

Outline of Authorities
of
MIPUG

Relevant sections

1. See attached schedule for relevant sections.

General Principles

2. *Consumers' Association of Canada (Manitoba) Inc v Manitoba Hydro Electric Board*, 2005 MBCA 55, at para 65 “the interests of the utility's ratepayers, and the financial health of the utility. Together, and in the broadest interpretation, these interests represent the general public interest.”
3. *Brandon Transit Consumers Association Inc. v. Brandon (City)* (1985) 34 Man. R. (2d) 36 (C.A.) at para. 35 "In determining a just and reasonable rate, the objective of the Board is to protect both the customer and utility, and to safeguard the overall public interest. The actual determination of rates is a complicated exercise. One must keep in mind the 'cost of service' concept as far as the utility is concerned. The concepts of 'value of service' and 'quality of service' are both of importance to the customers of the utility."
4. *ATCO Gas and Pipelines Ltd. v. Alberta (Utilities Commission)*, 2015 SCC 45 - onus of proof on Utility and review of concept of “just and reasonable”.
5. *Elmira Water, Light & R.R.*, 1922 D Pub. Util. Rep. (PUR) 231, 238 “Consumers should not pay in rates for property not presently concerned in the service rendered, unless- (1) Conditions exist pointing to its immediate future use; or (2) Unless the property is such that it should be maintained for reasonable emergency or substitute service; and in studying these two exceptions the economic factor should be carefully considered.”

6. *Shell Oil Co. v. F.P.C.* 52 F. 2d 1061 at pp. 1083-84 (5th Cir 1975) The “long and often judicially approved practice of basing rates on cost carries a substantial presumption of validity which places a heavy burden on those who would refute it”.

7. Goodman, L. S.: *The Process of Ratemaking*: 1998: Public Utilities Reports Inc. Vienna, Virginia; vol. 1 at pages 16-19, 130, 279-281.

8. MIPUG also intends to rely on various Canadian cases which support the principle that cost causation should be given substantial weight in a cost of service jurisdiction.

C.C.S.M. c. C336

The Crown Corporations Public Review and Accountability Act

(Assented to December 20, 1988)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:

PART I

DEFINITIONS AND APPLICATION

Definitions

1 In Parts I to IV of this Act,

"**board**" means the board of directors or other governing body of a corporation and includes a committee of the board or governing body; (« conseil »)

"**corporation**" means a corporation or other body to which this Act applies pursuant to section 2; (« corporation »)

"**council**" means the Crown Corporations Council established in section 4; (« Conseil »)

"**director**" means a person designated by the legislation governing a corporation as a director, board member or commissioner and includes any other person who exercises powers similar to those of a director in relation to the corporation; (« administrateur »)

"**minister**" means the member of the Executive Council charged by the Lieutenant Governor in Council with the administration of this Act; (« ministre »)

"**officer**" means the chairperson or vice-chairperson of the board of directors, the chief executive officer, president, vice-president, secretary, treasurer, comptroller, general manager, managing director or any other individual who performs functions for a corporation similar to those normally performed by an individual occupying any such office. (« dirigeant »)

Application of Act

2(1) This Act applies to Manitoba Hydro and The Manitoba Public Insurance Corporation.

PART IV

PUBLIC UTILITIES BOARD REVIEW OF RATES

Hydro and MPIC rates review

26(1) Notwithstanding any other Act or law, rates for services provided by Manitoba Hydro and the Manitoba Public Insurance Corporation shall be reviewed by The Public Utilities Board under *The Public Utilities Board Act* and no change in rates for services shall be made and no new rates for services shall be introduced without the approval of The Public Utilities Board.

Definition, "rates for services"

26(2) For the purposes of this Part, "**rates for services**" means

(a) repealed, S.M. 1995, c. 33, s. 5;

(b) in the case of Manitoba Hydro, prices charged by that corporation with respect to the provision of power as defined in *The Manitoba Hydro Act*;

(c) in the case of the Manitoba Public Insurance Corporation, rate bases and premiums charged with respect to compulsory driver and vehicle insurance provided by that corporation.

Application of Public Utilities Board Act

26(3) *The Public Utilities Board Act* applies with any necessary changes to a review pursuant to this Part of rates for services.

Factors to be considered, hearings

26(4) In reaching a decision pursuant to this Part, The Public Utilities Board may

(a) take into consideration

- (i) the amount required to provide sufficient moneys to cover operating, maintenance and administration expenses of the corporation,
- (ii) interest and expenses on debt incurred for the purposes of the corporation by the government,
- (iii) interest on debt incurred by the corporation,
- (iv) reserves for replacement, renewal and obsolescence of works of the corporation,
- (v) any other reserves that are necessary for the maintenance, operation, and replacement of works of the corporation,
- (vi) liabilities of the corporation for pension benefits and other employee benefit programs;
- (vii) any other payments that are required to be made out of the revenue of the corporation,
- (viii) any compelling policy considerations that the board considers relevant to the matter,
- (ix) any other factors that the board considers relevant to the matter; and

(b) hear submissions from any persons or groups or classes of persons or groups who, in the opinion of the board, have an interest in the matter.

Manitoba Hydro

26(6) In conducting a review under this Part of rates for services of Manitoba Hydro, The Public Utilities Board must take into consideration, in addition to the factors described in subsection (4), the costs to be incurred by Manitoba Hydro in respect of Efficiency Manitoba, as required under *The Efficiency Manitoba Act*.

.....

Multi-year approvals

27(1) A corporation may submit for the approval of The Public Utilities Board pursuant to this Part proposals regarding rates for services relating to a period of not more than three years and the board shall identify in its order the change approved, if any, with respect to each year.

Increases not cumulative

27(2) No corporation shall increase rates for services by an amount in any year that exceeds the amount approved for that year by The Public Utilities Board or introduce new rates for services in any year other than new rates for services approved for introduction in that year by The Public Utilities Board.

Changed circumstances

27(3) Where The Public Utilities Board is satisfied that the circumstances of a corporation have changed substantially, The Public Utilities Board may, of its own motion or on the application of the corporation or an interested person, review an order made pursuant to this section and modify the order in any manner that The Public Utilities Board considers reasonable and justified in the circumstances.

Compensation or refunds

28 When a new rate for services or an increased rate is allowed pursuant to an interim order and a final order does not allow any changes or allows changes other than those permitted in the interim order, The Public

Utilities Board may make any order to compensate for or to refund any excess amounts collected by the corporation that it considers necessary and appropriate in the circumstances.

Citation

29 Parts I to IV of this Act may be cited as *The Crown Corporations Public Review and Accountability Act* and may be published in the *Continuing Consolidation of the Statutes of Manitoba* under that title and may be referred to as Chapter C336 of those Statutes.

NOTE: Section 3, Part IV, subsections 34(4) to (9) and 37(4), section 38, and subsection 39(6) were proclaimed in force January 17, 1989. Sections 4 to 12 were proclaimed in force June 5, 1989. Remainder of S.M. 1988-89, c. 35, was proclaimed in force July 1, 1989.

C.C.S.M. c. P280

The Public Utilities Board Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:

Definitions

1 In this Act,

"**board**" means The Public Utilities Board continued under this Act; (« Régie »)

"**chairman**" means the chairman of the board designated as such under section 5; (« président »)

"**company**" includes every association, company, corporation or syndicate of persons, whether incorporated or unincorporated; (« compagnie »)

"**member**" means a member of the board; (« membre »)

"**minister**" means the member of the Executive Council charged by the Lieutenant Governor in Council with the administration of this Act; (« ministre »)

"**municipality**" means a city, town, village, rural municipality or local government district; and "**municipal**" has a corresponding meaning; (« municipalité »)

"**owner of a public utility**" or "**owner**" includes

(a) every corporation, including municipal corporations, and every person, firm, or association of persons the business or operations whereof are subject to the authority of the Legislature; and

(b) their lessees, trustees, liquidators or receivers appointed by any court;

that own, operate, manage or control any public utility; (« propriétaire d'un service public » ou « propriétaire »)

"**public utility**" means, subject to subsections 2(2) and 2(3), any system, works, plant, pipe line, equipment or service

(a) for the transmission of telegraph or telephone messages; or

(b) for the conveyance of persons or goods over a railway, street railway, or tramway, or by motor bus or truck; or

(c) for the production, transmission, delivery, or furnishing of gas, whether natural or manufactured, oil or other fluid petroleum products, water, heat, light, or power;

either directly or indirectly, to or for the public, and includes all such carried on by or for the owner or a municipality or the Government of Manitoba, and also includes any system, works, plant, pipe line, equipment, or service, declared to be a public utility under clause 2(4)(a), a pipeline declared to be a public utility under clause 2(4)(b), and a system of sewage collection or disposal declared to be a public utility under subsection 2(6). (« service public »)

S.M. 1988-89, c. 11, s. 19; S.M. 1992, c. 58, s. 28; S.M. 1993, c. 4, s. 235.

Application of Act

2(1) Subject to subsections (5) and (5.1), this Act applies

(a) to all public utilities owned or operated by, or under the control, directly or indirectly, of the Government of Manitoba or any municipality in the province;

(b) to all public utilities owned or operated by, or under the control of, any company or corporation that is subject to the legislative authority of the province, or which has by virtue of any agreement with any municipality, submitted to the jurisdiction and control of the board;

(c) to every person, company, or corporation, and local authority owning, operating, or controlling any public utility, including any railway, street railway, or tramway, to which the jurisdiction of the Legislature extends.

