

C A N A D A

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

FILE R-4008-2017

RÉGIE DE L'ÉNERGIE

PURCHASE AND SALE OF RENEWABLE
NATURAL GAS (“RNG”) BY ÉNERGIR

ÉNERGIR

Applicant

-and-

REGROUPEMENT SÉ-AQLPA-GIRAM,
COMPRISING:

STRATÉGIES ÉNERGÉTIQUES (S.É.)

ASSOCIATION QUÉBÉCOISE DE LUTTE
CONTRE LA POLLUTION ATMOSPHÉRIQUE
(AQLPA)

GROUPE D'INITIATIVES ET DE
RECHERCHES APPLIQUÉES AU MILIEU
(GIRAM)

Intervenor

**ARGUMENTS BY REGROUPEMENT SÉ-AQLPA-GIRAM CONCERNING THE JURISDICTION OF
THE RÉGIE IN RESPECT OF A PREMIUM PRICE FOR THE PURCHASE OF BIOMETHANE (RNG)**

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Prepared for:
Regroupement SÉ-AQLPA-GIRAM, comprising:
Stratégies Énergétiques (S.É.)
Association québécoise de lutte contre la pollution atmosphérique (AQLPA)
and Groupe d'initiatives et de recherches appliquées au milieu (GIRAM)
April 23, 2019

*Arguments concerning the jurisdiction of the Régie in respect of a premium price for the purchase of biomethane (RNG)
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*In respect of Regroupement SÉ-AQLPA-GIRAM,
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TABLE OF CONTENTS

1 - PREAMBLE	1
2 - THE RÉGIE'S JURISDICTION TO AUTHORIZE A PREMIUM PRICE FOR THE PURCHASE OF BIOMETHANE (RNG) BY ÉNERGIR, WHICH HELPS DEVELOP RNG PRODUCTION IN QUÉBEC	3
3 - THE APPROPRIATENESS OF THE RÉGIE AUTHORIZING SUCH A PREMIUM PRICE FOR THE PURCHASE OF BIOMETHANE (RNG) BY ÉNERGIR, WHICH HELPS DEVELOP RNG PRODUCTION IN QUÉBEC	11
4 - WOULD SUCH A PREMIUM PRICE FOR THE PURCHASE OF BIOMETHANE (RNG) BY ÉNERGIR USE THE MONOPOLY DISTRIBUTION POSITION IN A WAY THAT ALTERS THE RULES OF FREE MARKET ACCESS FOR RNG IN QUÉBEC?	25
5 - COULD SUCH A PREMIUM PRICE FOR THE PURCHASE OF BIOMETHANE (RNG) BY ÉNERGIR BE PERCEIVED AS FIXING OR CONTROLLING THE SUPPLY PRICE FOR AN UNREGULATED PRODUCT?	30
6 - THE APPROPRIATENESS OF ÉNERGIR WITHDRAWING ITS CONCLUSION ON THE APPROVAL OF THE AGREEMENT CONCERNING THE PURCHASE OF RNG ENTERED INTO WITH TIDAL ENERGY MARKETING INC.....	32
7 - CONCLUSION	34

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1

PREAMBLE

1 - The Régie de l'énergie has before it, in this File R-4008-2017, an application from Énergir (hereinafter referred to as “*the distributor*”) for the purchase and sale of renewable natural gas (“RNG”).¹

2 - Before addressing the substance of this application, the Régie de l'énergie has, in its March 13, 2019 procedural decision [D-2019-031](#), requested participants to submit their arguments for the purpose of a hearing to be held on May 7–8, 2019, on the four following preliminary issues [*translation*]:

a1) 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?

a2) 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?

¹ **ÉNERGIR**, File R-4008-2017, [Exhibit B-0050, Fifth re-amended application](#).

3 - On April 18, 2019, the Régie de l'énergie also asked to hear the parties' views on whether it was appropriate that Énergir withdraw its conclusion on the approval of the agreement concerning the purchase of RNG entered into with Tidal Energy Marketing Inc. (letter [A-0017](#)).

4 - Énergir submitted its arguments concerning these preliminary issues on April 17, 2019 ([Exhibit B-0048](#)).

5 - This file constitutes arguments concerning these two preliminary issues from Regroupement SÉ-AQLPA-GIRAM, comprising *Stratégies Énergétiques (S.É.)*, *Association québécoise de lutte contre la pollution atmosphérique (AQLPA)* and *Groupe d'initiatives et de recherches appliquées au milieu (GIRAM)*.

They already made opening submissions on March 21, 2019 ([Exhibit C-SÉ-AQLPA-GIRAM-0017](#)).

2

THE RÉGIE’S JURISDICTION TO AUTHORIZE A PREMIUM PRICE FOR THE PURCHASE OF BIOMETHANE (RNG) BY ÉNERGIR, WHICH HELPS DEVELOP RNG PRODUCTION IN QUÉBEC

6 - Below we answer the Régie’s first question:

a1) *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?*

7 - First, it should be recalled that in the present case, the expression “*tariff*” (feed-in tariff or “FIT”) is legally false and can cause confusion. (See our arguments on this topic in [Exhibit C-SÉ-AQLPA-GIRAM-0016](#), section 2.1). This is not a “*tariff*.”

