



Assembly of Manitoba Chiefs
EMPOWERING OUR NATIONS

Manitoba Hydro 2023/24 & 2024/25 General Rate Application
Public Utilities Board

Final Written Submissions of the Assembly of Manitoba Chiefs
June 22, 2023

Legal Counsel for the Assembly of Manitoba Chiefs
Carly Fox and Emily Guglielmin
Fox LLP
79 Redwood Meadows Drive
Redwood Meadows, Alberta T3Z 1A3

**Assembly of Manitoba Chiefs
Final Written Submissions
Manitoba Hydro 2023/24 & 2024/25 General Rate Application**

INTRODUCTION

1. The Assembly of Manitoba Chiefs (the “**AMC**”) is the political and technical coordination organization for 62 of 63 First Nations in Manitoba. The AMC’s member First Nations are parties to Treaties 1, 2, 3, 4, 5, 6, 10 and the Dakota Nations that are party to a pre-confederation Treaty.
2. The AMC was created to coordinate unified and collective action on issues common to First Nations in Manitoba while respecting each First Nation’s right to self-determination as a collective rights-holder.
3. Manitoba Hydro is a Crown corporation and its operations impact the lands and waters of First Nations in what is now Manitoba. The AMC’s interest in this proceeding and focus in its intervention is to advocate for honouring the spirit and intent of the Treaties and seek to uphold the principle of reconciliation through ensuring equitable consideration and treatment of First Nations and their citizens.
4. First Nations electricity customers live on and off reserve, but because Manitoba Hydro only tracks First Nations on-reserve customers, that tends to be the focus of the AMC’s intervention. It should, however, be noted, that the AMC’s member First Nations are also concerned with rate impacts for First Nations customers that live off-reserve.
5. First Nations customers of Manitoba Hydro encompass both residential electric and general service customers. General service accounts on First Nations reserves range from about 4.8% to 29.6% of Manitoba Hydro accounts on reserve, and can be broken into industrial, commercial, health facilities, offices and recreational accounts.
6. While the AMC is concerned with the impacts of rate increases for all First Nations customers, the AMC and its member First Nations are extremely concerned with the rates of energy poverty faced by First Nations residential customers, particularly those living on reserve, and these concerns weigh heavily in the AMC’s submissions.

SUMMARY OF POSITION

7. Manitoba Hydro’s 2023/24 and 2024/25 General Rate Application (the “**Application**”) is predicated on rate increases to improve the financial health of the utility at the expense of its most vulnerable customers.
8. Manitoba Hydro is requesting confirmation of the 3.6% interim general revenue increase awarded in January 2022 related to the drought. It makes this request despite the fact that the drought was significantly less detrimental than it originally predicted. Both the drought conditions and the value of Manitoba Hydro’s products on export markets were far more favourable to the utility than then when it first submitted its interim rate application.
9. In addition, Manitoba Hydro is requesting an overall increase of 2% effective September 1, 2023, and an additional 2% effective April 1, 2024, referred to throughout this submission as the “test years”. These rate increases are based off of a 20-year forecast that aims to achieve financial targets set out in Bill 36 that are not yet in force.
10. The AMC asks the Public Utilities Board (the “**PUB**”) to make the following directives or recommendations:
 - a. for Manitoba Hydro to make better efforts in future applications to consider and understand the unique and distinctive characteristics of its First Nations customers and the impacts of rate increases on those customers, including through more thorough direct engagement efforts with First Nations governments;

**Assembly of Manitoba Chiefs
Final Written Submissions
Manitoba Hydro 2023/24 & 2024/25 General Rate Application**

- b. for Manitoba Hydro and the provincial government to work with First Nations governments and the federal government to come up with real and impactful solutions to address First Nations energy poverty;
- c. for the provincial government to use the water rental fees it still collects to fund bill affordability programs that are, at least in part, directed at First Nations customers;
- d. that no rate increase be awarded in the test years, or in the alternative that a lower rate increase than the 2% in each test year be awarded;
- e. if any rate increase is awarded in the test years, that the time between rate increases is at least one year; and
- f. if any rate increase is awarded in the test years, that efforts are taken to minimize the impact of differentiated rates on residential customers through a broadening of the zone of reasonableness or an extension of the time to migrate customer classes to the zone of reasonableness.

RECONCILIATION AND BILL AFFORDABILITY ARE STILL RELEVANT CONSIDERATIONS

A. Background

- 11. Issues of bill affordability and energy poverty have been prominent concerns before the PUB for at least a decade.¹ Energy poverty is the circumstances in which a household is, or would be, required to make sacrifices or trade-offs that would be considered unacceptable by most Manitobans in order to procure sufficient energy from Manitoba Hydro.²
- 12. The *Manitoba Hydro Bill Affordability Collaborative Process Summary Report & Recommendations* (the “**Bill Affordability Report**”) found that impacts of higher energy costs are anticipated to be most pronounced for households that already spend a significant proportion of their total income on energy.³ After considering the results of the Bill Affordability Report the PUB determined that it had the jurisdiction to order implementation of lower-income rate assistance and directed Manitoba Hydro to establish a First Nations On-Reserve Residential customer class (the “**FNORRCC**”) for First Nations reserves and for the new rate class to receive a 0% rate increase for the 2018/19 year.⁴ The FNORRCC also received a 0% rate increase for 2019/20.⁵
- 13. The PUB justified the creation of the FNORRCC due to the high rates of energy poverty on-reserve. In particular, based on evidence that:
 - a. 96% of First Nations people on reserve live in poverty and that reserves in Manitoba have the highest rates of child poverty in Canada;
 - b. Issues of energy poverty for First Nations are exacerbated by poor housing stock on reserve;
 - c. Almost all First Nations Manitoba Hydro customers on reserve do not have access to the more economical option of natural gas for heating;

¹ Public Utilities Board Order No. 59/18: Final Order with Respect to Manitoba Hydro’s 2017/18 and 2018/19 General Rate Application, May 1, 2018 at p. 209. [PUB 59/18]

² PUB 59/18 at p. 212.

³ PUB 59/18 at p. 213.

⁴ PUB 59/18 at p. 216-222 and 231.

⁵ Order 69/19, Final Order with Respect to Manitoba Hydro’s 2019/20 General Rate Application, May 28, 2019.

**Assembly of Manitoba Chiefs
Final Written Submissions
Manitoba Hydro 2023/24 & 2024/25 General Rate Application**

- d. On average, First Nations Manitoba Hydro customers on reserve consume more energy than off-reserve residential customers;
 - e. Together, the above factors lead to higher utility bills;
 - f. First Nations on-reserve residential customers are disproportionately vulnerable to rate increases.⁶
14. None of the above findings of fact were overturned by the Manitoba Court of Appeal and no evidence has been provided by Manitoba Hydro in its Application to indicate that these facts are no longer true.⁷
15. The Manitoba Court of Appeal overturned the PUB's decision to direct the creation of a new customer class⁸, but the issue of First Nations energy poverty in this province persists and has only been exacerbated by the impacts of COVID-19 and high levels of inflation.

B. Relevance of Issues of Bill Affordability and Reconciliation

16. Issues of bill affordability and reconciliation are still relevant and important considerations for the PUB in making its decisions regarding just and reasonable rates for Manitoba Hydro.
17. While the Court of Appeal did not allow for the creation of the FNORRCC to target issues of bill affordability, it did confirm that the PUB is entitled to consider social policy and any other factors it considers relevant in fulfilling its mandate. The Manitoba Court of Appeal stated that bill affordability is an issue of social policy and forms part of the PUB's concerns when dealing with a rate application, because it goes to the "interests of the utility's ratepayers, and the financial health of the utility."⁹
18. The current legislative regime includes section 25(4) of *The Crown Corporations Governance and Accountability Act*, confirmed by the Court of Appeal as providing the jurisdiction for the PUB to consider bill affordability and other social policy when setting just and reasonable rates.¹⁰ Although this Part will be amended to become inapplicable starting April 1, 2025,¹¹ the AMC submits that the PUB will continue to be able to consider issues of bill affordability and energy poverty as part of its jurisdiction over the determination of just and reasonable rates,¹² and balancing the interests of ratepayers with the financial health of Manitoba Hydro.
19. The Court of Appeal also confirmed that the PUB may consider *The Path to Reconciliation Act* and the social policy underlying that legislation in reaching its decision.¹³ Reconciliation is defined in *The Path to Reconciliation Act* as the ongoing process of establishing and maintaining mutually respectful relationships between Indigenous and non-Indigenous peoples in order to build trust, affirm historical agreements, address healing and create a more equitable and inclusive society.¹⁴ The AMC submits that regardless of the legislative changes brought on by Bill 36, some of which have not yet been proclaimed, *The Path to Reconciliation*

⁶ PUB 59/18 at p. 231-232.