Application to Manitoba Hydro

2(5) Subject to Part IV of *The Crown Corporations Public Review and Accountability Act* and except for the purposes of conducting a public hearing in respect of an application made to the board under subsection 38(2) or 50(4) of *The Manitoba Hydro Act*, this Act, other than subsection 83(4) and the regulations under that subsection, does not apply to Manitoba Hydro and the board has no jurisdiction or authority over Manitoba Hydro.

PROCEDURE

Procedure governed by rules

24(1) All hearings and investigations conducted by the board shall be governed by rules adopted by the board.

Rules of evidence not binding on board

24(2) The board is not bound by the technical rules of legal evidence.

Rules of practice, their publication

24(3) The board may make rules of practice, not inconsistent with this Act, regulating its procedure and the times of its sittings, but the rules do not come into force until they are published in *The Manitoba Gazette*.

Board to have powers of Court of Queen's Bench in certain matters

24(4) The board, except as herein otherwise provided, as respects the attendance and examination of witnesses, the amendment of proceedings, the production and inspection of documents, the enforcement of its orders, the payment of costs, and all other matters necessary or proper for the due exercise of its powers, or otherwise for carrying any of its powers into effect, has all such powers, rights, and privileges as are vested in the Court of Queen's Bench or a judge thereof.

Witnesses

24(5) The procedure relating to the attendance of witnesses before the board is that from time to time in force in the Court of Queen's Bench; but a summons to a witness may be signed by a member or secretary of the board.

Power to require doing of acts

28(1) In matters within its jurisdiction, the board may order and require any owner of a public utility, person, municipality, or other corporation to do any act, matter, or thing that the owner of the public utility, person, municipality, or other corporation is or may be required to do under this Act or any other Act of the Legislature or under any order, regulation, direction, or agreement.

Method of performance

28(2) Any act, matter, or thing ordered and required to be done under subsection (1) shall be done

(a) forthwith, or within or at any time specified in the order; and

(b) in any manner prescribed by the board, so far as it is not inconsistent with this Act or any other Act of the Legislature conferring jurisdiction upon the board.

In case of default, board may authorize doing of act

29(1) Where default is made by any owner of a public utility, person, municipality, or corporation in the doing of any act, matter, or thing, that the board has authority, under this or any other Act of the Legislature, to direct and has directed to be done, the board may authorize such person as it sees fit to do the act, matter or thing.

Recovery of expense

29(2) In every case to which subsection (1) applies the person so authorized may do the act, matter or thing, and the expense incurred in the doing thereof may be recovered from the owner of the public utility, person, municipality or corporation in default as money paid for and at the request of the owner of a public utility, person, municipality or corporation; and the certificate of the board of the amount so expended is conclusive evidence thereof.

Reports to board, expense of

30 The board may appoint or direct any person to make an inquiry and report upon any application, complaint, or dispute pending before the board, or any matter or thing over which it has jurisdiction under this Act or any other Act of the Legislature; and it may order and direct by whom and in what proportion the costs and expenses incurred in making the inquiry and report shall be paid, and may fix the amount of the costs and expenses.

ORDERS OF THE BOARD

Power to order partial or other relief

44(1) Upon any application to it, the board may make an order granting the whole or part only of the application or may grant such further or other relief in addition to or in substitution for that applied for, as fully and in all respects as if the application had been for such partial, further or other relief.

Review of orders

44(2) The board may require a re-hearing of an application before making any decision thereon.

Varying order

44(3) The board may review, rescind, change, alter, or vary any decision or order made by it.

Interim orders ex parte

45 The board may, if the special circumstances of any case so require, make an interim ex parte order authorizing, requiring, or forbidding, anything to be done that the board would be empowered on application, petition, notice, and hearing to authorize, require, or forbid; but no such order shall be made for any longer time than the board deems necessary to enable the matter to be heard and determined, on such application, petition, notice or hearing.

Extension of time for compliance with order

46 Where any work, act, matter, or thing, by any order, regulation, or decision of the board is required to be done, performed, or completed within a specified time, the board may, if the circumstances appear so to require, upon such notice as it deems reasonable, or, in its discretion, without notice, extend the time so specified.

Orders subject to conditions

47(1) The board may direct, in any order, that the order or any portion or provision thereof shall come into force

- (a) at a future fixed time; or
- (b) upon the happening of any contingency, event, or condition specified in the order; or
- (c) upon the performance to the satisfaction of the board, or a person named in the order for the purpose, of any terms that the board may impose upon any party interested;

and the board may direct that the whole or any portion of the order shall have force for a limited time, or until the happening of a specified event.

Interim order

47(2) The board may, instead of making an order final in the first instance, make an interim order and reserve further directions, either for an adjourned hearing of the matter, or for further application.

Orders involving expense to parties to be after notice and hearing

48 The board shall not make an order involving any outlay, loss, or deprivation to any owner of a public utility, or any person without due notice and full opportunity to all parties concerned, to produce evidence and be heard at a public hearing of the board, except in case of urgency; and in that case, as soon as practicable thereafter, the board shall, on the application of any party affected by the order, re-hear and reconsider the matter and make such order as to the board seems just.

Contents of order

49(1) The board need not show upon the face of an order that any proceeding or notice was had or taken, or that there existed any circumstances necessary to give it jurisdiction to make the order.

Substantial compliance with Act only required

49(2) A substantial compliance with the requirements of this Act is sufficient to give effect to all the orders, rules, acts, regulations, or decisions of the board; and they are not inoperative, illegal, or void for any omission of a technical nature with respect thereto.

When orders effective

50(1) Every order of the board comes into effect at the time prescribed by the order, and its operation is not suspended by an appeal to The Court of Appeal for which provision is hereinafter made, unless otherwise ordered by the judge granting leave to appeal or by the court on hearing of the appeal; but the board itself may suspend the operation of the order from which appeal is made until the decision of The Court of Appeal is rendered.

Lapse of order

50(2) Except where the board extends the time for taking the action, unless action under an order of the board authorizing any action to be taken, is taken within one year of the date of the order, the order is void at the expiration of one year from its date.

.....

Investigation of excess charges

64(1) Where

- (a) it is made to appear to the board, upon the complaint of an owner of a public utility, or of any municipality or person having an interest, present or contingent, in the matter in respect of which the complaint is made, that there is reason to believe that the tolls or charges demanded by any owner of a public utility exceed what is just and reasonable, having regard to the nature and quality of the service rendered or of the commodity supplied; or
- (b) requested to do so by the minister; or
- (c) in the opinion of the board it is expedient to do so, on its own initiative;

the board may proceed to hold such investigation as it sees fit into all matters relating to the nature and quality of the service or the commodity in question, or to the performance of the service and the tolls or charges demanded therefor.

Order on investigation

64(2) Upon completion of an investigation made under subsection (1), the board may make such order respecting the improvement of the service or commodity and as to the tolls or charges demanded, as seems to it to be just and reasonable, and may disallow or change, as it thinks reasonable, any such tolls or charges as, in its opinion, are excessive, unjust, or unreasonable or unjustly discriminate between different persons or different municipalities, but subject, however, to such of the provisions of any contract existing between the owner and a municipality at the time the complaint is made as the board considers fair and reasonable.

Increase or decrease of contractual rate

65(1) Where, by any contract between an owner of a public utility and any municipality, other corporation, or person for the supply of any commodity or service by means of the public utility, the rate, toll or charge is agreed upon either as a fixed or variable rate, toll, or charge, or a maximum or minimum rate, toll, or charge, and whether the rate, toll, or charge is agreed upon with respect to a present or future supply of an existing or non-existing commodity or service, then, notwithstanding any other provision of this Act, upon the application of the owner, municipality, corporation or person, and if, upon the hearing of the application, it is shown that the rate, toll, or charge is insufficient, excessive, unjust, or unreasonable, the board may change the rate, toll or charge to such other greater or lesser rate, toll or charge, as it deems fair and reasonable.

.....

Orders as to utilities

77 The board may, by order in writing after notice to, and hearing of, the parties interested,

- (a) fix just and reasonable individual rates, joint rates, tolls, charges, or schedules thereof, as well as commutation, mileage, and other special rates that shall be imposed, observed, and followed thereafter, by any owner of a public utility wherever the board determines that any existing individual rate, joint rate, roll, charge or schedule thereof or commutation, mileage, or other special rate is unjust, unreasonable, insufficient, or unjustly discriminatory or preferential;

(Note, s. 77 is not specifically applicable to Manitoba Hydro but informs us of the usual role of the PUB as a regulator of monopolies. It is implicit that in giving jurisdiction to the PUB, a specialized regulator, it would apply usual tests and recognized regulatory principles.).....