8 - What we are dealing with here is actually Énergir’s proposed **price for biomethane (RNG) purchases by Énergir, or even a “*biomethane purchasing strategy*.”**

In [letter B-0046, dated April 17, 2019](#), Énergir even rightly specifies 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. Énergir is therefore considering an approach different from the FIT, based on a **purchasing strategy** similar to the one used for the traditional natural gas supply service.”

9 - Such being the case, the Régie de l'énergie clearly has jurisdiction over the price for the purchase of biomethane by Énergir, as this is one of the **“characteristics of the contracts the holder intends to enter into in order to meet the needs of Québec markets following the implementation of the energy efficiency measures”** that the Régie has the jurisdiction to approve as part of Énergir's Gas Supply Plan, pursuant to s. 72, para 1 of the *Act respecting the Régie de l'énergie*. Énergir's “biomethane purchasing strategy” is one of the key components of its supply plan, in accordance with s. 1, subpara 3 of the [Regulation respecting the tenor of a supply plan and the intervals at which it is to be submitted, R.R.Q., c. R-6.01, r. 8](#), which establishes that the distributor's plan must include **“the characteristics of the contracts he intends to enter into, indicating, among other things, a) the various products, tools or measures contemplated.”**

The “purchase of biomethane” part of this file can therefore be seen as a division of the Régie de l'énergie's study of Énergir's Gas Supply Plan (in the same way that, historically, the study of the characteristics of Hydro-Québec Distribution's (HQD's) power supply contracts has often been carried out in separate files constituting, as well, divisions of the study of its own supply plan).

10 - Nothing in the law prevents the Régie from approving an RNG purchasing strategy, a purchase price or other characteristics of RNG supply contracts which are more favourable to the gas seller than the price and conditions in the general gas market (i.e. gas other than RNG).

So, if the question is, “*Does the Régie have the **jurisdiction** to approve such a price or such terms that are more favourable to the seller?*” then the answer is, “*Yes, the Régie has the **jurisdiction.***”

11 - The biomethane purchase price and any other contract characteristic for such a supply or any characteristic of the RNG supply strategy are therefore not a matter of jurisdiction (there being no doubt on this).

Rather, it is a matter of whether the content of the decision is appropriate, as discussed in chapter 3 below.

12 - When the Régie exercises its aforesaid jurisdiction according to s. 72, para 1 of the *Act respecting the Régie de l'énergie* to approve the biomethane (RNG) purchase price, other supply contract characteristics or the biomethane purchasing strategy, it does so in a legislative context that offers it much broader discretion than the apparently more limited context in Ontario at the time the Ontario Energy Board (OEB) rendered its regrettable Decision [EB-2011-0242/EB-2011-0283](#) of July 12, 2012, p. 13. Indeed, it seems the OEB has no jurisdiction to approve distributors' supply plans, strategies for purchasing various products, or the price or other supply contract characteristics. Unfortunately, this lack of jurisdiction led the OEB to rule that its legislative framework did not allow it to approve a premium price for the purchase of biomethane.

Québec's legislative framework is completely different. When the Régie de l'énergie exercises its aforesaid jurisdiction according to s. 72, para 1 of the *Act respecting the Régie de l'énergie* (the Act) to approve the biomethane (RNG) purchase price, other supply contract characteristics or the biomethane purchasing strategy, it benefits from the powers given to it under s. 72, para 1 (and its aforesaid Regulation) and must also take into account the **following six legal aspects** (most of which did not exist in Ontario at the time of Decision [EB-2011-0242/EB-2011-0283](#)), which will allow the Court to determine whether the terms submitted to it are **appropriate**:

- ❑ The plan must include the quantity of RNG established by **regulation of the government** (s. 72, subpara 2 of the Act).
- ❑ The Régie de l'énergie has the exclusive jurisdiction to monitor the operations of holders of exclusive natural gas distribution rights to ensure

that consumers are **adequately supplied** (s. 31, para 1, subpara 2 of the Act).

- The Régie de l'énergie has the exclusive jurisdiction to monitor the operations of the natural gas distributor to ensure that consumers are charged **fair and reasonable rates** (s. 31, para 1, subpara 2.1 of the Act).

- 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, as we highlight below, 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**, like the development of the renewable electricity production sectors is already part of the **normal development** of HQD’s electricity grid and off-grid systems, and, more generally, like the **normal development** of all energy distribution networks includes multiple other energy transition, innovation and efficiency programs and measures.

- Section 5 of the Act stipulates that the Régie must ensure, in the exercise of its powers, conciliation between **public interest**, customer protection and the fair treatment of the electricity carrier and distributors. It promotes the satisfaction of energy needs **in accordance with the objectives of the government’s energy policies and with a view to sustainable development and equity at the individual and collective levels.**
- Moreover, Énergir’s program for the purchase of RNG, or biomethane, at a premium price that is higher than the natural gas market price **must also be seen as a distributor energy transition, innovation and efficiency program**, within the meaning of the [Transition Énergétique Québec \(TÉQ\) 2018–2023 energy transition, innovation and efficiency Master Plan](#) (French only), which the Régie is currently reviewing under File R-4043-2018 (except for the programs and measures that are already being reviewed under other files, such as this one).

It is normal and expected that distributor *energy transition, innovation and efficiency* programs involve financial assistance. This distributor financial assistance is sometimes provided in advance (to manufacturers, builders and sellers of *energy transition, innovation and efficiency* products). Such financial assistance is often explicitly for *market transformation*,² like Énergir’s

² See: **TRANSITION ÉNERGÉTIQUE QUÉBEC (TÉQ)**, File R-4043-2018, [Exhibit B-0005, Plan directeur 2018-2023 en transition, innovation et efficacité énergétiques](#), page 46, page 94 on residential building components, and measure 54 on page 220.

program for the purchase of RNG, or biomethane, at a premium price that is higher than the natural gas market price could transform the RNG market by allowing it to emerge and grow.

