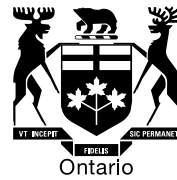


**Ontario Energy
Board**
P.O. Box 2319
27th. Floor
2300 Yonge Street
Toronto ON M4P 1E4
Telephone: 416- 481-1967
Facsimile: 416- 440-7656
Toll free: 1-888-632-6273

**Commission de l'Énergie
de l'Ontario**
C.P. 2319
27e étage
2300, rue Yonge
Toronto ON M4P 1E4
Téléphone; 416- 481-1967
Télécopieur: 416- 440-7656
Numéro sans frais: 1-888-632-6273



BY EMAIL

August 29, 2018

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street, 27th Floor
Toronto ON M4P 1E4

Dear Ms. Walli:

**Re: Application for Renewable Natural Gas Enabling Program and Geothermal Energy
Service Program
Enbridge Gas Distribution Inc. – EB-2017-0319**

Please find attached an English translation of the decision by Québec's energy regulator, la Régie de l'énergie (D-2013-041 / R-3824-2012), which is discussed in OEB staff's submission for this proceeding.

The applicant and intervenors have been copied on this filing.

Sincerely,

Original Signed By

Shuo Zhang

Attachment

1. APPLICATION

[1] On September 28 2012 Gaz Métro Limited Partnership (Gaz Métro or the Distributor) filed an application under sections 5, 31 (5), 52 and 73 para. 1, subpara. 1 of the *Act respecting the Régie de l'énergie*¹ (the Act) and section 1 of the *Regulation respecting the conditions and cases where authorization is required from the Régie de l'énergie* (the Regulation) with the Régie de l'énergie (the Régie) to have the Régie authorize the construction and acquisition of assets to be used for feeding biomethane natural gas produced by the Town of Saint-Hyacinthe into its distribution system (the Project).

[2] There are two parts to the Project:

- investments for the facilities required to provide the interchangeability, composition and pressure of the biomethane produced by the Town of Saint-Hyacinthe (Part A)
- investments to build a connection pipe between the Part A facilities and the Distributor's distribution system (Part B)

[3] The conclusions sought by Gaz Métro are:³

“GRANT this application;

AUTHORIZE Gaz Métro to carry out Part A of the investment project for feeding biomethane produced by the Town of Saint-Hyacinthe, as described in Exhibit Gaz Métro-2, document 1;

AUTHORIZE Gaz Métro to carry out Part B of the investment project for feeding biomethane produced by the Town of Saint-Hyacinthe, as described in Exhibit Gaz Métro-2, document 1;

¹ R.S.Q. c. R-6.01.

² (2001) 133 G.O. II, 6165.

³ Exhibit B-0030.

AUTHORIZE Gaz Métro to create a deferred cost account, bearing interest, in which the costs of Parts A and B of the investment project for feeding biomethane produced by the Town of Saint-Hyacinthe will be deposited;

TAKE NOTE of the estimated applicable rates at the reception point for the first year, i.e. 2.265 ¢/m³ (fixed rate for the investment part), 0.569 ¢/m³ (fixed rate for the distribution part) and 0.106 ¢/m³ (variable rate).

TAKE NOTE of the fact that the applicable rate at the delivery point in the territory applicable to the “Centre-du-Québec/Estrie” consumption zone will be 0.0 ¢/m³;

TAKE NOTE of the method for determining the purchase price of biomethane, as described in Exhibit Gaz Métro-3, Document 1;”

[4] On October 17 2012 the Régie rendered its procedural decision D-2012-138 on public notice and how applications are handled.

[5] On November 7 2012 the Régie rendered its procedural decision D-2012-149 in which it granted CFIB, GRAME, S.É./AQLPA, TCE and the UMQ intervenor status in the file, fixed the limits of interventions, ruled on participation budgets and set the timetable for the file.

[6] On December 5 2012 the Distributor responded to the requests for information from the Régie and the intervenors.

[7] On December 18 and 19 2012 all the intervenors except TCE filed their evidence.

[8] On January 17 and 18 2013, the UMQ and GRAME responded to the Régie’s requests for information.

[9] On January 30 and 31 2012 a verbal hearing was held in this file. During that hearing the Régie asked the participants for further arguments on the two following topics:

- whether Part A of the Project in Gaz Métro's application complies with the principles set out in paragraph 24 of Decision D-2011-108;⁴
- whether the connection pipe (Part B of the Project) to which Gaz Métro proposes applying the reception price, i.e. the pipe that will feed the interchangeable biomethane to Gaz Métro's system, can be considered a natural gas transportation and distribution pipe over which the Distributor has exclusive rights.

