DECISION

QUEBEC **RÉGIE DE L'ÉNERGIE**

D-2022-119	R-4156-2021 Phase 2	October 26, 2022

PRESENT:

Jocelin Dumas

Lise Duquette Esther
Falardeau

Commissioners

Énergir, s.e.c
Gazifère Inc.

Intragaz, s.e.c.

Complainants

and

Interveners whose names appear below

Decision on the merits

Joint request relating to the setting of rates of return and capital structures

Complainants:

Énergir, s.e.c. (Énergir)
represented by Éric Bédard, Marie-Pier Cloutier and Patrick Ouellet;

Gazifère Inc. (Gazifère)
represented by Adina Georgescu;

Intragaz, s.e.c. (Intragaz)
represented by Adina Georgescu.

Interveners:

Industrial Gas Users Association (IGUA) represented by Paule Hamelin;

Association Hôtellerie Québec and Association Restauration Québec (AHQ-ARQ) represented by Steve Cadrin;

Canadian Federation of Independent Business (CFIB)
represented by André Turmel;

Option consommateurs (OC)
represented by Éric McDevitt David.

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1. INTRODUCTION

[1] On April 16, 2021, Énergir, Gazifère and Intragaz (the Complainants) filed with the Régie de l'énergie (the Régie), pursuant to sections 32, 48, 49(3) and 51 of the *Act respecting the Régie de l'Énergie* (the Act), a joint application relating to the setting of rates of return and capital structures[2].

[[2] This request was further to decisions D-2020-145[3] and D-2020-104[4], where the Régie noted a context of interest rate without low risk, and no sign of redress. The filing of the application and its processing took place against the backdrop of financial market turbulence, the pandemic, international geopolitical tensions and a recent significant increase in interest rates.

[3] In this request, the Complainants propose that two aspects, namely the authorization to proceed jointly and the authorization to incur expenses, together with the creation of deferred charge accounts (DCAs), be treated in a phase 1 The filing of the Complainants' evidence and the review on the merits of the rates of return and capital structures applicable to each of the Complainants would be dealt with in a second phase.

[4] On June 30, 2021, the Régie rendered its decision D-2021-083[5] on the recognition of the interveners, the authorization to proceed jointly with the application relating to the setting of rates of return and capital structures and the authorization to incur expenses, together with the creation of DCAs.

[5] Between November 5 and 8, 2021, the Complainants filed a joint application in the context of phase 2 of this case[6].

1 CQLR, c. R-6.01.
2 Exhibit B-0002.
3 File R-4119-2020, decision D-2020-145, p. 92, para. 377.
4 File R-4122-2020 Phase 1A, decision D-2020-104, p. 22, para.72.
5 Decision D-2021-083.
6 Exhibit B-0011.

[6] On January 25, 2022, the Régie rendered its decision D-2022-006[7] in the context of phase 2, relating to the subjects of intervention, the processing of requests for recognition of expert status, budgets for participation, ACIG's request for a $140,000 advance for experts' fees and the timetable for reviewing the file.

[7] On February 7, 2022, the Complainants filed additional evidence.

[8] Between February 24 and March 1, 2022, the Régie and the interveners filed their Request for Information (RFI) No. 1 with the Complainants. On March 23, 2022, the Complainants filed their responses to these RFIs.

[9] Between March 25 and 29, 2022, ACIG and AHQ-ARQ filed a challenge to some of the Complainants' responses to their RFI.

[10] On April 5, 2022, the Régie rendered its decision D-2022-046[8] on the challenges relating to some of the Complainants' responses to the ACIG and AHQ-ARQ RFIs.

[11] On May 12, 2022, ACIG filed an application for recognition of expert witness status for Dr. Laurence Booth and Dr. Asa S. Hopkins.

[12] On May 13, 2022, the Complainants filed an application for recognition of expert witness status for Dr. Bente Villadsen and Dr. Toby Brown[9].

[13] On May 20, 2022, the Complainants challenged ACIG's application for recognition of expert witness status for Dr. Hopkins[10].

[14] On June 10, 2022, the Complainants filed an amended complaint (the Complaint)[11].

7 Decision D-2022-006.
8 Decision D-2022-046.
9 Exhibit B-0309.
10 Exhibit B-0320.
11 Exhibit B-0331.

[15] From June 12 to 20, 2022, the Régie held a hearing on phase 2 of this case. During that hearing, on June 16, 2022, the Régie rendered its decision on applications for recognition of expert status. Thus, it recognizes the expert status of:

- Dr. Asa S. Hopkins as an "*expert on energy transition in the gas industry, and business risk*";
- Dr. Laurence Booth as an "*expert on rate of return, capital structure and business risk*"[12];
- Dr. Toby Brown as an expert in the assessment of business risks of regulated utilities for purposes of determining rate of return and capital structure;
- Dr. Bente Villadsen as an expert in determining the rate of return and capital structure of regulated utilities.

[16] On July 5, 2022, the Régie specified and set the deadlines for the filing of the written arguments by the Complainant and the interveners as well as for the filing of the Complainants' written replies.

[17] On July 19, 2022, the Complainants filed their reply, the date on which the Régie began its deliberation.

[18] In this decision, the Régie rules on the Complaints as well as on the application for a confidentiality order.

12 Exhibit A-0062, p. 11.

2. MAIN FINDINGS OF THE RÉGIE

[19] The Régie determines a return on equity of 8.9% for Énergir for the 2022-2023 rate year, beginning October 1, 2022. It also approves a deemed capital structure for Énergir of 38.5% equity, 7.5% preferred shares and 54% debt.

[20] The Régie determines that Intragaz's return on equity (ROE) will be linked to that of Énergir over the period from May 1, 2023 to April 30, 2033, such that their return on equity is equivalent depending on their own capital structure. It approves a deemed capital structure for Intragaz of 46% equity and 54% debt.

[21] Finally, the Régie determines a rate of return on equity of 9.05% for Gazifère for the 2023 rate year, beginning on January 1, 2023. It also approves a deemed capital structure for Gazifère of 40% equity and 60% debt.

3. LEGAL CONTEXT

[22] Following the Régie's RFI No. 3[13], the Complainants filed the Complaint for the Régie to determine their rate of return and approve their capital structure:

> APPROVE *a rate of return of 10% on Énergir's equity, all in accordance with Dr. Villadsen's recommendations (Exhibit B-0015, ÉGI-1), for application to the 2022-2023 rate year, beginning October 1, 2022;*
>
> *APPROVE a deemed capital structure for Énergir of 43% equity and 57% debt;*

13 Exhibit B-0330, p. 1.
14 Exhibit B-0331.

APPROVE a rate of return of 10% on Gazifère's equity, all in accordance with Dr. Villadsen's recommendations (Exhibit B-0015, ÉGI-1), for application to the 2023 rate year, starting January 1, 2023;

APPROVE a deemed capital structure for Gazifère of 45% equity and 55% debt;

APPROVE a rate of return of 10% on Intragaz's equity, all in accordance with Dr. Villadsen's recommendations (Exhibit B-0015, ÉGI-1), for application to the 2023 to 2032 rate period, beginning May 1, 2023;

APPROVE a deemed capital structure for Intragaz of 43% equity and 57% debt;

[…]"[15].

[23] Various provisions of the Act govern the Régie's exercise of setting a rate of return.

[24] Thus, under section 49 of the Act, when the Régie sets a natural gas rate, the latter must be "*fair and reasonable*""(section 49(1)(7) (sic)). The rate it sets must allow a reasonable return on the rate base (section 49(1)(3) (sic)). In addition, the Régie must carry out this exercise while ensuring that financial ratios are maintained (section 49 (1) (5) (sic)). The Act does not provide that the rate of return must be "*fair and reasonable*". Rather, the Act provides that the rate set by the Régie must "*allow a reasonable return on the rate base*".

[25] Thus, for each of the Complainants, under section 51 of the Act, the rates must not provide for higher rates or more onerous conditions than are necessary to cover capital and operating costs, to maintain the stability of the distributor and the normal development of its distribution system or to provide a reasonable return on the rate base.

15 Exhibit B-0331, p. 7.

[26] In its decision D-2009-156[16], the Régie specified its role and its powers when it sets a rate of return for a distributor. To this end, it reviewed the case law framing the concept of a reasonable rate of return, in particular through the *Bluefield*[17] and *Hope*[18] decisions of the Supreme Court of the United States. Through this review, the Régie noted, among other things, that a public utility company is not only entitled to revenues allowing it to cover its operating costs, but also to sufficient revenues to cover its capital cost. It also noted that it is the outcome of the regulatory exercise that must be fair and reasonable and not the method used to achieve it, as mentioned in *Hope:*

> [TRANSLATION] "[184] *The legal principles framing the concept of a reasonable rate of return were first set out in two landmark Supreme Court of the United States decisions,* Bluefield *and* Hope*. The first of these two decisions sets out the standard by which the reasonableness of a tariff is judged:*
>
> > *"A public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding, risks and uncertainties, but it has no constitutional right to profits such as are realized or anticipated in highly profitable enterprises or speculative ventures. The return should be reasonably sufficient to assure confidence in the financial soundness of the utility, and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties. A rate of return may be reasonable at one time and become too high or too low by changes affecting opportunities for investment, the money market, and business conditions generally."*
> >
> > [footnotes omitted]

16 File R-3690-2009, decision D-2009-156, pp. 44 to 50.

17 *Bluefield Water Works & Improvement Co.* v. *Public Service Commission of West Virginia* 262 US 679 (1923).

18 *Federal Power Commission* v. *Hope Natural Gas Company* 320 US 591 (1944).

[27] With respect to the rights of a public utility company to revenues to enable it to cover not only its operating costs, but also its cost of capital, the *Hope* decision supplemented the standard in this regard:

> "*The ratemaking process under the Act, i.e, the fixing of "just and reasonable" rates, involves a balancing of the investor and the consumer interests. Thus, we stated in the Natural Gas Pipeline Co. case that "regulation does not insure that the business shall produce net revenues"[…]. But, such considerations aside, the investor interest has a legitimate concern with the financial integrity of the company whose rates are being regulated. From the investor or company point of view, it is important that there be enough revenue not only for operating expenses, but also for the capital costs of the business. These include service on the debt and dividends on the stock. […] By that standard, the return to the equity owner should be commensurate with returns on investments in other enterprises having corresponding risks. That return, moreover, should be sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and to attract capital. […]*". [footnote omitted]

[28] Finally, as mentioned above, *Hope* specifies that it is the outcome of the regulatory exercise that must be fair and reasonable, and not the method used to achieve it:

> "*… We held in Federal Power Commission v. Natural Gas Pipeline Co. […], that the Commission was not bound to the use of any single formula or combination of formulae in determining rates. Its ratemaking function, moreover, involves the making of "pragmatic adjustments". And when the Commission's order is challenged in the courts, the question is whether that order, "viewed in its entirety," meets the requirements of the Act. Under the statutory standard of "just and reasonable", it is the result reached, not the method employed, which is controlling. […] It is not theory, but the impact of the rate order, which counts. If the total effect of the rate order cannot be said to be unjust and unreasonable, judicial inquiry under the Act is at an end. The fact that the method employed to reach that result may contain infirmities is not then important. Moreover, the Commission's order does not become suspect by reason of the fact that it is challenged. It is the product of expert judgment which carries a presumption of validity. And he who would upset the rate order under the Act carries the heavy burden of making a convincing showing that it is invalid because it is unjust and unreasonable in its consequences. […]*". [footnote omitted]

[29] A review of the relevant case law also revealed three criteria that have historically been recognized by regulators as the basis for establishing the standard of reasonable return, namely the criteria of comparable investment, integrity finance and attracting capital.

[30] Thus, to be reasonable, a rate of return on capital must meet the following three criteria:

- be comparable to that which the capital invested in another company presenting a similar risk would yield (comparable investment criterion);

- allow the company to attract additional capital on favorable terms reasonable (criterion of the capital attraction effect); and

- allow the regulated company to preserve its financial integrity (criterion of financial integrity).

[31] In its decision D-2009-156[19], the Régie concluded that there is consensus on these criteria and that they can serve as a guide in the exercise of its jurisdiction with regard to setting a reasonable rate of return.

[32] Moreover, in this same decision, the Régie considered that its duty was to determine a reasonable rate of return and that the method it used for this purpose was at its discretion. In this regard, the Régie pointed out that the courts have recognized the wide latitude and discretion of regulatory bodies in the choice of method to set a reasonable rate of return on shareholder equity.

[19] File R-3690-2009, decision D-2009-156.

[33] In its decision D-2014-034, the Régie noted the three criteria set out above, but added that it must also take into consideration certain principles for evaluating reasonable performance, including that of the independence of the regulated company *(stand alone),* the principle of opportunity cost, as well as the consideration of several valuation methods and models[20].

[34] The Régie would also like to provide certain clarifications in connection with the criterion of financial integrity. In follow-up to Dr. Villadsen's responses to its RFI # 1, Dr. Booth asks Dr. Villadsen for a supplement in response to the following RFI:

> "*3.2 Please indicate any statements that Dr. Villadsen is aware of from previous Régie decisions that the Régie targets a particular bond rating"*[21].

[35] To this question, Dr. Villadsen replies that she is of the opinion that financial integrity implies an "A" credit rating for a Canadian regulated entity:

> "*Answer: Dr. Villadsen is not aware of any previous Régie decisions that target a specific credit rating. However, Dr. Villadsen is aware that in D-2009-156, paragraph 173, the Régie stated that the return must enable the regulated company to preserve its financial integrity. It is Dr. Villadsen's view that this means an A range rating for a Canadian regulated utility. An A range target is ideal because it gives the regulated entity some headroom to maintain investment-grade metrics if cash flows or debt levels deviate in the near-term. Setting a target lower than the A range for a Quebec utility (for example, BBB range) risks the company's ability to maintain its financial integrity. Simply put, a lower range gives the Canadian utility less headroom and risks the company falling into sub-investment grade territory if cash flows or debt levels deviate from expectations"*[22]. [emphasis added]

[36] However, in its decision D-2009-156, the Régie indicated that the rate of return should allow the regulated company to maintain its financial integrity, but that this financial integrity did not imply an "A" rating for a regulated company. Rather, it found that the "A" rating, confirmed by reports from credit agencies and a stable outlook, did not lead to the conclusion that Gaz Métro's financial integrity would have been called into question because of

20 File R-3842-2013, decision D-2014-034, pp. 7 and 8.
21 Exhibit B-0193, p. 4.
22 Exhibit B-0193, p. 4.

set rates of return using the automatic adjustment formula:

> [TRANSLATION] "[207] *The Régie notes that the spreads between the yield of long-term government bonds and that of bonds rated "A", or that of comparable regulated companies, subsequently widened by late 2008, and by early 2009 underwent an unprecedented expansion for a brief period. As mentioned by all the experts heard in this case, the North American and global economies then went through a period of uncertainty and high volatility, a crisis of a magnitude that no expert or estimation model could have predicted in advance. Nevertheless, the evidence indicates that the distributor should be able to fully realize the return of 8.76% set by the Régie for the fiscal year ending September 30, 2009.*
>
> *[208] Moreover, the Régie's reading of the credit agency reports, confirming Gaz Métro's "A" rating and a "stable" outlook, does not allow it to conclude that Gaz Métro's financial integrity would have been called into question because of the rates of return determined using the FAA. Gaz Métro's access to capital markets remains reasonable, as evidenced by the two debt issues made in October 2008 and June 2009. It is worth noting that despite the uncertainty prevailing in the first half of 2009, the interest rate on 10 year bonds issued by Gaz Métro last June, was similar and even lower than that at which these bonds were trading in June 2007 and June 2008"*[23].
>
> [emphasis added] [footnotes omitted]

[37] Thus, the Régie is of the opinion that compliance with the financial integrity criterion does not necessarily imply maintaining an "A"rating.

