

**C A N A D A**

**PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL**

**No. R-4008-2017**

**ÉNERGIR**

**Applicant**

**and**

**REGROUPEMENT DES  
ORGANISMES  
ENVIRONNEMENTAUX EN ÉNERGIE  
(ROÉÉ) *et al.***

**Intervenors**

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**APPLICATION REGARDING THE IMPLEMENTATION OF MEASURES  
CONCERNING THE PURCHASE AND SALE OF RENEWABLE NATURAL GAS**

**Summary of ROÉÉ arguments regarding the  
issues of the hearing of May 7 and 8, 2019**

April 23, 2019

## Natural gas is not a transitional energy

1. For ROÉÉ, it is essential to situate this file and our argument in a broader context.
2. ROÉÉ advocates for the end of use of all forms of combustion of hydrocarbons, including natural gas. Although “cleaner” than coal, fuel oil and gas, natural gas remains a very significant source of GHG.
3. There is no question that the ROÉÉ position applies foremost to fossil natural gas, especially since the natural gas distributed by Énergir comes primarily from the United States, produced by hydraulic fracturing and horizontal drilling. These are technologies that allow escape into the atmosphere of large quantities of methane and that cause many other negative environmental impacts.
4. Although recourse to RNG might prove to produce less GHG, even under market conditions that favour the industry’s development, Énergir *[translation]* “evaluates the overall potential for RNG production in Québec by 2030 to be more than 700 Mm<sup>3</sup>, representing 10% to 12% of the volumes delivered” by this distributor. Therefore, 90% of the GHG emissions associated with the use of regular shale gas will continue.

➤ [B-0022](#) (French), p. 10

5. Extension of the Énergir network by means of a transmission and distribution infrastructure with a service life of 40 years or longer and increased methane sales, even with the addition of a certain amount of RNG, cannot conceal the fact that reduced energy consumption, energy efficiency, recourse to sustainable technologies for the production of electricity and electricity from the Hydro-Québec network are all approaches preferable to the continued use of natural gas.
6. Furthermore, ROÉÉ considers the purchase of RNG and its injection into the Énergir network would only be acceptable if the 4R’s principle were strictly observed.
7. Furthermore, the analysis should not be limited to energy issues and GHG. In particular, the use of organic matter from agri-environments and forests should respect biodiversity and true sustainable practices. The vision of RNG potential presented by Énergir in its new report [B-0049](#) does not reassure us.

## The Régie's questions and Énergir's evolving application

8. It is in this context and subject to these reservations that ROÉÉ provides answers to the Régie's questions.
9. The Régie asked Énergir and intervenors to submit arguments regarding some questions of a legal nature, and to present their arguments in person on May 7 and 8, 2018.

➤ [D-2019-031](#) (French), March 31, 2019, paras 98-100 and 102

10. In paragraph 98 of this decision, the Régie states its request:

*[Translation]* “[98] Consequently, the Régie asks 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* to include costs in a tariff for the purpose of developing RNG in Québec? *[underlined in the original]* And, if it has such authority, is it fair and reasonable to exercise it?

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?

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

11. This argument by ROÉÉ concerning the Régie's questions is subject to the changing nature of Énergir's application.
12. Along with its argument ([B-0048](#) [French]), Énergir prepared a 5th re-amended application ([B-0050](#) [French]), submitted a technical and economic study of RNG production potential ([B-0049](#)) and informed the Régie and participants that it contemplated the possibility of amending the main element of its evidence ([B-0046](#) [French]).

