

CANADA
PROVINCE OF QUÉBEC
District of Montréal
No: **R-4008-2017**

RÉGIE DE L'ÉNERGIE

Énergir, L.P.

(hereinafter referred to as the “Distributor”)
Applicant

and

**Groupe de recommandations et d’actions
pour un meilleur environnement**

(hereinafter referred to as “GRAME”) [group
that proposes recommendations and actions for
a better environment]

Intervenor

*Énergir, L.P. application regarding the implementation of measures
concerning the purchase and sale of renewable natural gas*
GRAME arguments

IN SUPPORT OF ITS ARGUMENTS, GRAME RESPECTFULLY SUBMITS THE FOLLOWING:

1. By way of introduction, GRAME submits that, to compare the situation in Québec with certain Ontario Energy Board decisions cited by the Régie in decision D-2019-031,¹ the recent adoption of the *Regulation respecting the quantity of renewable natural gas to be delivered by a distributor* must now be taken into consideration;

2. In Ontario, the Climate Change Action Plan will eventually be supported by measures like a renewable content requirement for natural gas, but these measures are not yet in effect:

“To support Ontario’s Climate Change Action Plan, the Food and Organic Waste Action Plan will also consider:

- (...)
- opportunities to promote the development of renewable natural gas, including introducing a renewable content requirement for natural gas”;

[Strategy for a Waste-Free Ontario](#): Building the Circular Economy, p. 31

¹ The decision dated October 18, 2018 in file EB-2017-0319, as well as the July 12, 2012 interim decision in files EB-2011-0242 and EB-2011-0283

3. The role of distributors is therefore impliedly different in Québec, given the regulatory requirement to inject a minimum quantity of renewable natural gas (hereinafter referred to as “RNG”) into their distribution network;

4. The arguments below aim to answer the Régie’s questions in paragraph 98 of decision D-2019-031, taking into account this new regulatory requirement and the key role of gas distributors in this respect;

5. GRAME’s initial position in this file is that complete socialization of the costs to develop and supply renewable natural gas in Québec is the best option in respect of, in particular, the polluter pays principle;

[C-GRAEME-0002](#), para 29 and [C-GRAEME-0005](#)

6. Moreover, GRAME is in favour of developing the RNG production industry and believes a feed-in tariff (hereinafter referred to as “FIT”) could effectively stimulate it;

[C-GRAEME-0009](#), paras 1 to 11

7. In decision D-2019-031 (para 98), the Régie asks three legal questions, the first of which is about its authority under the *Act respecting the Régie de l’énergie*:

- a) Does the Régie have the necessary authority under the *Act respecting the Régie de l’énergie* to include costs in a tariff for the purpose of developing RNG in Québec? And, if it has such authority, is it fair and reasonable to exercise it?

8. The Régie must take into consideration not only the *Act respecting the Régie de l’énergie*, but also the entire applicable regulatory framework in particular since *The 2030 Energy Policy* was tabled, to determine whether it has the authority to include costs in a tariff for the purpose of developing RNG in Québec;

[Bill 106](#), *An Act to implement the 2030 Energy Policy and to amend various legislative provisions* (2016, chapter 35)

9. This new regulatory framework comprises the *Act respecting the Régie de l’énergie* and its regulations, as well as an Order in Council and *The 2030 Energy Policy* adopted by the government;

Order in Council

10. A first element that proves the government’s intention to promote the development of RNG is in Décret 1012-2014 *CONCERNANT les préoccupations économiques, sociales et environnementales indiquées à la Régie de l’énergie à l’égard des projets de raccordement des sites de production de gaz naturel renouvelable aux réseaux de distribution de gaz naturel* [O.C. 1012-2014 regarding the economic, social and environmental concerns indicated to the Régie de l’énergie pertaining to projects to connect natural gas production sites to the natural gas distribution networks], which states that projects to connect RNG production sites should be positively perceived, in order to offer distributors and their

customers locally produced RNG, and that distributors should be able to participate in these connection projects:

[Translation] “THAT the following economic, social and environmental concerns pertaining to projects to connect renewable natural gas production sites to the natural gas distribution networks be indicated to the Régie de l’énergie:

1. projects to connect renewable natural gas production sites to the natural gas distribution networks should be positively perceived in order to offer natural gas distributors and their customers a locally produced source of renewable natural gas;
2. natural gas distributors should be able to participate in projects to connect renewable natural gas production sites as distributors of renewable natural gas from a sector that is expected to grow in the coming years, given the government’s objectives for reducing greenhouse gas emissions and banning organic matter from disposal sites;
3. the avoided costs for compression, transmission and the exclusion of renewable natural gas from Québec’s Greenhouse Gas Cap-and-Trade System should be taken into consideration when the price for the purchase of renewable natural gas by the distributor is set.”