[10] On February 11 2013 Gaz Métro, CFIB, GRAME, S.É./AQLPA and the UMQ filed further arguments.

[11] On February 13 2013 Gaz Métro replied only to the arguments submitted by the CFIB. The Régie took the file under deliberation at that time.

[12] This decision is the Régie's conclusion on Gaz Métro's application.

2. LEGAL AND REGULATORY FRAMEWORK

[13] Under section 73 of the Act, Gaz Métro must obtain the authorization of the Régie to acquire and construct assets for the distribution of natural gas, among other things, subject to conditions and in the cases determined by regulation;

[14] Under the Regulation, Gaz Métro must obtain such authorization for all projects costing \$1.5 million or more.

⁴ File R-3732-2010.

[15] The Regulation states that the Distributor must give the Régie the following information about the Project:

“2. An application for authorization under the first paragraph of section 1 shall contain the following:

(1) the project objectives; (2) the project description;

(3) the justification of the project with regard to the objectives; (4) the project costs;

(5) the project feasibility study;

(6) the list of authorizations required under other laws; (7) the impact on the rates, including a sensitivity analysis

(8) the impact on the reliability of the electric power transmission system and on the quality of the electric power transmission service or electric power or natural gas distribution service;

(9) any other solutions contemplated, which must include the information referred to in the preceding paragraphs.”

[16] In the normal course of this kind of application, the Régie analyzes each of the above before authorizing a project.

[17] With regard to this application, and particularly Part A of the Project, the Régie has first to examine the issue of whether the assets of Part A of the Project are assets for the distribution of natural gas within the meaning of section 73 of the Act. The Régie's conclusion on that aspect of the Gaz Métro application will of course have an impact on the other aspects of the application.

3. BACKGROUND AND OBJECTIVES OF THE PROJECT

[18] The Quebec government adopted a strategy to reduce the amount of organic waste sent to landfills as part of its 2011-2015 Residual Materials Management Policy.

[19] The Ministère du Développement durable, de l'Environnement, de la Faune et des Parcs [Department of Sustainable Development, Environment, Wildlife and Parks] (the Department) created a program for processing organic matter using biomethanation and composting (the Program); it provides financial support for municipalities and private promoters to set up the facilities required for processing organic waste. A total of \$650 million was earmarked for that program.⁵

[20] The Town of Saint-Hyacinthe currently produces the equivalent of 800,000 m³ of biomethane per year from the mud resulting from its waste water processing.⁶

[21] The Town of Saint-Hyacinthe would like to obtain grants under the Program so that it can increase the capacity of its organic matter processing facilities. It asked Gaz Métro to participate in the application.

[22] The objectives of the Project are:

- to diversify Gaz Métro's supply sources and provide renewable natural gas to its customers;
- to respond to the requests of customers who want to produce biomethane to connect to Gaz Métro's distribution system;
- to boost the production of biomethane that can be turned into renewable natural gas in Quebec;
- to reduce greenhouse gas emissions;
- to reduce dependency on the sources of natural gas transportation outside Quebec;
- to reduce contributions to the Green Fund or possibly purchase greenhouse gas emissions rights;
- to ensure continued use of existing distribution infrastructure and avoid losing volumes to customers who could consume biomethane directly instead of natural gas;
- to increase general interest in natural gas for the benefit of customers;

⁵ Exhibit B-0005, p. 6.

⁶ Exhibit B-0031, p. 5.

4. ASSETS TO PROVIDE INTERCHANGEABILITY, COMPOSITION AND PRESSURE OF BIOMETHANE (PART A)

4.1 DESCRIPTION OF PART A

[23] Part A of the Project involves the Distributor investing in the facilities required to provide the interchangeability, composition and pressure of the biomethane produced by the Town of Saint-Hyacinthe so that it can be fed into Gaz Métro's distribution system. Gaz Métro will use a building belonging to the Town of Saint-Hyacinthe to install and operate the instruments and equipment of Part A of the Project. That equipment will later be turned over to the Town of Saint-Hyacinthe, no later than 20 years after it has been installed, in compliance with certain requirements of the Program. The Town of Saint-Hyacinthe also has the option of terminating its biomethane sale contract with Gaz Métro and taking possession of the Part A facilities before 20 years have elapsed.⁷

[24] Gaz Métro plans to acquire a maximum of 13,000,000 m³ of biomethane per year from the Town of Saint-Hyacinthe.⁸

[25] The total cost for completing Part A of the Project will be \$9,779,682. Gaz Métro's contribution, net of the \$5,891,457 government contribution under the Program, will amount to \$3,798,225.⁹

[26] Gaz Métro proposes that the costs of the Part A assets be recovered through distribution service prices, which means they will be charged on to all distribution customers.

