

Bill 11, *The Winter Heating Cost Control Act*

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I. INTRODUCTION

Bill 11, *The Winter Heating Cost Control Act*,¹ was introduced into the Manitoba Legislature on 16 November 2005. It was met with extensive debate throughout the legislative process. As Bill 11 passed through the Legislature it attracted media attention and was met with both official and public opposition at the Standing Committee of Social and Economic Development hearing on 5 June 2006. Subsequently Bill 11 was amended and given Royal Assent on 13 June 2006, with only some of its sections declared to come into force on 20 November 2006.

The initial intention behind Bill 11, according to a Manitoba Government news release, was to “keep heating cost increases manageable for Manitoba consumers during a period of instability in natural gas prices.”² The bill’s objectives in accomplishing this goal were twofold: to create a ceiling for the maximum level of natural gas prices; and to establish a fund financed by revenue from electricity exports to control costs and to support conservation, efficiency and alternatives to natural gas.³

This paper will examine stakeholder concerns with respect to natural gas regulation and the government rationale behind the introduction of Bill 11. It will also explore the forces that amended Bill 11, which ultimately led to the enactment of a significantly altered bill.

¹ Bill 11, *The Winter Heating Cost Control Act*, 4th Sess., 38th Leg., Manitoba, 2005 (assented to 13 June 2006, S.M. 2006, c. 5).

² Manitoba Government, News Release, “Bill 11 and Mild Winter Offer Opportunity to invest in Heating Efficiency” (30 January 2006), online: Manitoba Government <<http://www.gov.mb.ca/chc/press/top/2006/01/2006-01-30-01.html>>.

³ *Ibid.*

II. AN EXPLORATION OF THE NATURAL GAS INDUSTRY

A. Looking Forward

When importing non-renewable resources like natural gas, it is important for parliament to consider the future outlook on market prices. According to the National Energy Board, the supply of natural gas will be flat through to 2010,⁴ and both imports and domestic production sources will be stagnant until the next decade.⁵ On the other hand, predictions for natural gas demand indicate positive growth.⁶ On a simple supply demand analysis one might infer natural gas prices are going to rise. However, factors outside the scope of a demand supply analysis play a role in natural gas pricing. For example, fluctuations in pricing may be attributed to weather conditions, crude oil prices, drilling and production of natural gas, and storage levels of natural gas.⁷ The current price of natural gas may be attributed to both above seasonal winter temperatures and an absence of any major hurricanes near production facilities.⁸

However, the market rate of natural gas is generally considered to be volatile and unpredictable.⁹ For example, natural gas prices in 2000 were near the range of \$2.00 to \$4.00/GJ.¹⁰ Natural gas prices in January 2006 spiked significantly to \$12.00/GJ. To date, natural gas prices have decreased to \$4.50/GJ. However, another fluctuation is predicted: according to Natural Resources Canada, prices will rise to \$7.60/GJ for the winter of 2007.¹¹

In summary, although gas prices are predicted to continue to rise, a concrete prediction of future gas rates would be impossible.¹² Therefore, it is a fair assumption that consumers will face higher natural gas prices for the winter of

⁴ National Energy Board, *Looking Ahead to 2010 Natural Gas Markets in Transition—An Energy Market Assessment* (Calgary: Publications Office, National Energy Board, 2004), online: National Energy Board <http://www.neb-one.gc.ca/energy/EnergyReports/emagaslookingahead2010august2004_e.pdf> at 3.

⁵ *Ibid.* at 4.

⁶ *Ibid.* at 17.

⁷ *Ibid.*

⁸ Natural Resources Canada, *Canadian Natural Gas Winter 2006–07 Outlook* (Ottawa: Natural Gas Division, Petroleum Resources Branch, 2006), online: Natural Resources Canada <http://www2.nrcan.gc.ca/es/erb/cmfiles/winter_outlook_2006_english209Oeq-06112006-4763.pdf> at 2.

⁹ *Ibid.* at 4.

¹⁰ A gigajoule (GJ) is a metric term used for measuring energy use. For example, one GJ is equal to 26.9 m³ of natural gas.

¹¹ *Ibid.* In the winter of 2007, natural gas rates averaged a price of approximately \$8.00/GJ. This figure is based on AEEO Winter Strip rates, see: online <<http://www.psac.ca/statistics/firstenergy/>>.

¹² *Ibid.*, see also *supra* note 8 at 4.

2007, but it is unclear whether the price will approach the record levels exhibited during the winter of January 2006.

B. The Natural Gas Market in Manitoba

A brief overview of Manitoba's natural gas market is beneficial before embarking on analysis of the government initiatives in the sector. The importance of the energy industry in Manitoba society is evidenced by a quote from Energy, Science and Technology Minister Dave Chomiak, "...[C]onsumers and taxpayers who live in a climate that requires home heating as a necessity, not as a frivolous thing."¹³ Although natural gas is a necessity as a major source of heating, consumers of natural gas in Manitoba only have two sources from which to purchase natural gas: Manitoba Hydro, a Crown corporation, and private marketers. In addition to the limited sources of natural gas there are other factors that make Manitoba's natural gas market unique. For example, Manitoba does not produce its own natural gas. In fact, Manitoba Hydro imports all of Manitoba's natural gas supply. Therefore, because the Province of Manitoba is only a consumer with respect to the national market, both the two aforementioned sources of natural gas in Manitoba, as well as Manitoba consumers themselves, have little influence over the national gas rate. What effect, then, do the suppliers of domestic natural gas have on the prevailing domestic gas rates?