Impacts on tariffs and consumers' ability to pay

[38] The Régie also wondered, in this decision D-2009-156, whether the exercise of setting a reasonable return should involve the repercussions that such a return could have on rates, to which it replied in the negative.

[39] Indeed, the Régie pointed out that when it exercises its functions, it must ensure the reconciliation between the public interest, the protection of consumers and

[23] File R-3690-2009, decision D-2009-156, p. 53, paras. 207 and 208.

fair treatment of the distributor[24]. It stated:

> [TRANSLATION] “[191] […] *However, this cannot deprive investors of the reasonable return they are entitled to expect under section 49.3, the two sections of the Act being in no way incompatible.*
>
> *[192] Indeed, the return granted to the shareholder constitutes one of the elements of the distributor's cost of service, just like its operating costs. The rate set by the Régie must, by virtue of the Act and case law, allow sufficient revenue to cover all of these costs. Moreover, the three criteria mentioned above make no reference to users' ability to pay. However, by referring to the returns obtained in the rest of the economy, the rate granted takes into account the limits that market forces necessarily impose on the returns on equity that can be obtained in other sectors of activity of comparable risk. to that of the distributors"*[25].
>
> [footnote omitted]

[40] The Régie then concluded that users' ability to pay should not intervene in its decision on the quantum of what constitutes a reasonable return for the shareholder. It also pointed out that under section 51 of the Act, the rate set cannot provide for higher rates than those required to achieve this reasonable return, which adequately ensures the protection of consumer interests.

[41] Finally, the Régie indicated that, as mentioned in *Hope,* “[TRANSLATION] *it is the outcome of the regulatory exercise that must meet the standard of reasonable return and not the method"*[26] and that in this regard, US courts have recognized the wide latitude and discretion of regulators in determining the best method to set a reasonable return on the rate base.

24 Sec. 5 of the Act.

25 File R-3690-2009, decision D-2009-156, p. 49, paras. 191 and 192.

26 File R-3690-2009, decision D-2009-156, p. 49, para. 194.

4. HIGHLIGHTS OF THE POSITION OF THE EXPERTS OF THE COMPLAINANTS AND INTERVENERS

[42] The purpose of Énergir, Intragaz and Gazifère's Complaint is to present a proposal to adjust their deemed capital structure as well as the ROE to a level comparable to that of companies with similar risks. In support of their Complaint, the Complainants filed the testimonies of Dr. Brown and Dr. Villadsen as well as the report of the Aviseo Conseil firm (the Aviseo Report) on the evolution of the business risks of gas distributors in the establishment of the rate of reasonable return.

[43] This Complaint comes against a backdrop of financial market turbulence, a pandemic, international geopolitical tensions and a recent significant increase in interest rates.

[44] The Complainants submit that they are faced with new challenges that have an impact on investors' perceptions, including a significant acceleration in the implementation of public and environmental policies aimed at meeting the growing need for an energy transition in the face of the climate crisis.

[45] They also submit that in this context, the Régie, under section 5 of the Act, must, in particular, in the exercise of its functions, ensure compliance with the objectives of the government's energy policies.

[46] In order to perform a comparative analysis of their risks vis à vis those of their industry peers, the Complainants called on Dr. Brown and Dr. Villadsen, of *The Brattle Group* (Brattle), as experts.

[47] According to Dr. Villadsen, the replacement of preferred shares in Énergir's deemed capital structure by equity and debt is necessary. Similarly, she proposes an increase in the ROE from 8.9% to 10% in order to meet the criteria of comparable investment, capital attraction and financial integrity.

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27 Exhibit B-0028, p. 4.

[48] The Complainants' business risks are assessed by Dr. Brown using the facts and information presented in the Aviseo Report. The expert also uses Dr. Villadsen's reference sample of American gas distributors[28].

[49] Dr. Villadsen, relying on Dr. Brown's report, which indicates that Intragaz's risks are similar to those of Énergir, recommends for Intragaz a capital structure and an ROE identical to those of Énergir. Furthermore, as Intragaz's rates have a duration of application of 10 years, she also recommends a maturity premium of 50 basis points on this company's ROE.

[50] Finally, Dr. Villadsen recommends, for Gazifère, an ROE identical to that of Énergir and Intragaz. She incorporates Dr. Brown's conclusion that Gazifère's risks are greater than those of Énergir, by proposing that its deemed capital structure includes a greater share of equity than Énergir.

[51] Dr. Villadsen estimates the cost of capital of comparable companies using the Capital Asset Pricing Model (CAPM), the Empirical Capital Asset Pricing Model (ECAPM) and the Discounted Cash Flow (DCF) Model.

[52] The parameters used in these models come from samples of Canadian and American companies whose capital structures are set at market value. The expert also uses classical financial techniques to take into account the disparity in debt levels between the companies in the samples and those of the Complainants (ATWACC and Hamada's equations[29]).

[53] Dr. Villadsen's final recommendations are based primarily on the ROE ranges obtained using the ECAPM adjusted according to Hamada's equations, as well as their impact on the Complainants' financial ratios in order to maintain or achieve an "A" credit rating.

28 Exhibit B-0027, p. 2.
29 After-tax Weighted Average Cost of Capital (ATWACC). Exhibit B-0015, pp. 112 to 117.

[54] ACIG, for its part, retained the services of Dr. Hopkins to act as an expert witness on the matter of business risks, as well as those of Dr. Booth as an expert on the questions of capital structure, rate of return and business risk.

[55] ACIG and the other interveners, AHQ-ARQ, CFIB and OC, endorse the conclusions of Dr. Hopkins' report, as well as those of Dr. Booth with respect to capital structure and rate of return. With regard to business risks and, more specifically, the Aviseo Report, the stakeholders have coordinated to limit duplication in their interventions.

[56] In his expert report and his analysis, Dr. Booth uses the CAPM to estimate the fair and reasonable rate of return for the Complainants, insofar as the risks of Énergir and Intragaz are similar, and those of Gazifère are slightly higher than those of Énergir.

[57] It validates the estimate obtained using a DCF model whose parameters are valued from the Canadian market and not from any particular security or sample of securities.

[58] With respect to business risks, Drs. Hopkins and Booth submit that the analyses filed by the Complainants are incomplete and do not justify the upward adjustments they are requesting to their capital structure and their ROE. The experts propose a complete review of these risks in three years, including in particular the matter of the impacts of climate change on their business model.

[59] In addition, taking into account their ability to realize their authorized return on a regular basis and the low volatility of their realized return, Dr. Hopkins considers that Énergir and Gazifère have a lower level of risk than the American gas distributors included in Dr. Villadsen's sample.

[60] In light of Dr. Hopkins' risk findings, Dr. Booth recommends maintaining the Complainants' current capital structures as he believes that their risks remain similar to what they were since their last rate of return was set.

[61] The expert also recommends that the Régie reject the method of evaluating the cost of capital based on the ATWACC used by Dr. Villadsen. Dr. Booth

submits that the use of capital structures at their market value is incompatible with a regulated company, since this concept requires retaining the principle of maximizing value for shareholders rather than that of setting fair and reasonable rates.

[62] With respect to the Hamada adjustments, Dr. Booth is of the opinion that it is a methodology similar to that of ATWACC using market value weightings to subsequently adjust everything according to book value weightings.

[63] The expert suggests an ROE of 7.50% on Énergir and Intragaz equity and 7.65% on Gazifère equity.

5. BUSINESS RISKS

5.1 POSITION OF THE COMPLAINANTS

5.1.1 EVOLUTION OF BUSINESS RISK

[64] The Complainants filed the Aviseo Report[30] in evidence.

[65] For each of the Complainants, the Aviseo Conseil firm (Aviseo) carried out a specific analysis in Quebec relating to the evolution of business risks for the 2021-2030 period compared to the 2010-2020 decade. The table below presents this assessment for each of the five business risk categories.

30 Exhibit B-0028.

TABLE 1

AVISEO REPORT: RISK EVOLUTION MATRIX FOR THE 2021-2030 PERIOD
COMPARED TO THE 2010-2020 DECADE
FOR ÉNERGIR, GAZIFÈRE AND INTRAGAZ

Risks	Énergir	Gazifère	Intragaz
Environmental policies and public policies	Rising	Rising	Rising
Composition of the clientele	Rising		Similar
Energy context	Rising		Rising
Size Similar		Rising	Similar
Business partner	Rising		Similar

Source: Exhibit B-0028, p. 38.

[66] Based on its analysis of the business risk evolution matrix, Aviseo's main finding is that public and environmental policies lead to greater risks and uncertainties for the 2021-2030 period than during the previous decade[31].

[67] During the hearing, speaking on behalf of the Complainants, Mr. Éric Lachance, President and Chief Executive Officer of Énergir, argued that the issues related to climate change and, in particular, decarbonization, are known and are therefore not new. He specifies that the new element lies in the collective will to accelerate the pace of change[32].

[68] Based on the business risks identified in the Aviseo Report, Dr. Brown conducted a comparative assessment of the Complainants' business risk by considering five categories of risk: i) demand, ii) competition, iii) operations, iv) regulations, and v) procurement.

31 Exhibit B-0028, p. 12.
32 Exhibit A-0050, pp. 14 and 15.

[69] Dr. Brown explains that in order to provide an adequate level of compensation to shareholders of regulated companies, depending on the risk associated with their investment, the allowed return must reflect the business risk. Under the fair return standard, investors should expect to recover their investment and achieve a reasonable return[33].

[70] Dr. Brown adds that business risk can manifest itself in an increase in the volatility of returns expected for investors as well as in the possibility that the capital invested cannot be recovered over its lifespan. This possibility is also called "capital recovery risk"[34]. The expert explains that the assessment of business risk, carried out at a specific time, is of a prospective nature ("forward looking")[35].

[71] Dr. Brown indicates that he examined the individual business risk of each of the Complainants. He compared the Complainants' risks to those of the sample of natural gas distribution companies located in the United States drawn up by Dr. Villadsen[36]. However, he specifies that he did not examine the evolution of the Complainants' risk in this case[37].

[72] The expert considers that, compared to the level of risk observed since the last complete examination of the Complainants' rate of return on equity, a period of three to five years does not constitute a relevant horizon for assessing the risk of capital recovery. The relevant valuation period should reflect the useful life of the assets[38].

[73] Furthermore, in response to an RFI[39] from the Régie, Dr. Brown reiterates that investors care about the future and not the past, so historical returns can only be relevant to the extent that they provide indications for the future.

33 Exhibit B-0027, p. 4.
34 Exhibit B-0027, pp. 7 and 8.
35 Exhibit B-0344, p. 4.
36 Exhibit B-0027, p. 10.
37 Exhibit B-0141, p. 3, R1.1.
38 Exhibit B-0141, p. 4, R1.3.
39 Exhibit B-0342, p. 4, R1.3.

[74] In his testimony, Dr. Brown explained that he was not informed of any reason whatsoever to expect a systematic difference between the performance authorized by the Régie and the performance achieved by the Complainants[40].

[75] In oral argument[41], the Complainants reiterated that the rates of return achieved in the past do not constitute a relevant element to be considered in the assessment of business risk in order to establish a reasonable rate of return on the capital invested, the latter being established on a prospective basis. Therefore, the past not being a guarantee of the future, the analysis must look to the future to assess the business risk.

[76] In addition, during that oral argument, the Complainants specified that they are not subject to any legal or regulatory obligation relating to the development or submission of a business plan, as suggested by the interveners' expert. They specify that such a request would impose an additional burden in relation to that provided for in the current regulatory framework[42].

Evolution of the business risk for each complainant

[77] Based on the risk factors used in the Aviseo Report, the evolution of business risk differs for each of the Complainants.

5.1.1.1 Evolution of Énergir's business risk

[78] At the hearing, Mr. Jean-François Tremblay, testifying as Senior Director, Regulation at Énergir, specified that the measures put in place by the Complainants, such as the supply of dual energy and renewable natural gas, will not entirely eliminate the business risks related to the energy transition that the Complainants face, particularly in a context of a rapidly changing regulatory environment[43].

[79] Thus, Mr. Tremblay specified that, according to the Aviseo Report, several risk

40 Exhibit B-0027, p. 6.
41 ~~Exhibit B-0388, pp. 55 and 56.~~
42 Exhibit B-0388, p. 65.
43 Exhibit A-0054, p. 25, 26 and 27.

factors will exert pressure on demand in the coming years. Considering carbon neutrality objectives and the fact that Énergir mainly distributes fossil energy, it is committed to implementing decarbonization measures, including more specifically energy efficiency, dual energy and renewable natural gas. In this context, Énergir indicates that it is essential to succeed in the energy transition by maintaining the competitive position of natural gas, to ensure that the company's business model is resilient[44]. Mr. Tremblay nevertheless specifies that by 2050, depending on the assumptions made, the company succeeds in preserving its competitive position, but barely so with the business model in place[45].

5.1.1.2 Evolution of Gazifère's business risk

[80] In comparison with the 2010-2020 period, the Aviseo Report assesses that for 2021-2030, Gazifère's business risk is on the rise for all risk factors[46].

[81] During the hearing, Mr. Jean-Benoit Trahan, President of Gazifère and Director of Operations Eastern Region of Enbridge, specified that, although certain initiatives such as RNG or dual energy aim to reduce the risks, these are increasing because these initiatives have not been commercially demonstrated at scale[47]. In addition, he specifies that Gazifère has implemented a long-term strategy that must be adapted according to the means at its disposal and according to the nature of the company's clientele.

[82] Gazifère also submits that the energy transition induces additional risks that the company did not have to manage before[48].

[83] Finally, in the context of Hydro-Québec's competitive position, Gazifère recalls that the company’s small size always constitutes a significant risk.

44 Exhibit ~~A-0054,~~ pp. 102 and 103.
45 Exhibit ~~A-0054,~~ pp. 106 and 107.
46 Exhibit ~~B-0388,~~ p. 6.
47 Exhibit ~~A-0050,~~ p. 55.
48 Exhibit A-0050, p. 97.

5.1.2 COMPARATIVE RISK ASSESSMENT

[84] Dr. Brown identifies the additional long-term uncertainty factors that the Complainants face for the recovery of invested capital compared to all of the companies in the sample of American natural gas distributors from Dr. Villadsen. First, he mentions that the authorities have already implemented policies relating to greenhouse gas (GHG) emissions for the energy sector in Quebec and are considering adopting others. These policies have the effect of both increasing the price of natural gas and reducing demand for it, which means that the Complainants' customers are more inclined to replace natural gas by electricity. Second, Dr. Brown insists on the fact that electricity in Quebec is less expensive than in other jurisdictions. It also points out that the Complainants are relatively smaller in size than the other companies in the sample[49].

[85] Moreover, since Intragaz provides a storage service to Énergir, its only customer, Dr. Brown considers its business risk equivalent to the latter's[50].

[86] Finally, Dr. Brown assesses that Gazifère's business risk is higher than that of Énergir and Intragaz[51]. Since Gazifère is a very small company and distributes mainly to residential customers, it faces a higher risk, particularly in the context of the conversion of a portion of its customers to electricity[52]. Consequently, the long-term uncertainty for capital recovery is greater for Gazifère than for Énergir[53].

49 Exhibit B-0027, p. 33.
50 Exhibit B-0344, p. 8.
51 Exhibit B-0344, p. 10.
52 Exhibit B-0027, p. 30.
53 Exhibit B-0027, p. 30.

5.1.3 CANADIAN REFERENCE GROUP

[87] In order to understand the Complainants' business risk, Dr. Brown did not retain the Canadian reference group. Dr. Brown considers Dr. Villadsen's sample less relevant for comparison purposes and less representative in assessing the Complainants' business risk. According to Dr. Brown, the sample of Canadian companies is heterogeneous in that most of the companies included in this sample are not concentrated in gas distribution.

5.1.4 US REFERENCE GROUP

[88] In his testimony, Dr. Brown explains that it is reasonable to compare risks between jurisdictions when the regulatory frameworks are similar[54].