[27] Gaz Métro's financial analysis indicates a zero internal profitability rate for Part A of the Project and a rate impact of \$13.9 million over 20 years.¹⁰

⁷ Exhibit B-0006, p. 3.

⁸ Exhibit B-0031, p. 8.

⁹ Exhibit B-0031, p. 10.

¹⁰ Exhibit B-0031, p. 19.

4.2 GAZ MÉTRO'S POSITION

[28] According to Gaz Métro, the Régie should be asking the following question:

“...the Régie therefore has to determine whether the assets for which authorization is required are “assets for distribution (...) as part of a natural gas distribution of natural gas worth \$1.5 million or more.”¹¹

[29] It argues that the Régie has to answer that question by assessing the evidence in such a way as to reconcile the public interest, consumer protection and the fair treatment of the Distributor, as well as promoting the satisfaction of energy needs in keeping with the principles of sustainable development and individual and collective equity, as section 5 of the Act provides:

“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.”

[30] Supported by caselaw, the Distributor argues that the concept of public interest is broad and encompasses the interest of the general population, and that government policies must be taken into consideration when deciding what constitutes the public interest.¹²

[31] According to Gaz Métro, the assets of Part A of the Project are regulated assets that can be included in the price basis, since they will be useful for the operation of a natural gas distribution system within the meaning of section 49 of the Act.

[32] Gaz Métro states that an asset can be “for distribution” and “useful for the operation of a distribution system” without necessarily being subject to the exclusive distribution rights defined in section 63 of the Act.

¹¹ Exhibit B-0039, p. 4.

¹² Exhibit B-0039, pp. 4-5.

[33] On the more direct issue of whether the assets of Part A of the Project are useful for the operation of a natural gas distribution system, the Distributor argues essentially that they “*will allow Gaz Métro to provide a safe distribution of renewable natural gas fed into its system by the Town.*”¹³

[34] On that technical aspect, the Distributor adds that the assets of Part A of the Project are similar to the assets in its liquefaction, storage and regasification (LSR) plant, so that it can provide interchangeability with the natural gas transported by TransCanada Pipelines Ltd (TCPL), for which the Régie authorized an asset improvement investment in file no. R-3729-2010.

[35] According to Gaz Métro, consistency of decision-making would weigh strongly in favour of the recognition of the regulated nature of the Part A assets.

[36] In addition, according to Gaz Métro, the evidence in the file indicates that Gaz Métro has the expertise required to operate the Part A assets, which is not the case for municipalities.¹⁴

[37] Gaz Métro adds that the evidence shows that it is already holding and operating assets comparable to those of Part A.¹⁵

[38] Further, the Distributor believes that most of the evidence shows that municipalities do not want to acquire and operate Part A assets.¹⁶

[39] Gaz Métro mainly stresses the fact that the Project is of public interest and in line with the 2006-2012 Climate Change Action Plan, the Quebec Residual Materials Management Policy and the Program. It also stresses the fact that it has the support of the Quebec government.¹⁷

[40] Gaz Métro adds that biomethane cannot be fed into the distribution system without its technical support.¹⁸

¹³ Exhibit B-0039, p. 13.

¹⁴ Exhibit B-0039, p. 14.

¹⁵ Exhibit B-0005, p. 8.

¹⁶ Exhibit B-0039, p. 14.

¹⁷ Exhibit B-0039, p. 9.

¹⁸ Exhibit B-0039, p. 10.

[41] To complete its argument about the usefulness of the Part A assets for the operation of the natural gas distribution system, Gaz Métro lists the advantages to its customers:

“51. The conclusive evidence shows that the Project will provide some quantifiable benefits for the customers, which will cover most of the revenue required:

- a. Reduction of costs related to greenhouse gas emissions;*
 - Exhibit B-0022, Gaz Métro 4, Document 1, p. 8, answer to question 5.1*
 - NS, volume 1, January 30 2013, p. 23, examination in chief of Yannick Rasmussen*
 - NS, volume 1, January 30 2013, p. 88, cross-examination of Martin Imbleau*
 - NS, volume 1, January 30 2013, p. 206, examination in chief of Kim Cornelissen*
- b. Annual distribution revenue of \$370,000.*
- c. Annual distribution revenue not related to the gas system of \$74,022.*
 - Exhibit B-0037, Gaz Métro-6, Document 1, p. 9*

52. To those quantifiable benefits should be added the ‘hard to quantify’ but nevertheless real benefits for customers, such as:

- a. Supplies can be diversified*
- b. GHS emission costs will not go over a certain threshold*
- c. The natural gas system will become more sustainable as it adapts to Quebec’s new realities*
 - NS, volume 1, January 30 2013, p. 19, examination in chief of Martin Imbleau*
 - Exhibit B-0037, Gaz Métro-6, Document 1, p. 10”¹⁹*

[42] The Distributor submitted additional arguments on the issue of how its application to treat the assets of Part A of the project as regulated natural gas distribution assets fits with Decision D-2011-108. In that decision the Régie concluded²⁰that: *“the collection system, including the processing facilities to bring the gas up to the quality standards of the Gaz Métro system, is not used for transporting natural gas for consumption, since that gas is not ready for consumption.*

¹⁹ Exhibit B-0039, pp. 10-11.

