

Draft Regulations

Draft Regulation

An Act respecting the Régie de l'énergie
(R.S.Q., c. R-6.01)

Régie de l'énergie — Rules of procedure

Notice is hereby given, in accordance with sections 10 and 11 of the Regulations Act (R.S.Q., c. R-18.1), that the Rules of procedure of the Régie de l'énergie, the text of which appears below, may be submitted to the Government for approval on the expiry of 45 days following this publication.

These Rules replace the Regulation respecting the procedure of the Régie de l'énergie to “dejudicialize” the procedure with a view to greater public participation in matters dealt with by the Régie and to enable the use of streamlined and flexible regulatory procedures.

The draft Rules have no impact on the public or on enterprises other than allowing for faster and facilitated access to the services offered by the Régie de l'énergie.

Further information may be obtained by contacting the Secretary of the Régie de l'énergie, tour de la Bourse, C. P. 001, 800, place Victoria, 2^e étage, bureau 255, Montréal (Québec) H4Z 1A2; telephone: (514) 873-2452; fax: (514) 873-2070; e-mail: secretariat@regie-energie.qc.ca

Any person having comments to make on the matter is asked to send them in writing, before the expiry of the 45-day period, to the Secretary of the Régie de l'énergie. The comments will be examined by the Régie and forwarded to the Minister of Natural Resources and Wildlife, responsible for the application of the Act respecting the Régie de l'énergie.

VÉRONIQUE DUBOIS,
Secretary of the Régie de l'énergie

Rules of procedure of the Régie de l'énergie

An Act respecting the Régie de l'énergie
(R.S.Q., c. R-6.01, ss. 113 and 115)

CHAPTER I DEFINITIONS

1. For the purpose of these Rules, unless the context indicates otherwise,

“consultant” means a person recognized as such by the Régie to participate in a working session given the person’s specialized knowledge related to the subject-matter being examined; (*expert-conseil*)

“document” means any document as defined in section 3 of the Act to establish a legal framework for information technology (R.S.Q., c. C-1.1); (*document*)

“expert witness” means a person recognized as such by the Régie to participate in a hearing, given the person’s specialized knowledge, to provide an independent professional judgment or opinion to the Régie; (*témoin expert*)

“hearing” means the examination of an application by the Régie, whether public or not, that proceeds orally or that is conducted as a written hearing or by any means using information technology; (*audience*)

“intervenor” means a person who is authorized by the Régie to intervene before it at the person’s request or on the Régie’s own motion; (*intervenant*)

“observer” means a person who, without being an intervenor, makes submissions; (*observateur*)

“participant” means the applicant or the intervenor; (*participant*)

“working session” means any meeting or communication with the participants to examine a file, except an oral hearing, and includes a technical meeting, information session and negotiation session. (*séance de travail*)

CHAPTER II SUBMISSION OF AN APPLICATION

2. Every application to the Régie must be made in writing and

(1) provide the applicant's name, address, telephone and fax numbers and e-mail address, if any, and where applicable, those of the applicant's representative;

(2) contain a clear and concise statement of the facts, reasons for the application and conclusions sought;

(3) be signed by the applicant or the applicant's representative;

(4) contain all documents in support of the application and a list of the documents;

(5) include any applicable fees;

(6) contain, where applicable, proof of mailing to the persons concerned; and

(7) include all other information as may be required by the Régie.

An application that is not validly submitted may be returned to the applicant to be completed; the Régie may also suspend examination of the application.

3. Where the Régie is of the opinion that the matter is urgent, it may accept an application that does not satisfy the requirements described above and allow any departure from those requirements it considers necessary.

CHAPTER III PUBLICATION OF DIRECTIONS RELATING TO A PUBLIC HEARING

4. Where the Régie directs a participant to publish its written directions, the public notice may be issued by any means and using any information technology medium that informs the public in the area concerned by the public hearing.

The public hearing commences with the issue of the public notice.