⁷ Transcript of Manitoba Hydro Rates and Cost of Service Panel on June 7 at p. 3662-3665. [June 7 Transcript]

⁸ *Manitoba (Hydro-Electric Board) v Manitoba (Public Utilities Board) et al*, 2020 MBCA 60 [*Manitoba Hydro v PUB*].

⁹ *Manitoba Hydro v PUB* at paras 81 and 83.

¹⁰ *The Crown Corporations Governance and Accountability Act*, CCSM c. C336, s. 25(4) [*Crown Act*].

¹¹ Bill 36, *The Manitoba Hydro Amendment Act and Public Utilities Board Amendment Act*, 4th Sess, 42nd Leg, 2021-2022. [Bill 36]

¹² See Bill 36, s. 39(4)(b).

¹³ *Manitoba Hydro v PUB* at para 84.

¹⁴ *The Path to Reconciliation Act*, CCSM, c. R30.5, s. 1(1). [PTRA]

**Assembly of Manitoba Chiefs
Final Written Submissions
Manitoba Hydro 2023/24 & 2024/25 General Rate Application**

Act and principles of reconciliation will remain relevant for the PUB's jurisdiction in relation to Manitoba Hydro.

C. Manitoba Hydro Should be Directed to Better Consider and Understand the Impacts of Rate Increases on First Nations Customers

20. The AMC requests that the PUB recommend that Manitoba Hydro be directed to consider and understand the impacts of rate increases on the lives of First Nations customers for the purposes of future applications.
21. When considering what level of rate increase is justified, particularly in light of the fact that the debt-to-equity ratios set out in Bill 36 have not yet been proclaimed, Manitoba Hydro should have considered the impact of its decisions on its most vulnerable customers. Substantive and impactful change will not occur until Manitoba Hydro acknowledges the distinct issues faced by First Nations and their citizens and commits to working with First Nations governments to address those issues.
22. The AMC is disappointed with Manitoba Hydro's lack of initiative or concern with bill affordability, energy poverty and reconciliation in this Application. It feels that Manitoba Hydro is using Bill 36 as an excuse to ignore the unique status and issues faced by its First Nations customers because of section 39.1(2), which states that "all residential grid customers are to constitute a single class of customers" and section 39(5), which states that "[r]ates for different customers or classes of customers must not differ based on affordability or other socio-economic factors."¹⁵
23. When asked about these issues, Ms. Grewal repeatedly referred back to Bill 36 and its prohibition against customer classifications based on affordability or other socioeconomic factors. When asked about reconciliation, and whether Manitoba Hydro considers bill affordability and equity when determining its rate applications, Ms. Grewal would only state that Bill 36 precludes Manitoba Hydro from doing anything different for one class or set of customers compared with another class. When questioned about the unique impact of rate increases on First Nations residential customers, Ms. Grewal would only say that customers in any category will be impacted.¹⁶
24. Similarly, the revenue requirement panel was not able to answer questions asked of them regarding higher electricity consumption by First Nations on-reserve residential customers compared with the broader residential class, despite recognition that on-reserve customers only have access to electric heating and overall have lower quality housing.¹⁷ When asked if rate increases will have a higher impact for First Nations on-reserve residential customers when compared with the broader population, Ms. Amorim Dew stated: "there are many customers, not just Indigenous customers that may be struggling..."¹⁸ This comment, among others, shows that Manitoba Hydro views First Nations customers no differently than its broader residential and general service customers, even though First Nations customers face

¹⁵ Bill 36, s. 39.1(2).

¹⁶ Transcript of Manitoba Hydro Policy Panel and Opening Comments on May 15, 2023 at p. 260, l. 5-9, p. 264, l. 2-16, p. 262-263, p. 274, l. 6-20. **[May 15 Transcript]**.

¹⁷ Transcript of Manitoba Hydro Revenue Requirement Panel on May 30 Transcript at p. 2231, l. 8-22. **[May 30 Transcript]**

¹⁸ May 30 Transcript at p. 2231-2232, l. 23-8; Note: in the 2017/18 & 2018/19 General Rate Application, PUB/MH I-125a - Attachments p17 of 250 and AMC/MH II-32, Att.1 evidence was provided that in the province as a whole 82.8% of residents lived in an area where natural gas heating, while only 2 First Nations have natural gas service; See: Manitoba Hydro 2017-18 & 2018-19 General Rate Application, Written Submissions of the Assembly of Manitoba Chiefs, p. 12-13.

**Assembly of Manitoba Chiefs
Final Written Submissions
Manitoba Hydro 2023/24 & 2024/25 General Rate Application**

unique socioeconomic conditions, particularly those living on reserves, compared with the broader population.

25. The AMC was very disappointed that no witness in the revenue requirement panel was familiar with The Clean Environment Commission Report, dated May 2018 (the “**CEC Report**”) which documents some of the social impacts of extensive Manitoba Hydro development. Given that the members of that panel are high-ranking employees within Manitoba Hydro, this indicates that the unique status and impacts of Manitoba Hydro’s actions, colonial policies and legislation on First Nations in Manitoba is not well-known amongst Manitoba Hydro’s top ranks.¹⁹
26. One of the key findings of the CEC Report was that a major cause of the negative social impacts of Manitoba Hydro development for First Nations was the influx of Manitoba Hydro workers in First Nations traditional territories.²⁰ Impacts of this are still being felt today, and are echoed in current events, such as when First Nations partners of Keeyask felt the need to blockade an influx of 1,000 Manitoba Hydro workers to protect their citizens from COVID-19.²¹
27. The AMC found that, for the most part, Manitoba Hydro’s witnesses were unwilling to recognize or consider the unique situation of its First Nations customers, particularly those living on reserve. In addition, in some instances, Manitoba Hydro’s witnesses seemed ignorant of the context of Manitoba Hydro development and its impacts on First Nations and their citizens.
28. While Manitoba Hydro may have worked to strengthen relationships with “Indigenous communities” as it relates to capital construction projects and environmental monitoring,²² the AMC is concerned that this kind of work stops short at understanding First Nations governments and citizens as Manitoba Hydro customers, including the impacts of rate increases on these customers.

PERSISTING ENERGY POVERTY FOR FIRST NATIONS CUSTOMERS

29. First Nations customers, particularly residential customers living on reserve, continue to face persisting energy poverty. In this regard, the AMC makes three submissions:
 - a. The AMC supports the MKO’s argument for the PUB to recommend to the provincial government that the FNORRCC be re-instated;
 - b. The AMC requests that the PUB recommend that Manitoba Hydro, the provincial government and the federal government work cooperatively together with First Nations governments to come up with real and impactful solutions to address issues of energy poverty facing First Nations citizens, both on and off-reserve; and
 - c. The provincial government will still continue to receive 50% of the water rental fees from Manitoba Hydro. The AMC requests that the PUB recommend that the provincial

¹⁹ May 30 Transcript at p. 2229, l. 11-22; Manitoba Clean Environment Commission, A Review of the Regional Cumulative Effects Assessment for Hydroelectric Developments on the Nelson, Burntwood, and Churchill River Systems, May 2018 (http://www.cecmanitoba.ca/hearings/regional-cumulative-effects-assesment/doc/FinalReport/RCEA_Design_Web_Accessible_May24.pdf). [CEC Report]

²⁰ CEC Report, p. 16-17.

²¹ Rachel Bergen, CBC News, *First Nations partners of Keeyask ‘not backing down’ from blockades over COVID-19 fears*, May 20, 2020. <<https://www.cbc.ca/news/canada/manitoba/keeyask-manitoba-hydro-first-nations-blockades-1.5577185>>.

²² May 30 Transcript at p. 2242-2243.

**Assembly of Manitoba Chiefs
Final Written Submissions
Manitoba Hydro 2023/24 & 2024/25 General Rate Application**

government use these proceeds to fund initiatives that will assist First Nations and other vulnerable customers with energy poverty and bill affordability.