The Régie therefore considers that the transportation of gas in the collection system is not regulated.”

[43] The Distributor argues that in paragraph 24 of D-2011-108 the Régie did not decide on the regulated nature of the assets of the collection system from the point of view of the usefulness of the assets for the operation of the distribution system, which is what Gaz Métro is proposing for the assets of Part A of the Project in this file. It adds that it already has regulated assets that are useful for the operation of a distribution system but over which it does not have exclusive rights.²¹ It refers to assets such as its head office and business offices.²²

[44] The Distributor adds that *“the Régie must consider the nature of the collection system assets discussed in D-2011-108 (especially ‘gas processing facilities’), which is different from the nature of the Part A assets in this file.”*²³

4.1. THE POSITION OF THE INTERVENORS

4.1.1. CFIB

[45] CFIB believes the Régie should not authorize the Project, mainly for economic, regulatory and legal reasons.

[46] On the economic aspect, CFIB argues:

“CFIB is not opposed to biomethanation, or to its being fed into the Distribution system. However, it believes that Gaz Métro customers should not have to assume the cost if the operation turns out not to be profitable despite the heavy government subsidies it receives.

²⁰ Decision D-2011-108, p. 11.

²¹ Exhibit B-0043, p. 6.

²² Exhibit B-0005, p. 8.

²³ Exhibit B-0043, p. 7.

From a strictly economic point of view, such a project would only be justified if it were both profitable for Gaz Métro customers and could not be done any other way. The application does not meet either of those conditions.”²⁴

[47] CFIB argues that it is not the Distributor’s role to enable the biomethane market. It refers to the following passage in a decision of the Ontario Energy Board (OEB) on a project similar to that of Gaz Métro:

« *Enabling the Biomethane Market* »

The applicants identified the key objective of the biomethane program as enabling the development of the biomethane market; a market which they envision may eventually compete with market-priced natural gas. There was some support for this objective. GEC likened the gas utilities’ role to facilitating market transformation, in a manner similar to natural gas demand side management. However, most intervenors argued that others, in particular government, are better placed to enable or support the biomethane industry and that it is inappropriate to have ratepayers subsidize this activity.

CME and LPMA each argued that there is evidence of an emerging market for biogas and biomethane already. LPMA further submitted that the market’s development should be left to market forces and not be artificially stimulated. Shell argued that rather than fostering future competitive trade in biogas and environmental attributes, there is the potential with 20-year contracts for the programs to stifle future market evolution by removing this local supply from the mix of alternatives available to large commercial and industrial consumers, as well as marketers. Enbridge responded that the program would not take biomethane producers out of the competitive market, because in Ontario there is no biomethane production market to begin with.

In the Board’s view the applicants established the wrong goal for their programs. Their purpose in bringing the applications was expressly to create or enable a market for biomethane in Ontario. With respect, that is an objective which is beyond the scope of the distributor’s role. It is appropriate for the distributors to consider the conditions and pricing necessary to accept biomethane into their respective distribution systems, but it is not appropriate for them to use system gas customers as a means of subsidizing a variety of biomethane producers in the

²⁴ Exhibit C-FCEI-0007, p. 17.

hope of developing a viable biomethane supply market. In addition, the companies provided no evidence where such a program has been successful in stimulating market development, and therefore the achievement of this benefit is almost entirely speculative in any event. The Board concludes that this benefit should have no weight in the assessment of the program. »²⁵ [our underlining]

[48] According to CFIB, the costs of Part A of the Project should not be assumed by all natural gas consumers, but only by those customers who opted for biomethane consumption. It refers to the decision of the British Columbia Utilities Commission in the *Terasen Gas Inc.* case. (*Biomethane Application*):

« *As illustrated in the Biomethane Service Offering Model diagram in Section 3.0, Terasen proposes that customers opting for the Biomethane Offering should pay the full costs of the Biomethane gas supply while all Terasen Gas customers will share the costs related to the interconnection and monitoring equipment as well as the cost of IT upgrades, program management and customer education. This Section outlines the proposal in more detail to address the question: Should any costs be shared by all Terasen customers at all?* » [our underlining]

