

[Preparing a Presentation on Bill 36, The Manitoba Hydro Amendment and Public Utilities Board Amendment Act](#)

A Guide by the PUB Coalition

September 2022

Introduction:

[Bill 36](#) amends *The Manitoba Hydro Act*, *The Public Utilities Board Act*, and *The Crown Corporations Governance and Accountability Act*. The PUB Coalition has created this guide to provide more insight into the main issues that concerned community members have brought to our attention. We hope this guide will help you prepare your presentation or letter.

If you signed up to speak to the [Standing Committee](#) you may want to focus on only the issues that resonate with you the most, as you have a maximum of 10 minutes (but you do not need to use all of this time).

For each of the “big issues”, we include a brief description of what this bill will change, why it matters, and some suggestions on how you might share your concerns with the committee.

This list is not exhaustive, nor should it be considered a requirement for presenting. It is designed simply to help people as they think about what they might say about Bill 36.

Issue: Bill 36 changes the factors considered when electricity rates are set in Manitoba.

Historically, the Public Utilities Board (PUB) was allowed to consider a range of things in determining the price of electricity. This includes information about Manitoba Hydro’s operations and business practices.

Bill 36 changes the list of things the PUB must consider when approving or modifying a rate increase request from Manitoba Hydro. For example, Manitoba Hydro will no longer be required to operate or provide information about a formal reserve/sinking fund, even though electricity revenues will be used to fund operating expenses and pay interest. Bill 36 also adds new factors, such as a new requirement that Manitoba Hydro be able to achieve a set debt-to-capitalization ratio (discussed further below).

Along with these changes to the way electricity rates are set, Bill 36 also allows the Cabinet to change the rules for regulating gas rates.

[Why this matters:](#)

