

Hydraulic forces / New granting regime

New regime for granting and operating hydraulic forces in the domain of the state for hydro-electric power plants of 50 MW or less

1. Object

The object of this regime is to describe the terms and conditions for granting the hydraulic forces and lands in the public domain required for the development and operation of a small hydro-electric power plant by an independent promoter.

2. Definitions

For the purposes of applying this regime, the following terms are understood to mean:

- 2.1 "*evaluation committee*": a committee formed of representatives of the Ministère and Hydro-Québec responsible for evaluating tenders submitted to Hydro-Québec by promoters;
- 2.2 "*Hydro-Québec*": Hydro-Québec as a supplier of electricity as defined in section 2 of the *Act on the Régie de l'énergie* (R.S.Q., chapter R-6.01), except in sections 2.7, 2.9, 6.2 and chapter 7;
- 2.3 "*Ministère*": the Ministère des Ressources naturelles;
- 2.4 "*Minister*": the Minister of Natural Resources;
- 2.5 "*ministers*": the Minister of Natural Resources and the Minister of the Environment;
- 2.6 "*small power plant*": hydro-electric power plant with installed power output of 50 MW or less;
- 2.7 "*promoter*": a physical or moral person or an limited partnership constituted in particular with a regional county municipality or a First Nations community, authorized to conduct business within Québec and operating a place of business there, which submits a tender to operate hydraulic forces in the domain of the state for the purposes of producing electricity from a small power plant, with the exception of a municipality, Hydro-Québec and its employees or the employees of the Government of Québec;
- 2.8 "*lender*": a physical or moral person accepted by the Minister, such as a chartered bank, federation of savings and loans trusts, savings and loans trust, trust company, savings company, insurance company, acting as principal funder by supplying the financing during the construction period or the permanent financing for the lessee, with the exception of a person affiliated with the lessee, such as a sponsor;
- 2.9 "*lessee*": a physical or moral person or a limited partnership constituted in particular with a regional county municipality or a First Nations community, who is the holder of a lease of hydraulic forces in the domain of the state for the purposes of producing electricity from a small power plant, with the exception of Hydro-Québec or a municipality.

3. Scope

- 3.1 This regime concerns all hydraulic sites for which the hydraulic forces available for small power plants are in the domain of the state, with the exception of hydraulic sites in lands governed by the James Bay and Northern Quebec Agreement, and for which riparian land required to develop and operate a small power plant is also in the public domain, in whole or in part.
- 3.2 This regime also applies to:
- a. hydraulic sites for which the domain of the state includes only a part of the hydraulic forces necessary to operate them;
 - b. hydraulic sites for which all the riparian land required to develop and operate a small power plant are private property;
 - c. hydraulic sites for which part of the riparian land necessary to develop and operate a small power plant at an existing dam is private property.
- In all these cases, for hydraulic forces and lands in the domain of the state to be eligible for leasing by the government, the owner of the private portion must provide proof of ownership rights to the satisfaction of the Ministère. If the private portion is divided between multiple owners, written consent from each is necessary if one or more of them or a third party wishes to obtain the right to operate hydraulic forces in the domain of the state.
- 3.3 Applications for the purposes of self-use or concerning sites with a potential that may not exceed 225 kW are not subject to this policy. Leasing may, in these cases, be authorized by the government with a recommendation from the Minister.
- 3.4 The electricity produced by a small power plant, if it is not used by the producer, must be sold to Hydro-Québec.

4. **List of hydraulic sites eligible for leasing**

- 4.1 The Ministère will prepare a list of hydraulic sites eligible for leasing taking into account in particular the potential hydraulic forces within Québec's territory for small power plants, applications from regional county municipalities and promoters supported by a favourable resolution from the regional county municipality concerned.
- 4.2 The Minister will submit to the government a list of hydraulic sites eligible for leasing by the government. This list includes in particular the sites described in section 3.2 where a portion of the lands and hydraulic forces is acknowledged to be private as of the date of approval of this regime.
- 4.3 The Minister will make public the list of hydraulic sites eligible for leasing, accepted by the government.
- 4.4 Once the list of hydraulic sites has been announced by the Minister, Hydro-Québec may initiate the call to tenders procedure.

5. **Call for tenders procedure**

- 5.1 Hydro-Québec will issue a call to tenders procedure when the list of hydraulic sites

eligible for leasing by the government is made public by the Minister.

5.2 Hydro-Québec will then make public the terms and conditions for submission, the criteria for selecting tenders and any information or documentation it has concerning the sites on the list announced by the Minister.

6. Evaluation

6.1 The tenders submitted for each hydraulic site eligible for leasing by the government are evaluated by an evaluation committee, which will use as a primary criterion the sale price of the electricity offered.