At Énergir, financial assistance for *energy transition, innovation and efficiency* programs is treated like a **regulatory asset**.

13 - To summarize, the Régie de l'énergie's jurisdiction to approve a premium price for the purchase of biomethane (RNG) by Énergir and other supply contract characteristics stems from the following:

- **S. 72, para 1 of the Act respecting the Régie de l'énergie (interpreted, as aforesaid, taking into account ss. 5, 31, para 1, subparas 2 and 2.1, 51 and 72, subpara 2 of the Act)**
- **Its power to approve, with or without changes, Énergir's *energy transition, innovation and efficiency* programs**

HYDRO-QUÉBEC DISTRIBUTION, File R-3854-2013, [Exhibit B-0036, HQD 9, document 1](#), Page 5 (lines 14 to 17), Page 8 (lines 1 to 4), Page 9 (lines 5 to 7 and 18 to 20), Page 11 (note 4), Page 12 (lines 16 to 18).

HYDRO-QUÉBEC DISTRIBUTION, File R-4011-2017, [Exhibit B-0041, HQD 10, document 1](#), Page 7, lines 1 to 3.

HYDRO-QUÉBEC DISTRIBUTION, File R-9001-2017 on the 2017 annual report, [Exhibit B-0050, HQD 7, document 3](#), Page 5 (lines 15 and 26), Page 6 (table 1, line 3), Page 13 (table 4. Lines 3 and 5), Page 13 (table 5, lines 1 and 2).

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14 - In addition to the above, this file should be distinguished from [Decision EB-2017-0319 \(Application for the Renewable Natural Gas Enabling Program\) dated October 18, 2018 by the OEB](#). Enbridge wanted the OEB to set a rate for the biogas pre-treatment service it wished to offer; the OEB's response was that Enbridge could provide this service, but only as an unregulated activity for which the OEB was not required to set the rate.

In this file, neither the distributor nor the participants are proposing that Énergir offer a tariffed biogas pre-treatment service. Decision EB-2017-0319 is therefore not relevant here.

3

THE APPROPRIATENESS OF THE RÉGIE AUTHORIZING SUCH A PREMIUM PRICE FOR THE PURCHASE OF BIOMETHANE (RNG) BY ÉNERGIR, WHICH HELPS DEVELOP RNG PRODUCTION IN QUÉBEC

15 - Below we answer the Régie’s second question:

a2) If it has such authority, is it fair and reasonable to exercise it?

16 - We respectfully submit that this is **a matter of appropriateness**, which will be addressed during the merit-based review of this file.

Here the objective would be to rule on the terms of the biomethane (RNG) purchase price, other supply contract characteristics and the biomethane purchasing strategy, according to s. 72, para 1 of the *Act respecting the Régie de l'énergie*, (interpreted, as aforesaid, taking into account ss. 5, 31, para 1, subparagraphs 2 and 2.1, 51 and 72 subpara 2 of the Act), and also according to the Régie’s power to approve, with our without changes, Énergir’s *energy transition, innovation and efficiency* programs.

17 - To decide on the appropriateness of these terms, the Régie will take into account the uncontradicted evidence that it is impossible to develop a biomethane (RNG) market at the gas market price.

A premium purchase price is therefore necessary for this market to emerge.

18 - Québec should have a biomethane (RNG) market because:

- It is in the public interest for a biomethane (RNG) market to exist in Québec, within the meaning of section 5 of the Act.
- This is consistent with the government’s energy policy objectives.
- This is in keeping with the principles of sustainable development and individual and collective equity.
- Énergir’s program for the purchase of RNG, or biomethane, at a premium price that is higher than the natural gas market price **must also be seen as a distributor energy transition, innovation and efficiency program**, within the meaning of the [Transition Énergétique Québec \(TÉQ\) 2018–2023 energy transition, innovation and efficiency Master Plan](#) (French only), which the Régie is currently reviewing under File R-4043-2018 (except for the programs and measures that are already being reviewed under other files, such as this one).

- 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, “**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**, like the development of the renewable electricity production sectors is already part of the **normal development** of HQD’s electricity grid and off-grid systems, and, more generally, like the **normal development** of all energy distribution networks includes multiple other energy transition, innovation and efficiency programs and measures.

- In addition to the Saint-Hyacinthe biomethanation plant already in service, the Québec government’s *Programme de traitement des matières organiques par biométhanisation et compostage (PTMOBC)* [program for processing organic matter using biomethanation and composting] has enabled the emergence of **projects** for biomethanation plants in the city of Québec, Varennes, Montréal and Beauharnois (that could produce up to 36.8 million m³ of RNG a year, including the Saint-Hyacinthe plant already in

service). However, such projects cannot get off the ground without a premium purchase price from Énergir. Regrettably, other PTMOBC-subsidized projects, in Laval and Longueuil, already seem to have been abandoned.

