

MANITOBA JOINS QUEBEC IN MUZZLING HYDRO REGULATOR

Governments in North America have legislated independent bodies to regulate the operation of monopoly utilities. The regulator is charged with ensuring that the utility's costs and prices are just and reasonable. In Canada, several provincial governments with Crown corporations that generate and sell electricity have included these entities within the mandate of the independent regulator.¹

Relying on a third-party to review and set prices, or to approve major capital projects, allows the government to avoid the responsibility of what can often be difficult decisions. However, this theory often breaks down when the third-party regulator makes decisions that may be contrary to the policies or objectives of the party in power. This is especially true when the regulated utility is a Crown corporation, as the finer points of the distribution of authority and responsibility quickly disappear when the customers are also electors.

Manitoba Government Bypassed Regulator and Legislated a 2.9% Increase in Hydro Rates

On 5 November 2020, the Progressive Conservative government of Manitoba legislated a 2.9% increase, effective 1 December 2020, in the rates charged by Manitoba Hydro.² Normally, a rate increase proposal with detailed justification would have been submitted to the Public Utilities Board (PUB) for an open review, and a final decision by the Board. The decision to bypass the PUB was opposed by the opposition parties and consumer groups.

Apparently, the government believed that the PUB process was too expensive, and that a direct decision by cabinet aligned with the government's affordability objective.³ It accused the previous NDP government of wasting millions of dollars on unnecessary projects, but this excuse is difficult to understand because the conservative government replaced all the PUB members shortly after it took office in 2016.

The government's decision to legislate the rate increase follows its plan to overhaul the operation of the PUB. Earlier in the session the government introduced a series of amendments to the PUB legislation that would allow the government to set the

¹ Some, like BC and Manitoba, also include the monopoly auto insurer.

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https://www.hydro.mb.ca/accounts_and_services/rates/news/#:~:text=Electricity%20rates%20news,%25%20effective%20December%201%2C%202020

³ <https://www.winnipegfreepress.com/local/pcs-very-sneaky-for-imposing-hydro-rate-increase-572694272.html>

Manitoba Hydro rates for five years, followed by allowing the PUB to set the rates at five-year intervals.⁴

Quebec Government Also Sidelined its Electricity Regulator

The Manitoba decision to cut out the independent regulator of the public electricity regulator mirrors the decision of the government of Quebec. As I noted in a September 2019 paper:

In response to growing public concern about the complexity and fairness of the price charged for electricity the Legault government confirmed its label as a populist government. In June 2019, it legislatively sidelined the independent regulator for five years by ordering that Hydro Quebec freeze rates for 2020 and increases for 2021 to 2024 would be limited to the increase in the Quebec cost of living. The regulator would also lose its authority to approve longer-term capital expenditures, including generation and transmission projects.⁷ The regulator would set the rates for 2025, then the CPI would cap the increase for the next four years.

This “simplified” scheme also eliminates the potential for variances in the profit target because there is no target. The increase in domestic price is capped at the CPI and the Crown’s net income will vary depending on its costs and sales.⁵

A representative of a coalition of Quebec environmental groups called the new model “cut-rate” regulation and was concerned about the loss of outside scrutiny over the costs for the Crown utility. “We’re completing a process by which Hydro-Québec gets itself out of being publicly regulated and back into a situation where energy policy and rates are going to be set between cabinet and the public corporation without any proper public oversight.... It’s kind of returning to a ‘hewers of wood and carriers of water,’ kind of [a] Banana Republic approach with no civil society involvement in making the important decisions.”⁶

BC Government Loosens Controls over BC Hydro Regulator

While the governments of Quebec and Manitoba are relegating their third-party regulators to minor roles, the government of BC has relaxed its controls over the BC regulator. The oversight of the operation of BC Hydro has been legislatively assigned to the BC Utilities Commission (BCUC). In 2012, the former Liberal cabinet issued detailed directives to the BCUC respecting the finances of BC Hydro. These directives included the establishment of the rate changes and the net income for the period 2012

⁴ Ibid.

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https://www.bcpolicyperspectives.com/media/attachments/view/doc/commentary_hydro_quebec_26_september_2019/pdf/commentary_hydro_quebec_26_september_2019.pdf

⁶<https://www.cbc.ca/news/canada/montreal/hydro-qu%C3%A9bec-environmentalist-bill-34-1.5172905>

to 2017. Most variances between the yearly expenditure and revenue plans and actual results were deferred in a variety of deferral/regulatory accounts.

The auditor general qualified the government's financial statements for 2016/17 and 2017/18 partly because the accounting at BC Hydro did not conform to GAAP, and that the regulatory accounts lacked oversight by an independent their-party regulator.

In response, the new NDP government loosened the restrictions (euphemistically called "enhanced" regulation), although the cabinet-ordered net income target was retained for 2019/20 and 2020/21.

Whether the auditor-generals in Quebec and Manitoba raise the same objections to the use of deferral/regulatory accounts by the Crown utilities without an independent regulator remains to be seen.

Will the Trend Extend to BC?

The tension between elected representatives and appointed tribunals is part of the nature of the delegation of authority. The governments of Quebec and Manitoba have both exhibited a populist bent and believe that allowing open and evidence-based rate-setting for their public power utilities is too time-consuming and expensive (and perhaps too open and evidence-based).

The BCUC should take heed about questions as to the efficiency of the review process, given the recent lengthy review (20 months) of BC Hydro's 2019 and 2020 packaged rate increase, and the ongoing inquiry into a formula-based approach for setting BC Hydro's electricity rates (18 months and still counting).

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