

CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

RÉGIE DE L'ÉNERGIE

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No. R-4008-2017

ÉNERGIR, L.P. (“ÉNERGIR”)

Applicant

and

UNION OF QUEBEC  
MUNICIPALITIES (“UMQ”)

Defendant

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### UMQ ARGUMENTS

#### ANSWERS TO QUESTIONS ASKED BY THE RÉGIE IN ITS PROCEDURAL DECISION D-2019-031

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#### UMQ RESPECTFULLY SUBMITS THE FOLLOWING:

1. In its procedural decision D-2019-031, the Régie de l'énergie (the “Régie”) asked the distributor and intervenors 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 purpose of developing RNG in Québec? 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?

Question a)

2. Énergir's application is based mainly on sections 1, 31(5) and 52 of the Act.
3. The provisions confer wide discretion on the Régie in exercising its authority.
4. The Régie must give to these sections "such fair, large and liberal construction as will ensure the attainment of [their] object and the carrying out of [their] provisions, according to their true intent, meaning and spirit".
  - *Interpretation Act*, CQLR, c. I-16, s. 41, para 2
5. Furthermore, the provisions of the 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".
  - *Interpretation Act*, CQLR, c. I-16, s. 41.1
6. To learn the extent of the powers the legislator wished to confer on the Régie, these provisions must be interpreted in light of other provisions of the Act.
7. Section 5, subparagraph 3b) of section 72, and subparagraph 4 of section 112 of the Act are of key importance in this file:

**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.

**72.** With the exception of private electric power systems, a holder of exclusive electric power or natural gas distribution rights shall prepare and submit to the Régie for approval, according to the form, tenor and intervals fixed by regulation of the Régie, a supply plan describing 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. The supply plan shall be prepared having regard to

(...)

(3) as concerns natural gas supply,

(...)

(b) the quantity of renewable natural gas determined by regulation of the Government under subparagraph 4 of the first paragraph of section 112.

**112.** The Government may make regulations determining:

(...)

(4) the quantity of renewable natural gas to be delivered by a natural gas distributor and the terms and conditions according to which it is to be delivered.

8. In its *2030 Energy Policy – Energy in Québec: A Source of Growth*, the government set the objective of increasing the total production of renewable energy by 25% and the production of bioenergy by 50%.
9. The government also exercised the power conferred under subparagraph 4 of section 112 of the Act and adopted on March 20, 2019, the *Regulation respecting the quantity of renewable natural gas to be delivered by a distributor*.  
  
- *Gazette officielle du Québec*, April 3, 2019, Vol. 151, No. 14, Part 2, p. 911 (French only)
10. This regulation states that any natural gas distributor must deliver, by 2020, a quantity of RNG equal to or greater than 1% of the total volume of natural gas distributed.
11. When the legislator amended sections 5, 72 and 112 of the Act by adopting the *Act to implement the 2030 Energy Policy and to amend various legislative provisions* (SQ, c. 35, 2016), it clearly wanted the Régie to exercise its authority to promote achievement of the government's energy policy objectives.
12. A transition to increased use of RNG in Québec will certainly play a fundamental role in this regard.
13. The municipal biomethanation projects are the most likely to inject RNG into the natural gas network.

- B-0005, Aviseo's final report, p. 13 (French only)
- 14. Unfortunately, as UMQ already stated in files R-3824-2012 and R-3972-2016, the current model for establishing the price of gas, whether based on the revenue generated or on avoided costs, does not ensure adequate profitability for municipalities for them to justify taking the risks associated with an RNG production project.
- 15. As stewards of public funds, the municipalities have a well-founded aversion to risk and cannot be drawn into using property taxes to finance the deficit-based operation of injecting RNG into a distribution network.
- 16. For this reason, UMQ feels that the Régie should, in exercising its authority, take into account the special nature of municipal producers and approve any mechanism likely to ensure the financial neutrality of an operation to inject RNG into the distribution network, whether an FIT is involved or not.
- 17. However, both Aviseo's final report and Sylvain Audette's expert report (file R-3972-2016, A-0012) judged the establishment of an FIT to be the best solution to promote injection of RNG to be produced by municipalities in the Québec gas network.
- 18. UMQ respectfully submits that coming out in favour of conditions that would make possible the viability of an RNG industry in Québec does not constitute disguised financial aid, an excess of authority or an improper exercise of discretionary power.
- 19. It would be absurd, to say the least, that the Act not empower the Régie to rule on a price that reflects the risks taken by municipalities and that makes it possible to guarantee the viability of their operations.
- 20. Furthermore, as already indicated in its discussion paper, UMQ reiterates that paragraph 2 of section 52 of the Act confers sufficient leeway on the Régie to decide on additional costs sufficient to appeal to municipalities interested in producing RNG to launch such an operation.
- 21. For these reasons, UMQ feels that the Régie not only has authority in this matter, but also that it would be a fair and reasonable exercise of its authority.

*Question b)*

22. Access to the free market constitutes a consideration that the Régie must take into account in its decision.
23. Nonetheless, as Énergir underscores, subsidized producers do not play an important role in the market and establishing an FIT would have little—or no—impact on access to the free market.
24. Furthermore, UMQ must stress that the potential constraint to competition is just one consideration among others that must be weighed by the Régie, like the government's energy policy objectives.
25. At present, the RNG market lacks fluidity and production remains marginal.
  - Aiseo's final report, p. 12 (French only)
26. As proposed, the FIT rightly seeks to remedy this situation.
27. As stated in its discussion paper, UMQ believes that implementation of an RNG tariff would serve precisely to make the market more fluid for this type of supply. By making RNG available, the distributor will help spur demand for this type of gas.
28. As a result, the concerns expressed by the Régie in its decision D-2001-214 regarding the use of the distribution monopoly to alter the rules of free market access should weigh less in the decision than is demanded in this file.
29. On the other hand, the Régie should give more weight to the environmental benefits the establishment of an FIT would bring.
30. The Régie should seize the historic opportunity presented to it to create conditions that will facilitate the development of an RNG industry and, at the same time, contribute to achieving the government's energy policy objectives, as prescribed by the Act.

*Question c)*

31. UMQ is of the opinion that this file is substantially different from the case on which the Ontario Energy Board (OEB) ruled in its decision of October 18, 2018.
32. In this matter, the distributors specifically asked that the OEB establish a tariff for the purification of biogas to turn it into RNG.
33. Rightly, the OEB determined that purification was not regulated and that there were no grounds to establish a tariff.
34. However, in this case, clearly the Régie is merely ruling on a pricing formula in a supply plan, something it is fully authorized to do.
35. Next, regarding the question of whether proceeding in this manner constitutes an excess of authority or risks being a constraint on the competition, UMQ has already expressed its opinion above.

**RESPECTFULLY SUBMITTED**

Montréal, April 24, 2018

*(s) Jean-Philippe Fortin*

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