According to the *Manitoba Hydro Act*,¹⁴ the purpose of Manitoba Hydro is to create a continual supply of power to adequately meet the needs of the province and to promote economy and efficiency through this task.¹⁵ Manitoba Hydro created a subsidiary, Centra Gas, to aid in the implementation of this policy statement by purchasing and delivering natural gas to Manitoba residents at cost. Therefore, the cost of domestic natural gas sold by Manitoba Hydro will generally reflect the going national rate. However, as mentioned above, there is a second option for natural gas consumers—private brokers. In contrast to Manitoba Hydro, private brokers are businesses that profit from natural gas imports. Brokers include marketers such as Municipal Gas and Energy Savings (Manitoba) Corp.¹⁶ Private brokers operate by purchasing natural gas futures to hedge the natural gas market. The private broker earns income based on a

¹³ Manitoba, Legislative Assembly, *Debates and Proceedings*, Vol. LVII No. 15 (18 November 2005) [*Debates* (18 November 2005)] at 496 (Dave Chomiak).

¹⁴ C.C.S.M. c. H190.

¹⁵ *Ibid.* at s. 2.

¹⁶ Manitoba Hydro, *Residential Guide to Buying Natural Gas: It's Your Choice*, online: Manitoba Hydro <http://www.hydro.mb.ca/your_home/purchasing_natural_gas/residential_guide_to_buying_natural_gas.pdf> at 1.

premium which is the difference between the market rate contracted with a consumer and the futures price of the gas.¹⁷

The consumer thus has the choice of either locking into a fixed rate contract through a private broker or purchasing natural gas at market influenced prices that may fluctuate significantly through Manitoba Hydro. The value of either choice is dependent on market prices and consumer preferences. However, according to Tom Adams, an analyst from Energy Probe, marketers charge steep premiums for fixed prices.¹⁸ Mr. Adams states that if Manitoba Hydro were to fix natural gas rates and subsequently market rates dipped below the fixed rate, consumers could turn to brokers because they could offer ostensibly lower rates based on the low market rates prevailing at that point. Mr. Adams predicted this could cost consumers an extra \$12 million on natural gas.¹⁹ This is due to the fact that while private brokers may offer the comfort of fixed rates over a defined period, Manitoba Hydro may sell natural gas at a relatively cheaper rate in the long run, even though its prices will fluctuate with the national market rate.

III. PUBLIC DEBATE: THE BACKGROUND ON BILL 11

In Manitoba, debate over the issue of natural gas regulation has brought various public interest groups forward. Numerous commentators have responded against price regulations in the *Winnipeg Free Press*.²⁰ Also, associations like the Consumer Association of Manitoba and The Seniors Association of Manitoba, have actively placed a watchful eye on natural gas prices.²¹ These associations have also brought forth broader political issues that are affected by and are relevant to any political initiatives in natural gas regulation. These issues include but are not limited to the Kyoto Accord, emerging industries of alternate energy sources, and Manitoba Hydro's debt to equity ratio.²² In addition to these specific issues, the pricing of natural gas has widespread economic ramifications. Direct financial consequences can often become an issue that supersedes political issues for a majority of the interest groups.

¹⁷ Tom Adams, "Regulated gas a pain for Manitobans" *Winnipeg Free Press* (14 May 2006).

¹⁸ *Ibid.*

¹⁹ *Ibid.*

²⁰ *Ibid.*, see also: Avrom Charach, "Province's Gas-Rate Freeze Will be Cold Comfort" *Winnipeg Free Press* (27 December 2005) and Tom Adams, "Manitoba wastes electricity, and now gas, too" *Winnipeg Free Press* (6 November 2005) [Adams].

²¹ *Manitoba Society of Seniors Inc. v. Manitoba*, [1988] M.J. No. 69 (Man. CA) [*Manitoba Society of Seniors Inc.*].

²² Manitoba, Legislative Assembly, *Standing Committee of Social and Economic Development*, Vol. LVII No. 9 (5 June 2006) at 367 [*Standing Committee of Social and Economic Development* (5 June 2006)].

