



MANITOBA ECO-NETWORK

Winnipeg MB R3B 2B4
www.mbeconetwork.org

**Presentation by Heather M. Fast, Policy Advocacy Director
MB Social and Economic Development Standing Committee
October 6, 2022**

Tonight, I am speaking with you from Treaty 1, the territory of the Cree, Anishinaabeg, Oji-Cree, Dakota, and Dene Peoples, and the homeland of the Metis Peoples. It is also important to acknowledge that the water I drink comes from Treaty 3 territory and the power I use comes from Treaty 5 territory and beyond.

Since 1988, the Manitoba Eco-Network has promoted positive environmental action by supporting people and groups in our community. Our programming focuses on policy advocacy, engagement in consultation processes and developing capacity building tools that benefit the environmental non-profit sector and our member groups. We are a public interest environmental organization seeking to promote and facilitate good environmental governance and the protection of Manitoba's environment for the benefit of current and future generations.

The Manitoba Eco-Network is a member of the Protect the PUB Coalition and I am here today to provide insight into some of the many concerns about this Bill we have been hearing from Manitobans.

The main point of my comments is that we think Bill 36 should be withdrawn. As you will hear from the many presenters signed up to speak on this bill – there are a wide range of concerns that need to be addressed through public consultation before legislation of this type is enacted. In particular, there is a need to maintain the independence and effectiveness of the Public Utilities Board and ensure citizens are given meaningful opportunity to participate in decision-making processes.

My presentation today will therefore not be focused on suggested amendments to the Bill. Instead, I will discuss some of the key problems that Bill 36 will exacerbate if this Bill is not withdrawn.

But first, I would like to note that I specialize in and teach statutory interpretation and want to be clear that this omnibus bill has been a challenge for everyone to get through and understand – no matter what level of reading comprehension they may have. This is perhaps why political discourse on this bill has focused on such a small piece of the overall changes that could occur. Either way, this is why the use of omnibus legislation to implement complicated legal changes is discouraged by those of us who advocate for meaningful public engagement in legislative processes. It creates confusion and makes public participation even more difficult.

As you may already be aware, The Manitoba Eco-Network is a regular participant in public consultation processes and administrative tribunal proceedings, including public hearings held by the Public Utilities Board. We think the PUB plays an important role in Manitoba and is trusted by the public to provide independent oversight of important processes like the setting of gas and electricity rates, and review of the activities of Manitoba Hydro and Efficiency Manitoba, among other things.

This is why we are so concerned with the changes that will occur to The Public Utilities Board Act as a result of Part 2 of Bill 36 and other related sections. We are particularly concerned with proposed changes to restrict the authority of the PUB with respect to Manitoba Hydro and any analysis of regulations or directives of the Government of Manitoba.

The Manitoba Eco-Network is also concerned that a number of proposed changes will reduce opportunity for meaningful public participation in PUB hearings:

- This includes removing existing flexibility in terms of when rate hearings can be held;
- No longer requiring oral hearings and allowing for a written hearing to be held instead. (s 24.1);
AND
- Putting limits on hearing costs before knowing who wants to participate and what the scope of the hearing may be. (s 56; s 56.1)

Other parts of Bill 36 will also limit meaningful public involvement. For example, under the proposed new section 38.1 of *The Manitoba Hydro Act*, Hydro's integrated resource plans will not be required to undergo a public review by the PUB – it will be up to the discretion of the Minister to decide if they want the PUB's feedback or not. There will also be no required public consultation period associated with integrated resource plans. Manitoba Hydro will only be required to describe any stakeholder consultations that have been carried out, with no specific requirements that must be met to ensure meaningful engagement.

Overall, we strongly disagree with suggestions that Bill 36 will benefit the public. Bill 36 will in fact have the opposite impact and will reduce the opportunity for meaningful public participation in important energy governance processes. **For this reason alone, the Bill should be withdrawn.**

Another significant concern the Manitoba Eco-Network has with Bill 36 involves the creation of a new category of projects called “major new facilities”.

While we strongly encourage thorough review of all proposed large developments in Manitoba, the way “major new facility” has been defined in Part 1 of Bill 36 does not align with the way proposed new developments are classified in the provincial environmental assessment process. The Environment Act and its Regulations, which set out the requirements for environmental

assessment in Manitoba, divide projects into three categories: Class 1, Class 2 and Class 3. Each class requires an increasing level of scrutiny with Class 3 projects being recognized as having the most potential to cause negative impacts, and therefore requiring the highest level of review and public participation before approval.

It would seem to make the most sense that the definition of “major new facility” would align with the definition of a Class 3 development, so all Class 3 hydroelectric and transmission projects would be required to undergo an Needs For and Alternatives To (NFAT) review before such projects are licensed under The Environment Act. However, this is not the case. [100MW, no financial requirement - \$200,000,000]

- Based on the 200MW threshold and financial requirements imposed by the new s. 16(5) of The Manitoba Hydro Act, which are stricter than the requirements for a Class 3 development, only a small number of Class 3 developments will actually trigger an NFAT review.

While we would love to see a required NFAT review for all classes of proposed developments in Manitoba, at a minimum, all Class 3 developments should be required to undergo this additional review and the definition of “major new facility” should reflect this.

Although I have only discussed a few major issues today, I want to emphasize that there are many other problems with Bill 36 – as you will hear from my fellow presenters.

There is clearly more time needed to consult with concerned stakeholders and develop a new approach to energy governance in Manitoba that better aligns with public interests and other important legal processes like environmental assessment and licensing under The Environment Act. It is the best interest of all Manitobans to protect the independence and effectiveness of the PUB and ensure the public continues to have a meaningful role in review and decision-making processes.

As a result, the Manitoba Eco-Network strongly recommends Bill 36 be withdrawn.

Thank you for your time and consideration of our recommendations.