- The [Regulation respecting the quantity of renewable natural gas to be delivered by a distributor, 2019 \(151\) G.O. II 465 \(O.C. 233-2019, 20 March 2019\)](#), which came into effect on April 18, 2019, requires that Énergir annually deliver a quantity of RNG “**equal to or greater**” than 1% (beginning in 2020–2021), 2% (beginning in 2023–2024) and 5% (beginning in 2025–2026) of the average of the distributor’s actual non-biomethane natural gas deliveries to the major enterprise market and the medium flow market of the three previous years.

- Attaining the Regulation’s minimum targets will be difficult, because even if all the PTMOBC-subsidized projects that remain in the city of Québec, Varennes, Montréal and Beauharnois materialize (estimated at 36.8 Mm³ if the active plant in Saint-Hyacinthe is included)³ at the pace in the biomethane supply plan that Énergir set out in File R-4076-2018 (see the references after the table), even if efforts continue to add a new municipal project every year in 2023–24, 2024–25 and 2025–26, as calculated in the following table, and even if the supply in Saint-Jérôme is recorded as “*biomethane (RNG)*,” **Énergir’s total biomethane supply will still be clearly insufficient to attain the government’s minimum targets in 2020–2021, 2023–2024 and 2025–2026.** Indeed, even in such a very optimistic scenario, in 2025–2026, the biomethane volumes injected into Énergir’s network would barely reach 72 Mm³ (i.e. **1.18% of Énergir’s non-biomethane sales in 2025–2026**), far below the 304.7 Mm³ required to meet the government target of 5% of Énergir’s non-biomethane sales, for a shortfall of 232.7 Mm³.

³ ÉNERGIR, File R-4008-2017, [Exhibit B-0048](#) April 17, 2019 arguments, para 76.

To attain the government targets, Énergir will have no choice but to quickly acquire biomethane from agricultural and/or forest sources over the next five years, in addition to ensuring that all its planned municipal waste biomethanation plants are built.

This is an immense challenge.

Taking up such a challenge will require premium prices and terms for the purchase of biomethane, be it from municipal waste or an agricultural or forest source. Moreover, the magnitude of the required biomethane volumes to attain the minimum thresholds under the Regulation (or surpass them) makes it essential to socialize the cost premium for biomethane among all Énergir’s customers (as is already done for all the other energy transition, innovation and efficiency programs, and in the same way that all consumers of electricity help pay for wind-generated electricity). In fact, even if this was the objective, the number of private customers who would agree to pay a tariff premium to have the right to say they were supplied with biomethane would quickly become insufficient. Socializing the cost to purchase biomethane will be inevitable because of the volumes required for such a supply:

Régie de l'énergie – File R-4008-2017
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	Énergir's total sales*	St-Jér. If considered RNG	St-Hyac.	Others (EBI, Tidal)	New biomethane supplies	Total RNG	Énergir's total sales without RNG	Average of the three previous year's sales without RNG	T variable in the Regulation	RNG Minimum required by the Regulation	Surplus (Deficit) compared with the minimum required by the Regulation
	Mm ³	Mm ³	Mm ³	Mm ³	Mm ³	Mm ³	Mm ³	Mm ³	%	Mm ³	Mm ³
	(a)	(b)	(c)	(d)	(e)	(f)= (b)+ (c) +(d) +(e)	(g)= (a)- (f)	(h)	(i)	(j)	(k)=(f)-(j)
2016-2017 (A)	5,868.40	31.00	0			31.00	5,837.40				
2017-2018 (A)	6,094.40	29.00	2.00			31.00	6,063.40				
2018-2019 (A and F 4/8)	6,107.60	29.00	5.00			34.00	6,073.60				
2019-2020 (F by Énergir)	6,038.60	29.00	12.00	n.a.	0.00	41.00	5,997.60	5,991.47	0%	0.00	
2020-2021 (F by Énergir)	6,084.30	29.00	13.00	n.a.	5.00	47.00	6,037.30	6,044.87	1%	60.45	- 13.45
2021-2022 (F by Énergir)	6,140.20	29.00	13.00	n.a.	17.00	59.00	6,081.20	6,036.17	1%	60.36	- 1.36
2022-2023 (F by Énergir)	6,150.10	29.00	13.00	n.a.	21.00	63.00	6,087.10	6,038.70	1%	60.39	+2.61
2023-2024 (F by us)	6,160.00	29.00	13.00	n.a.	24.00	66.00	6,094.00	6,068.53	2%	121.37	- 55.37
2024-2025 (F by us)	6,169.90	29.00	13.00	n.a.	27.00	69.00	6,100.90	6,087.43	2%	121.75	- 52.75
2025-2026 (F by us)	6,179.80	29.00	13.00	n.a.	30.00	72.00	6,107.80	6,094.00	5%	304.70	- 232.70

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YEAR	REFERENCES FOR ÉNERGIR'S TOTAL SALES
2016–2017	ÉNERGIR, File R-4024-2017, Exhibit B-0049, Énergir-9. Document 1, page 1, line 28, (after interruptible)
2017–2018	ÉNERGIR, File R-4079-2018, Exhibit B-0048, Énergir-9. Document 1, page 1, line 27, (after interruptible)
2018–2019	ÉNERGIR, File R-4076-2018, Ph. 2, Exhibit B-0053, Énergir-H. Doc. 1, tab. 19. p. 54, (after interruptible for Oct., Nov., Dec. and Jan., before for all other months)
2019–2020	ÉNERGIR, File R-4076-2018, Phase 2, Exhibit B-0053, Énergir-H. Document 1, table 19, page 54, (before interruptible)
2020–2021	ÉNERGIR, File R-4076-2018, Phase 2, Exhibit B-0053, Énergir-H. Document 1, table 19, page 54, (before interruptible)
2021–2022	ÉNERGIR, File R-4076-2018, Phase 2, Exhibit B-0053, Énergir-H. Document 1, table 19, page 54, (before interruptible)
2022–2023	ÉNERGIR, File R-4076-2018, Phase 2, Exhibit B-0053, Énergir-H. Document 1, table 19, page 54, (before interruptible)
2023–2024	Our forecast (before interruptible)
2024–2025	Our forecast (before interruptible)
2025–2026	Our forecast (before interruptible)