A. Evidence of Persisting Energy Poverty

30. The rate increases being proposed by Manitoba Hydro as part of this Application will have a much more significant impact on the well-being of First Nations customers compared to the broader residential class. Although some of Manitoba Hydro’s witnesses appear reluctant to agree,²³ the PUB’s findings in Order 59/18 at p. 232 that on-reserve residential ratepayers are uniquely situated among residential customers in Manitoba and that First Nations customers are disproportionately vulnerable to rate increases is still applicable today.²⁴ The impacts of energy poverty are even more pronounced today given the ongoing impacts of the pandemic and high levels of inflation.
31. First Nations residential customers on reserve total 19,593 customers, of which 18,930 receive electrical heating service from Manitoba Hydro’s grid and do not rely on diesel energy.²⁵ First Nations on-reserve residential customers in Manitoba comprise 3.67% of all Manitoba Hydro residential customers.²⁶
32. The PUB’s previous findings regarding the high electricity consumption of First Nations on-reserve residential customers continues to persist. Comparison of electricity consumption data from the 2017/18 and 2018/19 General Rate Application with the most recently provided consumption data indicates that electricity consumption for First Nations on-reserve residential customers is substantially the same, and sometimes higher.²⁷ Most on-reserve residential customers use over 2,000 kilowatt hours of electricity per month, with the substantial majority using that amount over the winter months.²⁸
33. The higher the electricity consumption for a customer, the larger the dollar impact on the customer bill. Impacts of increasing rates are even more pronounced for households that already spend a significant portion of their total income on energy.²⁹ This means for First Nations residential customers living on reserve the impact of rate increases will be more pronounced when compared with the average residential customer.
34. Despite comprising 3.67% of Manitoba Hydro residential customers, First Nations residential customers on-reserve are disproportionately impacted by issues like bill arrears, uncollectible accounts and disconnected accounts. These customers also face significantly higher bills when compared with the broader residential class. Some of these issues are illustrated by the below table:

	First Nations on-reserve residential customers	Residential Class (includes First Nations residential customers)	Non-Reserve Residential Class
Average Revenue Per Customer³⁰	\$2,924.38	\$1,516.12	\$1,462.52

²³ see for example: June 7 Transcript at p. 3664, l. 14-25.

²⁴ June 7 Transcript at p. 3665, l. 1-11.

²⁵ Manitoba Hydro 2023/24 & 2024/25 General Rate Application, MKO/MH I-1 (Exhibit MKO 2-1).

²⁶ Transcript of Rates and Cost of Service Panel on June 6, 2023 at p. 3483-3484, l. 12-10. [June 6 Transcript]

²⁷ 2017/18 & 2018/19 General Rate Application, AMC/MH II-1; Manitoba Hydro 2023/24 & 2024/25 General Rate Application, AMC/MH I-44 (Exhibit AMC 2-44); June 6 Transcript at p. 3657.

²⁸ June 7 Transcript at p. 3653-3656.

²⁹ June 7 Transcript at p. 3657-3658, l. 20-2; 3661-3662, l. 25-3.

³⁰ Manitoba Hydro 2023/24 & 2024/25 General Rate Application, MKO/MH I-3 (Exhibit MKO 2-3).

**Assembly of Manitoba Chiefs
Final Written Submissions
Manitoba Hydro 2023/24 & 2024/25 General Rate Application**

Manitoba Hydro Revenues ³¹	\$57,297,414 or 7.1% of residential revenues	\$810,198,898	\$752,901,484
Arrears (as of Mar. 2022) ³²	\$28,823,438 or 52.9% of residential customers	\$54,503,040	\$25,679,602
Arrears (total divided by number of customers) ³³	\$1,471.11	\$101.99	\$49.88

35. In addition to the above, First Nations on-reserve residential customer accounts make up 16.36%³⁴ of all residential disconnected customer accounts and 22% of residential late payment charges.³⁵
36. The number of uncollectible accounts has trended higher in recent years due to the impacts of the pandemic and Manitoba Hydro's measures to extend the credit period it offers to customers. The numbers of uncollectible accounts are still trending higher today than they have been pre-pandemic.³⁶ First Nations residential customers on-reserve are also seeing the number of disconnected accounts rise back to pre-pandemic levels. Despite the increase in disconnected accounts, Manitoba Hydro does not factor the prediction of levels of disconnected accounts due to the impact of raising rates on bill unaffordability into its long-term forecast.³⁷
37. There has been considerable discussion in previous hearings about the impact of federal funding for social assistance recipients on bill payments on-reserve. In response, the AMC would like to note that not all First Nations customers receive social assistance, just as not all general residential customers receive social assistance from the province. Manitoba Hydro has provided further information about this topic as follows:

"Manitoba Hydro notes First Nations receive federal funding, administered through the Band, to cover the utility bills of social assistance recipients. The application of this funding is pro-rated between social and non-social assistance recipients. For example, if three adults live in a residence, and one is on social assistance, the customer's bill is prorated with 1/3rd covered by social assistance. The Income Administrator at the Band office advises Manitoba Hydro of how much is being paid by social funding. Manitoba Hydro then moves this amount off the customer's bill and into a holding account which is paid separately by the Band with the federal funding. This is a monthly process that, when kept current, helps the customer understand how much of the bill is their responsibility, but generally lags by about a month as the portion paid by the Band does not show up until the next bill is printed. A short-term exemption is used to waive late payment charges due to this lag.

³¹ June 6 Transcript at p. 3488, l. 3-17; Manitoba Hydro 2023/24 & 2024/25 General Rate Application, MKO/MH I-2 (Exhibit MKO 2-2).

³² June 6 Transcript at p. 3502-3503, l. 22-2; Manitoba Hydro 2023/24 & 2024/25 General Rate Application, MKO/MH I-6 (Exhibit MKO 2-6).

³³ June 6 Transcript at p. 3502, l. 6-15; Manitoba Hydro 2023/24 & 2024/25 General Rate Application, MKO/MH I-7 (Exhibit MKO 2-7).

³⁴ June 6 Transcript at p. 3521, l. 6-10.

³⁵ June 6 Transcript at p. 3519, l. 11-15.

³⁶ May 30 Transcript at p. 2275, l. 11-25, p. 2281, l. 19-25; 2023/24 & 2024/25 General Rate Application, AMC/MH I-30(b)(revised) (Exhibit AMC 2-30(b)(revised)).

³⁷ May 30 Transcript at p. 2283, l. 4-7, 23-25; 2285, l. 1-4 and 2286-2287, l. 14-2.

**Assembly of Manitoba Chiefs
Final Written Submissions
Manitoba Hydro 2023/24 & 2024/25 General Rate Application**

To further help customers understand their bill more clearly, a twelve-month statement summary is included on a bill detailing the date and amounts paid by social assistance, date and amounts paid by the customer, billing charges, any adjustments, and the balance owing. If a Band Income Administrator falls behind on the monthly process, then this will compound the arrears for the customer.”³⁸

38. Despite Manitoba Hydro’s response to Undertaking #57, set out above, Manitoba Hydro was unable to advise whether, or how many, First Nations on-reserve residential customers have bill arrears paid for by a third-party, such as an Income Administrator through social assistance.³⁹ In addition, Manitoba Hydro noted that “[c]ustomers that are not on social assistance are responsible for paying their own bills or a portion of the pro-rated bill where a social assistance recipient is present...any unpaid bills accumulate and thus leave a larger amount of arrears for the customer to manage.”⁴⁰ Given the indication that Manitoba Hydro uses a short-term exemption for delays in reporting from Income Administrators, the AMC believes that most arrears, if not all, are borne by First Nations customers.

B. Impactful Action on Energy Poverty for First Nations Customers is Required

39. The AMC requests that the PUB recommend that the provincial government collaborate with First Nations and the federal government to implement impactful action on energy poverty for First Nations customers. While Manitoba Hydro states that it offers to liaise with First Nations to discuss any issues they have and has a business plan to meet with First Nations 2-3 times every three years, there was no evidence filed in this Application about the concerns or wishes of First Nations customers in relation to the requested rate increases or long-term forecast.⁴¹

40. While Manitoba Hydro does have programs like the Equal Payment Plan, Energy Finance Plan, and Neighbours Helping Neighbours in partnership with the Salvation Army, the evidence throughout the hearing, and set out above, indicates that these programs have not had a meaningful effect on metrics evidencing ongoing energy poverty for First Nations residential customers on-reserve.

41. The AMC is supportive of Manitoba Hydro’s current programs but advocates for a more impactful solution. Evidence filed also indicates that while First Nations residential customers living on reserve are overrepresented in metrics like disconnected accounts, arrears and Manitoba Hydro’s revenue collection, they are underrepresented in terms of access to each bill affordability program. Using 2022 as an example:⁴²

Program Name	First Nations Participants in 2022	All Participants in 2022	First Nations Participants as a % of Total
Customer Arrears Assistance Program	20	1,394	1.43%

³⁸ 2023/24 & 2024/25 General Rate Application, Manitoba Hydro Undertaking #57.

³⁹ 2023/24 & 2024/25 General Rate Application, Manitoba Hydro Undertaking #60.

⁴⁰ 2023/24 & 2024/25 General Rate Application, Manitoba Hydro Undertaking #57.

⁴¹ Transcript of Manitoba Hydro Asset Management & Capital Panel on May 23, 2023 at p. 1349, l. 17-24. **[May 23 Transcript]**

⁴² 2023/24 & 2024/25 General Rate Application, Manitoba Hydro Undertaking #61.