A. Financial Considerations

With respect to financially driven considerations, a consumer's interest in natural gas regulation relates to minimizing their bill payments. This may be achieved in the short term by decreased bill costs, or over a longer period by increasing the efficiency of one's energy consumption and thereby lowering one's bill payments.²³ Another financial driven consideration includes consumers who seek cheaper energy alternatives. As a corollary, if natural gas prices become unaffordable the consumer is forced to minimize its use or find an alternative energy source. However, these principles cannot be generalized to all consumer groups. For example, the Community Education Development Association has suggested that even if natural gas prices become unaffordable, low income families and seniors may not be able to invest in alternate forms of energy because the initial investment needed to convert is too significant.²⁴ Subsidized Power Smart initiatives that attempt to make energy efficient choices affordable may also be outside the financial reach of low income households, because again, the initial investment is too significant.²⁵

Yet another factor to take into account when examining consumer preference is whether the consumer does not use natural gas or does not have access to this resource. These consumers do not benefit from subsidized natural gas costs, but they may be subject to the tax that will directly or indirectly subsidize the cost.²⁶ This factor is especially important in Manitoba, as there are approximately 510 000 individuals that obtain their heat source from Manitoba Hydro, but only one-half of these individuals use natural gas.²⁷ This statistic includes entire rural and northern communities that do not have access to natural gas.²⁸ This issue has been noted in the *Winnipeg Free Press*, which stated that farmers without natural gas would be subsidizing city dwellers.²⁹

B. Political Considerations

In addition to financial concerns, consumer preference is also altered by political issues. Environmentalists like former premier Ed Schreyer have

²³ *Ibid.* at 386 (Dave Chomiak).

²⁴ *Ibid.* at 388.

²⁵ *Ibid.*

²⁶ Manitoba, Legislative Assembly, *Debates and Proceedings*, Vol. LVII No. 20 (28 November 2005) [*Debates* (28 November 2005)] at 707 (Ralph Eichler).

²⁷ Manitoba, Legislative Assembly, *Debates and Proceedings*, Vol. LVII No. 18 (23 November 2005) [*Debates* (23 November 2005)] at 625 (Jon Gerrard).

²⁸ *Debates* (28 November 2005), *supra* note 26 at 708 (Ralph Eichler).

²⁹ Helen Fallding, "Hydro seeks 5% rate hike for electricity" *Winnipeg Free Press* (22 November 2005).

expressed concern over the consumption of a non renewable resource.³⁰ The consumption of hydrocarbons is said to be a major cause of global warming. In particular, Manitoba Premier Gary Doer has adopted the Kyoto Accord, which would seek to minimize natural gas consumption.³¹ This policy is contrary to a theoretical consumer preference for lower, subsidized natural gas rates and increased resource availability raised by one commentator.³² For example, according to Peter Holle, president of the conservative Frontier Centre for Public Policy, market signaling creates the financial push that alters consumer behaviour.³³ In making this statement Mr. Holle was referring to the deterrence power of increased prices that naturally arises when a resource becomes scarce.

C. Stakeholder Concerns

Stakeholders such as marketers and producers of alternate forms of energy, which include geothermal systems and biomass,³⁴ have a direct financial interest in natural gas regulation. These groups are in direct competition with Manitoba Hydro as they fight for a higher share of the commercial energy sector. Subsidization of natural gas prices would create a lower and artificial market price for natural gas, which would affect this interest group's ability to compete with Manitoba Hydro.

Upon an initial analysis it appears the varying interest groups have conflicting policies and goals. For example, environmentalists promote the use of biomass and geothermal systems, yet low income families may not be able to invest in these products. Consumers may demand a decrease in their natural gas bills, but taxpayers who do not use natural gas would be opposed to subsidizing those who do. However, a possible area of convergence is on the issue of government initiatives toward increased efficient use of heating spaces, and efficient use of natural gas. Consumers would require less natural gas and this would tend to minimize consumption levels. Furthermore, the majority of Manitoba Hydro customers could benefit from efficient heating spaces whether they use natural gas or not. Therefore, while each stakeholder's specific concerns in natural gas regulation may diverge, there are general initiatives that may appease a majority of the public interest.

In summary, during Bill 11's passage through the legislature, the stakeholders lobbied against subsidizing natural gas. Furthermore, they all generally lobbied

³⁰ Mia Rabson, "Natural Gas Price Relief Ridiculed by Schreyer Hydro plan 'perverse'" *Winnipeg Free Press* (18 November 2005).

³¹ *Debates* (28 November 2005), *supra* note 26 at 706 (Bidhu Jha).

³² Adams, *supra* note 20.

³³ *Supra* note 30.

³⁴ Manitoba Government, *Biomass Energy*, online: Manitoba Government <<http://www.gov.mb.ca/est/energy/initiatives/biomass.html>>.

against subsidizing a specific heating source over any other, and against subsidizing a resource in such a way that is geared to only benefit a specific interest group. The government accepted these recommendations and amended Bill 11 accordingly.

IV. BILL 11—THE FIRST PROPOSAL

Bill 11, *The Winter Heating Cost Control Act*,³⁵ purported to accomplish two objectives in its initial form: to create a rate freeze of natural gas prices; and to establish a fund to subsidize the rate freezes and promote natural gas conservation. Mr. Chomiak stated the rationale behind a rate freeze was to protect consumers from “rate shock”.³⁶ The rate freeze would smooth out natural gas prices, thereby protecting consumers from sudden rate increases.