C.C.S.M. c. H190

The Manitoba Hydro Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:

Definitions

1 In this Act,

"**board**" means the board for which provision is made in section 5; (« conseil »)

"**corporation**" means The Manitoba Hydro-Electric Board continued by this Act and otherwise referred to as Manitoba Hydro; (« Régie »)

"**customer**" includes any user or purchaser of power or any potential user or purchaser of power; (« client »)

"**fuels**" means all forms of energy other than electrical power, and includes, without limitation, natural, manufactured and mixed gas, liquefied petroleum gas, oil and coal; (« combustibles »)

"**generation**" means production by hydraulic, electrical, pneumatic, steam, internal combustion engine, gas, oil, atomic, or any other process; (« production »)

"**Her Majesty**" means Her Majesty the Queen in right of the Province of Manitoba; (« Sa Majesté »)

"**interconnection works**" means property, including land and works, upon or adjacent to the boundary line between Manitoba and any other province or any state of the United States and situated in Manitoba or in that other province or state, or partly in one and partly in the other of them; (« ouvrages d'interconnexion »)

"**land**" means real property of whatsoever nature or kind and includes tenements, hereditaments, and appurtenances, leaseholds, and any estate, term, easement, right or interest in, to, over, under or affecting land, including rights-of-way, and waters, water rights, water powers, and water privileges; (« biens-fonds »)

"**minister**" means the member of the Executive Council charged by the Lieutenant Governor in Council with the administration of this Act; (« ministre »)

"**municipality**" means a city, town, village, rural municipality or local government district and includes the City of Winnipeg, and also includes a school district, school area, or school division; and "**municipal**" has a corresponding meaning; (« municipalité »)

"**orders**" include orders made under this Act; (« décrets »)

"**owner**" includes a mortgagee, lessee, tenant, occupant, or any person entitled to any estate or interest in property, land, or works, and a guardian, committee, substitute decision maker for property as defined in *The Vulnerable Persons Living with a Mental Disability Act*, executor, administrator or trustee in whom property, land, or works, or any estate or interest therein is vested; (« propriétaire »)

"**person**" includes a firm, corporation, commission, whether governmental, municipal, or otherwise, and the heirs, executors, administrators, successors, and assigns of a person; (« personne »)

"**power**" means electrical power howsoever generated, and includes electrical energy; (« énergie »)

"**power plant**" includes all land and works, constructed, acquired, used or adapted, or that might be used or adapted, for or in connection with the development or generation of power; (« installation de production »)

"**power project**" includes any charter, franchise, privilege, or other right, or land, or works, acquired, or proposed to be acquired, by any person with a view to the development or generation of power, or any plans, surveys, or data made or assembled with a view to the development or generation of power; (« programme énergétique »)

"**power site**" includes any land, or any lake, river, stream, watercourse, or body of water, water licence or privilege, or reservoir, dam, water storage, sluice, canal, raceway, tunnel, or aqueduct, that is used or that might be used for or in connection with the development or generation of power; (« site de production »)

"property" includes any and all property, movable, immovable, real, personal, mixed, tangible or intangible; (« biens »)

"related business venture" means

- (a) a business venture to assist the corporation in carrying out its purposes and objects,
- (b) a business venture through which the corporation can market its products, services and expertise,
- (c) a business venture through which the corporation can utilize its property, or acquire and utilize other property to enhance the utilization of its property, for secondary purposes, or
- (d) any business venture related to fuels; (« entreprise commerciale connexe »)

"retail supply of power" means an arrangement, transaction or series of transactions which, in form or in substance, constitutes the sale or supply of power to the end-user of the power; (« fourniture d'énergie au détail »)

"separation of functions" means the functions of

- (a) the corporation,
- (b) any subsidiary, or
- (c) any other person,

as determined by the board, operated on an independent and separate basis by the corporation, any subsidiary, any other person or any combination thereof; (« séparation des fonctions »)

"subsidiary" means a company of which the corporation owns, directly or indirectly, all of its shares; (« filiale »)

"supply" includes delivery, dealing in, and sale; (« fournir »)

"works" includes all roads, railroads, plant, machinery, buildings, structures, erections, constructions, installations, materials, devices, fittings, apparatus, appliances, equipment, and other property for the development, generation, transmission, distribution, or supply of power. (« ouvrages »)

S.M. 1993, c. 29, s. 187; S.M. 1997, c. 55, s. 2.

Purposes and objects of Act

2 The purposes and objects of this Act are to provide for the continuance of a supply of power adequate for the needs of the province, and to engage in and to promote economy and efficiency in the development, generation, transmission, distribution, supply and end-use of power and, in addition, are

- (a) to provide and market products, services and expertise related to the development, generation, transmission, distribution, supply and end-use of power, within and outside the province; and
- (b) to market and supply power to persons outside the province on terms and conditions acceptable to the board.

S.M. 1997, c. 55, s. 3.

PART I THE CORPORATION

Continuation of corporation

3 The corporation as heretofore constituted, established, and incorporated shall continue to be a body corporate consisting of the members of the board.

References to "Manitoba Hydro"

4(1) The corporation may be referred to, or shortly described, in Acts of the Legislature and otherwise, as: "Manitoba Hydro".

Agent of Crown

4(2) The corporation is an agent of Her Majesty.

Holding of property

4(3) Property owned or acquired by the corporation shall be held or acquired in the name of the corporation.

S.M. 1997, c. 55, s. 4.

POWERS

General powers of board

14 The board on behalf of the corporation may perform, execute, and carry out, all the duties, powers, and functions imposed or conferred upon it or upon the corporation by this Act; and for that purpose the board may do all and any acts and things that are necessary for or incidental to the performance, execution, or carrying out, of any such duty, power, or function, including the passing of such by-laws and resolutions as the board may deem advisable.

Powers of board

15(1) The board, on behalf of the corporation, may

(a) make such by-laws, not contrary to law or this Act, as it deems necessary or advisable for the conduct of the affairs of the corporation, and, without limiting the generality of the foregoing, with respect to the time and place of the calling and holding of all meetings of the board, procedure in all things to be followed at such meetings, and generally with respect to the conduct in all other particulars of the affairs of the corporation, and may repeal, amend, or re-enact them;

(b) appoint and employ such officers and employees of the corporation as the board deems necessary for the transaction of the business of the corporation and prescribe the duties of any such officers and employees and fix their remuneration;

(c) obtain the services of such engineers, accountants, and other professional persons as the board deems necessary for the proper and convenient transaction of the business of the corporation, and fix their remuneration;

(d) make such inquiries and investigations into all or any matters, relating to the development, generation, transmission, distribution, supply, purchase, or use of power, actual or potential, at such times and places and in such manner as seems advisable to the board.

Corporation has powers of a natural person

15(1.1) In addition to the other powers set forth in this Act and subject to the limitations set forth in this Act, the corporation has the capacity, rights, powers and privileges of a natural person to carry out its purposes and objects and to carry on related business ventures, on such terms and conditions as the board deems proper.

Power to carry out purposes and objects of Act

15(1.2) Subject to subsection (1.3) and section 15.1, the corporation, or any subsidiary, may

(a) carry out the purposes and objects of this Act; or

(b) carry on related business ventures;

on behalf of the corporation, or the subsidiary, or, by way of a partnership, joint venture or any similar arrangement, with any other person, or by way of a company in which the corporation or a subsidiary owns shares or securities.

Approval of L.G. in C. required where aggregate value exceeds \$5,000,000.

15(1.3) The corporation or any subsidiary shall not, without the approval of the Lieutenant Governor in Council,

- (a) carry out the purposes and objects of the Act; or
- (b) carry on a related business venture;

by way of a partnership, joint venture or any similar arrangement, with any other person, or by way of a company in which the corporation or a subsidiary owns shares or securities, wherein the aggregate value of the investments of the corporation and any subsidiary in, and the obligations of the corporation and any subsidiary to, such partnership, joint venture, company or similar arrangement, with any other person, exceeds \$5,000,000.

Powers of corporation

15(2) The corporation may, for temporary purposes, and with or without the consent of the owner, enter, remain upon, take possession of, and use, any property, real or personal, and erect, make, or place thereon any structure, installation, or excavation, and flood and overflow any land, and accumulate and store water thereon.

Compensation

15(3) Where the corporation exercises the powers conferred under subsection (2), if it causes damage to the property of, or loss to, any person, it shall pay compensation therefor as in a case to which subsection 24(2) applies.

Transmission access

15(4) The corporation may enter into agreements, or issue a tariff prescribing terms and conditions and a rate schedule, under which the corporation may provide access to the transmission facilities of the corporation to any person entitled under section 21 to purchase power for resale in Manitoba or to any person for sale or use outside Manitoba.

Reliability

15(5) The corporation may set, coordinate and enforce standards and rules, for the security, reliability and quality control of the transmission and distribution lines, of any person other than the corporation, which lines are interconnected with the transmission and distribution lines of the corporation.

Rights where standards not observed

15(6) The corporation may, in addition to any other rights or remedies it may have, refuse to transmit or distribute power over, or receive power from, any transmission or distribution line, of any person other than the corporation, if the line is not operated in accordance with the standards and rules referred to in subsection (5) or any standards, rules, terms, conditions, guidelines or schedules adopted in accordance with section 16.3.

S.M. 1997, c. 55, s. 6; S.M. 2002, c. 45, s. 9.

Retail supply of power

15.2 No person other than the corporation shall engage in the retail supply of power in Manitoba.

S.M. 1997, c. 55, s. 6; S.M. 2002, c. 45, s. 9.