YEAR	REFERENCES FOR THE BIOMETHANE SUPPLY IN SAINT-JÉRÔME
2016–2017	ÉNERGIR, File R-4024-2017, Exhibit B-0068, Énergir-12. Document 1, page 1, line 35
2017–2018	ÉNERGIR, File R-4079-2018, Exhibit B-0068, Énergir-12. Document 1, page 1, line 36
2018–2019	ÉNERGIR, File R-4018-2017, Exhibit B-0034, GAZ Métro-H. Document 1, Appendix 7, page 1, line 6
2019–2020	ÉNERGIR, File R-4076-2018, Phase 2, Exhibit B-0053, Énergir-H. Document 1, Appendix 10, page 1, line 4.
2020–2021	ÉNERGIR, File R-4076-2018, Phase 2, Exhibit B-0053, Énergir-H. Document 1, Appendix 10, page 1, line 4.
2021–2022	ÉNERGIR, File R-4076-2018, Phase 2, Exhibit B-0053, Énergir-H. Document 1, Appendix 10, page 1, line 4.
2022–2023	ÉNERGIR, File R-4076-2018, Phase 2, Exhibit B-0053, Énergir-H. Document 1, Appendix 10, page 1, line 4.
2023–2024	ÉNERGIR, File R-4076-2018, Phase 2, Exhibit B-0053, Énergir-H. Document 1, Appendix 10, page 1, line 4.
2024–2025	ÉNERGIR, File R-4076-2018, Phase 2, Exhibit B-0053, Énergir-H. Document 1, Appendix 10, page 1, line 4.
2025–2026	ÉNERGIR, File R-4076-2018, Phase 2, Exhibit B-0053, Énergir-H. Document 1, Appendix 10, page 1, line 4.

YEAR	REFERENCES FOR THE BIOMETHANE SUPPLY IN SAINT-HYACINTHE
2016–2017	ÉNERGIR, File R-4024-2017, Exhibit B-0083, Énergir-12. Document 13, page 1.
2017–2018	ÉNERGIR, File R-4079-2017, Exhibit B-0068, Énergir-12. Document 1, page 1, line 30.
2018–2019	ÉNERGIR, File R-4018-2017, Exhibit B-0034, GAZ Métro-H. Document 1, Appendix 7, page 1, line 29
2019–2020	ÉNERGIR, File R-4008-2017, Exhibit B-0022, Gaz Métro-1. Document 1, Appendix 1, page 13.
2020–2021	ÉNERGIR, File R-4008-2017, Exhibit B-0022, Gaz Métro-1. Document 1, Appendix 1, page 13.
2021–2022	ÉNERGIR, File R-4008-2017, Exhibit B-0022, Gaz Métro-1. Document 1, Appendix 1, page 13.
2022–2023	ÉNERGIR, File R-4008-2017, Exhibit B-0022, Gaz Métro-1. Document 1, Appendix 1, page 13.
2023–2024	ÉNERGIR, File R-4008-2017, Exhibit B-0022, Gaz Métro-1. Document 1, Appendix 1, page 13.
2024–2025	ÉNERGIR, File R-4008-2017, Exhibit B-0022, Gaz Métro-1. Document 1, Appendix 1, page 13.
2025–2026	ÉNERGIR, File R-4008-2017, Exhibit B-0022, Gaz Métro-1. Document 1, Appendix 1, page 13.

Arguments concerning the jurisdiction of the Régie in respect of a premium price for the purchase of biomethane (RNG)
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In respect of Regroupement SÉ-AQLPA-GIRAM, comprising:
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Régie de l'énergie – File R-4008-2017
Purchase and sale of renewable natural gas (“RNG”) by Énergir

YEAR	REFERENCES FOR OTHER BIOMETHANE SUPPLIES EXISTING SINCE 2017–2018 (EBI, TIDAL)
	No available data. The Régie will have to require that Énergir make this data public; otherwise, it will not be possible to precisely calculate the minimum volume of RNG required under the Regulation. As this information is not available, we recorded 0 m ³ in the above table.