It is important to note Bill 11 was drafted when natural gas prices rose to \$12.54/GJ in November 2005; an increase of 68% over 2004 rates.³⁷ According to Vale Perry, the drafter of the bill, “[Bill 11] came at a time of great concern”.³⁸ However, this rate freeze initiative would only apply to the 2005–06 and the 2006–07 winter heating seasons.³⁹ The rate freeze for the 2005–06 season would bar the Public Utilities Board from approving any rate increase after 3 November 2005. The rate freeze for the 2006–07 season would be accomplished by creating a general cap on price increases. The level of this cap would be determined by the Lieutenant Governor in Council.⁴⁰

The second stated task of the bill was to establish the “Stabilization and Affordable Energy Fund”.⁴¹ Manitoba Hydro was statutorily obligated to establish this fund to make payments for the objectives of the entire bill.⁴² However, the bill stated that the specific objectives of the fund itself were to provide support for programs and services that promote conservation and efficiency of electricity and natural gas.⁴³ Did this mean that monies from Manitoba Hydro could be used for objectives other than promoting

³⁵ *Supra* note 1.

³⁶ Mia Rabson, “Province Vows Gas Relief Will Guard Against Looming Price Pain” *Winnipeg Free Press* (13 October 2005).

³⁷ Natural Resources Canada, *Canadian Natural Gas—Monthly Market Update* (Ottawa: Natural Gas Division, Petroleum Resources Branch, 2005), online: Natural Resources Canada <http://www2.nrcan.gc.ca/es/erb/cmfiles/market_update_november_20052006-25012006-1793.pdf> at 2.

³⁸ Interview of Vale Perry (23 November 2006).

³⁹ See *The Winter Heating Cost Control Act*, *supra* note 1 at s. 7(3).

⁴⁰ *Ibid.* at s. 6(2).

⁴¹ *Ibid.* at s. 7(1).

⁴² *Ibid.*

⁴³ *Ibid.* at s. 7(2).

conservation and efficiency of electricity and natural gas? Furthermore, the fund was to promote "gas system viability and the development of alternatives to natural gas."⁴⁴ This notion of conservation and efficiency of energy programs has been coined demand side management ("DSM"). DSM deals with objectives for controlling the demand of a commodity.⁴⁵ However, beyond the fund's general construction of DSM, it was unclear what initiatives it proposed or how they were to be carried out.

What was clear was that the fund was legislated to be financed by export electricity sales.⁴⁶ For example, Manitoba Hydro had to pay into the fund a percentage of electricity export sales from the winter seasons on which the rate freezes applied.⁴⁷ However, according to Ms. Perry there was nothing in the bill to indicate what value this percentage would be.⁴⁸ Ms. Perry said funds established through legislation are usually constructed in a general way to provide flexibility in their management.

Aside from the purpose of the fund itself, Manitoba Hydro would also be able to use the fund to make payments for provisions set out in s. 7(2) of the bill.⁴⁹ Section 2(a) outlines the bill's general purpose as well as its aim of protecting consumers from rising heat costs.⁵⁰ Therefore, while the fund does not include subsidizing natural gas prices as its specific purpose, Bill 11's original wording would suggest payments can nonetheless be made out of the fund for this objective.⁵¹

V. DEBATE IN THE HOUSE

Bill 11, *The Winter Heating Cost Control Act*, was sponsored by then Minister of Energy, Science and Technology Dave Chomiak, and it was introduced in the Legislative Assembly for first reading on 16 November 2005. The bill was politically motivated, according to Ms. Perry and as evidenced by the background leading up to its introduction.⁵²

⁴⁴ *Ibid.*

⁴⁵ *Supra* note 4 at 16.

⁴⁶ See *The Winter Heating Cost Control Act*, *supra* note 1 at s. 7(3).

⁴⁷ *Ibid.*

⁴⁸ *Supra* note 38.

⁴⁹ See *The Winter Heating Cost Control Act*, *supra* note 1 at s. 7(4).

⁵⁰ *Ibid.* at s. 2(a).

⁵¹ *Ibid.* at s. 7(4).

⁵² *Supra* note 38.

A. Second Reading

Bill 11 was met with significant criticism in the second reading stage. The critics, including both Liberals and Progressive Conservatives ("PC") argued the bill attempted to cross-subsidize natural gas through electricity profits. Further, this subsidy was at the expense of Manitoba electricity consumers, of which only half use natural gas.⁵³ Critics went as far as stating the bill was a New Democrat Party ("NDP") slush fund.⁵⁴ The NDP, and in particular Mr. Chomiak, fought back. They urged the Legislative Assembly to view the bill as protecting consumers and taxpayers from high natural gas prices and benefiting all energy consumers through DSM initiatives.⁵⁵ The bill continued to meet strong opposition through its second reading, which continued until 31 May 2006.

Mr. Chomiak began the introduction of Bill 11 by outlining the policy considerations that compelled the government to draft the bill. In particular, Mr. Chomiak referred to the Public Utilities Board's recommendation to the government to reduce consumption of natural gas:

The Public Utilities Board has also said that we should look at reducing consumption in a major way by which natural gas consumers can reduce the impact of rising natural gas prices and make staying with natural gas for heating an acceptable strategy.⁵⁶

Mr. Chomiak argued high prices were severely hurting low income families: "It is extremely difficult in January to tear your walls apart to add insulation or to drill the holes or lay the pipes needed to add a heat pump."⁵⁷ Therefore, it was clear from the onset that Bill 11 was an attempt to protect consumers from natural gas price increases. Mr. Chomiak also spoke about the usage of electricity export dollars. He argued electricity exports have been profitable and will continue to increase. The Minister submitted it was therefore the government's duty to use the cash influx to protect consumers.