13. On this last point, in its letter of April 17, 2019, Énergir announced to the Régie that *[translation]* “it appears the feed-in tariff (FIT) may not be the most appropriate tool, given the current state of the market, to determine the RNG purchase price that Énergir intends to offer producers,” but is not yet able to say whether its evidence will be amended regarding this essential aspect of its application.
14. The Régie’s questions are primarily legal in nature. However, they arise in an evolving factual context. This situation leaves ROEÉ no choice but to reserve the right to change its stance depending on the application and the evidence potentially drawn up by Énergir.
15. Addressing the Régie’s questions without the benefit of answers to potential requests for information and before various participants provide evidence obliges ROEÉ to reserve the right to change its answers later.
16. More generally, this document is only a summary argument. ROEÉ therefore reserves the right to adjust its position during the hearing of May 7 and 8, and potentially when the merits of the file are assessed.
17. In particular, only during assessment of the merits of the file will ROEÉ be able to take a definitive stance on the advisability of proceeding with integration of RNG by means of a tariff aimed at voluntary buyers, rather than material and regulatory integration of this methane through a tariff structure that would have these acquisitions costs borne by all customers.
18. With respect, and considering that Énergir would withdraw the FIT, the Régie could not decide on this important question at its procedural determination stage to address the file.
19. We stress that the call for caution in our argument for the hearing of September 4 and 6, 2018 [C-ROEÉ-0012](#) (French) remains just as relevant:

*[Translation]* “ROEÉ believes that at this preliminary stage of the file, the Régie should proceed with caution and avoid formulating and ruling on preliminary issues that are equivalent to motions for dismissal, without first hearing the evidence and arguments of Énergir and intervenors.

The following regular law court rulings (French only) offer instructive analogies:

- [Hydro-Québec c. Entreprises R. & G. St-Laurent inc., 2016 QCCA 2102 \(CanLII\)](#), para 1
- [Fanous c. Gauthier, 2018 QCCA 293 \(CanLII\)](#), para 21.”

**a.1) 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?**

20. In this area, ROÉÉ generally agrees with the analysis Énergir documented in paragraphs 31 to 47 of its argument [B-0048](#) (French).
21. In paragraph 73 and subsequent of its decision [D-2019-031](#) (French), the Régie refers to a number of decisions by the Ontario Energy Board (OEB).
22. It is entirely appropriate for the panel presiding to allow participants to make submissions on the implications of these decisions for exercise by the Régie of its authority in this file.
23. However, this situation perfectly illustrates why addressing such complex and fundamental issues should only take place in light of more comprehensive evidence and arguments.
24. Although interesting, the OEB decisions should be considered with caution, since they arise in a statutory and government policy context that differs from those now in place in Québec regarding RNG.
25. Therefore, in ROÉÉ's opinion, the questioning of the panel presiding could be seen as arising from a vision of the authority and responsibilities of the Régie as focused almost exclusively on classic economic considerations, such as minimization of the cash price of natural gas distribution, respect of price deregulation, the methane commodity business and maintaining competition.
26. However, with respect, the legislation that binds the Régie, its exclusive jurisdiction, and the considerations and policies it is obliged to respect under section 5 of the *Act respecting the Régie de l'énergie* (the "Act") mean that the integration of the actual costs of using hydrocarbon energy must absolutely be allowed as internal elements in the regulation and distribution of natural gas in 2019.

27. In this respect, even if the Énergir application hypothesized *[translation]* “the equivalent of direct financial assistance for the production of RNG in Québec,” in the opinion of ROÉÉ, *[translation]* “the purchase of natural gas is part of the normal activities of a natural gas distributor.” Within the currently prevailing regulatory framework regarding RNG, these purchases are part of Énergir’s regulated activities.

➤ [D-2019-031](#) (French), paras 85 and 83.

28. Based on all of the evidence, tested in public hearings and in light of arguments on the merits, the Régie will be able to determine whether inclusion of the cost of stimulating RNG production is necessary to allow the integration of large volumes of this gas produced in Québec in the Énergir network.

29. Section 51 of the Act must be read in its full context, and especially in conjunction with section 52:

**“51.** No electric power transmission tariff or natural gas transmission or delivery tariff may impose higher rates or more onerous conditions than are necessary to cover capital and operating costs, to maintain the stability of the electric power carrier or a natural gas distributor and the normal development of a transmission or distribution system or to provide a reasonable return on the rate base.