[Décret 1012-2014](#), 19 novembre 2014 CONCERNANT les préoccupations économiques, sociales et environnementales indiquées à la Régie de l’énergie à l’égard des projets de raccordement des sites de production de gaz naturel renouvelable aux réseaux de distribution de gaz naturel

11. This Order in Council also sets out the factors that should be taken into account when the price for the purchase of RNG by the Distributor is set;

The 2030 Energy Policy

12. The 2030 Energy Policy sets a target for a 50% increase in bioenergy production in Québec:

[The 2030 Energy Policy](#), p. 12

13. The 2017–2020 action plan arising from The 2030 Energy Policy provides for an increase in the production and consumption of RNG in Québec, in particular with the adoption of a regulation establishing 5% as the minimum proportion of RNG that Québec distributors must inject in their distribution network for customers in Québec;

Orientation 3 : Proposer une offre renouvelée et diversifiée aux consommateurs, Action 37, *[Plan d’action de la Politique énergétique 2030](#)* [Direction 3: Offer consumers a renewed, diversified energy supply, Action 37, the 2030 Energy Policy Action Plan]

14. While policies do not have the force of law in Québec, The 2030 Energy Policy’s objectives are supported by the *Act respecting the Régie de l’énergie*, which states that the Régie must promote the satisfaction of energy needs in a manner consistent with the government’s policies and in keeping with the principles of sustainable development:

“5. In the exercise of its functions, the Régie shall reconcile the public interest, consumer protection and the fair treatment of the electric power carrier and of distributors. It shall promote the satisfaction of energy needs in a manner consistent with the Government’s energy policy objectives and in keeping with the principles of sustainable development and individual and collective equity.”

S. 5, [Act respecting the Régie de l’énergie](#) (our underlining)

Act respecting the Régie de l’énergie and its regulations

15. The *Act to implement the 2030 Energy Policy and to amend various legislative provisions* (2016, c. 35), assented to December 10, 2016, amended section 72 of the *Act respecting the Régie de l’énergie* to stipulate that the supply plan of a holder of exclusive natural gas distribution rights must have regard to the quantity of RNG determined by regulation of the Government under subparagraph 4 of the first paragraph of section 112, also amended:

Act to implement the 2030 Energy Policy and to amend various legislative provisions, 2016, c. 35, s. 9

Sections 72, para 1, subpara 3 (b) and 112, para 1, subpara 4, [Act respecting the Régie de l’énergie](#)

16. The purpose of these legislative amendments was to increase the use of RNG in Québec by introducing measures to ensure its distribution:

“The Act also amends the Act respecting the Régie de l’énergie to introduce new measures concerning the distribution of renewable natural gas by a distribution system as well as the inclusion of excess transmission capacity in a natural gas distributor’s supply plan.”

[Act to implement the 2030 Energy Policy and to amend various legislative provisions](#), 2016, c. 35, Explanatory notes

17. In August 2018, the draft *Regulation respecting the quantity of renewable natural gas to be delivered by a distributor* was published in Part 2 of the Gazette officielle du Québec,² and in March 2019, the Québec government adopted the *Regulation* without any amendments; it came into force on April 18, 2019;

[Regulation respecting the quantity of renewable natural gas to be delivered by a distributor](#) (c. R-6.01, s. 112, 1st. par., subpar. 4) Gazette officielle du Québec, April 3, 2019, Vol. 151, No. 14

18. All natural gas distributors must now deliver a minimum quantity of RNG equal to or greater than 1% of the delivered volume (based on the average of total natural gas deliveries for the three years preceding the current rate year) as of the distributor’s rate year beginning in

² Gazette officielle du Québec, Part 2, August 22, 2018, Vol. 150, No. 34, p. 4437

2020, 2% as of the distributor's rate year beginning in 2023, and 5% as of the distributor's rate year beginning in 2025;

[Regulation respecting the quantity of renewable natural gas to be delivered by a distributor](#), c. R-6.01, s. 1

19. When the draft regulation was published in August 2018, Minister Moreau indicated in the introduction that compliance with this regulatory requirement would represent an additional cost for natural gas consumers:

“Study of the matter has shown no specific negative impact on small and medium-sized businesses. However, according to the current conditions of the market, it is estimated that the delivery of the minimum quantity of renewable natural gas required as of 2020 would represent an additional cost for natural gas consumers equivalent to 1.1% of the value of the deliveries of natural gas in Québec in 2017.”