6.2 Following evaluation of the tenders, the evaluation committee will forward its recommendations on all qualified and selected projects to the Minister of Natural Resources and the Chief Executive Officer of Hydro-Québec. The Minister and the Chief Executive Officer of Hydro-Québec will then announce Hydro-Québec's decision.

7. Procedure for granting rights to hydraulic forces

7.1 The Minister notifies the selected promoter in writing of his intention to recommend to the government that the hydraulic forces be leased to him. The promoter has a period of two months from the date of reception of the notice to inform the Minister of his decision to pursue the matter or not.

7.2 The selected promoter has a period of six months from the reception of the notice from the Minister to undertake the procedures necessary to obtain all the required rights and authorizations. He may seek information on these procedures from the Ministère and Hydro-Québec.

7.3 Should the promoter fail to comply with sections 7.1 or 7.2, or should he withdraw his tender, the Minister may offer the hydraulic forces of the site concerned to any other promoter qualified by the evaluation committee according to the terms described in section 6.2.

7.4 Hydro-Québec and the promoter must sign a memorandum of agreement conditional upon the obtention of all the required rights and authorizations, concerning the terms of the contract to purchase electricity, such as the price, the term, the date commercial service begins and the connection and operation requirements of Hydro-Québec.

7.5 The promoter is required to provide the Ministère and Hydro-Québec with a copy of all government authorizations and deeds of acquisition of ownership rights or any real right.

7.6 Subject to section 8.17, the leasing of hydraulic forces and the granting of other real rights is for a maximum term of 25 years from the date commercial service of facilities begins and is not renewable. However, if the site becomes eligible for leasing again, the lessee may submit a tender.

7.7 The promoter must prepare at his cost and submit to the Ministère and Hydro-Québec a plan prepared by a land surveyor showing in particular:

- the normal measured operating holdback elevation of the dam;
- the protection area equivalent to one-hundred-year flooding and any other effects on riparian properties due to management of the headwater level and other local conditions such as waves, erosion;
- the rights in the public domain, Hydro-Québec and other owners

required to develop and operate the small power plant.

- 7.8 The promoter must clarify, at his cost, ownership of illegal occupations, cadastral irregularities and any other anomaly likely to affect the lands.
- 7.9 A notarized deed conditional upon the signature of the contract to lease hydraulic forces and taking effect on the date of this contract will confirm the surrender by Hydro-Québec to the government of the bed and the hydraulic forces of the selected project sites, as the case may be. The documents required for this surrender will be prepared according to the standards and directives of the Direction de l'information foncière for the public lands belonging to the Ministère.
- 7.10 A deed of surrender conditional upon the signature of a lease contract and taking effect on the date of this contract will confirm the surrender by Hydro-Québec and its subsidiaries to the promoter of all the rights, titles and interests it holds in the works, hydraulic and electrical equipment and lands with the existing flood, erosion and infiltration servitudes. Hydro-Québec reserves the right to maintain or sell to a third party any buildings not required for operation of the site. The documents (plans and technical descriptions) required for this surrender will be prepared at the promoter's cost according to the standards and directives of Hydro-Québec.
- 7.11 The full costs incurred by Hydro-Québec in the course of the surrender process, including the book value of facilities, will be recovered in the form of a lump sum from the promoter upon the signature of the contract of surrender by Hydro-Québec.
- 7.12 Any other acquisition by the promoter from any other owner of lands or real rights required to develop and operate the small power plant is at his cost.
- 7.13 The leasing of hydraulic forces and the granting of other rights in the domain of the state required to develop and operate the small power plant is conditional upon:
 1. the surrender to the government by the lessee, at the end of the lease contract, or upon his cancellation or revocation, of all the lands or real rights set out in sections 7.10 and 7.12 along with the works and hydraulic and electrical equipment erected on these lands;
 2. should one of the events described in sections 10.2 or 10.4 be authorized by the ministers, upon the transfer to the new lessee of the rights set out in sections 7.10 and 7.12.

This lease will be authorized by the government in accordance with the Watercourses Act (R.S.Q. c. R-13) and the Act respecting the lands in the domain of the State (R.S.Q. c. T-8.1) after issuance of the authorization certificate required under the Environment Quality Act (R.S.Q. c. Q-2), the approval of plans and estimates under the Watercourses Act, and any other authorization that may be required.

8. **Principal duties and obligations of the lessee**

- 8.1 The lessee will pay to the Minister the statutory royalties set out in Section VIII of the *Watercourses Act*.
- 8.2 Upon the signature of the lease contract, the lessee will pay to the Minister a lump sum set in 2000 at \$10,000/installed MW, to cover the full costs incurred under this lease.
- 8.3 The annual fees paid by the lessee as rent, corresponding to the terra firma property rights and assets affected by the development and operation of a small power plant are set in accordance with the Regulation respecting the leasing of land in the public domain for the building, operation and maintenance by private producers of hydro-electric power plants having a capacity of 25 MW or less, set out in decree no 1317-90.