Both the bill and this line of reasoning were immediately hit with a barrage of criticism. In particular, Mr. Jack Reimer, the MLA for Southdale, questioned why the government would not use electricity export funds to subsidize electricity customers.⁵⁸ Mr. Chomiak responded by stating the DSM initiatives would be beneficial to electricity customers because the subsidized programs would also apply to electricity customers, but he did not state why electricity price protection was not included in the bill.

⁵³ *Debates* (28 November 2005), *supra* note 26 at 713 (Jack Reimer).

⁵⁴ *Ibid.* at 708 (Ralph Eichler).

⁵⁵ *Supra* note 2.

⁵⁶ *Debates* (18 November 2005), *supra* note 13 at 503 (Dave Chomiak).

⁵⁷ *Ibid.* at 505 (Dave Chomiak).

⁵⁸ *Ibid.* at 498 (Jack Reimer).

Opposition members continued to hammer the notion of cross-subsidization. In particular, the opposition latched onto the comments of former premier Ed Schreyer. Mr. Schreyer verbally attacked Bill 11 and the NDP in a *Winnipeg Free Press* article:

[T]he most retrograde step the government could possibly take ... it's so wrong it's perverse ... it means a clean, renewable energy source is going to be used to subsidize a non-renewable, environmentally unfriendly fuel and it won't encourage people to reduce their use of natural gas.⁵⁹

Deputy Leader of the Official Opposition Glen Cummings echoed these sentiments when he stated, "This creates a perverse cross-subsidization with legislation ... it violates sound environmental thinking."⁶⁰

Dr. Jon Gerrard, the MLA for River Heights, took a different approach and attacked the bill on the basis that it put consumers who did not use natural gas at an unfair disadvantage. He argued that only half of Manitoba Hydro customers who use electricity use natural gas.⁶¹ Therefore, these customers would be supporting services they do not use. Furthermore, Ralph Eichler, the MLA for Lakeside, picked up on this notion and submitted the bill was an extra tax for farmers who did not have access to natural gas.⁶²

Peter Dyck, the MLA for Pembina, was opposed to the bill on yet another issue: its commitment to the Kyoto accord. Mr. Dyck questioned how decreasing the cost of a commodity would support a decrease in demand.⁶³

The NDP rebutted these attacks by continually returning to the second objective of the bill, DSM promotion. However, it was clear that the NDP did not have an answer for these critics. Opposition ministers from both the PC and the Liberal parties repeatedly stated that any initiatives that either cross-subsidized natural gas prices or fixed natural gas prices were fraught with difficulties.

Mr. Chomiak attempted to address the opposition's concerns in an effort to save the bill's objectives. It was Mr. Chomiak's position that the bill did not allow electricity dollars to subsidize natural gas dollars. He instead referred to Manitoba Hydro's hedging and balancing accounts and submitted that the accounts could be used to "smooth" gas prices.⁶⁴ In doing so, electricity profits would only finance the second objective of the bill, the efficiency and conservation programs. However, opposition critics attacked Mr. Chomiak's

⁵⁹ *Supra* note 30.

⁶⁰ *Debates* (18 November 2005), *supra* note 13 at 494 (Glen Cummings).

⁶¹ *Debates* (23 November 2005), *supra* note 27 at 625 (Jon Gerrard).

⁶² *Debates* (28 November 2005), *supra* note 26 at 707 (Ralph Eichler).

⁶³ *Ibid.* at 711 (Peter Dyck).

⁶⁴ *Debates* (23 November 2005), *supra* note 27 at 625 (Dave Chomiak).

interpretation of the bill with equal muster; they asserted the bill was unnecessary if Manitoba Hydro already had the ability to smooth gas prices.

For example, Jack Penner, the MLA for Emerson, submitted that the bill was erroneously presented if its purpose was simply to fund DSM initiatives that were geared towards all energy consumers. He stated that if this was the bill's objective, the bill should have been drafted in such a way that it tried to convert those consumers that use natural gas to electricity. Specifically, Mr. Penner stated:

Would it not have been simpler just to say, "Well, we are going to put in place programs to encourage those people who are now on natural gas to convert to hydro"? Would that not have been nice? Number one, cleaner fuel; No. 2, stop the destruction of the ozone layer; No. 3, stop and decrease the effects of global warming.⁶⁵

Mr. Penner was referring to the current existence of Manitoba Hydro Power Smart programs. He argued subsequent legislation for Power Smart programs is redundant and the bill should have been structured differently instead.