[Draft Regulation respecting the quantity of renewable natural gas to be delivered by a distributor](#), Gazette officielle du Québec, Part 2, August 22, 2018, Vol. 150, No. 34, p. 4437

20. In this file, the Régie is questioning whether it has the authority to include an excess cost in Énergir's tariffs to stimulate the RNG production industry;

21. GRAME submits that the Régie has the authority to include the excess costs stemming from RNG delivery in the rate base, including the costs of projects to connect RNG production sites, having regard to the provisions above and the government's desire to reduce greenhouse gas emissions and ban organic matter from disposal sites;

[Order in Council 1012-2014](#), November 19, 2014 (French only)

22. Regarding the transmission and delivery tariff, GRAME agrees with the SÉ-AQPLA-GIRAM's remarks in its March 21, 2019 correspondence:

[Translation] “Indeed, section 51 of the Act stipulates that no natural gas transmission or delivery tariff may impose higher rates or more onerous conditions than are necessary to cover capital and operating costs or to maintain the stability of the natural gas distributor and the ‘**normal development of a transmission or distribution system.**’ That said, in 2019 in Québec, the ‘**normal development of a [natural gas] transmission or distribution system,**’ as interpreted according to section 5 of the Act, taking into account the public interest, the government's energy policy objectives, and the principles of sustainable development and individual and collective equity, includes the emergence and development of the biomethane sector in Québec, [...]”

[C-SÉ-AQLPA-GIRAM-0017](#), p. 2

23. Regarding the supply service, the Régie referred to the cost causation and actual cost of acquisition principles stemming from section 52 of the *Act respecting the Régie de l'énergie*:

[Translation] “[71] Based on this principle, the Régie is of the opinion that the concept of class of consumer set out in section 52 of the Act is closely linked to the principle of cost causation under which the legislator establishes a principle for the allocation of costs related to natural gas supply. More specifically, the legislator states that, 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 for this class of consumers.”

R-4008-2017, [D-2019-031](#), para 71

24. However, the actual cost of acquisition concept in section 52 of the *Act respecting the Régie de l'énergie* is not the only element to consider when establishing the tariff for the supply of natural gas:

“**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.”

S. 52, [Act respecting the Régie de l'énergie](#)

25. Given the current context, where developing the production and consumption of RNG is a government objective set out in The 2030 Energy Policy, the additional cost that would, among other things, make it possible to develop this industry must be seen as “[an]**other acquisition-related cost of the natural gas,**” like the social, environmental and economic cost of climate inaction must be considered for all molecules from sources that are not renewable;

26. So, although the proposed cost to establish a special tariff for RNG may be higher than the actual cost of acquisition, based on our interpretation, including additional costs in a tariff to develop RNG production in Québec is not contrary to section 52 of the *Act respecting the Régie de l'énergie*. It is, however, contrary to the polluter pays principle in the *Sustainable Development Act*;

[Sustainable Development Act](#), R.S.Q., c. D-8.1.1, s. 6 (o)

27. Moreover, the *Act respecting the Régie de l'énergie* states that the Régie has a duty to monitor the rates that electricity and natural gas consumers pay. In the *Act respecting the Régie de l'énergie*, section 31, subparagraph 2.1, the expression “reasonable rates” can be subject to interpretation:

“**31.** It is within the exclusive jurisdiction of the Régie to

(2.1) monitor the operations of the electric power carrier, the electric power distributor and natural gas distributors to ensure that consumers are charged fair and reasonable rates”;

S. 31, subpara 2.1, [Act respecting the Régie de l'énergie](#)

28. GRAME submits that, considering natural gas distributors' new obligations to include a gradually increasing minimum amount of RNG in their annual supply plan, a reasonable rate must include the recovery of the excess cost making it possible to develop this industry from customers;

29. In its impact analysis of the *Regulation respecting the quantity of renewable natural gas to be delivered by a distributor*, the Ministère de l'Énergie et des Ressources naturelles (hereinafter referred to as "MERN") stated that the costs to inject RNG could be recovered either through the rate offered to customers who wanted to purchase RNG on a voluntary basis or through their integration into the rate base:

[Translation] "For natural gas users, it is estimated that injecting an additional volume of 60 Mm³ of RNG, which is approximately equivalent to 1% of the natural gas volumes delivered in Québec and the regulatory requirement proposed for 2020, would represent an additional cost of \$20.6 million annually.