YEAR	REFERENCES FOR NEW BIOMETHANE SUPPLIES
2016–2017	N/A
2017–2018	N/A
2018–2019	N/A
2019–2020	N/A
2020–2021	ÉNERGIR, File R-4076-2018, Phase 2, Exhibit B-0053, Énergir-H. Document 1, Appendix 10, page 1, line 4. The 13 Mm ³ injected by Saint-Hyacinthe were subtracted from the purchases within the territory. The volumes injected in Saint-Jérôme were already excluded and recorded separately. However, we were unable to subtract the volumes injected by EBI, as they were not disclosed. Tidal is not part of the purchases within the territory.
2021–2022	ÉNERGIR, File R-4076-2018, Phase 2, Exhibit B-0053, Énergir-H. Document 1, Appendix 10, page 1, line 4. The 13 Mm ³ injected by Saint-Hyacinthe were subtracted from the purchases within the territory. The volumes injected in Saint-Jérôme were already excluded and recorded separately. However, we were unable to subtract the volumes injected by EBI, as they were not disclosed. Tidal is not part of the purchases within the territory.
2022–2023	ÉNERGIR, File R-4076-2018, Phase 2, Exhibit B-0053, Énergir-H. Document 1, Appendix 10, page 1, line 4. The 13 Mm ³ injected by Saint-Hyacinthe were subtracted from the purchases within the territory. The volumes injected in Saint-Jérôme were already excluded and recorded separately. However, we were unable to subtract the volumes injected by EBI, as they were not disclosed. Tidal is not part of the purchases within the territory.
2023–2024	We are forecasting the addition of one 3 Mm ³ municipal project per year: ÉNERGIR, File R-4008-2017, Exhibit B-0022, Gaz Métro-1. Document 1, Appendix 1, page 13.
2024–2025	We are forecasting the addition of one 3 Mm ³ municipal project per year: ÉNERGIR, File R-4008-2017, Exhibit B-0022, Gaz Métro-1. Document 1, Appendix 1, page 13.
2025–2026	We are forecasting the addition of one 3 Mm ³ municipal project per year: ÉNERGIR, File R-4008-2017, Exhibit B-0022, Gaz Métro-1. Document 1, Appendix 1, page 13.

- Clearly, it is already difficult to attain the aforesaid Regulation targets (which are only minimums). It will therefore be even more challenging for Énergir to aim to surpass them, with a view to harnessing the tremendous technical and economic potential of RNG production in Québec, which could reach up to 3,808 million m³ (i.e. 144.3 million GJ) in 2030, or approximately two thirds of the natural gas volumes Énergir currently distributes:

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- **ÉNERGIR**, File R-4008-2017, [Exhibit B-0048](#) April 17, 2019 arguments, para 75.
- **DELOITTE and WSP**, *Renewable natural gas production in Québec: A key driver in the energy transition. Assessment of technical and economic potential in Québec (2018–2030)*, Montréal, October 2018, https://www.energir.com/~media/Files/Corporatif/Publications/181120_Potentiel%20GNR_Rapport%20synth%C3%A8se_ANG.pdf?la=en.
- **AVISEO CONSULTING**, *La filière de production de gaz naturel renouvelable au Québec. Impacts économiques à l'horizon 2030 et contribution à l'économie circulaire*, January 2019, <https://www.energir.com/~media/Files/Corporatif/Publications/Rapport%20Final%20GNR.pdf?la=fr> [The renewable natural gas production sector in Québec. Economic impacts up until 2030 and contribution to the circular economy].

(We invite Énergir to add the two aforesaid reports to this file. Aviseo's 2019 report should not be confused with its 2017 report, which is already in this file in Appendix 1 of [Exhibit B-0022, Gaz Métro 1, Doc. 1](#)).

- In addition, there is [Décret 1012-2014 du 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](#) [O.C. 1012-2014, 19 November 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 is still in effect and which the Régie must take into account when exercising its jurisdiction according to s. 72, para 1 of the Act. This Order of Council regarding concerns reads as follows [translation]:

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WHEREAS the Québec Residual Materials Management Policy aims to ban organic matter from disposal sites in order to help the government attain its 2013–2020 Climate Change Action Plan objectives;

WHEREAS the delivery of infrastructure that makes it possible to process organic matter using biomethanation aims to reduce greenhouse gas emissions as well as the amount of organic matter destined for disposal;

WHEREAS Gaz Métro Limited Partnership’s principal activities are the distribution, storage and transmission of natural gas;

WHEREAS Gaz Métro Limited Partnership holds exclusive natural gas distribution rights in many regions of Québec under Orders of Council 1264-99 of 17 November 1999, 860-2000 of 28 June 2000 and 773-2010 of 10 September 2010, each of which has a term of 30 years;

WHEREAS many municipality projects to produce local and renewable natural gas are located within the territory where Gaz Métro Limited Partnership holds exclusive natural gas distribution rights;

WHEREAS the municipalities receive financial assistance from the government to build infrastructure making it possible to process organic matter by biomethanation;

WHEREAS Gaz Métro Limited Partnership wishes to diversify its natural gas supply and the municipalities are points of production of natural gas within the territory where Gaz Métro Limited Partnership holds exclusive natural gas distribution rights;

WHEREAS the renewable natural gas injected into Gaz Métro Limited Partnership’s natural gas distribution network is mainly methane (CH₄) obtained by processing organic matter using biomethanation, with characteristics and a composition similar to the natural gas (composition and calorific value) in Gaz Métro Limited Partnership’s distribution network;

WHEREAS **renewable natural gas from biomethanation projects will replace natural gas that is currently imported;**

WHEREAS the connection of renewable natural gas production sites to the natural gas distribution networks would make it possible for customers to **consume local and renewable natural gas;** [...]

IT IS ORDERED, therefore, upon the recommendation of the Minister of Energy and Natural Resources:

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;** [...]

19 - For all the above reasons, we are confident that the Régie de l'énergie will indeed consider it appropriate to set a premium price for the purchase of biomethane by Énergir when it rules on the merits of the “*purchase of biomethane by Énergir*” part.