[49] It argues that if the Program is not adequate, it is up to the municipalities to ask the government to enhance it.²⁶

[50] CFIB insists that the Act applies, and that the Régie cannot consider the assets of Part A of the Project as assets for the distribution of natural gas on the basis that promoting biomethane would be in the public interest.²⁷

[51] According to CFIB, if the Régie allowed the Distributor's application that would amount to burdening the consumers of natural gas with the costs that really should be assumed by the Town of Saint-Hyacinthe and its taxpayers.²⁸

[52] CFIB argues that the Distributor is stretching the notion of public interest to get around the Act when it comes to assets that consumers could be charged for.²⁹

²⁵ Interim Decision and Order, EB-2011-0242 and EB-2011-0283, pp. 12-13.

²⁶ Exhibit A-0015, p. 94.

²⁷ *Ibid.*, pp. 96 and 107 to 109.

²⁸ *Ibid.*, p. 98 and 107 to 109.

[53] CFIB also argues that the Régie must maintain consistency with Decision D-2011-108 and thus conclude that Part A of the Project, including the facilities required for providing interchangeability, composition and pressure of biomethane, is not regulated.

4.1.2. GRAME

[54] GRAME argues essentially that the assets of Part A of the Project should be considered to be useful for the operation of a natural gas distribution system within the meaning of section 49 of the Act.

[55] According to GRAME, the usefulness is based on the fact that there are several advantages to the Distributor buying interchangeable biomethane: the possibility of delivering 14-20% of the distributed gas volume to consumers through the distribution system, relatively stable supply, balancing tool, lower dependency on the TCPL system.

[56] GRAME submits, however, that the assets of Part A of the Project are not part of the natural gas distribution system within the meaning of the Act.³⁰

[57] GRAME also submits that Part A of the Project in Gaz Métro's application does not go against the principles set out in paragraph 24 of Decision D-2011-108. Among other things, GRAME argues that the Part A facilities will be for the interchangeability, composition and pressure of biomethane, not natural gas.³¹

4.1.3. S.É./AQLPA

[58] According to S.É./AQLPA, excluding biogas and syngas from the definition of "natural gas" in the Act and, consequently, from the application of the Act to the supply, transportation, distribution and storing of biogas would not take away the Régie's jurisdiction over biomethane.

²⁹ *Ibid.*, p. 109.

³⁰ Exhibit C-GRAME-0011, p. 3.

³¹ Exhibit C-GRAME-0011, p. 2.

[59] The intervenor argues that “impure” biogas has to be distinguished from biomethane:

*“But the processing of that biogas will have the effect of transforming it into biomethane, i.e. methane that is pure enough to be recognized as interchangeable with the rest of the gas flowing through the system, and therefore can be distributed and consumed there.”*³²

[60] According to the intervenor, the assets covered by this file, including the assets of Part A of the Project, are assets that are subject to the requirement for authorization under section 73 of the Act. The intervenor argues that they are assets for distribution, and therefore regulated assets.

[61] The intervenor argues that the assets of Part A of the Project should be considered as an investment required for the improvement of the system.³³ It adds that the cost of such investment will be reduced by the government subsidies, that it will bring gains, and that the Régie should authorize it.³⁴

[62] In its additional arguments,³⁵ S.É./AQLPA reverts to the distinction that has to be made between biogas and biomethane, concluding that the amendment of the definition of natural gas in section 2 of the Act to exclude biogas and syngas only applied to the deregulation of “biogas” and not to the deregulation of “biomethane.”³⁶

[63] The intervenor submits that the assets of Part A of the Project are for “converting biogas into biomethane” or into renewable natural gas.³⁷ From that, it concludes that when the biogas ceases to exist and has become biomethane the Régie has entire jurisdiction over it.

[64] According to the intervenor, the fact that Gaz Métro does not have exclusive distribution rights over the assets of Part A of the Project does not mean that they could not be included in the Distributor’s price basis. Like Gaz Métro, it gives the example of

³² Exhibit C-SÉ-AQLPA-0007, p. 5.

³³ *Ibid.*, p. 12.

³⁴ *Ibid.*, pp. 13 to 15.

³⁵ Exhibit C-SÉ-AQLPA-0010.

³⁶ *Ibid.*, p. 4.

³⁷ *Ibid.*, p. 17.

the company's head office, adding: "*Gaz Métro does not have exclusive rights over the construction or operations of office buildings in Quebec.*"³⁸

[65] The Régie would like to point out that the head office argument is mere sophistry. In fact, it is the company that has exclusive natural gas distribution rights, which it cannot surrender without the government's authorization (see section 80 of the Act). What is more, the company cannot dispose of the immovable property (such as the head office) without the Régie's authorization (section 73 of the Act). The patently non-exclusive right to build Gaz Métro's head office or system should not therefore be confused with the company's exclusive distribution rights.