[89] Dr. Brown notes that electricity represents strong competition for natural gas. In Quebec, the price of electricity for households is 50% to 80% cheaper than that prevailing in the United States. Although the number of Énergir customers remains stable, Dr. Brown qualifies the latter as a small natural gas distributor, characterized by slower growth in its customer base compared to the companies in the American reference group[55].

[90] Finally, by comparing it to the companies in Dr. Villadsen's sample of American natural gas distributors, Dr. Brown assesses that the business risk range of Intragaz and Énergir is above of the average risk, whereas that of Gazifère is higher and is located towards the top of the range[56].

54 Exhibit B-0027, p. 11.
55 Exhibit B-0344, p. 10.
56 Exhibit B-0344, p. 10.

5.2 INTERVENERS' POSITION

[91] The interveners selected Dr. Hopkins and Dr. Booth as expert witnesses for the Complainants' business risk assessment. For the purposes of this assessment, the experts take particular account of the comparison between the yields authorized and the yields achieved.

[92] The interveners endorse the conclusions of Dr. Hopkins' report as well as those of Dr. Booth regarding business risks.

Business Risk Assessment - Dr. Hopkins

[93] Dr. Hopkins[57] is of the view that short-term business risk is primarily operational in nature and arises from the fact that the company may realize less revenue than expected or face unexpected costs. This business risk is manifested by the variation in the return achieved by the company's shareholders.

[94] As for long-term business risk, he explains that natural gas distributors are mainly faced with the risk of not being able to recover the capital invested and of not realizing a return during the life of the capital invested[58].

[95] Dr. Hopkins[59] concludes that Énergir and Gazifère face a low level of short-term risk. This conclusion stems from their ability to realize the authorized return on a regular basis as well as the low volatility of their realized return compared to the companies in Dr. Villadsen's sample of American natural gas distributors .

[96] Furthermore, the expert is of the opinion[60] that the evidence presented in the Aviseo Report and during Dr. Brown's testimony is insufficient to assess the long-term risk associated with stranded assets and electricity competition, including the risks associated with decarbonization resulting from the energy transition. Moreover, this evidence does not sufficiently take into account the opportunities linked to decarbonization or the impact of

57 Exhibit C-ACIG-0028, p. 5.
58 Exhibit C-ACIG-0028, p. 6.
59 Exhibit C-ACIG-0028, p. 3.
60 Exhibit C-ACIG-0028, pp. 3 and 4.

risk mitigation measures in a prudently managed company to adapt to this transition.

[97] As for Intragaz, Dr. Hopkins submits that it faces little short-term and long-term business risk because it deals with a single client whose distribution activities are regulated and who will likely need its services for decades to come.

[98] Furthermore, and unlike Dr. Brown, Dr. Hopkins does not consider that the reductions in demand for the Complainants' services expose them to a greater risk of capital recovery than the companies in the sample of American natural gas distributors [62].

[99] In the opinion of Dr. Hopkins, a utility company that manages its activities prudently, so as to mitigate its business risks, should not be rewarded by being allowed a higher rate of return[63].

[100] In order to mitigate long-term business risks, Dr. Hopkins is of the opinion that the Régie should establish the Complainants' rates of return and capital structures on the basis of a business plan filed within the next three years. These business plans, prepared by the Complainants, should outline future risks and opportunities, as well as impacts and strategies to mitigate those risks[64].

Business Risk Assessment - Dr. Booth

[101] As an indicator, by comparing the returns achieved with the authorized returns of Énergir and Gazifère since 1990[65], Dr. Booth concludes that neither of these two companies has had to face a business risk in the short term[66].

[102] According to Dr. Booth, the term "long-term risk" is inappropriate, since the long term is simply the succession of short-term periods.

61 Exhibit ~~C-ACIG-0028,~~ p. 35.
62 Exhibit ~~C-ACIG-0028,~~ p. 21.
63 Exhibit ~~C-ACIG-0028,~~ p. 4.
64 Exhibit ~~C-ACIG-0028,~~ p. 21.
65 Exhibit ~~C-ACIG-0043,~~ pp. 25 and 26.
66 Exhibit C-ACIG-0043, p. 26.

According to him, for long-term risk to manifest itself, a regulated company must be unable to realize its allowed return and rebalance its rates.

[103] Dr. Booth explained that a situation may arise where a utility suffers a loss of customers and the costs cannot be recovered from other rate classes because their rates would be too high. In such a situation, a "death spiral" could occur if the rate increases necessary to compensate for the revenue declines lead to an additional loss of customers. The company would therefore no longer be able to increase its rates sufficiently nor to achieve a fair return and even to achieve a sufficient return to recover its depreciation expenses[67].

[104] However, until now the Complainants have not incurred any issues preventing them from realizing their authorized return. This situation is undeniable proof that there are very few long-term risks[68].

[105] For Dr. Booth, on a prospective basis, it is important to examine supply and demand over the economic planning horizon in order to assess the risk associated with the Stranded costs.

[106] According to the information in evidence[69], natural gas production in Western Canada is not decreasing significantly. The only factor affecting the risk of stranded assets to consider is demand[70].

[107] In order to assess the economic planning horizon that could apply to the Quebec natural gas distribution network, the expert Booth examined the situation of the natural gas transmission system supplying Quebec and the TransQuébec & Maritimes Inc. (TQM) system[71]. It is based on a study on the natural gas transmission system supplying Quebec and the TQM system filed and approved by the Canada Energy Regulator in 2022, which concludes that there is no change in the economic planning horizon used to assess the depreciation of TQM's rate base assets in Quebec. Thus, the absence of modification of the amortization periods of

67 Exhibit C-ACIG-0043, p. 28.
68 Exhibit C-ACIG-0043, p. 28.
69 Exhibit C-ACIG-0043, p. 30.
70 Exhibit C-ACIG-0043, p. 31.
71 TQM's map shows that it supplies gas to the Énergir system in most of Quebec, and that the two systems are closely integrated. This is also why Énergir owns 50% of TQM and the remaining 50% is held by TransCanada (which became TC Energy in 2019). Source: Exhibit C-ACIG-0043, p. 33.

of the TQM system in Quebec leads the expert Booth to reject an increase in the risk for demand for natural gas in Quebec supplied by the TQM system.

[108] In the opinion of Dr. Booth, this conclusion means that the business risk assessment for the main natural gas pipeline supplying Quebec has remained unchanged, and the business risks of Quebec gas distributors remain stable.

[109] Finally, with respect to the business risks arising from policies aimed at reducing GHG emissions and the risks associated with climate change, Dr. Booth indicates that climate change will constitute a risk factor if it affects the Complainants' ability to achieve their performance or if they drag them into a "death spiral"[72].

[110] Expert Booth sees only general statements in the evidence relating to the impact of climate change and the pressure exerted on customers to switch from natural gas to electricity. He also notes the absence of a complete plan showing the impact of these elements on the Complainants, and supports Dr. Hopkins' proposal to require the Complainants to submit a risk assessment plan and risk mitigation strategies[73].

[111] Dr. Booth specifies that, given the regulatory framework in place, when these risks arise, they are entirely the customers' responsibility[74]. In order for these risks to be deemed by the shareholders, the regulatory authorities must so rule.
In addition, the Complainants must demonstrate not only that there is a decline in customers and a reallocation of volumes, but also that they are unable to cope with a decrease in the number of natural gas consumers in Quebec[75].

72 Exhibit C-ACIG-0043, p. 34.
73 Exhibit C-ACIG-0043, p. 34.
74 Exhibit A-0062, p. 186.
75 Exhibit A-0062, p. 187.

5.2.1 EVOLUTION OF BUSINESS RISK

[112] Dr. Hopkins considers that Énergir's short-term business risk is lower today than it was in 2011[76]. He bases his assessment on the absence of evidence of risk over the long term, giving a significant weighting to short-term risks, and based on the expected filing of a request for a review of its rate of return in a few years.

[113] Dr. Hopkins believes that Gazifère's short-term business risk outlook has diminished since the last review in 2010. Furthermore, the evidence on Gazifère's long-term business risk does not support a conclusion that these risks have changed since 2010[77].

[114] According to him, Gazifère's long-term business risks are slightly higher than those of Énergir, since it serves relatively more buildings that are more likely to convert to electric power[78]. In addition, Gazifère's business context is such that it has fewer opportunities to mitigate its risks by serving industrial customers or customers for whom electrification is difficult.

[115] As for Intragaz, Dr. Hopkins[79] estimates that its business risk remains slightly lower than that of Énergir, just as it was in 2013. Although data showing the annual variability of returns is not available for this 10-year period, the fact that the returns achieved by Intragaz were higher than the authorized returns demonstrates to investors that the risk is relatively low. According to him, the Régie could take this performance into account as an element leading it to conclude that Intragaz faces fewer risks than when the Régie assessed them in 2013.

76 Exhibit C-ACIG-0048, p. 2, R1.1.
77 Exhibit C-ACIG-0048, p. 3, R1.1.
78 Exhibit C-ACIG-0028, p. 31.
79 ~~Exhibit C-ACIG-0048, p. 4, R~~1.1.

5.2.2 COMPARATIVE RISK ASSESSMENT

[116] Based on the historical comparison between the returns achieved and the returns authorized since 1990, Dr. Booth notes that Énergir has achieved, with the exception of a single year over the entire period, an annual return at least equal to the authorized return. Over this entire period, Dr. Booth estimates that Énergir achieved an average overearnings of 0.58%[80]. Although this situation stems, at least in part, from the existence of a productivity incentive mechanism for setting rates, he believes that there is nothing to indicate that shareholders are at risk of not obtaining the authorized return.

[117] According to Dr. Booth, the same is true for Gazifère given that since 1990 the company has averaged overearnings of 0.66% and has only been able to achieve its authorized return five times. He is therefore of the opinion that the ability of the two companies to achieve their authorized return attests to the absence of short-term risk[81].

[118] As for Intragaz, he recalls that in 2012, he indicated that the latter's assets could not be distinguished from those of Énergir, a 50% shareholder of Intragaz. He reiterates this opinion. Consequently, Dr. Booth is of the opinion that Énergir's financial parameters should also apply to Intragaz[82].

5.2.3 CANADIAN REFERENCE GROUP

[119] With respect to regulated public utilities in Canada, Dr. Booth explains that significant differences in business risk can be mitigated by regulatory authorities[83].

[120] According to Dr. Booth, the company with the lowest level of risk is the one that benefits from the best conditions and, therefore, has the least need for recourse to the protection under the regulatory regime. Conversely, a regulated company may face the same short-term risk in earning its income but need more

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80 Exhibit C-ACIG-0043, p. 25.
81 Exhibit C-ACIG-0043, p. 26.
82 Exhibit C-ACIG-0043, p. 27.
83 Exhibit C-ACIG-0043, p. 20.

regulatory protection because its long-term risks are greater[84].

[121] Thus, compared to other natural gas distribution companies in Canada, Dr. Booth considers that Énergir is one of the two "riskiest regulated utilities in Canada"[85].

5.2.4 US REFERENCE GROUP

[122] Expert Hopkins concludes that the returns achieved by Énergir and Gazifère[86] are higher than those achieved by the companies included in the sample of American natural gas distributors. The expert also notes that comparable companies generally do not achieve a return higher than their authorized return, unlike Énergir and Gazifère[87].

[123] In the opinion of Dr. Hopkins, in the presence of lower short-term risks, the authorized returns should be lower than those estimated by Dr. Villadsen for the sample of American natural gas distribution companies because the short-term risk is higher for the companies included in this sample than that of the Complainants[88].

[124] Moreover, unlike Dr. Brown, Dr. Hopkins questions the relevance of the sample of American companies as a reference group for comparing the Complainants' risks[89]. A benchmark group is used to provide an indication of the cost of capital of a prudently managed utility. To the extent that the companies in the sample of US companies do not take the measures available and expected by shareholders to mitigate the risks arising from climate policies, these companies do not constitute an appropriate reference group with a view to estimating the cost of capital of a prudently managed company. The cost of capital

84 Exhibit C-ACIG-0043, p. 20.
85 Exhibit C-ACIG-0043, p. 21.
86 Exhibit C-ACIG-0028, p. 15.
87 Exhibit C-ACIG-0028, p. 16.
88 Exhibit C-ACIG-0028, p. 16.
89 Exhibit C-ACIG-0028, p. 26.

calculated based on this benchmark group would be too high to be representative of a prudently managed company.

5.3 OPINION OF THE RÉGIE

Assessment of the Complainants' business risks

[125] From the outset, the Régie notes that the Complainants presented several elements of a qualitative rather than quantitative nature in support of the assessment of the factors having an impact on business risks. Among these elements, there is the ongoing energy transition and decarbonization efforts by 2030 that could affect the demand for fossil natural gas. In this regard, the Régie notes that pressure from society is prompting the Complainants to accelerate the implementation of initiatives aimed at positioning the natural gas systems as part of the energy transition solution in order to secure their future[90].

[126] The Régie notes that these measures are put in place by the Complainants in order to mitigate the risks they face, and it understands that these initiatives have not yet been commercially demonstrated on a large scale.

[127] Based on these elements, the Régie cannot exclude from its considerations that the Complainants' business context has evolved since the last review and that new elements are present.

[128] The Régie recognizes that the competitive position of natural gas, compared to electricity in Quebec, constitutes an inescapable element of the Complainants' business risk and that the current energy transition context adds uncertainty to their business environment.

[129] However, despite this increased uncertainty which could ultimately lead to losses in the Complainants' sales volume due to the energy transition, the Régie retains from the evidence that their competitive position has not deteriorated in the immediate term, and believes that there is no indication of this in the foreseeable future either.

90 Exhibit A-0050, p. 16.

[130] The Régie agrees with Dr. Booth's assessment that Énergir's business risk is higher than that of comparable Canadian natural gas distributors, mainly given the low price of electricity in Quebec. It also retains from Dr. Brown's assessment that Gazifère's business risk is higher than that of Énergir, due to a greater risk of its customers converting to electricity.

[131] Finally, the Régie considers, for the reasons expressed by Drs. Brown and Booth, that Intragaz's business risk is identical to that of Énergir, the latter being its only client for its storage services.

[132] The Régie thus concludes that the business risks of Énergir and Intragaz are comparable, whereas Gazifère presents a higher business risk than Énergir.

[133] **Thus, the Régie deems that the increased level of uncertainty in the business environment justifies an increase of 10 basis points from the top of the current range for Énergir's business risk adjustment, compared to the ROE of a benchmark distributor. Consequently, the Régie determines that the new range for Énergir's business risk adjustment is 25 to 45 basis points rather than 25 to 35 basis points, as it was estimated in the last cases on determining the rate of return on equity.**

[134] **Because it considers that Intragaz and Énergir face the same risk, the Régie determines that the range for Intragaz's business risk adjustment is also 25 to 45 basis points.**

[135] **The Régie considers that the higher business risk of Gazifère compared to that of Énergir justifies an adjustment of 15 additional basis points to the range established for Énergir. Consequently, the Régie sets the new range for Gazifère's business risk adjustment at 40 to 60 basis points rather than 25 to 50 basis points, as estimated at the last review.**

6. CAPITAL STRUCTURE AND RATE OF RETURN

6.1 COMPLAINANTS' POSITION

[136] The Complainants rely on the recommendations of their expert, Dr. Villadsen, in asking the Régie to review their capital structure and increase their ROE[91].

[137] Based on the analysis of the Complainants' business risks carried out by Dr. Brown[92], Dr. Villadsen recommends an ROE of 10% for Énergir et Gazifère. In order to take into account Intragaz's 10-year rate period, Dr. Villadsen recommends adding a premium of 50 basis points to Intragaz's rate of return for an ROE of 10.5%. Alternatively, in accordance with a proposal from the expert, Intragaz is asking to link its rate of return to that of Énergir over the 2023-2032[93] horizon.

[138] Also, the expert recommends modulating the Complainants' capital structure according to the differences in their business risks.