**Assembly of Manitoba Chiefs
Final Written Submissions
Manitoba Hydro 2023/24 & 2024/25 General Rate Application**

Neighbours Helping Neighbours	4	413	0.96%
Equal Payment Plan	282,862	1,386	0.49%

42. In Order 59/18 the PUB stated that given Manitoba Hydro’s expertise regarding its customers’ billing system and affordability issues, Manitoba Hydro should take initiative to work with the provincial government and other stakeholders to assist in the development of a comprehensive program based on affordability of bills.⁴³ It appears that neither Manitoba Hydro nor the province has taken action on this recommendation. In addition, Manitoba Hydro has not attempted to work with First Nations governments or the federal government on these issues.⁴⁴
43. In Order 59/18, the PUB recommended the provincial government consider applying capital tax and water rental payments from Manitoba Hydro toward funding energy affordability programs targeted at vulnerable consumers.⁴⁵ Although, the province reduced water rental fees and provincial guarantee fees by 50%, these savings have been applied to reduce debt and to minimize new debt and result in an overall reduction in the requested rate increase from 3.5% to 2% in the test years. Ms. Grewal confirmed that Manitoba Hydro did not have any conversations with the provincial government about reducing the burden for low-income customers, only about lowering the overall rate increase request.⁴⁶
44. The provincial government will still continue to receive 50% of the water rental fees and provincial guarantee fees from Manitoba Hydro. The AMC requests that the PUB recommend that the provincial government use the proceeds of water rental fees to fund initiatives that will assist First Nations and other vulnerable customers with bill affordability.

NEED TO ENSURE THAT FIRST NATIONS RECEIVE EQUITABLE BENEFITS

45. Manitoba Hydro’s long-term forecast indicates that rates will continue to increase over the next twenty years. The AMC submits that given the disproportionate burden of rate increases on First Nations customers, more must be done to ensure that First Nations equitably benefit from the services and operations that are made possible by such rates. If First Nations do not equitably benefit from rate increases, then the proposed rates are not just or reasonable.
46. Manitoba Hydro is a Crown corporation and its infrastructure and operations are situated on the traditional and unceded lands and waters of First Nations. Development of Manitoba Hydro assets on these lands has also historically led to devastating impacts for First Nations, while the bulk of economic benefits have flowed to settler communities in the south.⁴⁷ Treaties were meant to set up relationships for sharing the land, however, First Nations continue to suffer from broken Treaty promises. This makes it particularly important that issues of equitable benefits be considered and addressed by Manitoba Hydro.

A. Relevance of Principles of Equality

⁴³ PUB Order 59/18 at p. 230.

⁴⁴ May 15 Transcript at p. 260, l. 17-23 and p. 261 l. 20-24.

⁴⁵ Order 59/18 at p. 30.

⁴⁶ May 15 Transcript at p. 180-181 and 261, l. 20-24.

⁴⁷ CEC Report.

**Assembly of Manitoba Chiefs
Final Written Submissions
Manitoba Hydro 2023/24 & 2024/25 General Rate Application**

47. Below, the AMC argues that in the current Application, Manitoba Hydro has built a cushion into its proposed rates and financial forecast due to rigid adherence to financial metrics set out in Bill 36, among other things. This means, there is room to reduce the requested rate increases. A reduction is just and reasonable given the continuing metrics of energy poverty that persist for First Nations on-reserve residential customers (set out above), and due to indications that these customers may not benefit equitably from Manitoba Hydro's services and operations (outlined further below).
48. The PUB, as an administrative decision-maker, must act consistently with its grant of statutory discretion and the values enshrined in both *The Path to Reconciliation Act* and the *Charter of Rights and Freedoms*.⁴⁸ A decision is consistent with *Charter* values where it reflects a proportionate balance between the statutory objectives that the administrative decision-maker acts under and the *Charter* values engaged by their decision.⁴⁹
49. For the purposes of this Application, the existing legislative framework continues to apply to the PUB's decision. This means that Part 4 of *The Crown Corporations Governance and Accountability Act* sets out the PUB's rate approval jurisdiction, which explicitly allows the PUB to consider "other compelling factors".⁵⁰ The AMC submits that the PUB will continue to be required to consider *Charter* values under the new legislation when it comes into force, pursuant to its jurisdiction to determine just and reasonable rates, and balance the financial health of Manitoba Hydro with the interests of its customers.
50. First Nations living on reserve are protected under section 15(1) of the *Charter*, on the basis of their race and ethnic origin and of their residence on reserve.⁵¹ Whether a given policy or decision undermines equality is a contextual question, focusing on the real outcomes of the policy or decision on members of a protected group, in light of the social and economic context in which it unfolds.⁵² The issue the AMC raises is whether First Nations citizens in Manitoba, while being disproportionately vulnerable to the impacts of rate increases, are equitably benefiting from Manitoba Hydro's services and operations.
51. When considering whether First Nations customers are equitably benefiting from rate increases, the PUB should consider substantive as opposed to formal equality. This is a comparative analysis, which asks first if there is a distinction created based on an enumerated or analogous ground and, if so, if the distinction-imposed burdens or denies a benefit in a manner that has the effect of reinforcing, perpetuating or exacerbating disadvantage.⁵³ *The Path to Reconciliation Act*, further supports consideration of equity as a principle of reconciliation.⁵⁴

B. Continuing Inequities Regarding Provision of and Access to Hydro Services

52. In addition to the metrics evidencing continuing energy poverty for First Nations on-reserve residential customers in comparison to the broader residential class, the AMC raised similar substantive equality concerns in the 2017/18 & 2019/20 General Rate Application, which continue to remain today:

⁴⁸ *Doré v Barreau du Québec*, 2012 SCC 12, at para 24, 35 [Doré].

⁴⁹ *Doré* at paras 55-66; *Loyola High School v Québec (Attorney General)*, [2015] 1 SCR 613 at para 39.

⁵⁰ *Crown Act*, s. 25(4).

⁵¹ *Corbiere v Canada (Minister of Indian and Northern Affairs)*, [1999] 2 SCR 203 at paras 6 and 10.

⁵² *Kahkewistahaw First Nation v Taypotat*, 2015 SCC 30, [2015] 2 SCR 548 at paras 17, 19, 21.

⁵³ *Stadler v Director, St. Boniface/St. Vital*, 2020 MBCA 46 at para 54.

⁵⁴ *The Path to Reconciliation Act*, s. 1(1), CCSM, c. R30.5.

**Assembly of Manitoba Chiefs
Final Written Submissions
Manitoba Hydro 2023/24 & 2024/25 General Rate Application**

“...First Nations people living on reserve in Manitoba are historically disadvantaged in relation to the provision of and access to Hydro services...:

- a. Hydro’s gas lines have been extended to reach only 2 of the 63 First Nations in Manitoba. This limited access to infrastructure cannot be explained by the remoteness of First Nations since even southern and more accessible First Nations have been excluded from switching to alternative forms of energy that could help them reduce their energy costs.” This is in contrast 82.8% of Manitoba households that have access to natural gas as an energy source.
- b. The costs of providing hydro services already inequitably fall on First Nations...Hydro’s infrastructure is situated on the ancestral and traditional lands and waters of First Nations across Manitoba. It has been placed there largely without their input or consent. This has negatively impacted First Nation’s people’s ability to exercise their treaty-protected hunting and gathering rights, and as a result, reduced their ability to earn a livelihood. In a very real sense, members of [First Nations in Manitoba] have already paid, and paid dearly for their electricity.”⁵⁵

C. Employment Equity

53. The largest component of Manitoba Hydro’s operations and administration costs are related to wages, salaries, overtime and benefits. This makes up 70 to 75% of operations and administration (“O&A”) costs in the test years. O&A costs make up a significant portion of Manitoba Hydro’s total costs, encompassing 20% of Manitoba Hydro’s total expenses.⁵⁶ O&A expenses will increase by approximately 11.6% in the first test year and then a further 4.6% in the second test year.⁵⁷
54. Manitoba Hydro states that it has committed to promoting and supporting the equitable representation of Indigenous people in its workforce.⁵⁸ Manitoba Hydro has been recognized as one of the top employers in Manitoba and while employment-related costs are a significant portion of Manitoba Hydro’s budget, they also provide benefits in Manitoba like increased job creation.⁵⁹
55. When employment figures for Manitoba Hydro are reviewed, First Nations employees are underrepresented. Further, Manitoba Hydro appears to take a pan-Indigenous approach to employment policies and targets that do not sufficiently recognize the unique status of First Nations citizens. In Exhibit AMC 28(a), in response to requests to provide employment information for First Nations, Manitoba Hydro responded with employment information for Indigenous staff generally. These statistics obfuscate the underrepresentation of First Nations citizens in Manitoba Hydro’s workforce.⁶⁰
56. While 20.21% of all staff at Manitoba Hydro self-identified as Indigenous, Exhibit AMC 3-7 shows that out of the 1,029 Indigenous employees, only 334 self-identified as being First Nations. This is approximately 6% of Manitoba Hydro’s workforce.⁶¹ The AMC is also concerned that self-identification policies could result in this being an inflated number. The

⁵⁵ Manitoba Hydro 2017-18 & 2018-19 General Rate Application, *Written Submissions of the Assembly of Manitoba Chiefs*, p. 26-27.