Bonnie Mitchelson, the MLA for River East, attacked Bill 11 on a fiscal level. Ms. Mitchelson compared Bill 11 to a 2002 bill called Bill 41, *The Manitoba Hydro Amendment Act*.⁶⁶ She submitted that Bill 41 was a two-year raid on Manitoba Hydro that took \$203 million from Manitoba Hydro coffers.⁶⁷ In comparison, she noted that Bill 11 was a two-year bill with similar provisions to draw funds from Manitoba Hydro. Ms. Mitchelson submitted Manitoba Hydro's debt to equity ratio is extremely poor and therefore funds taken from Manitoba Hydro are only borrowed from the bank.⁶⁸ She urged the House to use any export revenues of electricity to decrease Manitoba Hydro's debt.

Finally, Bill 11 was passed along to the committee stage with the complications of numerous unresolved issues that were raised in the second readings.

B. Committee Stage

Bill 11 went to the Social Economic Development Committee on 5 June 2006. Five interest groups made presentations in addition to further debate amongst the ministers. All five presenters spoke in opposition of Bill 11.

Ian Wishart, the vice president of Keystone Agricultural Producers, spoke on behalf of the farming community of Manitoba. Mr. Wishart attacked the bill for

⁶⁵ Manitoba, Legislative Assembly, *Debates and Proceedings*, Vol. LVII No. 26 (7 December 2005) [*Debates* (7 December 2005)] at 987 (Jack Penner).

⁶⁶ Bill 41, *The Manitoba Hydro Amendment Act*, 3d Sess., 37th Leg., Manitoba, 2002 (assented to 9 August 2002, S.M. 2002, c. 41).

⁶⁷ Manitoba, Legislative Assembly, *Debates and Proceedings*, Vol. LVII No. 80 (31 May 2006) [*Debates* (31 May 2006)] at 2822 (Bonnie Mitchelson).

⁶⁸ *Ibid.*

subsidizing natural gas, which would not benefit most farmers because a majority of them did not have access to the resource.⁶⁹ Furthermore, Mr. Wishart was concerned about provisions in the legislation that required Manitoba Hydro to establish the fund. As farmers producing biomass compete with Manitoba Hydro, it was Mr. Wishart's position that the fund created by Bill 11 would need more arms-length separation from Manitoba Hydro to have merit. This was because, on the face of Bill 11, the Legislature would have little control over how Manitoba Hydro spent its electricity export funds.⁷⁰

Gloria Desorcy, a representative of the Consumer Association of Canada, spoke on behalf of consumers in Manitoba and the Manitoba Society of Seniors Inc. Both groups have played an active role in natural gas price debates. For example, in 1998 the parties commenced an action against Manitoba Hydro for disclosure of government reports on pricing considerations of rates.⁷¹ Ms. Desorcy closed her presentation with three suggestions:

- That the Government of Manitoba allow the PUB to continue to set rates for primary natural gas using the well-designed procedures that allow for stakeholder input and full disclosure of information;
- That the Government of Manitoba reject the subsidization of primary natural gas rates by electricity export revenues; and
- [That the government should recognize] that electricity DSM programs can and should pay for themselves.⁷²

Ms. Desorcy's recommendations did not support fixed natural gas rates. She further suggested any DSM programs should be universally accessible to all Manitoba citizens and reviewed by the Public Utilities Board.

The third presenter was Tom Simms, from The Community Education Development Association, who spoke on behalf of low income families in Manitoba. He cautioned the committee that DSM strategies are often inaccessible to low income families, and in particular renters.⁷³ Mr. Simms stated that 30–40% of energy consumption in inner cities is energy waste.⁷⁴ He lobbied to have extensive DSM programs focused at low income families.

The fourth presenter was Jennifer Lukovich, a private citizen who advocated an environmental position with respect to Bill 11. Ms. Lukovich submitted that

⁶⁹ *Standing Committee of Social and Economic Development* (5 June 2006), *supra* note 22 at 365–367.

⁷⁰ *Ibid.*

⁷¹ *Manitoba Society of Seniors Inc.*, *supra* note 21.

⁷² *Standing Committee of Social and Economic Development* (5 June 2006), *supra* note 22 at 385–386.

⁷³ *Ibid.* at 388–392.

⁷⁴ *Ibid.* at 390.

“financial incentives”, like high gas prices, were required to promote alternate forms of energy and these financial incentives were not present in this bill.⁷⁵

The final presenter, Sara Anghel, provided a written report on behalf of Direct Energy, an energy retailer. Ms. Anghel argued two positions: first, against fixed prices; and second, that any subsidization initiatives should be directed to all natural gas consumers regardless of who they purchased gas from. Her suggestions were as follows:

- Allow primary gas rates to continue to reflect the true cost of gas so that consumers can make informed and efficient usage and investment decisions;
- Minimize the size of the cost deferral by applying it to the most vulnerable consumers, as was recommended by the PUB, and by limiting the recovery period; and
- Maintain equity among Manitoba’s gas supply customers, regardless of their choice of gas supplier.⁷⁶

Therefore all five presenters—while having varying specific interests—all argued against Bill 11. As a whole, the presenters lobbied against fixed gas costs; they also argued DSM initiatives should be accessible to all energy consumers, not just electricity or natural gas consumers. In particular, they emphasized the special needs of low income consumers and argued if subsidies were allocated exclusively to the natural gas sector, they may be inaccessible to this special interest group.

