

*News from the BC Public Interest Advocacy Centre***January 1998, Volume 2.1****CONTENTS:**[Telco Views/](#)[Energy Views/](#)[Human and Equality Rights Views/](#)**Telco Views****A CRTC Update**

In our September newsletter, we reported on the application then pending before the Canadian Radio-Television and Telecommunications Commission ("CRTC") with respect to implementation of the new price cap regulatory regime. As part of that proceeding, BC Tel was asking for a large rate increase consisting of a full \$3.00 per month rebalancing increase, and further increases to be collected in the first two or three years of the price cap regime amounting to an additional \$80 million.

The CRTC issued an interim decision on December 18, 1997. It approved an average increase of \$2.84 per month for BC Tel. Increases will be lower in urban centres and higher in areas outside the Lower Mainland and South Vancouver Island. The CRTC did not approve BC Tel's application for the additional \$80 million, but neither did it reject it. It will address this part of the application in its final decision, to be issued prior to March 1, 1998. It rejected similar increases for all but one of the other Stentor companies, and the decision gives no reason why it is prepared to consider a further increase for BC Tel. That means we won't know the full extent of local rate increases for a few more weeks.

Also on December 18, 1997 the CRTC issued a decision totally deregulating the long distance telephone market. Despite opposition from consumer groups and competitors, the CRTC determined that the long distance market was sufficiently competitive that it no longer required the telephone companies to be regulated.

It was our clients' position that the long distance market is not yet fully competitive. The Stentor companies continue to control the lion's share of the market. Although they focus on their reduced market share, they fail to note that they have a reduced share of significantly larger market and profits are increasing.

However, the Commission did realize the need to ensure protection for the large majority of customers who do not make enough long distance calls to qualify for discounts and therefore are not attractive to competitors.

On January 1, 1998, the local telephone market formally became subject to competition, but as we noted in our September newsletter, residential customers are very unlikely to see any

real competition for the next two or three years for both financial and technological reasons. Competition will focus on the business market in major cities. Even the CRTC expects and in fact has mandated a relatively slow roll-out of competition to other markets.

Energy Views

BC Energy News

The energy market, particularly electricity, has been very active over the last few months and will continue to be so in 1998.

Task Force on Electricity Market Reform

In the past, we reported on the activities of the British Columbia Task Force on Electricity Market Reform, which was established by the government in the Spring of 1997 and of which BC PIAC was a member. The government had hoped that the Task Force could reach some consensus on what reforms should be considered in the electricity market. However, the make-up of the task Force and the process it followed doomed it to failure. Some members pressed for a major restructuring of the market and the break-up of BC Hydro. Others, including BC PIAC, unions, and environmentalists, considered that only minor reforms, including a strengthening of BC Hydro, were necessary given that British Columbia has the second lowest rates in Canada and arguably the most reliable service.

Consensus could not be reached, and it was finally agreed in the late Fall of 1997 that the Chair of the Task Force, Dr. Mark Jaccard, would prepare his own report. He filed an interim report in December 1997, with a final report to be presented after public input in February 1998. All indications are that the final report will be essentially the same as the interim report.

The interim report recommends giving direct access to large industrial customers only - that is, they would be the only customers allowed to buy from suppliers other than BC Hydro. It also recommends as a second step the establishment of a separate entity to run BC Hydro's and West Kootenay Power's transmission facilities.

The report is unacceptable to the coalition of BC PIAC, environmentalists and unions, and we will be preparing and presenting a separate proposal to the Minister of Employment and Investment shortly. Besides critiquing Dr. Jaccard's report, it will present an alternative and more moderate action plan to the government.

BC Hydro Rate Review

In October, BC Hydro released its Annual Report for the year ended March 31, 1997. The report indicated that it had earned more than its British Columbia Utilities Commission ("BCUC") - approved profits, and would likely do so in this fiscal year as well. Accordingly, BC PIAC, on behalf of its clients, filed an application to the BCUC to hold a hearing to review BC Hydro's rates. A similar application was made by BC Hydro's industrial customers.

Despite BC Hydro's opposition, the BCUC allowed the applications, and has given BC Hydro until January 30, 1998, to file materials. At that time, the BCUC will decide how to proceed, but we anticipate a full public rate hearing.