[139] Dr. Villadsen notes that Énergir's deemed capital structure includes 7.5% preferred shares, unlike its non-consolidated balance sheet, which does not. She also notes that the percentage of preferred shares is 3.4% higher than that of the companies in her Canadian sample. For this reason, she recommends the replacement of preferred shares in Énergir's deemed capital structure and proposes that it contain 43% equity and 57% debt.

[140] For Intragaz, the expert recommends that the deemed capital structure be identical to that of Énergir, namely 43% equity and 57% debt.

[141] According to Dr. Villadsen, in order to take into account the increased business risks of Gazifère compared to those of Énergir, she proposes a capital structure for Gazifère of 45% equity and 55% debt.

91 Exhibit ~~B-0331~~, p. 5, paras. 34 to 38.
92 Exhibit ~~B-0027~~, p. 30, A48 and p. 32, A53.
93 Exhibit B-0388, p. 92.

[142] The following table summarizes the current situation and the expert's recommendations.

TABLE 2

CURRENT SITUATION AND DEMAND RE PRESUMENT CAPITAL STRUCTURE AND ROE

	Énergir		Intragaz		Gazifère	
	Current	demand	Current	demand	Current	demand
Equity	38.5%	43%	46%	43%	40%	45%
Preferred shares	7.5%	0%	0%	0%	0%	0%
Debt	54%	57%	54%	57%	60%	55%
ROE	8.9%	10%	8.5%	10% + 0.5%	9.1%	10%

Source: Table based on exhibit B-0015, p. 6, table 3 and p. 16, table 5.

In order to estimate the returns demanded by investors, Dr. Villadsen and Dr. Brown use recognized models in the financial and regulatory fields, such as the CAPM and DCF. However, the use of these models requires parameters (examples: Beta[94] and dividend growth rates) which stem from companies traded on the stock exchange.

[143] In this context, Dr. Villadsen proposes the use of three distinct samples of companies traded on the stock exchange, namely Canadian gas holding companies, gas distributors and American water utilities[95].

[144] Canadian gas holding companies and US gas distributors serve as comparable companies to the Complainants. The water utilities are used to validate the results of the models obtained using the data from the other two samples.

94 The relationship between market risk and security risk is expressed by the Beta factor (or Beta). See file R-3690-2009, decision D-2009-156, p. 59.

95 Exhibit B-0015, p. 53, table 18 and p. 59, tables 20 and 21.

[145] Using the financial and stock market data of the companies in these samples, Dr. Villadsen obtains preliminary ranges for the Complainants' ROE[96]. These ranges are preliminary since they do not include the expert's requirements with regard to attraction of capital and financial integrity criteria.

[146] Dr. Villadsen calculates these preliminary ranges using the CAPM, ECAPM and DCF models[97]. The results of these models are then adjusted using methods to take account of financial leverage (effect of the disparity of the levels of indebtedness on the Betas or on the cost of capital[98]). In these calculations, the capital structure used to determine the debt levels of the companies in the samples is established according to their market value.

[147] Dr. Villadsen submits that compliance with the three criteria of the Fair Return Standard requires that the capital structure and the ROE be determined in order to enable the Complainants to achieve an “A” credit rating. Compliance with these three criteria also requires that the return, namely the ROE multiplied by the share of equity in the capital structure, compares with that of companies deemed comparable to the Complainants[99].

[148] It is with this in mind that Dr. Villadsen proposes to set the level of equity and the ROE of the Complainants while ensuring that the previously calculated ROE ranges comply with the financial ratios published by Dominion Bond Rating Service (DBRS). and Standard & Poor's (S&P) for Canadian and US utilities to maintain or obtain an “A” credit rating.

96 Exhibit B-0015, pp. 75 and 76, A71. The data used by Dr. Villadsen is as of June 30, 2021.

97 Capital Asset Pricing Model (CAPM), Empirical Capital Asset Pricing Model (ECAPM) and Discounted Cash Flow Model (DCF).

98 That is to say, the Financial Risk Unlevered Method and Hamada's adjustments (with and without taxes). Refer to Exhibit B-0015, pp. 18 to 21, A20 to A23, pp. 65 and 66, A60 and pp. 113 to 117.

99 Exhibit B-0015, pp. 10 and 11, A11.

[150] According to Dr. Villadsen, the relevant financial ratios and their target are as follows:

EBIT Coverage[100]*:* at least 2.5 times;

FFO Interest Coverage[101]*:* 3.5 to 4.0 times, with a preference for high value range; and

FFO to Debt[102]*:* at least 15%.

[151] The expert examines various levels of equity in the deemed capital structure and the rates of return of each of the Complainants. Her final recommendation corresponds to the combination of these two components making it possible to meet the targets mentioned in the previous paragraph. In her calculations, two rates of return are considered, namely 9.25% and 10%. As these are within the preliminary ROE ranges determined beforehand, the expert concludes that her final recommendation satisfies the three criteria of reasonable return.

[152] In response to an RFI from the Régie, Dr. Villadsen mentions that her recommendation with regard to the Complainants' ROE is slightly above the average of the results for Canadian gas holding companies and close to the average of the results for American gas distributors. The expert also mentions that the percentages of equity and the rates of return that she recommends are not adjusted upwards compared to those of the samples to take into account the risk of capital recovery, nor to take into account the risks attributable to GHG reduction initiatives[103].

[153] During the hearing, Dr. Villadsen updated certain parameters of the financial models she used, mainly a significant increase in the risk-free rate from 2.30% to 3.40% and a drop in the prospective risk premium from 8.05% to 5.86%. These changes do not change the expert's recommendation with regard to the ROE of 10% for the Complainants[104].

100 *Earnings before interest and taxes coverage. Funds from operations (FFO) to interest coverage.*

101

102 *Funds from operations (FFO) to Debt*. Exhibits B-0143, p. 2, R1.1, and B-0141,

103 p. 4, R1.4 and R1.5.

104 Exhibit B-0350, p. 36 and 37.

ACIG expert's position

[154] Dr. Booth explains that in finance, risk is the probability of losing money and that, in the case of regulated utilities, this translates into the likelihood of not earning the authorized return[105]. There is a short-term risk, namely the risk that the public service realizes a return lower than its authorized return and a long-term risk (return on capital), namely that the public service does not recover a part of its capital invested in its rate base (return of capital).

[155] With regard to the short-term risk, the expert mentions that there is nothing to indicate that the Complainants are having a problem achieving their authorized return. He also believes that the level of debt in their deemed capital structure does not cause any negative impact.

[156] Dr. Booth adds that TQM's most recent depreciation rates (2022) are based on economic lifespans up to 2050 for the service of the Énergir franchise and up to 2040 for the segment going to East Hereford. In addition, according to S&P[106], Énergir Inc.'s business risk is "Excellent" and its financial risk is "Intermediate".

[157] Thus, Dr. Booth considers that Énergir's short- and long-term business risks have not changed since their last review. The expert also notes that the equity in the deemed capital structures of the major gas distributors in Canada is between 36% and 38.5%.

[158] For these reasons, the expert recommends maintaining Énergir's deemed capital structure. He considers that Intragaz's risk is lower than that of Énergir, but since these two companies are integrated, there is, in his opinion, no disadvantage in establishing for Intragaz a capital structure and ROE identical to those of Énergir.

[159] The expert also recommends maintaining the deemed capital structure of Gazifère because it is a small gas distributor. However, he points out that

105 Exhibit A-0062, p. 200.
106 Exhibit cited on p. 14 of Exhibit C-ACIG-0087.

Altagas' capital structure is 39% equity. The latter is half the size of Gazifère and Altagas is not integrated into a major gas distributor.

[160] The following table presents the ROE range according to the CAPM results calculated by Dr. Booth, for a generic gas distributor in Canada.

TABLE 3

ROE RANGE ACCORDING TO DR BOOTH 'S CAPM

Factor		High	Low
Canada 30-Year Bond Yield Forecast		3.37	3.37
Adjustment to take into account the Bank of Canada action on long-term rates *(bond buying)*[107]		0.43	0.43
	(a)	3.80	3.80
Beta Factor		0.50	0.55
Market risk premium		x5.50 _	6.00
	(b)	2.75	3.30
~~Issuance costs~~	~~(c)~~	~~0.50~~	~~0.50~~
CAPM Result	= (a) + (b) + (c)	**7.05**	**7.60**

Source: Exhibit C-ACIG-0037, p. 67.

[161] In this CAPM, the risk-free rate, that is to say the forecast yield on Canda 30 year bonds according to the Parliamentary Budget Officer, is 3.37%[108]. Added to this risk-free rate is 43 basis points, because the expert deems that in the absence of measures to stimulate the economy adopted by the Bank of Canada (quantitative easing or bond buying), the return on Canada 30 year bonds would be at least 3.8%. This adjustment also takes into account the credit spread. If Canada bond yields rise, then the credit spread should narrow.

107 Exhibit C-ACIG-0087, p. 24, Dr. Booth presents this adjustment on the line “Adjustment for results of other models”.

108 This is the yield on Canada 10 year bonds forecast by the Parliamentary Budget Officer *(Economic and Fiscal Outlook,* March 2022) for the years 2024–2026 (3.0%) to which the expert adds a spread for the rates at 10 years and at 30 years (0.37%).

[162] Furthermore, Dr. Booth proposes a formula under which the ROE would be at least 7.5%. This ROE would increase by 75 basis points for every 100 basis point increase in the risk-free rate above 3.8%[109]. For example, if the risk-free rate increased from 3.8% to 4.25%, the ROE would increase to 7.84%[110].

[163] According to Dr. Booth, the accumulation of savings by households during the pandemic and their high consumption mean that long-term rates of around 3% to 3.5% will be necessary. to counter inflation. This range is below the 3.8% threshold that the expert considers necessary before adjusting his ROE upwards according to the recommended formula.

[164] Questioned at the hearing by the Régie, the expert submits that there is no stagflation in Canada and he believes that there will not be. The economy should instead grow faster than inflation in a context where he deems that the Bank of Canada will not have the necessary will to increase its key rate in order to counter inflation. He admits, however, that in the presence of stagflation, the cost of capital could increase rapidly[111].

6.2 OPINION OF THE RÉGIE ON THE DEEMED CAPITAL STRUCTURE OF THE COMPLAINANTS

6.2.1 BOOK VALUE AND MARKET VALUE

[165] In her evidence and in response to RFIs[112], Dr. Villadsen asserts that the Complainants' deemed proportion of equity is lower than the proportion observed among the companies forming the samples of comparable companies, as shown in Table 4. She notes in particular that there would be almost 10 percentage points more equity among US gas distributors.

109 Exhibit C-ACIG-0061, p. 6, R2.1.
110 7.84 = 7.50 + 0.75 x (4.25 – 3.80).
111 Exhibit A-0063, pp. 221 to 224.
112 Exhibit B-0143, p. 28, R6.3.

TABLE **4**

FIGURE 7: AVERAGE CAPITAL STRUCTURES OF PROXY GROUP COMPANIES

Proxy Sample	DCF Capital Structure			3-Year Average Capital Structure		
	Common Equity - Value Ratio	Preferred Equity - Value Ratio	Debt - Value Ratio	Common Equity - Value Ratio	Preferred Equity - Value Ratio	Debt - Value Ratio
	[1]	[2]	[3]	[4]	[5]	[6]
Canadian Sample Average	48.8%	3.4%	47.8%	45.6%	4.4%	50.0%
U.S Natural Gas Sample Average	55.2%	1.2%	43.6%	61.1%	0.8%	38.1%
U.S Water Utility Sample Average	69.5%	0.0%	30.5%	70.8%	0.0%	29.2%

Sources and Notes:
[1], [4]:Workpaper #1 to Schedule No. BV-4.
[2], [5]:Workpaper #2 to Schedule No. BV-4.
[3], [6]:Workpaper #3 to Schedule No. BV-4.
Values in this table may not add up exactly to 1.0 because of rounding.

Source: Exhibit B-0015, p. 17. [we frame]

[166] According to the expert, it follows that the expected return of comparable companies, determined by models such as the DCF based on market values, would apply to companies with a financial risk that is significantly lower than that of the Complainants. In the absence of an adjustment for differences in financial leverage, the application of the results of the models would not meet the criterion of reasonable return:

> "[…] *therefore, absent an adjustment to account for differences in financial leverage, the raw model results are not comparable for purposes of determining a fair return, even to the extent the underlying business risk is comparable"*[113].

[167] In response to an RFI from the Régie, Dr. Villadsen explains that the adjustment methods she presents use market values rather than book values. She also confirms that with these methodologies, she compares capital structures based on market values of samples of comparable companies with the Complainants' deemed capital structures based on book values. However, she specifies that her recommendations are essentially based on Hamada's adjustments:

> *"The Hamada and ATWACC methodologies adjust for differences in financial leverage between the proxy companies' market value capital structure and the Complainants' deemed book (authorized) capital structure. Dr. Villadsen relies*

113 Exhibit B-0015, p. 18.

primarily on the ROE estimates derived from the Hamada adjustments because the Regie (sic) in the past has been critical of the ATWACC methodology"[114].

[emphasis added]

[168] For his part, Dr. Booth rejects the need for these adjustments and the use of these methodologies, in particular the ATWACC, which are based on market values. He cites Alberta Public Utilities Commission decision U-99099 in support of his position:

"*In essence, a regulated company's earnings are driven by the portion of the original cost rate base deemed to be financed by common equity. This fact results in a fundamental disconnect to the theory that market capitalization ratios, which have deviated significantly from book capitalization ratios, reflect the appropriate financial risk necessary to determine a fair composite return to be applied to the original cost rate base of a pure play regulated utility. This is because the earnings of a pure play regulated utility are governed by and driven by the regulated return allowed on book equity. In other words, it is the book equity that reflects the appropriate financial risk necessary to determine a fair composite return for a pure play regulated utility* "[115]. [emphasis added]

[169] Dr. Booth agrees that ATWACC and leverage adjustments are fundamental concepts in modern finance. During the hearing, Dr. Booth explains that the ATWACC is the minimum rate of return that an investment must earn in order to increase the market value of a company. It is a rate of return that maximizes shareholder value[116].

[170] Although these are important concepts, he nevertheless considers that their application is inappropriate[117] because it would lead to the abdication of the role of economic regulator. According to the expert, economic regulation is designed to protect rate payers against the exercise of market power by regulated monopolies and not to maximize value for their shareholders:

"[…] *The ATWACC is thus a critical concept to understand how a firm can make decisions that enhance shareholder value. In contrast, regulators are not concerned*

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114 Exhibit B-0143, pp. 96 and 97, R16.8.

115 Exhibit C-ACIG-0087, p. 40. See also decision U99099, November 25, 1999, p. 301.

116 Exhibit A-0063, p. 46.

117 Exhibit C-ACIG-0042, p. 1.

with maximizing or enhancing shareholder value; their mandate is to set "fair and reasonable" rates. This frequently puts them at odds with maximizing shareholder value since regulation should never be designed to enhance or even maintain market values"[118].

[171] According to Dr. Booth, the Hamada adjustment suffers from the same problem as the ATWACC, since it readjusts the Betas upwards by applying weights based on the capital structures according to the market values of the samples of companies comparable to the Complainants' deemed capital structures, based on book values[119].

[172] In the opinion of the expert, recourse to traditional financial analyses, based on financial statements and book values, should be favored in order to compare financial leverage rather than market values[120].

[173] The Régie notes that the proportions of equity observed among the companies forming the samples of comparable companies presented by Dr. Villadsen in Table 4 (paragraph 165 of this decision) are calculated based on market values[121], unlike the deemed proportions of equity of the three Complainants[122]. Accordingly, the Régie believes that any difference between these proportions of equity established on different bases must be interpreted with caution.

[174] Furthermore, the Régie notes that the financial ratios calculated by the credit rating agencies used to measure the financial health and default risk of regulated companies are essentially established from the financial statements and book values[123].