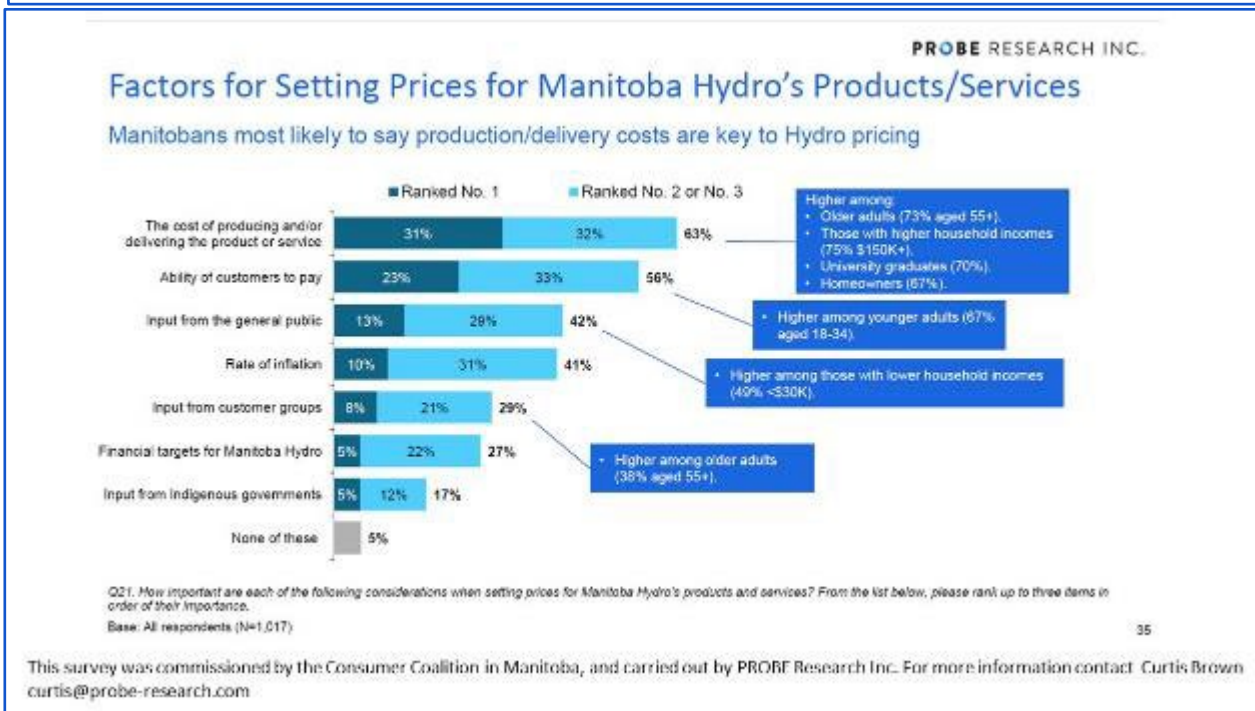
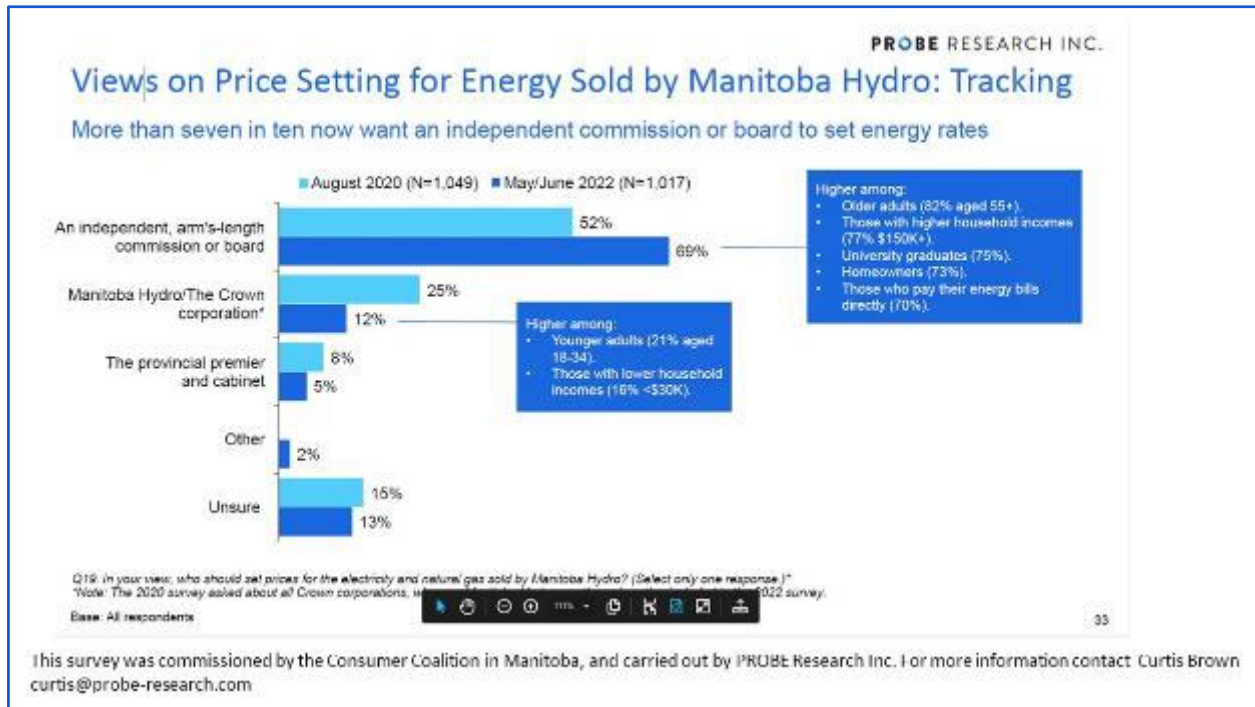
- Allowing the government to set a financial target in law sets a dangerous precedent.
- Bill 36 will reduce the PUB’s independence and does not allow for evidence from other intervenors to question and challenge the material presented by Manitoba Hydro.
- There is no information on the rules for setting gas rates - and by allowing these to be created through regulation, they could happen with no warning, or public review.