Government Directions to the BCUC

The BCUC regulates BC Hydro in accordance with the terms of a "Special Direction" authorized by the *Utilities Commission Act*. This Special Direction specifies "the factors, criteria and guidelines that the Commission must or must not use in regulating and fixing rates for (BC Hydro)". The Special Direction that has been in place for the past few years arguably goes further than the *Act* permits, but recent amendments made by the Cabinet go much further. In effect, the government has directed the BCUC that it must approve any projects, contracts or expenditures that the government, in the person of the Minister of Employment and Investment, directs BC Hydro to undertake.

We are preparing a petition to the Supreme Court of British Columbia to have the Special Direction, or at least certain aspects of it, set aside as being beyond the jurisdiction of Cabinet. We expect to file the petition in the next few weeks. The petition will be filed on behalf of BC PIAC's energy clients and the Association for the Advancement of Sustainable Energy Policy, a group representing environmental interests. A separate petition will be filed at the same time by BC Hydro's industrial customers.

West Kootenay Power

There were two proceedings involving West Kootenay Power in the Fall of 1997. The first was a rate design application in which WKP was seeking to increase residential rates by approximately 10% over three years. Michael Doherty of BC PIAC participated in the Alternative Dispute Resolution process which resulted in the increase being substantially reduced to approximately 4% over three years.

The second proceeding involved the annual review of WKP's rates under a settlement agreement approved two years ago by the BCUC. We raised a number of concerns, including some in which we argued a hearing is required, given the lack of evidence produced at the one-day review. No decision had been issued at the time of publication.

New BCUC Chair

The BCUC has been without a Chair since the resignation in April 1997 of Dr. Mark Jaccard to head the BC Task Force on Electricity Market Reform. On January 20, 1998, the government announced the appointment of Peter Ostergaard, an Assistant Deputy Minister in the Ministry of Employment and Investment, and formerly Assistant Deputy Minister of Energy in the then Ministry of Energy, Mines and Petroleum Resources. The appointment is initially for only one year subject to renewal.

Human And Equality Rights Views

An Update on Decisions

After many months of hard work by Katherine Hardie and Judy Parrack a number of decisions were released this Fall which were victories for the client groups that we represent. In this January issue, we will discuss two of those decisions and update you on further decisions in our next issue.

Tenants Rights' Action Coalition et al. v. The Corporation of Delta et al.

Secondary suites provide affordable housing to thousands of individuals in the Lower Mainland. Unfortunately, most of these suites are illegal. The focus of this case was on the legality of a bylaw passed by the Corporation of Delta which provided for legal suites only if the suite was occupied by a person related by blood, marriage or adoption to the owner/occupant of the house; all other suite arrangements were illegal.

TRAC, along with others, challenged the bylaw on several grounds including that the bylaw was discriminatory (as between related and non-related persons) and such discrimination was not authorized by the *Municipal Act* and further that it violated s. 15 of the *Charter of Rights and Freedoms*.

On September 19, 1997, Madam Justice Koenigsberg released her decision. She found that the bylaw in question was discriminatory and such discrimination was not authorized by the *Municipal Act*, as a result the bylaw was found to be beyond the power of the Corporation of Delta to enact. Madam Justice Koenigsberg did not rule on the *Charter* arguments. Madam Justice Koenigsberg stated that Delta's bylaw "clearly has the effect of drawing a distinction between persons occupying 'dwelling-units' based upon their relationship with the principal occupant of the dwelling" and the authority to create such a distinction could not be found, either directly or indirectly, in the *Municipal Act*.

Madam Justice Koenigsberg severed the offending portions of the bylaw. The intent of the remedy was to ensure that this discriminatory practice would end. It remains to be seen how the Corporation of Delta will deal with the difficult issue of legalizing secondary suites.

Robin Susan Eldridge et al. v. The Attorney General of B.C. et al.

This case dealt with the provincial government's obligation to provide sign language interpretation for deaf persons in the context of the publicly funded health care. BC PIAC, along with counsel from the Women's Legal Education and Action Fund ("LEAF") intervened on behalf of LEAF and the DisAbled Person's Network. It was our position that the failure to provide sign language interpreters violated s. 15 of the *Charter*, as it denied deaf persons equal access to the medical system in BC.

The Supreme Court of Canada, in a unanimous decision released on October 9th, 1997, agreed that the failure of the BC Government to provide sign language interpretation effectively discriminated against deaf persons and this violated s. 15 of the *Charter*.

The Court stated that "effective communication is quite obviously an integral part of the

process of medical service...” and if such communication is absent “how can it be said that they receive same level of medical care as hearing persons”. Having drawn this conclusion, the Court had no trouble in finding that the actions of the BC Government were discriminatory.

This decision was a great victory for deaf persons across the country, as well as all those persons who suffer from a disability.