Powers of corporation with approval of L. G. in C.

16(1) With the approval of the Lieutenant Governor in Council the corporation may

- (a) acquire by purchase, lease, licence, or otherwise
 - (i) any power project, power site, and power plant;
 - (ii) that part of the undertaking, property, and assets (including works) of any person, relating to, or used in, the generation, distribution, or supply of power;
- (b) without the consent of the owner or persons interested therein, acquire, take, and expropriate land, including the right of entry to install, maintain and protect works and the right to impose restrictions on the use of any land, notwithstanding that the land which is subject to the restriction is not, or may not be, appurtenant or annexed to any land of the corporation;
- (c) require any person generating, transmitting, distributing, or supplying power, to supply such power to the corporation as the board may from time to time require or designate;
- (d) within such territorial or other limits as the Lieutenant Governor in Council may from time to time prescribe, control and regulate the development, generation, transmission, distribution, and supply, of power in Manitoba, and, for any of those purposes, control and regulate the flow of, and right to use for the generation of power, or any purpose connected therewith, the water in any lake, river, or watercourse, or other body of water in Manitoba, and the taking, diversion, storage, or pondage of any such water;
- (e) acquire by purchase, lease, licence or otherwise
 - (i) any real property outside Manitoba and erect, construct, maintain and operate, upon the real property so acquired, any works, or
 - (ii) interconnection works and maintain and operate the interconnection works so acquired;
- (f) enter into an agreement with Her Majesty in right of Canada or of any province, or with any commission or minister of the Government of Canada, or of any province, or with any state of the United States or any officer or representative thereof, or with any person interested in or affected by any interconnection works, as to the terms and conditions upon which the interconnection works and the works carried out thereon shall be carried on or exercised;
- (g) acquire for use in Manitoba power generated outside Manitoba by the government of any other province, or of any state of the United States, or by any person in that other province or state;
- (h) supply power generated in Manitoba to any other province or any state of the United States, or to any person in that other province or state;
- (i) sell, lease or otherwise dispose of any property of the corporation to a subsidiary or make any other investment in, or incur any obligation to, a subsidiary, where the aggregate value of the property, investments and obligations to the subsidiary exceeds \$5,000,000.;
- (i.1) develop new power generation stations;
- (j) enter into agreements and do all things proper or necessary for the due exercise of the powers mentioned in this section.

No approval required if less than \$5,000,000.

16(2) Notwithstanding subclause (1)(e)(i), the corporation shall not require the approval of the Lieutenant Governor in Council to acquire real property outside Manitoba if the purchase price of the real property is less than \$5,000,000.

S.M. 1997, c. 55, s. 7.

Subsidiaries

16.1(1) A subsidiary has the capacity, and subject to this Act and to the applicable laws of the jurisdictions in which the subsidiary carries on business, the rights, powers and privileges of a natural person.

L. G. in C. may limit rights, powers and obligations of subsidiaries

16.1(2) In the case of a subsidiary that carries on business outside Manitoba, the Lieutenant Governor in Council may, for the purposes of enabling the subsidiary to comply with the regulatory requirements of the jurisdiction in which it carries on business, specify the rights, powers and obligations of the corporation or a subsidiary set out in this Act which shall not apply to the subsidiary.

L.G. in C. to approve loans

16.1(3) A subsidiary shall not raise money by way of loan, on the credit of the subsidiary or otherwise, from any person other than the corporation, without the approval of the Lieutenant Governor in Council.

L.G. in C. approval required

16.1(4) A subsidiary shall not carry on an activity for which the corporation is required to obtain the approval of the Lieutenant Governor in Council without obtaining the approval of the Lieutenant Governor in Council.

Rights of board re subsidiaries

16.1(5) The board shall exercise all of the rights of a holder of shares or securities with respect to any subsidiary or any company of which it holds shares or securities, including the right to elect directors, as it deems proper.

S.M. 1997, c. 55, s. 8.

Separation of functions

16.2 Any rules and procedures for the separation of functions which the board has established for the purposes of pursuing opportunities to purchase and sell power within and outside Manitoba may be adopted, by regulation, by the Lieutenant Governor in Council, and upon such adoption such rules and procedures shall have the force of law.

S.M. 1997, c. 55, s. 8.

Adoption of codes and standards

16.3(1) For the purposes of pursuing opportunities to purchase and sell power within and outside Manitoba, the board may, subject to the approval of the Lieutenant Governor in Council,

(a) adopt, in whole or in part, any standards, rules, terms, conditions, guidelines or schedules, which are related to the planning, design or operation of generation or transmission facilities within an integrated regional power grid, established by the North American Electric Reliability Council, Mid-Continent Area Power Pool or any other industry organization, regional transmission group, regulatory body or other association or group or any other person;

(b) prescribe variations in, additions to or deletions from any standards, rules, terms, conditions, guidelines or schedules adopted under clause (a);

notwithstanding that the adoption of such standards, rules, terms, conditions, guidelines or schedules may constitute the delegation of powers or duties of the corporation to carry out or carry on certain functions to any other person.

Effect of adoption

16.3(2) The adoption of any standards, rules, terms, conditions, guidelines or schedules under clause (1)(a), in whole or in part and either in existing form or as altered under clause (1)(b), is deemed, on the approval of the board, to be an adoption of

(a) any subsequent amendment made to the standards, rules, terms, conditions, guidelines or schedules; and

(b) any new standards, rules, terms, conditions, guidelines or schedules subsequently substituted by the North American Electric Reliability Council, Mid-Continent Area Power Pool or any other industry organization, regional transmission group, regulatory body or other association or group or any other person, for the

standards, rules, terms, conditions, guidelines or schedules, and any new standards, rules, terms, conditions, guidelines or schedules so substituted are deemed to be subject to such alterations, with such modifications as the circumstances require, as may have been made in the adopted standards, rules, terms, conditions, guidelines or schedules under clause (1)(b).

S.M. 1997, c. 55, s. 8.

17 Repealed.

S.M. 1994, c. 3, s. 12.

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PART II

PROVISIONS RELATING TO DISTRIBUTION AND SUPPLY OF POWER

Limitation on supplying of power

21(1) Notwithstanding any Act of the Legislature, or the charter of any corporation, or any contract or franchise entered into or granted, no person shall supply power in any municipality or in any locality in unorganized territory without first having obtained the approval of the Lieutenant Governor in Council so to do, unless, on June 18, 1940, that person was supplying power in that municipality or locality.

No resumption where supplying of power discontinued

21(2) Where a person supplying power in a municipality or a locality in unorganized territory on June 18, 1940, subsequently ceases to supply power in that municipality or locality, that person shall not again, nor shall any other person, supply power in that municipality or locality without having first obtained the approval of the Lieutenant Governor in Council so to do.

Section not applicable

21(3) This section does not apply to the corporation.

Exclusive authority of corporation

22 Notwithstanding any provision to the contrary in any Act of the Legislature or in any regulation, rule, or by-law made under any such Act, the corporation has the sole and exclusive jurisdiction, right, and authority, over and with regard to all matters to which this Act applies in any place, locality, area, or territory in which the corporation supplies power to the actual user thereof or in which it is engaged or intends to be engaged in a program of construction with a view to supplying power therein.

PART III

GENERAL REVENUE AND BORROWING

Collection of revenues

29 The income and revenue arising from the operation of the corporation, whether from the sale of power or otherwise, shall be collected by the corporation.

Authority for temporary borrowing

30(1) With the approval of the Lieutenant Governor in Council, the corporation may, from time to time, borrow or raise money for temporary purposes by way of overdraft, line of credit, or loan, or otherwise upon the

credit of the corporation in such amounts, not exceeding in the aggregate the sum of \$500,000,000. of principal outstanding at any one time, upon such terms, for such periods, and upon such other conditions, as the corporation may determine.

Guarantee

30(2) The government may, on such terms as may be approved by the Lieutenant Governor in Council, guarantee the payment of the principal and interest on any borrowings of the corporation under this section.

Minister of Finance's approval

30(3) Where the corporation borrows or raises money under this section, otherwise than

- (a) by way of overdraft with a bank; or
- (b) by sale of its short term notes to a bank in lieu of borrowing by overdraft;

it shall do so only with the prior approval of the Minister of Finance, who, at the request of the corporation, may act as its agent in that behalf.

S.M. 1992, c. 8, s. 2.

Temporary advances by government

31 To the extent permitted by any Act of the Legislature the Lieutenant Governor in Council, on the recommendation of the Minister of Finance, may authorize the Minister of Finance to advance moneys to the corporation for its temporary purposes out of the Consolidated Fund; and every such advance shall be repaid by the corporation to the Minister of Finance at such times, and on such terms, as the Lieutenant Governor in Council may direct, together with interest thereon at such rate per annum as may be approved by the Lieutenant Governor in Council at the time of the making of the advance and from time to time.

Loans by government

32(1) To the extent permitted by any Act of the Legislature the Lieutenant Governor in Council may authorize the raising by way of loan, in the manner provided in *The Financial Administration Act* and *The Loans Act*, of such sums as the Lieutenant Governor in Council may deem requisite for any of the purposes of the corporation under this Act; and any such sums may be advanced to, and paid over by the Minister of Finance to, the corporation, and shall be repaid by it to the Minister of Finance at such times and on such terms as the Lieutenant Governor in Council may direct, together with interest thereon as provided in subsection (2).