[What you might say:](#)

- According to recent public opinion polls commissioned by the Consumers’ Coalition, Manitobans want rates set by an Independent, arm’s length commission or board.

This is EXACTLY what the PUB is under current legal rules. However, Bill 36 reduces the independence of PUB, because it is no longer able to determine what (if any) financial targets are reasonable.

Below is what the public thinks should be considered in setting the rates:



Issue: Bill 36 adds specific deadlines for paying off Manitoba Hydro's debt that do not work.

Bill 36 adds a new target for Manitoba Hydro to pay off its debt. The debt-to-capitalization ratio is a financial metric that measures the total debt of Hydro with the value of its assets (dams, transmission infrastructure, other buildings, and so on). Under Bill 36, new financial targets are introduced (and 80% debt to capitalization Rate by March 31, 2035). The bill also establishes a maximum annual rate increase of 5%.

Why this matters:

- There is concern that the debt-to-capitalization ratio is too aggressive, and can't realistically be achieved even with the maximum 5% increase over many years (<https://www.youtube.com/watch?v=LE9YscKwTFY>). Bill 36 gives the PUB an impossible task when making decisions and prevents it from ensuring Manitoba Hydro's financial health into the future.
- There is little evidence that the debt-to-capitalization ratio is based on sound planning or is needed (<https://www.youtube.com/watch?v=LE9YscKwTFY>).
- Previous attempts to pass a bill similar to this one contained different debt to capitalization ratio targets, suggesting that the number chosen is arbitrary. The PUB has found in previous hearings that suggested debt to capitalization ratios were not necessary.
- The 5% annual increase limit was introduced as "protection from inflation". Increases of 5% or more are extremely rare historically, and Hydro is less affected by the inflation rate than the numbers that get published, which are for consumers. Hydro does not pay rent, tuition, buy alcohol, or many of the other goods that go into calculating the Consumer Price Index.

What you might say:

- Explaining the math might be the best way to discuss this issue. Check out this helpful youtube video with more information:

Manitoba's Public Utility Board - Why You Should Protect it from Bill 36 Featuring: Byron Williams, Director of the Public Interest Law Centre

Issue: Bill 36 could limit hearings from a live, in-person setting in favour of strictly written presentations. In some cases rate hearings could be held completely behind closed doors.

When Hydro wants to increase electricity prices, it has to make an application to the Public Utilities Board (PUB). The PUB holds a hearing on the application where they consider the information that Hydro presents to justify the price increase. These hearings also provide an opportunity for intervenors to submit their own evidence, and critique the information in Hydro's application. Typical intervenors at a PUB hearing include the Consumer's Association of Manitoba (which represents low-income Manitobans), the Manitoba Industrial Power Users Group, Indigenous organizations, and other businesses engaged in the provision or maintenance of electricity in Manitoba.