Mr. Chomiak proposed various amendments in response to this criticism.⁷⁷ The amendments were all passed on division during the committee stage. The amendments responded to the concerns voiced by both opposition members and presenters in form and content. For example, the amendments specifically included seniors, rural families, and low income families in the purpose provision of the bill’s DSM initiatives;⁷⁸ which is clear evidence of a prevailing democratic process.

⁷⁵ Manitoba, Legislative Assembly, *Standing Committee of Social and Economic Development*, Vol. LVII No. 10 (5 June 2006) [*Standing Committee of Social and Economic Development* (5 June 2006)] at 403–405.

⁷⁶ *Ibid.* at 450.

⁷⁷ *Standing Committee of Social and Economic Development* (5 June 2006) at 416–439. See also: Manitoba, Legislative Assembly, *Debates and Proceedings*, Vol. LVII No. 84B (6 June 2006) [*Debates* (6 June 2006)] at 3038–39.

⁷⁸ *The Winter Heating Cost Control Act*, C.C.S.M. c. W165 at s. 6(3). This version of the Act should be distinguished from Bill 11, *The Winter Heating Cost Control Act*, S.M. 2006, c. 5, the initial version of the bill that was significantly amended into the current continuing consolidated statute.

C. Third reading and Royal Assent

On 13 June 2006, the Social Economic Development Committee reported to the Legislative Assembly on Bill 11, *The Winter Heating Cost Control Act*. No further amendments were proposed.

VI. BILL 11 AS AMENDED

Bill 11 as proclaimed on 20 November 2006 no longer embodied its original intent.⁷⁹ For example, the rate freeze provision has not yet been proclaimed. Further, it is unlikely this provision will be proclaimed as it was faced with the strongest criticism throughout the legislative process, and in any event, a significant increase in the price of natural gas is no longer predicted.⁸⁰ Also, the fund established under the second objective of the bill now applies generally to all of Manitoba Hydro's energy consumers, not only its natural gas and electricity users.⁸¹ The fund is now deemed the "Affordable Energy Fund", and it seems to be the bill's sole effect. In fact, the name of the bill, *The Winter Heating Cost Control Act*,⁸² is a misleading title because the amendments changed its character; it is submitted that the "Affordable Energy Fund Act" would have been more appropriate. Furthermore, the bill now specifically states that any DSM initiatives are to ensure consumers in northern or rural Manitoba, seniors, low income families, and those with alternate energy sources have equal access to the services.⁸³

Additionally, the fund will only be financed by a percentage of export profits during the 2006–07 winter season.⁸⁴ However, it is still unclear what value this percentage would be⁸⁵ and there is no indication the fund cannot be used to subsidize natural gas prices.

There are no further instructions or restraints on the mechanics of the Affordable Energy Fund. Therefore, the bill was altered significantly in three areas: it no longer focuses on creating a rate freeze; it will not fund any losses accrued from a rate freeze; and its DSM provisions apply to all energy sectors

⁷⁹ *Ibid.*

⁸⁰ See interview with Ms. Perry, *supra* note 38 and see also predicted gas rates, *supra* note 8. Please note that the rate freeze provision was not enacted during the winter of 2007 and is therefore no longer applicable.

⁸¹ See *The Winter Heating Cost Control Act*, *supra* note 78 at s. 6(3).

⁸² *Ibid.*

⁸³ *Ibid.*

⁸⁴ *Ibid.* at s. 6(4).

⁸⁵ See interview with Ms. Perry, *supra* note 38.

and all energy customers equally.⁸⁶ These changes fully respond to and reflect the lengthy debate and lobbying during the legislative process.

VII. THE BILL'S EFFECTS

The government chose to play an active role in the market regulation of natural gas sales through Bill 11. However, critics argue government regulation of natural gas prices creates an inaccurate representation of the market and fails to predict the price of the global market.⁸⁷ As a result, consumers purchase a product that would otherwise be beyond their financial means or preference. This effect may tip the delicate demand supply equation in favor of the demand side. Further, according to the National Energy Board, provincial governments should let energy prices reflect market values.⁸⁸ The board submits this will allow the consumer to understand total costs and make informed decisions. However, the government not only has to take into account the resource's price, but it has the added duty of ensuring the citizens of Manitoba are provided with affordable heating. Therefore, the government must ask whether natural gas prices are an unaffordable choice to the citizens. Assuming this is true, it is then essential that a government in a climate akin to Manitoba explores initiatives to alleviate the problem.

A. The Role of the Affordable Energy Fund

Bill 11, as amended, is an attempt to tackle heating affordability concerns by establishing the Affordable Energy Fund for programs that promote energy efficiency and conservation.⁸⁹ It is possible the bill will obligate Manitoba Hydro to pay a substantial amount of electricity export revenues into the fund. It was submitted in debates in the Legislature that the government would be hurting electricity consumers by taking export dollars out of Manitoba Hydro.⁹⁰ For example, Manitoba Hydro would not be able to channel the full amount of electricity export revenues back into the production of electricity, which may raise costs of electricity in light of Manitoba Hydro's large debt.