[66] The issue instead is whether Gaz Métro has exclusive rights over the activity of transforming biogas into biomethane.

4.1.4. The UMQ

[67] In its additional arguments³⁹ the UMQ concludes on the issue of whether the assets of Part A of the Project can be included in the Distributor's price base.

[68] On that topic the UMQ says it supports Gaz Métro's proposal unreservedly, but also proposes that all the costs of Part A be incorporated into the price base without factoring in the government subsidy. It adds that the fact that Gaz Métro owns the Part A assets (and that those assets are included in its price base) will allow the Project to be funded adequately and the price impact will be very limited.⁴⁰

[69] According to the UMQ, the production of biomethane will not be possible unless the rates are adjusted, and on that basis Gaz Métro's proposal in this file seems perfectly appropriate in the circumstances. The UMQ adds that the production of biomethane by cities has nothing in common with the production of

³⁸ Exhibit C-SÉ-AQLPA-0010, p. 16.

³⁹ Exhibit C-UMQ-0013.

⁴⁰ Exhibit C-UMQ-0013, p. 6 and C-UMQ-0007, p. 63.

shale gas dealt with in file R-3732-2010, and therefore price adjustments should be contemplated.⁴¹

[70] The UMQ points out that the Department's decision and the Program demonstrate a willingness to create "*rules to facilitate the emergence of biomethanation, while significantly reducing the price impact on Gaz Métro's customers.*" It should be noted that *the both the contract and the investment project proposed by Gaz Métro have received government approval.*"⁴²

4.2. OPINION OF THE RÉGIE

[71] Landfill reclamation by the capture, use and distribution of biomethane is a worthwhile project from the point of view of the environment. No one would contest that.

[72] Both the federal and provincial governments consider such projects to be in the public interest, since they subsidize them.

[73] The Part A facilities will be used to process biogas or biomethane in such a way that the gas can then be fed into Gaz Métro's natural gas distribution system.

[74] That means the biomethane has to be transformed into what Gaz Métro calls "interchangeable biomethane" or "renewable natural gas."

[75] That operation is absolutely necessary, and without it the biomethane producer would not be able to sell its production to Gaz Métro and feed the interchangeable biomethane into Gaz Métro's system.

[76] Gaz Métro claims that the equipment of Part A of the Project constitutes assets for distribution, since they will be useful for the operation of a natural gas distribution system within the meaning of section 49 of the Act. The Régie does not agree.

⁴¹ Exhibit C-UMQ-0013, p. 6.

⁴² *Ibid.*

[77] This panel believes that Part A type facilities would be facilities for producing and marketing biomethane, which a producer would absolutely have to have if it wanted to feed biomethane into the Gaz Métro system. In D-2011-108 (paragraph 24) the Régie concluded that those kinds of facilities were not regulated. The processing of biomethane by Part A type equipment is therefore not an operation over which Gaz Métro has exclusive distribution rights.

[78] The issue is not whether those assets are useful for the operation of its natural gas distribution, as Gaz Métro suggests. Under section 49 of the Act, the usefulness of an asset for pricing purposes must be assessed when it is a regulated asset. That is not the case for the assets of Part A of the Project.

[79] Making Gaz Metro and the natural gas consumers assume the costs of the facilities of Part A of the Project over which Gaz Métro does not have exclusive rights would be tantamount to having the customers of a regulated activity finance a non-regulated activity. The Régie does not believe that would be appropriate.

[80] As things stand now, with natural gas available at advantageous prices, it is clear that supply of natural gas to consumers in Quebec is not dependent on the production and distribution of interchangeable biomethane.

[81] The reclaiming of biomethane is based on praiseworthy public objectives, but the cost should not be passed on to the consumers of natural gas.

[82] CFIB, the only intervenor that represents natural gas consumers directly and exclusively, does not agree that consumers of natural gas should foot the bill for the facilities of Part A of the Project.

[83] The other intervenors that represent environmental groups are naturally in agreement with the Project, for obvious reasons in line with their goals.

[84] As for the UMQ, on the one hand it approves the government and consumers of natural gas subsidizing part of the production facilities for the municipalities (Part A), but on the other hand it is silent on the position of the municipalities it represents as a consumer of natural gas.

