

CANADA

RÉGIE DE L'ÉNERGIE

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PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

ÉNERGIR, s.e.c.

Applicant

-and-

N°: R-4008-2017

SUMMITT ENERGY QUÉBEC LP /  
ÉNERGIE SUMMITT QUÉBEC S.E.C.  
et al.

Intervenors

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**PLAN OF ARGUMENT OF SUMMITT ENERGY QUÉBEC LP  
WITH RESPECT TO PRELIMINARY ISSUES 1, 2 and 3  
HEARING OF MAY 7, 2019**

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**SUMMITT ENERGY QUÉBEC LP RESPECTFULLY STATES:**

1. Intervenor Summitt Energy Québec LP / Énergie Summitt Québec S.E.C. (“**Summitt Energy**”), hereby submits its representations with respect to the three preliminary issues set out in paragraph 98 of decision D-2019-031 dated March 13, 2019 rendered by the Régie de l'énergie (the “**Régie**”), namely:
  - Issue A: Does the Régie have jurisdiction pursuant to the Act respecting the Régie de l'énergie to include in a tariff the costs of developing the production of Renewable Natural Gas (“**RNG**”) in Quebec? If so, is it fair and reasonable to exercise such jurisdiction?
  - Issue B: Would a feed-in tariff (“*tariff de rachat garanti*” or “**TRG**”) approved by the Régie use the distribution monopoly to alter access to the free market for RNG in Quebec?
  - Issue C: Could a TRG approved by the Régie be considered to be fixing or controlling the price for the supply of an unregulated product?
2. For the reasons set out in the letter filed as C-SUMMIT-0008, Summitt Energy respectfully requests that the Régie consider the contents hereof in assessing the above questions.

**ISSUE A: Does the Régie have jurisdiction pursuant to the *Act respecting the Régie de l'énergie* to include in a tariff the costs of developing the production of RNG in Quebec? If so, is it fair and reasonable to exercise such jurisdiction?**

3. In its plan of argument submitted to the Régie,<sup>1</sup> Énergir refers at paragraphs 5 and following to various government notices, policies and legislation favouring RNG, as well as a regulation requiring distributors in Quebec to deliver minimum quantities of RNG annually, but there is no evidence that Énergir is required to subsidize producers in Quebec to achieve that result. It may be that purchasing readily available RNG from sources outside of Quebec at market prices would allow Énergir to meet its obligations while simultaneously establishing the market in Quebec for RNG.
4. As appears in the representations below, Summitt is concerned that the application submitted by Énergir could have detrimental effects on the competitive landscape for RNG in Quebec.
5. Summitt Energy takes no position as to whether the Régie has jurisdiction to include in a tariff the costs of developing the production of RNG in Quebec. However, to the extent that it has such jurisdiction, the Régie should decline to exercise it in any manner that would result in direct or indirect regulation of the market price of RNG or that would discourage competition for the supply of RNG in Quebec.

**ISSUE B: Would a TRG approved by the Régie use the distribution monopoly to alter access to the free market for RNG in Quebec?**

6. A TRG or similar formula approved by the Régie for use by Énergir would necessarily affect the free market for RNG in Quebec, to the extent that it is not reflective of the actual market price of RNG.
7. In an earlier *document de réflexion*,<sup>2</sup> Summitt Energy highlighted the concerns about unfair competition raised by the Régie in decision D-2001-214 (and noted again by the Régie in decision D-2019-031 at para. 94) that:

*...la proposition, bien que ne visant que les clients en gaz de réseau, aurait pour effet de modifier de façon importante le rapport de forces entre le distributeur et les autres fournisseurs dans le marché déréglementé de la marchandise. En effet, comme le distributeur propose d'offrir le tarif fixe à l'ensemble de la clientèle, il est à prévoir que le déplacement déjà observé des clients des achats directs vers le gaz de réseau ne pourra que s'accroître de façon importante si le distributeur devait offrir des options à prix fixe à des conditions plus avantageuses que celles disponibles sur le marché auprès des courtiers et autres fournisseurs. [Emphasis added]*

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<sup>1</sup> B-0048.

<sup>2</sup> C-SUMMIT-0002 at p. 2.

8. When asked at the hearing how Énergir would determine the market price for RNG, counsel for Énergir stated:

*...C'est difficile d'établir exactement la valeur du GNR.*

*Maintenant, c'est une raison pour laquelle on est d'avis que le TRG n'est peut-être plus l'outil approprié, avec une grille de prix qui était peut-être plus fixe qu'on le pensait...<sup>3</sup>*

9. If Énergir purchases RNG at an artificially elevated price from subsidized producers, those producers will have an unfair advantage over non-subsidized suppliers of RNG, who could cease to provide such supply, resulting in a closed market in Quebec with little or no competition.
10. The price at which Énergir acquires RNG would also likely inform the price at which it is able to sell RNG, and any discrepancy between such price and the market price would be compounded by the use of its distribution monopoly, having adverse effects on the economic incentive of third-parties to supply RNG in Quebec.

**ISSUE C: Could the approval of a TRG by the Régie be considered to be fixing or controlling the price for the supply of an unregulated product?**

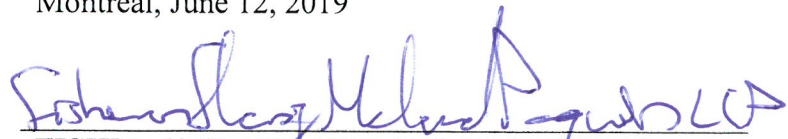
11. Summitt Energy agrees with the Régie's statement that:

*...la proposition d'Énergir d'établir un TRG largement supérieur au prix du marché du gaz naturel et même au-delà de l'actuelle formule d'établissement du coût d'acquisition de GNR, pourrait, dans les faits, avoir pour effet de fixer ou contrôler le prix du GNR produit au Québec.<sup>4</sup> [Emphasis added]*

12. If the Régie were to approve a TRG or similar formula, especially one intended to be used by Énergir for long-term (such as 20-year) contracts, it could effectively be considered to be a control on the price for the supply of an unregulated product, and in doing so would be setting a precedent that could influence the treatment of other unregulated products.

**The whole respectfully submitted.**

Montreal, June 12, 2019



**FISHMAN FLANZ MELAND PAQUIN LLP**  
Attorneys for Intervenor Summitt Energy Québec LP

<sup>3</sup> A-0022, Transcript of hearing of May 7, 2019 at p. 40, lines 19-24.

<sup>4</sup> D-2019-031 at para. 96.