a consumer or class of consumers;

14- ACEF de Québec does not share the intervenor's opinion and believes that the arguments cited by SÉ-AQLPA-GIRAM in support of the alleged non-compliance with the provisions of section 52 of the Act, based on its interpretation, are a convoluted attempt to reintroduce into the case considerations that the Régie had explicitly excluded from the issues to be debated in paragraph 35 of its decision D-2018- 052 of May 8, 2018:
(our emphasis)

D-2018-109 [translation]

[21] The Régie acknowledges the interest of (...) and SÉ-AQLPA-GIRAM in intervening in this case. However, with regard to the intervention of SÉ-AQLPA-GIRAM, it must comply with the limit imposed in paragraph 35 of decision D-2018-052 and to paragraph 22 of this decision.

[22] As mentioned in paragraph 35 of its decision D-2018-052, the Régie reiterates that there are no grounds for debating the identification of the actual amount of natural gas consumed by a customer wishing to purchase RNG. This issue has therefore been set aside.

15- Similar to the position adopted by Énergir in its arguments regarding compliance with the concept of a class of consumers set out in section 52 of the Act, ACEF de Québec does not consider SÉ-AQLPA-GIRAM's argument to be applicable;

- ACEF de Québec supports the position defended by Énergir to the effect that, in this case, the Régie must interpret the provisions of section 52 in a broad and non-restrictive manner that is adapted to the context of the application submitted;
- Like Énergir, ACEF de Québec notes that section 52 of the Act concerns rates and other conditions applicable to a consumer or class of consumers;

- Furthermore, ACEF de Québec submits that, for the purposes of this case, the meaning of the term *class of consumers* must be interpreted in a much broader sense than its strict meaning (i.e. a category of users of a consumption sector or a particular rate category), as the group of potential voluntary RNG buyers will inherently consist of a range of customers from various consumption sectors and rate categories; the supply component of their rate will be adjusted to reflect the proportion of RNG they wish to purchase, while other components (subject to transportation rate adjustments) will continue to be established based on the same terms and conditions as other customers in their category;
- 16- According to ACEF de Québec, given the decisions already rendered by the Régie and the considerations mentioned in paragraph 14 above, the other arguments raised in the application for intervention submitted by the intervenor, SÉ-AQLPA-GIRAM, should not be eligible for debate;
 - 17- Although it considers the interpretations of section 52 suggested by the intervenor to be inappropriate, ACEF de Québec nonetheless submits the following comments regarding the two other provisions of section 52 addressed by SÉ-AQLPA-GIRAM;
 - 18- According to ACEF de Québec, while the terms and conditions of the RNG tariff proposed by the Distributor are imperfect, they demonstrate the distributor's desire to ensure that rates and other conditions applicable to the RNG tariff proposed, including the handling of volume differences, are as fair of a reflection as possible of the acquisition costs and conditions; therefore, ACEF de Québec does not share the conclusion of SÉ-AQLPA-GIRAM that the *Fixed-Price Supply Agreement* is the only purchasing formula that allows for compliance with the Act;
 - 19- Lastly, with regard to the third aspect of section 52 addressed by SÉ-AQLPA-GIRAM, ACEF de Québec is of the opinion that, based on the terms and conditions proposed (which could be enhanced over the course of this case), the RNG supply tariff will be determined as accurately as possible in consideration of the purchase volumes required by voluntary buyers and that, based on the best foreseeable volume adjustments and conditions for the disposal of inventory differences, only a very small proportion of the costs incurred will become stranded and need to be socialized;
 - 20- As for the last point, ACEF de Québec submits that, regardless of the purchase formula preferred by consumers, acquiring RNG under an FIT and its injection into the Distributor's network are crucial measures for the development of the RNG production industry in Québec; therefore, the development of measures concerning the purchase and sale of RNG must ensure the fair treatment of all customers connected to the network, both those who wish to purchase RNG and those who prefer to continue receiving conventional natural gas only;

- 21- In light of the foregoing, ACEF de Québec submits that pursuing an objective of making the socialization of all costs related to the purchase and sale of RNG mandatory and universal could generate strong objections and compromise efforts to make RNG available to consumers as well as the development of its production.

Québec City, August 23, 2018

Denis Falardeau
Lawyer