

C A N A D A

RÉGIE DE L'ÉNERGIE

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

ÉNERGIR, L.P.

R-4008-2017

Applicant

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

and

**CANADIAN FEDERATION OF
INDEPENDENT BUSINESS**

Intervenor

**CANADIAN FEDERATION OF INDEPENDENT BUSINESS (CFIB)
ARGUMENTS**

CFIB RESPECTFULLY SUBMITS THE FOLLOWING:

1. In its decision D-2019-031, the Régie de l'énergie (the "**Régie**") asked participants to provide additional arguments and evidence regarding the following questions:
 - a) Does the Régie have the necessary authority under the *Act respecting the Régie de l'énergie* (the "**Act**") to include costs in a tariff for the purposes of developing renewable natural gas ("**RNG**") in Québec? And, if it has such authority, is it fair and reasonable to exercise it?
 - b) Would a feed-in tariff ("**FIT**") approved by the Régie use the monopoly distribution position in a way that alters the rules of free-market access for RNG in Québec?
 - c) Could an FIT approved by the Régie be perceived as fixing or controlling the supply price for an unregulated product?
2. Despite the letter from Énergir of April 17, 2019, informing of a potential amendment to its evidence, which is quite unusual, CFIB agreed to answer the Régie's questions by addressing them from the standpoint of the current FIT approach.
3. In answer to question a), CFIB is of the opinion that the Régie does not have the necessary authority under the Act to include costs in a tariff for the purposes of developing RNG in Québec.

4. Although CFIB considers development of the RNG production industry in Québec to be important, no provision of the Act authorizes or allows inclusion of an excess cost arising from an unregulated activity in Énergir's tariffs.
5. The Act applies to "the supply, transmission, distribution and storage of natural gas",¹ and the Régie has exclusive authority to "fix or modify the rates and conditions [...] for the supply, transmission or delivery of natural gas by a natural gas distributor or for the storage of natural gas".² Section 48 of the Act is also consistent in this respect:

"48. The Régie shall, on the application of an interested person or on its own initiative, fix or modify the rates and conditions for the transmission of electric power by the electric power carrier or for the distribution of electric power by the electric power distributor or the rates and conditions for the supply, transmission or delivery of natural gas by a natural gas distributor or for the storage of natural gas. The Régie may in particular require the electric power carrier, the electric power distributor or a natural gas distributor to file a modification proposal.

Applications must be filed with the documents and fees prescribed by regulation. Applications filed by the electric power distributor or a natural gas distributor must include a document describing the impact a rate increase would have on low-income earners."

[Our underlining]

6. The Act does not cover, either directly or indirectly, the production of natural gas or RNG (or the setting of any tariff for the purpose of developing this industry); the production of natural gas or RNG is an unregulated activity.
7. Social consensus concerning development of the renewable natural gas production industry in Québec may well be reflected in the public policies of recent years, but this has not materialized to the point of amending the Act to authorize Énergir's application as formulated.
8. Furthermore, under sections 49, para 1 (7) and 52, para 1 of the Act, when the Régie sets or changes a natural gas transmission, delivery or storage tariff, in particular it must ensure that it is fair and reasonable, and that the tariff for the supply of natural gas reflects the actual cost of acquisition.

¹ Act respecting the Régie de l'énergie, CQLR, c R-6.01, s. 1.

² Act respecting the Régie de l'énergie, CQLR, c R-6.01, s. 31(1).

“49. When fixing or modifying rates for the transmission of electric power or for the transmission, delivery or storage of natural gas, the Régie shall, in particular, [...]

(7) ensure that the rates and other conditions for the provision of the service are fair and reasonable [...]”

[Our underlining]

“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 underlining]

9. In this case, there is a risk that Énergir would not be able to sell all quantities of RNG purchased to voluntary buyers. Such a situation would inevitably mean that the sale of RNG could not transpire voluntarily; or that it would be sold at the price of fossil natural gas, i.e. at a price lower than its acquisition cost; or that it would be forced on customers.
10. Furthermore, CFIB comments regarding the first file, for Saint-Hyacinthe, cited in decision D-2013-041, apply again:

[Translation]

“[47] CFIB submits that it is not the distributor’s role to implement the biomethane market. [...]