118 Exhibit C-ACIG-0042, p. 5, lines 9 to 14.
119 Exhibit A-0063, pp. 52 and 53.
120 Exhibit C-ACIG-0061, p. 10.
121 Exhibit B-0143, p. 28.
122 Exhibit B-0143, pp. 96 and 97.
123 Exhibits B-0143, pp. 18 and 19, and B-0313, pp. 10 and 11.

[175] It also notes that financial analysts and financial publications intended for stock market investors use financial statements and book values to determine various ratios measuring financial risk including, in particular, the financial leverage of companies[124].

[176] **The Régie remains of the opinion that, to judge the financial leverage and risk of regulated companies and of comparable companies, recourse to a comparative analysis of the financial statements and book values constitutes the traditional approach to be favored for purposes of determining return on equity.**

[177] The Régie understands that corporate finance is a specialized field of finance that is particularly interested in strategies for maximizing shareholder value. Dr. Villadsen[125] and Dr. Booth[126] also agree that in corporate finance, it is appropriate to use capital structures based on market values.

[178] However, the Régie shares Dr. Booth's opinion that we must beware of applying this approach to regulated companies[127]. Unlike the methodologies proposed in corporate finance, the regulator who must set the rate of return of a company does not aim to maximize value for shareholders. Rather, the Régie must, when exercising its functions, ensure a balance between the public interest, consumer protection and equitable treatment of distributors, according to section 5 of the Act. Under section 49 of the Act, it must therefore determine a reasonable return.

[179] Furthermore, the Régie includes the explanations provided in response to the RFIs concerning the Hamada or ATWACC adjustment[128], whether they are based on the comparison of capital structures, based on the market values of samples of comparable companies, with the Complainants' alleged capital structures, based on book values.

124 Exhibit B-0313, p. 11 to 19.
125 Exhibits B-0143, p. 35, and A-0061, p. 54 and 55.
126 Exhibit C-ACIG-0042, p. 5.
127 Exhibit C-ACIG-0042, p. 1, p. 5, pp. 9 and 10.
128 Paragraph 167 of this decision and Exhibit B-0143, pp. 96 and 97.

[180] The Régie also notes Dr. Villadsen's explanation justifying this approach:

> "*Dr. Villadsen is not comparing market and book value capital structures. The CAPM and DCF models rely on market data to estimate the cost of equity – implicit in which is the market value of debt and equity. Consequently, to compare the return investors expect on market value equity and that allowed on the equity portion of the rate base, it is necessary to translate the market-value based equity return to one that applies to the equity portion of the rate base. At no point in time does Dr. Villadsen suggests that a rate regulated company should be regulated on the market value of its equity*"[129]. [emphasis added]

[181] For his part, Dr. Booth refutes the use of market values, either directly with the ATWACC or indirectly through an adjustment for financial leverage calculated from market values:

> "*The above discussion is a critique of the use of the ATWACC for a regulated utility. However, the ATWACC has also been used in a more roundabout way to achieve the same result without applying the ATWACC directly to the book value rate base. This is by using it to generate a financial leverage risk premium that does not in reality exist*"[130].

[182] In the opinion of the Régie, a regulated company must be compared, not on the basis of the market value of its equity, but rather on the basis of the book value, as Dr. Villadsen points out. To this end, it may be useful to compare the proportion of equity in the capital structure of these companies with that of the companies in the samples of comparables on a common basis, that is to say according to the book value. This makes it possible to see whether the financial leverage is significantly different when using the same basis of comparison.

129 Exhibit B-0143, p. 29.
130 Exhibit C-ACIG-0042, p. 10, lines 22 to 25.
131 Exhibit B-0143, p. 29.

[183] However, the Régie notes in Table 5 that, when Énergir's capital structure is compared with that of the average of the sample of Canadian comparables[132] and the average of the sample of American gas distributors[133] using the book values, there is no significant difference in terms of financial leverage.

TABLE 5

Structures de capital (*valeurs aux livres*)	Actions ordinaires	Actions privilégiées	Capitaux propres	Dette
Échantillon entreprises comparables canadiennes	38,4%	4,6%	43,0%	57,0%
Échantillon distributeurs gaziers américains	42,2%	1,7%	43,9%	56,1%
Énergir structure de capital présumée	38,5%	7,5%	46,0%	54,0%

Sources: Exhibits B-0143, p. 30, B-0313, p. 4, and B-0015, p. 77.

[184] **The Régie deems that, in the absence of significant differences between Énergir's deemed capital structure compared to the average of the samples of comparable Canadian companies and American gas distributors, measured according to book values, there is no need to make an adjustment for the financial leverage of the ROE applicable to Énergir compared to the returns of samples of comparable companies.**

[185] The Régie therefore does not retain the approach proposed by the Complainants' expert, based on market values, as the reference approach for determining the reasonable return on the rate base of regulated companies. Thus, the Régie does not consider it necessary to examine Hamada's adjustments because Dr. Villadsen applies them to the market capital structure of her Canadian and American samples.

132 Exhibit B-0143, p. 30.

133 Exhibit B-0313, p. 4.

6.2.2 ESTABLISHMENT OF DEEMED CAPITAL STRUCTURES

[186] First, the Régie recalls the principles it used to establish the capital structure in its decision D-96-31:

> [TRANSLATION] "*Consequently, even if the equity ratio of SCGM's capital structure is slightly higher than the average for Canadian distributors, the Régie maintains and hopes that, unless exceptional circumstances justify it, we will not every year challenge this structure that the Régie deems optimal, and which respects the principles that guided it in its decision, namely: ensuring the lowest possible long-term cost of capital, and maintaining the financial health of the distributor.*
>
> [...]
>
> *the objective sought by the Régie in establishing this ceiling was to limit the ratio of common equity of the members because it requires a higher return than debt, while allowing the distributor to enjoy from year to year 'a capital structure that meets investors* ' expectations[134]."

[187] The Régie retains from the Complainants' evidence that the increase in the share of equity in their capital structure is mainly based on their expert's analysis of financial ratios[135].

[188] Dr. Villadsen highlights in particular the recent downgrading of FFO to debt[136], which is approaching the threshold that could result in a haircut for Énergir. However, in her analysis, the expert does not take into account the mentions of S&P indicating that a haircut in the next 12 to 24 months would be unlikely, unless this ratio falls below this threshold without possibility of improvement. S&P also mentions that a haircut could occur in the event of an adverse regulatory decision, or an acquisition by the non-regulated activity having a significant impact on the debt or operational problems[137].

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134 File R-3351-96 Phase 2, decision D-96-31, pp. 65 and 66 (decision of the Régie du gaz naturel available on request).

135 Exhibit B-0015, pp. 77 to 85, A72 to A82.

136 Funds from operations (FFO) to Debt. Exhibit B-0074, p. 3.

137

[189] In addition, the Régie accepts from the evidence that Dr. Villadsen's analyses do not take into account the fact that rating agencies can compensate for the weak achievement of one criterion by exceeding another, such as the regulatory environment[138]:

> "*In Quebec, where distribution activities account for about half of the energy distribution net income, Energir can recover revenue shortfalls in subsequent years, which reduces its sales volume risk exposure. Furthermore, key rate-base parameters such as return on equity and equity thickness are credit-supportive and in line with those of other jurisdictions*"[139].

[190] Dr. Villadsen clarifies that she uses generic data to assess financial ratios because she uses them from a forward-looking perspective.

[191] However, in doing so, the expert excludes headings with annual variations such as the amortization of deferred costs and intangible assets, as well as the short-term debt. The evidence shows that the rating agencies take these items into account when establishing Énergir's credit rating.

[192] The Régie notes that the expert's recommendations resulting from her financial ratios serve to provide the Complainants with a financial cushion in the event of an adverse event[140]. However, it notes that Énergir has an "A" credit rating despite its high level of indebtedness, i.e. 67.2% in 2020[141] and 65.2% in 2021[142].

[193] In this regard, the Régie does not share Dr. Villadsen's statement that her recommendations regarding capital structures are prudent:

> "[…] *Put differently, the ratios that I calculate based on the parameters above are likely to overstate the resulting credit ratio and hence my capital structure recommendations are conservative*"[143].

138 Exhibit B-0143, pp. 61 and 62, R10.2.
139 Exhibit B-0074, p. 4.
140 Exhibit B-0313, p. 25, R-6.1 and p. 27, R-6.5.
141 Exhibit B-0075, p. 2.
142 File R-4177-2021 Phase 2, exhibit B-0093, p. 2.
143 Exhibit B-0015, p. 118.

[194] The Régie notes that the expert confirms that her calculation of FFO to Debt is done with net profit after taxes, instead of net profit before taxes. As this calculation does not take into account the fact that Énergir does not present income tax expenses, but that these expenses are found in the rates, both the FFO Interest Coverage and FFO to Debt ratios are underestimated[144].

[195] Dr. Villadsen adds that by calculating FFO to Debt, S&P would have deducted the cash taxes paid from the net profit, and that her approach is therefore consistent with that of this rating agency[145]. However, as recalled in response to an RFI by the Régie, this answer contradicts that of Énergir provided in the context of file R-3879-2014[146].

[196] Dr. Villadsen submits that, excluding Enbridge Gas Distribution, the share of equity in the capital structures of Énergir and Gazifère is lower than that of Canadian gas distributors. Similarly, still excluding Enbridge Gas Distribution, the Complainants' ROEs are lower than those of Canadian gas distributors. The expert concludes that this situation is inconsistent with the fair return standard[147]. The detail of the calculations can be found in confidential exhibit B-0024[148].

[197] Questioned by the Régie, the expert confirms that the validity of the comparison and of the conclusion she draws from her findings requires that the distributors in the sample of confidential exhibit B-0024 have risks comparable to those of the Complainants. However, she admits that she did not carry out the required checks in this regard[149].

[198] The Régie notes that on the basis of three important indicators, namely the number of customers, the volume of deliveries and annual revenues, the three largest Canadian gas distributors are Enbridge Gas, ATCO Gas and FortisBC Energy. Énergir is the fourth largest distributor. Moreover, the sum of all the customers of the

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144 Exhibit B-0313, pp. 29 and 30, R7.1 to R7.4.
145 Exhibit B-0313, p. 35, R8.3.
146 Exhibit B-0313, p. 34, R8.1 and file R-3879-2014, exhibit B-0539, pp. 17 and 18.
147 Exhibit B-0015, p. 16, lines 13 to 20.
148 In response to a RFI from the Régie, confidential exhibit B-0318, p. 3, R-1.1, Dr. Villadsen clarified that the averages presented in confidential exhibit B-0024 (and reported in exhibit B-0015) exclude Enbridge Gas Distribution, because this company has been integrating Union Gas' activities since 2019.
149 Confidential Exhibit B-0318, p. 3, R1.2 and R1.3.

gas distributors smaller than Énergir does not exceed the number of the latter's customers[150].

[199] Thus, the Régie finds that Dr. Villadsen's conclusions are based on small Canadian distributors whose risks are not comparable to those of Énergir. In addition, in calculating the ROE and equity percentages, a very small distributor is separated into three small entities. As a result, ROE and equity share calculations are biased upwards[151].

[200] Thus, the Régie tends to agree with Dr. Booth that the share of equity in Énergir's deemed capital structure should be compared to the average of only the three largest Canadian gas distributors, namely 37.2 %[152].

[201] Moreover, contrary to the opinion of Dr. Villadsen[153], the Régie is of the opinion that using the capital structures of US gas distributors requires caution. In this regard, it accepts Dr. Booth's testimony that the Alberta Utilities Commission recently ruled on this issue based on evidence filed by Concentric that US regulators do not determine capital structures using the same approach as Canadian regulators[154].

[202] With respect to preferred shares, the Régie accepts the comments of Mr. Tremblay, during the hearing, that the capital structure established more than thirty years ago for Énergir approximately corresponds to the company’s actual financing structure. However, about 30 years ago, preferred shares were eliminated, so the real financing structure no longer contains any[155].

[203] However, according to this witness, there is no contraindication for Énergir's real capital structure to eventually contain preferred shares. There is also no contraindication to maintaining the deemed preferred shares in the current deemed capital structure. Moreover, he adds that the objective of a

150 Exhibit C-ACIG-0087, p. 5.
151 Confidential Exhibit C-ACIG-0063, p. 3, R1.1.
152 Exhibit C-ACIG-0087, p. 7.
153 Exhibit B-0015, pp. 16 and 17, A18.
154 Exhibit C-ACIG-0087, p. 7 and confidential exhibit C-ACIG-0063, p. 7, R1.1. Exhibit A-0054, pp. 145 to 147.
155

regulator is to set a capital structure that allows the regulated entity to minimize its financing costs while having an “A” credit rating[156].

[204] The Régie also holds that Dr. Villadsen's proposal to replace the preferred shares in Énergir's deemed capital structure results in an increase in its level of equity and debt.

[205] However, as mentioned above, the resulting level of equity of 43% is well above the average equity share of the three largest Canadian gas distributors, namely 37.2%. Thus, the Régie is of the opinion that the replacement of the preferred shares in Énergir's deemed capital structure, all other things being equal, would have the effect of increasing its level of debt.

[206] Such an increase in the level of debt in a capital structure has a direct impact on the profits attributable to shareholders due to the increase in interest charges[157]. In addition, the increase in the level of debt is often perceived negatively by rating agencies and may therefore lead to higher financing costs[158].

[207] The Régie also notes that the average capital structure according to the book value of Dr. Villadsen's Canadian sample contain 4.6% preferred shares[159]. The Régie believes that this type of financing is an effective means of minimizing the cost of capital.

[208] Moreover, the Régie notes that Énergir's preferred shares are financing remunerated in the “equity” portion. Thus, replacing them with equity, while preserving the current return provided by the current ROE of 8.9% and a rate of preferred shares of 5.4%, would be equivalent to remunerating the 46%”equity“at 8.3%[160].

156 Exhibit A-0054, p. 159.
157 Exhibit B-0313, p. 19,
158 R4.5.1. Exhibit B-0015 p.
159 112.
160 Exhibit B-0143, p. 30.
Exhibit A-0054, p. 162 and 163.

[209] With respect to the introduction of preferred shares into Intragaz's capital structure, in order to standardize it with that of Énergir, the Régie refrained from doing so for the reasons given by Mr. Rock Marois, President of Intragaz, in hearing[161].

[210] However, since the parties are unanimous in acknowledging that the risks of these two companies are similar, the Régie standardizes their return by means of an adjustment of the ROE of Intragaz to take into account the fact that the latter's capital structure does not include preferred shares.

[211] Moreover, in its decision D-2011-182, the Régie ruled that Énergir's increased risk compared to a benchmark distributor was offset by its deemed capital structure as well as by maintaining an adjustment to the increase compared to the risk premium of a benchmark distributor[163].

[212] In section 5.3 of this decision, based on the business risk factors, the Régie concludes that the Complainants face a higher level of uncertainty than the level estimated since the last review[164].

[213] **In view of the foregoing, the Régie is of the opinion that the current structures remain adequate and that it is appropriate to maintain the Complainants' deemed current capital structures.**

161 Exhibit A-0054, pp. 136 and 137.
162 Refer to section 6.4.5 of this decision.
163 File R-3752-2011 Phase 2, decision D-2011-182, pp. 57-59, paras. 226 to 237.
164 Refer to section 5.3 of this decision.

6.3 OPINION OF THE RÉGIE ON THE RATE OF RETURN OF THE COMPLAINANTS

6.3.1 EMPIRICAL MODEL FOR THE VALUATION OF FINANCIAL ASSETS (ECAPM)

[214] The ECAPM is represented by the following equation:

Cost of Capital = *Alpha* + *Risk-Free Rate* + *Beta* x *(Market Risk Premium - Alpha).*

[215] The ECAPM aims to correct the downward bias stemming from the CAPM for companies with a Beta below unity. In the specialized literature, this bias is observed in research carried out using risk-free rates based on 90 day T-Bills. The correction obtained by introducing an Alpha[165] factor into the ECAPM equation results in an increase in the ordinate at the origin and a reduction in the slope of the linear relationship.