Fixing of rate of interest

32(2) Where an advance is made to the corporation under subsection (1), the Lieutenant Governor in Council shall, by order in council at the time of making the advance, fix the rate of interest that shall be paid by the corporation on the sums so advanced, or on the balance thereof remaining from time to time outstanding and not repaid, during such period as is stated in the order; and after the expiry of that period the Minister of Finance shall, by an order in writing, fix, and alter from time to time, as may be required, the rate of interest that shall be paid by the corporation on the sums so advanced, or on the balance thereof as aforesaid, during any one or more subsequent periods that may be stated in any such order.

Power of corporation to borrow and to issue securities

33(1) Subject to the approval of the Lieutenant Governor in Council, and to subsection (2), the corporation may

- (a) raise money by way of loan on the credit of the corporation;
- (b) limit or increase the amount to be raised;
- (c) issue notes, bonds, debentures, or other securities of the corporation;

for the purposes of the corporation or for any related business venture; and, through the Minister of Finance, who shall be its agent in that behalf, it may

- (d) sell or otherwise dispose of the notes, bonds, debentures, or securities, for such sums, and at such prices, as are deemed expedient;
- (e) raise money by way of loan on any such securities;
- (f) pledge or hypothecate any such securities as collateral security; and
- (g) do any of those things.

Power of government to guarantee

34(1) The government may, on such terms as may be approved by the Lieutenant Governor in Council, guarantee the payment of the principal, interest, and premium, if any, of any notes, bonds, debentures, and other securities issued by the corporation; and the form and manner of any such guarantee shall be such as the Lieutenant Governor in Council may approve.

Signing of guarantees

34(2) The guarantee shall be signed by the Minister of Finance, or such other officer or officers as may be designated by the Lieutenant Governor in Council; and, upon being signed, the government is liable for the payment of the principal, interest, and premium, if any, of the notes, bonds, debentures, and securities guaranteed, according to the tenor thereof.

Discharge of liability under guarantee

34(3) In a case to which subsections (1) and (2) apply, the Lieutenant Governor in Council may discharge the liability resulting from the guarantee out of the Consolidated Fund, or out of the proceeds of securities of the government issued and sold for the purpose; and, in the hands of a holder of any such notes, bonds, debentures, or securities of the corporation, a guarantee so signed is conclusive evidence that compliance has been made with this section.

Signature of Minister of Finance, etc.

34(4) The signature of the Minister of Finance or of any such officer or officers for which provision is made in subsection (2) may be engraved, lithographed, printed, or otherwise mechanically reproduced, and the mechanically reproduced signature of any such person shall be conclusively deemed, for all purposes, the signature of that person and is binding upon the Government of Manitoba notwithstanding that the person whose signature is so reproduced may not have held office at the date of the notes, bonds, debentures, or other securities or at the date of the delivery thereof and notwithstanding that the person who holds any such office at the time when any such signature is affixed is not the person who holds that office at the date of the notes, bonds, debentures, or other securities or at the date of the delivery thereof.

Authority to raise loans in other currencies or in units of monetary value

35 Where this Act, or any other Act, authorizes the corporation to borrow or raise by way of loan a specific or maximum number of dollars by the issue and sale of notes, bonds, debentures, or other securities, it authorizes the borrowing, or raising by way of loan in whole or in part, of the same number of dollars of the currency of the United States; and if the amount of the loan is raised, in whole or in part, by the issue and sale of notes, bonds, debentures, or other securities payable in the currency of any country other than Canada or the United States or in units of monetary value, the Act authorizes the raising of an equivalent amount in that other currency or in units of monetary value calculated in accordance with the nominal rate of exchange between the Canadian dollar or the unit of monetary value, as the case may be, and the currency concerned on the business day next preceding the day on which the corporation authorizes the issue of the notes, bonds, debentures, or other securities, as that nominal rate is determined by any bank in Canada.

Price of power sold by corporation

39(1) The prices payable for power supplied by the corporation shall be such as to return to it in full the cost to the corporation, of supplying the power, including

(a) the necessary operating expenses of the corporation, including the cost of generating, purchasing, distributing, and supplying power and of operating, maintaining, repairing, and insuring the property and works of the corporation, and its costs of administration;

(b) all interest and debt service charges payable by the corporation upon, or in respect of, money advanced to or borrowed by, and all obligations assumed by, or the responsibility for the performance or implementation of which is an obligation of the corporation and used in or for the construction, purchase, acquisition, or operation, of the property and works of the corporation, including its working capital, less however the amount of any interest that it may collect on moneys owing to it;

(c) the sum that, in the opinion of the board, should be provided in each year for the reserves or funds to be established and maintained pursuant to subsection 40(1).

Fixing of price by corporation

39(2) Subject to Part IV of *The Crown Corporations Public Review and Accountability Act* and to subsection (2.1), the corporation may fix the prices to be charged for power supplied by the corporation.

Equalization of rates

39(2.1) The rates charged for power supplied to a class of grid customers within the province shall be the same throughout the province.

Interpretation

39(2.2) For the purpose of subsection (2.1),

(a) grid customers are those who obtain power from the corporation's main interconnected system for transmitting and distributing power in Manitoba; and

(b) customers shall not be classified based solely on the region of the province in which they are located or on the population density of the area in which they are located.

39(3) to (7) Repealed, S.M. 1988-89, c. 23, s. 34.

Confining hearing

39(8) In any public hearing held under this section, The Public Utilities Board may define the status and rights of any intervener to the application and it may confine the public hearing by refusing to admit evidence or permit a submission that does not relate to matters that come within the scope of the public hearing as determined and prescribed by The Public Utilities Board.

39(9) Repealed, S.M. 1988-89, c. 23, s. 34.

Material supplied by corporation

39(10) Where an application is made to The Public Utilities Board under this Act, the corporation, upon request of The Public Utilities Board, shall provide The Public Utilities Board with

(a) a statement showing the prices fixed or proposed to be fixed and the prices which were or are in effect prior to the new prices being fixed;

(b) a statement of the reasons for any changes in the prices fixed or proposed to be fixed including a statement of the facts supporting those reasons;

(c) a statement of the manner in which and a time at which the changes in the prices were or are proposed to be implemented; and

(d) such further information incidental thereto as The Public Utilities Board may reasonably require.

Recommendations by P. U. Board

39(11) After hearing evidence and submissions in respect of any application made to it under this Act, The Public Utilities Board shall make a report to the minister which shall include its recommendations as to the prices that should be charged for power supplied by the corporation or paid for power requisitioned by the corporation, as the case may be, and the reasons for its recommendations.

Action by L. G. in C.

39(12) Upon receiving the report of The Public Utilities Board under subsection (11), the minister shall refer the report for consideration to the Lieutenant Governor in Council, who shall thereafter direct the corporation as to the prices to be charged for power supplied by the corporation or paid for power requisitioned by the corporation, as the case may be, together with such other orders or directions incidental thereto as he deems appropriate, and the corporation shall comply with the orders and directions given by the Lieutenant Governor in Council for such period as may be prescribed by the Lieutenant Governor in Council.

Applications made under subsec. 38(2) or 50(4)

39(13) Where an application is made to The Public Utilities Board under subsection 38(2) to review a price computed under subsection 38(1) or an application is made to The Public Utilities Board under subsection 50(4) to review an assessment or apportionment made under subsection 50(3), subsections (8), (10), (11) and (12) apply with such modifications as the circumstances require to the application.

S.M. 1988-89, c. 23, s. 34; S.M. 2001, c. 23, s. 2.

DEPRECIATION AND STABILIZATION RESERVES

Establishment of reserves

40(1) The board shall establish and maintain, and may adjust as required, such reserves or funds of the corporation as are sufficient, in the opinion of the board, to provide

- (a) for the amortization of the cost to the corporation of the property and works, (whether as a whole or in its component parts), of the corporation during the period, or remaining period, of the useful life thereof;
- (b) insurance, for which provision is not otherwise made, against loss or damage to any property of the corporation, or to the persons or property of others, caused by or arising out of the works or operations of the corporation;
- (c) for the stabilization by the board of rates or prices for power sold by the corporation, the meeting of extraordinary contingencies, and such other requirements or purposes as in the opinion of the board are proper.

Use of reserves

40(2) The reserves created pursuant to subsection (1) may be used or employed by the board

- (a) towards the reservation and setting aside of the sinking fund established under section 41;
- (b) towards the renewal, reconstruction, or replacement, or depreciated, damaged, or obsolescent property and works;
- (c) towards restoration of any property lost or damaged, or the payment of any claims, in respect of which a reserve as insurance has been established;
- (d) in such manner towards the stabilization of rates or prices for power, the meeting of extraordinary contingencies, and for such other requirements or purposes, as the board in its discretion deems proper; and
- (e) subject to the approval of the Lieutenant Governor in Council, towards the cost of construction of new works and extensions, improvements, or additions, to any property and works of the corporation.