This cost is equal to 1.1% of the value of natural gas deliveries in Québec in 2017. These costs would later be recovered through the rate offered to customers who want to purchase RNG on a voluntary basis or through their integration into the rate base.

However, it is difficult to assess the impact of this regulation for 2025, when a minimum proportion of 5% of RNG would be required, considering, among other things, the uncertainty surrounding change in natural gas prices, the cost of cap-and-trade system emission allowances and developments in RNG production technologies."

[Analysis of the regulatory impact, Draft Regulation respecting the quantity of renewable natural gas to be delivered by a distributor](#) (French only), Ministère de l'Énergie et des Ressources naturelles, p. 10

30. GRAME submits that integrating the costs to inject RNG (delivery and supply) into the rate base is the most logical solution, as the additional costs of RNG, which distributors are required to inject into their distribution network, are borne by all customers;

31. In addition to the fact that the objective of the FIT is to develop RNG production in Québec, GRAME submits that the Régie must instead take into account Québec's particular regulatory framework to conclude it has the authority to directly include these excess costs in the rate base;

32. Regarding whether the Régie should fairly and reasonably exercise its authority to set a higher tariff for the sale of RNG to voluntary customers, GRAME respectfully submits that, given the current climate emergency, it would be entirely contrary to the principles of sustainable development to set surplus tariffs for specific customers, who would thus bear the cost of the slow adaptation to a supply that complies with government directions, even though the polluter pays principle in the *Environment Quality Act* justifies the opposite;

[Environment Quality Act](#), R.S.Q., c. Q-2, Preliminary provision

- b) Would an 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?

33. Even though natural gas distributors enjoy a distribution monopoly, the *Act respecting the Régie de l'énergie* states that customers have the opportunity to choose their natural gas and/or RNG supplier:

“77. A natural gas distributor is required to supply and deliver natural gas to every person who so requests within the territory served by the distributor’s distribution system.

Within that territory, the distributor shall also, at the request of a consumer or at the request of a natural gas broker acting in his own name or in the name of a producer or a consumer, receive, transmit and deliver to the consumer natural gas purchased from a third person by the consumer for his own consumption.”

S. 77, [Act respecting the Régie de l'énergie](#)

34. Therefore, GRAME submits that an FIT would not alter the rules of free market access for RNG in Québec, because customers who want to make direct RNG purchases will still be able to do so, like brokers;

35. GRAME also supports the position Énergir took in its arguments, in particular in paragraph 65:

[Translation] “65. Énergir respectfully submits that if the Régie were to prohibit this player from using an FIT or any other method as a guide in determining the RNG purchase price because it believes using such guides ‘would alter the rules of free market access for RNG,’ it would in fact be intervening in this free market”;

[B-0048](#), para 65

- c) Could an FIT approved by the Régie be perceived as fixing or controlling the supply price for an unregulated product?

36. Énergir describes the FIT as a price granted to certain producers, i.e. the price paid by gas distributors to RNG producers subsidized by the Programme de traitement des matières organiques par biométhanisation et compostage (hereinafter referred to as “PTMOBC”) [program for processing organic matter using biomethanation and composting];

[B-0002](#), paras 15 and 16

37. Unsubsidized RNG producers are free to choose other markets;

[B-0005](#), p. 12

38. U.S. public policy on transmission (*Renewable Fuel Standard, Low Carbon Fuel Standard*) increases demand and allows RNG producers to obtain higher prices than on the Canadian and/or Québec market;

[B-0005](#), p. 13

39. According to the MERN, the goal of regulating the distribution of minimum quantities of RNG is to offer RNG producers a predictable and stable market:

[Translation] “Thus, the considered option is the most likely to attain the government’s bioenergy production and GHG emission reduction objectives. It would offer RNG producers a predictable and stable market, which is beneficial economically.”

[Analysis of the regulatory impact, Draft Regulation respecting the quantity of renewable natural gas to be delivered by a distributor](#), Ministère de l’Énergie et des Ressources naturelles, page 6

40. Consequently, to the extent that unsubsidized producers can choose the market they wish to do business with and customers can also choose their supplier, a Régie-approved FIT could not be perceived as fixing or controlling the supply price for an unregulated product;

41. Instead, an FIT approved by the Régie should be perceived as an option allowing PTMOBC-subsidized producers to benefit from a stable and predictable market;

Respectfully submitted.

April 23, 2019.

(S) Geneviève Paquet

Geneviève Paquet, Attorney

For the Groupe de recommandations et d’actions pour un meilleur environnement
(GRAME)