

C A N A D A

RÉGIE DE L'ÉNERGIE

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PROVINCE OF QUÉBEC  
District of Montréal

No. R-4008-2017

ÉNERGIR, L.P., a duly constituted corporation  
headquartered at 1717 rue du Havre, District  
of Montréal, Province of Québec, H2K 2X3

(hereinafter "Énergir")

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**ARGUMENTS**  
**ISSUE 2**  
**HEARING ON SEPTEMBER 4 AND 6, 2018**

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**ÉNERGIR RESPECTFULLY SUBMITS THE FOLLOWING:**

1. In its decision D-2018-109 and its letter dated August 20, 2018 ("Letter"), the Régie convened a hearing to be held on September 4 and 6, 2018 in order to examine the following two issues ("Issues"):
  - a. in the absence of a new regulatory framework, determine whether it is appropriate to examine the method (FIT) by which Énergir wishes to purchase RNG ("Issue 1"),
  - b. determine whether customers who are interested in a potential RNG tariff offered by Énergir can be considered a "class of consumers" within the meaning of section 52 of the *Act respecting the Régie de l'énergie* (the "Act") ("Issue 2");
2. As required by the Régie in this decision, Énergir has submitted its arguments below in response to Issue 2. Énergir reserves the right to make further representations at future hearings;

**I. STATUS OF PROCEEDINGS**

3. Énergir would like to point out that, as required under section 10 of the *Rules of Procedure of the Régie de l'énergie*, it has produced an affidavit by Mr. Mathieu Johnson dated July 7, 2017 (B-0003) attesting to the truth of the facts set out in the documentary evidence;
4. Énergir therefore respectfully submits that at this stage of the proceedings, the facts set out in the documentary evidence must be considered as proof;

## II. ISSUE 2: Concept of a “class of consumers”

5. In its Letter, the Régie invited *[translation]* “participants who wish to do so to 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*.”

6. Section 52 of the Act stipulates the following:

“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.”

7. In its decision D-2018-109 (para 25), the Régie points out that this issue was raised by SÉ-AQLPA-GIRAM and was referred to on page 17 and following of the group’s application for intervention under C-SÉ-AQLPA-GIRAM-0011;

8. However, Énergir notes that page 17 and following of that application for intervention address more than the issue of the definition of a “class of consumers” within the meaning of section 52 of the Act;

9. Therefore, as Issue 2 is described in decision D-2018-109 and the Letter as merely determining what constitutes a “class of consumers,” Énergir will limit its representations to the following passage in the application for intervention submitted by SÉ-AQLPA-GIRAM, in which the group submitted its interpretation of what constitutes a “class of consumers”:

*[Translation]*

“Furthermore, **voluntary customers (based on a potential RNG tariff offered by Énergir) are not considered a “class of consumers” within the meaning of the Act.** The concept of a “*class of consumers*” is used in several places by the legislator: it inherently refers to consumers who have **[a.]** common characteristics, whether related to **[b.i.]** their use of natural gas (e.g. residential or commercial), the **[b.ii)]** volumes they consume or **[b.iii)]** their consumption profile. However, RNG customers would not present such characteristics enabling them to be qualified as a “*class of consumers*.” They would only have the option of purchasing RNG **[c.]** for part of their consumption. Furthermore, the issues in this file consist specifically in determining which clients are eligible for RNG, and the SÉ-AQLPA-GIRAM Group, like other participants, recommends that **all class of consumers be eligible for it.**”

[our underlining; bold appearing in the decision]  
[the characters between [ ] have been added]

10. Based on this excerpt, according to SÉ-AQLPA-GIRAM, a “class of consumers” would demonstrate the following characteristics:
  - a. it would group together consumers with “common characteristics”;
  - b. the “common characteristics” of these consumers would concern:
    - i) the consumers’ “use” of natural gas (e.g. “residential, commercial”),
    - ii) “the volumes they consume,” or
    - iii) the “consumption profile”;
  - c. the consumers’ consumption should fully meet their needs; in other words, the fact that their consumption would only partially meet their needs contradicts the concept of a “class of consumers”;
11. Énergir respectfully submits that this definition expressed by SÉ-AQLPA-GIRAM regarding the concept of a “class of consumers” is not based on any provision of the Act or the Régie’s case law;
12. First and foremost, Énergir submits that in the absence of a definition of a “class of consumers” in the Act, the Régie must interpret its enabling statute broadly and liberally in order to achieve its objective;
  - *Interpretation Act*, section 41
13. SÉ-AQLPA-GIRAM proposes limiting the concept of a “class of consumers” such that it would prevent the application of this interpretation rule, as is frequently done by the Régie;
14. Moreover, the Régie has already had the opportunity to define the concept of “consumer” in these terms:

[Translation]

“[48] Lastly, based on the Distributor’s planned commercial model, the Régie is also of the opinion that LNG will not be delivered to a “consumer,” which is commonly known as a “*person who uses goods, resources or services to meet his or her needs*” (*Le Petit Robert*, 2014, p. 519.)”

[our underlining]

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15. According to Énergir, based on this definition chosen by the Régie, a “class of consumers” within the meaning of the Act is a group of “people who use goods, resources or services to meet their needs”;

16. In this file, *[translation]* “customers who are interested in a potential RNG tariff” (D-2018-109, para 25) could very well correspond to a “class of consumers” within the meaning of section 52, as they use “a service,” i.e. “RNG service” (or RNG supply service) to meet their needs;
17. Moreover, for the purposes of applying section 52 of the Act, the presence of a “class” of consumers is not necessary as this provision specifies: “in consideration of the consumption of that consumer or class of consumers”;
18. Therefore, even in the presence of RNG consumption volumes that vary from one consumer to another, this would not prevent section 52 from being applied, as it has been worded to take into consideration the actual situation of each customer;
19. In light of the foregoing, Énergir submits that nothing in the Act should cause the Régie to question the compliance of Énergir’s application concerning the adherence to section 52 of the Act regarding the concept of “class of consumers”;

**RESPECTFULLY SUBMITTED**

Montréal, August 22, 2018

*(s) Hugo Sigouin-Plasse*

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