CHAPTER IV REPRESENTATIONS TO THE RÉGIE

DIVISION I PARTICIPATION

5. In the course of the examination of a file, an interested person may apply to the Régie for status to intervene before it.

6. An application for intervenor status must be made in writing, signed by the interested person or the person's representative and be sent to the Régie and the applicant within the time fixed by the Régie.

The application must set out

(1) the interested person's name, address, telephone and fax numbers and, where applicable, e-mail address;

(2) the nature of the interested person's interest and, where applicable, representativeness;

(3) the reasons in support of the intervention;

(4) a concise statement of the conclusions sought or recommendations proposed;

(5) the manner in which the interested person's position is to be presented, including whether witnesses are to be heard or expert evidence presented, and the estimated hearing time; and

(6) the interested person's suggestions to facilitate the examination of the file.

7. The Régie may refuse or grant the application for intervenor status and determine the conditions.

8. The Attorney General and the Minister responsible for the administration of the Act respecting the Régie de l'énergie may at all times intervene on their own motion before the Régie.

9. The Régie shall determine the scope of the participation according to the intervenor's interest and the nature, importance and breadth of the issues addressed by the intervenor.

10. The intervenor is to receive the documents filed in the record and all documents filed by the intervenor must be sent to the participants and to the Régie in the required number of copies.

DIVISION II OBSERVER

11. An interested person who does not wish to obtain intervenor status but who wishes to make submissions on a matter before the Régie may make the submissions in accordance with these Rules.

The submissions must include all the relevant documents and information explaining or supporting the interested person's point of view.

12. An observer may obtain a copy of the documents filed in the record on payment of the reproduction costs.

CHAPTER V METHODS OF PROCEDURE

DIVISION I PRINCIPLES

13. For any matter requiring a public hearing pursuant to section 25 of the Act respecting the Régie de l'énergie (R.S.Q., c. R-6.01), a public notice must be issued and the Régie shall decide if the hearing will be oral, in whole or in part, or be conducted as a written hearing.

14. For any other matter, the Régie shall determine the appropriate method of procedure.

DIVISION II VARIOUS METHODS OF PROCEDURE

§1. *Processing by the Régie*

15. The Régie may, at any time, call a pre-hearing conference or a working session to define and clarify a procedural matter, the matters being examined, the use of experts, the recognition of participants and the conditions for participation in the examination of an application.

The Régie may issue directions for the conduct of the hearing and the preparation of a timetable and schedule, and fix the time allowed participants to present their positions.

16. Recordings or shorthand notes constitute the minutes of the pre-hearing conference.

17. The Régie may issue directions for the conduct of working sessions or for any other method of procedure it chooses.

§2. *Negotiated agreement process*

18. A negotiated agreement process may be initiated by the Régie which determines its rules. The resulting agreement must be written and signed by the participants to the agreement, and be filed with the Régie for approval. The participants must show that the agreement is in conformity with the law and the public interest.

19. Any dissent must be written, substantiated, signed by the participants and filed with the Régie along with the agreement.

CHAPTER VI EXAMINATION OF THE APPLICATION

DIVISION I FILING OF DOCUMENTS

20. Documents may be transmitted by any method approved by the Régie. They may also be filed in person at the office of the Régie.

The method of document transmittal must allow for proof of receipt and origin, and guarantee integrity of content.

Where a participant transmits all or part of a document by different methods and on different dates, the document considered to be received is the last document received within the time fixed by the Régie.

21. Every document cited or relied on by a participant must be filed with the Régie and sent to the other participants according to the procedure prescribed by the Régie.

22. The applicant must provide the Régie and the participants with any additional documents or evidence the Régie considers necessary for the examination.

A request for information must be filed with the Régie with a copy to each participant. If the person to whom the request is directed is unable to reply in full within the time fixed by the Régie, the person must inform the Régie and the participants in writing of the reasons and of the time needed to reply.

