Bill 69: A new era for the Québec energy sector

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The government of Québec (government) continues its legislative efforts to overhaul the energy transition regulatory framework, including steps to achieve net-zero emissions by 2050. On June 6, 2024, it tabled Bill 69, *An Act to ensure the responsible governance of energy resources and to amend various legislative provisions*, in the National Assembly.

With it, the Legault government is striving to align its economic development objectives with the global push for decarbonization.

What you need to know

Bill 69's proposed amendments would:

- Enable Hydro-Québec to enter into renewable electric power supply contracts without being subject to tendering obligations, as well as give Hydro-Québec the ability to sell certain production infrastructure;
- Allow private producers to sell and distribute electric power to other private entities located on a site adjacent to their production site;
- Introduce a new governance model, under which a) the Régie de l'énergie would promote the meeting of energy needs; b) the Minister of Economy, Innovation and Energy would propose an energy resource management plan; and c) projects of 5 MW or more would be subject to approval by the Minister of Economy, Innovation and Energy.

Context

The electrification of the economy is at the heart of the *2030 Plan for a Green Economy*, the Québec government's framework policy on electrification and the fight against climate change. Viewing this collective effort as both an energy and an economic transition, the government developed the plan as a roadmap to meet its greenhouse gas reduction targets and generate wealth by leveraging Québec's abundant natural resources.[1]

Bill 69 introduces significant changes in four main areas. This article covers each in turn.

1. Energy project fast-tracking
2. Energy sector governance
3. Electric power and natural gas rate fixing
4. Energy supply and demand management

Main objectives

1. Energy project fast-tracking

According to Hydro-Québec's *Plan d'approvisionnement 2023-2032* [in French only] (Supply Plan), filed with the Régie de l'énergie (the Régie), between now and the government's 2050 carbon neutrality target, Québec's energy needs will nearly double. This 150 TWh to 200 TWh growth in demand over 2022 levels can be primarily attributed to government actions on transportation electrification and industrial decarbonization.

According to the Supply Plan, maintaining the energy and capacity balances in the face of an anticipated energy deficit, Hydro-Québec needs to make purchases on short-term markets, match demand reduction strategies with energy-efficiency measures, maintain existing supply contracts until they expire and conclude new supply contracts.

That is why Hydro-Québec's *Action Plan 2035 – Towards a Decarbonized and Prosperous Québec* (2035 Action Plan), sets out plans to add nearly 60 TWh of energy and 9,000 MW of capacity by 2035 through improvements to existing hydropower facilities, new wind power projects and energy-efficiency measures.

Since filing the Electricity Supply Plan and publishing Action Plan 2035, Hydro-Québec has also launched its *Wind Power Development Strategy – Charting the Course toward Collective Success* with the goal of developing over 10,000 MW of new wind power generation.

Demand for renewable power generation projects is on the upswing. The government introduced Bill 69 to help address this rapid change. It aims to make it easier for the private sector to get involved, leverage its agility, boost opportunities for community partnerships and broaden the range of production sources.

a) Withdrawal of the call for tenders process

During its consultation on the regulation and development of clean energy in Québec (*Consultation sur l'encadrement et le développement des énergies propres au Québec*[in French only]) in summer 2023, the Ministère de l'Économie, de l'Innovation et de l'Énergie (MEIE) estimated that Hydro-Québec's current tendering process involved 14 distinct steps over more than 100 weeks.[2]

Given the urgency to quickly complete energy projects to meet the supply demands driven by economic growth and the electrification of transportation and the industrial sector, the government aims to reduce delays and enhance Hydro-Québec's agility in awarding major contracts. Thus, the bill moves the current process-based regulatory framework towards an objectives-based approach.

Bill 69 removes the requirement for a tendering process,[3] freeing Hydro-Québec to meet demand in excess of the heritage pool[4] by entering directly into electrical power supply contracts by mutual agreement with partners.

That said, Bill 69 is not a move towards a full market deregulation, since most such private contracts would require the Régie's authorization, which may come with conditions.[5] However, this authorization would not be required where:

- The electric power distributor awards a contract for the supply of electric power from renewable energy sources by way of a public call for tenders;
- The electric power distributor enters into an electric power supply contract because of an emergency or for a period not exceeding three months;
- The government authorizes the electric power supply contract on the conditions it determines.[6]

Currently, the Régie ensures transparency in the energy sector by collecting, monitoring, analyzing, and publishing factual information about energy supply and markets. Should Bill 69 be adopted, it remains to be seen whether this market transparency will be upheld or jeopardized in the case of supply contracts requiring direct government authorization. Nothing indicates that the terms of such will also be made public.