SINKING FUND

Establishment of sinking fund

41(1) The board shall reserve and set aside, out of the reserves or funds of the corporation established and maintained under section 40 and out of such other revenues and funds of the corporation as may be available for such purposes,

(a) such annual or other periodic amounts as may be required to be reserved and set aside as a sinking fund under any agreement or undertaking entered into, or assumed, by the corporation or the responsibility for the performance or implementation of which is an obligation of the corporation, relative to the repayment of moneys borrowed by the corporation and

(b) such additional annual or other periodic amounts as the Lieutenant Governor in Council may from time to time direct to be reserved and set aside as a sinking fund for the repayment of any other moneys borrowed by, or advanced to, the corporation and applied to the cost of acquisition or construction of property and works of the corporation, or indebtedness assumed by the corporation or the liability for the repayment of which is an obligation of the corporation, in respect of the cost of any property or works of the corporation, or otherwise.

Minimum annual amount for sinking fund

41(2) Subject to subsection (7), the aggregate of the amounts so reserved and set aside as a sinking fund in each fiscal year under subsection (1) shall not be less than

(a) 1% of the advances, borrowings, and assumptions of indebtedness or indebtedness for which the corporation is liable, mentioned in subsection (1) that are outstanding as at March 31 of the fiscal year next preceding the fiscal year in which the sinking fund payment is made; and

(b) an amount in each fiscal year equal to interest at the rate of 4% per annum on the total sinking fund balances as at March 31 in the next preceding fiscal year.

Payment to Minister of Finance

41(3) The moneys reserved and set aside in each fiscal year for sinking fund purposes under subsections (1) and (2) shall be paid to the Minister of Finance as trustee for the corporation before the end of that fiscal year.

Sinking fund trust account

41(4) The Minister of Finance shall continue to maintain appropriate sinking fund trust accounts, in which shall be included

(a) the moneys and investments made from the moneys reserved and set aside by the corporation, and from interest earnings thereon, held by the Minister of Finance at the time this Act comes into force; and

(b) the moneys paid to the Minister of Finance under subsection (3).

Investment by Minister of Finance

41(5) The Minister of Finance shall invest and keep invested the moneys and investments so held by the Minister of Finance, in securities authorized by *The Financial Administration Act*

for the investment of funds, and shall apply them towards the repayment of advances made to, and moneys borrowed or assumed by, the corporation or liability for the repayment of which is an obligation of the corporation and to which reference is made in subsection (1), as they fall due; and the Minister of Finance shall pay to the corporation all interest earned from the investment of the moneys so reserved and set aside and paid to and held by the Minister of Finance.

Repayments to the government

41(6) The corporation in addition to the payments provided for under subsections (1) and (2), may pay to the Minister of Finance such money as it may have available for application on advances made by the government to

the corporation or assumed by the corporation or liability for the repayment of which is an obligation of the corporation.

Authorization of omission or deferment of commencement of sinking fund payments

41(7) Subject to subsection (1) and notwithstanding subsection (2), the Lieutenant Governor in Council may direct that

(a) in respect of any moneys advanced to or borrowed by the corporation pursuant to sections 31 or 32, no amounts need be reserved or set aside as a sinking fund; and

(b) in respect of any moneys advanced to, or borrowed or assumed by, the corporation, or liability for the repayment of which is an obligation of the corporation, and that are applied to the cost of newly constructed works of the corporation, the payments to which reference is made in clauses (2)(a) and (b), shall begin with such fiscal year of the corporation as, in each case, the Lieutenant Governor in Council may direct.

Limitation respecting fiscal year that is to be fixed

41(8) The fiscal year to be directed by the Lieutenant Governor in Council under clause (7)(b) shall not be later than five years after the making of the respective advances to or borrowings by the corporation or, in the case of moneys assumed by the corporation or liability for the repayment of which is an obligation of the corporation, shall not be later than five years after the making of the respective advances or borrowings liability for repayment of which is an obligation of the corporation.

"Works" defined for purposes of subsection (7)

41(9) For the purposes of subsection (7), the expression "**works**", in addition to the meaning given it in section 1, includes preliminary reports, surveys, investigations, engineering, accounting, or organization work or service, or any other work or service in connection with, or incidental to, any proposed development or construction.

APPLICATION OF REVENUES

Application of revenues of the corporation

42(1) The corporation shall apply its revenues toward payment of the operating expenses, interest, and other charges, to which reference is made in clauses 39(1)(a) and (b), and the establishment and maintenance of the reserves and funds established under section 40, and to the reservation and setting aside of the sinking fund established under section 41, and towards all other obligations of the corporation; and the corporation may pay the Minister of Finance, for investment for the corporation, such additional moneys as are available for that purpose and as are not immediately required for the purposes and objects of the corporation.

Funds to be held in trust

42(2) Additional moneys paid to the Minister of Finance for investment under subsection (1) shall form part of the Consolidated Fund; and interest earnings thereon shall be credited to the account of the corporation in the Consolidated Fund or shall be paid over to the corporation by the Minister of Finance.

Right of corporation to use of funds and securities

42(3) The moneys referred to in subsection (2), and any investment therefrom held for the corporation, may be used as required by the board for the purposes of the corporation.

S.M. 1996, c. 59, s. 98.

Licences and leases to corporation under Water Power Regulations

51(1) Notwithstanding subsection 6(2) of *The Water Power Act*, a licence or lease may be issued to the corporation, subject to the *Manitoba Water Power Regulations* (being Manitoba Regulation 95/45), as amended

from time to time, covering any water power site in Manitoba not otherwise licensed or leased, together with the lands required for the protection of that water power site.

Application of Water Power Act and Water Rights Act

51(2) Subject to subsection (1), this Act and the corporation are subject to *The Water Power Act* and *The Water Rights Act* and regulations made thereunder.

This Act to prevail in case of conflict

54 In case of conflict between this Act and any other Act or law, this Act prevails unless expressly otherwise provided in any such other Act.

Saving power

55(1) The powers and authority herein granted and conferred upon the Lieutenant Governor in Council, the corporation, or the board do not limit, but are in addition to, the power or authority conferred upon them, or any of them, by any other Act.

Ancillary powers

55(2) Where under this Act power is expressly given to the corporation or to the board to do, or enforce the doing, of any act or thing

(a) all such powers shall be deemed also to be given as are necessary to enable the corporation or the board to do, or enforce the doing, of the act or thing; and

(b) if the doing by the corporation or the board of any such act expressly authorized is dependent upon the doing of any other act not expressly authorized, the corporation or the board, as the case may be, has the power to do that other act.

Restraining or compliance order

55.1 If the corporation or any member, officer, employee, agent or auditor of the corporation does not comply with this Act, the regulations or by-laws, Her Majesty may, in addition to exercising any other right available to Her Majesty, apply to a court for an order directing the person to comply with, or restraining the person from acting in breach of, any provision of the Act, regulations or by-laws, and upon such application the court may so order and make any further order it thinks fit.

S.M. 1997, c. 55, s. 22.

Offence and penalties

56 Every person who violates any provision of this Act, or who neglects or refuses to comply with any order, regulation, or direction of the board, is guilty of an offence and is liable, on summary conviction, where a penalty is not otherwise provided herein, if a person, to a fine of not more than \$5,000., and in default of payment of the fine, to imprisonment for a term not exceeding one year, or if a corporation, to a fine of not more than \$10,000.

C.C.S.M. c. W165

The Winter Heating Cost Control Act

Table of Contents

(Assented to June 13, 2006)

Preamble not yet proclaimed.

THEREFORE HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:

1 Not yet proclaimed.

PURPOSES

Purposes of this Act

2 The purposes of this Act are

(a) not yet proclaimed;

(b) to provide support for programs and services

(i) for electricity and natural gas energy efficiency, enhanced space heat retention and heating efficiency, and

(ii) for developing alternatives to natural gas,

in order to ensure that sufficient and sustainable energy resources are available in the future.

3 to 5 Not yet proclaimed.

AFFORDABLE ENERGY FUND

Affordable energy fund

6(1) Manitoba Hydro must establish an affordable energy fund sufficient to carry out the purpose described in subsection (2).

Purpose of the fund

6(2) The purpose of the fund is to provide support for programs and services that

(a) encourage energy efficiency and conservation;

(b) encourage the use of alternative energy sources, including earth energy;

(c) facilitate research and development of alternative energy sources and innovative energy technologies.

Energy efficiency and conservation programs and services

6(3) The programs and services for energy efficiency and conservation referred to in clause (2)(a) must be designed and delivered to ensure

(a) that people living in rural or northern Manitoba, those with low incomes and seniors have access to those programs and services; and

(b) that Manitoba Hydro's residential customers have access to comparable programs and services, regardless of the energy source they use to heat their homes.

Payments into the fund

6(4) After consulting with the minister responsible for Manitoba Hydro, Manitoba Hydro must pay into the fund a percentage of the gross revenue generated by the sale of electricity to customers outside Manitoba in the 2006-07 fiscal year.

Payments from fund

6(5) Manitoba Hydro may make payments from the fund to support programs and services described in subsection (2).

GENERAL PROVISIONS

Conflict with other Acts

7 If there is a conflict between this Act and another Act, this Act prevails.

C.S.S.M. reference

8 This Act may be referred to as chapter W165 of the *Continuing Consolidation of the Statutes of Manitoba*.

Coming into force

9 This Act comes into force on a day to be fixed by proclamation.

NOTE: Clause 2(b) and sections 6 to 8 of S.M. 2006, c. 5 were proclaimed in force November 20, 2006.