⁵⁶ May 15 Transcript at p. 186, l. 19-22.

⁵⁷ May 15 Transcript at p. 235, l. 12-16.

⁵⁸ Manitoba Hydro 2023/24 & 2024/25 General Rate Application, AMC/MH I-34 (Exhibit AMC 2-34), page 3.

⁵⁹ May 30 Transcript at p. 2232-2233, l. 9-4.

⁶⁰ Manitoba Hydro 2023/24 & 2024/25 General Rate Application, AMC/MH I-28 (Exhibit AMC 2-28).

⁶¹ May 30 Transcript at p. 2238, l. 5-13; Manitoba Hydro 2023/24 & 2024/25 General Rate Application, AMC/MH II-7 (Exhibit AMC 3-7).

**Assembly of Manitoba Chiefs
Final Written Submissions
Manitoba Hydro 2023/24 & 2024/25 General Rate Application**

registered population of First Nations citizens in Manitoba, according to 2021 census data is approximately 12% of the population.⁶²

57. Manitoba Hydro also does not have targets for First Nations employment, only Indigenous employment broadly.⁶³ Similarly, Manitoba Hydro has an enterprise goal of 8% Indigenous employees for management and professional positions but no goal specific to First Nations employees.⁶⁴ This does not sufficiently recognize the importance of the Crown-First Nations Treaty relationship nor the distinct identity of First Nations citizens in Manitoba. The AMC also wishes to use this opportunity to advocate to Manitoba Hydro directly that it should consider job training programs for First Nations candidates in areas like management and professional positions in addition to trades programs.
58. Another concern for the AMC is what will happen to First Nations contractors now that Keeyask and other major capital development projects have wound down. While the Keeyask Project exceeded employment and contracting targets with four Keeyask First Nations partners,⁶⁵ there is no indication of whether these economic benefits will continue. In addition, Manitoba Hydro has indicated that half of the employees hired for Keeyask left the project because they were term employees.⁶⁶

D. Equitable Reliability and Service

59. Manitoba Hydro's mission statement is to "...ensure safe, clean, reliable energy at the lowest possible cost" for all Manitobans.⁶⁷ However, Manitoba Hydro does not track reliability metrics for First Nations customers specifically and has not undertaken an analysis of reliability of assets on First Nations reserves.⁶⁸ Manitoba Hydro is unable to fully account for the impact of its capital spending priorities on First Nations customers over the past decade.⁶⁹ Therefore, it is unclear whether First Nations customers, particularly those on reserve, benefit to the same extent as other customers in relation to improvements created through capital spending.⁷⁰
60. The AMC is generally supportive of Manitoba Hydro's efforts to harden the distribution grid in remote northern communities and communities where response times are greater than average to withstand environmental factors that might cause outages.⁷¹ This is something of particular interest to First Nations and their citizens. It appears from oral evidence that First Nations concerns are primarily related to weather events that cause lengthy duration outages and require evacuation or back-up generation.⁷²

⁶² Government of Canada, "First Nations in Manitoba", accessed online: <https://www.sac-isc.gc.ca/eng/1100100020400/1616072911150>; Statistics Canada, 2021 Census of Population (Manitoba): <https://www12.statcan.gc.ca/census-recensement/2021/dp-pd/prof/details/page.cfm?Lang=E&SearchText=Manitoba&DGUIDlist=2021A000246&GENDERlist=1,2,3&STATISTIClist=1&HEADERlist=0>

⁶³ May 30 2023 Transcript at p. 2235-2236, l. 21-1.

⁶⁴ May 30 Transcript at p. 2238-2239, l. 1-9.

⁶⁵ May 30 Transcript at p. 2251, l. 4-8.

⁶⁶ May 30 Transcript at p. 2249, l. 8-13.

⁶⁷ Manitoba Hydro, Enterprise Plan: FY 22/23 <
https://www.hydro.mb.ca/corporate/news_media/pdf/enterprise_plan_2022_23.pdf>.

⁶⁸ Manitoba Hydro 2023/24 & 2024/25 General Rate Application, AMC/MH I-13a (Exhibit AMC 2-13 and AMC/MH I-11b (Exhibit AMC 2-11b.)

⁶⁹ May 23 Transcript at p. 1343, l. 5-13.

⁷⁰ May 23 Transcript at p. 1344, l. 5-14.

⁷¹ May 23 Transcript at p. 1343, l. 15-24.

⁷² May 23 Transcript at p. 1350, l. 3-25.

**Assembly of Manitoba Chiefs
Final Written Submissions
Manitoba Hydro 2023/24 & 2024/25 General Rate Application**

61. The asset management plan provided by Manitoba Hydro in the current Application does not sufficiently provide the detail for the AMC to be confident that First Nations customers are benefiting equitably from reliable services. Only two projects were identified to benefit First Nations customers specifically, the Laurie River line and some investments to diesel services.⁷³ Midgard also noted that from an asset management perspective, it did not see evidence or particularly strong evidence describing how Manitoba Hydro's investment decisions were different for residential compared with industrial customers or allocated between those groups in a clear and transparent way.⁷⁴
62. Manitoba Hydro has stated that the balance between low predictable rate increases and ensuring system reliability is not just a Manitoba Hydro priority but also something that Manitoba Hydro hears from customers directly.⁷⁵ However, Manitoba Hydro does not specifically track data or complaints by First Nations customers regarding reliability.⁷⁶ Manitoba Hydro also filed no evidence about direct engagement with First Nations customers regarding issues of reliability or prioritization of reliability with rate levels despite having a dedicated accounts and administrator group for First Nations customers.⁷⁷
63. The evidence relied on by Manitoba Hydro to illustrate the preferences of residential customers are the Customer Satisfaction Tracking Study and the 2019 Customer Perception Study.⁷⁸ The sample sizes of First Nations customers in these surveys are too small to use for statistical analysis.⁷⁹ The studies also do not indicate whether reliability concerns are related to weather events or regular reliability issues.⁸⁰ These studies are simply not indicative of First Nations interests in the current Application regarding the balance between accepting decreased reliability and increasing rates.⁸¹
64. The AMC notes that if it goes forward, advance metering infrastructure being explored by Manitoba Hydro will allow for more granular tracking of outages for First Nations customers.⁸² The AMC would like to see this kind of evidence produced in future applications.

E. Access to Rate Mitigating Measures

65. The AMC further notes that access to rate mitigating measures appears to be worse for First Nations customers on reserve compared with other customers. Regarding access to continuous improvement initiatives, Manitoba Hydro does not consider accessibility for First Nations customers.⁸³ Another example is access to behind-the-meter renewable energy systems. Out of 1,171 behind-the-meter installations in Manitoba, of which 99% are solar, according to Manitoba Hydro's records only 5 solar installations are found on 3 First Nations reserves.⁸⁴

⁷³ May 23 Transcript at p. 1344-1345, l. 20-7.

⁷⁴ Transcript of Midgard Panel, May 22, 2023 at p. 1663, l. 9-20.

⁷⁵ May 23 Transcript at p. 1164, l. 19-25.

⁷⁶ May 23 Transcript at p. 1346, l. 7-19.

⁷⁷ May 23 Transcript at p. 1347-1348.

⁷⁸ May 23 Transcript, p. 1352-1353, l. 22-2.

⁷⁹ Manitoba Hydro 2023/24 & 2024/25 General Rate Application, AMC/MH I-13(b) through (d) (Exhibit AMC 2-13(b) through (d)).

⁸⁰ May 23 Transcript, p. 1356, l. 19-25.

⁸¹ May 23 Transcript, p. 1357.

⁸² May 23 Transcript at p. 1362, l. 11-24.

⁸³ May 15 Transcript at p. 270, l. 10-24.

⁸⁴ June 7 Transcript at p. 3673; Manitoba Hydro 2023/24 & 2024/25 General Rate Application, AMC/MH I-9 (AMC Exhibit 2-9(c)).