[85] From the point of view of the public interest and the reciprocal roles of producers of gas and distributors of natural gas, the Régie shares the position of the OEB:

« In the Board's view the applicants established the wrong goal for their programs. Their purpose in bringing the applications was expressly to create or enable a market for biomethane in Ontario. With respect, that is an objective which is beyond the scope of the distributor's role. It is appropriate for the distributors to consider the conditions and pricing necessary to accept biomethane into their respective distribution systems, but it is not appropriate for them to use system gas customers as a means of subsidizing a variety of biomethane producers in the hope of developing a viable biomethane supply market. In addition, the companies provided no evidence where such a program has been successful in stimulating market development, and therefore the achievement of this benefit is almost entirely speculative in any event. The Board concludes that this benefit should have no weight in the assessment of the program. »⁴³ [our underlining]

[86] Consequently, the Régie is of the opinion that the Part A investments are not assets for the distribution of natural gas within the meaning of section 73 of the Act, and therefore refuses to authorize Part A of the Project.

[87] As for the other aspects of the application - to authorize Gaz Métro to carry out Part B of the Project, authorize Gaz Métro to create a deferred cost account, take note of the estimated rates applicable at the reception point, of the rates applicable at the delivery point in the territory and the method of biomethane purchase price - the Régie makes no conclusions, since it is not authorizing Part A of the Project.

[88] That being said, the Régie wishes to emphasize - although it makes no conclusion on this issue - that there are some ambiguities around the issue of whether the connection pipe (Part B assets) would be used to transport natural gas within the meaning of the Act, and whether that would give Gaz Métro exclusive rights over it.

⁴³ Interim Decision and Order, EB-2011-0242 and EB-2011-0283, pp. 12-13.

[89] Section 2 of the Act defines “natural gas” as:

“ “natural gas” means methane in gaseous or liquid form, except syngas and biogas other than renewable natural gas;”

[90] The evidence shows that the gas that would flow through the Part B assets is essentially methane resulting from the fermentation of organic matter with no oxygen present. That raises the question: is methane a biogas within the meaning of the Act?

Definition of biogas

[91] Section 2 of the Act does not provides a description of biogas. According to the rules of interpretation, we have to give words their meaning in everyday language and the meaning they had on the day the Act was enacted.⁴⁴

[92] The only dictionary definition the Régie could find that is contemporaneous with the legislative amendment of 2006 is the following:

*« **Biogas**: gaseous fuel, especially methane, produced by fermentation of organic matter. »⁴⁵*

[93] According to that definition, methane resulting from the fermentation of organic matter would be biogas within the meaning of the Act.

[94] In addition, the use of the following words in the Act: “methane [...] except syngas and biogas” would indicate that “biological” or “synthetic” methane, whether it is of the same quality as the methane that is usually fed into the distribution system or not, is not natural gas within the meaning of the Act. Under the Act, therefore, we cannot conclude that all methane is natural gas.

[95] Although the biological origin of methane seems to be a criterion used by the Act to differentiate biogas from natural gas, that is not the case for “interchangeability.” The Act does distinguish between the different

⁴⁴ Pierre-André CÔTÉ, *Interprétation des lois*, 4^e edition, Montréal, Thémis, 2009, pp. 299 to 309.

⁴⁵ *Concise Oxford English Dictionary*, Eleventh edition (revised), 2006.

qualities of biogas, particularly between “non-interchangeable biogas” and “interchangeable biogas.”

[96] What is more, as more fully indicated below, a reading of the Québec Energy Strategy 2006-2015⁴⁶ (the Energy Strategy) and the parliamentary debates⁴⁷ would support an interpretation making “interchangeable biogas” (or methane) from Quebec landfill sites biogas within the meaning of the Act.

The Energy Strategy and the Parliamentary Debates

[97] It appears from extracts of the Energy Strategy and the parliamentary debates cited below that when the legislative amendment was passed the elected representatives wanted to limit the undesirable effects associated with biogas, especially those associated with methane, which were being released from landfill sites in Quebec - since methane is much more harmful to the environment than carbon dioxide - by allowing all companies to operate and build biogas distribution systems:

“In the future, all firms will be able to build and operate biogas distribution systems, and this will facilitate the development of biomass processes and reduce methane emissions.” (Energy Strategy)

“Biogas [...] can be captured by the appropriate technology and used as fuel.” It is therefore good value as an energy product, and also reduces the greenhouse effect associated with the release of methane into the environment.” (Energy Strategy)

“With regard to the brief you have just submitted, do you believe that the fact of using biogases to replace natural gas and preventing methane from being released into the atmosphere will really limit our recycling and composting efforts? Because the objective is to try and capture the maximum of those biogases, which they said are close to 20 times more harmful for the environment than CO₂. [...]”

⁴⁶ Québec Energy Strategy 2006-2015 – Using Energy to Build the Québec of Tomorrow, Ministère des Ressources naturelles et de la Faune, 2006.