[50] CFIB insists that the Act applies, and that the Régie cannot consider the assets of component A of the Project to be destined for the distribution of natural gas, under the pretext that the development of biomethane would be in the public interest.

[51] In CFIB’s opinion, should the Régie accept the distributor’s Application, it would be equivalent to forcing natural gas consumers to assume costs that should normally be assumed by the City of Saint-Hyacinthe and its taxpayers.”³

[References omitted and our underlining]

³ D-2013-041, R-3824-2012, March 20, 2013, paras 47, 50 and 51.

11. Since the Régie does not have authority to set the supply price of natural gas, be it fossil or RNG, to a level other than the actual acquisition cost, CFIB feels that it also does not have authority under the Act to include costs in a tariff to develop the production of RNG in Québec unless the Régie is certain that all RNG purchases can be sold voluntarily or by imposing purchase on customers.
12. Clearly, the Régie cannot be certain that Énergir will be able to dispose of all its RNG purchases voluntarily over the duration of the supply contracts proposed.
13. Furthermore, since customers are free to opt for supply through direct purchase, Énergir cannot guarantee that it will be able to impose purchase of RNG on its customers. In CFIB's opinion, it would be unreasonable to adopt such an approach which, in any case, could lead to supply rates that do not coincide with the cost of acquisition.
14. What's more, imposing RNG purchase on customers would be unfair to them, especially small-volume customers generally less likely to seek supply through direct purchase.
15. In answer to question b), CFIB is of the opinion that, under a hypothetical FIT approved by the Régie or any other RNG acquisition mechanism, Énergir would effectively use, directly or indirectly, the Régie's monopoly distribution position to change the rules of access in the RNG free market in Québec the moment all RNG purchases cannot be sold to voluntary buyers or simply if there is a risk that such purchases might not be sold voluntarily.
16. Indeed, if Énergir succeeds in imposing, in one way or another, the costs of RNG supply on customers who do not want it, Énergir would dispose of its costs in a manner that is accessible to it only as a result of its monopoly distribution position. Clearly, the other potential buyers of RNG produced in Québec and that must be sold in Québec (marketers or direct customers) do not have this option. Realistically, it is therefore impossible for them to propose to producers comparable RNG purchase conditions, either in terms of price or duration.
17. CFIB likewise answers affirmatively to question c). The moment Énergir offers RNG producers conditions that are more advantageous than those offered by other market players, these conditions, and especially the price paid, are likely to be reflected in Énergir's energy supply price and therefore alter the price of this good in an unregulated market.
18. Thus, in CFIB's opinion, Énergir's current application would inevitably restrain free competition in the Québec RNG market.
19. Why allow a monopoly, natural gas distribution, created by legislative and regulatory means to interfere in a field that is already deregulated and in which there are already real competition and multiple players?

20. Énergir's application runs counter to the objective of maintaining the deregulated market for the supply of natural gas or RNG. This objective has remained unchanged since the 1990s.
21. In its decision D-2001-214, the Régie expressed the following opinion with regard to supply service:

[Translation]

“In decision D-94-19 the Régie specified that the distributor must continue to be active in supplying natural gas, but must never use its monopoly distribution position to alter the rules of the game with respect to free access to gas markets by suppliers as well as consumers. [...]

The Régie feels that acceptance of this application would run counter to efforts deployed over the past several years to nurture the emergence of a free and efficient market for the product and could ultimately be unfavourable to all customers. [...]

According to the Régie, the distributor must take measures to, on the one hand, foster the emergence of a dynamic and competitive gas supply market and, on the other hand, to proactively inform consumers of the supply services and options available in the market from suppliers and brokers. [...]

In the Régie's opinion, approval of the application would run counter to the regulatory trend of encouraging competition and could, over time, significantly reduce the competition at the gas supply level.⁴

[Our underlining]

22. In CFIB's opinion, this reasoning also applies to the supply of RNG.
23. In light of the foregoing, CFIB feels that Énergir's application, as formulated, is not allowable under the Act, is likely to significantly change the rules of access to the free market for RNG in Québec, and will effectively fix or control, either directly or indirectly, the supply price of a product that has been unregulated since the 1990s.

⁴ D-2001-214, R-3463-2001, September 6, 2001, p 30–32.

24. CFIB reserves the right to formulate unannounced arguments during the audience to be held on May 7 and 8.

Montréal, April 24, 2019

(s) Fasken Martineau

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