[216] According to Dr. Villadsen, the ECAPM model is an appropriate model to determine a reasonable rate of return. The expert, in support of the use of the model, cites empirical studies carried out with US treasury bill rates rather than long-term 30 year US government bond rates. It indicates that the Alpha factor, estimated according to empirical studies dating from the 1990s, is between 1% and 7.32%. She considers herself to be conservative by using an Alpha factor of 1.5%.

[217] According to Dr. Booth, the model uses 90 day T-Bill rates to establish a security's return over a 30-day horizon. He considers that the correction for this bias is no longer justified when the estimation model uses long-term government bond yields. According to the expert, the application, based on empirical studies carried out with short-term rates, produces results qualified as absurd[166].

[218] Dr. Villadsen disagrees with this position and argues that the use of long-term bond yields only partially corrects the bias in question. In

165 See file R-3690-2009, decision D-2009-156, p. 59, para. 235.
166 Exhibit C-ACIG-0037, p. 56.

response to an RFI[167], Dr. Villadsen argues that short-term rates are not appropriate to determine the reasonable return of a regulated company. She adds that short-term rates are volatile and are not matched to the economic life of the assets being financed.

[219] **In the context of previous cases on the determination of the rate of return, the Régie previously ruled that the correction of the results of the CAPM model by the ECAPM was not sufficiently justified. The Régie considers that there are no new elements prompting it to reconsider this approach.**

6.3.2 DISCOUNTED CASH FLOW MODEL (DCF)

[220] There are several versions of the DCF discounted cash flow model. Dr. Villadsen produced results using the best-known version of this model, namely the simple version in which dividend growth is deemed to be constant over time. She also produced results using a version in which the growth of dividends converges, over a 10-year horizon, to the expected growth of GDP[168].

[221] Since the growth rates of the first version are higher than those of the second, the resulting rates of return are also higher. For example, Dr. Villadsen uses both versions of the DCF to determine ranges of rates of return for the samples of Canadian and American companies.

[222] Dr. Villadsen adjusts the results of the DCF models using the AIWACC method to take into account the fact that she uses market-valued capital structures[169].

[223] Furthermore, the expert submits that there is academic research that shows regulatory reforms have eliminated the optimism bias associated with financial analysts' forecasts. This situation would therefore be a problem of the past. Other academic research would show that the optimism bias persists for stocks that are difficult to evaluate, especially those for which there are disagreements between analysts.

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167 Exhibit B-0143, p. 88.
168 Exhibit B-0015, pp. 70 to 75, A65 to A70 and pp. 107 to 111.
169 Refer to section 6.3.1 of this decision.

[224] However, as shown in the following table, the Régie notes the low number of analysts per company in the American samples.

TABLE 6

GROWTH RATES IN DR. VILLADSEN'S DCFs

Sample	Combined rate IBES / Value Line	Number of IBES analysts	Value Line
Canadian Holdings	5.3%	Between 2 and 4 analysts per company	A forecast for Enbridge and Fortis. None for others
US gas distributors	6.3%	1 analyst per company except 3 for Atmos Energy	One forecast per company
Water services	7.8%	1 analyst per company	One forecast per company. None for Artesian Res Corp and Global Water Res.

Sources: Table prepared by the Régie using exhibit B-0015, table BV-4.5 and exhibit B-0015, table BV-5.5.

[225] The Régie notes that the growth forecasts of the Institutional Broker's Estimate System (IBES) and of Value Line are based on forecasts of earnings per share over a horizon of three to five years, without however guaranteeing that each forecast covers exactly the same horizon. It also notes that an IBES forecast can be in effect for up to 180 days.

[226] In addition, among the 20 EBES forecasts related to Canadian holding companies, 11 come from unidentified analysts[171]. Among the 19 forecasts linked to American companies, 12 come from unidentified analysts[172].

[227] For these reasons, the Régie is of the opinion that the companies in Dr. Villadsen's samples do not benefit from broad analyst coverage and transparency of information. Thus, in this situation, it considers that it would be imprudent to affirm the absence of analysts' optimism bias[173].

170 Exhibit B-0143, p. 14, R4.4.

171 Exhibit B-0143, p. 12, table in response R4.1.

172 Exhibit B-0143, p. 13, table in response R4.3.

173 Exhibit B-0015, pp. 110 and 111.

[228] Moreover, the Régie accepts Dr. Booth's explanations indicating that simple DCF amounts to postulating that the rate of return expected by an investor is the sum of the expected return on dividends and their expected growth. This model is valid provided that the long-term growth of dividends is constant. In practice, this means that simple DCF applies to very low-risk companies or to the entire stock market[174].

[229] The Régie also accepts Dr. Booth's opinion that earnings growth forecasts contain an optimism bias and that multilevel DCF models do not eliminate this bias but mitigate its impacts.

[230] **Consequently, the Régie does not retain the results of the Complainants' DCF. In continuity with its previous decisions, including decisions D-2011-182 and D-2014-034175, the Régie is of the opinion that the CAPM remains the most appropriate reference model for determining the Complainants' ROE.**

[231] However, a single model cannot on its own correctly represent investors' expectations in all circumstances and in all phases of the economic and financial cycles, particularly in the present context of high inflation.

[232] In this regard, the Régie notes that due to the recent period of very low Canada bond yields, Dr. Booth questions the use of the DCF for the purpose of validating the results of the CAPM.

[233] It notes in particular that according to the latter, when inflation accelerates, it is captured by the DCF. However, in this situation, bond yields do not rise as fast as inflation, so the results of the DCF are higher than those of the CAPM.

[234] **Thus, the Régie adds to the results of the CAPM a range of 50 to 100 basis points to take into account Dr. Booth's explanations regarding the discrepancies between the historical results of the CAPM and the DCF[176].**

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174 Exhibit C-ACIG-0037, pp. 68 to 71.

175 Files R-3752-2011 Phase 2, decision D-2011-182, pp. 59 and 60, paras. 242 and 243, and R-3842-2013, decision D-2014-034, pp. 51-54, paras. 195 to 207.

176 Exhibit C-ACIG-0037, pp. 71 to 75.

6.3.3 CAPITAL ASSET PRICING MODEL (CAPM)

[235] According to the CAPM, the cost of capital of a financial asset is explained by the risk-free rate and its systematic risk (Beta factor) multiplied by the market risk premium.

Cost of Capital = *Risk Free Rate* + *Beta* x *Market Risk Premium*

Risk-free rate

[236] Dr. Villadsen proposes the use of two scenarios with respect to the risk-free rate and the market risk premium. The same Betas are used in both scenarios.

[237] Both scenarios are based on the forecast yield on Canada 30 year bonds at a rate of 2.30%. The expert derives this value using the *Consensus Forecast* of June 2021, where the yield on Canada 10 year bonds would reach 1.9% in June 2022. To this forecast, she adds a historical yield spread (1990–2021) of 40 basis points between 10 and 30 year bonds.

[238] In a context of low interest rates, the expert estimates that current credit spreads[177] are higher than those prevailing prior to the 2007-2008 financial crisis[178]. In the first scenario, this difference between the credit spreads is taken into account in the risk-free rate that the expert establishes at 2.47%. This is the forecast for the Canada 30 year bond yield plus half the credit spread as of June 2021[179].

[239] Moreover, in order not to double count the effect of credit spreads, the expert uses in this scenario a market risk premium calculated using historical data[180].

[240] In the second scenario, the risk-free rate corresponds to the projected return for 2022 on Canada 30 year bonds, namely 2.30%. The

177 Spread between 30 year A-rated utility bond yields and those of Canada.

178 Exhibit B-0015, pp. 34 to 36, A33 and

179 A34. 2.47% = 2.30% + ½ x (1.33% – 0.99%). Refer to Exhibit B-0015, p. 100, Table A-1, for details of the 1.33% and 0.99% credit spreads.

180 Exhibit B-0015, p. 64, lines 6 to 14.

difference in credit spreads is factored into a market risk premium calculated using Bloomberg.

[241] Details relating to the market risk premium are presented in the next subsection.

[242] The risk-free rates for the two scenarios, according to the May 2022 update, are 3.77% and 3.40 % respectively181. The risk-free rate of the first scenario incorporates, as in the initial proof of June 2021, the difference between credit spreads.

[243] Moreover, when questioned by the Régie during the hearing, Dr. Villadsen estimates that long-term rates should be in a range of 3.4% to 4.0% for the next two years[182].

[244] The risk-free rate advocated by Dr. Booth is 3.8%.

[245] In response to an RFI from the Régie[183], expert Booth recalls that in the absence of the "Twist" operation[184] of the Federal Reserve System (the Fed) in 2011 and 2012, he estimated that the return of long-term Canada bonds was 3.8%. This estimate used the difference between the yields of "A" rated corporate bonds and those of preferred shares[185].

[246] The expert adds that the data used to measure this gap is no longer available, but he is of the opinion that this 3.8% rate is still adequate. In addition to action by central banks, the expert says demographic shifts and slowing economic growth explain the downward trend in Canada's long-term bond yields since the early 2010s.

181 Exhibit B-0364.

182 Exhibit A-0061, p. 45.

183 Exhibit C-ACIG-0061, pp. 2 and 3, R1.1.

184 A "Twist" operation is a central bank's monetary policy whereby the bank buys long-term bonds and simultaneously sells short-term bonds with the aim of stimulating the economy by reducing long-term interest rates term and increasing those in the short term.

185 File R-3842-2013, exhibit C-AQCIE-CIFQ-0023, pp. 42 and 43.

[247] When questioned by the Régie during the hearing, Dr. Booth submits that a reasonable range of Canada long-term bond yields for the next few years is between 3.0% and 3.5%[186].

[248] The Régie notes that the experts have different opinions on the extension and impacts of geopolitical uncertainties, inflation, or central bank actions in the coming years, which explains the different ranges they propose.

[249] On the one hand, in support of his recommendation of lower risk-free rates than those of Dr. Villadsen, Dr. Booth submits that the economy's growth will surpass that of inflation. He is of the opinion that the Bank of Canada will not have the necessary will to increase its key rate in order to counter inflation[187]. The expert also submits that there is no stagflation in Canada and that, in his opinion, there will not be[188].

[250] On the other hand, during the hearing, Dr. Villadsen observes that the Fed recently raised the federal funds rate by 75 basis points and that this is a significant increase. He also notes the Bank of Canada's desire to raise its key rate to counter inflation[189].

[251] In its assessment of the range of the risk-free rate, the Régie cannot assume a specific scenario of economic growth or the evolution of inflation and interest rates. Nor can it assume that changing economic and financial conditions will subside in 2023 as submitted by ACIG[190].

[252] In addition, the Régie agrees with Dr. Villadsen's opinion that estimating an upper limit for Canada's long-term rates is a matter of conjecture[191].

[253] **Thus, given the foregoing, the Régie retains a risk-free rate range of 3.25% to 4.25%.**

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186 Exhibit A-0063, pp. 208 and 209.
187 Exhibit A-0063, pp. 217 to 219.
188 Exhibit A-0063, pp. 221 to 224.
189 Exhibit A-0061, p. 45.
190 Exhibit C-ACIG-0102, p. 3, para. 6.
191 Exhibit A-0061, p. 45.

Market risk premium

[254] Dr. Villadsen explains that the market risk premium (MRP) is a forecasting concept. It corresponds to the expectation of the additional return of investments in the market, compared to the return of a risk-free investment. The MRP cannot be observed directly. Its value is obtained from an estimate or forecast based on market data.

[255] As mentioned above, the expert's first scenario incorporates the difference in credit spreads into the risk-free rate. Thus, it uses an MRP corresponding to the arithmetic average of historical annual MRPs in Canada between the years 1935 and 2020. This historical average MRP is 5.68%. The annual MRPs come from Duff & Phelps[192].

[256] Estimation of historical data is a commonly used method for estimating the MRP. The MRPs for the 1919-2020 and 1945-2020 horizons are respectively established at 5.54% and 5.80%[193].

[257] The MRP for the second scenario is set at 8.05%. This is a forward-looking MRP determined using Bloomberg. It is calculated relative to Canada 10 year bond yields and then adjusted relative to Canada 30 year bond yields[194].

[258] According to Dr. Villadsen, there is an inverse relationship between the MRP and the risk-free interest rate. This relationship would be demonstrated by academic analyses[195]. Furthermore, Bloomberg's forward-looking MRP is higher than the historical MRP. In addition, the forward-looking MRP against Canada 10 year bond yields increased from 7.25% at the end of 2019 to 8.45% at the end of June 2021. For these reasons, the expert believes the historical MRP is lower than investors' expectations.

[259] According to a *Staff Report* from the Federal Reserve Bank of New York published in 2015, the MRP would have reached an unprecedented level in 2012 and 2013. According to the expert, this trend is confirmed by Bloomberg data and is similar to the one observed

192 Exhibit B-0015, p. 42, footnote 91 and confidential exhibit B-0040.
193 Exhibit B-0015, p. 100.
194 ~~Exhibit B-0015, p. 62, A57 and~~ footnote 137 as well as confidential exhibit B-0019 (Excel file).
195 Exhibits B-0015, p. 42, lines 4 to 9, B-0038 and B-0039.

following the pandemic-induced financial crisis. For this reason, he submits that the MRP will remain high compared to its historical level.

[260] According to the May 2022 update filed by the Complainants, Canada's historic MRP goes from 5.68% to 5.91%[196]. Bloomberg's prospective MRP for Canada decreases from 8.05% to 5.86%[197].

[261] Dr. Booth assesses the historical MRPs of Canada and the United States over the 1926-2021 horizon at 4.80% and 6.36% respectively.

[262] However, he recommends an MRP for Canada in the range of 5.5% to 6.0%. This range incorporates the recommendations of Duff and Phelps, Prof. Aswath Damodaran, the survey by Prof. Pablo Fernandez and the Credit Suisse "*Global Investment Returns Yearbook"* report. This range also incorporates forecasts for the United States, since there are, in particular, significant movements of Canadian capital abroad and of foreign capital in the Canadian bond market.

[263] Moreover, with the help of Professor Fernandez's investigations, Dr. Booth submits that there is no proof indicating that since 2011 the MRP and the interest rates vary in opposite directions. He adds that he does not know of contemporary studies on this subject, especially since the decrease in inflation in Canada and the United States.

[264] The explanations provided by Dr. Villadsen regarding the forward-looking MRP calculated by Bloomberg show, in particular, that the long-term growth rate of dividends implicit in this MRP is higher than that of the Canadian GDP (3.7%)[198].

[265] The Régie is of the opinion that the prospective MRP used by the Complainants' expert is questionable, since analysts' estimates often turn out to be overly optimistic and the short-term growth rate is high over an infinite horizon. In addition, it considers the credit spread adjustment to be one-time in nature. These are the same shortcomings as

196 Exhibit B-0364.
197 Exhibit B-0350, p. 36.
198 Confidential Exhibit B-0318, p. 8, R2.8.

the prospective MRP used by Concentric rejected in file R-3842-2013 and it must reject the approach proposed by Dr. Villadsen for the same reasons[199].

[266] In its decision D-2011-182, the Régie reiterated its preference for a historical MRP, used since 1996. It pointed out, however, that the choice of reference periods to establish the MRP raises certain issues. Indeed, the calculated average may differ significantly depending on the start and end year and the series of data used. In this context, the Régie chose to give preponderance to averages over long periods[200].

[267] **Considering the foregoing, the Régie does not accept the reasons invoked by the Complainants for the use of a prospective MRP. It maintains that the establishment of the MRP must be based on historical data of long periods.**

[268] The Régie notes that the historical MRPs for Canada provided by the Complainants' expert and according to the horizons considered are between 5.54% and 5.91%.

[269] It also notes that the historical MRP of Canada, reported by Dr. Booth, is lower than those reported by Dr. Villadsen. The horizons of the MRPs used by the two experts are not the same but do not explain the difference observed for the following reasons.