Assembly of Manitoba Chiefs
Final Written Submissions
Manitoba Hydro 2023/24 & 2024/25 General Rate Application

THE REQUESTED RATE INCREASES ARE NOT JUSTIFIED

66. The AMC submits that the requested general rate increase in the test years has not been proven to be just or reasonable. The AMC supports a 0% rate increase in the test years on the basis that Manitoba Hydro has not proven that its revenue requirement is necessary outside of the long-term debt-to-equity ratios in Bill 36, which are not applicable in the current Application.
67. The PUB must balance Manitoba Hydro's financial needs with the impact that the proposed rate increases will have on customers, especially low-income customers and customers on reserve. Manitoba Hydro's main justification for a 2% increase in the test years is based on a 20-year forecast aimed at achieving the debt-to-equity ratio targets set out in Bill 36.⁸⁵ Until the debt-to-equity ratios set out in Bill 36 are in-force, they continue to be arbitrary and untested. This is confirmed by Mr. Rainkie who states that there is significant uncertainty as to whether Manitoba Hydro needs the level of retained earnings that would result from the Bill 36 debt-to-equity targets and when you use that kind of ratio, you build in a large cushion.⁸⁶
68. Manitoba Hydro is building in a large cushion to reduce its financial risk profile at the expense of vulnerable customers. It's attempt to do so must be balanced against the fact that increased rates will cause more hardship for First Nations customers in Manitoba. Bill impacts and energy poverty issues for First Nations residential customers on-reserve do not support a rate increase that is grounded in a 20-year goal-seeking exercise to meet arbitrary debt-to-equity ratios.⁸⁷
69. The AMC endorses Analytical Perspective #3 set out by Mr. Rainkie, which suggests that ratepayers have been paying average rate increases of 3% per year during the last 12-year period when major capital projects were not in-service, and these customers were not receiving the benefits of these projects. With better cost-control, a rate pause in the two test years should not result in higher rate increases for customers later on.⁸⁸
70. The rate pause recommendation is not retroactive, because Mr. Rainkie notes in his report that with better cost control, a rate pause in the two test years should not result in higher rate increases for customers in later years. This indicates that Manitoba Hydro does not require an increase to its general revenue in the test years. Retroactive ratemaking is the act of going back in time to adjust rates that were in place. This is not what the AMC is proposing. The AMC proposes that the PUB recognize that Manitoba Hydro has received higher than inflation rate increases over the past decade⁸⁹ and must now implement greater cost control going forward based on the evidence submitted in this hearing.
71. In the alternative, should the PUB determine that the Bill 36 targets must be considered in the current hearing or that a rate increase in the test years is just and reasonable, the requested 2% general revenue increase in the test years is not justified and a lower rate increase is warranted. Any increase approved should be under 1.4% for each test year. Evidence in this Application suggests that the PUB can meet its earlier debt-to-equity ratio target by 2035 through equal rate increases of 1.43% from now until 2034/35.⁹⁰

⁸⁵ June 7 Transcript at p. 3666, l. 9-14.

⁸⁶ Transcript of Darren Rainkie Evidence on June 1, 2023 at p. 2687, l. 13-25 and p. 2689, l. 3-13. **[June 1 Transcript]**

⁸⁷ Darren Rainkie, Manitoba Hydro 2023/24 & 2024/25 General Rate Application, "Revenue Requirement Evidence", April 3, 2023 at p. 43. **[Rainkie Report]**

⁸⁸ Rainkie Report at p. 128.

⁸⁹ May 30 Transcript at p. 2382-2383.

⁹⁰ Manitoba Hydro 2023/24 & 2024/25 General Rate Application, PUB/MH I-20(a) (Exhibit PUB 4-20(a)).

**Assembly of Manitoba Chiefs
Final Written Submissions
Manitoba Hydro 2023/24 & 2024/25 General Rate Application**

72. As will be set out further below, no increase or a lower increase is further justified by the uncertainty and lack of information underpinning the long-term forecast, the conservative export assumptions that underpin both the long-term export revenue forecast and the requested general revenue increase and the evidence of experts in this hearing that have indicated opportunities for Manitoba Hydro to reduce its cost forecasts.
73. The AMC further notes the concerns it raised about the impact of the rate increase awarded in the interim rate application and supports any action that will reduce the impact of that rate increase for First Nations customers.
- A. Shorter-Term Rate Path Should Be Considered More Persuasive for this Application**
74. Given the uncertainty of forecasts beyond the short-term, as recognized by Manitoba Hydro in its argument, there is little imperative in this proceeding to set rates based on a forecast that is undoubtedly going to be incorrect and will need to be adjusted. Manitoba Hydro spent considerable time in this proceeding describing the changing energy landscape and the uncertainty facing utilities like Manitoba Hydro. It is unnecessary and irresponsible to implement a rate increase of 2% today to match long-term forecasting at a time when the energy sector is undergoing dramatic change that may be more favourable to Manitoba Hydro than is being forecast in this application.
75. The Application is largely premised on a 20-year financial forecast and rate path proposed by Manitoba Hydro in order to meet legislated debt-to-equity targets set out in Bill 36, which have not yet come into force. The uncertainty underlying the long-term financial forecast is such that the long-term rate path cannot be adequately relied on as the basis for the current Application.
76. Financial forecasts are always subject to risk, and it is equally true that the longer out a forecast extends into the future, the greater the uncertainty in the forecast becomes.⁹¹ Manitoba Hydro has admitted to this risk throughout this proceeding, concluding that its long-term forecast is “directional” and “does not necessarily represent the rates that will be required.”⁹² However, because of the missing or incomplete components filed in this Application, the uncertainties are more pronounced. For this reason, shorter-term financial forecasting should be given stronger weighting in this Application.
77. Perhaps the most important aspect that is missing from the current Application is an integrated resource plan (the “IRP”). The IRP will provide a more detailed assessment regarding the optimal mix of energy and capacity resources that will be required over the next twenty years. It will also look at a number of different futures and an optimization that will ensure that Manitoba Hydro is meeting demand with the lowest possible cost supply mix.⁹³ Importantly, it will also provide a more detailed and robust analysis on the cost of both energy and supply over the next two decades. The current application provides little, if any, insight into the future costs facing Manitoba Hydro to meet what is expected to be higher energy demand.
78. The long-term forecast filed in this Application also does not take into account the Clean Electricity Investment Tax Credit that was introduced in federal budget 2023. This tax credit invests heavily in the clean economy.⁹⁴ Manitoba Hydro will be eligible for this tax credit and

⁹¹ Transcript of Manitoba Hydro Revenue Requirement Panel on May 29, 2023 at p. 2047, l. 2-10 [**May 29 Transcript**]; May 30 Transcript at p. 2221; June 1 Transcript at p. 2689-2690, l. 22-7.

⁹² Written Final Argument of Manitoba Hydro With Respect to Manitoba Hydro’s 2023/24 & 2024/25 General Rate Application at p. 21. [**MH Final Written Argument**]

⁹³ May 15 Transcript at p. 286, l. 1-16 and 295, l. 13-16; May 30 Transcript at 2257; Manitoba Hydro 2023/24 & 2024/25 General Rate Application, PUB/MH I-4 (Exhibit PUB 4-4);

⁹⁴ May 15 Transcript at p. 167, l. 14-20.

**Assembly of Manitoba Chiefs
Final Written Submissions
Manitoba Hydro 2023/24 & 2024/25 General Rate Application**

customers should expect to see savings from this tax credit in future applications, which may reduce future rate increases.

79. Further, in Exhibit PUB 4-21(b), a summary of key financial metrics with a zero percent rate increase approved for the 2023/24 and 2024/25 years indicates that a debt-to-equity ratio will still hit 80% by 2035, the date that may soon be legislated by Bill 36. With above average water flow or higher electricity price forecasts, this target will be reached sooner.⁹⁵

B. Export Revenue Forecast

80. While the AMC is not advocating for speculative forecasts, it does note that the conservative nature of Manitoba Hydro's export forecast impacts customers today and limited weight should be given to the long-term forecast, which is predicated on conservative estimates of Manitoba Hydro's ability to earn export revenue. Evidence indicates that there is an element of double counting to have an export revenue forecast that is independently assessed as conservative and to also build in residual risk into the rate increases requested for the forward test years in order to build up financial reserves for such risks. Mr Rainkie's advice was that we should not build risk into the forecast until those risks are actually upon us.⁹⁶
81. Manitoba Hydro's export activities play a material role in determining rate increases both in this Application and throughout the forecast horizon.⁹⁷ Export revenues will reduce costs for domestic customers. When Manitoba Hydro's export capabilities are undervalued or not fully considered in its application, it will result in a higher rate burden for domestic customers, and even more so for First Nations customers that heat with electricity and have a higher overall consumption. Manitoba Hydro has also highlighted the "significant uncertainty" of export markets, which the AMC believes should reduce the push to implement rate increases today that are based on a "smoothing" methodology incorporating this uncertainty.⁹⁸
82. Although, Manitoba Hydro's analysis of existing export contracts identified that the contracts provided value and do not have to be further optimized,⁹⁹ no such analysis was undertaken for future opportunities despite export revenues forming a major variable in determining future rate increases.¹⁰⁰ Daymark reviewed the future export forecast for this Application and determined that while "reasonable" the future export forecast is "conservative."¹⁰¹ It is also clear that one of the previously identified top risks in previous risk reporting, being the risk of reduced access to export markets, has declined in both impact and likelihood.¹⁰²
83. Part of Manitoba Hydro's conservative approach is that it has not assumed any new capacity contracts in the long-term forecast once current contracts expire.¹⁰³ In the test years, summer capacity sales are still possible for the 2024/25 year as well as through the longer-term forecast.¹⁰⁴ Manitoba Hydro is also not estimating any capacity revenue from annual capacity

⁹⁵ May 30 Transcript at p. 2225, l. 1-8; Manitoba Hydro 2023/24 & 2024/25 General Rate Application, PUB/MH I-21(b) (Exhibit PUB 4-21(b)).