Bill 69 also gives the government the right to set certain conditions for supply contracts entered into by Hydro-Québec, as well as the option of requiring a tendering process for electricity contracts exceeding a yet-to-be-determined volume of electric power.[7]

b) Private power distribution

Bill 69 would open up the electric power distribution market by enabling private power producers to sell electric power from renewable sources to a single consumer to meet the needs of the consumer's installations, insofar as the installations are situated on a site adjacent to the production site and the government authorizes such distribution on the conditions it determines.[8]

As a result, businesses producing surplus energy can anticipate being allowed to sell it, provided the above conditions are met. This exception was already in place for the sale of electric power generated from forest biomass to a consumer situated on a site adjacent to the production site.

Note that the "site adjacent" notion remains to be defined as Bill 69 is silent on the matter. Furthermore, the conditions under which the government will authorize the private distribution of electric power are yet to be determined. As they will be at the government's discretion, subjective considerations may come into play.[9]

With this change, Bill 69 aims to achieve two objectives: facilitate the development of projects in remote areas that cannot be rapidly served by Hydro-Québec, and authorize private producers to profit from their excess power production infrastructure.

2. Energy sector governance

Along with reducing the number of members on Hydro-Québec's board of directors,[10] Bill 69 expands the MEIE's responsibilities in the energy sector. It gives the Minister the mission of aligning energy transition goals with economic development targets through the responsible and integrated management of Québec's energy consumption.[11]

Similarly, it updates the Régie's mission, making it responsible for ensuring that Québec's energy needs are met while promoting an energy transition at the lowest cost. Furthermore, the Régie must promote innovation and the economic, social, and environmental benefits generated by Québec's energy sector.[12]

This new mission contrasts with the Régie's current legislative framework, which requires it to:

- reconcile the public interest, consumer protection and the fair treatment of the electric power carrier and of distributors;
- promote the satisfaction of energy needs in a manner consistent with the government's energy policy objectives;
- adopt the principles of sustainable development and individual and collective equity.

Therefore, while the Régie must currently *promote* the satisfaction of energy needs, under Bill 69 it would become its *mission*.

In an effort to speed up Régie proceedings, Bill 69 proposes expanding the types of applications that can be examined by a single commissioner, rather than the current three.[13] It also makes the Régie's chair responsible for ensuring promptness and efficiency in the Régie's decision-making process by specifying time limits for processing applications.[14]

3. Electric power and natural gas rate fixing

Bill 69 sets out a new approach to fixing energy rates. It proposes reducing the time between rate reviews from every five years under current legislation to every three.[15] When fixing Québec's electric power distribution rates, the Régie will primarily consider power supply costs, and transmission and distribution costs.[16]

However, in exceptional circumstances, Hydro-Québec would have the ability to apply to the Régie for a rate review before the end of the current three-year period.[17] In addition, the government would have general powers to indicate the economic, social, and environmental concerns the Régie must consider in any decision it makes under the law.[18]

The bill proposes a similar rate fixing procedure for natural gas. In contrast, note that the Régie would fix rates and conditions of service applicable to the distribution of natural gas for a period of 12 months.[19] When it comes to gas from renewable sources, Bill 69 aims to reduce the cost of connecting these renewable sources to the natural gas distribution system and to encourage its voluntary consumption by offering flexible pricing.[20]

As part of the government's drive to improve energy efficiency through smarter energy consumption, Bill 69 introduces one or more electric power distribution rates or

conditions of service applicable from April 1, 2026, to domestic clientele in such a manner as to promote the reduction of electric power consumption during peak periods and a rate or conditions of service for electric power distribution that are applicable to that clientele and that vary according to energy intensity.[21]

In 2019, the government adopted *An Act to simplify the process for establishing electricity distribution rates* to tie rate increases to inflation. Then in 2022, it had to adopt the *Act to limit the indexation of several government tariffs* to mitigate the impact of higher-than-expected inflation.That is why Bill 69 proposes the creation of the *Fonds d'aide à la clientèle domestique d'Hydro-Québec,* a financial assistance fund to limit the impact of electric power rate increases on the domestic clientele.[22]

Given the government's intention to cap domestic rates at 3 per cent,[23] this fund may allow Hydro-Québec to obtain rate increases while limiting the impact of these increases on consumers.

In addition, Rate L for large-power customers will no longer be exempt from the heritage pool's inflation indexing.

4. Energy supply and demand management

a) Integrated energy resource management plan

As part of the government's aim to have the MEIE more involved in Québec's energy future, every six years, the Minister would be responsible for establishing a 25-year integrated energy resource management plan (IERMP).

The IERMP would provide an opportunity to take stock of Québec's energy sector, identify future energy needs, and set policy directions and objectives regarding energy efficiency, infrastructure development and supply.[24]

The IERMP would be established in compliance with government policy directions regarding economic development, climate change and the decarbonization of the economy.[25] The energy sector is thus seen as crucial in shaping Québec's future.

