



Fast

FACTS

CANADIAN CENTRE FOR POLICY ALTERNATIVES - MANITOBA

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Under Cover of COVID, Beware Bill 44

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On April 15th, after the province went into lockdown, the Conservatives tried to pass Bill 44 the Public Utilities Ratepayer Protection and Regulatory Reform Act in an emergency sitting of the legislature. The Bill introduces significant changes to the Public Utilities Board Act, the Manitoba Hydro Act, the Manitoba Public Insurance Corporation Act and the City of Winnipeg Charter.

The emergency sitting was ostensibly required to quickly pass legislation required to deal with the pandemic. But the Conservatives also tried to pass eight other bills, including Bill 44, none of which had anything to do with the pandemic. All bills were to be expedited to Second Reading without debate or input from Manitobans. The Opposition NDP was able to convince the Conservatives to deal only with the legislation relative to COVID19. This was not the first time the sitting government tried to rush legislation through without debate.

Bill 44 is clearly a means to bend the Public Utility Board (PUB) to the Conservatives' will by undermining its ability to protect the public interest.

The PUB currently regulates retail electricity rates and oversees approval of capital projects such as the Keeyask Generating Station and Bipole III. It conducted Needs for and Alternatives to (NFAT) hearings for both projects. A June 2014 hearing reviewed Manitoba Hydro's preferred plan which included the Keeyask

and Conawapa generating stations. Five organizations were granted intervenor status and eight independent expert consultants provided testimony. After 43 days of evidence, the panel approved the Keeyask and the 750 MW US transmission interconnection projects.

Manitoba Hydro's estimates for the amount of debt it would take on for Keeyask were discussed at the hearings and approved by the PUB. Financing was raised in the normal matter, despite the Conservatives' current angst over the state of the utility's debt-equity ratio. Since taking power and re-populating the Hydro PUB, their 2017 attempt to significantly increase hydro rates to pay down the debt was thwarted by the PUB, partly based on the testimony of intervenors such as the Consumer Association of Canada and Winnipeg Harvest.

In response to such rulings, Bill 44 brings in a transitional period ending March 31, 2024 during which time Cabinet – after consulting with the Minister and the PUB - can increase hydro rates to any level. It can do so without an independent expert review process or consumer testimony. This means that stake holders like Manitoba Keewatinowi Okimakanak or Winnipeg Harvest will no longer be able to bring forward their concerns at hearings. Hydro rates could increase as much as 7.9%/year, as per Manitoba Hydro's 2017 proposal that was rejected by the PUB. Once the transitional period is over, rate increases

there is an alternative.

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will be capped at 4%.

The Conservatives' concerns over Manitoba Hydro's finances are driving this push to increase rates, concerns that were countered by the PUB's 2017 report when it found:

While the focus of Manitoba Hydro may be on the financial risks faced by the Utility, the PUB's role is broader. As noted above, to set rates in the public interest, the PUB considers not only the financial health of Manitoba Hydro. Rather, the PUB must balance the financial health of Manitoba Hydro with the interest of ratepayers.

Bill 44 strips the PUB's ability to make such rulings, and requires the corporation to achieve targeted debt-to-capitalization ratios by raising rates to whatever amount is required to meet the targets. The PUB had not only rejected the idea that Manitoba Hydro was in immediate financial trouble, it noted the prediction that Hydro's payment of water rental, capital tax and debt guarantee fees should double by the early 2030s as the benefits from the capital expansion are realized. These increases could be used to offset rate increases on low-income customers.

The 2014 NFAT report concluded that "A significant concern of the Panel is the impact of Manitoba Hydro's projected rate increases over the next 20 years on lower income and vulnerable customers . . ." Fast forward to Bill 44: "Rates for different customers or classes of customers must not differ based on affordability or other socio-economic factors." This amendment is clearly in response to the PUB's 2017 recommendation that Manitoba Hydro establish a First Nations On-Reserve Residential class so communities would not face a rate increase in 2018/19. The PUB was moved by testimony presented by First Nation intervenors (who, under Bill 44, will have no means to express future concerns). Manitoba Hydro subsequently instigated legal proceedings against the ruling.

On June 9th, 2020, the Manitoba Court of Appeal ruled in favour of Manitoba Hydro and by extension against First

Nation communities that have suffered so much damage in the name of hydro development and that now pay extraordinarily high prices to heat their homes.

Finally, amendments to the Manitoba Hydro Act that will break up the utility's monopoly over the sale of electricity need close scrutiny. The Bill allows for the sale of power to recharge electric vehicles at public charging stations. Manitoba should be investing in such infrastructure, but in order to provide the same affordable, reliable power we have for our residential and industrial sectors, that power needs to be provided publicly by Manitoba Hydro.

The Bill also authorizes landlords, condominium corporations and housing cooperatives to produce and sell power to tenants. These provisions are controlled by a regulation made under a subsection of the Bill – a regulation that can be more easily changed than legislation. Will these customers pay the same rates as Manitoba Hydro residential customers? It's also not clear what protections or service guarantees these residents will have in the case of system failures and outages. They may face more costly and less reliable service, while Manitoba Hydro could lose revenue. Tax payers, Manitoba Hydro's de facto shareholders, should not accept such a loss.

Roughly 32% of Manitobans live in multi-family housing units, so these changes open up the door to substantial privatization of the residential market and greatly erode an invaluable public asset. Alarm bells should be ringing.

In an age of reconciliation, climate change, growing inequality and continental demand for renewable energy, Manitobans need to demand that Manitoba Hydro and the PUB be strengthened, not dismantled.

Pandemic or not, Bill 44 needs to be vigorously and publically debated.

Lynne Fernandez holds the Errol Black Chair in Labour Issues at the Canadian Centre for Policy Alternatives, MB.

References available upon request.