The fund may also be used to promote residential and commercial Power Smart upgrades. This would create a more efficient use of natural gas and would continue the work that the gutted Federal Energuide initiatives started.⁹¹ It is

⁸⁶ *Ibid.*

⁸⁷ *Debates* (18 November 2005), *supra* note 13 at 506. See also *supra* note 4 at 18.

⁸⁸ *Supra* note 4 at 16.

⁸⁹ See *The Winter Heating Cost Control Act*, *supra* note 78 at s. 6(1).

⁹⁰ *Debates* (31 May 2006), *supra* note 67 at 2822–23 (Bonnie Mitchelson).

⁹¹ CBC, "Energuide" (5 May 2006), online: CBC <<http://www.cbc.ca/canada/story/2006/05/05/energuide05052006.html>>.

important to note the fund would not be the only Manitoba Hydro Power Smart initiative. Manitoba Hydro already has programs that include energy evaluations for old furnace replacements.⁹² It is unclear what role the fund will play in regard to these previously established Power Smart programs. One could also question if this legislation was even required because these programs already deal with energy conservation. Manitoba Hydro may also choose to use the fund to aid in research and development of alternative forms of energy.⁹³ According to the National Energy Board, DSM is based to a large extent on education and awareness,⁹⁴ but the board specifically recommended market-based mechanisms like pricing for peak hours.⁹⁵ Bill 11 does not allude to any pricing mechanisms.

B. Direction for Future Initiatives

If Manitoba residents cannot afford to heat their homes there is a problem and this problem will not be solved through fixed price rates. Further, according to Mr. Chomiak,

Manitoba does not produce the natural gas which it uses but rather must pay oil and gas companies in other provinces, usually Alberta, for the fuel, producing a net drain on the economy.⁹⁶

Therefore, it is submitted that any government initiatives in natural gas regulation should be focused on phasing out natural gas use. Bill 11 fails to take this aggressive approach and may merely supplement current Power Smart programs.

VIII. CONCLUSION

Bill 11 was delayed with strong opposition during the legislative process and was effectively barred from being enacted into force for the 2005–06 winter season. During the committee process, problematic issues with the bill and natural gas regulation became clear. This was made possible by effective submissions from well-represented public interest groups. The debate eventually compelled the government to amend the bill. The bill as amended clearly responded to the issues raised by opposition to it throughout the legislative process.

It may appease the public interest groups who were involved in its passage, but the bill's practical effect is suspect: the amendments were an answer to

⁹² Manitoba Hydro, *What is Powersmart?*, online: Manitoba Hydro <http://www.hydro.mb.ca/saving_with_ps/psmart_overview.shtml>.

⁹³ See *The Winter Heating Cost Control Act*, *supra* note 78 at s. 6(2).

⁹⁴ *Supra* note 4 at 16.

⁹⁵ *Ibid.* at 15.

⁹⁶ *Debates* (18 November 2005), *supra* note 13 at 504 (Dave Chomiak).

opposition criticism but they were not a solution to the underlying issues that were raised through the legislative process. These issues include over consumption, consumer dependency on an imported commodity, and the continued consumption of hydrocarbon energy sources.

Nonetheless, Bill 11 provided several important observations as a unique case of effective lobbying. First, even in the face of strong opposition, Bill 11 was not barred from becoming legislation, but that opposition drastically affected the nature and ultimate effect of the bill when it became law. For example, Bill 11 no longer embodies a rate freezing provision. Second, the effective debate in the Legislative Assembly acted to educate ministers about the policy considerations and consequences of Bill 11 on all consumer groups. As the debate progressed on Bill 11 it was apparent issues became more focused and more researched. In fact, debate often reflected current expert opinion on natural gas regulation. Third, an accurate representation of public opinion was taken into account when amending Bill 11. In particular, Bill 11 as amended exhibits the interests of all five presenters from the committee stage.

Finally, although the amendments on Bill 11 appeased the electorate, it fell short of aggressive legislation that would answer some of the issues raised during the legislative process. As previously mentioned, the bill did not attempt to address broader political issues, such as the consumption of hydrocarbons, Manitoba's economy, including Manitoba Hydro's debt to equity ratio, and alternate sources of heating energy. Furthermore, although the bill's original objective was to protect the consumer's interest by ensuring natural gas remains affordable, experts do not support subsidized natural gas prices, and instead promote clear market signals. Therefore, parliament should avoid regulating natural gas prices and it is further submitted that any subsequent legislation should deal with the aforementioned broader issues. The value of future natural gas bills that fail to do this should be seriously questioned.

In conclusion, Bill 11 was rendered to have little effect because of its delayed coming into force date. However, this does not necessarily reflect a shortcoming of the legislative process. In fact, debates in both the House and during the committee stage afforded parliament an educated and comprehensive understanding of stakeholder concerns with respect to natural gas regulation. This valuable insight was incorporated into the amended version of Bill 11. Although the legislative process did not create a forum for innovative drafting to deal with the broader issues surrounding Bill 11, it did create a forum that effectively scrutinized the proposed law, and incorporated the interests of the majority therein.