⁹⁶ June 1 Transcript at p. 2686-2687, l. 22-3; Manitoba Hydro 2023/24 & 2024/25 General Rate Application, PUB/CC I-28(b) (Exhibit PUB 14-28(b)).

⁹⁷ Transcript of Manitoba Hydro Export Drought & Hydrology Panel, May 17, 2023 at p. 774, l. 4-9 [May 17 Transcript].

⁹⁸ MH Final Written Argument, p. 57.

⁹⁹ Manitoba Hydro 2023/24 & 2024/25 General Rate Application AMC/MH I-10 (Exhibit AMC 2-10).

¹⁰⁰ Manitoba Hydro 2023/24 & 2024/25 General Rate Application, section 4.4, sensitivity analysis.

¹⁰¹ Daymark Energy Advisors, *Independent Expert Consultant Report: Export Revenues and Drought Operations*, April 13, 2023 at p. 9.

¹⁰² Manitoba Hydro 2023/24 & 2024/25 General Rate Application AMC/MH I-1 (Exhibit AMC 2-1).

¹⁰³ May 17 Transcript at 758-759, l. 22-13 and 786, l. 20-25. [May 17 Transcript]

¹⁰⁴ May 17 Transcript at p. 760-761 and 763, l. 3-22.

Assembly of Manitoba Chiefs
Final Written Submissions
Manitoba Hydro 2023/24 & 2024/25 General Rate Application

auctions in either MISO or Ontario markets.¹⁰⁵ Notably, both the MISO and Ontario markets have forecasted the need for summer capacity and Manitoba Hydro will have surplus capacity and energy in the summer months over the forecast horizon.¹⁰⁶

84. Daymark notes that the driver of the MISO capacity need is the retirement of fossil-fired thermal resources, which provide firm capacity and the addition of renewables, which provide energy but not as much dependable capacity, which results in reliability concerns.¹⁰⁷ While the increase in renewable energy assets in the MISO market is driving the reduction in the long-term energy price forecast, the capacity contribution of renewable resources is reduced because the intermittency of those resources. Daymark notes that this has implications for resource adequacy.¹⁰⁸ “Renewable resources provide different amounts of capacity in different seasons, and extreme weather events have caused reliability concerns outside of typical system peak periods.”¹⁰⁹
85. Manitoba Hydro’s value in export markets is likely to be less based on energy, but Manitoba Hydro provides no forecasts or evidence in its Application about the value of its capacity. Basing its long-term export market value on declining energy costs inevitably undervalues its assets and increases forecasted costs for domestic customers.
86. As more renewable resources are added to the grid, their Effective Load-Carrying Capacity (“ELCC”) will continue to decline. ELCC is a method for quantifying the capacity contribution that a renewable resource or thermal resource has or how much that resource helps the grid meet load reliability.¹¹⁰ An ELCC study process typically evaluates resources based on their fuel (thermal, wind, solar, etc.), and the more of a single type of resource there is, the relative contribution to reliability that the resource has typically declines.¹¹¹ As the MISO market continues to add renewable resources, Manitoba Hydro’s ELCC should be expected to increase compared to the total installed capacity. This means that the amount of capacity that Manitoba Hydro has compared to other resource types will increase, resulting in higher capacity revenues.
87. Manitoba Hydro can also target sales in the hours where thermal units are setting the price and market signals are highest for opportunity sales.¹¹² This means that Manitoba Hydro will be able to extract the most value from short-term energy markets compared to other resource types. It also means that its opportunity sales will increasingly be more valuable than the average energy price in MISO, which is expected to decline due to low or zero marginal cost resources. In short, while energy prices may decline, the value of Manitoba Hydro’s assets in export markets may, in some cases, increase. This dichotomy was not presented in Manitoba Hydro’s Application or evidentiary record.
88. Both Daymark and Manitoba Hydro have noted some risks with the future export market that may impact Manitoba Hydro’s export possibilities. Daymark has predicted that the MISO market will become winter peaking, which means that utilities will build winter capacity which

¹⁰⁵ May 17 Transcript at p. 790, l. 14-19.

¹⁰⁶ May 17 Transcript at p. 790-792, referring to Manitoba Hydro 2023/24 & 2024/25 General Rate Application AMC/MH I-7 (Exhibit AMC 2-7) and Manitoba Hydro 2023/24 & 2024/25 General Rate Application AMC/MH I-8 (Exhibit AMC 2-8); May 17 Transcript at p. 796, l. 5-14; Transcript of Daymark Panel on May 18, 2023 at p. 916, l. 12-16 and 964-965, l. 18-4 [May 18 Transcript].

¹⁰⁷ May 18 Transcript at p. 917, l. 10-16.

¹⁰⁸ May 18 Transcript at p. 914, l. 14-25.

¹⁰⁹ May 18 Transcript at p. 918, l. 6-9.

¹¹⁰ May 18 Transcript at p. 1002, l. 15-21.

¹¹¹ May 18 Transcript at p. 1002-1003, l. 22-7.

¹¹² May 18 Transcript at p. 1005, l. 16-24.

**Assembly of Manitoba Chiefs
Final Written Submissions
Manitoba Hydro 2023/24 & 2024/25 General Rate Application**

will also be available in the summer, and this could reduced demand for Manitoba Hydro's surplus summer capacity.¹¹³ However, Daymark has also confirmed that the most recent MISO load forecast does not anticipate the Northern MISO annual peak to occur in the winter at any point over the twenty (20) year forecast horizon.¹¹⁴ The significant adoption of electrified heating technologies could speed things up, however in the short-to medium term the future switch to a winter peak is unlikely.¹¹⁵ Manitoba Hydro's predominant market is the northern MISO region. Given the unlikelihood of winter peaking in this region, the risk to Manitoba Hydro appears low.

89. In terms of seasonal capacity auction possibilities, Manitoba Hydro notes that it is impossible to predict a monetary value for potential new products at this time, but it is not assuming that its product will not sell.¹¹⁶ Success in pursuing seasonal diversity contracts may also mean deferring the need for additional capacity resources for several years.¹¹⁷
90. The expected capacity shortfall in MISO may provide the opportunity to sell Manitoba Hydro's summer surplus capacity into the market.¹¹⁸ Daymark has also "discussed some ways in which Manitoba Hydro's energy and capacity might be restricted due to this MISO market evolution. But some of these changes could just as easily create new or expanded opportunities for Manitoba Hydro products."¹¹⁹ Manitoba Hydro has repeated throughout the hearing that it continues to actively look for further export opportunities¹²⁰ and Daymark has recommended that Manitoba Hydro continue to seek to monetize its surplus summer capacity, which is forecast in 2023/24 and forecasted to grow in 2030/31 without new capacity sales.¹²¹
91. The AMC submits that the conservative forecast produced by Manitoba Hydro is likely to have negative impacts for its current customers, as the export potential is not nearly as dire as Manitoba Hydro claims. While it may be appropriate not to forecast a premium for Manitoba Hydro's energy or capacity, Daymark does note that "Manitoba Hydro is a clean, reliable and dispatchable" resource, which is important for a region that is trying to maintain a reliable grid with a lot of renewables coming online.¹²² Daymark further notes that "...in a world where there is a priority on a decarbonized grid, a source of clean firm supply, like Manitoba Hydro, should be valued highly, and we think that ultimately it will be valued highly." Daymark has stated, however that the dollar value is too uncertain to include in the forecast.¹²³ This does not mean that it will be of no value in the future.

C. Opportunities to Reduce Asset Management and Operations Spending

92. The AMC submits that wherever feasible, Manitoba Hydro should be actively looking to improve its systems in order to reduce costs. Given the current economic climate, this is the best way to balance Manitoba Hydro's financial health with the interests of its customers.
93. Manitoba Hydro has placed great emphasis on its engagement and research that it says indicates customers are asking for a balanced approach between low rates and maintain or

¹¹³ May 18 Transcript at p. 920, l. 5-10 and p. 921.

¹¹⁴ Manitoba Hydro 2023/24 & 2024/25 General Rate Application, PUB-DEA I-8a (Exhibit PUB 17-8a).

¹¹⁵ May 18 Transcript at p. 1020, l. 1-3 and 1021, l. 13-19.

¹¹⁶ May 17 Transcript at p. 799, l. 11-23.

¹¹⁷ May 17 Transcript at p. 837, l. 2-7.

¹¹⁸ May 18 Transcript at p. 918, l. 10-17.

¹¹⁹ May 18 Transcript at p. 923, l. 21-25.

¹²⁰ See for example: May 17 Transcript at p. 797, l. 10-19.