- 8.4 The lessee will pay an annual fee set in 2000 at 54.2 ¢/thousand kWh produced from the date the small power plant enters commercial service.
- 8.5 The lessee will forward to the Minister, by March 1 of each year at the latest, a written report on his production covering the period between January 1 and December 31 and payment of the required royalties.
- 8.6 As of January 1, 2001, the lump sum and the royalty fee described in sections 8.2 and 8.4 will be indexed on January 1 of each year according to the percentage increase over the previous year in the consumer price index published by Statistics Canada.
- 8.7 The lessee is required to pay all taxes, contributions and other fees that may be imposed on the leased rights and lands during the term of the lease contract.
- 8.8 The lessee will ensure proper maintenance of the facilities and operate the small power plant during the term of the lease contract.
- 8.9 The lessee, as a guarantee, will deposit a performance bond equivalent to 10% of the cost of developing the submitted project, taking into account the modifications authorized under section 9.1.
- 8.10 The lessee will purchase an insurance contract and maintain it in effect during the entire term of the lease contract. This insurance contract is to include civil liability insurance covering the development and operating phases of the small power plant, insurance guaranteeing full restoration of the site in the case of abandonment of operations or bankruptcy, and general liability insurance.
- 8.11 The lessee will forward to the Ministère a true copy of his insurance contract and, subsequently, proof of annual renewal, within ten days of their taking effect, at the latest.
- 8.12 The lessee will maintain and retain records detailing the monthly data taken by counters installed at the power generator outputs.
- 8.13 The lessee will respect all operating conditions set out in the lease contract, in particular the normal operating holdback elevation and the protection area, and will take all measures necessary to this end.
- 8.14 Subject to the rights granted to him, the lessee is responsible for any damage caused to goods in the private or domain of the state due to work to develop or operate the small power plant. The lessee must, at the request of the Minister, produce the surveying documents concerning the building so affected according to the instructions and to the satisfaction of the Service de l'arpentage of the Ministère.
- 8.15 If the lessee neglects to respect his obligations, the rights may be revoked.
- 8.16 At the end of the lease contract, the government becomes the owner, without compensation, of the constructions, equipment and other improvements located on the leased lands theretofore used to operate the leased hydraulic forces.
However, the government may waive this at any time before the expiration of the lease contract. Should this happen, the lessee will remain responsible, after termination of the lease contract, for maintaining the works in accordance with the approved plans and estimates, failing which the government may require demolition, at the lessee's cost, of the works and restoration of the lands to their original condition.
- 8.17 The lessee has a period of three years from the signature of the lease contract for a disused site, and a period of five years for an undeveloped site, to achieve the start of commercial service.
- 8.18 Administrative costs related to the lease contract are the lessee's responsibility. These costs are established under the regulation cited in item 8.3 and are indexed as set out in section 8.6.

9. **Monitoring and inspection**

- 9.1 Any modification to the selected tender must be authorized by the Ministère and Hydro-Québec. The surveying documents required for this modification must be produced according to the instructions and to the satisfaction of the Service de l'arpentage of the Ministère.
- 9.2 The lessee agrees to allow access to his books and records for the purposes of auditing to any person designated by the Minister.
- 9.3 The lessee agrees to allow access to the sites and facilities for the purposes of inspection to any person designated by the Minister or by the Minister of the Environment.

10. **General provisions**

- 10.1 The provisions of chapter 8 on the duties and obligations of the lessee and the provisions of chapter 9 on monitoring and inspection do not exempt the lessee from the requirements of the Dam Safety Act.
- 10.2 The rights leased, granted or surrendered to a lessee under this regime cannot be alienated, surrendered or otherwise transferred, in whole or in part, before the fifth anniversary of the signature of the lease contract. After this date, they cannot be transferred without the authorization of the ministers.
- 10.3 From the date of the Minister's notice to the selected promoter, any change in the control of the promoter or the lessee must be approved by the ministers, unless it is not a company listed on the stock market. The Minister may decide to maintain or revoke his intention of recommending that the government lease the hydraulic forces. After signature of the lease contract, the ministers may decide to maintain or cancel the contract.
- 10.4 The rights granted by the ministers in the lease contract may be surrendered as a guarantee to a lender.
Where the lender executes his guarantee, the rights and obligations of the lessee are transferred to him and any surrender, alienation or other transfer by the lender requires the authorization of the ministers.

11. **Specific provisions**

- 11.1 The Minister may submit to the government, in accordance with this regime, lists of hydraulic sites eligible for leasing.