23. The Régie may inform the participants of missing elements in the documents filed.

If an element is missing, the Régie may decide not to examine the documents until the necessary steps have been taken to complete the documents, or may decide to return the documents to the sender.

24. A participant wishing to have a translation made of a document filed in the record must notify the Régie and the participants and file the translated document with the Régie.

DIVISION II HEARING

25. In the absence of serious grounds, the Régie may dismiss a late application or proceeding where it foresees an impact on the expeditiousness or fairness of the proceeding.

26. For valid reasons, a request for adjournment may be submitted in writing to the Régie before the date fixed for the hearing. The request must be communicated to the other participants.

In exceptional circumstances, the Régie may accept a request for adjournment in the course of a hearing.

27. Unless the Régie issues directions to the contrary, participants may call and examine witnesses, examine the other participants' witnesses and present their positions, subject to the conditions determined by the Régie.

Unless the Régie decides otherwise, witnesses are heard under oath, which is a solemn affirmation to tell the truth, the whole truth and nothing but the truth.

Unless the Régie decides otherwise, a participant must file in writing, within the prescribed time, the expert testimony to be relied on in support of the participant's position and send a copy to the other participants within the same time.

28. The Régie may call witnesses and require the production of documents at the request of a participant or on its own motion.

The Régie, where applicable, shall issue a subpoena to a participant so requesting who is responsible for serving the subpoena on the witness at the participant's own expense.

The subpoena must be served at least five clear days before the hearing, unless the Régie issues special directions.

29. A document submitted as evidence to the Régie must bear the author's name and the address of the author's head office or place of residence.

30. Where a participant fails to attend or to participate in a hearing, the Régie may decide in the participant's absence after ensuring that the participant has been duly notified.

31. A hearing may be recorded by any means permitted by the Régie including stenotype or shorthand.

A participant who requests a hearing be recorded must provide the Régie with a copy of every transcript of the recording, whatever the medium used, on the conditions determined by the Régie.

Recording and transcript costs are borne by the participant requesting the recording or transcription, unless the Régie decides otherwise.

DIVISION III EXPERT WITNESSES AND CONSULTANTS

32. A participant intending to use the services of an expert witness or a consultant must file a written request for recognition of status as regards the expert witness or consultant.

33. The request for recognition of status as an expert witness or consultant must be sent to the Régie and the participants. The request must provide all the information required to examine it, including

(1) the name and contact information of the expert witness or consultant;

(2) a description of the need for the expert testimony and how it relates to the participant's interest;

(3) the area of expertise and qualifications of the expert witness or consultant;

(4) a copy of the resumé of the expert witness or consultant, including a description of relevant experience; and

(5) justification of the compensation requested for the expert witness or consultant.

34. A challenge to a request for recognition of status as an expert witness or consultant must be made in writing.

In the case of a consultant, the challenge must be made within five working days of the date on which the request is received.

In the case of an expert witness, the challenge must be made within a reasonable time before the testimony of the expert witness, and the Régie must dispose of the challenge at the hearing.

35. Recognition of status as a consultant is effective on the expiry of ten working days. In urgent circumstances, the recognition is effective as of the date on which the request is received unless the Régie has suspended the time period or denied the request.

36. The Régie may require that the participants' experts or consultants communicate with each other to

(1) exchange information and documents relating to the facts or opinions on which they disagree;

(2) discuss the facts or opinions on which they disagree in order to reduce or eliminate disputed issues; or

(3) come to a consensus on the facts, matters and opinions to be decided by the Régie.

Where the experts or consultants are to communicate with each other in a meeting or by any other means of communication, they must so notify the other participants in order that they may take part.

Experts and consultants must report the result of their communication to the Régie.

DIVISION IV CONFIDENTIALITY

37. A participant who requires documents or information be treated confidentially must make a request in writing to that effect in which the participant must provide

(1) a summary of the nature of the documents and information to be treated confidentially;

(2) the reasons for the request, including details of the nature and scope of the particular prejudice that would be caused by treating the documents and information confidentially and by disclosing them;

(3) a copy of the document for the public record in which the excerpts for which confidentiality is requested are blanked out; and

(4) a complete copy of the document or information under confidential cover.