C.C.S.M. c. E15
The Efficiency Manitoba Act

(Assented to June 2, 2017)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:

PART 1

PURPOSE AND DEFINITIONS

Purpose of this Act

1 The purpose of this Act is to

- (a) establish Efficiency Manitoba as a corporation with the mandate set out in section 4;
- (b) establish savings targets Efficiency Manitoba is to meet in respect of the consumption of electrical energy and natural gas in Manitoba; and
- (c) establish a funding and regulatory oversight framework for Efficiency Manitoba.

Definitions

2 The following definitions apply in this Act.

"board" means the board of directors of Efficiency Manitoba. (« conseil »)

"commencement date" means the date Efficiency Manitoba is to begin implementing its first efficiency plan, as prescribed in the regulations. (« date de mise en œuvre »)

"consumption" means, on a weather-adjusted basis,

- (a) for electrical energy, electrical energy that is metered and sold to a customer in Manitoba; and
- (b) for natural gas, natural gas that
 - (i) is metered and sold to a customer in Manitoba, and
 - (ii) is not used as a feedstock or ingredient in the manufacture of a product. (« consommation »)

"demand for electrical power" means the requirement for electrical power at a specific time by a user of electrical power in Manitoba. (« demande en puissance électrique »)

"demand-side management initiative" means a measure or action taken, or a program, service or rate designed to reduce the consumption of electrical energy or natural gas, including a resulting reduction in the demand for electrical power, in Manitoba, but does not include

- (a) a measure, action, program, service or rate that encourages or results in a switch from the use of one kind of fuel source to another if the switch increases greenhouse gas emissions in Manitoba; or
- (b) a prescribed measure, action, program, service or rate. (« initiative d'effacement de consommation »)

"**Efficiency Manitoba**" means Efficiency Manitoba Inc. established by section 3. (« Société »)

"**efficiency plan**" means a plan required under section 9. (« plan d'efficacité énergétique »)

"**fiscal year**" means the period beginning on April 1 of one year and ending on March 31 of the following year. (« exercice »)

"**government agency**" means a government agency as defined in *The Financial Administration Act*. (« organisme gouvernemental »)

"**Manitoba Hydro**" includes Manitoba Hydro's subsidiary Centra Gas Manitoba Inc. and any successor company to Centra Gas Manitoba Inc. (« Hydro-Manitoba »)

"**minister**" means the minister appointed by the Lieutenant Governor in Council to administer this Act. (« ministre »)

"**net savings**" means, in respect of a change in the consumption of electrical energy or natural gas in Manitoba, the savings that occur after taking into account any other adjustments in consumption that are attributable to, or influenced by, the change. (« économies nettes »)

"**personal information**" means personal information as defined in *The Freedom of Information and Protection of Privacy Act*. (« renseignements personnels »)

"**PUB**" means The Public Utilities Board continued under *The Public Utilities Board Act*. (« Régie »)

"**regulation**" means a regulation made under this Act. (« règlement »)

"**savings target**" means a savings target

(a) established under section 7; or

(b) prescribed by the regulations. (« objectif d'économies »)

"**weather-adjusted**" means adjusted to remove the effect of deviations from average weather patterns. (« rajustement pour les aléas climatiques »)

PART 2

MANDATE AND POWERS

Efficiency Manitoba established

[3\(1\)](#) Efficiency Manitoba Inc. is hereby established as a corporation without share capital, consisting of the directors appointed under this Act.

Corporations Act does not apply

[3\(2\)](#) Except as otherwise provided in the regulations, *The Corporations Act* does not apply to Efficiency Manitoba.

Crown agent

[3\(3\)](#) Efficiency Manitoba is an agent of the Crown.

Mandate

[4\(1\)](#) The mandate of Efficiency Manitoba is to

(a) implement and support demand-side management initiatives to meet the savings targets and achieve any resulting reductions in greenhouse gas emissions in Manitoba;

(b) achieve additional reductions in the consumption of electrical energy or natural gas — including resulting reductions in the demand for electrical power — if the reductions can be achieved in a cost-effective manner;

(c) mitigate the impact of rate increases and delay the point at which capital investments in major new generation and transmission projects will be required by Manitoba Hydro to serve the needs of Manitobans;

(d) if any of the following are prescribed as being subject to demand-side management under this Act, carry out the prescribed duties in respect of them:

(i) demand for electrical power in Manitoba,

(ii) potable water consumed in Manitoba,

(iii) fossil fuels consumed in the transportation sector in Manitoba; and

(e) promote and encourage the involvement of the private sector and other non-governmental entities in the delivery of its demand-side management initiatives.

Related activities

4(2) In carrying out its mandate, Efficiency Manitoba may

- (a) undertake educational initiatives and encourage innovations in areas related to its mandate; and
- (b) provide advice to government, Manitoba Hydro and others on matters related to
 - (i) the appropriateness of the savings targets and the ways of integrating net savings attributable to demand-side management initiatives, both current and forecasted, into the electricity planning process, and
 - (ii) the benefits and options related to achieving reductions that are in addition to the savings targets.

Considerations in fulfilling mandate

4(3) In fulfilling its mandate, Efficiency Manitoba may

- (a) specifically target, where appropriate, particular locations or areas of Manitoba or particular fuel choices;
- (b) encourage the use of particular types of renewable energy sources; and
- (c) aim to provide initiatives that are accessible to all Manitobans.

Participation of public entities

5 The government, government agencies and other public bodies are eligible to participate in the demand-side management initiatives implemented or supported by Efficiency Manitoba, in accordance with the terms and conditions Efficiency Manitoba establishes for participating in those initiatives.

Powers of Efficiency Manitoba

6(1) Subject to this Act, for the purpose of carrying out its mandate, Efficiency Manitoba has the capacity and powers of a natural person and any additional powers prescribed by regulation.

General powers

6(2) Subject to any restrictions specified in the regulations, Efficiency Manitoba may

- (a) acquire and hold any interest in real or personal property, and sell, mortgage, lease or otherwise deal with or dispose of any interest in real or personal property;
- (b) receive, expend, loan and invest money;
- (c) borrow money and give security for the repayment of money borrowed; and
- (d) exercise any other powers that are necessary to carry out its mandate.

Power re additional undertakings

6(3) In addition to the other activities authorized under this Act, Efficiency Manitoba may

- (a) administer or undertake demand-side management initiatives on behalf of the government, other levels of government, government agencies and other persons and organizations, subject to any terms and conditions that may be prescribed;
- (b) undertake prescribed activities related to efficiency, conservation or the reduction of greenhouse gas emissions in Manitoba; and
- (c) if authorized by the regulations, provide services outside Manitoba.

PART 3

SAVINGS TARGETS AND EFFICIENCY PLANS

SAVINGS TARGETS

Initial savings targets

7(1) Subject to the regulations, the annual savings targets that Efficiency Manitoba is responsible for meeting in the 15-year period following the commencement date are as follows:

Electrical Energy

In the initial year following the commencement date, net savings that are at least equal to 1.5% of the consumption of electrical energy in the preceding year.

In each of the following years, incremental net savings that are at least equal to 1.5% of the consumption of electrical energy in the immediately preceding year.

Natural Gas

In the initial year following the commencement date, net savings that are at least equal to 0.75% of the consumption of natural gas in the preceding year.

In each of the following years, incremental net savings that are at least equal to 0.75% of the consumption of natural gas in the immediately preceding year.

Targets are cumulative

[7\(2\)](#) Shortfalls or surpluses in annual net savings carry forward during the 15-year period under subsection (1) such that at the end of the period Efficiency Manitoba must demonstrate that the cumulative total of the annual percentage savings in the consumption of

(a) electrical energy is 22.5%; and

(b) natural gas is 11.25%.

Calculating net savings

[7\(3\)](#) Net savings for the consumption of electrical energy or natural gas are to be determined in accordance with the regulations.

Savings targets after first 15 years

[8](#) For each 15-year period after the initial 15-year period referred to in subsection 7(1), the Lieutenant Governor in Council must, by regulation, establish annual and cumulative savings targets in respect of the consumption of electrical energy and natural gas.