20 - In its [new application for intervention, C-SÉ-AQLPA-GIRAM-0011](#), in this file, section 3.1.3, Regroupement SÉ-AQLPA-GIRAM submits that Énergir's proposal, which draws on the Aviseo report, for a **price structure set in advance, offered to all subsidized producers in Québec and based on the producer's operating cost structure (price that will decline as production capacity increases)**, is the optimal solution. This cost premium compared with the market reflects Énergir's environmental, social and public interest role within Québec society (even without a government Order in Council), thus supporting the biomethane sector in Québec. The cost premium is necessary to attain the minimum targets for mandatory biomethane purchases set by the Québec government, as well as any future targets for additional biomethane purchases that Énergir may adopt (with the Régie's approval), with a view to harnessing the tremendous technical and economic potential of RNG production in Québec.

Regulatory theory, including the writings of Bonbright, acknowledges that a company could be induced to pay additional costs to **support the public interest within society**.

However, the price should not be excessively high, which could have the adverse effect of artificially generating an overproduction of waste for the purposes of creating biogas, as Énergir rightly pointed out, quoting its consultant, Aviseo, which recommended the following:

[translation] “Respect the order of priority for the 4R’s principle: The RNG price must not make it advantageous to produce organic waste.”

As mentioned, we are taking note of the new letter B-0046 dated April 17, 2019, which reads, [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. Énergir is therefore considering an approach different from the FIT, based on a **purchasing strategy** similar to the one used for the traditional natural gas supply service.”

21 - Once the Régie, in this file, gives Énergir the authorization to implement a biomethane purchasing strategy (which will eventually include a purchase price or other premium contract characteristics), the purchase price and characteristics thus defined will be **the actual cost of acquisition or any other terms granted** between the biomethane seller and Énergir, for the purposes of carrying out the *Act respecting the Régie de l'énergie*.

4

WOULD SUCH A PREMIUM PRICE FOR THE PURCHASE OF BIOMETHANE (RNG) BY ÉNERGIR USE THE MONOPOLY DISTRIBUTION POSITION IN A WAY THAT ALTERS THE RULES OF FREE MARKET ACCESS FOR RNG IN QUÉBEC?

22 - Below we answer the Régie’s third question:

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?

23 - Énergir, like other energy distributors in many countries, has a distribution monopoly. This is why some of its actions require approval or authorization from an energy board, as is the case in this file. Thus, the action is no longer taken by a monopoly exerting its power over society; it is a Régie decision. The Supreme Court of Canada ruling in *Glykis v. Hydro Québec*, [2004] 3 R.C.S. 285, 2004 SCC 60 (majority opinion), <https://scc-csc.lexum.com/scc-csc/scc-csc/en/2175/1/document.do> offers an analogy, as it was held that an electricity consumption contract was not a “*contract of adhesion*,” because its rates and conditions were not dictated by Hydro-Québec, but by a regulator (the Québec government, at the time).

It is therefore the Régie de l'énergie that will rule on the appropriateness of the strategy for the purchase of biomethane by Énergir, the purchase price and the other biomethane supply contract characteristics, taking into account all the relevant considerations, including the lines of thinking set out in chapter 3 of these arguments. It will be a Régie decision, not one made by a monopoly.

24 - As aforesaid, the uncontradicted evidence is that it is impossible to develop a biomethane (RNG) market in Québec at the gas market price.

A premium purchase price is necessary for this market to emerge.

25 - As aforesaid, in its [new application for intervention, C-SÉ-AQLPA-GIRAM-0011](#), in this file, section 3.1.3, Regroupement SÉ-AQLPA-GIRAM submits that Énergir's proposal, which draws on the Aviseo report, for a **price structure set in advance, offered to all subsidized producers in Québec and based on the producer's operating cost structure (price that will decline as production capacity increases), is the optimal solution. This cost premium compared with the market reflects Énergir's environmental, social and public interest role within Québec society (even without a government Order in Council), thus supporting the biomethane sector in Québec. As aforesaid, this cost premium is necessary to attain the minimum targets for mandatory biomethane purchases set by the Québec government, as well as any future targets for additional biomethane purchases Énergir may adopt (with the Régie's approval), with a view to harnessing the tremendous technical and economic potential of RNG production in Québec.**

Regulatory theory, including the writings of Bonbright, acknowledges that a company could be induced to pay additional costs to **support the public interest within society**.

The price should not be excessively high, which could have the adverse effect of artificially generating an overproduction of waste for the purposes of creating biogas, as Énergir rightly pointed out, quoting its consultant, Aviseo, which recommended the following: *[translation]* “Respect the order of priority for the 4R’s principle: The RNG price must not make it advantageous to produce organic waste.”

As mentioned, we are taking note of the new letter B-0046 dated April 17, 2019, which reads, *[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. Énergir is therefore considering an approach different from the FIT, based on a **purchasing strategy** similar to the one used for the traditional natural gas supply service.”

26 - Lastly, as aforesaid, Énergir’s program for the purchase of RNG, or biomethane, at a premium price that is higher than the natural gas market price **must also be seen as a distributor energy transition, innovation and efficiency program**. Furthermore, it is normal and expected that distributor *energy transition, innovation and efficiency* programs involve financial assistance. This distributor financial assistance is sometimes provided in advance (to manufacturers, builders and sellers of *energy transition, innovation and efficiency* products).