The first IERMP is slated for publication on April 1, 2026.[26]

b) Sale of Hydro-Québec infrastructure

In what is perhaps one of its most striking provisions, Bill 69 proposes to authorize the sale of Hydro-Québec's hydroelectric infrastructure with a generating capacity of 100 MW or less.[27] It would also allow Hydro-Québec to lease the hydraulic power and the bed of the watercourses for the subsequent operation of that infrastructure.[28] This new provision affects sixteen hydroelectric generating stations totalling about 680 MW.[29]

In such cases, new owners will be able to sell the energy generated to an adjacent site, enter into an energy purchase agreement with Hydro-Québec as transmission and distribution provider, and generate energy for their own use.

Bill 69 also opens the door to greater collaboration between Hydro-Québec and First Nations and Inuit communities, as well as municipalities. It would enable the government corporation to sell any other immovable to a partnership with an Indigenous community or municipality.[30]

This suggests that the government wishes to give Hydro-Québec the ability to sell off its smallest hydroelectric assets – which may not be profitable to maintain or operate – and focus on bigger projects, such as large-scale wind farms to add 10,000 MW of wind power to Québec's energy mix.

c) Authorization of projects requesting 5,000 kW or more

Bill 69 also incorporates a notion introduced in Bill 2, *An Act mainly to cap the indexation rate for Hydro-Québec domestic distribution rate prices and to further regulate the obligation to distribute electricity*, which received assent on Feb. 16, 2023.

It includes a provision requiring holders of exclusive electric power distribution rights to apply for MEIE authorization to distribute electric power to any person who requests 5,000 kW or more of power and with whom the holder did not enter into, before Dec. 2, 2022, an agreement that provides for a financial commitment from the person making the request.[31] This transitional provision therefore directly involves the MEIE in decisions about supply power to large-scale industrial projects.

Consequently, businesses looking to set up in Québec and benefit from renewable electric energy will have the additional step of ensuring their project receives MEIE authorization. Several criteria will be analyzed, including technical capacity and the impact on the power system, as well as economic spinoffs and environmental impacts.[32] However, given this new authorization to sell their surplus energy, some companies may view this as an opportunity for energy self-sufficiency or to implement grid curtailment solutions such as storage and battery systems or generators.

On this matter, we will be closely following the adoption of the regulation that will ultimately define the specifics of government action.

Conclusion

If adopted, Bill 69 will kick-start an ambitious reform of Hydro-Québec and an in-depth modernization if Québec's energy sector. By focusing on responsible governance, energy efficiency and the development of renewable energy sources, this bill aims to shepherd Québec through a cleaner, more sustainable, and safer energy transition.

The Committee on Agriculture, Fisheries, Energy and Natural Resources will begin its special consultations and public hearings on Bill 69 on Sept. 10, 2024. Interested parties have the opportunity to submit a brief to share their views on this bill.

Contact us

If you have any questions about Bill 69 or any other Canadian energy issue, feel free to reach out to the key contacts below or any other member of BLG's Infrastructure or Environmental groups.

Footnotes

[1] Hydro-Québec, *Action Plan 2035 – Towards a Decarbonized and Prosperous Québec*, p. 6

[2] Ministère de l'Économie, de l'Innovation et de l'Énergie, *Consultation sur l'encadrement et le développement des énergies propres au Québec*, Reference document E2304-008-05 "Étapes et échéanciers — Processus d'appel d'offres".

[3] S. 45 Bill 69.

[4] Hydro-Québec's pool of 165 TWh of electricity annually, excluding loss, to serve its clients in Québec.

[5] S. 45 Bill 69.

[6] *Ibid.*

[7] *Ibid.*

[8] S. 38(1) para. 2.

[9] *Ibid.*

[10] S. 109 Bill 69.

[11] S. 3 Bill 69.

[12] S. 13 Bill 69.

[13] S. 17 Bill 69.

[14] S. 18 Bill 69.

[15] S. 27 Bill 69.

[16] S. 30(1) para. 1 Bill 69.

[17] S. 27 Bill 69.

[18] S. 67 Bill 69.

[19] S. 27 Bill 69.

[20] See primarily ss. 29 and 39 Bill 69.

[21] S. 130 Bill 69.

[22] S. 75 Bill 69.

[23] See for example *An Act mainly to cap the indexation rate for Hydro-Québec domestic distribution rate prices and to further regulate the obligation to distribute electricity*.

[24] S. 4 Bill 69.

[25] *Ibid.*

[26] S. 126 Bill 69.

[27] S. 116(1) para. 5 Bill 69.

[28] Ss. 83 and 116(1) para. 5 Bill 69.

[29] Hydro-Québec, *Annual Report 2023* “Our generating, transmission and distribution facilities”, p. 88.

[30] S. 116(1) para. 5 Bill 69.

[31] S. 147 Bill 69.

[32] MEIE *Procedure for obtaining connection authorization for projects with power ratings of 5 MW or more*

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