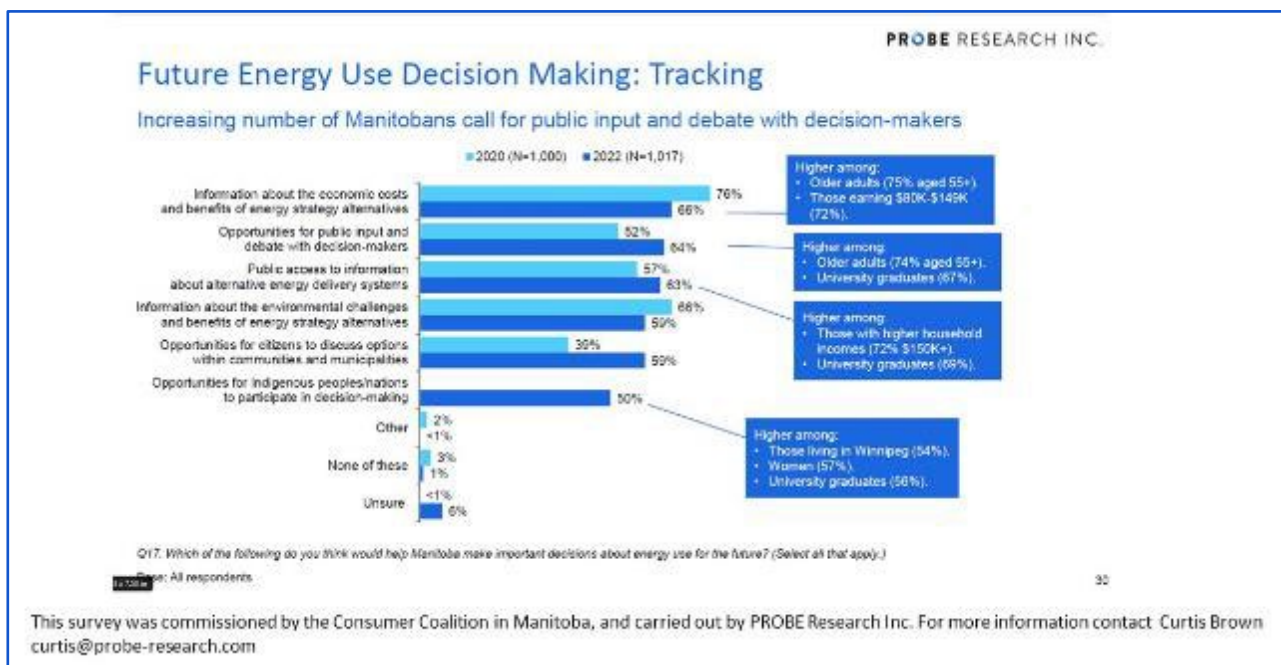
Bill 36 could change this process. Oral hearings are no longer required, the PUB may hold written hearings and make rules regarding how those hearings are conducted. Written hearings would limit public participation. The use of a written hearing is mentioned in the amendments to the Manitoba Hydro Act, where it states a written hearing is to be used when a rate review is warranted in the middle of a 3-year rate period.

Why this matters:

- Not all people feel comfortable with submitting written comments – some prefer to share information orally. How might this impact the ability of the public to participate in important decision? Does it limit the ability of key stakeholder groups to ask questions of expert witnesses?

What you might say:

- You might talk about the importance of transparency in decision-making, and why this is essential - particularly when Manitoba Hydro is a de facto-monopoly (and a crown corporation).
- According to recent public opinion polls commissioned by the Consumers’ Coalition, Manitobans think there should be public input on these decisions,



Issue: Bill 36 allows for the private retail sale of electricity without a clear framework or strategy on what will be permitted.

Currently, only Manitoba Hydro is allowed to sell power to the retail market. Bill 36 would allow regulations to be created that allow others to sell power in certain circumstances. This includes:

1. New rules that will allow Manitoba Hydro to permit a person to sell power for the purpose of recharging vehicles or if the power sold is on a landlord’s property,

condominium corporation, or housing cooperative for use by tenants/occupants/ other users of the property.

2. Allowing the Lieutenant Governor in Council to create regulations for power that is sold but is not transmitted over Hydro's transmission lines. This would allow non-Hydro entities to produce and sell power to off-grid communities.
3. Giving the Lieutenant Governor in Council powers to create regulations establishing the terms and conditions for other entities to sell power is generated from a "clean, renewable source of energy" or for research or experimental purposes.