Such financial assistance is often explicitly for “market transformation,”⁴ like this Énergir program for the purchase of RNG, or biomethane, at a premium price that is higher than the natural gas market price could transform the RNG market by allowing it to emerge and grow.

27 - Consequently, in this file, by offering biomethane producers a premium purchase price (by offering to purchase all the biomethane they produce at this price), Énergir will make it possible for a biomethane (RNG) market to develop in Québec which otherwise would not exist.

Énergir is thus “altering” the market, in a positive, desirable and entirely legal manner.

Conversely, if Énergir were to abstain from offering a premium price for the purchase of biomethane (because it did not obtain the Régie’s authorization), it would also “alter” the market, but in a negative manner, preventing the existence of a biomethane (RNG) market in Québec. Municipal biomethane plants would simply not be built in Québec.

⁴ See: **TRANSITION ÉNERGÉTIQUE QUÉBEC (TÉQ)**, File R-4043-2018, [Exhibit B-0005, Plan directeur 2018-2023 en transition, innovation et efficacité énergétiques](#), page 46, page 94 on residential building components, and measure 54 on page 220.

HYDRO-QUÉBEC DISTRIBUTION, File R-3854-2013, [Exhibit B-0036, HQD 9, document 1](#), Page 5 (lines 14 to 17), Page 8 (lines 1 to 4), Page 9 (lines 5 to 7 and 18 to 20), Page 11 (note 4), Page 12 (lines 16 to 18).

HYDRO-QUÉBEC DISTRIBUTION, File R-4011-2017, [Exhibit B-0041, HQD 10, document 1](#), Page 7, lines 1 to 3.

HYDRO-QUÉBEC DISTRIBUTION, File R-9001-2017 on the 2017 annual report, [Exhibit B-0050, HQD 7, document 3](#), Page 5 (lines 15 and 26), Page 6 (table 1, line 3), Page 13 (table 4. Lines 3 and 5), Page 13 (table 5, lines 1 and 2).

28 - The situation is identical to that of Hydro-Québec Distribution, which entered into long-term supply contracts for wind-generated electricity, agreeing to purchase all the electricity the wind farms produced at a higher price than the electricity market price.

The premium price for wind-generated electricity and the long-term purchasing agreements allowed the wind farms to be built. If Hydro-Québec Distribution had abstained from offering a higher purchase price than the electricity market or refused to enter into long-term agreements for such purchases, the wind farms would not have been built.

5

**COULD SUCH A PREMIUM PRICE FOR THE PURCHASE OF BIOMETHANE (RNG)
BY ÉNERGIR BE PERCEIVED AS FIXING OR CONTROLLING THE SUPPLY
PRICE FOR AN UNREGULATED PRODUCT?**

29 - Below we answer the Régie’s fourth question:

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

30 - In response to this question, we submit that Énergir’s proposal is not price fixing or price control for the supply of an unregulated product.

It is simply a matter of the Régie, as part of Énergir’s Gas Supply Plan,

- a) establishing the purchase price and other characteristics for its biomethane (RNG) supply contracts,
- b) emphasizing that the purchase of all the biomethane (RNG) produced at a premium price is an *energy transition, innovation and efficiency* program or measure.

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31 - This should not be perceived as fixing or controlling the supply price of an unregulated product, in the same way that Hydro-Québec Distribution's long-term purchase of all the electricity wind farms produce at a price that is higher than that of the electricity market would not be qualified as such.

Similarly, as aforesaid, other distributor *energy transition, innovation and efficiency* programs where financial assistance is provided in advance (to manufacturers, builders and sellers of *energy transition, innovation and efficiency* products), sometimes explicitly for “*market transformation*,”⁵ do not constitute price fixing or price control for the supply of an unregulated product.

⁵ See: **TRANSITION ÉNERGÉTIQUE QUÉBEC (TÉQ)**, File R-4043-2018, [Exhibit B-0005, Plan directeur 2018-2023 en transition, innovation et efficacité énergétiques](#), page 46, page 94 on residential building components, and measure 54 on page 220.

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6

THE APPROPRIATENESS OF ÉNERGIR WITHDRAWING ITS CONCLUSION ON THE APPROVAL OF THE AGREEMENT CONCERNING THE PURCHASE OF RNG ENTERED INTO WITH TIDAL ENERGY MARKETING INC.

32 - Below we answer the Régie’s fifth question on the appropriateness of Énergir withdrawing its conclusion on the approval of the agreement concerning the purchase of RNG entered into with Tidal Energy Marketing Inc.

33 - We respectfully submit that Énergir’s conclusion on the approval of the agreement concerning the purchase of RNG entered into with Tidal Energy Marketing Inc. **should be kept in this file, for reasons of convenience.**

The purpose of this file already includes the prices and other characteristics of all biomethane supply contracts, whether they involve subsidized producers or not, within and outside Québec.

34 - Incidentally, as mentioned in the notes for the table in chapter 3 of these arguments, the Régie will have to require that Énergir **make public the delivery start date, the contract end date and the annual volumes of RNG received from Tidal Energy Marketing Inc. (and the same information for EBI)** for every year from 2017–2018 to 2025–2026; otherwise, the minimum volume of RNG required under the Regulation cannot be accurately calculated.

Régie de l'énergie – File R-4008-2017
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7

CONCLUSION

35 - For all of the above reasons, we ask that the Régie allow the recommendations expressed in these arguments.

36 - Respectfully submitted,

Montréal, April 23, 2019

[signed]

Dominique Neuman

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