[270] Based on the information provided by Dr. Villadsen on Canada's MRP over the 1935-2020 and 1935-2021 horizons, the Régie concludes that Canada's MRP in 2021 is around 25.69%. Indeed, although the 2021 PRM is not available in confidential exhibit B-0040, it can be deduced from the two historical MRPs provided by the expert[201].

199 File R-3842-2013, decision D-2014-034, ~~pp. 43-45~~, paras. 157 to 169.

200 File R-3752-2011 Phase 2, decision D-2011-182, p. 55, para. 215 and

201 216. 5.91% = 5.68% x (86 ÷ 87) + 25.69% ÷ 87, where 86 and 87 correspond to the number of years between 1935 and 2020 and 1935 and 2021 respectively. 25.69% can also be verified using the data in confidential exhibit B-0040.

[271] This 2021 MRP, estimated using data from confidential exhibit B-0040, also makes it possible to estimate Canada's MRP over the 1926-2021 horizon according to the data used by Dr. Villadsen and to compare it to Dr. Booth's MRP. The spread between the two MRPs is approximately 100 basis points.

Historical MRP Over the 1926-2021 Horizon

According to Dr. Booth:	4.80%
Using data from Dr. Villadsen as estimated by the Régie:	5.81%

[272] Dr. Booth calculates stock market returns and Government of Canada bond market returns taking into account capital gains. He also submits that the methodology used by Dr. Villadsen, namely that of Duff & Phelps, excludes capital gains in the calculation of returns on the Government of Canada bond market[202].

[273] Moreover, the Régie notes that the American data tab of exhibit B-0040 cited by Dr. Villadsen in a response to an RFI from Dr. Booth on the methodology of Duff & Phelps[203], contains the mention " * S&P total returns minus long-term U.S. government bond income returns"[204]. In other words, Duff & Phelps' US MRP does not take into account capital gains from the Government of Canada bond market. However, this exhibit does not specify the methodology used for Canada's MRPs.

[274] In addition, the Régie notes that Dr. Booth's MRPs are based on arithmetic averages[205].

[275] Thus, for the reasons set out above, the Régie is of the opinion that the main difference between Dr. Booth's MRPs and those of Dr. Villadsen lies in the treatment of the yield of the Government of Canada bond market.

202 Exhibit C-ACIG-0037, pp. 2, lines 20 to 22.
203 Exhibit B-0193, p. 19, R7.3.
204 Confidential exhibit B-0040,"United States LCL LT"tab, cell A107. Exhibit
205 C-ACIG-0039, p. 24, appendix 9.

[276] The Régie also points out that it arrived at a result similar to that produced above in its decision D-2014-034, namely a difference of approximately 100 basis points between an MRP calculated excluding capital gains in the calculation of Government of Canada bond market returns and another spread obtained from the difference between the total return of the stock market and the total return of bonds[206].

[277] In the absence of a substantive debate on the advantages and disadvantages of these two possible approaches to calculating the return on the Government of Canada bond market in a historical MRP context, the Régie does not rule on the best methodology to use in this case.

[278] However, in its determination of a range of market risk premiums, it takes into account all the historical Canadian and American MRPs presented by the parties' experts. It also takes into account the representations of the Complainants indicating that it is relevant to weight the historical averages according to the current economic context, since the capital markets undergo certain variations, in particular during periods of great uncertainty[207].

[279] **Consequently, the Régie adopted a range for the market risk premium for the CAPM for the benchmark distributor of between 5.50% and 6.00%.**

Beta

[280] In applying the concept of isolation, a benchmark company is a utility with a low level of risk. The risk of a benchmark distributor is measured by the Beta factor, which represents the difference between the risk of a benchmark distributor and the market in general.

[281] Dr. Villadsen determines the Beta factors using Bloomberg based on a calculation of weekly returns over a three-year period. It adjusts these Betas according to Blume's formula[208].

206 File R-3842-2013, D-2014-034, p. 46, paras. 172 and 173.

207 Exhibit B-0388, p. 25, para. 114.

208 Exhibit B-0015, p. 103.

[282] In this regard, the expert mentions that Bloomberg, Value Line and other investor services firms make it possible to adjust the unadjusted Betas (or raw Betas) in order to improve their precision. She adds that adjusted Betas are commonly used in the application of the CAPM and are recognized by several regulatory agencies[209].

[283] There is a Beta factor for each of the three samples made up of Canadian gas holdings, US gas distributors and US water utilities. These factors, as of June 2021, are 0.91, 0.95 and 0.84[210], respectively. Dr. Villadsen points out that the Betas have gotten stronger over the past two years.

[284] The Betas presented in the May 2022 update filed by the Complainants are similar to those of June 2021[211].

[285] Dr. Booth, for his part, uses Betas ranging between 0.50 and 0.55. These come, among other things, from an analysis of raw Betas since 1998 of a Canadian utility index. Returns for this index were calculated monthly over five-year rolling windows and compared to the return of the TSX.

[286] Unlike Dr. Villadsen, Dr. Booth does not use corporate samples for Beta determination purposes. He calculates Betas for individual Canadian and US companies for validation purposes. He also consults the Betas provided by RBC, Yahoo, CFRA and Reuters.

[287] According to Dr. Villadsen, the Beta she proposes is higher than what was known for regulated companies in the past. This increase could be explained by the prolonged impacts of the financial crisis[212].

[288] However, the Régie notes that Dr. Villadsen's sample of Canadian gas holding companies includes Enbridge Inc. and TC Energy Corp. According to Dr. Booth, these companies have seen their Beta increase significantly because of the difficulties they are having in advancing their pipeline expansion projects in Canada and the United States[213].

209 Exhibit B-0079.
210 Exhibit B-0015, p. 53, table 18 and p. 59, tables 20 and 21.
211 Exhibit B-0364.
212 Exhibit B-0388, p. 31, para. 144.

The Régie considers that this explanation is more convincing than that provided by Dr. Villadsen on the evolution of the Betas of these two companies[214].

[289] The Régie also notes that the natural gas distribution sector in Canada and the United States is characterized by numerous mergers and acquisitions[215]. She notes that it is becoming increasingly difficult to assess a Beta for a benchmark company in a context where the samples are made up of companies whose activities can be diversified both in terms of their activities and the various jurisdictions (states, provinces) in which they do business.

[290] Moreover, the Régie notes that the two experts do not agree on the periodicity to be used in order to sample stock market data for the calculation of Betas.

[291] Dr. Villadsen submits that the use of Betas calculated according to weekly data over a period of three years increases the reliability of the results, because they improve the statistical reliability compared to monthly observations and this use makes it possible to adequately capture the current market environment.

[292] However, the Régie is not convinced by Dr. Villadsen's response to the effect that the volatility of Betas is higher when calculated from monthly data over a five-year horizon rather than weekly data over a three-year horizon[217].

[293] It is of the opinion that Dr. Booth's explanations about the bias induced on the Betas by weekly sampling are more convincing[218]. The Régie notes that these explanations are based on an article published in a reputable investment management journal.

[294] With respect to the contemporaneity of the data, Dr. Villadsen indicates that using too short a horizon implies that current conditions will extend over time.

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213 Exhibit C-ACIG-0040, p. 6, lines 9-12.
214 Confidential exhibit B-0154, p. 17, R4.1.
215 Exhibits B-0015, pp. 48 and 49, A45, and C-ACIG-0040, p. 6, lines 20 to 27 and p. 7, lines 1 to 4.
216 Exhibit A-0058, p. 116.
217 Confidential exhibit B-0154, p. 12, R3.1.
218 Exhibit C-ACIG-0040, pp. 10 and 11.

[295] However, according to the Régie, the risk of a benchmark distributor in relation to the market cannot fluctuate significantly from one year to the next according to changes in the economic situation. This development is rather taken into account in the specific risk of each company it regulates. Although a benchmark distributor's Beta may fluctuate over time, the risk remains stable.

[296] The Régie also notes that the two experts do not adjust the Betas using the same method.

[297] According to Dr. Villadsen, the objective of adjusting the Betas according to the Blume formula is to correct a sampling error and not to make them converge towards a value of 1. In the context where the result of the CAPM is used for prospective purposes, it believes it is appropriate to use adjusted Betas.

[298] However, the Régie is of the opinion that Blume's formula, as used by Dr. Villadsen[219], is based on the assumption that the Beta of a security tends in the long term towards the market average. In the context of SCGM's 1998-1999 rate case[220], the Régie ruled for the first time on the issue of adjusted Betas as opposed to raw Betas:

> [TRANSLATION] "*According to the documents filed, the majority of recognized investment houses, such as Value Line, Bloomberg and others, publish adjusted Betas as part of their analyses of market returns.*
>
> *On the other hand, this trend of Betas towards 1.0 is not so evident for regulated sectors such as natural gas distribution. ACIG's evidence indeed calls into question the appropriateness of using the general adjusted Beta theory unreservedly for regulated firms. In the absence of being able to directly measure SCGM's Beta, the experts must resort to estimates based either on a sample of comparable companies, or on general studies"*[221]. [emphasis added], [footnotes omitted]

219 Exhibit B-0015, p. 103 and confidential exhibit B-0154, p. 13, R3.3.

220 Société en commandite Gaz Métro, Énergir's name in 1998. File R-3397-

221 98, decision D-99-11, p. 46.

[299] Since this decision, as the following table shows, the Régie has always retained unadjusted Betas for the purposes of the CAPM of a benchmark company[222].

TABLE 7

BETAS RETAINED BY THE RÉGIE SINCE ITS DECISION D-99-11

FOR THE PURPOSES OF THE BENCHMARK DISTRIBUTOR'S CAPM

Case	Regulated company	Decision	Unadjusted Beta
R-3842-2013	Hydro-Quebec (HQT/HQD)	D-2014-034, pp. 40 to 42	0.48 – 0.58
R-3807-2012	Intragaz	D-2013-08, p. 38	0.50 – 0.60
R-3752-2011	SCGM (Énergir)	D-2011-182, pp. 56 and 57	0.50 – 0.60
R-3724-2010	Gazifère	D-2010-147, p. 20	0.50 – 0.55
R-3690-2009	SCGM (Énergir)	D-2009-156, p. 65	0.50 – 0.55
R-3630-2007	SCGM (Énergir)	D-2007-116, p. 27	0.50 – 0.55
R-3492-2002	Hydro-Quebec (HQD)	D-2003-93, pp. 72 and 73	0.55
R-3401-98	Hydro-Quebec (HQT)	D-2002-95, pp. 165 and 166	0.53
R-3397-98	SCGM (Énergir)	D-99-11, p. 46	0.55

[300] The Régie finds that the explanations provided by Dr. Villadsen are no different from those provided by the experts in the previous cases to support the use of the Blume adjustment.

[301] The Régie also notes that it is normal for the difference between an adjusted Beta of between 0.85 and 0.95, as proposed by Dr. Villadsen, and an unadjusted Beta to be small. Indeed, Blume's formula is constructed in such a way that the adjustment is zero if the unadjusted Beta is 1, and 0.67 if it is zero[223]. According to the level of Betas established by Dr. Villadsen using her samples and three years of weekly data, the difference between unadjusted and adjusted Betas is approximately 0.05[224].

222

223
224

222 The Intragaz decision does not specify whether Beta is adjusted or not. However, the Régie did not retain the DCF model recommended by the complainant's expert. It opted instead for a CAPM like the one proposed by Dr. Booth.

223 Confidential exhibit B-0154, p. 13, R3.3.

224 Exhibit B-0350, p. 20.

[302] The Régie is of the opinion that the explanations provided by Dr. Booth regarding the Beta adjustment are convincing[225]. **Thus, it maintains its conclusion expressed many times to the effect that in the presence of exclusive distribution rights, it is difficult to conceive how the risk specific to a benchmark distributor could change substantially upwards and evolve towards the market risk over the years.**

[303] For this reason, the Régie is of the opinion that even if the Beta range presented by Dr. Villadsen was not adjusted according to Blume's formula, it remains at a level too close to 1, namely in the order of 0.85, to represent the risk of a benchmark distributor.

[304] However, this does not necessarily fully resolve the problem related to the quality of the raw Betas and their ability to correctly predict returns in the context of the application of the CAPM. There is an increasing difficulty in inferring the Beta value of a benchmark distributor objectively from stock market data. **Consequently, based on the evidence in the file, the Régie establishes the Beta of a benchmark distributor within a range of 0.50 to 0.60.**

Costs of issuance

[305] To arrive at her recommendations, Dr. Villadsen uses several methodologies and proposes different hypotheses and adjustments, as presented above. However, it does not make use of a provision for costs of issuance and other capital market access costs.

[306] Dr. Booth also presents different methodologies, assumptions and adjustments. For his part, he uses a provision for costs of issuance and other capital market access costs of 0.50% to establish his ROE recommendation of 7.50%[226].

[307] The Régie points out that costs of issuance and other capital market access costs were authorized in several previous decisions[227] relating to

225 Exhibit C-ACIG-0040, p. 7 to 10.
226 Exhibit C-ACIG-0037, p. 3.
227 Files R-3690-2009, decision D-2009-156, p. 68 and 69, R-3724-2010, decision D-2010-147, p. 24, and R-3752-2011 Phase 2, decision D-2011-182, p. 59.

Énergir and Gazifère, such an adjustment being in accordance with the principle of isolation, compatible with the practice applied by several regulators and not disputed in this case.

[308] **Consequently, the Régie establishes a range for the provision for costs of issuance and other capital market access costs of 30 to 50 basis points.**

6.3.4 RATE OF RETURN FOR A BENCHMARK DISTRIBUTOR

[309] The table below presents the CAPM for a benchmark distributor according to the ranges of values retained for each of the parameters. In this CAPM, the Régie also takes into account Dr. Booth's explanations regarding the discrepancies between the historical results of the CAPM and the DCF.

TABLE 8

VALUES RETAINED FOR THE PURPOSES OF A BENCHMARK DISTRIBUTOR'S CAPM

Parameter	Bottom of the range	Top of the range
Risk-free rate	3.25%	4.25%
Market risk premium	5.50%	6.00%
Beta for a benchmark distributor	0.50	0.60
Cost of issuance	0.30%	0.50%
Subtotal: Result produced by the CAPM	**6.30%**	**8.35%**
Adjustment to account for differences between the historical results of the CAPM and the DCF	0.50%	1.00%
Total: ROE of a benchmark distributor	**6.80%**	**9.35%**

6.3.5 COMPLAINANTS' RATE OF RETURN

[310] In order to establish the Complainants' ROE, the Régie takes into account their own level of risk compared to a benchmark distributor, through adjustments made to the ROE on the shareholders' equity of a benchmark distributor[228].

[311] As established in section 5.3 of this decision, the Régie estimates that Énergir's risk in relation to a benchmark distributor is between 25 and 45 basis points. It also estimates that Gazifère's risk compared to a benchmark distributor is between 40 and 60 basis points.

[312] The following table presents the ROE ranges for Énergir and Gazifère resulting from taking into account their specific risks, compared to a benchmark distributor.

TABLE 9

ROE RANGE FOR ÉNERGIR AND GAZIFÈRE

Parameter		Bottom of the range	Top of the range
ROE of a benchmark distributor (table 8)	(a)	6.80%	9.35%
A. Adjustment for Énergir's risk	(b)	0.25%	0.45%
ROE for Énergir = (a) + (b)		**7.05%**	**9.80%**
C. Adjustment for Gazifère's risk	(vs)	0.40%	0.60%
ROE for Gazifère = (a) + (c)		**7.20%**	**9.95%**

[313] Thus, taking into account all of the preceding conclusions, the ROE to be authorized for Énergir is within a range of 7.05% to 9.80%. That of Gazifère is between 7.20% and 9.95%.

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228 File R-3752-2011 Phase 2, decision D-2011-182, p. 59, para 236 and p. 74, table 4.