Why this matters:

- Bill 36 will change the way electricity is sold in the province, allowing for individuals and corporations entry into the market. But these changes would be permitted through regulation, a law-making process which requires significantly less public debate or scrutiny than when a Bill becomes law.
- Bill 36 does not create a role for the PUB in regulating the sale of electricity in these contexts, leaving it up to the Government to decide.
- "Clean, renewable source of energy" (point 3) is not defined in the Act, and there is no universally accepted definition.
- The details of how these new electricity sales will work are not included in Bill 36. Thus, it is unclear how this Bill will change the way electricity is sold in Manitoba. The absence of detail and the lack of a clear strategy is concerning.

What you might say:

- While some of the changes contemplated in Bill 36, such as authorizing the sale of power for recharging electric vehicles, are important, and in fact may be necessary. However the way Bill 36 has been written makes it unclear how this new process is going to work and why this approach has been chosen.
- If we are going to open up the electricity market to other players - should we not have a broader public debate about the strengths and weaknesses of opening up the current monopoly? What are the impacts going to be for consumers?
- There are two major planning documents being developed by Manitoba Hydro that will provide important details that should be considered when developing new electricity rules. Shouldn't we wait to see what those documents have to say before changing the law?
- Reference another example of a law, policy, or decision-making process where "working out the details later" resulted in bigger or unexpected changes than originally thought.

Issue: Bill 36 is not in line with other legislation in Manitoba.

Bill 36 introduces new rules that require Manitoba Hydro to get approval from the Government of Manitoba for a new category of hydroelectric generation and transmission projects classified as a "major new facility". This new category of project is not consistent with the Classes of Development used in Manitoba's environmental assessment process and means that some hydroelectric projects that require the highest level of review under *The Environment Act* (Class 3), will not be considered big enough or expensive enough to fit the definition of a "major new facility".

Why this matters:

- Some large hydroelectric projects that will require the highest level of environmental assessment and public scrutiny under *The Environment Act* will not be required to be reviewed by the Public Utilities Board, reducing the amount of information available to the public and decision-makers about the potential impacts of proposed hydroelectric projects.
- Bill 36 could trigger a change in policy towards less environmental review of new electrical transmission and generation projects.

What you might say:

- Point out that the basis of these new review requirements is unclear and is inconsistent with current environmental legislation.
- Ask for all hydroelectric projects to require the highest level of public and government scrutiny and be reviewed by an independent tribunal before they are approved.

Issue: Bill 36 limits the Public Utilities Board from being able to comment on government policy and regulation.

Bill 36 (Section 10.2) will limit the ability of the PUB to comment on the validity of government regulations or other directives, such as a mandate letter given to Manitoba Hydro.

Why this matters:

- It is difficult to separate out rates and targets from the government context in which they are formed. For example, the Efficiency Manitoba's targets are set by legislation. How can the PUB fully comment on Efficiency Manitoba's plan in the absence of talking about those targets?
- Section 10.2 of Bill 36 prevents the PUB from being able to comment or investigate the financial targets the government is imposing on Hydro. Even though in the past, the PUB has previously found proposed financial targets unreasonable. Bill 36 reduces the PUB to being a "math-checker" rather than a valuable independent voice on Manitoba's energy policy.

What you might say:

- Support the PUB's ability to question and investigate all relevant information.
- In the past the PUB has made **valuable** comments about government policy with important implications for the province. For example:
 1. Since 2014, it recommended that Manitoba Hydro prepare an Integrated Resource Plan (NFAT decision, Recommendation 15, June 20, 2014), a recommendation which was endorsed by the Wall Commission, and is currently underway.
 2. In another example the PUB recommended that legislative changes be made to allow for Efficiency Manitoba to participate in utility-led Integrated resource

Planning (Efficiency Manitoba Decision, Recommendation 31, February 28, 2020).

- Applications that come before the PUB are shaped by government regulations and policy. Removing the ability of the Board to comment on the broader context, limits its ability to inform subsequent applications and we will lose valuable information about what policies should be in place (such as the importance of Integrated Resource Planning).

For more resources and information about the Protect the PUB Coalition, see:

<https://protectpub.ca/>