The Régie may require that a document or information subject to a confidentiality request be filed.

38. Participants may challenge the confidentiality request no later than ten days after its filing.

CHAPTER VII CLAIM FOR COSTS

39. A participant in a hearing other than the carrier or a distributor may make a claim for costs.

40. The carrier or distributor from which the costs are claimed may, within ten days after the date on which the claim is received, send to the Régie in writing any objection to or comment respecting the claim, its eligibility, the amount or any other subject raised in the claim. The distributor or carrier must send a copy of the claim to the person who filed the claim with the Régie.

41. A participant who claims costs may, within ten days after the date on which the objections or comments are received, reply in writing to the Régie with a copy to the carrier or distributor.

42. The Régie may depart from the procedure provided for in this Chapter to accelerate or facilitate the payment of costs.

CHAPTER VIII COMPLEMENTARY PROVISIONS RESPECTING EXAMINATION OF COMPLAINTS

DIVISION I CONCILIATION

43. The Régie may suspend the examination of a complaint if the parties wish to refer the matter to conciliation.

44. Any agreement to allow inadmissible evidence consisting of information and documents exchanged during the conciliation must be made in writing and be signed by the person agreeing to allow the inadmissible evidence.

45. The Régie shall officially acknowledge the agreement entered into between the parties, unless it decides otherwise.

DIVISION II EXAMINATION OF THE COMPLAINT

46. Unless otherwise requested, the hearing of a complaint is conducted by the exchange of documents.

A request for information must be directed within a reasonable time and be answered within 15 days of receipt.

47. A preliminary exception made against a complaint must be raised in writing, even in the case of an oral hearing, and allow reasonable time for the other party to reply adequately.

48. If a party fails to attend or participate in a hearing, the Régie may proceed in the absence of the party and render its decision after ensuring that the party has been duly notified at the address provided by it to the Régie.

49. A settlement or withdrawal of a complaint must be evidenced in writing and be signed by the parties or their representatives. The parties must so notify the Régie and, at its request, file their agreement or submit a certificate of withdrawal.

CHAPTER IX COMPLEMENTARY PROVISIONS RESPECTING ADVICE TO THE MINISTER OR THE GOVERNMENT

50. The intervenors must file a written memorandum and a brief summary of its content with the Régie within the time it fixes.

51. The Régie shall make the memoranda it receives public on the conditions set out in its written directions.

52. The witnesses of the Régie and of the proponent may be examined by any participant. The other witnesses may be examined by the Régie, the proponent and the participant who called them, except if the Régie issues special directions.

53. For the purposes of this Chapter, the Minister or the Government is considered to be a proponent when requesting an opinion from the Régie.

CHAPTER X MISCELLANEOUS

54. Where a date determined in these Rules for the doing of a thing falls on a non-working day, the thing may be validly done on the following working day.

For the purposes of the first paragraph, Saturday, Sunday and any other day on which the offices of the Régie are closed are non-working days.

55. The Régie shall take all the necessary measures to ensure a fair, expeditious and simple proceeding.

56. The Régie may remedy any delay, defect of form or irregularity of procedure.

57. The secretary of the Régie is empowered to receive the documents that must be filed with or sent to the Régie under the Act or these Rules.

58. Upon payment of reproduction costs, any interested person may obtain a copy of a document filed with the Régie, except documents considered to be confidential or for which a publication ban has been ordered.

CHAPTER XI TRANSITIONAL AND FINAL

59. These Rules replace the Regulation respecting the procedure of the Régie de l'énergie made by Order in Council 140-98 dated 4 February 1998.

60. Applications already before the Régie on the date of coming into force of these Rules are to be continued in accordance with these Rules.

61. These Rules come into force on the fifteenth day following the date of their publication in the *Gazette officielle du Québec*.

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