¹²¹ May 18 Transcript at p. 964-965, l. 18-4; p. 1011, l. 1-11; Daymark Report at p. 58.

¹²² May 18 Transcript at p. 924, l. 1-9.

¹²³ May 18 Transcript at p. 926, l. 4-10 and 14-16.

**Assembly of Manitoba Chiefs
Final Written Submissions
Manitoba Hydro 2023/24 & 2024/25 General Rate Application**

improve reliability.¹²⁴ It has planned for \$18 billion over the 20-year forecast, with 90% of that cost attributed to business operations capital.¹²⁵ Manitoba Hydro states that its increase in its asset management costs over the forecast scenario is primarily to sustain existing assets and maintain system reliability.¹²⁶

94. Midgard has challenged Manitoba Hydro's proposed asset and capital management plan, suggesting that Manitoba Hydro's assessment tools are not as developed as they could be. Midgard suggested a reduction in expenditure would be warranted by Manitoba Hydro and recommends at least a 10% reduction in Manitoba Hydro's business operations capital budget until such time as Manitoba Hydro provides evidence that its asset decision making is supported by quality asset management data, tools and decision-making frameworks.¹²⁷
95. The AMC also notes that Manitoba Hydro has a history of cost overruns, which whether related to scoping, supply chain issues or any other issue, is ultimately borne by Manitoba Hydro's customers.¹²⁸ The AMC is concerned that cost overruns may have caused necessary projects from being implemented, and if such overruns continue it will contribute to increased cost pressures that will be passed on to Manitoba Hydro customers both in terms of higher rates and in system reliability.
96. Further, Manitoba Hydro may be able to find cost-saving alternatives to its current asset management and capital plan. For example, Manitoba Hydro has not considered whether non-wire alternatives could be a more cost-effective solution to either mitigate the impacts from future weather events or natural disasters, or to return service to customers following such an event.¹²⁹ Manitoba Hydro has also not considered whether any capital investments proposed as part of its Application could be deferred, cancelled or replaced with wind, solar or batter investments that could receive tax credits under the Federal Budget 2023. Manitoba Hydro has committed to looking into this issue to keep costs as low as possible for Manitobans.¹³⁰
97. As noted previously, Manitoba Hydro is also forecasting increased operations and administration costs. Mr. Rainkie has made a number of recommendations for O&A cost containment, that if followed by Manitoba Hydro could reduce rate burdens for its customers.¹³¹

COST OF SERVICE

98. If any rate increase is awarded, the AMC supports efforts to minimize the impact on residential customers, including by allowing an equal rate increase across customer classes or expanding the zone of reasonableness. Manitoba Hydro's Application proposes a 2.4% rate increase for residential customers, which is higher than the differential rate increase proposed for all other classes. Given the disproportionate bill affordability and energy poverty issues faced by First Nations on-reserve residential customers, efforts to reduce additional bill impacts for the residential class are necessary.

¹²⁴ May 23 Transcript at p. 1165, l. 6-12.

¹²⁵ May 23 Transcript at p. 1183-1184, l. 21-8.

¹²⁶ May 23 Transcript at p. 1184, l. 9-13.

¹²⁷ Midgard Consulting, 2023/24 & 2024/25 Manitoba Hydro General Rate Application, *Midgard Consulting Incorporated - Evidence for the Consumers Coalition*, April 3, 2023 at p. 85.

¹²⁸ May 30 Transcript at p. 2262-2263, and 2267-2268; Manitoba Hydro 2023/24 & 2024/25 General Rate Application PUB/MH I-95 (Exhibit PUB 4-95).

¹²⁹ May 23 Transcript at p. 1365, l. 8-16.

¹³⁰ May 23 Transcript at p. 1366-1367, l. 6-3

¹³¹ Rainkie Report.

**Assembly of Manitoba Chiefs
Final Written Submissions
Manitoba Hydro 2023/24 & 2024/25 General Rate Application**

99. Regulators may consider non-cost attributes when designing rates. One such non-cost attribute is affordability, which Manitoba Hydro agrees is an important consideration.¹³² Further, given the integrated nature of Manitoba Hydro's system, Manitoba Hydro has stated that it is not possible to precisely determine the cost of serving each customer or customer class.¹³³ While Manitoba Hydro uses known customer characteristics as the basis to split costs, cost of service is still only available to provide an approximation of the actual cost of servicing a particular customer or class of customers given the many judgments and estimates that are required throughout the process.¹³⁴
100. The uncertainty of future export revenues and disproportionate impact of export revenues between the industrial classes and residential class further supports limiting the impact of differentiated rates on the residential class for the current Application. A zone of reasonableness is used to recognize uncertainty, and Manitoba Hydro has noted that the tolerance range must accommodate the uncertainty in the initial allocation of costs to the class, as well as any additional uncertainty that accompanies the secondary step of allocating a share of net export revenue to reduce the costs for each class.¹³⁵ As stated by Ms. Gregorashuk: "We can reasonably expect that the total costs will be similar in the next study, but we don't have the same level of confidence that export revenues are going to remain at the same elevated levels in the future."¹³⁶
101. For First Nations customers, the disproportionate impact of export revenue on differentiated rates is even more significant because First Nations in what is now Manitoba never ceded their rights to lands and waters. First Nations in Manitoba are now being required to pay a disproportionately high rate for the use of their own stolen water in order to profit a Crown-owned utility.
102. Export revenues reduce the total revenue requirement that needs to be recovered from domestic customers.¹³⁷ Net export revenue is used to reduce the revenue requirement of the generation and transmission functions that was allocated to the domestic classes.¹³⁸ In its evidence, Manitoba Hydro stated that net exports when allocated to each class was 35% of total costs for the residential class compared with 38% for general service medium and 48% for general service large. The lower percentages for residential and general service medium are due to the additional non-generation and transmission requirements of the class, which do not get a share of the export revenue.¹³⁹
103. When asked about the disproportionate benefit to the GSL classes, and whether Manitoba Hydro took any position as to whether the zone of reasonableness should remain or be expanded, Ms. Van Hussen stated that Manitoba Hydro took no strong position, and it may be reasonable to widen the zone of reasonableness to 90-110% when you have significant export revenue like Manitoba Hydro had in PCOSS24.¹⁴⁰ Alternatively, the PUB could make an order for a more gradual approach to moving customer classes within the zone of reasonable and as export revenues lower, all classes will get a little bit closer to the existing zone of reasonableness.¹⁴¹ Manitoba Hydro has further agreed that

¹³² June 6 Transcript at p. 3394, l. 3-10.

¹³³ June 6 Transcript at p. 3389-3390, l. 23-2.

¹³⁴ June 6 Transcript at p. 3395-3396, l. 21-1.

¹³⁵ June 6 Transcript at p. 3407, l. 4-8.

¹³⁶ June 6 Transcript at p. 3407-3408, l. 23-2.

¹³⁷ June 6 Transcript at p. 3402, l. 8-10.

¹³⁸ June 6 Transcript at p. 3402, l. 15-18.

¹³⁹ June 6 Transcript at p. 3404, l. 5-13.

¹⁴⁰ June 6 Transcript at p. 3430, l. 14-21.

¹⁴¹ June 6 Transcript at p. 3430-3431, l. 22-2.

**Assembly of Manitoba Chiefs
Final Written Submissions
Manitoba Hydro 2023/24 & 2024/25 General Rate Application**

leaving the residential class slightly below the ZOR while bringing the industrials closer to it and differentially increasing the GSS and GSM rate increases instead is not inconsistent with the PUB's previous directions.¹⁴²

104. The AMC submits that the PUB should take steps to ensure that the impact of differentiated rate increases are minimal for more vulnerable residential customers, such as First Nations on-reserve residential customers. At the rate design stage, the PUB may involve consideration of rate objectives and policies to ensure that the revenue requirement is fairly being recovered from customers in a manner that results in just and reasonable rates. One of the objectives is affordability, which considers the magnitude of bill impacts.¹⁴³ Ms. Gregorashuk stated that Manitoba Hydro has taken bill affordability into consideration with respect to rate design when it looks at the differentiation between the rate classes that they are proposing. Although, Ms. Gregorashuk stated that the rate differentiation is "quite moderate" looking at the average rate increase,¹⁴⁴ the impacts on vulnerable customers like First Nations residential customers on-reserve are not moderate, for the reasons set out above regarding the impact of rate increases on First Nations customers.¹⁴⁵

CONCLUSION

105. The AMC submits that no rate increase in the test years is just and reasonable, and in the alternative that a lower increase is justified.

¹⁴² June 6 Transcript at p. 3448, l. 3-13.

¹⁴³ June 6 Transcript at p. 3410, l. 10-16; June 7 Transcript, p. 3619-3620, l. 20-4.

¹⁴⁴ June 7 Transcript, p. 3666, l. 1-8.

¹⁴⁵ see also: June 7 Transcript at p. 3651-3663.