⁴⁷ Journal des débats, 37^e législature, 2^e session (March 14 2006 to February 21 2007), Commission de l'économie et du travail, Wednesday, November 29 2006, Vol. 39 No. 22, Special consultations on Bill 52.

So, as I said earlier, there are sites already in place and there are biogases being released into the atmosphere, especially methane, and the law is currently so complicated and rigid, giving Gaz Métro exclusive distribution..."⁴⁸ (Parliamentary debates)

[our underlining]

[98] It also appears from the parliamentary debates that one of the reasons for deregulating the distribution of biogases was that it was clear at that time that Gaz Métro would not reclaim gases - including methane - from landfill sites, as appears from the following passage:

"So, as I said earlier, there are sites already in place and there are biogases being released into the atmosphere, especially methane, and the law is currently so complicated and rigid, giving Gaz Métro exclusive distribution... The volumes are dispersed and are not evenly distributed, so it is clear that Gaz Métro is not going to reclaim these landfill sites. Essentially, what we want is to allow either communities or companies that are interested in using them to reclaim those noxious gases there, purify them and improve our environmental performance.

[...]

We know that the Gaz Métro distribution system does not cover all of Quebec. In my region there are not many gas distribution systems. And Gaz Métro is not going to capture the biogases from a former landfill site in Val d'or that may contain garbage that has been accumulating for years, I would say from 1975 to 1995, before the new LET came in to meet the new environmental standards. So, there is 20 years worth of garbage there, contributing to a lamentable environmental performance. But there is a farming company nearby that said: I would like to capture those biogases and use them to create power for my poultry farm, my whatever farm, I think there's stuff there we can use if we break it down."⁴⁹ (Parliamentary debates)

[our underlining]

⁴⁸ Journal des débats, 37^e législature, 2^e session (March 14 2006 to February 21 2007), Commission de l'économie et du travail, Wednesday, November 29 2006, Vol. 39 No. 22, Special consultations on Bill 52.

⁴⁹ *Ibid.*

[99] The problem the elected officials seem to have been trying to solve by deregulating the distribution of biogases was that of limiting the undesirable effects associated mainly with the release of methane into the environment. It seems clear that Gaz Métro would not reclaim those gases (including methane) produced by landfill sites. Against that backdrop, it is hardly convincing to claim that the amendment was intended to give Gaz Métro exclusive distribution of interchangeable biogas produced by landfill sites.

[100] In the light of the above, the Régie doubts that any interpretation of the word “biogas” that would prevent companies from distributing “purified” biogas (methane) from landfill sites would meet the objective of the legislative amendment.

[101] Nor is the Régie convinced that that the meaning of the word “biogas” in the Act should be limited to mean “non-interchangeable biogas,” as Gaz Métro suggests.

[102] The Distributor also argues that excluding interchangeable biomethane from the definition of “natural gas” would automatically lead the Régie to conclude that it has no jurisdiction over the distribution system, since interchangeable biomethane is already flowing through the system since the compositional range of natural gas transported by TCPL was changed.

[103] On that matter, the Régie does not believe that the 2006 legislative amendment was aimed at biogases from the TCPL transportation system that may have been flowing through the distribution system. The parliamentary debates seem to indicate instead that the purpose of the legislative amendment was to deregulate the distribution of biogases from landfill sites in Quebec.

[104] As we stated earlier, the Régie makes no conclusion on that issue, but wishes to emphasize that it would be wise to clarify some concepts and definitions in the Act so that there is no ambiguity as to what comes under the distributor’s regulated monopoly, either for promoters of biogas reclamation projects or for the Régie and interested parties.

4.3. REQUEST THAT THE DOCUMENTS BE TREATED AS CONFIDENTIAL

[105] The Distributor has asked the Régie to issue a confidentiality order with respect to the information contained in Tables 2 and 3, produced on pages 11 and 12 of Exhibit B-0008 (the Documents). In support of that request the Distributor has submitted the solemn affirmation of Gas Métro's Vice President for Operations and Major Projects. He says those Documents contain information about the breakdown of the estimated costs for the Project, for which Gaz Métro intends to launch a call for tenders in order to obtain the best possible price. He says that making that information public would prevent Gaz Métro from obtaining the best possible price, which would be detrimental to all customers of the regulated activity. He states that the Régie should acknowledge the confidential nature of that information.

[106] The Régie grants the Distributor's request that the Documents be treated as confidential.

[107] WHEREFORE

The Régie de l'énergie:

REJECTS Gaz Métro's application to carry out an investment project for feeding biomethane produced by the Town of Saint-Hyacinthe;

GRANTS the request that Tables 2 and 3, produced on pages 11 and 12 of Exhibit B-0008 be treated as confidential.