EFFICIENCY PLANS

Efficiency plans

[9](#) For the three-year period following the commencement date, and for each three-year period after that, Efficiency Manitoba must prepare an efficiency plan that includes the following information:

(a) a description of the demand-side management initiatives it proposes to meet the savings targets that apply to the period;

(b) a description of the educational initiatives it proposes to undertake and the support it proposes to provide for encouraging innovations in areas related to its mandate;

(c) a description of any initiatives proposed in addition to those proposed to meet the savings targets;

(d) if the cumulative net savings secured to date have fallen short of the sum of the applicable annual savings targets, a description of the initiatives planned to address the shortfall;

(e) an analysis of the reductions in greenhouse gas emissions in Manitoba expected to result from the initiatives proposed under clauses (a) to (d);

(f) an analysis of the amount and cost-effectiveness of the net savings to be achieved by

(i) each of the initiatives proposed under clauses (a) to (d), and

(ii) the plan as a whole;

(g) an assessment of the benefits to be attained if the initiatives proposed under clauses (a) to (d) are implemented during the three-year period, including the benefits to be experienced by

(i) those who participate in any of the proposed initiatives,

(ii) Manitoba Hydro, and

(iii) Manitobans generally, including any environmental benefits, economic development opportunities and enhancements to energy security;

- (h) a description of the input that Efficiency Manitoba received from stakeholders — including the stakeholder committee established under section 27 — and the public in preparing the plan, and the process established for receiving the input;
- (i) a description of how the initiatives proposed under clauses (a) to (d) will assist Efficiency Manitoba in positioning itself to secure the net savings that are reasonably anticipated to be required over the next 15 years;
- (j) a description of how the plan addresses the prescribed factors the PUB must consider under subsection 11(4);
- (k) for any ongoing or proposed energy efficiency or energy conservation loan or financing program, including a program that is delivered in conjunction with Manitoba Hydro, a description of
 - (i) the interest rate charged or to be charged under the program, or the manner in which the interest rate is or will be determined,
 - (ii) the eligibility and assessment criteria to be used to determine participation in the program, and
 - (iii) the amounts reasonably anticipated to be loaned or financed by Manitoba Hydro under the program, including any amount to be financed by Manitoba Hydro;
- (l) a budget that sets out, for the three-year period,
 - (i) the projected costs of designing and implementing each of the initiatives proposed under clauses (a) to (d), and when those costs are anticipated to be incurred,
 - (ii) the projected administrative and overhead costs — including evaluation costs — to be incurred in delivering the initiatives proposed under clauses (a) to (d) and in carrying out its related activities under subsection 4(2),
 - (iii) the amount reasonably required as a contingency fund to enable Efficiency Manitoba to take advantage of emerging opportunities that are not otherwise addressed in the plan,
 - (iv) the proposed sources of any required funds and the amount from each source, and
 - (v) a schedule of when the funds will be required over the course of the three-year period;
- (m) a description of the manner in which the outcomes achieved under the plan are to be assessed, including the proposed performance measures to be used.

Plans to be submitted to PUB

[10](#) Subject to the regulations, Efficiency Manitoba must submit each of its efficiency plans to the PUB at the time and in the manner specified by the PUB.

Review and recommendation by PUB

[11\(1\)](#) The PUB must review an efficiency plan and make a report, with recommendations, to the minister as to whether the plan should be

- (a) approved;
- (b) approved with suggested amendments; or
- (c) rejected.

Timing of PUB review

[11\(3\)](#) The PUB must make its report and recommendations to the minister within the time specified by the minister.

Mandatory considerations

[11\(4\)](#) In reviewing an efficiency plan and making recommendations to the minister, the PUB must consider

- (a) the net savings required to meet the savings targets and the plans to address any existing shortfall;
- (b) the benefits and cost-effectiveness of the initiatives proposed in the plan;
- (c) whether Efficiency Manitoba is reasonably achieving the aim of providing initiatives that are accessible to all Manitobans; and
- (d) any additional factors prescribed by the regulations.

Optional recommendations

[11\(5\)](#) The PUB may recommend to the minister

(a) an increase in a savings target if it is reasonably satisfied that it is in the public interest for Efficiency Manitoba to achieve additional net savings; or

(b) a decrease in a savings target if it is reasonably satisfied that the existing savings target is not in the public interest.

Ministerial approval

[12\(1\)](#) After receiving an efficiency plan and the PUB's recommendations respecting the plan, the minister must

(a) approve the plan as submitted; or

(b) refer the plan back to Efficiency Manitoba for further action, with any directions the minister considers appropriate.

Actions if plan referred back to Efficiency Manitoba

[12\(2\)](#) A plan that is referred back to Efficiency Manitoba under this section must be resubmitted as directed by the minister.

Directions to be made public

[12\(3\)](#) Efficiency Manitoba must publish on its website or through other public means, any direction it receives under this section.

Approved plan must be implemented

[12\(4\)](#) Efficiency Manitoba must implement an efficiency plan as approved by the minister.

Adjustments under approved plan

[12\(5\)](#) For certainty, in implementing an approved efficiency plan, Efficiency Manitoba may adjust the activities to be undertaken during the three-year period of the efficiency plan, provided the adjustments

(a) are reasonably required to maximize the amount or cost-effectiveness of the net savings to be achieved under the approved plan; and

(b) do not result in Efficiency Manitoba's total costs exceeding the total costs specified in the approved efficiency plan.

ASSESSMENT OF RESULTS

Independent assessment

[16\(1\)](#) Efficiency Manitoba must appoint an independent assessor to assess the following and prepare a report on the assessment:

(a) the results obtained by Efficiency Manitoba under an approved efficiency plan;

(b) the cost-effectiveness of obtaining those results;

(c) any other matter prescribed by regulation.

Access to information

[16\(2\)](#) Efficiency Manitoba and Manitoba Hydro must provide the assessor with the information, records and other assistance that the assessor requires to complete an assessment under this section.

Report to be given to PUB and made public

[16\(3\)](#) Efficiency Manitoba must, within the prescribed time,

(a) submit the assessment report to the PUB; and

(b) publish the report on its website, or through other public means.

Fees and expenses

[16\(4\)](#) The costs of an assessment are to be paid by Efficiency Manitoba.

PUB recommendations

[16\(5\)](#) If the PUB finds that an assessment report discloses any significant discrepancy from the initiatives, budget or projected net savings set out in an approved efficiency plan, the PUB may

(a) review the findings with Efficiency Manitoba; and

(b) make any recommendations to the minister it considers appropriate.

Minister may issue directives

[16\(6\)](#) If the minister receives a recommendation from the PUB under this section and is satisfied that any significant discrepancies set out in the assessment report are within the control of Efficiency Manitoba,

(a) the minister may issue directives to Efficiency Manitoba respecting its management or operations, including the time frame to implement the directives; and

(b) Efficiency Manitoba must comply with the directives within the time frame set out in them.

Publication and scope of directives

[16\(7\)](#) For certainty, a directive issued by the minister may amend an approved efficiency plan and must be published by the minister on a website available to the public or through other public means.

PUB RESPONSIBILITIES

Application of Public Utilities Board Act

[17\(1\)](#) Part I of *The Public Utilities Board Act* applies, with necessary changes, as if the review of an efficiency plan or assessment report were the hearing of an application under that Act, except as otherwise specified by regulation under subsection (2).

Conflict with Manitoba Hydro Act

[18\(5\)](#) The provisions of this Act prevail to the extent of any inconsistency or conflict with *The Manitoba Hydro Act*.

Annual report

[32\(1\)](#) Within six months after the end of each fiscal year, Efficiency Manitoba must prepare and submit to the minister an annual report on its activities and operations during that fiscal year. The report must include

(a) Efficiency Manitoba's audited financial statements for the fiscal year;

(b) for the plan year that ends in the fiscal year, Efficiency Manitoba's comparison of the net savings attained in the plan year with the projected net savings for that plan year that were set out in the applicable approved efficiency plan, together with an explanation of any significant discrepancy between the two;

(c) if any portion of the contingency fund was used in the applicable plan year, as provided for in subclause 9(l)(iii),

(i) a description of the initiatives for which the contingency fund was used,

(ii) an assessment of the net savings and other benefits realized as a result of those initiatives, and

(iii) an analysis of the cost-effectiveness of those initiatives; and

(d) a description of any operational adjustments Efficiency Manitoba made during the fiscal year, as provided for under subsection 12(5).

Meaning of "plan year"

[32\(2\)](#) In subsection (1), "plan year" means the 12-month period ending on the anniversary of the commencement date.

REGULATIONS

Regulations — savings targets

[38\(1\)](#) On recommendation of the minister, the Lieutenant Governor in Council may make regulations amending a savings target established under section 7 or 8.

Minister's recommendations

[38\(2\)](#) In making a recommendation under this section, the minister is to consult with Efficiency Manitoba and is to have regard for the recommendations of the PUB, if any.

Application of Public Utilities Board Act

[40\(4\)](#) For certainty, a regulation under this section may assign responsibilities to the PUB, and section 17 applies in respect of the PUB discharging those responsibilities.

Efficiency plan may address demand for electrical power

[40\(5\)](#) A regulation under this section may require Efficiency Manitoba to address its responsibilities for securing savings targets in respect of the demand for electrical power in Manitoba within its efficiency plans, in which case,

(a) the initiatives related to the demand for electrical power that are proposed, approved and undertaken are deemed to be demand-side management initiatives and form part of an efficiency plan for the purpose of this Act, including, for certainty, funding of the plan under subsection 18(2); and

(b) the regulation may change or make an addition or substitution to a provision of this Act, as required for the purpose of having initiatives related to the demand for electrical power included in an efficiency plan, and the provision of the regulation prevails to the extent it is inconsistent with this Act.

PART 6

Coming into force

[51\(1\)](#) Subject to subsection (2), this Act comes into force on a day to be fixed by proclamation.

Coming into force — section 42

[51\(2\)](#) Section 42 comes into force on the day this Act receives royal assent.

NOTE: S.M. 2017, c. 18, except for sections 37, 44 and 49, came into force by proclamation on January 25, 2018.