[314] **Based on the evidence on file and for all of the reasons expressed above, the Régie maintains the deemed capital structure of the Complainants, namely:**

- **38.5% equity, 7.5% preferred stock and 54% debt for Énergir;**

- **46% equity and 54% debt for Intragaz;**

- **40% equity and 60% debt for Gazifère.**

[315] **It determines the ROE on Énergir's equity at 8.90%, for application to the 2022-2023 rate year, starting on October 1, 2022.**

[316] **The Régie determines the ROE on Gazifère's equity at 9.05%, for application to the 2023 rate year, starting on January 1, 2023.**

[317] With respect to Intragaz's ROE, the Régie notes that, apart from the issue of the maturity premium, the parties agree on the fact that this company's risks are similar to those of Énergir and that, consequently, the capital structure and the ROE of these two companies should be equivalent[229].

[318] With respect to the maturity bonus proposal, the Régie considers that it is not appropriate to follow up on Dr. Villadsen's recommendation to grant such a bonus to Intragaz. This proposal by Dr. Villadsen is based on a decision by the Iowa Utilities Board. However, the Régie considers that the legal framework of this body differs from that of Intragaz. Furthermore, Intragaz' main risk with this multi-year contract is that of not being paid by Énergir. However, the evidence is to the effect that this risk is linked to Énergir's risk of being able to receive the necessary revenues for the purpose of paying its suppliers. Dr. Booth even emphasizes that this 10-year contract has the effect of reducing Intragaz' risks and not increasing them[230], but he indicates that he has no difficulty in allocating equivalent financial parameters, since he considers that Énergir and Intragaz are, for all intents and purposes, integrated companies.

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229 Exhibit A-0054, p. 135.

230 Exhibit C-ACIG-0087, p. 4.

[319] The Régie also accepts that Intragaz confirms that it is in agreement with Dr. Villadsen's proposal to link its rate of return to that of Énergir over the 2023-2032 horizon[231]. According to the complainant, this is a streamlined approach that makes it possible to adjust Intragaz's ROE based on changes in the financial context, using Énergir's ROE as a reference.

[320] However, the remuneration of the 46% "equity" of Intragaz and Énergir is based on the one hand on 46% equity and on the other hand on 38.5% equity and on 7.5% preferred stock.

[321] Thus, in order to link Intragaz's ROE to that of Énergir, while ensuring that their rate of return on "equity" is equivalent, the Régie uses the calculation presented by Énergir's Mr. Tremblay at the hearing[232]. As an illustration of the calculation of Intragaz's ROE using that of Énergir, the Régie uses the rate for Énergir's preferred shares, provided by the latter in its 2021-2022 rate case, namely 5.412 %[233]:

$$8.33\% = (8.90\% \times 38.5\% + 5.412\% \times 7.5\%) \div 46\%.$$

[322] In other words, an ROE of 8.9% based on a capital structure composed of 38.5% equity and 7.5% preferred shares remunerated at a rate of 5.412%, provides a return equivalent to an ROE of 8.33% on 46% equity.

[323] **For the reasons expressed above, the Régie determines that the ROE of Intragaz will be linked to that of Énergir over the period from May 1, 2023 to April 30, 2033 so that their rate of return on "equity" is equivalent depending on their own capital structure.**

231 Exhibit B-0325, p. 1, R1.1.
232 Exhibit A-0054, p. 163.
233 File R-4151-2021, exhibit B-0054, row 6, column 7.

[324] **Given that the update of the average effective rate of preferred shares was not filed in rate case 2022-2023[234], the Régie is asking Énergir to file this update within two weeks at most from this decision, using the same methodology[235], in order to approve Intragaz's final ROE in a future decision.**

[325] Furthermore, in response to an RFI from the Régie, Intragaz proposes a simplified method that would link its ROE to that of Énergir over the period from May 1, 2023 to April 30, 2033[236].

[326] The Régie is of the opinion that the proposed method complies with the conclusions of this decision, namely that Intragaz's business risks are similar to those of Énergir. This method also represents a reasonable compromise between the accuracy of an approach based on expert evidence and the benefits of regulatory relief for a company the size of Intragaz.

[327] **Consequently, the Régie approves the streamlined method, proposed by Intragaz in exhibit B-0325, which makes it possible to link its ROE to that of Énergir over the period from May 1, 2023 to April 30, 2033. In the application of this method, the Régie orders that the rule linking the ROE of Intragaz to that of Énergir is based on the principle used in this decision, namely that the rate of return on the "equity" of the two companies be equivalent according to their own capital structure.**

234 File R-4177-2021.

235 File R-4151-2021, exhibit B-0054.

236 Exhibit B-0325, p. 1 and 2, R1.2.1.

7. PERIOD OF APPLICATION

[328] In this case, the Régie asked participants for their position on a period of application of rates of return and capital structures. The objectives targeted by the Régie are efficiency, stability and regulatory relief, as well as the reduction of regulatory costs. The Régie is of the opinion that a multi-year application period could make it possible to avoid repetitive requests relating to the rate of return, as observed in decision D-2011-182237.

[329] In response to an RFI from the Régie[238], the Complainants indicate that they are generally in favor of regulatory relief, particularly with regard to the determination of the rate of return, but believe that a period of five years is a bit long in light of the experience of the past 20 years, when the periods went up to three years.

[330] In addition, they submit that the framework allowing the review of the rate of return during the period that the Régie could determine should be specified, as it noted in its decision D-99-011:

> [TRANSLATION] "*The Régie also notes that, during the testimonies, certain reservations about the use of an automatic formula to periodically adjust the rate of return were expressed and that various parameters, to limit or justify possible interventions before the Régie, were suggested. The Régie is of the opinion that such an adjustment mechanism will only be effective and valid if, while ensuring the maintenance of a healthy financial situation for the distributor, the rules and circumstances of the review are clear to all interested parties.*"[239]

[331] In its argument, ACIG suggests reviewing the rate of return and the capital structure, within the context of a new hearing in three years[240].

[332] The Régie notes the relevance of the request to specify the context of a period of application. The Régie recognizes that the Complainants are entitled to a reasonable rate of return ensuring them a healthy financial situation. However, it must assess

237 File R~~-3752-2~~011 Phase 2, decision D-2011-182, pp. 72 and 73.
238 Exhibit B-0209, p. 11.
239 File R~~-3397-98, deci~~sion D-99-11, p. 49.
240 Exhibit C-ACIG-0102, p. 71.

the balance between a sufficiently long period of application before a new review of the rate of return to achieve the objectives sought while allowing, if the situation so requires, the Complainants to present a request before the end of the period.

[333] The Régie considers that a three-year period of application of the Complainants' rates of return and capital structures ensures this balance. At the end of this period, the Complainants may, if necessary, ask the Régie to review, or not, both their rate of return and their capital structure.

[334] However, in the event that the Complainants are of the opinion that the situation requires a re-examination of their rate of return and their capital structure before the end of this three-year term, they must first submit a request to the Régie on the reasons and conditions justifying such an examination, in a timely manner, before incurring significant costs, in particular with regard to external resources (expert fees, legal fees, etc.).

8. DEFERRED CHARGE ACCOUNTS

[335] The Complainants file their update of the actual costs[241] associated with preparing for the examination of this case and reported to the DCAs.

[336] Énergir asks to accept the terms of disposal of the DCA, which provide that the costs associated with the preparation of the examination of this case be accumulated and carried to its off-base DCA, bearing interest according to the weighted average cost of capital up to their inclusion in the 2023-2024 rate case, at the latest.

[337] Gazifère asks to allow the terms of disposal of the DCA, which provide that the costs associated with the preparation of the examination of this case be accumulated and charged to its off-base DCA, bearing interest according to the rate of the short-term debt, for 2021 and 2022, until their inclusion in the rate cases for 2023 and 2024 respectively.

241 Exhibit B-0394.

[338] **The Régie upholds Énergir's request concerning the terms and conditions for disposing of the DCA, which provide that the costs associated with preparing for the examination of this case be accumulated and charged to its off-base DCA, bearing interest according to the weighted average cost of capital, until their inclusion in the 2023-2024 rate case, at the latest.**

[339] **The Régie upholds Gazifère's application relating to the terms and conditions for the disposal of the DCA, which provides that the costs associated with preparing for the examination of this case be accumulated and charged to its off-base DCA, bearing interest at the short-term debt rate, for 2021 and 2022, until their inclusion in the 2023 and 2024 rate cases, respectively.**

9. REQUEST FOR CONFIDENTIAL TREATMENT ORDER

[340] Further to RFI No. 3 from the Régie[242], the Complainants ask in particular to the latter of:

> [TRANSLATION] "*APPROVE the request for a confidential treatment order with regard to the annexes to exhibit ÉGI-1, which are identified as exhibits BV-4 to BV-10, BV-12 and BV-13, as well as exhibits EGI-5, EGI-6.3, EGI-7.1 to EGI-7.22, EGI-9, EGI-12, EGI-14.3 to EGI-14.24, EGI-18.1.2, EGI-18.3.1, EGI-18.3.2, EGI-18.3.9, EGI-18.5, EGI-18.5.1 to EGI-18.5.6, EGI-20.4.1 to EGI-20.4.4, EGI-24.2.1, EGI 24.2.4, EGI-24.3 and EGI -18.1.2.*
>
> *PROHIBIT the disclosure, publication and dissemination of information contained in the appendices to exhibit ÉGI-1, which are identified as exhibits BV 4 to BV-10, BV-12 and BV-13, as well as exhibits EGI-5 , EGI-6.3, EGI-7.1 to EGI 7.22, EGI-9, EGI-12, EGI-14.3 to EGI-14.24, EGI-18.1.2, EGI-18.3.1, EGI-18.3.2, EGI-18.3.9, EGI-18.5, EGI-18.5.1 to EGI-18.5.6, EGI-20.4.1 to EGI-20.4.4, EGI 24.2.1, EGI-24.2.4, EGI-24.3 and EGI-18.1.2 until December 31, 2031"*[243].

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242 Exhibit B-0330, p.
243 1. Exhibit B-0331, p. 8.

[341] The Complainants submit affidavits in support of their request for a confidential treatment order.

[342] Only ACIG made representations regarding this request for confidential treatment. It submits that it had requested access to these documents from the Complainants and that this gave rise to a great deal of discussion and exchange before its experts agreed to sign the modified confidentiality undertaking, the latter judging that the scope of this undertaking was too broad and that the data in question did not, strictly speaking, constitute confidential information, since it could be obtained by anyone who paid the fees.

[343] ACIG submits that, in its view, the Complainants wish to give "confidential treatment" to the data given the existence of contractual agreements with certain data providers and other copyrights to be respected. However, it wishes to make the Régie aware of the fact that a considerable amount of time has been required on this issue and that it would be necessary to find, possibly, for the future, a way of granting special treatment to this information, without having to be described as "confidential". However, it relies on the Régie on the qualification sought by the Complainants.

Opinion of the Régie

[344] Section 30 of the Act provides the following:

> "*The Régie may ban or restrict the disclosure, publication or release of information or documents it indicates, if the confidentiality thereof or the public interest so requires*".

[345] This section constitutes an exception to the general rule of the public nature of the proceedings before the Régie. According to this rule, it is incumbent on the party requesting a confidential treatment order to prove that the information covered by the request is of a confidential nature that must be respected.

[346] For the purposes of this decision, the Régie takes into consideration the nature of the information covered by the request and the prejudice to which the Complainants would be exposed, according to the affidavits filed.

[347] The Régie lists below the exhibits and information covered by the request for a confidential treatment order and refers to the affidavits concerned, as well as the duration requested for the confidential treatment.

TABLE 10

EXHIBIT OR INFORMATION SUBJECT TO A REQUEST FOR A CONFIDENTIAL TREATMENT ORDER

Exhibit or information being the subject of a request for a confidential treatment order	**Régie Rating**	**Declaration under oath**	Confidential **treatment timeline**
Exhibits BV- to BV-10	B-0016 to B-0022	Barbara Levine, Exhibit B-0031	December 31, 2031
Exhibits BV-12 and BV-13	B-0023 and B-0024	Barbara Levine, Exhibit B-0031	December 31, 2031
Exhibit EGI-18.1.2.	B-0211	Odile Poupart (B-0214) and Fadi Amine (B-0213)	December 31, 2031
Exhibits EGI-5, EGI 6.3, EGI-7.1 to EGI 7.22, EGI-9, EGI 12, EGI-14.3 to EGI 14.24, EGI-18.3.1, EGI-18.3.2, EGI 18.3.9, EGI-18.5, EGI-18.5.1 to EGI 18.5.6, EGI-20.4.1 to EGI-20.4.4, EGI 24.2.1, EGI-24.2.4, EGI-24.3.	B-0040, B-0043, B-0046 to B-0067, B-0076, B-0080, B-0108 to B-0129, B-0144, B-0145, B-0152, B-0154, B-0155 to B-0160, B-0194 to B-0197, B-0314, B-0317, B-0318.	Barbara Levine, Exhibit B-0031	December 31, 2031

[348] **After reviewing the reasons stated in the affidavits in the third column of Table 10 above, the Régie deems that they justify that the exhibits identified in the first two columns of Table 10 be treated confidentially.**

[349] **The Régie therefore grants the application for a confidentiality treatment order relating to these exhibits and prohibits the disclosure, publication and dissemination of the information they contain, as well as the exhibits themselves, until December 31, 2031.**

[350] **For these reasons,**

The Régie de l'énergie:

DETERMINES a rate of return of 8.9% on Énergir's equity for application to the 2022-2023 rate year, starting October 1, 2022;

APPROVES a deemed capital structure for Énergir consisting of 38.5% equity, 7.5% preferred shares and 54% debt;

DETERMINES a rate of return of 9.05% on Gazifère's equity for application to the 2023 rate year, beginning January 1, 2023;

APPROVES a deemed capital structure for Gazifère consisting of 40% equity and 60% debt;

APPROVES a deemed capital structure for Intragaz consisting of 46% equity and 54% debt;

DETERMINES that the ROE of Intragaz will be linked to that of Énergir over the period from May 1, 2023 to April 30, 2033, so that their rate of return on *"equity"* is equivalent according to their capital structure;

REQUESTS Énergir to file, within a maximum period of two weeks from this decision, the update of the average effective rate of the preferred shares, according to the same methodology for the 2022-2023 rate year, for the purposes of determining Intragaz's final ROE in an upcoming decision;

APPROVES the streamlined method proposed by Intragaz in Exhibit B-0325, which makes it possible to link its ROE to that of Énergir over the period from May 1, 2023 to April 30, 2033;

ORDERS that the rule linking the ROE of Intragaz to that of Énergir be based on the principle used in this decision, namely that the rate of return on the "equity" of the two companies be equivalent according to their capital;

ORDERS a three-year application period for the Complainants' rates of return and capital structures;

ORDERS the Complainants, in the event that they are of the opinion that the situation requires a re-examination of the rates of return and the capital structures before the end of the three-year term, to first present a request relating to the reasons and conditions justifying such review before incurring material costs;

APPROVES Énergir's request relating to the terms and conditions for disposal of the DCA, which provide that the costs associated with the preparation of the review of this case be accumulated and charged to its off-base DCA, bearing interest according to the weighted average cost of capital, until their inclusion in the 2023-2024 rate case, at the latest;

APPROVES Gazifère's request relating to the terms and conditions for disposal of the DCA, which provide that the costs associated with the preparation of the review of this case be accumulated and charged to its off-base DCA, bearing interest according to the short-term debt rate, for 2021 and 2022, until their inclusion in the 2023 and 2024 rate cases, respectively;

APPROVES the request for a confidential treatment order for the exhibits presented in Table 10;

PROHIBITS the disclosure, publication or dissemination of the exhibits identified in the first two columns of Table 10 and prohibits the disclosure, publication or dissemination of the information contained therein until December 31, 2031.

Jocelin Dumas

Commissioner

Lise Duquette

Commissioner

Esther Falardeau

Commissioner