The same applies to the storage of natural gas by the operator of a natural gas storage facility insofar as it is warranted by the rate determination method employed by the Régie.

**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.”

30. Thus, the limit proposed by section 51 concerns what is “necessary”. The list that follows is not restrictive.

31. However, in the new transition context, the cost necessary to stimulate the production of RNG in Québec is part of the “actual cost of acquisition” or other “acquisition-related cost of the natural gas” by Énergir (section 52, paras 1 and 2 of the Act).

32. In fact, with regard to section 1 of the Act and the questioning of the panel presiding in paragraphs 66 and 67 of Decision [D-2019-031](#) (French), we respectfully put forward that Énergir’s application would not fall outside the field of application of the *Act respecting the Régie de l’énergie*. Legislation regarding the Régie’s authority and responsibilities must be interpreted and applied in a broad and liberal manner, in their full context, and according to their purpose.

➤ [Interpretation Act, CQLR c I-16](#):

“41. Every provision of an Act is deemed to be enacted for the recognition of rights, the imposition of obligations or the furtherance of the exercise of rights, or for the remedying of some injustice or the securing of some benefit.

Such statute shall receive such fair, large and liberal construction as will ensure the attainment of its object and the carrying out of its provisions, according to their true intent, meaning and spirit.

41.1. The provisions of an Act are construed by one another, ascribing to each provision the meaning which results from the whole Act and which gives effect to the provision.”

**a.2) And, if it has such authority, is it fair and reasonable to exercise it?**

33. Our answer to this question emerges from our analysis below.

34. The Régie must always exercise its authority according to the law, the various considerations included in section 5 of the Act and tariff matters and supplies to ensure that tariffs are fair and reasonable, and supplies adequate.

35. There is no doubt that Énergir’s proposal is very likely to affect the structure and development of the RNG production industry and the price of this gas in Québec.

36. However, these are not purely legal issues where solutions can be found in an interim order of the OEB.
37. Indeed, and as reflected in the Régie's discussion in paragraph 88 and following in decision [D-2019-031](#) (French), these are issues of great complexity that must be examined in light of all the evidence after reviewing the file.
38. With respect, the fair and reasonable exercise of its authority is the question the Régie must still resolve. This is not a preliminary point of law.

**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?**

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

39. Our answers to these questions emerge from our analysis below.
40. We feel that these are questions that could only be answered in light of all the evidence from participants, answers to the requests for information, cross-examinations and arguments on the merits.
41. It is important to note that the Régie's questions have been asked in terms of an FIT for which Énergir would withdraw its request for approval from this file.
42. Furthermore, it is highly likely that approval of Énergir's application by the Régie would affect the functioning of the RNG market in Québec.
43. ROEÉ does not consider the potential acceptance of Énergir's application would necessarily follow a conclusion by the Régie that RNG as a commodity is a product whose supply is regulated.



44. Rather, Énergir's application is based on considerations that now fall within the regulatory framework established by law and by policies applicable to RNG.
45. Impacts, even significant ones, beyond the scope of the Régie of potential acceptance of the Énergir application, must be weighed in the exercise of the Régie's discretion.
46. ROEE reserves the right to make more substantive arguments at the hearing and to submit authorities as needed.

**Respectfully submitted,**

**Montréal, April 23, 2018**

***(s) Franklin Gertler, legal office***

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**FRANKLIN GERTLER LEGAL OFFICE  
Per: M<sup>e</sup> Franklin S. Gertler**

**Aldred Building  
507 Place d'Armes, Suite 1701  
Montréal, Québec H2Y 2W8  
T: 514-798-1988  
F: 514-798-1986  
M: 514-942-9309  
[franklin@gertlerlex.ca](mailto:franklin@gertlerlex.ca)**